

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

Old High Court Building, Dhaka, Bangladesh

ICT-BD [ICT-1] Case No. 05 of 2017

[Arising out of ICT-BD Misc Case No. 07 of 2016]

[Charges: Participating, committing, aiding and contributing to the commission of offences constituting crimes against humanity and genocide as specified in section 3(2) 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) Khan Ashraf Ali [**absconding**] (2) Khan Akram Hossain,
(3) Rustam Ali Mollah[**absconding**] (4) Sheikh Md. Ukiluddin
(5) Sheikh Idris Ali [**absconding**] (6) Sheikh Rafiqul Islam alias
Babul [**absconding**] and (7) Md. Mokbul Molla

[Now three accused detained in prison and four accused have been
absconding]

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Rana Das Gupta, Prosecutor

Mr. Mokhlesur Rahman, Prosecutor

Mr. Sultan Mahmud, Prosecutor

Rezia Sultana Begum, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

For the Accused:

Mr. Gazi M.H Tamim, Advocate, Supreme Court of Bangladesh, **State defence Counsel** to defend **03** accused

Mr. Abdus Sattar Palwan, Advocate, Supreme Court of Bangladesh, **State Defence Counsel** to defend **04** accused.

Date of delivery of Judgment: 30 November, 2023

JUDGMENT

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

I. Introductory Words

1. Twelve [12] accused (1) Khan Ashraf Ali [absconding], (2) Khan Akram Hossain (3) Sultan Ali Khan [absconding and died during trial] (4) Rustam Ali Mollah[absconding] (5) Idris Ali Mollah(died during trial) (6) Sheikh Md. Ukiluddin, (7) Sheikh Idris Ali [absconding] (8) Sheikh Rafiqul Islam alias Babul [absconding], (9) Md. Maniruzzaman Howlader [died during trial], (10) Md. Hashem Ali Sheikh (died during trial) (11) Md. Ajahar Ali Sikder [died on 17.10.2023] and (12) Md. Mokbul Mollah have been indicted in the case in hand to face trial involving the atrocious prohibited criminal acts constituting the offences of ‘genocide’ and ‘murder’, ‘abduction’, ‘confinement’, ‘torture’, ‘rape’ and ‘other inhumane acts’ as

crimes against humanity enumerated in the International Crimes (Tribunals) Act, 1973 which were committed in the localities under police station-Morrelganj and Kachua of District[now]-Bagerhat in 1971, during the war of liberation of Bangladesh, as arraigned in the charges framed.

2. Out of 12 accused indicted four (4) accused Idris Ali Mollah, Md. Hashem Ali Sheikh, Sultan Ali Khan and Md. Maniruzzaman Howlader died during trial and one (1) accused Md. Ajahar Ali Sikder died on 17.10.2023 i.e. after closure of summing up phase and thus proceeding so far as it related to them stood abated. Tribunal rendered necessary order in this regard after bringing the matter together with death certificates to its notice.

3. Prosecution alleges that in 1971 the accused persons indicted were actively affiliated with the locally formed Razakar Bahini and they, in exercise of their dominant nexus with this paramilitia auxiliary force participated and actively and culpably carried out hideous systematic criminal activities directing the pro-liberation civilians, in furtherance of policy and plan of resisting the Bangalee nation's self-determination and long cherished independence.

4. Trial eventually concluded against eight (8) accused. Since according to report of the enforcement agency there had been no immediate prospect of causing arrest of some accused persons in execution of warrant issued at pre-trial stage as prayed by the investigation officer through the chief prosecutor the Tribunal ordered publication of notification in two national daily newspapers, in compliance with necessary legal requirements directing them to surrender before the Tribunal within the time stipulated therein. But none of those accused responded. As a result, trial proceeded in the absence of those accused persons along with the accused persons detained in prison, treating them absconded.

5. Today, this unanimous Judgment is being rendered by this Tribunal [ICT-1] for the prosecution of persons belonging to auxiliary force allegedly responsible for the serious offences known as ‘system crimes’ as enumerated in the International Crimes (Tribunals) Act, 1973[hereinafter referred to as the ‘Act of 1973] committed in violation of international humanitarian law in the territory of Bangladesh in 1971, during the war of liberation.

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

Tribunal-1' [ICT-1] hereby renders and pronounces the following unanimous judgment.

II. Formation and Jurisdiction of the Tribunal

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

8. We reiterate that the Act of 1973 has been enacted to prosecute, try and punish not only the 'armed forces' but also the perpetrator[s] belonging to 'auxiliary force[s]', or who committed the offence even in the capacity of an 'individual' or being part of a 'group of individuals' or 'organization'. It is manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be prosecuted and tried under the Act.

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

III. Historical backdrop and Context

10. The offences for perpetration of which the accused persons have been indicted were not isolated crimes. Those are recognized as international crimes and those crimes happened in context of war of liberation directing unarmed civilian population, to further specific policy and plan of the Pakistani occupation army.

11. The events arraigned in the charges framed just form split portrayal of dreadful atrocities committed directing pro-liberation Bangalee civilians which constituted the offences of crimes against

humanity in 1971 in the territory of Bangladesh during the nine-month blood-spattered war of liberation.

12. We feel it expedient to pen the observation that the verdict of the Tribunal [ICT-BD], a court of law is not only aimed to render its decision on adjudication of the arraignment brought. The verdict being rendered in the case in hand also mirrors the untold truth and the context behind the commission of horrific criminal acts and this appalling truth shall create youth quake to go ahead with the spirit of the war of liberation and firm patriotism.

13. In Bangladesh, the efforts initiated under a lawful legislation enacted by our sovereign parliament to prosecute, try and punish the perpetrators of crimes committed in violation of customary international law is an indicia of valid and courageous endeavor to come out from the culture of impunity and to ensure justice. But the perpetrators of the crimes could not be brought to book for decades together, and this left a deep scratch on the whole nation.

14. Atrocious and dreadful crimes were committed during the nine-month-long war of liberation in 1971 which resulted in the birth of Bangladesh, an independent state and the motherland of the Bangalee nation. Some three million people were annihilated, nearly quarter million women were raped and over

10 millions people were forced to deport to India quitting own homes to escape brutal persecution, during the nine-month battle and struggle of Bangalee nation.

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

16. Since the partition of British-India in 1947 the Pakistani rulers started derogating rights of Bangalee population. The nation started suffering grave disparity. In 1952 the Pakistani authorities attempted to impose 'Urdu' as the only State language of Pakistan ignoring Bangla, the language of the greater part of population of Pakistan. The people of the then East Pakistan started movement to get 'Bangla' recognized as a state language and eventually it led to movement for greater autonomy and self-determination and finally independence.

17. The history goes on to portray that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation became the

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

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

19. In the early hour of 26th March, following the onslaught of "Operation Search Light" by the Pakistani Military on 25th March 1971, Bangabandhu Sheikh Mujibur Rahman declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

20. History tells that Pakistani occupation army started its monstrous 'mayhem' since 25 March 1971 by conducting the designed criminal mission known as 'operation searchlight' which was in grave breaches of Geneva Convention 1949, intending to liquidate the pro-

liberation Bangalee civilians, to resist their aspiration of self-determination. The atrocities continued for long nine months. Local collaborators belonging to auxiliary force[s] formed got actively engaged in accomplishing the crimes directing civilian population, being imbued by the policy and plan of the Pakistani occupation army on visible and active endorsement of Jamaat E Islami [JEI] a potential pro-Pakistan political party, the history says it.

21. 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 teams to collaborate with the Pakistani occupation army to further policy and plan.

22. In the War of Liberation that ensued in 1971, all people of the then East Pakistan unreservedly supported and participated in the call to make their motherland Bangladesh free but a small segment of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamaat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League, Nizam-e-Islami party culpably collaborated with the Pakistani occupation army to aggressively resist the conception of independent Bangladesh and most of them committed and facilitated as well the commission of atrocious activities directing the pro-liberation civilian population, in

exercise of their explicit nexus with auxiliary forces. This is now a settled history of which this Tribunal takes judicial notice as permitted by the Act of 1973 and the ROP.

23. The Pakistani occupation army's widespread appalling brutality directing Bangalee civilian population of Bangladesh was planned and in furtherance of policy-- the policy to wipe out the pro-liberation Bangalee civilians.

24. Grave and recurrent horrific atrocities committed directing the Bangalee civilians in the territory of Bangladesh starting since 25 March 1971 did not thrive to foil the highest sacrifice to which the nation always pays tribute and homage to the blood of millions of patriotic martyrs and innocent defenceless people.

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

26. It is now an undisputed history that the local collaborators, knowing consequences, actively assisted the Pakistani occupation army in accomplishing their policy and plan to annihilate the pro-liberation Bangalee civilians. The local collaborators truly had acted

as ‘traitors’. It is now a settled history which needs no further document to prove.

27. Enactment of International Crimes (Tribunals), Act, 1973 in our sovereign parliament in the end removed hurdles in prosecuting the perpetrators of crimes against humanity and genocide committed in 1971 in the territory of Bangladesh.

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

29. It is now historically settled that the members of Razakar Bahini, a para militia force did not keep them abstained from implementing the strategy of JEI to further the policy and plan of the Pakistani occupation army in carrying out barbaric atrocities against the non-combatant pro-liberation civilians that resulted in commission of offences enumerated in the Act of 1973, in grave breach of Geneva Convention and Genocide Convention.

30. The untold atrocious resistance on part of thousands of local collaborators belonging to Razakar Bahini, Al-Badr Bahini finally could not impede the nation's valiant journey to freedom. Undeniably, the way to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle and immense sacrifices.

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

IV. Brief account of the accused

32. It is essentially needed to paint an account and status the accused persons had in 1971 as it is indispensably chained to the arraignments brought. Tribunal notes that thirteen (13) accused were recommended to be prosecuted and tried by filing formal charge. Of them one accused Mokched Ali Didar dies before framing charges. Rest twelve accused have been indicted in different counts of charges. But in course of trial four (4) accused namely Idris Ali Mollah, Md. Hashem Ali Sheikh, Sultan Ali Khan and Md.

Maniruzzaman Howlader died during trial died during trial and another accused Md. Ajahar Ali Sikder too died on 17.10.2023 after closure of summing up and thus proceeding so far as it related to them stood abated. Therefore, now the brief account of seven (07) accused as has been described in the formal charge is being stated as below:

(i) Khan Ashraf Ali [Absconding]

Accused Khan Ashraf Ali, son of late Moktar Ali Khan and late Shamsunnahar Begum of village-Teligati under police station-Morrelganj of District-Bagerhat was born on 24.11.1950 [according to his NID Card]. He passed SSC from Teligati High School. In 1971, his father was a local leader of Convention Muslim League. In 1971 he got enrolled in locally formed Razakar Bahini and collaborated with the Pakistani occupation army in accomplishing crimes against the civilian population, prosecution alleges. He was prosecuted in 1972 for offences of murder punishable under The Collaborators Order, 1972.

(ii) Khan Akram Hossain

Accused Khan Akram Hossain [younger brother of accused Khan Ashraf Ali], son of late Moktar Ali Khan and late Shamsunnahar Begum of village- Teligati under police station-Morrelganj of District-Bagerhat was born on 01.01.1955 [according to NID Card]. He studied up to class VIII at Teligati

High School. In 1971 he got enrolled in locally formed Razakar Bahini and collaborated with the Pakistani occupation army in carrying out atrocious activities against the civilian population of the localities under Morrelganj police station, prosecution alleges. He was prosecuted under The Collaborators Order, 1972 for the offences of murder committed in 1971 in the localities under Morrelganj police station.

(iii) Rustam Ali Mollah [Absconding]

Accused Rustam Ali Mollah, son of late Gafur Mollah and Jarina Begum of village-Josordi under police station-Kachua of District Bagerhat was born on 03.01.1947 [according to his NID Card]. He studied up to class V at Josordi Primary School. He was a follower of Convention Muslim League, a pro- Pakistan political party. In 1971 he joined in locally formed Razakar Bahini and collaborated with the Pakistani occupation army in carrying out atrocious activities against the civilian population, prosecution alleges. He was prosecuted under The Collaborators Order, 1972 for the offences of murder committed in 1971 in the localities under Morrelganj police station.

(iv) Sheikh Md. Ukiluddin

Accused Sheikh Md. Ukiluddin, son of late Sheikh Moslemuddin and Chufiya Begum of village-Chapri under

police station-Moralganj District- Bagerhat was born on 03.07.1933 [according to his NID Card]. He studied up to class III at Daibagyhati Madhyamik School. In 1971 he joined in locally formed Razakar Bahini and collaborated with the Pakistani occupation army in carrying out heinous atrocious activities against the civilian population, prosecution alleges.

(v) Sheikh Idris Ali [Absconding]

Accused Sheikh Idris Ali, son of late Sheikh Afsar Ali and Fatema Begum of village-Josordi under police station-Kachua of District Bagerhat was born on 07.07.1954 [according to his NID Card]. He studied up to class V at Josordi Primary School. In 1971 he was a follower of Convention Muslim League and joined in locally formed Razakar Bahini and collaborated with the Pakistani occupation army in carrying out heinous atrocious activities against the civilian population, prosecution alleges. He was prosecuted under The Collaborators Order, 1972 for the offences of murder committed in 1971 in the localities under Morrelganj police station.

(vi) Sheikh Rafiqul Islam alias Babul [Absconding]

Accused Sheikh Rafiqul Islam alias Babul, son of late Sheikh Showkat Ali and Jobeda Begum of village-Sannyasi under

police station-Rampal of District Bagerhat was born on 20.02.1951 [according to his NID Card]. He studied up to SSC. In 1971 he joined in locally formed Razakar Bahini and actively collaborated with the Pakistani occupation army in carrying out heinous atrocious activities against the civilian population, prosecution alleges.

(vii) Md. Mokbul Mollah

Accused Md. Mokbul Mollah, son of late Md. Safdar Mollah and Mosammat Chhutu Bibi of village-Udankhali under police station-Kachua of District Bagerhat was born on 05.02.1952 [according to his NID Card]. He studied up to class IV at Alipur Primary School. In 1971, he being a follower of Convention Muslim League joined in locally formed Razakar Bahini and actively collaborated with and assisted the Pakistani occupation army in committing heinous atrocious activities against the civilian population, prosecution alleges.

V. Procedural History

Pre-Trial stage

Commencement of Investigation

33. The Investigation Agency of the Tribunal constituted under the Act of 1973 initiated investigation pursuant to complaint register's serial no. 53 dated 04.06.2015, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated in 1971 during the war of liberation around the localities under Police Station-Morrelganj and Kachua of District-Bagerhat.

34. Investigation started against thirteen suspected accused (1) Khan Akram Hossain, (2) Idris Ali Mollah, (3) Sheikh Md. Ukiluddin, (4) Md. Mokbul Mollah and (5) Md. Hashem Ali (6) Khan Ashraf Ali , (7) Sultan Ali Khan, (8) Rustom Ali Mollah, (9) Sheikh Idris Ali , (10) Sheikh Rafiqul Islam alias Babul , (11) Md. Maniruzzaman Howlader , (12) Md. Ajahar Ali Sikder, and (13) Mokched Ali Didar.

Issuance of Warrant of Arrest

35. During investigation, on prayer of the IO placed through the prosecution the Tribunal on 16.07.2016 ordered issuance of warrant of arrest [WA] against all the 13 suspected accused.

36. In execution of WA issued the enforcement agency causing arrest of 03 accused Khan Akram Hossain, Idris Ali

Mollah(died during trial) and Md. Mokbul Mollah produced them before the Tribunal when they were sent to prison on 22.08.2016. Another accused Sheikh Md. Ukiluddin was shown arrested on 22.08.2016 in connection with this case.

Interrogation of arrested accused

37. In this way 04 suspected accused could have been detained at pre-trial stage in execution of W/A issued by the Tribunal, on prayer of the Investigation Officer and they were permitted by the Tribunal's order dated 09.11.2016 to be interrogated at the convenient place of the central jail in Keraniganj, Dhaka, as prayed for.

38. Accused Hashem Ali Sheikh (died during trial) has also been arrested on 04.01.2017 in execution of W/A issued by the Tribunal and on production he was sent to prison, as prayed for.

Submission of Investigation report

39. On 22.01.2017, the Investigation Officer [IO] submitted report together with documents and materials collected and statement of witnesses before the Chief Prosecutor, wrapping up of investigation against 14 suspected accused including accused Md. Abdul Ali Mollah (died during proceeding) who was arrested at pre-trial stage in execution of W/A issued by the

Tribunal and was sent to prison vide Tribunal's order dated 24.01.2017.

40. After submission of the report by the investigation agency, accused Md. Abdul Ali Mollah died on 27.03.2017 in Dhaka Medical College Hospital and as such proceedings so far as it related to him stood abated.

Submission of Formal Charge

41. 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 20.04.2017 under section 9(1) of the Act of 1973 before this Tribunal alleging that accused persons were engaged in committing the offences as enumerated in section 3(2) of the Act of 1973 during the period of War of Liberation in 1971 around the localities under Police Station-Morrelganj and Kachua of District-Bagerhat, recommending joint trial of the accused persons as permitted in law.

Taking Cognizance of Offence

42. On 31.5.2017, the Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) of the Act of 1973, by application its judicial mind to the Formal Charge, materials and documents submitted therewith.

Publication of Notification for holding proceeding in *absentia*

43. The law enforcement agency could not secure arrest of eight (8) accused persons as they remained absconded and there was no immediate prospect of causing their arrest. Thus after having the report in execution of warrant of arrest issued against these accused the Tribunal, for the purpose of holding proceeding in *absentia* against them, ordered publication of notice in two national daily news papers as required by law.

Appointment of State defence Counsel

44. But those accused did not turn up despite such notification published in two national daily news papers and as such treating them absconding the Tribunal ordered for hearing on charge framing matter by appointing Mr. Gazi M.H Tamim who is engaged counsel for one accused Idris Ali Mollah(died during trial) as the state defence counsel to defend 04 accused detained in prison and also by appointing Mr. Abdus Sattar Palwan as the state defence counsel to defend 07 absconding accused , at the cost of Government, to defend them.

45. Before hearing on charge framing matter, accused Mokched Ali Didar died on 02.01.2018, after submitting the formal charge and after bringing it to notice of the Tribunal together

with a report of the OC, Police Station- Kachua District Bagerhat dated 06.01.2018 proceedings so far as related to this accused stood abated.

Hearing on Charge Framing matter

46. Thus hearing on charge framing matter took place in presence of 05 accused who are in prison and in absentia of 07 accused as they had been absconding. In course of hearing on charge framing matter both sides placed their respective submission, drawing attention to the formal charge and documents submitted therewith.

Commencement of Trial by Framing Charges

47. On hearing both sides on charge framing matter Tribunal on prima facie appraisal of the formal charge and materials collected rendered order on charge framing on 01.08.2018. The charges so framed were read over and explained to the accused persons present on dock to which they pleaded not guilty and claimed to be tried according to law. In this way trial commenced.

Opening Statement of Examination of prosecution witnesses

48. On the date fixed, after framing charges prosecution placed opening statement on 10.09.2018 and started examining witnesses. The phase of examination of prosecution witnesses ended on

21.12.2021. Defence duly cross-examined the prosecution witnesses. On closure of examination of prosecution witness on 21.12.2021 defence was given opportunity to adduce and examine witness, if any. But defence declined to adduce and examine any witness. And thus date 03.02.2022 -was fixed for placing summing up.

Summing up and keeping the case in CAV

49. Placing summing up started on 25.04.2022 and it ended on 07.08.2023 and then on closure of summing up Tribunal kept the case in CAV i.e. for delivery and pronouncement of Judgement. Prison authority by making communication dated 23.10.2023 together with necessary papers and death certificate informed that one accused Md. Ajahar Ali Sikder detained in prison died on 17.10.2023 and thus proceeding so far as it relates to this accused stood abated. Tribunal rendered necessary order in this regard on 01 November, 2023. Afterward, on 09.11.2023 both parties informed verbally that another absconding accused Md. Maniruzzaman Howlader too died during trial and then Tribunal directed both sides to submit related papers including death certificate in respect of death of accused Md. Maniruzzaman Howlader. On perusal of papers including the death certificate submitted Tribunal rendered necessary order on 16.11.2023 and accordingly proceedings far as it related to accused Md. Maniruzzaman Howlader stood

abated. It is to be noted too that on 09.11.2023, the date fixed for delivery and pronouncement of judgment, on perusal of papers and death certificate it came to notice of Tribunal that one accused Sultan Ali Khan (absconded) also died during trial. Therefore, keeping the delivery of judgment in abeyance Tribunal passed necessary order abating the proceeding so far as it related to this accused and deferred the matter of delivery and pronouncement of judgement by fixing date 30.11.2023.

VI. Applicable laws

50. In dealing with the proceedings involving the offence enumerated in the International Crimes (Tribunals) Act 1973 which are known as 'system crimes', the Tribunal shall be guided by the International Crimes (Tribunals) Act 1973, the Rules of Procedure 2010 formulated by the Tribunal under the powers conferred in section 22 of the Act of 1973.

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

52. The Tribunal may admit any evidence which it deems to have probative value [Section 19(1) of the Act]. The Tribunal shall have discretion to consider hearsay evidence by weighing its probative value [**Rule 56(2)**] and credence.

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

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

55. Since the Act of 1973 is meant to prosecute and try the persons responsible for the offence of crimes against humanity, genocide committed in violation of International Humanitarian Law, the Tribunal however is not precluded from seeking guidance from international reference and relevant evolved jurisprudence, if needed to resolve legal issues related to adjudication of charges and culpability of the accused indicted.

56. Tribunal reiterates that both the Act of 1973 and the Rules (ROP) have adequately ensured the universally recognised rights of the defence. Additionally, the Tribunal, in exercise of its discretion and inherent powers as contained in Rule 46A of the ROP, has adopted numerous practices for ensuring fair trial by providing all possible rights of the accused.

VII. Summing Up

Summing up: By the prosecution

57. **Mr. Rana Das Gupta**, the learned prosecutor in placing summing up drew attention to ocular testimony of witnesses examined and other materials together with settled jurisprudence. It has been submitted that the events arraigned constituting the offences of crimes against humanity and genocide have been proved from uncontroverted ocular narrative of direct witnesses to facts related to the events arraigned. Uncontroverted ocular narrative also proves participation and complicity of the accused persons indicted in accomplishing the crimes arraigned in of charges framed beyond reasonable doubt.

58. The learned prosecutor further submitted that the crimes were committed directing pro-liberation Bangalee civilians and

unarmed freedom fighters in 1971, to further policy of Pakistani occupation army. The accused persons indicted had acted culpably in exercise of their alliance with the locally formed auxiliary force i.e. Razakar Bahini and they knowing the consequence contributed and substantially facilitated in perpetrating the horrific crimes arraigned, sharing common purpose.

59. Argument has been placed categorically in respect of each count of charge which may be well addressed when we will move to adjudicate each charge independently.

Summing up by the defence

60. *Per contra*, **Mr. Gazi M.H. Tamim**, the learned state defence counsel argued that testimony of prosecution witnesses suffers from inconsistency and the same is not credible. The prosecution witnesses had no reason of knowing the accused persons. Some of prosecution witnesses were tendered aged in 1971 and thus they are not competent and credible witnesses. The witnesses have implicated the accused persons out of rivalry and it could not be proved beyond reasonable doubt that the accused persons being part of the criminal gang were

engaged in perpetrating the crimes alleged. The accused persons did not allegedly belong to any auxiliary force.

61. Mr. Abdus Sattar Palwan, the learned state defence counsel for other accused persons echoed the contention agitated by the other learned state defence counsel. It has been contended too on part of defence that failure to establish accused persons' involvement in committing the alleged crimes should entail their acquittal.

62. The learned state defence counsels questioning truthfulness of testimony of witnesses placed argument in respect of each charge which may be well addressed in adjudicating respective charge.

VIII. General considerations regarding the evaluation of evidence in a case of Crimes against Humanity & Genocide.

63. The accused persons who were allegedly the members of 'auxiliary force' created in 1971 intending to provide static support to the Pakistani occupation army as defined in section 2(a) of the Act of 1973 have been charged for the offences enumerated in section 3(2) of the Ac of 1973. The offences for which they have been indicted were 'system crimes' committed

in violation of international humanitarian law in the territory of Bangladesh in 1971 directing pro-liberation civilians and, the followers of pro-liberation political party and non-combatant freedom-fighters. All those offences arraigned happened in context of war of liberation.

64. The accused persons have been brought to justice more than four decades after the diabolical atrocities occurred. The case so far as it relates to the alleged facts of atrocious criminal acts constituting the alleged offences is predominantly founded on ocular evidence presented by the prosecution. The victims and witnesses came on dock to recount what prohibited acts materially related to the principal events they experienced.

65. Together with the facts and circumstances to be divulged 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. Considering the pattern and nature of crimes arraigned, determination of the related legal issues will be of assistance in arriving at decision on facts in issues.

66. In the process of appraisal of evidence adduced in adjudicating the atrocious events arraigned and complicity of the accused persons therewith we must keep the ‘context’ in mind. The reason is that the term ‘**context**’ refers to the events, organizational structure of the group of perpetrators, *paramilitia* forces, policies that imbued the perpetrators in committing the alleged crimes committed in 1971 during the war of liberation.

67. It is to be noted too that the 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 compatible 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].

68. This Tribunal[ICT-BD], in the earlier cases disposed of, in exercise of its jurisdiction has observed 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’. That is to say, hearsay evidence is admissible and the Tribunal can act on it in arriving at decision on fact in issue, provided it carries reasonable probative value [Rule 56(2) of the ROP].

69. However, according to universally recognised jurisprudence and the provisions as contained in the ROP of the ICT-BD-1 onus squarely lies upon the prosecution to establish accused persons’ presence, concern, acts or conducts, and omission forming part of attack that resulted in actual commission of the principal offences of crimes against humanity as enumerated in section 3(2) of the Act of 1973 for which they have been arraigned. Therefore, until and unless the accused persons are found guilty they shall be presumed innocent. Keeping this universally recognised principle in mind Tribunal moved ahead with the task of evaluation of evidence provided.

70. Finally, the Tribunal retells that assessment of the evidence is to be made on the basis of the totality of the evidence presented in the case before us and also considering the context

prevailing in 1971 in the territory of Bangladesh. Credibility of evidence adduced is to be weighed in context of its relevance and circumstances.

IX. Formation of Razakar Bahini and whether the accused persons had affiliation with this auxiliary force in 1971

71. Mr. Rana Das Gupta, the learned prosecutor submits that the accused persons indicted belonged to para militia auxiliary force i.e. Razakar Bahini formed in Kachua and Morrelganj of District Bagerhat in 1971. It is a challenging task indeed of collecting adequate documents to show the nexus of accused persons with Razakar Bahini. However, it has been proved from oral and documentary evidence relied upon. Defence could not refute such culpable association of accused persons with the locally formed Razakar Bahini, the learned prosecutor added.

72. On contrary, **Mr. Gazi M.H. Tamim**, the learned defence counsel submitted that alleged affiliation of accused persons with auxiliary forces could not be proved by any authoritative document of 1971; that the documents relied upon have been created for the purpose of the case. Mere oral testimony of witnesses does not make alleged affiliation credible.

73. It is to be noted that The International Crimes (Tribunals) Act, 1973 permits to prosecute even an 'individual' or 'group of individuals' for the offences enumerated in section 3 of the Act. That is to say, mere failure to prove membership in Razakar Bahini an accused cannot be exonerated if he is found to have had participation and complicity with the commission of the offences alleged even in the capacity of an 'individual'.

74. Now, let us see how far the prosecution has been able to prove the fact of accused persons' affiliation with the locally formed Razakar Bahini.

75. Long more than four decades after the atrocities committed in 1971 it was indeed a challenge to collect particularly documentary evidence to substantiate this crucial issue. It is to be noted that in the case of Motiur Rahman Nizami vs. The Government of Bangladesh, represented by the Chief Prosecutor, International Crimes Tribunal, Dhaka, Bangladesh, **(2017) 2 Law Messenger (AD) 446 at paragraph 224**, it has been held as under:

“It has already been observed earlier that the alleged incidents of this case took place long 42 years before. With the passage of this long 42 years many

of the documentary evidence might have been destroyed. In an old case like the present one the prosecution faces great challenges in producing necessary evidence, both oral and documentary.”

76. However, in the case in hand prosecution relied upon oral and documentary evidence as well intending to make this matter proved. What the oral testimony tendered demonstrates in respect of membership of the accused persons in locally formed Razakar Bahini? Forming Razakar Bahini and setting up its camps as stated by P.W.10, P.W.25 and P.W.26 goes to show the status and affiliation the accused persons had in 1971. Being the freedom fighters naturally it was practicable for them of being aware which persons of the localities got affiliated with Razakar Bahini after its formation.

77. P.W.10 Alhaz Shikder Habibur Rahman platoon commander of freedom-fighters and they got stationed at the base set at Dhopakhali. Uncontroverted testimony of P.W.10 demonstrates that around 100 people of their localities joined the Razakar Bahini and received basic training from Pakistani armed forces and set their camps at Kachua, Doibogghati and Teligati.

78. It also depicts from testimony of P.W.10 that among those Razakars he could recall the name of Khan Ashraf Ali, Khan Akram Hossain, Sultan Ali Khan (died during trial), Rustam Ali Mollah, Idris Ali Mollah (died during trial), Sheikh Md. Ukiluddin, Sheikh Idris Ali, Sheikh Rafiqul Islam alias Babul, Maniruzzaman Howlader (died during trial), Hashem Ali Sheikh(died during trial), Ajahar Ali Sikder (died on 17.10.2023), Mokbul Mollah, Moksed Didar and Alim Mollah.

79. Defence simply suggested that the accused were not Razakars. But could not controvert and specifically denied even. P.W.10 is a freedom fighter and got stationed at their camp at Dhopakhali. It appears from his cross-examination that Doiboggohati and Teligati were about 8/9 kilometers and 10 kilometers away respectively from Dhopakhali. It was natural for a freedom fighter of knowing the setting of Razakar camps there and the Razakars affiliated with those camps.

80. P.W.25 Md. Latifuzzaman stated too that 24/25 days after the war of liberation had ensued peace committee was formed after holding a meeting at the Kachua CO Office and later it formed Razakar Bahini. Being present at that meeting he (P.W.25) saw Abdul Ali Molla, Mokbul Molla, Ajahar Ali

Sikder (died on 17.10.2023), Abul Hashem Sheikh (died during trial), Maniruzzaman (died during trial), Sheikh Idris Ali, Idris Ali Molla (died during trial), Ashraf Ali Khan, Akram Ali Khan, Sultan Ali Khan and many others declaring their joining in the Razakar Bahini.

81. P.W.26 S.M. Bazlur Rahman is a freedom-fighter. He

before narrating the event arraigned in charge no.06 stated that after the beginning of Liberation War, one day of third week of April, local Jamaat-E-Islami and Muslim League leaders arranged peace meeting at Kachua CO Office. Being informed of it, he (P.W.26) stayed beside the CO office wherefrom he observed the formation of Peace Committee and Razakar Bahini.

82. Unimpeached testimony of P.W.25 also demonstrates that accused Md. Maniruzzaman Howlader. was made commander of Razakar Bahini and accused Ajhar Ali Shikder, Mokbul Mollah, Abdul Ali Mollah, Rustom Ali Molla, Sultan Ali, Idris Ali, Mokched Ali Didar, Sheikh Md. Ukiluddin, Rafiqul Islam Babul, Hashem Ali Sheikh, Akram Hossain Khan, Ashraf Ali Khan, Idris Ali Sheikh and many more joined this Razakar

Bahini and they received their training at the Pakistani army camp at Bhuter Bari in Khulna. It could not be impeached.

83. It also depicts from unimpeached testimony of P.W.26 that those Razakars formed their camps at Kachua CO Office, Doiboggohati and Morrelganj and started committing crimes against humanity and devastating activities and causing torture directing civilians irrespective of their religion around the localities.

84. Defence simply denied what the P.W.25 and P.W.26 stated about the formation of Razakar Bahini and affiliation of accused persons therewith. No effort seems to have been made to controvert it in cross-examination of these two witnesses, the freedom-fighters.

85. In 1971 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 Pakistani armed force for ‘operational’ purpose. Razakars, an auxiliary force was thus formed to collaborate with the Pakistani occupation army to further the policy of annihilating the Bengali nation—it is now well settled.

86. The narrative made in the book titled ‘Muktijudhdhe Dhaka 1971’ demonstrates that in 1971, Jamat-e-Islami with intent to provide facilitation and culpable assistance to the Pakistani occupation army by forming armed Razakar and Al-Badr force and obtained Pakistan government’s recognition for those para militia forces. The relevant telling is as below

"Rivgqv†Z Bmjvqx gw³ht×i iiy†_†K tkl chᵒ
mvgwi K Rvš††K mg_ᵒ K†i | Zv†`i mnvqZvi Rb`
Ab`vb` agvᵒ` j vbtq cᵒᵒZ MVb K†i kmš† KivgU |
cieZxᵒng†q mk`zewnbx ivRvKvi | Avje`i MVb
K†i Ges miKvix `xKZx Av`vq K†i | hy†K agly
w†m†e cᵒᵒi Yv Pw†j†q DMᵒagxᵒ Db†`bv mᵒᵒi †Póv
K†i | Avi Gi Avov†j `mb††`i mnvqZvq Pvjvq
vbw†ᵒ†i bksm MYnZ`v, j y, bvix vbhvᵒᵒ, AcniY |
Pv†w Av`vq | me††ᵒ RvwZi v††eK eyxR†ext`i nZ`v
Kiv nq |"

**[Source: Muktijudhdhe Dhaka 1971:
edited by Mohit Ul Alam, Abu Md.
Delowar Hossain, Bangladesh Asiatic
Society , page 289]**

87. It is now settled history that Bangalee traitors belonging to the Razakar Bahini formed on explicit patronization of pro-Pakistan political party Jamat-e-Islami committed and conducted untold atrocious acts like genocide and murder, abduction, torture, rape and other inhumane acts constituting the

offences as crimes against humanity all over the territory of Bangladesh intending to execute the common design and policy of Pakistani occupation army, as its auxiliary force.

88. In the case in hand, oral testimony of the prosecution witnesses lends sturdy assurance to the finding that all the accused persons belonged to locally formed Razakar Bahini. Their nexus and affiliation with Razakar Bahini which was created to collaborate with the Pakistani occupation army became anecdote, especially for its notoriety around the locality. This logical proposition together with the oral evidence suggests the conclusion that all the accused were associated with the locally formed Razakar Bahini.

89. It was a challenging task indeed to collect documentary evidence relating to fact existed five decades back. However, prosecution relies upon some documents to establish the affiliation of accused persons with locally formed Razakar Bahini. Photocopy of the same have been proved by the Investigation Officer [IO] which have been marked as **Material Exhibit-I Series [prosecution documents volume page 6-30]**.

90. It appears that the IO [P.W.27] collected those documents from the library of the office of the investigation wing. The documents are the list of Razakars of Morrelganj and Kachua which go to show that accused persons belonged to Razakar Bahini formed in Kachua and Morrelganj police station in 1971. It appears that this list of Razakars dated 4.11.2010 was communicated by the Police Super to the Deputy Commissioner, Bagerhat. That is to say, this list **Material Exhibit-I Series** was prepared long five years before the investigation of the case initiated by the investigation agency. Thus, we do not find any reason to question its authoritativeness.

91. The document [**prosecution documents volume page 25-27**] is an old document which contains endorsement of the convener, sub-committee, Formation of Razakar Force, Khulna permitting the Razakars listed therein to undergo training. It appears that name of two accused Sheikh Idris Ali and Sheikh Md. Ukiluddin finds place in this list prepared in 1971. True that name of other accused does not find place in this old list. It may be inferred that it could not be possible to collect such old list or document containing name of other accused persons.

92. From totality of evidence tendered as already discussed it stands proved that the accused persons despite being Bengali took stance with the Pakistani occupation army on getting enrolled in Razakar Bahini, in the name of preserving solidarity of Pakistan. Indisputably it became anecdote around the localities under Kachua and Morrelganj of Bagerhat District.

93. Finally, we may therefore arrive at a safe and an unerring conclusion that all the accused persons indicted had acted as the members of Razakar Bahini, an 'auxiliary force' under control of Pakistani army for their operational and other purposes in 1971.

X. Adjudication of Charges

**Adjudication of Charge No.01: [08 accused indicted of whom 02 accused died during trial]
[Narrated as event no. 01: page 34-41 of the Formal Charge]**

[Offences of confinement, torture, looting, arson, murder as crimes against humanity or in the alternative the offence of genocide at villages Chapri and Teligati under police station- Morrelganj of District-Bagerhat]

94. Charge: That on 26 May 1971 at about 02:00 P.M a group formed of the accused (1) Khan Ashraf Ali (2) Khan Akram Hossain,(3) Sultan Ali Khan (**died during trial**), (4) Rustom Ali Mollah, (5) Idris Ali Mollah (**died during trial**), (6) Sheikh Md. Ukil Uddin, (7) Sheikh Idris Ali (8) Sheikh Rafiqul Islam alias

Babul and their 15/20 cohort Razakars including Mokched Ali Didar [now dead] coming from Teligati Razakar camp and a group of Pakistani occupation army coming from Bagerhat by launching joint attack against civilians of villages Chapri and Teligati , with **intent to destroy ‘political group’**, in whole or in part forcibly captured 10 civilians [as named in the formal charge] and brutally tortured them to death, burnt down their houses, looted one Hindu temple and caused serious bullet hit injury to one Jabeda Begum[now dead].

Next, the accused persons and the army men and their accomplices attacked the village-Teligati and carried out looting, destruction of houses of numerous civilians [as named in the formal charge].

On the following day, in continuation of the attack carried out as above the accused persons, being accompanied by their cohorts by launching attack at village-Teligati at about 11:00 A.M unlawfully detained **Saheb Ali Sheikh** who was subjected to torture when the victims killed on previous day were being buried by their relatives.

Therefore, the accused (1) Khan Ashraf Ali (2) Khan Akram Hossain,(3) Sultan Ali Khan (**died during trial**),(4) Rustom Ali

Mollah, (5) Idris Ali Mollah (**died during trial**), (6) Sheikh Md. Ukil Uddin, (7) Sheikh Idris Ali (8) Sheikh Rafiqul Islam alias Babul participated, facilitated, abetted and substantially contributed, by their culpable act and conduct forming part of systematic attack to the commission of offences of abduction, confinement, torture, arson, other inhumane act and murder as **'crimes against humanity'** as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 or in the alternative the offence of **'genocide'** as specified in section 3(2)(c)(g)(h) of the Act of 1973 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses Examined

95. This charge involves offences of confinement, torture, looting, arson and killing nine (09) civilians belonging to pro-liberation 'political group' as **'crimes against humanity'** or in the alternative the offence of **'genocide'** committed at villages-Chapri and Teligati under police station-Morrelganj of District-Bagerhat, with intent to destroy a **'specific group'**, in whole or in part. The arraignment rests upon testimony of six (06) witnesses who have recounted the event they experienced, standing on dock as P.W.01, P.W.02, P.W.03, P.W.04, P.W.05

and P.W.06. Now, let us see what the witnesses testified before Tribunal.

96. P.W.01 Khan Nazrul Islam (66/67) is a resident of village-Teligati under police station- Morrelganj of District (now) Bagerhat. He is a freedom fighter. In 1971 he was 19/20 years old and a student of Intermediate class of Prafulla Chandra College, Bagerhat.

97. Before describing the event arraigned P.W.01 stated that his uncle Abdus Sattar Khan (now dead), Secretary of Awami League of the then Bagerhat sub-division formed 'Sangram committee' after the 07th March speech of Bangabandhu and he was made its convener. He (P.W.01) too got engaged with this committee. He joined the war of liberation after it ensued on 26 March, 1971 and they formed a camp at Primary School at village-Teligati.

98. P.W.01 also stated that peace committee was formed under headship of Muktar Ali Khan (now dead) of their village and later on Razakar Bahini was formed in Kachua, Doibogghati and Morrelganj. A temporary Razakar camp was also set up at Teligati.

99. In respect of the event arraigned P.W.01 recounted that on 26 May in 1971 he had been staying at Teligati freedom-fighters camp along with his co-freedom-fighters when in morning he came to know through source that locally formed Razakar Bahini and Pakistani occupation army had planned to attack Teligati freedom-fighters camp. On getting this information he along with co-freedom-fighters shifting their staying site got stationed at neighbouring Gajirhat village. He (P.W.01) keeping his arms with his co-freedom-fighters went into hiding at the house of Hasen Howlader, adjacent to their house.

100. P.W.01 next stated that on that day at about 02:00 P.M. he saw Razakars and Pakistani army men moving toward their house. Seeing this he went into hiding inside a bush adjacent to house where he saw some other people already remained hidden. There from (hiding place) he could see that 15/20 Razakars including Razakars Ashraf Ali, Akram Khan, Sultan Khan(died during trial), Ukil Sheikh, Moksed Didar (now dead), Idris Molla (died during trial), Rustom Molla, Idris Sheikh, Rafiqul Islam Babul and 25/30 Pakistani army men entering inside Hasen Howlader's house and there from they dragged out Rafij Uddin Howlader, Shahab uddin Howlader, Moktar Howlader. Shahadat Howlader, Hasen Howlader, Soyaj Uddin

Howlader, Abdul Latif Khan, Khorshed Sardar, Mobarak Sheikh to the courtyard on forcible capture and tortured them and then gunned them down to death there. At that time Jabeda Begum attempted to appeal the Razakars and army men when they shot her too by gun firing that resulted injures to her and she died after independence.

101. P.W.01 also stated that next the gang of perpetrators looted households and set the house ablaze and then had left the site. After the Razakars and army men moved back from the site he came out of the hiding place and saw 40/50 houses of their village ablaze. He (P.W.01) also found dead bodies lying at the courtyard of the house of Hasen Howlader. He also found dead body of Jamir Sheikh lying at the courtyard of his house. He (P.W.01) then got united with his co-freedom-fighters in night. In respect of knowing the accused persons indicted P.W.01 stated that the accused Razakars were from their neighbouring locality and thus he knew them beforehand.

102. P.W.01 denied defence suggestions that in 1971 accused Ukil Uddin and accused Idris Ali Molla were 12/13 years old; that the accused persons were not Razakars; that in the month of May in 1971 no Razakar Bahini was formed in their locality.

103. In cross-examination done on part of absconding accused persons P.W.01 stated in reply to defence question put to him that their home was about 7/8 miles far from Bagerhat Sadar Thana; P.W.01 denied defence suggestion that he did not know these accused persons; that what he testified implicating these accused was untrue and tutored.

104. P.W.02 Soleman Sarder (69/70) is a resident of village-Teligati under police station Morrelganj of District (now) Bagerhat. In 1971 he was 23/24 years old and he used to work as a tailor at Mongla. He is the son of one victim Khorshed Ali Sarder. He is a deirect witness to the event arraigned.

105. P.W.02 stated that after the war of liberation ensued he coming back to their village Teligati from Mongla received training of freedom fighters at the camp set up at the Teligati Primary School under headship of commander Soleman Khan. On 26 May in 1971 they being led by commander Soleman Khan had been staying around the site adjacent to Teligati road. At about 02:00 P.M on that day they saw the group formed of Razakar Ashraf Ali Khan, Akram Ali Khan, Sultan Ali Khan (**died during trial**), Rustom Ali, Idris Molla (**died during trial**), Moksed Didar (now dead), Idris Ali Sheikh, Ukil Uddin

Sheikh, Rafiqul Islam @ Babul, their 15/20 cohort Razakars and 25/30 Pakistani army heading toward the home of Moktar Ali Master of village-Chapri.

106. P.W.02 next stated that seeing the gang heading toward the home of Moktar Ali Master of village-Chapri they went into hiding inside the bush, about 40/50 yards far from the home of Moktar Ali Master. Remaining in hiding there they saw the Pakistani army men besieging the home of Moktar Master when the Razakars entered inside the home and brought out Rafiz Uddin Halder, Saij Uddin Halder, Moktar Master, Hasen Howlader, Shahabuddin Halder, Shahadat Halder, his (P.W.02) father Khorshed Ali Sarder, Latif Khan, Mobarak Sheikh to the courtyard of the house on forcible capture. The Pakistani army and Razakars then started beating the detainees at the courtyard and then gunned them down to death. Then the perpetrators committed looting and burnt down the house by setting fire. One Jabeda Begum (now dead) sustained bullet hit injuries on her legs, in conjunction with the attack conducted.

107. P.W.02 continued stating that next the gang formed of accused persons and Pakistani army coming out of Moktar Master's house committed looting and arson at the house of

freedom fighter Nazrul Islam. Later on, he heard that the gang committed looting and arson by launching attack also at the house of Jamir Sheikh, a supporter, follower of war of liberation and gunned him down to death.

108. P.W.02 also narrated that on the same day the gang formed of Razakars he named and Pakistani occupation army also carried out indiscriminate looting and arson at 40/50 houses of villages Teligati and Chapri. At about 04:00 P.M on the same day they came out of the hiding place and discovered the dead bodies (of victims).

109. P.W.02 next stated that on the following day at 11:00 A.M at the time of burial of dead bodies (of victims) he heard that the Razakars he named had attacked again at their village. With this after burial of dead bodies they then fled away and on their way back they heard gun firings. Later on, he (P.W.02) heard that the Gang had shot gun fire directing **Saheb Ali** (now dead) that resulted in injuries. Few days later he heard this event from Saheb Ali. Finally, P.W.02 stated that the accused Razakars were their neighbours and from their neighbouring locality and thus he knew then beforehand.

110. In cross-examination done on part of accused Khan Akram Hossain, Sheikh Md. Ukil Uddin and Idris Molla P.W.01 stated in reply to defence question that village Teligati was 12/13 miles west to Mongla; that Moktar Master was a Master of Teligati Primary School; that he could not say whether any case over the event of killing Basharat and Mannan was initiated; that he could not say whether accused Ukil Uddin's father used to stay in Khulna along with his family since 1965.

111. In reply to question put to him by Tribunal P.W.02 stated that Moktar Ali Master was affiliated with Awami League and was a follower of war of liberation and that is why his house was attacked.

112. In cross-examination done on part of absconding accused persons P.W.02 stated in reply to defence question put to him that after the 07 March 1971 speech of Bangabandhu he quitting the job of tailoring returned back Teligati village intending to join the war of liberation. P.W.02 denied defence suggestions that he did not join the war of liberation and did not see any event he testified and what he narrated implicating the accused persons was tutored and that the accused persons were not Razakars.

113. P.W.03 Soleman Khan (76/77) is a resident of village-Teligati under police station Morrelganj of District (now) Bagerhat. He is direct witness to crucial facts chained to the event arraigned. He is one injured freedom-fighter. He used to work as Ansar at the Ansar Office at Tutpara, Khulna till the war of liberation ensued.

114. P.W.03 stated that after the 07 March 1971 speech of Bangabandhu he along with other Ansar members of Tutpara Ansar camp (of Khulna) departing the camp taking arms arrived at Teligati and formed freedom-fighters camp at Teligati Primary School and started providing freedom-fighters training.

115. In respect of the event arraigned P.W.03 stated that on 26 May in 1971 at afternoon he along with some other freedom-fighters got positioned secretly near the Teligati road. At about 02:00 P.M. he saw Razakars Ashraf Ali Khan, Akram Hossain Khan, Sultan Ali Khan (**died during trial**),, Rustom Molla, Idris Molla(**died during trial**),, Moksed Didar (now dead), Ukil Sheikh, Idris Ali Sheikh, Rafiqul Islam @ Babul, their 15/20 cohort Razakars and 25/30 Pakistani army men moving toward the house of Moktar Master.

116. P.W.03 stated too that seeing the gang moving toward the house of Moktar Master he (P.W.03) and his 05 companions went into hiding inside a bush 40/50 yards south-west corner to Moktar Master's house. There from they could see the Pakistani army besieging the house of Moktar Master and then Razakars entering inside the house brought out Rafiz Uddin Howlader, his son Shahabuddin Howlader, Sayaoj Uddin Howlader, Hasen Howlader, Moktar Master, his son Shahadat Howlader, Latif Khan, Khorshed Ali Sarder, Mobarak Ali Sheikh at the courtyard on forcible capture and made them stood in a line and caused inhumane torture to them and then gunned them down to death there. The victims were the followers of the war of liberation. The gang then looted household and burnt down the house by setting fire.

117. P.W.03 also stated that next he witnessed the said Razakars and Pakistani army men moving toward the house of freedom-fighter Nazrul Khan where they committed looting and arson and then the gang headed toward the adjacent house of organizer of the war of liberation Jamir Sheikh and gunned down him to death and committed looting and arson. The gang then had carried out looting and arson by launching attack at numerous neighbouring houses.

118. P.W.02 next stated that after the gang had left the site they came out from the hiding place and discovered the dead bodies. Finally, P.W.03 stated that the accused persons were the residents of their neighbouring locality and thus he knew them beforehand.

119. In cross-examination done on part of accused Khan Akram Hossain, Sheikh Md. Ukil Uddin and Idris Molla P.W.03 stated in reply to defence question that in 1971 Moktar Hossain (victim) used to stay at his own home along with his three sons; that accused Akram Hossain's elder brother accused Ashraf Ali Khan was UP Chairman in the regime of Ziaur Rahman; that he could not say whether any case was initiated over the event he testified; that village Jashordi was their neighbouring village.

120. P.W.03 denied defence suggestions that he did not see the event he testified; that the accused were not involved with the event arraigned and that they were not Razakars and that he did not know the accused persons.

121. In cross-examination done on part of absconding accused persons P.W.03 stated in reply to defence question put to him

that Bagerhat Sadar is about 08 miles far from their home; that Rampal is about 14/15 miles far from their home.

122. P.W.03 denied defence suggestions that he did not know any of accused persons; that he testified out of electoral rivalry against the accused Ashraf Ali and Sultan Ali; that he did not join the war of liberation and that he did not see and hear the event he narrated.

123. P.W.04 Md. Emdadul Haque (58/59) is a resident of village-Chapri under police station Morrelganj of District (now) Bagerhat. He is the son of one victim martyr Moktar Uddin Master. In 1971 he was a student of class VI. He is a, freedom-fighter direct witness to the event leading to brutal killing of numerous pro-liberation civilians.

124. In recounting the event arraigned P.W.04 stated that on 26 May in 1971 at about 02:00 P.M. he had been at home when they saw the people coming toward their home with screaming and they told that the Pakistani army and Razakars were moving toward their home. Then as asked by his elder uncle Rafiz Uddin Howlader they the male inmates got sheltered in one

room of the building and the female inmates got sheltered in another room.

125. What happened next? P.W.04 stated that his (P.W.04) mother taking him and his two younger brothers got stood inside a room wherefrom he saw 25/30 Razakars and 20/25 army men heading toward their house and at a stage the Razakars made their house identified. His (P.W.04) father and uncles and inmates of their family were affiliated with politics of Awami League. Then the Razakars and some army men opened the door by breaking it with kicking as his father and uncles did not open the door on asking. Then his elder uncle Rafiz Uddin Howlader, uncle Sayaoj Uddin Howlader, Hasen Howlader, his cousin brother Sahab Uddin Howlader, his elder brother Shahadat Howlader, Abdul Latif of Teligati village, Khorshed Ali Sarder, Mobarak Sheikh, his (P.W.04) father Moktar Master were brought out to courtyard on forcible capture and made them stood in a line. He (P.W.04) could recognize accused Razakars Khan Ashraf Ali, Khan Akram Hossain, Sultan Ali Khan (**died during trial**), Rafiqul @ Babul, Moksed Ali Didar (now dead), Rustom Molla, Idris Molla (**died during trial**), Idris Ali Sheikh, Ukil Uddin Sheikh accompanying the gang as they were from their village.

126. P.W.04 next stated that the Razakar he named and Pakistani army then started brutally beating the detainees with rifle and at a stage they killed them there by gun shots. His auntie Jabeda Begum (now dead) embraced her husband and thus she too sustained bullet hit injuries. The gang then carried out looting and arson.

127. P.W.04 also stated that then the gang quitting the site started moving toward north-west and by launching attack at the house of Latif Khan committed looting and arson at his house. Next the gang conducted attack at their neighbouring house of Jamir Sheikh and carried out looting and arson and then he (P.W.04) heard gun firing from that end. The gang then had left the sites by committing looting and arson at numerous houses.

128. P.W.04 continued stating that on the same day at the time just before the dusk Javed Ali Sheikh, Joynal Sheikh, Jalil Sheikh, freedom-fighter Nazrul Khan, freedom-fighter commander Soleman Khan, freedom-fighter Soleman Sarder, freedom-fighter Deben Gush of their village came to their home and they then had kept the dead bodies lying in veranda room and on the following morning at about 09:00/09:30 A.M. took away the dead bodies of Latif Khan, Mobarak Sheikh and

Khorshed Ali Sarder. At about 11:00 A.M they attempted to bury the dead bodies when the people informed them that Razakars were coming again. With this he (P.W.04) somehow dumping the dead bodies of his father, uncle and brothers fled away. Few time later, he heard a gun firing. Then Razakars attacked Saheb Ali by charging bayonet when he was engaged in cultivating land and Razakars had left the site guessing him dead. Three days later, they heard that Saheb Ali was alive and moving to him they heard the event. Said Saheb Ali died on 02nd day of last Ramadan month.

129. In cross-examination done on part of accused Khan Akram Hossain, Sheikh Md. Ukil Uddin and Idris Molla P.W.04 stated in reply to defence question that Teligati Bazar was nearer to their house; that accused Ashraf Ali Khan, the brother of accused Khan Akram Hossain was the chairman of their union in the regime of Ziaur Rhaman; that he did not see the accused Rustom Ali, Sheikh Md. Ukil Uddin and Sheikh Idris Ali around the locality since Bangladesh got liberated; that he saw the other accused persons very often around the locality after independence achieved; that he could not say whether any case was initiated over the vent arraigned.

130. P.W.04 denied defence suggestions that he did not know the accused persons; that he did not see and hear the event he testified; that the accused persons were not involved with the commission of alleged offences and that what he testified implicating the accused persons was untrue and tutored out of local rivalry.

131. In cross-examination done on part of absconding accused persons P.W.04 stated in reply to defence question put to him that their home was about 10 kilometers far from Rampal Thana; that the village Sannayasi is about 5/6 kilometers far from Rampal. P.W.04 denied defence suggestion that what he testified was untrue and out of rivalry.

132. P.W.05 Md. Imran Sheikh (65) is a resident of village-Chapri under police station Morrelganj of District (now) Bagerhat. He is a direct witness to the event of attack conducted at the house of victim Moktar Master.

133. In recounting the event arraigned P.W.05 stated that on 26 May in 1971 at about 02:00 P.M he saw a group formed of 25/30 Pakistani army and 30/35 Razakars heading toward the house of Moktar Master. At that time he was engaged in cultivating land. But seeing the gang he along with others

moved to Moktar Master's house. When the Pakistani army and Razakars entered inside Moktar Master's house he went into hiding inside a ditch of the home wherefrom he saw Razakars Ashraf Ali Khan, Ukil Uddin Sheikh, Akram Khan, Sultan Khan (died during trial), Idris Molla (died during trial), Idris Sheikh, Moksed Didar (now dead), Babul, Rustom Ali and their cohorts and Pakistani army entering inside the building by breaking door as it was not opened even on asking.

134. What happened next? P.W.05 continued stating that the Pakistani army kept the home encircled and the Razakars he named entering inside the building started telling that all the residents of that building were organizers of war of liberation and followers of Awami League and then they entering inside the building brought out Moktar Master, Sayaoj Uddin Howlader, Hasen Howlader, Shahadat Howlader, Shahab Uddin, Mobarak Sheikh, Latif Khan, Khorshed Sarder and Rois Uddin Howlader @ Rafiz Uddin Howlader at the courtyard and started causing inhumane torture to them and then the Razakars gunned down those 09 detainees to death. The gang then looted household and burnt down the house by setting fire. Jobeda Begum, the wife of victim Rois Uddin Howlader also sustained bullet hit injuries

135. P.W.05 continued stating that next he saw the Razakars and Pakistani army moving toward neighbour Latif Khan's house where too they committed looting and arson and then moved back by setting fire on numerous houses and temple and at a stage he (P.W.05) heard gun firing from the end of Jamir Sheikh's house.

136. P.W.05 also stated that after the gang had left the site he along with neighbouring people had kept the dead bodies inside a room. On the following day dead bodies of Mobarak Sheikh, Khorshed Ali Sarder and Latif Khan were taken away by their relative. At about 11:00 A.M at the time of burying the 06 other dead bodies they heard the Razakars he named again coming and with this they by dumping the dead bodies fled away and at a stage they heard gun firing. Later on he heard that Razakars had stabbed Saheb Ali and abandoned him guessing dead.

137. In respect of reason of knowing the accused Razakars P.W.05 stated that the Razakars he named were from their village and neighbouring villages and thus he knew them beforehand.

138. In cross-examination done on part of accused Khan Akram Hossain, Sheikh Md. Ukil Uddin and Idris Molla P.W.05 stated in reply to defence question that he (P.W.05) remained in hiding inside a ditch of a coconut tree on the bank of pond, south to the building (Moktar Master's house); that he heard that martyr Hasen Howlader was a relative of accused Akram Khan and Ashraf Khan; that accused Ashraf Ali Khan was the chairman of their Union Parishad; that the accused he named used to stay at their own home after Bangladesh got liberated. P.W.05 denied defence suggestions that he did not see and hear the event he testified; that none of accused was involved with the alleged events and that they were not Razakars.

139. Above cross-examination has been adopted on part of absconding accused persons. P.W.05 however denied the defence suggestion that he testified implicating the accused persons out of local rivalry.

140. P.W.06 Debendra Nath Das (78/79) is a resident of village- Panbaria under police station Kachua of District (now) Bagerhat. In 1971 he was 30/31 years old and he is a freedom-fighter. He testified what he witnessed in respect of the event arraigned.

141. P.W.06 stated that on 26 May in 1971 he along with his co-freedom-fighter commander Soleman Khan, Soleman Sarder, Bashar, Mannan, Emran Sheikh got stationed at a secret shelter beside Teligati road. At about 02:00 P.M. they saw the Razakars Khan Ashraf Ali, Khan Akram Hossain, Sultan Ali Khan (**died during trial**), Rustom Ali, Idris Molla (**died during trial**), Moksed Didar (now dead), Ukil Uddin Sheikh, Idris Ali Sheikh, Rafiqul Islam @ Babul, their 15/20 cohort Razakars and 20/25 Pakistani army moving toward the home of Moktar Master of village Chapri. Seeing this they then went into hiding inside an adjacent bush, 40/50 yards south-west to Moktar Master's house.

142. What happened next? P.W.06 continued narrating that remaining inside the hiding place they saw the said Razakars and Pakistani army besieging the house of Moktar Master. There was a building at that house. Razakars brought out Rois Uddin Howlader, Sayaoj Uddin Howlader, Moktar Master, Hasen Howlader, Shahadat Howlader, Shahab Uddin Howlader, Khorshed Sarder of village Teligati, Latif Khan, Mobarak Sheikh to courtyard on forcible capture and made them stood there in a line and then they started torturing them and at a stage they gunned them down to death there. The perpetrators then

looted household and burnt down the house. Jobeda Begum, the wife of victim Rois Uddin Howlader sustained three bullet hit injuries on her body.

143. P.W.06 further stated that the gang then attacked the house of neighbouring house of freedom-fighter Khan Nazrul Islam, committed looting and arson. Then they entered into the house of Jamir Sheikh, an organizer of the war of liberation and fired gunshot, looted household and burnt down the house. Next, in this way the same gang had carried out looting and arson at 40/50 houses, one by one and then had left the sites.

144. Finally, the P.W.06 stated that on seeing the people coming toward Howlader house from Doiboggohati Bazar they came out of the hiding place and moved to Howlader house where they found and identified the dead bodies lying there. They saw the dead body of Jamir Sheikh lying at his house. Inmates of Howlader house and Jamir Sheikh were the organizers of the war of liberation and used to assist the freedom-fighters and thus Razakars in collaboration with the Pakistani army targeted and annihilated them. The Razakars he named were from their neighbouring localities and thus he knew them beforehand.

145. In cross-examination done on part of accused Khan Akram Hossain, Sheikh Md. Ukil Uddin and Idris Molla P.W.06 stated in reply to defence question that in 1971 Moktar Master's house consisted of three tin shade rooms and one building and there was a courtyard between the building and tin shade rooms and there had been a pond behind these; that Teligati road was east to Howlader house's building; that there had been houses to places north, south and west to Howlader house and the perpetrators burnt down those houses by setting fire.

146. P.W.06 denied defence suggestions that he did not see and hear the event he testified; that the accused were not Razakars and that the event alleged did not happen.

147. Above cross-examination has been adopted on part of absconding accused persons. In reply to defence question put to him P.W.06 stated that Nazrul Khan's house situated north to Moktar Master's house and Jamir Sheikh's house was at the west to it. P.W.06 however denied the defence suggestion that he testified implicating the accused persons out of local rivalry.

Finding with Reasoning on Evaluation of Evidence Presented

148. This count of charge involves offences of confinement, torture, looting, arson and killing ten (10) civilians, the

followers of pro-liberation 'political group' constituting the offences as 'crimes against humanity' or in the alternative the offence of 'genocide', committed at villages-Chapri and Teligati under police station-Morrelganj of District-Bagerhat.

149. The arraignment rests upon testimony of six (06) witnesses who have recounted the event they experienced standing on dock of Tribunal as P.W.01, P.W.02, P.W.03, P.W.04, P.W.05, and P.W.06.

150. **Mr. Rana Das Gupta**, the learned prosecutor drawing attention to testimony of witnesses argued that the accused persons indicted being part of the group of attackers were actively engaged in carrying out brutal annihilation of ten civilians perceiving them the followers of pro-liberation political party and intent was to destroy the group the victims belonged. Uncontroverted testimony of witnesses demonstrates patently that the crimes arraigned were perpetrated on active assistance, aid and facilitation of the accused persons therewith, the learned prosecutor added.

151. The learned prosecutor further submitted that the accused persons indicted and their cohorts knowingly accompanied the Pakistani occupation army in materializing the goal of the

designed criminal mission. It has been also argued that testimony of witnesses explicitly demonstrates it. The gang also had carried out looting arson and destructive activities directing civilians' property. Such devastating activities together with indiscriminate killing of numerous civilians, the followers of pro-liberation political party is sufficient to prove that the specific intent of the gang was to destroy the distinct part of population which constituted the offence of 'genocide'.

152. Per contra, **Mr. Gazi M.H Tamim** the learned engaged defence counsel as well as state defence counsel argued that the prosecution witnesses had no reason of knowing the accused persons; that seeing the alleged event as testified by the witnesses is not credible. In 1971 P.W.04 Md. Emdadul Haque was a tender aged boy and was a student of class VI and thus it is improbable for him to recollect the alleged event. His testimony thus does not carry credence.

153. It has been further argued on part of defence that admittedly, no case was initiated earlier over the alleged event of killing and accused Khan Ashraf Ali was elected Union Council Chairman and he used to continue staying in the locality even after independence achieved. All these

cumulatively indicate that this accused has been indicted falsely and the testimony of prosecution witnesses implicating this accused was out of rivalry. Inconsistent testimony of witnesses creates doubt as to alleged involvement of accused persons with the perpetration of alleged crimes.

154. Before starting appraisal of evidence adduced Tribunal considers it necessary to note that first phase of the criminal mission involves forcible captured 09 civilians [as named in the formal charge] who were eventually brutally tortured and gunned down to death, burning down their houses, looting one Hindu temple and caused serious bullet hit injury to one Jabeda Begum [now dead]. This phase of the event happened by launching joint attack against civilians of villages Chapri and Teligati and intent was **to destroy ‘political group’**, in whole or in part, the charge framed arraigns.

155. Next, the accused persons and the army men and their accomplices attacked the village-Teligati and carried out looting, destruction of houses of numerous civilians.

156. On the following day, same group by launching attack at village-Teligati at about 11:00 A.M unlawfully detained **Saheb**

Ali Sheikh who was subjected to torture when the victims killed on previous day were being buried by their relatives.

157. Tribunal notes that eight (8) accused have been indicted in this count of charge. Of them one accused Idris Ali Mollah died during trial.

158. Onus squarely lies upon the prosecution to establish accused persons' presence, acts and conducts forming part of systematic attack resulted in commission of the system crimes enumerated in section 3(2) of the Act of 1973 for which they have been arraigned.

159. It has been unveiled that P.W.01 is a freedom-fighter. On 26 May in 1971 he had been staying at Teligati freedom-fighters camp along with his co-freedom-fighters when he came to know through source that locally formed Razakar Bahini and Pakistani occupation army had planned to attack their camp. On getting this information they the freedom-fighters changing their staying location got stationed at neighbouring Gazirhat village.

160. Defence could not controvert the above version. The situation as unveiled facilitated the P.W01 and his co-freedom-fighters to get sheltered first at neighbouring Gazirhat village

and then P.W.01 keeping his arms with his co-freedom-fighters went into hiding at the house of Hasen Howlader, adjacent to their house. It too remained undisputed.

161. Ocular narrative of P.W, .01 demonstrates that on the same day Razakars and Pakistani army men were on move toward their house and on seeing it P.W.01 went into hiding inside a bush adjacent to the house where some other people already remained stayed.

162. Uncontroverted testimony of P.W.01 a direct witness to facts chained to the event arraigned depicts that the group formed of 15/20 Razakars including Razakars Khan Ashraf Ali, Khan Akram Hossain, Sultan Khan (**died during trial**), Ukil Uddin Sheikh, Moksed Didar (now dead), Idris Molla (**died during trial**), Rustom Molla, Idris Sheikh, Rafiqul Islam Babul and 25/30 Pakistani army men entered inside Hasen Howlader's house. It thus stands proved that the accused persons indicted accompanied the criminal enterprise in besieging the site i.e. Hasen Howlader's house.

163. What happened next? According to ocular narrative recounted by the P.W.01 the gang of invaders then dragged out nine unarmed civilians namely Rafij Uddin Howlader, Shahab

Uddin Howlader, Moktar Howlader. Shahadat Howlader, Hasen Howlader, Sayaoj Uddin Howlader, Abdul Latif Khan, Khorshed Sardar, Mobarak Sheikh on forcible capture and made them assembled at the courtyard with torture and finally the invaders gunned them down to death there.

164. P.W.01 could see the above phase of annihilation of numerous pro-liberation civilians remaining in hiding inside the bush. Defence does not seem to have made any effective effort to refute this crucial fact. Thus, it stands proved that ten (10) civilians were brutally gunned down to death by launching systematic attack at the house of Hasen Howlader. P.W.01 witnessed it staying in hiding inside a nearer bush.

165, P.W.01 saw the attack conducted by the gang formed of accused persons and remaining in hiding place he also witnessed the act of killing the detainees by gunshots. Finding dead bodies of victims lying at the courtyard of Hasen Howlader's house and dead body of Jamir Sheikh lying at his house, after the gang had left the site, as stated by P.W.01 adds assurance to the fact of launching attack and act of accomplishing barbaric killings by the gang formed of accused persons and their cohorts.

166. Testimony of P.W.01 also demonstrates that the group of invaders formed of accused Razakars and Pakistani army after committing looting households and setting the house ablaze had left the site. Then they discovered the bullet hit dead bodies lying at the killing site i.e. at the courtyard of Hasen Ali Howlader. Besides, it remained unimpeached. It was quite natural. Thus, it adds assurance to the fact that the invaders had carried out their systematic criminal mission of barbaric annihilation of ten (10) pro-liberation civilians at the site as stated by P.W.01, to further policy and plan of Pakistani occupation army.

167. Defence contends that the P.W.01 did not know the accused persons and thus what he testified implicating them with the event arraigned does not carry credence. In reply to this contention prosecution argued that the accused persons were from the neighbouring locality and thus naturally the P.W.01 and other locals had fair space of knowing them beforehand.

168. We are not with what has been agitated by the defence. In 1971 the rural vicinities were not thickly populated. People not only of a particular village but people even of neighbouring localities too were naturally known to the locals. Thus, it was

natural of knowing the persons of even of neighbouring locality beforehand.

169. Tribunal notes that in 1971 during the war of liberation criminal activities with notoriety conducted and the affiliation of individuals with auxiliary force and engagement of people in perpetrating those prohibited acts became anecdote. Be that as it may, seeing the accused persons indicted accompanying the gang in accomplishing the killing of ten (10) civilians by launching systematic attack as testified by the P.W.01 carries credence and it remained unimpeached.

170. It has been argued on part of defence that it has been admitted by P.W.01 that accused Ashraf Ali Khan was elected UP chairman and he used to stay in the locality even after the independence and thus it may be presumed that he was not involved with the event arraigned.

171. The above contention seems to be devoid of justification. Being elected UP chairman was the status subsequent to the event happened and his mere presence in the locality even after independence readily does not negate his involvement with the

crimes alleged, if his involvement with the horrific event is found reasonably proven from facts and circumstances unveiled.

172. P.W.02 Soleman Sarder is the son of one victim Khorshed Ali Sarder. He is a direct witness to the event arraigned. At the relevant time P.W.02 had been at village-Teligati for receiving training of freedom fighters at the camp set up at the Primary School under headship of commander Soleman Khan.

173. Testimony of P.W.02 demonstrates that on 26 May in 1971 at about 02:00 P.M they being led by freedom-fighters commander Soleman Khan had been staying around the site adjacent to Teligati road wherefrom they saw the gang formed of accused persons and Pakistani army heading toward the site attacked.

174. P.W.02 also witnessed the gang accompanied by the accused Razakar Ashraf Ali Khan, Akram Ali Khan, Sultan Ali Khan (**died during trial**), Rustom Ali, Idris Molla (**died during trial**), Moksed Didar (now dead), Idris Ali Sheikh, Ukil Uddin Sheikh, Rafiqul Islam @ Babul, their 15/20 cohort Razakars and 25/30 Pakistani army heading toward the home of Moktar Ali Master of village-Chapri.

175. It has been divulged too from ocular narrative of P.W.02 that the accused persons indicted and Pakistani occupation army besieging the home of Moktar Master and bringing out defenceless civilians namely Rafiz Uddin Halder, Saij Uddin Halder, Moktar Master, Hasen Howlader, Shahabuddin Halder, Shahadat Halder, his (P.W.02) father Khorshed Ali Sarder, Abdul Latif Khan, Mobarak Sheikh on forcible capture.

176. It also stands proved from unimpeached testimony of P.W.02 that the gang formed of accused Razakars and Pakistani occupation army also carried out indiscriminate looting and arson at 40/50 houses of villages Teligati and Chapri. Such destructive activities were in grave violation of human rights which impacted upon normal livelihood of civilians.

177. It depicts too that the Pakistani army and Razakars then started beating the detainees at the courtyard and eventually gunned them down to death there. P.W.02, the son of one victim indubitably sustained untold trauma and shock on seeing this gruesome event of killing numerous civilians including his father. The shock the P.W.02 sustained cannot be quantified.

178. P.W.03 Soleman Khan is one injured freedom-fighter. At the relevant time he along with his co-freedom-fighters got positioned secretly near the Teligati road when he too witnessed the gang formed of accused persons indicted, their cohort Razakars and Pakistani army men getting civilians [Rafiz Uddin Howlader, his son Shahabuddin Howlader, Sayaoj Uddin Howlader, Hasen Howlader, Moktar Master, his son Shahadat Howlader, Latif Khan, Khorshed Ali Sarder, Mobarak Ali Sheikh] forcibly captured by launching attack at the house of Moktar Master.

179. Consistently corroborative ocular testimony of P.W.01, P.W.02 and P.W.03 in respect of horrific killing of nine civilians on forcible capture by launching attack besieging the home of Moktar Master has proven it unerringly that the accused persons indicted were consciously present with the criminal enterprise and their presence itself is sufficient to prove that they sharing the intent substantially assisted and facilitated the diabolical indiscriminate annihilation of nine defenceless civilians, in violation of laws of war and international humanitarian law

180. P.W.04 is another ocular witness. On the day the event happened at about 02:00 P.M. P.W.04 had been at home when on hearing the movement of the gang formed of Pakistani army and Razakars toward their home he got sheltered in one room of the building and the female inmates got sheltered in another room.

181. What happened next? Uncontroverted ocular account of P.W.04 demonstrates that the Razakars and some army men opened the door by breaking it with kicking as his father and uncles did not open the door on asking and dragged out the victims to courtyard on forcible capture and made them stand in a line.

182. It also depicts from corroborative ocular account of P.W.04 that the accused Razakars and Pakistani army then started brutally beating the detainees with rifle and at a stage they killed them there by gun shots. His (P.W.04) auntie Jabeda Begum (now dead) embraced her husband and thus she too sustained bullet hit injuries. The gang then carried out looting and arson.

183. Unimpeached testimony of P.W.05 demonstrates too that the gang accompanied by the accused persons, their cohorts and Pakistani army men gunned down the 10 unlawfully captured

detainees to death and then the gang looted household and burnt down the house by setting fire. Jabeda Begum, the wife of victim Rois Uddin Howlader also sustained bullet hit injuries

184. In conjunction with the first phase of attack one Jabeda Begum (now dead) sustained bullet hit injuries on her legs, at the time of the event happened. It has been divulged too from ocular narrative of P.W.05 and it remained uncontroverted.

185. In conjunction with the attack Jabeda Begum attempted to appeal the Razakars and army men when they shot her too by gun firing that resulted injures to her and she died after independence. It stands proved from testimony of P.W.01, P.W.02, P.W.03 and P.W.05 that after gunning down the detained civilians the invaders committed looting and burnt down the house by setting fire and one Jabeda Begum(now dead) sustained bullet hit injuries on her legs, at the time of the event happened.

186. In addition to indiscriminate killings the gang of invaders carried out wanton destructive activities by committing looting and arson also at the house of Nazrul Islam before the gang had left the house of Moktar Master. P.W.02 testified it which remained unshaken. Later on, P.W.02 heard that the gang

committed looting and arson also by launching attack at the house of Jamir Sheikh, a supporter of the war of liberation and had killed Jamir Sheikh by gunshot.

187. It has been unveiled that father and uncles of P.W.04 and inmates of their family were affiliated with politics of Awami League, the pro-liberation political party. Presumably, extinction of civilians belonging to a pro-liberation 'political party' was the specific intent of the perpetrators.

188. It depicts too from unimpeached testimony of P.W.05 that the gang accompanied by the accused persons, their cohorts and Pakistani army men gunned down the 10 unlawfully captured detainees to death and then the gang looted household and burnt down the house by setting fire. Jabeda Begum, the wife of victim Rois Uddin Howlader also sustained bullet hit injuries, in conjunction with the attack.

189. It stands proved from unimpeached testimony of P.W.04 that in course of the next phase of attack the gang conducted attack at their neighbouring house of Jamir Sheikh and carried out looting and arson and then he (P.W.04) heard gun firing

from that end. The gang then had left the sites by committing looting and arson at numerous houses.

190. P.W.05 too witnessed the gang carrying out attack at Moktar Master's house, remaining in hiding. It could not be impeached. It has been affirmed in cross-examination that at the relevant time P.W.05 remained in hiding inside a ditch of a coconut tree on the bank of pond, south to the building (Moktar Master's house). It rather makes the account the P.W.05 stated credible.

191. Uncontroverted ocular narrative of P.W.05 demonstrates that in conjunction with the attack the gang had carried out attack at their neighbour Latif Khan's house where they also committed looting and arson and then moved back by setting fire on numerous houses and temple and at a stage he heard gun firing from the end of Jamir Sheikh's house.

192. P.W.06 Debendra Nath Das is a co-freedom-fighter of other P.W.s. He too is a direct witness. He along with his co-freedom-fighters witnessed the accused persons, their cohorts and Pakistani army men conducting attack that resulted in killing nine civilians, carrying out attack also at the house of Jamir Sheikh, an organizer of the war of liberation. It stands

proved too that the same gang had carried out looting and arson at 40/50 houses, one by one and then had left the sites.

193. The unimpeached testimony of prosecution witnesses crucially related to the systematic attack portrays the extent of aggression of the criminal gang to the civilians perceiving them the followers of pro-liberation '**political group**'. The gang formed of accused persons indicted and their cohorts by committing such grave destructive activities were detrimental to normal livelihood of civilians, committed in violation of recognized human rights.

194. It has been affirmed in cross-examination of P.W.02 that Moktar Ali Master was affiliated with Awami League and was a follower of war of liberation and that is why his house was attacked. This fact leads to the unerring conclusion that the intent of the invaders was to destroy the '**political group**' the victims belonged, in whole or in part.

195. It has been unveiled too from testimony of P.W.02 that on the same day the criminal enterprise formed of accused persons and their cohorts and Pakistani army had carried out indiscriminate looting and arson as well at 40/50 houses of

villages Teligati and Chapri. Such extensive destruction and appropriation of civilians' property were not justified by military necessity and the same was carried out unlawfully and wantonly in a grave breach of international humanitarian law.

196. Testimony of P.W.02 demonstrates too that on the following day at 11:00 A.M at the time of burial of dead bodies of victims he heard that the Razakars he named had attacked again at their village. With this after burial of dead bodies they then fled away and on their way back they heard gun firings and later on he (P.W.02) learnt from one Saheb Ali (now dead) that he too sustained injuries due to gun fire made directing him, in conjunction with the attack. This part of the attack as testified by P.W.02 gets corroboration from P.W.05. Defence does not seem to have been able to impeach it.

197. Committing looting and arson even after accomplishing indiscriminate killing of numerous civilians perceiving them followers of a distinct political party demonstrates prohibited 'specific intent' of the criminal squad. This part of the designed attack could not be shaken in any manner by defence. It rather indicates that the gang being accompanied by the accused

persons knowingly opted to continue its criminal mission even after brutal annihilation of nine civilians.

198. The intent to commit the offence of ‘genocide’ may still be inferred from the factual circumstances of the crimes arraigned. In this regard the ICTY Appeal Chamber in the case of Jelusic observed that-

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

[Jelusic, (ICTY Appeals Chamber), July 5, 2001, para. 47]

199. In the case in hand, all the proved criminal acts cumulatively suggest concluding that the intent of the perpetrators was to destroy, in part the ‘political group’ formed of followers of pro-liberation political party ‘Awami League’ to which the victims belonged and thus the designed criminal

scheme was intended to destroy this distinct 'political group' in part, we deduce it justifiably.

200. Such intent of the gang of perpetrators was rather a 'genocidal intent'. Horrendous killing of numerous civilians, followers of a distinct political ideology and indiscriminate devastating activities thus were intended to destroy such distinct political group, either whole or in part which constituted the offence of '**genocide**'.

201. Presumably, the perpetrators of the horrendous crimes believed that the victims they annihilated formed a collection of people belonged to a 'specific group' as a separate and distinct entity sharing bond and explicit stance in favour of the war of liberation.

202. It stands proved that the accused persons indicted remained present at the crime sites with the criminal enterprise. Why they accompanied the gang of attackers? It could not be refuted that the gang of attackers was formed of accused persons, their cohort Razakars and Pakistani occupation army. Why local collaborators accompanied the army?

203. In the case in hand, facts and circumstances unveiled lead to deduce that naturally the Pakistani occupation army was not at all familiar with the locations of villages or the information as to where a particular group of civilians used to reside and who were to be targeted for annihilation. It is now historically settled that the local Razakars including the accused persons indicted being enthused by the policy accompanied the Pakistani occupation army and thereby substantially urged and facilitated to perpetrate the attack targeting the pro-liberation non-combatant civilians, perceiving them to be the followers of pro-liberation political party.

204. Thus and intending to facilitate recognizing the selected pro-liberation civilians belonging to distinct part of pro-liberation political party the accused persons, members of auxiliary force got consciously engaged in carrying out the criminal mission. In this regard we recall the observation of the Appellate Division of the Supreme Court of Bangladesh rendered in the Appeal, of Motiur Rahman Nizami which is as below:

“It should also be borne in mind that the Pakistani invading force were strangers to this country who came to the then East Pakistan from West Pakistan,

and as such, without the help and connivance of the people of this region, it would not have been possible for them to identify the freedom fighters and other pro-liberation people and kill them.”

[Motiur Rahman Nizami Appeal: **Criminal Appeal No.143 OF 2014:Judgment on: 06.01.2016: page 114**]

205. In view of above, it may be justifiably deduced that the accused persons in exercise of their affiliation in locally formed auxiliary force knowing consequence of their act accompanied the gang to assist, substantially facilitate and contribute to the commission of designed crimes including killings and devastation of civilians' property.

206. Mr. Gazi M.H. Tamim, the learned defence counsel submitted that in 1971 P.W.04 Md. Emdadul Haque was a student of class VI i.e. a tender aged boy who naturally had no capacity to retain any part of the alleged event in memory and thus what he testified does not carry credence.

207. We are not agreed with the above defence contention. First, this count of charge rests not only upon testimony of P.W.04 but also upon five other prosecution witnesses' uncontroverted ocular testimony which amply proves the commission of crimes arraigned and participation of accused persons therewith.

208. It appears that P.W.04 Md. Emdadul Haque is the son of one victim martyr Moktar Uddin Master. He deposed in Tribunal on 12th November 2018. That is to say he was 10/11 years old in 1971. He experienced the traumatic event which obviously retained in his memory. Thus, his testimony cannot be kept aside from consideration. We reiterate that mere tender age, at the time of the event arraigned does not diminish one's testimony if it inspires credence. Mere tender age cannot be a ground to discard one's testimony if the same appears to be natural and gets corroboration from other evidence.

209. In this regard 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]

210. 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]

211. Now let us eye on another aspect. It is now settled jurisprudence that ‘committing’ is not limited to direct and physical perpetration and that other acts and conduct can constitute direct participation in the *actus reus* of the crime. Personal and actual participation in committing crime is one of mode of responsibility. It is not required to show that an accused forming part of the criminal enterprise personally committed the crime of which he is arraigned.

212. In the case in our hand, we are to perceive and infer that the accused persons had acted having ‘awareness’ coupled with their conscious decision to accompany the principals to the crime site. The accused persons may not have direct participation in committing the offence of murder or devastating

activities or ill treatment of specific person(s), but it has been proved beyond doubt that the accused persons were consciously engaged to the scheme or system which had a criminal outcome.

213. It is now well settled that if it is found that the accused was aware that a number of crimes will probably be committed, and when those crimes in fact were committed, it may be presumed that he had intended to facilitate the commission of that crime, and accordingly he is found guilty as a co-perpetrator.

214. The telling evidence adduced unerringly suggests that act and conduct on part of accused persons indicted substantially assisted or provided encouragement and moral support and the same had extensive effect to the actual commission of crimes.

215. The provision of section 4(1) requires that when several persons unite to do any criminal act, all those who assist the accomplishment of the object would be equally guilty as if it was done by him alone. It deals with the doing of separate act similar or diverse by several persons, if all are done, each person is liable for the result of them all, as if he had done them himself, for that act(s).

216. Obviously the accused persons indicted did not accompany the criminal enterprise merely as spectators or bystanders. Facts and circumstances unveiled do not suggest deducing it. It is now well settled that the doctrine of first category of JCE is attracted where all co-accused, acting pursuant to a common design possess the same criminal intention in effecting the common design nevertheless all possess the intent to commit the crimes.

217. It stands proved that the accused (1) Khan Ashraf Ali (2) Khan Akram Hossain,(3) Sultan Ali Khan (**died during trial**) (4) Rustom Ali Mollah, (5) Idris Ali Mollah (**died during trial**), (6) Sheikh Md. Ukil Uddin, (7) Sheikh Idris Ali (8) Sheikh Rafiqul Islam alias Babul being part of the group of perpetrators actively participated in getting the victims unlawfully captured by launching attack, sharing intent of the gang. The act of brutal killing of numerous civilians, the followers of pro-liberation political party, the upshot of the attack happened, it stands proved.

218. Therefore, the accused persons indicted incurred equal liability as they being co-perpetrators knew the predictable

consequence of the execution of the common design. In this regard we recall the observation rendered by the **ICTY Appeal Chamber** in the case of **Tadic** which is as below:

“Criminal responsibility may be imputed to all participants within the common enterprise where the risk of death occurring was both a predictable consequence of the execution of the common design and the accused was either reckless or indifferent to that risk”:

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

219. Uncontroverted testimony of witnesses demonstrates that the accused persons being part of the criminal enterprise took culpable action to contribute in implementing the common plan and goal. The act of presence of accused persons at the crime sites with the gang was not for any pious purpose and it had substantial effect on the commission of the crimes.

220. Thus and in line with the settled jurisprudence we come to conclude that the accused persons who knowingly contributed to the commission of crimes in execution of a common criminal purpose are subject to criminal liability under the doctrine of JCE [Basic form] as a form of ‘commission’ of crimes. It is to

be noted that out of eight accused indicted two (2) accused died during trial.

221. In view of discussion made above together with the settled jurisprudence we come to conclude that prosecution has been able to prove beyond reasonable doubt that the six (6) accused (1) Khan Ashraf Ali (2) Khan Akram Hossain (3) Rustom Ali Mollah (4) Sheikh Md. Ukil Uddin (5) Sheikh Idris Ali and (6) Sheikh Rafiqul Islam alias Babul knowingly participated in the commission of the offence of ‘**genocide**’ as enumerated in section 3(2)(c)(g)(h) of the Act of 1973 as they are found culpably ‘concerned’ with it by their acts forming part of attack and thus they incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge No.02: [04 accused indicted of whom 02 died during trial and 01 died on 17.10.2023]

**[Narrated as event no. 02: page 42-44 of the Formal Charge]
[Offences of confinement, torture, abduction and murder as crimes against humanity committed at Hazrakhali, Baikhlai Ramnagar and Abader canal’s bridge under police station-Kachua of District-Bagerhat]**

222. Charge: That on 07 July 1971 at about 08:00 A.M the accused (1) Md. Maniruzzaman Howlader (died during trial) (2) Md. Hashem Ali Sheikh (**died during trial**) (3) Md. Ajahar Ali

(died on 17.10.2023) and (4) Md. Mokbul Mollah , the armed members of Razakar Bahini by launching attack at villages Hazrakhali, Baikhlai Ramnagar and adjacent locality forcibly captured Nur Mohammad, Mobarak Kha and one unknown people and taking them to the bridge of Abader canal where the accused persons gunned down them to death and threw their bodies into the canal. Bodies of victims could not be traced.

Therefore, the accused (1) Md. Maniruzzaman Howlader (died during trial) (2) Md. Hashem Ali Sheikh (died during trial) (3) Md. Ajahar Ali Sikder(died on 17.10.2023) and (4) Md. Mokbul Mollah participated, facilitated, abetted and substantially contributed, by their culpable act and conduct forming part of systematic attack to the commission of offences of **‘abduction’**, **‘confinement’**, **‘torture’** and **‘murder’** as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses Examined

223. This count of charge involves the offences of confinement, torture, abduction and murder as crimes against humanity committed at Hazrakhali, Baikhlai Ramnagar and Abader canal's bridge under police station-Kachua of District (now) Bagerhat. The arraignment rests upon testimony of four witnesses who have recounted the event before Tribunal [ICT-BD] as P.W.10, P.W.11, P.W.12 and P.W.13. Before we move to evaluate let us see what they have testified.

224. P.W.10 Alhaj Shikder Habibur Rahman (65/66) is a resident of village- Bichot under police station- Kachua of District Bagerhat.

225. P.W.10 stated that he was a student before the Liberation War ensued and was actively involved with Awami League politics. During the Liberation War he was the platoon commander of freedom-fighters, and their base was in Dhopakali. Around 100 people of their localities joined the Razakar Bahini and received basic training from Pakistani armed force and set their camps at Kachua, Doiboggohati and Teligati. Among the group of Razakars he could recall the name of Khan Ashraf Ali, Khan Akram Hossain, Sultan Ali Khan (died during trial), Rustam Ali Mollah, Idris Ali Mollah (died

during trial) , Sheikh Md. Ukiluddin, Sheikh Idris Ali, Sheikh Rafiqul Islam alias Babul, Md. Maniruzzaman Howlader (died during trial), Hashem Ali Sheikh (died during trial), Ajahar Ali Sikder (died on 17.10.2023), Mokbul Mollah, Moksed Didar and Alim Mollah.

226. In narrating the event as arraigned in charge no.02, P.W.10 stated that on 06.07.1971 under the command of Sub-Sector Commander Captain Tajul Islam he along with Amol Mojumder (now dead), Sheikh Fajor Ahmed (now dead), Mojibur Rahman Sheikh and Anwar Sheikh moved to rekey the locality to become familiar with it. However, at around 03:00 A.M. they went into hiding at comrade Amol Majumdar's place.

227. P.W.10 continued stating that on the next day i.e. on 07.07.1971, at around 08:00 A.M. their undercover source informed that beside the south street of Amol Majumdar's house, a group of Razakars being led by Razakar commander Maniruzzaman Howlader (**died during trial**), his cohort Razakars Hashem Ali Sheikh (died during trial), Mokbul Molla, Alim Molla, Ajahar Sikder (died on 17.10.2023) and other 20/25 Razakars were on move toward west side. After having

heard it, they went into hiding inside the nearby jungle, west to Amol Majumdar's house.

228. P.W.10 next stated that few hours after at around 12:00 P.M. they heard screaming from the end of a bridge situated at south side of Amol Majumdar's house. Remaining in hiding they heard screaming. Then they went into hiding inside a bigger bush wherefrom they saw that on having approval of Razakar commander Maniruzzaman Howlader (**died during trial**) his cohort Razakars Hashem Ali Sheikh (died during trial), Razakar Mokbul Mollah, Razakar Alim Mollah and Razakar Ajahar Sikder (died on 17.10.2023) gunned down four people to death and threw their dead bodies in the canal.

229. P.W.10 also stated that after the Razakars had left the crime scene they came to know that Nur Mohammad Sheikh, Mobarak Khan, Sachin Saha and another unknown civilian had been killed. They then at that night moved back to their base camp. Finally, P.W.10 stated that the Razakars were from their neighboring villages and that's why he knew them beforehand.

230. In cross examination done on behalf of the accused persons P.W.10 stated that in his platoon there were 25-armed freedom

fighters; that he had LMG (*light machine gun*) with him when they came to rekey the place; that he went to India to receive training and came back during the end of May; that he joined Dhopakali High School freedom fighters' camp; that Teligati is 8/9 km south to Dhopakali High School; that he could not state father's name of Razakars he implicated; that his father died in 2003 and mother died in 2013 though the date of their death he could not recall; that he was born in 1952; that he participated in front battle though he could not remember the dates.

231. In cross-examination, P.W.10 denied the defence suggestion put to him that what he testified implicating the accused persons was untrue and tutored; that the accused persons were not Razakars and did not get involved with the event alleged.

232. P.W.11 Mozam Ali Sheikh (88/89) is a resident of village-Hazrakhali, under police station- Kachua of District Bagerhat. His full brother Hashem Ali Sheikh was a Razakar against whom P.W.11 deposed before Tribunal.

233. In 1971 P.W.11 was engaged with farming. Many people from their area including Sultan Dakua (now deceased), Goni

Sikder (now deceased), Goni Sardar (now deceased) and Maniruzzaman Howlader Commander (**died during trial**) including his sibling Hashem Ali Sheikh joined in Razakar Bahini.

234. P.W.11 stated that on 22nd day of Bangla month Ashar (in 1971) a group of Razakars he named i.e. Sultan Dakua (now deceased), Goni Sikder (now deceased), Goni Sarder (now deceased), Razakar Commander Maniruzzaman Howlader (**died during trial**), Hashem Ali Sheikh and many more by launching attack at their house forcibly captured his nephew Nur Mohammad Sheikh. At that time he (P.W.11) had been at home and his brother Moslem Ali Sheikh was at the marketplace.

235. P.W.11 continued stating that three days later it was known that his detained nephew was involved with 'Nakshal' movement and for that reason he was taken away on forcible capture. Three days after his capture, his dead body was found at Baroikhali Kalikhola canal. He recognized the dead body there.

236. In cross examination on behalf of Md. Hashem Ali Sheikh (**died during trial**) and accused Md. Maniruzzaman Howlader

(died during trial) P.W.11 stated that his father died in 1986; that his mother died before his father, though he could not remember the date of death of his mother; that his father after the independence registered some land on behalf of the wife of the accused Md. Hashem Ali Sheikh; that a civil suit was ongoing against the accused Md. Hashem Ali Sheikh which is now over; that the accused Md. Hashem Ali Sheikh was an employee of paper mill; that his nephew was unmarried. No case was initiated earlier over the event alleged.

237. In cross-examination, P.W.11 denied the defence suggestion put to him that what he testified implicating the accused persons was untrue and tutored and out of rivalry; that the accused persons were not Razakars and did not get involved with the event alleged.

238. P.W. 12 Hanif Kha (70) is a resident of village-Hazrakhali, under police station- Kachua of District Bagerhat.P.W.12 is a freedom fighter and direct witness to the event arraigned.

239. P.W.12 stated that on 21st Ashar in 1971 under the direction of his commander Habibur Rahman Sikder (P.W.10)

he along with his co freedom fighter Abdul Hakim Bali came to his home intending to rekey the position of the local Razakars. On the following day at around 10:00 A.M. on having information about movement of Razakars they got hidden inside the jungle situated in the garden of the house of Montu Chowdhury.

240. P.W.12 continued stating that remaining in hiding there they witnessed Razakars Hashem, Maniruzzaman Howlader(**died during trial**), Ajahar Ali Shikder(died on 17.10.2023), Mokbul Molla and their 20/25 cohort Razakars carrying out torture upon Mobarak Khan, Shachin Saha of Boishakhi Ramnagar village, Nur Mohammad Sheikh and one stranger bringing them at the bridge of Abader canal. At a stage, they (detainees) were gunned down to death there and their dead bodies were thrown into the canal. Half an hour later, after the Razakars had left the site they (P.W.12 and his co-freedom fighters) moved to the canal but did not have trace of the dead bodies of victims.

241. In cross examination on behalf of Md. Mokbul Molla P.W.12 stated that Abader canal is situated at 50/60 yards south-east corner from Montu Chowdhury's house; that during 1971

there was a water body in east side of Montu Chowdhury's house and another water body was in south side; that during 1971 there was the one storied building and three tin roofed houses at Montu Chowdhury's residential premises. P.W.12 denied defence suggestions that he did not know the accused persons and that this accused was not involved with the event alleged.

242. In cross examination on behalf of absconding accused Md. Maniruzzaman Howlader(**died during trial**) and Md. Ajahar Ali Shikder (died on 17.10.2023) P.W.12 stated that during 1971 their union was under Kachua police station; that he could not state the name of parents of accused Md. Maniruzzaman Howlader(died during trial) and Md. Ajahar Ali Shikder(died on 17.10.2023). P.W.12 denied defence suggestions that he neither knew the accused in 1971 nor now; that they were not Razakars; that the accused were not involved with the event alleged.

243. P.W.13 Md. Mojibar Rahman (66/67) is a resident of village- Char Fultola under police station-Kachua of District Bagerhat. He is a valiant freedom-fighter. He testified facts

related to the event of attack as arraigned in charge no.02 and affiliation of the accused persons indicted therewith.

244. P.W.13 stated that before the war of liberation ensued he was posted as a soldier in Eighth Bengal Regiment at Sholoshohor, Chittagong. On 27/28 of March (in 1971), after the war of liberation ensued he went to Kalurghat, Chittagong to participate in the war of liberation. However, the situation was not as favorable at Kalurghat as he expected and so he came back to his native place and stayed in hiding at his friend Montu Chowdhury's residence.

245. P.W.13 stated that on 07th July 1971 on sensing entry of Razakars into the Hazrakhali village, he went into hiding inside the garden of the house of Montu Chowdhury. There from he saw Razakar commander Maniruzzaman (died during trial), Razakars Hashem Sheikh (now dead), Razakar Ajahar Ali (died on 17.10.2023), Razakar Mokbul Molla including 20/25 cohort Razakars taking away Mobarak Khan, Nur Mohammad, Shachin Saha and one stranger at the bridge of Abader canal where they gunned them down to death and their dead bodies were thrown into the canal.

246. In cross examination P.W.13 stated that he could not tell the name of parents of accused; that Ubdakhali village is around 02 mile north from their village; that in 1971 there were 2/3 tin roofed houses at Montu Chowdhury's home; that during the Liberation War Montu Chowdhury having stance in favour of war of Liberation used to live at that house along with his family inmates.

247. P.W.13 denied the defence suggestions that the event he narrated did not happen; that he did not know the accused persons; that the accused persons did not belong to Razakar Bahini and that what he testified implicating the accused persons was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

248. **Mr. Rana Das Gupta**, the learned prosecutor drawing attention to the ocular testimony of four witnesses i.e. P.W.10, P.W.11, P.W.12 and P.W.13 submitted that it has been proved that the accused persons formed part of the criminal enterprise and they by launching systematic attack directing pro-liberation civilians got the victims unlawfully captured and finally the detainees were gunned down to death. Defence in no way could taint the narrative made by the P.W.s. The accused persons

indicted knowingly participated in conducting the designed attack in exercise of their culpable affiliation in locally formed Razakar Bahini.

249. On contrary, **Mr. Gazi M.H Tamim** argued that the witnesses are not credible and what they testified implicating the accused persons does not carry credence. P.W.11 testified out of rivalry with accused Md. Hashem Ali Sheikh (died during trial). Testimony of P.W.11 is gravely inconsistent with that of other witnesses relied upon. The witnesses did not have any reason of knowing the accused persons beforehand. Situation did not leave space of seeing the alleged event of killing and thus what the P.W.s described in respect of seeing the alleged killing was untrue. No case was initiated over the event alleged just after the independence achieved and thus delayed prosecution creates sufficient doubt as to involvement of the accused persons with the alleged event. Therefore, the accused persons deserve acquittal of this count of charge.

250. Tribunal reiterates that it is now well settled phenomenon that in the criminal justice system, the accused does not need to prove his innocence – the prosecution needs to prove guilt. On

evaluation of evidence presented we need to see how far the prosecution has been able to prove –

- (i) A systematic attack was conducted on the date and time directing civilians, the victims;
- (ii) The attack was conducted in context of war of liberation;
- (iii) The gang was formed of accused persons indicted and their cohort Razakars;
- (iv) Four civilians were unlawfully captured and taken away to the Abader canal where they were gunned down to death and their dead bodies were made floated in the canal;
- (v) That the accused persons indicted sharing intent of the criminal mission actively assisted, facilitated and contributed to the commission of crimes including murder of four civilians constituting the offence as crimes against humanity.

251. P.W.10 is a freedom-fighter. His testimony demonstrates that one day prior to the event arraigned happened he under the command of his Sub-Sector Commander Captain Tajul Islam along with co-freedom fighters Amol Mojumder (now dead), Sheikh Fajor Ahmed (now dead), Mojibur Rahman Sheikh, Anwar Sheikh was on move to rekey the locality. At a stage, they went into hiding at Commander Amol Majumdar's place.

252. Defence could not impeach the above fact which proves the fact of staying of P.W.10 and his co-freedom-fighters at Amol Majumdar's place, one day prior to the event occurred. What happened next? What the P.W.10 experienced during his staying at Amol Majumdar's place?

253. Unimpeached testimony of P.W.10 also depicts that during their staying in hiding in that place, on the following day at around 08:00 A.M their source informed that a group formed of Razakars Hashem Ali Sheikh (died during trial), Mokbul Molla, Alim Molla, Ajahar Sikder (died on 17.10.2023) and other 20/25 Razakars led by Razakar commander Md. Maniruzzaman Howlader (died during trial) was heading toward west. On being informed of it they then went into hiding inside the nearby jungle, west to Amol Majumdar's house.

254. It appears that remaining in hiding in jungle the P.W.10 experienced what atrocious acts were conducted by the criminal gang. Uncontroverted ocular testimony of P.W.10 demonstrates that on the same day, few hours after at about 12:00 noon they heard screaming from the end of the bridge situated at south side of Amol Majumdar's house. It has been unveiled that this site

was nearer to the bush where the P.W.10 and his co-freedom-fighters remained in hiding. Defence could not diminish it.

255. What happened next? Hearing screaming from the end of the crime scene as stated by P.W.10 carries credence. Naturally, they had fair opportunity of seeing the phase of the event that ended in killings, the outcome of the attack.

256. It has been unveiled from ocular account of P.W.10 that they remaining in hiding inside the bush witnessed that on approval of Razakar commander Md. Maniruzzaman Howlader (died during trial) his cohort Razakars Hashem Ali Sheikh (died during trial), Razakar Mokbul Mollah, Razakar Alim Mollah and Razakar Ajahar Ali Sikder (died on 17.10.2023) gunned down four detained civilians to death and threw their dead bodies in the canal.

257. It appears that the accused Razakars were from the neighboring villages and that's why P.W.10 knew them beforehand, P.W.10 stated. Defence simply denied it. But it could not be shaken in any manner. Thus, recognizing the accused persons accompanying the gang and participating in perpetrating the killings is indisputably believable.

258. In cross-examination, P.W.10 denied the defence suggestion put to him that the accused persons were not Razakars and did not get involved with the event alleged. But it could not be refuted by defence that Razakar Bahini was formed of the accused persons indicted in this count of charge and other accused and they received basic training from Pakistani armed force and set their camps at Kachua, Doiboggohati and Teligati. Besides, in 1971 activities, of Razakar Bahini and the persons affiliated with it became anecdote around the localities.

259. Thus, in view of above it may be justifiably inferred that the P.W.10 was acquainted with the identity of the accused persons and what the P.W.10 testified implicating the accused persons cannot be disbelieved.

260. It stands proved too from unshaken account of P.W.10 that after the Razakars had left the crime scene P.W.10 and his co-freedom-fighters came out of the hiding place and then they came to know that civilians annihilated were Nur Mohammad Sheikh, Mobarak Khan, Sachin Saha and another unknown civilian.

261. P.W. 12 Hanif Khan is a freedom fighter and direct witness to the event arraigned. At the relevant time he too had

been in hiding along with his co-freedom-fighters including the P.W.10. P.W.12 stated that he saw this barbaric part of the event being remained in hiding inside the bush. His corroborative testimony demonstrates too how the gang formed of accused persons and their cohort Razakars had tortured and killed the detainees by gunshot.

262. It stands proved from unimpeached testimony of P.W.12 that the dead bodies of victims were thrown into the canal. But on moving to the canal, after the gang moved back they did not have trace of the dead bodies of victims. Defence does not seem to have been able to negate the killing of four defenceless civilians at the killing site as stated by the P.W.12.

263. Ocular narrative of P.W.13 Md. Mojibur Rahman, a valiant co-freedom-fighter of other P.W.s. demonstrates that coming back to his native place he continued staying in hiding at his friend Montu Chowdhury's residence.

264. It depicts from his testimony that time on the date the attack happened at the relevant he remaining stayed at Montu Chowdhury's residence. He (P.W.13) saw Razakar commander Md. Maniruzzaman Howlader (died during trial), Razakars Hashem Sheikh (now dead), Razakar Ajahar Ali Shikder (died

on 17.10.2023), Razakar Mokbul Molla and their 20/25 cohort Razakars taking away Mobarak Khan, Shachin Saha, Nur Mohammad and one stranger at the bridge of Abader canal where they were gunned down to death and their dead bodies were thrown into the canal.

265. It has been affirmed in cross-examination of P.W.12 that Abader canal, the killing site was situated at 50/60 yards south-east corner from Montu Chowdhury's house. It gets corroboration from P.W.13 as well. Be that as it may, the version the P.W.12 made in respect of witnessing the act of taking away the detained victims on forcible capture to the Abader canal, the killing site is quite believable.

266. Cumulative evaluation of testimony of P.W.12 and P.W.13 in relation to facts chained to the ending phase of the event arraigned leads to the unmistakable conclusion that the detained civilians were gunned down to death taking them at Abader canal which was adjacent to the site wherefrom the victims were apprehended.

267. It is now well settled that to prove the offence of murder as crime against humanity locating dead body is not necessary, as

such crime is committed in war time situation and as a part of pattern based attack and not is an isolated crime. In view of totality of facts recovery of dead bodies of victims is not required to prove the fact of their killing constituting the offence of murder as crime against humanity. In this regard we recall the observation of **ICTY Trial Chamber** in the case of *Krnojelac* **which is as below:**

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

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

268. In this regard it has also been observed by the ICTY Trial Chamber on the case of Tadic that-

“Since these were not times of normalcy, it is inappropriate to apply rules of some national systems that require the production of a body as proof to death. However, there must be evidence to link injuries received to a resulting death.’

[Brdjanin, ICTY Trial Chamber, September 1, 2004, para. 383 and also Tadić Trial Judgement, para. 240]

269. The killing of detained civilians happened not in times of normalcy. The accused persons the members of para militia force were engaged in committing the crimes to further policy of resisting the pro-liberation civilians. It depicts from testimony of P.W.12 that the dead bodies of victims were thrown into the canal and could not be traced. It gets corroboration from P.W.10. Defence could not controvert it.

270. Consistently corroborative account narrated by the P.W.10 and P.W.12 leads to the unerring conclusion that the accused persons actively participated in accomplishing the brutal annihilation of four defenceless pro-liberation civilians in systematic manner.

271. Sequences as have been unveiled in uncontroverted testimony of the P.W.10 suggest concluding that the gang formed of accused (1) Md. Maniruzzaman Howlader (died during trial) , (2) Md. Hashem Ali Sheikh (died during trial), (3) Md. Ajahar Ali Sikder (died on 17.10.2023) and (4) Md. Mokbul Mollah indicted and their cohort Razakars by launching designed and systematic attack deliberately wiped out four defenceless pro-liberation civilians. It happened in context of war of liberation on explicit order of accused Razakar

commander Md. Maniruzzaman Howlader(**died during trial**).

Thus, the brutal killing of numerous civilians was committed in grave violation of human rights and international humanitarian law which constituted the offence of '**murder**' as 'crime against humanity'.

272. Accused Hashem Ali Sheikh (died during trial) is full brother of P.W. 11 Mozam Ali Sheikh. Victim Nur Mohammad Sheikh was the nephew of P.W.11. Testimony of P.W.11 demonstrates that the gang formed of Razakar Commander Maniruzzaman Howlader (died during trial), Hashem Ali Sheikh (died during trial) and their cohorts by launching attack at their house forcibly captured his nephew Nur Mohammad Sheikh and three days later his dead body was found at Baroikhali Kalikhola canal.

273. The above piece of testimony of P.W.11 relating to killing of one civilian Nur Mohammad Sheikh on forcible capture remained uncontroverted. It was crucially chained to the event of killings, the upshot of the systematic attack. Defence however argued that due to rivalry arising out of a civil litigation against the accused Md. Hashem Ali Sheikh (died during trial) P.W.11

testified falsely implicating this accused and thus P.W.11 is not a credible witness.

274. We are not agreed with this contention. From cross-examination of P.W.11 it appears that admittedly there had been a civil litigation against this accused Md. Hashem Ali Sheikh (died during trial) and the case is now over. Mere a civil litigation against this accused does not tend to suggest that P.W.11 testified out of rivalry against this accused. Besides, due to death of the accused Md. Hashem Ali Sheikh (died during trial), Md. Maniruzzaman Howlader (died during trial) and Md. Ajahar Ali Sikder who died on 17.10.2023 proceeding so far as it related to them stood abated and therefore we do not require resolving liability of these three accused for the crimes arraigned.

275. It appears that defence intending to negate the involvement of the accused persons with the event arraigned suggested the P.W.s that the accused persons were not Razakars and were not involved with the event alleged. The P.W.s blatantly denied this suggestion.

276. Besides, mere denial is not at all sufficient to taint the version made by witness in examination-in-chief. In the case in hand it appears that defence does not seem to taken any effort to question truthfulness of the version made by witnesses in examination-in-chief in this regard.

277. P.W.10 described a crucial fact relating to affiliation of accused persons with locally formed Razakar Bahini. According to his uncontroverted version that the accused persons indicted in this count of charge and other accused persons indicted in other count of charges as well got affiliated in locally formed Razakar Bahini and their camps were set up at Kachua, Doiboggohati and Teligati.

278. In view of above it was quite natural for P.W.10 to recognize the accused persons accompanying the gang when it conducted its horrific attack leading to unlawful detention of four civilians which ended in their brutal liquidation and they committed such horrific criminal to further policy and plan of Pakistani occupation army.

279. It has been argued on part of defence that four accused have been indicted in this count of charge. But P.W.11 testified the alleged event implicating two accused Md. Maniruzzaman

Howlader (died during trial) , Hashem Ali Sheikh (died during trial). This version is inconsistent with what has been testified by three other P.W.s in this regard and thus complicity of accused persons with the alleged event suffers from doubt.

280. We are not agreed with the above defence contention. P.W.11 testified what he experienced in respect of the phase of forcible capture of his nephew Nur Mohammad Sheikh which occurred at their house by launching attack. All the perpetrators forming the criminal gang might not be seen present in carrying out all the phases of the event of attack. Getting one victim Nur Mohammad Sheikh forcibly captured as testified by P.W.11 was part of the attack conducted. Besides, memory overtime naturally degenerates. Hence it would be wrong and unjust to treat forgetfulness as being synonymous with giving false testimony.

281. In adjudicating this count of charge it reveals that the majority of the witnesses who testified before the Tribunal were eye-witnesses and their testimonies in respect of acts alleged in the indictment relate to the event they had seen or heard. We do not find any reason to disbelieve the narrative they have made.

282. We have already got it proved from combined appraisal of ocular testimony of P.W.10, P.W.12 and P.W.13 that all the four accused indicted i.e. accused (1) Md. Maniruzzaman Howlader (died during trial), (2) Md. Hashem Ali Sheikh (died during trial) ,(3) Md. Ajahar Ali Sikder (died on 17.10.2023) and (4) Md. Mokbul Mollah formed part of the group of attackers.

283. It stands proved too that all the four accused indicted were present with the group of perpetrators when it conducted the designed systematic attack, sharing intent. Thus, mere non-stating the name of two other accused by the P.W.11 does not make the act of participation of all the accused indicted (of whom two (2) died during trial) untrue, particularly when participation of all the accused indicted to the commission of crimes arraigned stands proved from evidence of other ocular witnesses.

284. Presence of accused persons being part of the criminal enterprise is sufficient to deduce that they all, by their acts actively and knowingly participated in accomplishing the object of the designed criminal mission. Totality of facts and circumstances lead to conclude that they sharing intent of the gang consciously aided, facilitated and actively contributed to

the commission of crimes including abduction, confinement, torture and murder as crimes against humanity.

285. It may be irresistibly concluded that prohibited criminal acts committed were grave and patent violation of international humanitarian law and laws of war. Mens rea of the gang formed of accused persons and their cohorts was to liquidate the pro-liberation defenceless civilians, to further policy of Pakistani occupation army, we deduce it from totality of evidence presented.

286. It stands proved that the accused persons and their cohorts forming group of attackers had carried out unlawful systematic attack directing the civilian population. Presumably, the primary purpose of such designed acts of violence conducted deliberately directed against the pro-liberation civilians was to spread terror among the pro-liberation civilian population of the vicinity attacked, we deduce.

287. The word 'population' does not mean that the entire population of the geographical entity in which the attack took place must have been subjected to that attack. The settled jurisprudence tells that it is not required to show killing of

significant number of civilians to constitute the offence of murder as crime against humanity.

288. In view of above, Tribunal notes that killing even of a single civilian on discriminatory grounds occurred in such context of war of liberation 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, ICTR Trial Chamber, Judgment: December 13, 2006, para. 357]

289. In view of above settled legal proposition evolved and since the killings arraigned happened in context of the war of liberation, in systematic manner we are forced to conclude that the barbaric murder of four unarmed civilians who were first apprehended by launching attack constituted the offences of ‘abduction’, ‘confinement’ and ‘murder’ as crime against humanity.

290. Unshaken facts divulged from testimony of P.W.s examined demonstrate the existence of common purpose and plan in furtherance of which the pattern crime of abduction,

confinement and barbaric killing of four unarmed civilians was accomplished.

291. It stands proved that the accused persons indicted took away the detained victims to Abader canal where the accused persons gunned them down to death and their dead bodies were made floated in the canal. The event was indeed gravely barbaric.

292. The learned defence counsel Mr. Gazi M.H. Tamim submitted that no case was initiated over the alleged event after the independence achieved. Thus now delayed prosecution of accused persons creates doubt as to their involvement with the event arraigned.

293. We are not agreed with the above defence contention. Tribunal notes that serious crimes like 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. In this regard it is to be noted that neither the Genocide Convention of 1948, nor

the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity.

294. The act of ‘facilitating’ the actual commission of crime may not always be tangible. It is to be inferred from facts and circumstances. In the case in hand, it stands proved from facts and circumstances divulged that crimes proved constitute patent manifestation of collective criminality of which the accused (1) Md. Maniruzzaman Howlader (died during trial), (2) Md. Hashem Ali Sheikh (died during trial), (3) Md. Ajahar Ali Sikder (died on 17.10.2023) and (4) Md. Mokbul Mollah were active part and the crimes were perpetrated by the group formed of these accused persons and their cohort Razakars in pursuance of a common criminal design.

295. Since the role the accused persons had played in exercise of their nexus with infamous Razakar Bahini in accomplishing the crimes arraigned we may justifiably conclude that they made them deliberately connected with the horrific ‘systematic attack’ knowing the consequence of their culpable acts of extreme notoriety.

296. The crimes arraigned committed during that period of war of liberation in 1971 in the territory of Bangladesh were the end result of “systematic attack’ directed against the unarmed pro-liberation Bangalee civilian population. This ‘context’ itself prompts even a person of common prudence that the offences of ‘crimes against humanity’ as mentioned in section 3(2) (a) were inevitably the effect of part of ‘widespread’ or ‘systematic attack’.

297. Defence could not taint the joint participation of accused persons indicted to the commission of crimes in any manner. Facts unveiled lead to conclude that they consciously made them active part of common plan of collective criminality that eventually resulted in killing of four pro-liberation civilians as already found proved. However, two accused Md. Hashem Ali Sheikh and accused Md. Maniruzzaman Howlader died during trial and one accused Md. Ajahar Ali Sikder died on 17.10.2023 and thus no finding as to liability of these three accused is being rendered. The rest one accused indicted being part of collective criminality incurred liability under section 4(1) of the Act which refers to JCE [Basic Form]

298. Totality of evidence as evaluated herein above suggests the only reasonable inference that the accused Md. Mokbul Mollah indicted being part of the squad knowingly participated in the JCE with intent to liquidate the pro-liberation civilians. Tribunal recalls that the notion of joint criminal enterprise [JCE] arises when two or more persons join in a common and shared purpose to commit a crime. Prosecution does not require showing which accused perpetrated the act of killing of which detainee.

299. It already stands proved that the accused persons had acted being part of 'collective criminality' sharing common intent that resulted in killing four civilians. Accused persons, as it stands proved from evidence, remained with the group of perpetrators when it moved towards the crime site taking the detainees with them on forcible capture. Such culpable act indubitably connects the accused persons even with the act of accomplishing killing of detainees by gun shot.

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

“A crime can be committed individually or jointly with others, that is, there can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence.”

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

301. We have already noted that accused Md. Hashem Ali Sheikh and Md. Maniruzzaman Howlader died during trial and one accused Md. Ajahar Ali Sikder died on 17.10.2023, after closure of summing up. Therefore, now, on integrated appraisal of evidence relating to facts and circumstances chained to the event arraigned we eventually come to conclusion that prosecution has been able to prove that the accused (1) Md. Mokbul Mollah participated, abetted and substantially contributed to the accomplishment of object of the criminal mission leading to the offences of **‘abduction’; ‘confinement’** and **‘murder’** of four defenceless civilians as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which is punishable under section 20(2) read with section 3(1) of the Act and thus the accused person incurred liability under section 4(1) of the Act for the above offences.

Adjudication of Charge No.03:[08 accused indicted of whom 02 died during trial]

**[Narrated as event no. 03: page 44-48 of the Formal Charge]
[Offences of confinement, torture and murder of 02 civilians as crimes against humanity committed at village-Dhuligati under police station- Morrelganj of District-Bagerhat]**

302 Charge: That on 13 November 1971 at about 10:00 A.M a group of 15/20 Razakars being accompanied by the accused (1)Khan Ashraf Ali (2) Khan Akram Hossain (3) Sultan Ali Khan (**died during trial**) (4) Rustom Ali Mollah,(5) Idris Ali Mollah (**died during trial**) (6) Sheikh Md. Ukil Uddin,(7) Sheikh Idris Ali and (8) Sheikh Rafiqul Islam alias Babul the members of locally formed Razakars Bahini and their accomplice Mokched Ali Didar[now dead] by **launching attack at the house of Raihan Ali Master of village-Dhuligati** under police station-Morrelganj forcibly captured **Basarat Khan and Mannan Khan**, the two full brothers out of 06 unarmed freedom-fighters staying there for taking meal and gunned them down to death when they attempted to escape.

On way back to Razakars camp the accused persons going to the house of Basarat and Mannan disclosed to their wives about the killing. Later on, bodies of victims were collected from the killing site and were buried.

Therefore, the accused (1) Khan Ashraf Ali (2)Khan Akram Hossain (3) Sultan Ali Khan (**died during trial**) (4)Rustam Ali Mollah,(5) Idris Ali Mollah (**died during trial**) (6) Sheikh Md. Ukil Uddin,(7) Sheikh Idris Ali and (8) Sheikh Rafiqul Islam alias Babul participated, facilitated, abetted and substantially contributed, by their culpable act and conduct forming part of systematic attack to the commission of offences of confinement, torture and murder as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses Examined

303. This count of charge involves the event of brutal killing of two unarmed freedom-fighters, the two full brothers when they had been staying at the home of Raihan Ali Master of village-Dhuligati under police station-Morrelganj of District Bagerhat for having meal. Prosecution, to prove the arraignment brought in this count of charge adduced three witnesses of whom two have been examined as P.W.07 and P.W.08 and P.W.9 has been tendered. Before we move on to the task of evaluation let us see what the witnesses described before Tribunal on oath.

304. P.W.07 Md. Ismail Hossen Howlader (66) is a resident of village-Dhuligati under police station Morrelganj of District (now) Bagerhat). In 1971 he was a student of class X. He is a direct witness to facts chained to the event arraigned in this count of charge, he claims.

305. P.W.07 stated that on 13 November in 1971 he had been staying at home. Their home was known as 'Raihan Master's Bari'. His father and Uncle Abul Kashem (now dead) used to stay at that home, located at introverted site and thus the freedom-fighters very often used to visit this home, used to take meal and sometimes they used to stay there as well.

306. P.W.07 next stated that Soleman Khan, Nazrul Islam Khan, Solaiman Sarder, Mujibur Rahman Khan, Basharat Khan(victim), Abdul Mannan Khan(victim), the freedom-fighters of their locality came to their home at about 10:00 A.M on 13 November, 1971 being unarmed to have lunch . Few time later on getting informed of it Razakars Ashraf Ali Khan, Akram Khan, Sultan Ali Khan (**died during trial**) (**died during trial**), Rustom Molla, Idris Molla(died during trial), Idris Sheikh, Ukil Sheikh, Rafiqul Islam Babul, Mokched Didar

(now dead) of their locality being accompanied by their 10/12 cohort Razakars being armed besieged their home.

307. What the P.W.07 experienced next? P.W.07 stated that after the group of Razakars besieged the home he (P.W.07) went into hiding inside a bush adjacent to home wherefrom he saw the said Razakars beating Mannan Khan and Basharat Khan taking them in the courtyard. The rest four freedom-fighters however managed to escape. The Razakars he named then gunned down the two detained freedom-fighters to death taking them on the bank of the canal adjacent to their home.

308. P.W.07 next stated that after the Razakars had left the site he (P.W.07) came out of the hiding place and discovered two dead bodies. Few times later relatives of those two deceased freedom-fighters came to their home and buried the dead bodies. At that time he described the event he experienced.

309. P.W.07 also stated that the wives of those two deceased freedom-fighters disclosed that the Razakars on their way back came to their home and disclosed the fact of killing two freedom-fighters.

310. In cross-examination P.W.07 denied defence suggestions that what he stated in respect of the alleged event was untrue and tutored; that the accused persons were not Razakars; that he did not see the event he narrated; that the event he narrated did not happen.

311. P.W.08 Emran Hossen Khan (62/63) is at present a resident of village Teligati under police station Morrelganj of District (now) Bagerhat. He is the son of one victim martyr Abdul Mannan Khan. He narrated the fact pertinently linked to the event arraigned.

312. P.W.08 next stated that on 13 November in 1971 at about 02:00/02:30 P.M suddenly Razakars Khan Ashraf Ali, Akram Khan, Sultan Khan(**died during trial**), Rafiqul Islam @ Babul, Rustom Ali Molla, Idris Ali Molla (died during trial) , Ukil Sheikh, Idris Sheikh, Moksed Ali Didar (now dead) of their locality and their 15/20 armed cohorts entering their home disclosed to his (P.W.08) mother and aunty that his (P.W.08) father and uncle had been killed by gunshot at Raihan Master's home at Dhuligati and their dead bodies were left abandoned there. At that time he (P.W.08) had been at home. On getting this information they the family inmates moved to Raihan

Master's home where they found dead bodies of his father and uncle lying there and heard the event from them who witnessed it. They too disclosed that the accused Razakars going to their home disclosed the event of killing his father and uncle. Then they buried the dead bodies bringing at home.

313. In cross-examination P.W.08 denied defence suggestions that what he testified implicating the accused persons was untrue and tutored; that the accused were not Razakars; that they were not involved with the event alleged; that he did not see and hear the event he testified.

314. P.W.09 Johura Khatun (75/76) is the wife of martyr victim Abdul Mannan Khan. Prosecution tendered her with P.W.08, the son of the martyr victim Abdul Mannan. Defence declined to cross-examine her.

Finding with Reasoning on Evaluation of Evidence Presented

315. Mr. Rana das Gupta, the learned prosecutor drawing attention to testimony of P.W.07 and P.W.08 argued that the accused persons forming part of the criminal enterprise by launching attack at the house of Raihan Master unlawfully

apprehended two non-combatant freedom-fighters and brutally gunned them down to death there. P.W.07 the son of one victim witnessed the event remaining in hiding. Defence could not impeach it in any way.

316. The learned prosecutor also submits that post event conduct of accused persons rather made them self-declared perpetrators of crimes. The dead bodies were recovered from the site attacked which proves conducting attack leading to killings. The accused persons forming part of the group had carried out attack which explicitly connected them with the act of killing as well. Since the status of victims the freedom-fighters was *hors de combat* they were not subjected to any prohibited act. Corroborative evidence of P.W.07 and P.W.08 proves it beyond reasonable doubt that the accused persons in exercise of their affiliation with Razakar Bahini were actively and aggressively engaged in conducting the systematic attack leading to brutal killing of two non-combatant freedom-fighters.

317. On contrary, **Mr. Gazi M.H Tamim** argued that P.W.08 is a hearsay witness in respect of the event alleged; that P.W.07 who claims himself to be a direct witness did not know the accused persons and thus his testimony implicating the accused

persons was untrue. Another witness P.W.09, the wife of one alleged victim has been tendered. Therefore, the accused persons cannot be held responsible for the crimes arraigned.

318. Tribunal reiterates that it would be appropriate jurisprudentially logical if, in the process of appraisal of evidence, we separate the grains of acceptable truth from the chaff of exaggerations and improbabilities. The facts needed to be proved by prosecution are --

- a. Launching systematic attack at the house of Raihan Ali Master of village-Dhuligati under police station-Morrelganj of District Bagerhat;
- b. The group of attacker formed of accused persons and their cohorts Razakars;
- c. Six unarmed freedom-fighters had been staying at the house attacked;
- d. Sensing attack four unarmed freedom-fighters managed to escape and the group unlawfully apprehended two unarmed freedom-fighters;
- e. the detainees were gunned down to death;
- f. After the event happened the accused persons disclosed it to the relatives of one victim;

- g. The accused persons had acted sharing common intent to further policy of Pakistani occupation army.

319. Attack arraigned was conducted at the house of Raihan Ali Master of village-Dhuligati under police station-Morrelganj of District Bagerhat, the charge framed alleges. Unimpeached testimony of P.W.07 demonstrates that their home was known as '**Raihan Master Bari**' and on the relevant date and time he (P.W.07) had been at home. It could not be tainted in cross-examination. Testimony of P.W.07 also demonstrates that in 1971 the freedom-fighters very often used to visit this home, used to take meal and sometimes they used to stay there as well.

320. It stands proved from uncontroverted ocular narrative of P.W.07 that six freedom-fighters Soleman Khan, Nazrul Islam Khan, Solaiman Sarder, Mujibur Rahman Khan, Basharat Khan(victim), Abdul Mannan Khan(victim) of their locality came to their home at about 10:00 A.M on 13 November, 1971, being unarmed to have lunch .

321. What happened next? It depicts from testimony of P.W.07 that few time later staying of those unarmed freedom-fighters at that home got leaked and then accused Razakars Ashraf Ali

Khan, Akram Khan, Sultan Ali Khan (**died during trial**), Rustom Molla, Idris Molla (**died during trial**), Idris Sheikh, Ukil Sheikh, Rafiqul Islam Babul, Mokched Didar (now dead) of their locality being accompanied by their 10/12 cohort Razakars being armed besieged their home i.e. the house of Raihan Ali Master.

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322. We got it proved that on sensing the attack P.W.07 went into hiding inside a bush adjacent to home wherefrom he saw the said Razakars beating two victims Mannan Khan and Basharat taking them in the courtyard. The rest four freedom-fighters however managed to escape. Defence does not seem to have been able to refute this crucial part of the attack.

323. It thus stands well proved that by launching attack the group formed of accused persons indicted and their cohorts forcibly captured Basarat Khan and Mannan Khan, the two full brothers out of 06 unarmed freedom-fighters staying there for taking meal and gunned them down to death when they attempted to escape.

324. Unlawful detention of two non-combatant freedom-fighters ended in their annihilation by gunshot. It stands proved from

ocular testimony of P.W.07 that the accused persons indicted gunned down the two detained non-combatant freedom-fighters to death taking them on the bank of the canal adjacent to their home.

325. It depicts that after the Razakars had left the site he (P.W.07) came out of the hiding place and discovered two dead bodies and few times later relatives of those two deceased freedom-fighters came to their home and buried the dead bodies. At that time he described the event he experienced.

326. The learned defence counsel Mr. Gazi M.H. Tamim argued that the P.W.07 did not know the accused persons and thus what he testified implicating the accused persons does not carry credibility.

327. It appears that the P.W.07 has not stated the reason of knowing the accused persons. But it has not been suggested to the P.W.07 in his cross-examination that he did not know or had no reason of knowing the accused persons. Also it appears that it could not be controverted in any manner by cross-examining the P.W.07 that the group of attackers formed of accused persons and their 10/12 cohorts, as testified by the P.W.07.

328. P.W.08 Emran Hossen Khan is the son of one victim martyr Abdul Mannan Khan and his uncle Basharat Khan was freedom fighter. It depicts too from testimony of P.W.08 that in 1971 during the war of liberation his freedom-fighter father and uncle Basharat Khan very often used to visit home being unarmed in night time.

329. Already we got it proved from unimpeached ocular testimony of P.W.07 that the gang formed of accused persons and their cohorts committed killing of two unarmed freedom-fighters and it happened at **the house of Raihan Ali Master**.

330. What happened next to the perpetration of killing? It has been unveiled from corroborative testimony of P.W.07 and P.W.08 demonstrates that on the day the event happened at about 02:00/02:30 P.M the accused persons indicted and their 15/20 armed cohorts entering their home **disclosed to his (P.W.08) mother** and aunty that his (P.W.08) father and uncle had been killed by gunshot at Raihan Master's home at Dhuligati and their dead bodies were left abandoned there. Defence could not refute this post event fact in any manner. Later on, bodies of victims were collected from the killing site and were buried.

331. The above piece of unimpeached post event fact reflects grave aggression of accused persons to the civilians participated in war of liberation. The accused persons indicted by such act proved them declared killers or perpetrators. It reflects extreme notoriety of accused persons. Such act of accused persons indicted indubitably caused immense trauma and mental harm to the relatives of victims constituting the offence of ‘torture’. It is to be noted that physical torture is not required to inflict ‘torture’ and causing untold mental harm constitutes the act of ‘torture’. In this regard it has been observed in the case of **Limaj** that -

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

[Limaj, ICTY Trial Chamber, November 30, 2005, para. 236]

332. In this way, on being aware of the killing P.W.08 and family inmates then moved to Raihan Master’s home and heard the event from them who witnessed it and they found dead bodies of his father and uncle and then they buried the dead bodies bringing at home.

333. Hearing the event of attack from them including P.W.07 who witnessed it was natural and believable. Defence could not impeach it. Finding dead bodies of victims from the killing site adds assurance as to launching attack that ended in killing two non-combatant freedom-fighters.

334. P.W.09 Johura Khatun is the wife of one martyr victim Abdul Mannan Khan. She has been tendered. It does not cause any adverse effect on testimony of her son P.W.08 as it stands proved from testimony of P.W.8 that after accomplishment of killings the accused persons coming to their home disclosed that they had liquidated Abdul Mannan Khan and his brother Basharat Khan.

335. Tribunal also notes that not the quantity but quality of evidence is to be considered in arriving at decision in respect of the event arraigned. In the case in hand P.W.07 is a direct witness and he recounted how the attack was conducted and how the unarmed victims got unlawfully apprehended and were killed by gunshot. Later on P.W.08 and his relatives discovered dead bodies of victims from the killing site. P.W.07 is a direct witness who remaining in hiding saw the accused (1) Khan

Ashraf Ali, (2) Khan Akram Hossain,(3) Sultan Ali Khan(**died during trial**) (4) Rustom Ali Mollah, (5) Idris Ali Mollah (**died during trial**) (6) Sheikh Md. Ukil Uddin,(7)Sheikh Idris Ali and (8) Sheikh Rafiqul Islam alias Babul conducting prohibited acts leading to forcible capture and killing the detained victims.

336. It is not disputed that the victims were freedom-fighters. Presumably, the fact of their staying at ‘Raihan Master Bari’ along with four other freedom-fighters got leaked and the accused Razakars then being imbued by the policy of Pakistani occupation army instantly conducted the designed and systematic attack targeting those freedom-fighters that ended in killing two and rest four managed to escape, sensing the attack.

337. It is now settled jurisprudence that combatants cease to be subject to attack when they have individually laid down their arms and in all circumstances they be treated humanely. Situation of victims when crimes committed, not their status is to be considered.

338. On integrated evaluation of evidence presented it stands proved that the two non-combatant freedom-fighters were captured, detained and afterwards killed. The settled

jurisprudence states that the targeted population must remain predominantly civilian in nature and it is the situation of the victim at the time of the attack and not the victim's status. In this regard ICTR Trial Chamber has observed in the case of **Kamuhanda that-**

“..... the specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his standing as a civilian.”

[ICTR Trial Chamber: Kamuhanda, January 22, 2004, para. 668]

339. It is to be considered what their status was at the time of crimes committed. Even non-combatant freedom fighters may be considered part of the civilian population if at the time of the attack they were unarmed. The victims were ‘freedom fighters, true. But what we see in the case in hand? It stands proved that at the relevant time they were non-combatant i.e. *hors de combat*’ as they were no longer bearing arms. In this regard the principle enunciated by the ICTY is as below:

“The definition of a ‘civilian’ is expansive and includes individuals who at one time performed acts of resistance, as well as persons who were *hors de combat* when the crime was committed.”

[Limaj, ICTY Trial Chamber, November 30, 2005, para. 186]

340. On cumulative evaluation of evidence presented we arrive at decision that prosecution has been able to prove beyond reasonable doubt that intending to further policy of Pakistani occupation army the accused (1) Khan Ashraf Ali, (2) Khan Akram Hossain,(3) Sultan Ali Khan (**died during trial**) (4) Rustom Ali Mollah, (5) Idris Ali Mollah (**died during trial**) (6) Sheikh Md. Ukil Uddin (7) Sheikh Idris Ali and (8) Sheikh Rafiqul Islam alias Babul, in exercise of their explicit culpable nexus with the Razakar Bahini had conducted the designed deliberate attack, with extreme aggression even against the unarmed defenceless civilians. It was indeed gross violation of Universal declaration of Human rights and the laws of war.

341. Of the eight accused indicted two (2) accused Idris Ali Mollah and Sultan Ali Khan died during trial and thus no finding as to their liability is being rendered, although it has been proved that they too actively participated in materializing the goal of the enterprise.

342. In view of above we arrive at decision that the six (6) accused (1) Khan Ashraf Ali (2) Khan Akram Hossain (3) Rustom Ali Mollah (4) Sheikh Md. Ukil Uddin (5) Sheikh Idris Ali and (6) Sheikh Rafiqul Islam alias Babul participated,

facilitated, abetted and substantially contributed, by their culpable act and conduct forming part of systematic attack to the commission of offences of **‘confinement’, ‘torture’ and ‘murder’** as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 read with section 4(1) of the Act which are punishable under section 20(2) of the said Act.

Adjudication of Charge No.04:[12 accused indicted of whom 04 died during trial and 01 died on 17.10.2023]

**[Narrated as event no. 04: page 48-51 of the Formal Charge]
[Offences of confinement, abduction, torture and murder of Soleman Sheikh and 03 other civilians as crimes against humanity committed at village-Dhuligati under police station-Kachua of District-Bagerhat]**

343. Charge: That on 17 November 1971 at about 10:00 A.M a group formed of the accused (1) Khan Akram Hossain, (2) Idris Ali Mollah (**died during trial**), (3) Sheikh Md. Ukiluddin, (4) Md. Mokbul Mollah (5) Md. Hashem Ali Sheikh (**died during trial**) (6) Khan Ashraf Ali , (7) Sultan Ali Khan (**died during trial**) (8) Rustom Ali Mollah, (9) Sheikh Idris Ali , (10) Sheikh Rafiqul Islam alias Babul , (11) Md. Maniruzzaman Howlader (**died during trial**) and (12) Md. Ajahar Ali Sikder (**died on 17.10.2023**) and 30/35 other Razakars affiliated with the

Razakars camps of Kachua, Daibagyahati and Teligati by launching attack at villages forcibly captured two non-combatant freedom fighters Ashraf Ali Mollah and Soleman Sheikh and Nipen Debnath of village-Bilkul and Sunil Kumar Ghosh of village Bichat. In conjunction with the attack the gang carried out wanton destruction of households and burnt down houses.

Then at about 12:00 noon the detained unarmed freedom-fighters were taken to Kathaltola Bridge where they were shot to death and their bodies were thrown to the river Isamoti. Later on, relatives of victims recovered the bodies of victims and buried the same at their houses.

Therefore, the accused (1) Khan Akram Hossain, (2) Idris Ali Mollah(**died during trial**) (3) Sheikh Md. Ukiluddin (4) Md. Mokbul Mollah (5) Md. Hashem Ali Sheikh (**died during trial**) (6) Khan Ashraf Ali (7) Sultan Ali Khan (**died during trial**) (8) Rustom Ali Mollah, (9) Sheikh Idris Ali (10) Sheikh Rafiqul Islam alias Babul (**11**) Md. Maniruzzaman Howlader (**died during trial**) and (12) Md. Ajahar Ali Sikder (**died on 17.10.2023**) participated, facilitated, abetted and substantially contributed, by their culpable act and conduct forming part of systematic attack to the commission of offences of

‘confinement’, ‘abduction’, ‘torture’ and ‘murder as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses Examined

344. This charge involves offences of confinement, abduction, torture and murder of Soleman Sheikh and 03 other non-combatant civilians as crimes against humanity committed at village-Dhuligati under police station-Kachua of District-Bagerhat. The arraignment rests upon testimony of five witnesses who have recounted the event on oath standing on dock of Tribunal as P.W.10, P.W.14, P.W.15, P.W.16, and P.W.18. Now let us see what the witnesses testified before Tribunal.

345. P.W.10 Alhaj Shikder Habibur Rahman (65/66) is a resident of village-Bichat under police station Kachua of District Bagerhat. He was involved with politics of student wing of Awami League since prior to the war of liberation ensued. He was a platoon commander of freedom-fighters. Their freedom-fighters’ camp was situated at Dhopakhali. In addition to charge

nos.2 and 6 P.W.10 testified what he experienced in respect of the event arraigned in charge no.04 as well.

346. Before recollecting the event arraigned in this count of charge P.W.10 stated that in the month of May in 1971 about one hundred people including accused indicted Akram Kha, Ashraf Kha, Sultan Ali Khan(**died during trial**), Rafiqul Islam @ Babul, Rustom Molla, Moksed Didar (now dead), Ukil Sheikh, Maniruzzaman (**died during trial**), Hashem **Sheikh (died during trial)**, Mokbul Molla, Alim Molla (now dead), Idris Ali Molla (**died during trial**), Idris Sheikh and Ajahar Ali Sikder (**died on 17.10.2023**) received training from the Pakistani occupation army and they formed Razakar camps at Kachua, Doiboggohati and Teligati.

347. In narrating the event arraigned in this count of charge i.e. charge no.04 P.W.10 stated that on 16.11.1971 after completing rekey of Doiboggohati Razakar camp at about 03:00 A.M. he along with his co-freedom-fighters Lutfar Rahman Nakib, Sachipada Das and Seraj Nakib got sheltered at the house of freedom-fighter Seraj Nakib.

348. P.W.10 next stated that on the following day i.e. on 17.11.1971 at about 08:00 A.M. their sources informed that Razakars Akram Kha, Ashraf Kha, Sultan Ali Khan (died during trial) and Rafiqul Islam @ Babul, Mokched Didar (now dead), Idris Ali Molla (died during trial), Idris Ali Sheikh, Ukil Uddin Sheikh and their 20/25 cohort Razakars were heading toward Kachua Razakar camp. On hearing this they went into hiding inside the bush, north to the house of Seraj Nakib and sent Seraj Nakib's father to collect information.

349. P.W.10 continued stating that on that day at about 12:00 noon they remaining in hiding site saw the Razakar commander Maniruzzaman Howlader (**died during trial**), Razakars Hashem Ali Sheikh (**died during trial**), Ashraf Kha, Akram Kha, Sultan Khan (**died during trial**), Rafiqul Islam @ Babul, being accompanied by their 20/25 cohorts Razakar gunning down Fela Sheikh, Sunil Kumar Ghosh @ Lochon, Nrirpen Babu and Ashraf Molla to death on the Kathaltola bridge and they abandoned the dead bodies in the canal. P.W.10 finally stated that the accused Razakars he named were from their neighbouring villages and thus he knew them beforehand.

350. In cross examination in reply to defence question P.W.10 stated that he did not initiate any case against the accused persons; that he could not say as to what the accused persons use to work and live; that he saw the accused persons excepting accused Rafiqul Islam Babul staying in the locality after independence; that accused Ashraf Kha was the Union Parishad Chairman.

351. In cross-examination P.W.10 also stated in reply to defence question that in 1971 freedom-fighter Seraj Nakib's house consisted of two room and there had been a garden, north to the house; that there had been a freedom-fighters' camp at Doiboggohati; that victim Sunil Kumar Ghosh @ Lochon the father of two daughters was from their village and that he could not say whether the martyr Fela Sheikh, Nrirpen Babu and Ashraf had any son and daughter.

352. P.W.10 denied defence suggestions that he did not see the alleged event; that the event alleged did not happen; that the accused persons were not concerned with the event he testified; that the accused persons were not Razakars and that what he testified implicating the accused persons was untrue and out of rivalry.

353. P.W.14 Abu Jafar Mallik (65/66) is a resident of village- Atharogati under police station- Kachua of District Bagerhat. During 1971 he was a student of class VIII in Dhuligati High School. He is a freedom fighter. In addition to charge nos. 5, 6 and 7 P.W.14 testified also in respect of the event arraigned in charge no. 04.

354. P.W.14 stated that on 16th November 1971 on instruction of Commander Soleman Khan of Teligati freedom-fighters camp he (P.W.14) along with his co-freedom-fighters Sohrab Nakib and Tapas after discharging the task of rekey on movement of Razakars of Kachua locality at around 12:00 in night got stationed at Bilkul primary school. On the following day i.e. on 17th November they got sheltered at the bamboo garden, adjacent to freedom-fighter Sachipada Das's house to secure their safe movement in day time.

355. P.W.14 next stated that on the same day at around 12:00 noon they heard sound of gun firing from the end of Kathaltola bridge; and then with this they headed toward the bridge secretly and got seated at the garden of Arjan Ali where they found freedom-fighters Habibur Rahman Sikder, Sachipada

Das, Lutfor Rahman Nakib, Serajul Islam Nakib staying there. They (co-freedom-fighters) informed that Razakar commander Maniruzzaman Howlader (**died during trial**), Hashem Ali Sheikh (**died during trial**), Mokbul Mollah, Ajahar Sikder (**died during trial**), Sultan Khan(**died during trial**), Akram Khan, Idris Mollah (died during trial), Idris Sheikh, Rustom Molla, Mokched Didar (now dead), Ukiluddin Sheikh and Babul Sheikh had killed four civilians of the locality taking them at Kathaltola bridge and abandoned the dead bodies. They remaining stayed inside the garden saw the Razakars moving back being divided into two groups.

356. P.W.14 finally stated that they then on moving to the bridge found the dead bodies abandoned in the canal. He could recognize the dead body of freedom-fighter Ashraf Molla and he learnt that two others victims were Nripen Babu and Sunil Babu. Finally, P.W.14 stated that the accused Razakars he named were from their neighbouring localities and thus he knew them beforehand.

357. In cross-examination P.W.14 stated in reply to defence question that accused Ashraf Ali Kha was elected Union Parishad Chairman after assassination of Bangabandhu. P.W.14

denied defence suggestions that he did not see the event he testified; that he did not know the accused persons; that the accused persons were not Razakars; that what he testified implicating the accused persons was untrue and tutored.

358. **P.W.15 Ansar Ali Molla (70)** is a resident of village-Bilkul under police station- Kachua of District Bagerhat. During 1971 he was a student of class X in Goalmath High School. He is bother of one victim freedom-fighter Ashraf Ali Molla. In addition to the event arraigned in charge no.5, P.W.15 testified also in respect of the event arraigned in charge nos.04. He is a direct witness to the event alleged in this count of charge.

359. P.W.15 stated that on 16 November 1971 his elder brother freedom fighter Ashraf Ali Molla came to home at night to meet the family members. On 17 November, 1971 at about 10:00 A.M during staying his brother at home a group formed of Razakar commander Maniruzzaman Howlader (**died during trial**), Razakars Hashem Ali (**died during trial**), Mokbul Mollah, Ajahar Ali Shikdar (**died on 17.10.2023**), Ashraf Khan, Akram Khan, Sultan Khan (**died during trial**), Mokched Ali Didar (now dead), Ukil Uddin Sheikh, Idris Ali Sheikh, Rustom Mollah, Razakar Idris Mollah (**died during trial**),

Rafiqul Islam alias Babul and their cohorts 20/25 armed Razakars launched attack at their house.

360. What happened next to launching attack? P.W.15 stated that he remaining in hiding inside the garden adjacent to their home saw the said Razakars taking away his brother freedom-fighter Ashraf Ali Molla tying him up and with beating toward Kathaltola Bridge, on forcible capture. Seeing it he and some of their villagers then started following the Razakars and got hidden inside the bamboo garden of Kathaltola.

361. P.W.15 continued stating that he (remaining in hiding inside the bamboo garden) saw the said Razakars pounding his brother and three other detainees and at a stage they gunned them down to death and abandoned their dead bodies in the canal.

362. P.W.15 also stated that after the Razakars had left to site they on moving to the bridge found there clotted blood. They then collected his brother's dead body from the canal and buried it bringing at home. He also recognized the dead body of Fela of their village and dead body of Luchon Babu of their neighboring village. Finally P.W.14 stated that he knew the accused Razakars he named as they were from their locality.

363. In cross-examination done on part of all present and absconding accused P.W.15 stated in reply to defence questions that Bagerhat town is 04 miles away from their village and Morrelganj Thana Sadar is 03 miles south to their village; that accused Akram Khan and Ashraf Khan's father's name is Muktar Ali Khan.

364. P.W.15 denied defence suggestions that the accused persons were not Razakars; that they were not involved with the event he narrated; that what he testified implicating the accused persons was untrue and being influenced by rival group of accused persons. P.W.15 also denied the defence suggestion that since 1965 the accused Sheikh Ukil Uddin has been residing in Khulna town.

365. **P.W.16 Sohrab Nakib (71/72)** is a resident of village-Bilkul under police station-Kachua of District Bagerhat. He was a farmer before the war of independence ensued. He after the war of liberation ensued on receiving training at Teligati, Bagerhat participated in the war of liberation. In addition to the events arraigned in charge no.s 5 and 6 P.W.16 testified facts crucially related to the event arraigned in charge no.04 as well.

The valiant freedom fighter stated fact what he witnessed directly relating to the event arraigned in charge no-4.

366. P.W.16 stated that on 16th November, 1971 on instruction of Teligati freedom fighters Commander Solaiman Khan he and his co-freedom-fighters Abu Jafar Mallik and Dipankar Sen alias Tapas being unarmed came out for holding rekey the position of Razakars and at about 12:00 in night they arrived at Bilkul School. In morning, they took refuge inside a bamboo garden beside Sachipada Das's house.

367. P.W.16 continued narrating that on that day i.e. on 17th November at around 12:00 noon they heard frequent gun firing from the end of Kathaltola bridge and with this they then started moving toward the bridge secretly and on arriving nearer to the garden of Arjan Ali Nakib (now dead) where they found there freedom-fighters commander Habibur Rahman Sikder, freedom-fighter Fajar Ali Sheikh and freedom-fighter Seraj Nakib and they informed that Razakar commander Moniruzzaman Howlader (**died during trial**), Razakars Ajahar Ali(died on 17.10.2023), Hashem Ali (dead during trial), Mokbul, Akram Khan, Idris Mollah (died during trial), Rustom Mollah, Idris Sheikh, Ukil Uddin Sheikh, Rafiqul Islam Babul, Mokched

Didar (now dead) and their cohorts had killed freedom fighter Soleman Sheikh alias Fela, freedom fighter Ashraf Ali Mollah, Nripen Babu and Sunil Babu and the dead bodies were thrown on the bank of the river Isamoti.

368. P.W.16 also stated that remaining in hiding they saw the Razakars moving back toward Kachua and Doiboggohati being divided into two groups. After the Razakars had left the site they on moving to the killing site identified the dead bodies and coming back to camp they disclosed the event to their commander. Finally, P.W.16 stated that the accused Razakars were from their neighboring localities and that's why he knew them beforehand.

369. In cross examination on behalf of all present accused P.W.16 stated that after the independence achieved the accused persons fled away from their own homes; that he did not initiate any case against the accused persons prior to the present prosecution.

370. In cross examination on behalf of all accused persons P.W.16 denied defence suggestions that he did not see the event he testified; that the event he narrated did not happen; that he did not know the accused persons; that the accused persons did

not belong to Razakar and that what he testified was untrue and tutored.

371. P.W.17 Dipankar Chandra Sen @ Tapash (65/66) is a resident of village-Panbaria under police station Kachua of District Bagerhat. In 1971 he was a student of class X. He is a freedom-fighter. Prosecution tendered him with P.W.16. Defence declined to cross-examine him.

372. P.W.18 Sarwar Sheikh (61) is a resident of village- Bilkul under police station- Kachua of District Bagerhat. He used to work as a day laborer in 1971.

373. In recounting the event arraigned P.W.18 deposed that on 17th November in 1971 in morning he was engaged in working at the house of neighbour Arjan Nakib (now dead) as day laborer. At about 11:00 A.M he saw the Razakars coming from the end of main road. Razakars Idris Molla (died during trial) and Razakar Akram Kha started chasing him perceiving him to be the brother of freedom-fighter Mansur Nakib and with this he (P.W.18) went into hiding inside a bush nearer to the house of Yunus Ali and attempted to move to their house when he saw the Razakar commander Maniruzzaman Howlader (**died during trial**), Razakars Hashem Ali (died during trial), Ajahar (died on

17.2023), Mokbul Mollah, Ashraf Khan, Idris Mollah (died during trial), Rustom Mollah, Ukil Uddin, Mokched Didar (now dead), Idris Sheikh, Rafiqul Islam Babul and their cohorts Razakars committing looting and brining down their house be setting fire, by launching attack.

374. P.W.18 also recounted that those Razakars got his (P.W.18) brother unarmed freedom-fighter Soleman Sheikh @ Fela forcibly captured and took him away with beating toward Badhal Union Parishad office. He (P.W.18) then started following them secretly and got hidden inside a bush nearer to Union Parishad office wherefrom he saw the invaders dragging his brother into the union Parishad office.

375. P.W.18 continued stating that at about 02:00 P.M he saw the invaders bringing out his brother and other detainees including freedom-fighter Ashraf Molla of their village, Sunil Kumar Ghosh and Nripen Babu from union Parishad office and they brought them to west side of northern part of Kathaltola bridge where the detainees were gunned down to death and their dead bodies were left abandoned on the brink of the river Isamoti.

376. P.W.18 finally stated that after the Razakars had left the site they detected the dead bodies and buried his brother's dead body bringing it at home. Finally, P.W.18 stated that accused were from their neighboring areas and that's why he knew them beforehand.

377. In cross examination on behalf of all absconded accused P.W.18 stated in reply to defence question put to him that Kachua Thana is 4/5 miles far in north side from his house; that Rampal Thana Sadar is 7/8 miles away from their house; that he was born in 1961.

378. P.W.18 denied the defence suggestion that accused persons were not Razakars and were not involved with the event he testified; that he did not see the event alleged; that the event alleged did not happen; that what he testified implicating accused persons were untrue and tutored.

379. In cross-examination done on behalf of all present accused P.W.18 stated that he could not recall date of death of his parents; that the accused were not involved with agriculture in 1971; that after the victory of Bangladesh these accused used to

stay at their home and that he did not lodge any complaint (earlier to the instant case) against these accused.

380. P.W.18 denied the defence suggestions that he did not see what he narrated; that he had falsely testified by making untrue testimony implicating the accused persons; that the event he narrated did not happen; that he did not know the accused; that the accused did not belong to Razakar Bahini and that what he testified was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence Presented

381. **Mr. Rana Das Gupta**, the learned prosecution drawing attention to the testimony of witnesses emphatically submitted that the group of attackers was formed of the accused persons indicted and they knowing consequence contributed and participated in committing the criminal acts leading to confinement, abduction, torture and murder of four unarmed civilians and thus they all incurred liability under section 4(1) of the Act of 1973 which refers to JCE- Basic Form.

382. It has been further submitted that defence simply denied that the witnesses did not see the event of which the accused persons have been indicted. But it is not at all sufficient to taint

credibility of what the witnesses narrated. Rather, facts unveiled in evidence of witnesses examined cumulatively tends to the conclusion that the attack was systematic and was designed to annihilate the pro-liberation unarmed civilians, to further policy and plan of Pakistani occupation army.

383. **Mr. Gazi M.H. Tamim** in placing his argument chiefly submitted that the testimony of witnesses relied upon is not credible. They had no reason of recognizing the accused persons. There is no evidence as to participation of any of accused in committing the alleged offences including the alleged killing of civilians. It has been admitted by P.W.18 that after the independence achieved the accused persons used to stay at their home and that none of them was prosecuted earlier for any of alleged offences. If the accused had any involvement with the alleged offences they would have quitted the locality to keep them safe and abstained from liability. Non initiation of any earlier prosecution over the event alleged rather indicates innocence of accused persons.

384. This count of charge involves the offences of confinement, abduction, torture and murder of four unarmed civilians **Ashraf Ali Mollah, Soleman Sheikh @ Fela, Nripen Debnath** of village-Bilkul and one **Sunil Kumar Ghosh**, on getting them forcibly

captured by launching systematic attack constituting the offences as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 read with section 4(1) of the Act, 1973.

385. All the 12 accused have been indicted in this count of charge. However, of them four (4) accused (1) Idris Ali Mollah, Md. Hashem Ali Sheikh, Sultan Ali Khan and Md. Maniruzzaman Howlader died during trial and one (1) accused Md. Ajahar Ali Sikder **died on 17.10.2023** and thus proceeding so far as it related to them stood abated. Now, we require resolving the commission of the event arraigned and participation of seven (07) accused indicted therewith on due evaluation of facts and circumstances unveiled in evidence.

386. In view of the charge arraigned prosecution require proving that the gang of attackers was formed of accused persons indicted and they had carried out designed attack; that they on getting the defenceless civilians forcibly captured took away to the killing site and eventually they liquidated the detained victims by gun shots. Most of witnesses examined in support of the event arraigned are freedom fighters. They claim to have experienced what occurred in course of the attack, remaining in hiding.

387. It is now well settled phenomenon that in the criminal justice system, the accused does not need to prove his innocence – the prosecution needs to prove guilt. Now, let us see how far the prosecution has been able to prove the crucial facts related to the event that ended in killing Ashraf Ali Mollah and Soleman Sheikh and Nripen Debnath of village-Bilkul and Sunil Kumar Ghosh.

388. P.W.10 Alhaj Shikder Habibur Rahman is a freedom-fighter. It has been divulged from his unimpeached testimony that on 16.11.1971 after completing rekey of Doiboggohati Razakar camp at about 03:00 A.M. he along with his co-freedom-fighters Lutfar Rahman Nakib, Sachipada Das and Seraj Nakib got sheltered at the house of freedom-fighter Seraj Nakib.

389. Testimony of P.W.10 demonstrates that on the following day sensing the movement of a group formed of accused persons and their cohort Razakars toward Kachua Razakar camp he (P.W.10) and his co-freedom fighters went into hiding inside the bush, north to the house of Seraj Nakib and sent Seraj Nakib's father to collect information.

390. What happened next? Testimony of P.W.10 demonstrates that they remaining in hiding site saw six (6) accused Razakar commander Md. Maniruzzaman Howlader (died during trial), Razakars Hashem Ali Sheikh (**died during trial**), Ashraf Kha, Akram Kha, Sultan Kha (**died during trial**) and Rafiqul Islam @ Babul, being accompanied by their 20/25 cohorts Razakar gunning down Fela Sheikh, Sunil Kumar Ghosh @ Lochon, Nrirpen Babu and Ashraf Molla to death on the Kathaltola bridge and they abandoned the dead bodies in the canal.

391. Staying in hiding inside the bush, north to the house of Seraj Nakib remained unshaken. Thus, remaining in hiding there it was natural of seeing how and who accomplished the act of bringing the detained victims at the killing site on forcible capture. Defence could not taint it in any manner.

392. P.W.14 Abu Jafar Mallick too is a freedom-fighter. He also corroborates as to when and where they got sheltered after discharging the task of rekey about movement of Razakars of Kachua locality. At the time of the act of annihilation of detained civilians P.W.14 remained in hiding along with P.W.10 and co-freedom-fighters. It could not be refuted.

393. It reveals from testimony of P.W.14 that remaining in hiding he saw the Razakar commander Md. Maniruzzaman Howlader (died during trial), Hashem Ali Sheikh (**died during trial**), Mokbul Mollah, Ajahar Sikder (**died on 17.10.2023**), Sultan Khan (**died during trial**), Akram Khan , Idris Mollah (**died during trial**), Idris Sheikh, Rustom Molla, Mokched Didar (now dead), Ukiluddin Sheikh and Babul Sheikh gunning down four detained civilians to death taking them at Kathaltola bridge and abandoning the dead bodies.

394. The above unimpeached version of P.W.14 is quite consistent with what has been narrated by P.W.10, another freedom-fighter. Their unimpeached and corroborative testimony leads to the conclusion that the accused persons indicted consciously took active and culpable part in effecting the killing mission.

395. Victim unarmed freedom-fighter Ashraf Ali is the brother of P.W.15. P.W.15 described how the gang of attackers took away his brother tying him up and with beating toward Kathaltola Bridge, by launching attack at their house. It depicts from unimpeached ocular narrative of P.W.15 that the group formed of Razakar commander Md. Maniruzzaman Howlader

(died during trial), Razakars Hashem Ali **(died during trial)**, Mokbul Mollah, Ajahar Ali Shikdar **(died on 17.10.2023)**, Ashraf Khan, Akram Khan, Sultan Khan **(died during trial)**, Mokched Ali Didar (now dead), Ukil Uddin Sheikh, Idris Ali Sheikh, Rustom Mollah, Razakar Idris Mollah **(died during trial)**, Rafiqul Islam alias Babul and their cohorts 20/25 armed Razakars launched attack at their house. This ocular narrative remained unimpeached.

396. It stands proved that on seeing the act of taking away his brother Ashraf Ali, P.W.15 and some of their villagers started following the gang secretly and got hidden inside the bamboo garden of Kathaltola wherefrom he saw the accused Razakars pounding his brother and three other detainees and at a stage they gunned them down to death there and abandoned their dead bodies in the canal.

397. The above part of the attack conducted as has been narrated by P.W.15 does not seem to have been refuted and denied even specifically in cross-examination. After the gang had left the site they on moving to the bridge they found there clotted blood and collected his brother's dead body from the canal and buried it bringing at home.

398. P.W.15 did not have opportunity of seeing the act of accomplishing the killing. But he collected dead body of his brother from killing site. Collecting dead body of victims from the killing site is chained to the attack conducted leading to killing of detained civilians and their abduction as unveiled from ocular consistent testimony of witnesses.

399. In this way it stands proved that the detained victims including Ashraf Ali Mollah were brutally liquidated on getting them forcibly captured from home by launching designed attack. Uncontroverted testimony of P.W.10, P.W.14 and P.W.15 collectively proves it indisputably.

400. It is now well settled that protection of non-combatant civilians is the key goal of international humanitarian law. People having status of civilians must be humanly treated if he is found in the hands of the counterpart. Victim Ashraf Ali Mollah was a freedom-fighter and was unarmed when he was unlawfully detained. He was treated with brutal beating violating his recognized right to protection. The unlawful confinement ended in barbaric annihilation of him and other detained civilians. All these acts were prohibited and committed in gross violation of international humanitarian law and laws of war.

401. P.W.16 Sohrab Nakib is a co-freedom fighter of P.W.10 and P.W.14. He (P.W.16) too corroborated the narrative made by his co-freedom fighters. It depicts from his unimpeached testimony that at the relevant time on hearing frequent gun firing from the end of Kathaltola bridge they started moving toward the bridge secretly and found there freedom-fighters commander Habibur Rahman Sikder, Fajar Ali Sheikh and Seraj Nakib staying who disclosed that the gang had killed freedom fighter Soleman Sheikh alias Fela, freedom fighter Ashraf Ali Mollah, Nripen Babu and Sunil Babu and the dead bodies were thrown on the bank of the river Isamoti.

402. Hearsay narrative made by P.W.16 is admissible as it gets corroboration from ocular testimony of his co-freedom fighters. Defence does not seem to have made any effort even to deny it specifically. Moving back of the gang and finding dead bodies at the killing site as testified by P.W.16 could not be controverted and denied even.

403. P.W.18 is the brother of one victim. His brother, unarmed freedom-fighter was unlawfully captured and taken away to union Parishad office camp by beating. His (P.W.18) unimpeached testimony demonstrates it. He is a direct witness

as to the first phase of attack launched at their house. Destructive activities were carried out. He saw it. Defence could not controvert it. No effort to impeach it has been taken on part of defence.

404. What happened next? P.W.18 saw the gang taking away his freedom-fighter brother Soleman Sheikh @ Fela on forcible capture. The accused formed part of the gang of attackers. They thus actively participated in effecting forcible capture. It could not be impeached. Defence simply denied that he did not see what he testified and the event did not happen. But mere such denial does not taint the truthfulness of what the P.W.18 recounted.

405. P.W.18 saw the accused persons indicted forming part of the group taking away his (P.W.18) brother unarmed freedom-fighter Soleman Sheikh @ Fela and three other detainees to the west side of northern part of Kathaltola bridge where they were shot to death. No effort seems to have been made to refute it. Even this crucial fact has not been denied even.

406. It could not be denied even that victims were kept detained at the union Parishad office. Presumably, it was rather a concentration camp. After the accused Razakars and their

cohorts had left the site they detected the dead bodies. It is chained to the fact that the killing was perpetrated at this site i.e. at the place nearer to bridge. It could not be denied even.

407. Facts unveiled from evidence lead to the conclusion that the accused persons and their accomplices were extremely aggressive to the pro-liberation civilians and those who participated in the war of liberation. Intending to spread terror and intimidation they, in exercise of their nexus with Razakar Bahini opted to resist the war of liberation by carrying out horrific acts leading to killings of non-combatant civilians.

408. It stands proved that the accused (1) Md. Maniruzzaman Howlader (**died during trial**), (2) Md. Hashem Ali Sheikh (**died during trial**), (3) Md. Mokbul Mollah, (4) Md. Ajahar Ali Sikder (**died on 17.10.2023**), (5) Khan Ashraf Ali, (6) Khan Akram Hossain ,(7) Sultan Ali Khan (**died during trial**), (8) Sheikh Md. Ukiluddin, (9) Sheikh Idris Ali, (10) Rustam Ali Mollah, (11) Idris Ali Mollah (**died during trial**) and (12) Sheikh Rafiqul Islam alias Babul forming part of the group were consciously present at the site when the victims were taken away to the killing site on unlawful capture.

409. It reveals too from cumulative evaluation of testimony of P.W.s that on getting the victims unlawfully captured the gang gunned them down to death. After the gang had left the site the witnesses discovered dead bodies of victims at the killing site.

410. It could not be shown specifically as to which accused committed killing of which detained victim, true. But however, it has been proved that the accused persons indicted were with the gang when it accomplished the killing the detainees by gunshot.

411. It is now well settled that if it is proved that the accused had any sort of complicity in commission of the crime arraigned he can be found guilty of that crime if it is proved that being part of the criminal enterprise he was present at the crime site at the time of commission of that crime.

412. Settled jurisprudence tells that it was not necessary for all the accused to physically participate in effecting killing of detained civilians by gun shot. However, the accused incurred liability for the killing of victims as they forming part of the criminal enterprise remained present at the site when the killings happened.

413. It is sufficient to deduce that the accused persons knowing the consequence accompanied the gang, sharing common intent and it is sufficient to deduce that the accused persons indicted knowingly participated in effecting perpetration of killing of unarmed civilians and they did it in exercise of their nexus with Razakar Bahini.

414. It is now well settled proposition that personal and actual participation in committing crime is one of mode of responsibility. It is not required to show that an accused forming part of the criminal enterprise personally committed the crime of which he is arraigned. This view finds support from the observation made by the **Appeal Chamber of ICTR** in the case of **Ntakirutimana and Ntakirutimana** which is as below:

“Murder as a crime against humanity under Article 3(a) does not require the Prosecution to establish that the accused personally committed the killing. Personal commission is only one of the modes of responsibility.”

[Ntakirutimana and Ntakirutimana, ICTR Appeals Chamber, December 13, 2004, para. 546]

415. Mode of participation may thus be proved by evidence, direct, hearsay or circumstantial. The telling evidence adduced

suggests that act on part of accused persons and their presence with the criminal gang substantially assisted, provided encouragement and explicit moral support in carrying out the designed attack which had substantial effect to the actual commission of crimes including killings perpetrated.

416. The core matter related to the participation of accused persons to the commission of crimes arraigned is their culpable presence with the criminal enterprise at the killing site. Such culpable presence indubitably contributed and prompted the perpetration of the killing of four detained civilians. The witnesses have testified before the Tribunal in respect of what they experienced, chiefly based on episodic memory and the facts unveiled from their unimpeached testimony that the accused persons were consciously participated in accomplishing the object of the designed attack.

417. **Mr. Gazi M.H. Tamim**, the learned defence counsel argued that it has been admitted by P.W.18 that after the independence achieved the accused persons used to stay at their home and that none of them was prosecuted earlier for any of alleged offences, immediate after independence achieved. If the accused had any involvement with the alleged offences they

would have quitted the locality to keep them abstained from liability. Thus non initiation of any earlier prosecution over the event alleged rather indicates innocence of accused persons.

418. We are not agreed with the above contention. It is true that perpetrators of horrendous crimes committed in 1971 were supposed to go into hiding to evade responsibility. But it appears from testimony P.W.18 that the accused persons used to stay at their home in the locality.

419. But such act cannot make them absolved of liability if it found proved that they were involved with the perpetration of horrendous crimes. Already we have got it proved from corroborated testimony of direct witnesses that the accused persons actively and substantially participated in perpetrating the crimes directing unarmed civilians.

420. In view of above, mere act of staying of accused persons in the locality even after independence achieved does not create any degree of doubt as to their culpable nexus with the commission of the crimes proved. It is to be noted too that act subsequent to the commission of crime cannot make the accused absolved of liability if he is proved to have had participation to its commission.

421. Evidence of all the P.W.s shows a demonstrable link of the accused persons to the actual commission of the crimes proved. Their narration stored in their episodic memory has consistently portrayed the event of abduction of unarmed civilians followed by the event of killings and accused persons' culpable complicity and participation therewith.

422. Therefore, it stands proved that an attack was launched on the date directing the crime villages that resulted in forcible capture of 04 unarmed civilians followed by their brutal killing. Accused persons and their cohorts who were culpably concerned with such shocking and horrendous crimes against humanity are known as the enemies of the mankind.

423. It is now well settled that responsibility for any crime enumerated in the Act of 1973 is incurred not only by individuals who physically commit that crime, but also by individuals who participate in and contribute to the commission of a crime arraigned by instigating, aiding and abetting.

424. We reiterate that act of aiding and abetting need not be tangible, but it may be well inferred from the acts of the accused forming part of the attack. It stands proved that the accused

persons formed part of the criminal gang and remained present with it till it concluded its ultimate goal, the killing. Thus their conduct together with prominence in locally formed Razakar Bahini indisputably endorsed, encouraged, aided and facilitated the commission of the crimes, we conclude.

425. Thus, we conclude that the accused persons substantially aided and contributed to the commission of the ‘group crime’ and their contribution was ‘*intentional*’ and with the ‘*aim of furthering*’ the goal of the group. We may thus unerringly conclude that the accused persons had shared ‘intent’ of the group of attackers in launching the ‘attack’ on the civilian population of which their culpable acts were part.

426. According to settled jurisprudence ‘committing’ connotes an act of ‘participation’, physically or otherwise directly or indirectly, in the material elements of the crime charged through positive acts, whether individually or jointly with others. It has been observed in the case of *Stakic*, [ICTY Trial Chamber, July 31, 2003, para. 528] that—

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

the requisite elements of the definition of the substantive offence.”

427. We reiterate that the crimes committed during the period of war of liberation in 1971 in the territory of Bangladesh were the outcome of “systematic’ attack directed against the unarmed Bangalee civilian population. This ‘context’ itself prompts even a person of common prudence that the offences of ‘crimes against humanity’ as mentioned in section 3(2)(a) were inevitably the effect of part of ‘widespread or systematic attack’. Therefore, we are forced to conclude that the barbaric ‘**murder**’ of unarmed civilians who were apprehended by launching attack constituted the offence of crime against humanity.

428. It stands proved that the victims were subjected to physical torture after they were unlawfully apprehended. Keeping one protected civilian in unlawful confinement in violation of international humanitarian law amounts to mistreatment and mental pain or suffering. Causing such mistreatment constituted the offence of ‘**torture**’.

429. We have already got it proved that all the accused indicted had notorious affiliation with the activities carried out by the local Razakar Bahini the accused persons indicted were

culpably related to the scheme or system which had the object of achieving a criminal outcome, the killings.

430. On cautious appraisal of facts and circumstances divulged it stands proved that the accused (1) Khan Akram Hossain, (2) Idris Ali Mollah (**died during trial**), (3) Sheikh Md. Ukiluddin, (4) Md. Mokbul Mollah (5) Md. Hashem Ali Sheikh (**died during trial**) (6) Khan Ashraf Ali , (7) Sultan Ali Khan (**died during trial**), (8) Rustom Ali Mollah, (9) Sheikh Idris Ali , (10) Sheikh Rafiqul Islam alias Babul , (11) Md. Maniruzzaman Howlader (**died during trial**), and (12) Md. Ajahar Ali Sikder (**died on 17.10.2023**) remained stayed with the criminal gang till it ended its designed mission of killing the detained civilians. It is to be noted again that of these twelve accused, four i.e. Idris Ali Mollah, Md. Hashem Ali Sheikh, Sultan Ali Khan and Md. Maniruzzaman Howlader died during trial and one accused Md. Ajahar Ali Sikder **died on 17.10.2023 i.e. after closure of summing up**. Thus, finding on criminal liability, based on evidence evaluated as above in respect of rest seven (07) accused is being rendered.

431. Tribunal notes that JCE is an agreement or understanding to execute a 'common criminal plan'. As to Joint Criminal

Enterprise (JCE), it is uncontroversial that all participants in a JCE-I must 'share' the specific intent of the respective offence. It is to be noted too that under the doctrine of Joint Criminal Enterprise [JCE] liability an accused can be held criminally responsible even for his act of sharing and agreeing the object of the enterprise.

432. Finally, based on extensive evaluation of evidence as made above we come to conclusion that prosecution has been able to prove beyond reasonable doubt that the accused persons, sharing common intent participated and facilitated the commission of abducting, causing torture to 04 civilians and eventually killing them, by carrying out deliberate and systematic attack. Therefore, the accused (1) Khan Akram Hossain, (2) Sheikh Md. Ukiluddin, (3) Md. Mokbul Mollah (4) Khan Ashraf Ali , (5) Rustom Ali Mollah, (6) Sheikh Idris Ali and (7) Sheikh Rafiqul Islam alias Babul are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, assisting to the actual commission of the offence of **'abduction', 'torture' and 'murder'** as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Adjudication of Charge No.05 [12 accused indicted of whom 04 accused died during trial and 01 accused died on 17.10.2023]

**[Narrated as event no. 05: page 51-54 of the Formal Charge]
[Offences of confinement, abduction, torture and murder of Mansur Ali Nakib and other inhumane act as crimes against humanity committed at village-Bilkul under police station-Kachua of District-Bagerhat]**

433. Charge: That on 30 November 1971 at about 02:00 P.M a group formed of the accused (1) Khan Akram Hossain, (2) Idris Ali Mollah (**died during trial**), (3) Sheikh Md. Ukiluddin, (4) Md. Mokbul Mollah (5) Md. Hashem Ali Sheikh (**died during trial**) (6) Khan Ashraf Ali , (7) Sultan Ali Khan (**died during trial**), (8) Rustam Ali Mollah, (9) Sheikh Idris Ali, (10) Sheikh Rafiqul Islam alias Babul , (11) Md. Maniruzzaman Howlader (**died during trial**), and (12) Md. Ajahar Ali **Sikder (died on 17.10.2023)** and 20/25 cohort Razakars by launching attack at village-Bilkul forcibly captured unarmed freedom-fighter Mansur Ali Nakib from his house and inflicted brutal torture to him. In conjunction with the attack the gang looted households and set the house on fire.

Next, the detained victim Mansur Ali Nakib was taken to the place adjacent to Garurhat Bridge at Daibagyahati where he was gunned down to death and his body was left abandoned on the

bank of the canal. Later on, relatives of victim recovered his body and buried the same.

Therefore, the accused (1) Khan Akram Hossain, (2) Idris Ali Mollah (**died during trial**), (3) Sheikh Md. Ukiluddin, and (4) Md. Mokbul Mollah (5) Md. Hashem Ali Sheikh (**died during trial**) (6) Khan Ashraf Ali, (7) Sultan Ali Khan (**died during trial**), (8) Rustam Ali Mollah, (9) Sheikh Idris Ali, (10) Sheikh Rafiqul Islam alias Babul, (11) Md. Maniruzzaman Howlader (**died during trial**), and (12) Md. Ajahar Ali Sikder (**died on 17.10.2023**) participated, facilitated, abetted and substantially contributed, by their culpable act and conduct forming part of systematic attack to the commission of offences of confinement, abduction, torture and murder as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses Examined.

434. This count of charge i.e. charge no. 05 involves offences of confinement, abduction, torture and murder of unarmed freedom-fighter Mansur Ali Nakib and the offence of ‘other inhumane act’ as crimes against humanity committed at village-Bilkul under police station-Kachua of District-Bagerhat on 30

November 1971, during the war of liberation. The arraignment brought in this count of charge rests on testimony of five witnesses who have been examined as P.W.14, P.W.15, P.W.16, P.W.19 and P.W.20. First, let us eye on what has been described by the witnesses before Tribunal.

435. **P.W.14 Abu Jafar Mallik (65/66)** is a resident of village- Atharogati under police station- Kachua of District Bagerhat. During 1971 he was a student of class VIII in Dhuligati High School. He is a freedom fighter. In addition to charge nos. 04, 06 and 07 P.W.14 testified also in respect of facts related to the event arraigned in this count of charges i.e. charge no. 05.

436. P.W.14 stated that on 30th November in 1971 at about 12:00 noon they the four freedom-fighters moved to the martyr **freedom fighter Ashraf Molla's** house to console the members of his family. Half an hour later, they were moving back when they saw 20/25 armed Razakars being accompanied by Commander Maniruzzaman Howlader (**died during trial**), Hashem Ali Sheikh (died during trial). Mokbul Molla, Ajahar Ali Sikder (died on 17.10.2023), Sultan Kha (**died during trial**), Ashraf Kha, Akram Kha, Idris Molla (died during trial), Idris Sheikh, Rustom Molla, Mokched Didar, Ukil Uddin

Sheikh and Babul Sheikh taking away freedom-fighter **Mansur Nakib** on forcible capture toward Doiboggohati.

437. P.W.14 continued stating that later on, they learnt that freedom fighter Mansur Nakib was gunned down to death taking him on Doiboggohati bridge and his dead body was thrown in the river Isamoti. Finally, P.W.14 stated that he knew the accused persons beforehand as they were from their locality and neighboring localities.

438. In cross-examination P.W.14 denied defence suggestions that he did not know the accused persons; that since 1965 accused Ukil Uddin has been residing in Khulna town; that the accused were not Razakars and were not involved with the event he testified and that what he testified was untrue and tutored.

439. **P.W.15 Ansar Ali Mollah (70)** is a resident of village-Bilkul under police station- Kachua of District Bagerhat. During 1971 he was a student of class X in Goalmath High School. He is the brother of freedom-fighter Ashraf Ali Molla. In addition to the event arraigned in charge no.4 P.W.15 testified also in respect of the event arraigned in charge no.05. Victim Mansur Nakib was his (P.W.15) uncle. He is a direct witness to the act of taking away the victim on forcible capture.

440. P.W.15 recounted that on 30th November in 1971 at about 02:00 P.M. he had been at home when he saw the Razakars he named [Razakars he named in describing the event arraigned in charge no.04 and they are Razakar commander Moniruzzaman Howlader(**died during trial**), Hashem Ali (die during trial) Mokbul Molla, Ajahar Ali Sikder (died on 17.10.2023), Ashraf Khan, Akram Khan, Sultan Khan(**died during trial**), Mokched Ali Didar, Ukil Uddin Sheikh, Idris Ali Sheikh, Rustom Molla, Idris Molla (died during trial), Rafiqul Islam @ Babul and their cohorts 20/25 Razakars] coming to their home got his uncle freedom-fighter Mansur Nakib forcibly captured and took him away by beating toward Doiboggohati.

441. P.W.15 next stated that later on he learnt that those Razakars had killed his uncle by gunshot taking him on the Doiboggohati Garurhat Bridge and threw his dead body in the river. On being informed of it he along with some villagers collected the dead body and buried it. Finally, P.W.15 stated that he knew the accused persons beforehand as they were from their locality.

442. In cross-examination in reply to defence question P.W.15 stated that name of father of accused Akram Kha and Ashraf

Kha is Muktar Ali Kha. P.W.15 denied defence suggestions put to him that the accused were not Razakars and were not involved with the event he narrated and what he testified implicating the accused was untrue.

443. **P.W.16 Sohrab Nakib (71/72)** is a resident of village-Bilkul under police station-Kachua of District Bagerhat. He was a farmer before the war of independence ensued. He on receiving training at Teligati, Bagerhat participated in the war of liberation. In addition to the events arraigned in charge no.s 4 and 6 P.W.16 testified facts crucially related to the event arraigned in charge no.05. P.W.16 is a freedom fighter. He stated the attack carried out by the gang that he witnessed and which was directly related to the event arraigned in charge no.4.

444. P.W.16 in recounting the event arraigned testified that on 30th November in 1971 at about 02:00 P.M. he along with his co-freedom fighters Abu Jafar Mallik (P.W14), Sachipada Das and Dipankar Sen @ Rapa arrived at the house of freedom fighter Ashraf Molla. Few times later they saw Razakar commander Maniruzzaman Howlader (**died during trial**), Razakars Ajahar Ali (died on 17.10.2023), Hashem Ail (died during trial), Mokbul, Akram Khan, Idris Molla (died during trial, Idris Sheikh, Ukil Uddin Sheikh, Rafiqul Islam Babul,

Mokched Didar (now dead), Ashraf Kha, Sultan Khan (**died during trial**), and their cohorts 20/25 Razakars taking away unarmed freedom fighter Mansur Nakib by pounding toward Doiboggohati, on forcible capture. On seeing it they returned back to their camp.

445. P.W.16 next stated that in night on the same day they learnt that freedom-fighter Mansur Nakib was killed by gunshot taking him on the bridge adjacent to Doiboggohati Garurhat and his dead body was thrown in the river Isamoti. The locals then collected his dead body and buried it. Finally, P.W.16 stated that he knew the accused persons beforehand as they were from their locality and neighboring localities.

446. In cross-examination P.W.16 stated in reply to defence question put to him that after independence achieved the accused persons fled away from their house; that he did not initiate any case prior to the instant case.

447. P.W.16 denied defence suggestions that he did not know the accused persons; that the accused persons were not Razakars; that the event he narrated did not happen; that the accused were not involved with the event alleged; that he did

not see and hear what he testified and that what he testified was untrue.

448. **P.W.19 Mokam Howlader (79/80)** is a resident of village-Bilkul under police station- Kachua of District Bagerhat. During the glorious Liberation War, he was engaged with agriculture.

449. P.W.19 stated that on 13th Agrahayan 1971 he was engaged in working at Arzan Nakib's house, neighbour of freedom fighter Monsur Nakib. At around 01:30/02:00 P.M a roofed boat got anchored at a flight of steps leading down to river. At that time under the leadership of Razakar Aziz Didar (now dead) many armed Razakars including Razakars Idris Molla (died during trial), Rustom Molla, Idris Sheikh, Ukil Uddin, Moksed Didar (now dead), Babul, Ashraf Khan, Akram Khan, Sultan Khan (died during trial),, Maniruzzaman (died during trial),, Hashem Ali (died during trial), Ajahar Ali Shikder (died on 17.10.2023), Mokbul and many others accompanying the gang besieged Monsur Nakib's house. He (P.W.19) saw Monsur Nakib (victim) attempting to flee, on seeing the Razakars. But Razakar Aziz Didar addressed him (Monsur Nakib) as uncle and then he (victim) stopped fleeing when the Razakars forcibly captured and tied him up.

450. P.W.19 continued stating that then said Razakars looted Monsur Nakib's household and set his house on fire. The unarmed detained freedom fighter was then taken away to Doiboggohati bazar and was gunned down to death taking him beside Gorur Hat Bridge and his dead body was thrown beside the river. He witnessed the whole event from hiding place and informed it to the family members of Monsur Nakib.

451. P.W.19 then stated that the next day he and other villagers recovered the dead body of Monsur Nakib and buried it. Monsur Nakib was a freedom-fighter and he being unarmed came home in the previous night.

452. Finally, P.W.19 stated that few Razakars were farmers like him, few were his relatives, and few were their neighbours. And that's why he knew them beforehand.

453. In cross-examination on behalf of the present accused P.W.19 stated that he could not recall his date of birth; that he could not recall the date of death of his parents; that accused Ukiluddin is his relative and the name of Ukiluddin's father is Moslem Uddin; that Ukil Uddin's present home is at Gazirhat village in Morrelganj thana; that accused Ukiluddin was 7/8

years junior to him; that before 1971 Monsur Nakib and Arzan Nakib had same house; that just before 1971 Monsur Nakib built different house; that Monsur Nakib had three sons and three daughters who used to live at village.

454. P.W.19 denied the defence suggestions that he had falsely implicated the accused in this case and gave untrue oral testimony; that the event he narrated did not happen; that he did not know the accused persons; that the accused persons did not belong to Razakar Bahini and that what he testified was untrue and tutored.

455. On behalf of seven absconded accused P.W.19 stated that those accused were not his relatives; that Morrelganj Thana is 07 miles far from south side of their village.

456. P.W.19 denied the defence suggestions that he did not hear the event he testified; that the event he narrated did not happen; that he did not know the accused persons; that the accused persons did not belong to Razakar Bahini and that what he testified was untrue and tutored.

457. **P.W.20 Farida Begum (60/61)** is a resident of village-Bilkul under police station- Kachua of District Bagerhat. She is the daughter of victim martyr freedom-fighter Monsur Ali Nakib. P.W.20 stated that when the Liberation War ensued, her father Monsur Ali Nakib participated in war of liberation. Often, her father used to visit the family at night. On 12th Agrahayan her father being non-combatant came to meet family.

458. In respect of the event arraigned P.W.20 stated that on 13th Agrahayan at around 02:00 P.M. while her father had been at home, a group of armed Razakars surrounded their house. With this her non-combatant freedom fighter father tried to flee when Razakar Aziz Didar (now dead) called her (P.W.20) father as uncle and told him that the Razakars wanted to talk to him. The Razakars also ensured that they would not cause any harm to him. As soon as her father the honest man stood for them but he was instantly tied up by the liar Razakars.

459. P.W.20 continued stating that when they saw her father detained, they started crying. Subsequently the Razakars looted their household and set the house on fire. Then the group of armed Razakars took her father away to Doiboggohati with beating when her mother, grandmother, rest of her family

inmates including she started following the gang when the armed Razakars threatened them showing fire arms and then they came back.

460. P.W.20 then stated that later they came to know that group of attackers was formed of Razakars Khan Ashraf Ali, Akram Hossain, Sultan Ali Khan (died during trial), Rustom Ali Mollah, Idris Ali Mollah (died during trial), Sheikh Idris Ali, Mokched Ali Didar, Sheikh Ukil Uddin, Sheikh Rafiqul Islam alias Babul, commander Maniruzzaman (died during trial), Ajahar Ali Shikder (died on 17.10.2023), Hashem Ali Sheikh (died during trial) and Mokbul Mollah.

461. Finally, P.W.20 stated that on that day in the evening Mokam Howlader (P.W.19) coming to their house informed that the Razakars (she named) took away her father beside Isamoti river and gunned him down to death there. Mokam Howlader (P.W.19) also disclosed that he witnessed the killing of her father, by following the gang. On the following day Mokam Howlader and along with some villagers recovered the dead body of her father and brought it to home by boat and then it was buried.

462. In cross examination on behalf of 04 present accused P.W.20 stated that she did not know any accused by name; that she studied up to class III; that in 1971 she was a student of class I; that they were three brothers and three sisters; after the killing of their father they stayed at the cow shed because the Razakars burnt down their house; that she could not remember the date when she got married; that 07 years ago her mother died.

463. P.W.20 denied the defence suggestions that the event she narrated did not happen; that she did not know the accused persons; that the accused did not belong to Razakar Bahini and that what she testified was untrue and tutored.

464. On behalf of seven absconded accused P.W.20 stated that she has National Identity Card; that she has no idea about what was written in the NID about her date of birth; that her mother remained single after the death of her father.

465. P.W.20 however denied the defence suggestion that she did not know the accused and they did not belong to Razakar Bahini and that the accused were not involved with the event she testified; that she did not see the alleged event and what she

testified was untrue and tutored. P.W.20 denied all the defence suggestions blatantly.

Finding with Reasoning on Evaluation of Evidence

466. This count of charge involves the offences of confinement, abduction, torture and murder of an unarmed freedom-fighter who was unlawfully apprehended by launching attack at his house leading to his brutal killing which constituted the offences as crimes against humanity. The accused persons indicted forming the criminal enterprise had carried out systematic attack which ended in brutal liquidation of the detained victim, the charge framed arraigns.

467. **Mr. Rana Das Gupta**, the learned prosecutor argued that of five witnesses relied upon two witnesses i.e. P.W.14 and P.W.16 are freedom fighters and they witnessed the gang formed of accused persons taking away the victim on forcible capture. Apart from these two witnesses P.W.15, P.W.19 and P.W.20 are key direct witnesses and of them P.W.20 the daughter of the martyred victim witnessed how the gang took away his unarmed freedom fighter father, on forcible capture. Defence in no way could taint their ocular versions relating to the first phase of the attack.

468. The learned prosecutor further argued that none had opportunity of seeing the perpetration of annihilation of detained victim. But the first phase of attack was chained to the outcome of the attack, the killing of detained victim. It could not be refuted that the victim's bullet hit dead body was thrown in the river Isamoti. The locals collecting his dead body buried it as testified by witnesses and it remained unimpeached. The witnesses knew the accused persons beforehand. Besides, P.W.14 and P.W.16 are freedom-fighters and thus naturally they were acquainted with the infamous Razakars of the localities. Their testimony inspires credence, the learned prosecutor emphasized. .

469. On contrary, **Mr. Gazi M.H. Tamim**, the learned defence counsel argued that the witnesses had no reason of knowing the accused persons. No case was initiated against them prior to the instant case over the alleged event and thus such inordinate delay in prosecuting the accused creates doubt as to alleged involvement of accused persons with the event arraigned.

470. It has also been argued on part of defence that none of witnesses examined claims to have seen the alleged act of killing the victim and thus the accused persons cannot be said to

have incurred liability for this alleged phase of the event. P.W.20 is a star witness as claimed by prosecution. But she could not recognize any of accused by name. The witnesses relied upon are not credible and their narrative does not connect the accused persons with the event alleged.

471. Defence is not obliged to prove innocence. It is the prosecution who is burdened to prove the arraignment brought beyond reasonable doubt. However, in view of charge framed and argument placed by both sides the matters need to be proved by prosecution are:-

- (i) The attack was conducted at the house of victim Mansur Nakib, an unarmed freedom-fighter;
- (ii) The gang of attackers was formed of accused persons indicted and their cohorts;
- (iii) Then gang unlawfully captured the victim , an unarmed freedom-fighter;
- (iv) The gang also carried out looting and arson at the house attacked;
- (v) The event ended in killing the detained victim by gunshot taking him to the bridge at Doibogghati.

472. The event of attack happened in day time, as arraigned. Prosecution requires proving the act of launching attack; taking away the victim on forcible capture, devastating activities carried out at the house attacked and killing the detained victim. At the same time it also requires to prove that the accused persons indicted being part of the group of attackers participated to the commission of the crimes arraigned.

473. It is now well settled that evidence tendered must be weighed and not counted. It is to be tested whether the evidence of prosecution witnesses carries a ring of truth and credible. Keeping this principle in mind first, let us eye on testimony relating to the first phase of the event. P.W.14 is a freedom fighter. His testimony demonstrates that on 30th November in 1971 at about 12:00 noon he and his three co-freedom-fighters moved to the martyr freedom fighter Ashraf Molla's house to console the members of his family. Half an hour later they were moving back there from when they saw 20/25 armed Razakars including the accused persons taking away freedom-fighter Mansur Nakib on forcible capture toward Doiboggohati.

474. The above piece of uncontroverted ocular testimony demonstrates that the gang formed of accused persons and their

cohorts by launching attack got the victim unarmed freedom-fighter Mansur Nakib forcibly captured.

475. Visiting the house of martyred freedom-fighter Ashraf Ali by P.W.14 and his co-freedom fighters just prior to the event of attack conducted gets corroboration from P.W.16 Sohrab Nakib. P.W.16 was a co-freedom-fighter who accompanied P.W.14 in visiting the house of martyred freedom-fighter Ashraf Ali. It depicts that P.W.16 too saw the gang accompanied by the accused persons taking away the victim Mansur Nakib on forcible capture. Defence could not impeach it in any manner.

476. It thus stands proved from corroborative ocular testimony of P.W.14 and P.W.16 that the act of unlawful confinement of victim Mansur Nakib was the first phase of the attack in accomplishing which the accused persons indicted being part of the criminal enterprise were seen present at the site attacked and when the victim Mansur Nakib, an unarmed freedom fighter was taken away on forcible capture toward Doiboggohati. It could not be impeached in any manner. Testimony of P.W.14 in respect of this phase of the event does not seem to have been denied even in cross-examination. This crucial fact chained to

the event appears to have been corroborated by P.W.15 and P.W.16 as well.

477. Seeing the accused (1) Khan Ashraf Ali , (2) Khan Akram Hossain, (3) Sultan Ali Khan (**died during trial**) ,(4) Rustam Ali Mollah, (5) Idris Ali Mollah (**died during trial**), (6) Sheikh Md. Ukiluddin, (7) Sheikh Idris Ali,(8) Sheikh Rafiqul Islam alias Babul, (9) Md. Maniruzzaman Howlader (**died during trial**), (10) Md. Hashem Ali Sheikh (**died during trial**) ,(11) Md. Ajahar Ali Sikder (**died on 17.10.2023**) and (12) Md. Mokbul Mollah forming the gang of attackers taking away the unarmed freedom fighter Mansur Nakib toward the Doiboggohati Bridge and killing him there by gunshot as witnessed by P.W.14 and P.W.16 does not seem to have been denied even. It thus stands proved that the first phase of event ended in killing the victim there by gunshot.

478. **P.W.15 Ansar Ali Mollah is the brother of** freedom-fighter Ashraf Ali Molla at whose house the attack was conducted. Victim Mansur Nakib was his uncle. It gets corroboration even from ocular testimony of P.W.15 that the group formed of accused persons and their cohort Razakars coming to their home got his uncle freedom-fighter Mansur

Nakib unlawfully captured and took him away by beating toward Doiboggohati.

479. This phase of the event does not seem to have been specifically denied even in cross-examination. There is no reason to disbelieve **P.W.14, P.W. 15 and P.W.16**. Rather, they seem to be natural witnesses and their ocular narrative has proven it beyond doubt that at the relevant time the gang formed of accused persons indicted had carried out systematic attack in getting the victim Mansur Nakib unlawfully captured. It thus stands proved that the accused persons indicted actively participated in accomplishing this phase of attack.

480. Testimony of P.W.19 Mokam Howlader demonstrates that in 1971 at the relevant time he was neighbour of freedom fighter Monsur Nakib and used to work at the Arzan Nakib's house,. He too saw the gang formed of accused persons and their cohorts coming at the site attacked. It depicts from his (P.W.19) ocular narrative that sensing the attack victim Nakib Mansur attempted to flee. But the Razakars strategically got him unlawfully captured. Defence does not seem to have made any effort to impeach this crucial fact.

481. P.W.19 is the key witness. He witnessed how the attack was conducted and what happened eventually. Testimony of P.W.19 demonstrates that Monsur Nakib was a freedom-fighter and he being unarmed came home in the previous night.

482. Presumably, presence of unarmed freedom fighter Mansur Nakib at home somehow got leaked and then the gang formed of accused persons designed to carry out the attack. Not only unlawful capture of the victim, the gang also carried out devastating activities. It reveals from ocular narrative of P.W.19 that the accused Razakars looted Monsur Nakib's household and set his house on fire, in conjunction with the attack.

483. P.W.19 witnessed the gang formed of accused persons and their cohorts taking away the victim to Doiboggohati bazar and finally they gunned down the victim to death taking him beside Gorur Hat Bridge and his dead body was thrown beside the river. P.W.19 witnessed the whole event.

484. It stands proved too that next day P.W.19 and other villagers recovered the dead body of Monsur Nakib and buried it. Recovery of dead body was chained to the act of killing and forcible capture of the victim. Since it has been proved that the

accused persons actively participated in accomplishing the act of abduction of victim we are forced to deduce it unerringly that the accused persons had active participation explicit concern and participation also in effecting killing of the detained victim.

485. P.W.19 stated that few Razakars were farmers like him, few were his relatives, and few were his neighbours and that's why he knew them beforehand. It could not be shaken. Thus, it was quite natural of recognising the accused persons present with the gang at the site when it carried out the attack. Testimony of P.W.19 carries credence.

486. It also depicts from unshaken narrative of P.W.19 that the invaders also committed looting at Monsur Nakib's house and set the house on fire. It gets explicit corroboration from untainted ocular testimony of P.W.20 Farida Begum, the daughter of victim martyred freedom-fighter Mansur Ali Nakib.

487. Such prohibited devastating activities were indeed detrimental to the livelihood of relatives of victim and victim's neighbour which constituted the offence of '**other inhumane act**'. It appears that P.W.20 sustained untold trauma as the first phase of event leading to her father's confinement and

abduction happened within her sight. Indisputably such deliberate criminal acts caused grave mental harm to P.W.20.

488. P.W.14 and P.W.16 were moving back from the house of martyr freedom-fighter Ashraf Molla when they saw the gang formed of accused persons taking away the victim on forcible capture. None of these two witnesses stated that the gang had also committed looting and arson at the house of Mansur Nakib. But it does not taint what has been narrated by P.W.19, a neighbour of the victim. The P.W.14 and P.W.16 might not have seen such prohibited acts as it happened after they moved back from the house of martyr freedom-fighter Ashraf Molla.

489. It is true that P.W.20 could not state name of any of those Razakars. On cross-examination P.W.20 honestly stated that she did not know any accused by name. But it depicts from hearsay testimony of P.W.20 that she later came to know that Razakars Khan Ashraf Ali, Akram Hossain, Sultan Ali Khan (**died during trial**), Razakars Rustom Ali Mollah, Idris Ali Mollah (**died during trial**), Sheikh Idris Ali, Mokched Ali Didar (died), Sheikh Ukil Uddin, Sheikh Rafiqul Islam alias Babul, commander Md. Moniruzzaman Howlader (**died during trial**), Ajahar Ali Shikder (**died on 17.10.2023**), Razakars Hashem Ali

Sheikh (**died during trial**) and Mokbul Mollah were with the gang of invaders when it carried out the attack.

490. First, it was natural of knowing the identity of perpetrators subsequent to the event of killing happened. Next, hearsay testimony is not inadmissible if gets corroboration from other facts and evidence. In the case in hand, it appears from ocular narrative of P.W.14 and 16 that the accused persons indicted formed part of the gang of attackers.

491. **Mr. Gazi M.H Tamim**, the learned defence counsel argued that no case was initiated over the alleged event immediate after the independence achieved and now delayed prosecution creates doubt as to involvement of accused persons with the event arraigned.

492. We are not agreed with the above contention. Tribunal notes that studies in other countries where trials have not taken place several decades after the alleged atrocities suggest that the passage of time does not dampen the victims'/survivors' yearning for accountability.

493. Tribunal also notes that in respect of inordinate delay in commencing the proceedings it has been observed by the Appellate Division of Supreme Court of Bangladesh as below:

“It is clear that no limitation has been prescribed by the Act, 1973 and the rules framed hereunder for initiating/commencing the proceedings against a person for the commission of crime as mentioned in sub-section (2) of section 3 thereof. Therefore, the delay in commencing the proceedings in question against the accused after 41(forty one) years *ipso facto* cannot be a ground to doubt the truth or veracity of the prosecution case.”

**[A. Wahhab Miah J. judgment dated 17.9.2013
in Criminal Appeal Nos. 24-25 of 2013: Page 279]**

494. Thus, mere state inaction, for whatever reasons, does not render the delayed prosecution frustrated and barred by any law. It is well known that neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity.

495. Now, let us resolve the question of ‘participation’ to the commission of the principal crime, the killing. ‘Committing’ may be done ‘individually’ or ‘jointly’ with others. It is now settled jurisprudence that there can be several perpetrators in relation to the same crime where the conduct of each one of

them fulfils the requisite elements of the definition of the substantive offence.

496. In the case in hand, facts and circumstances unveiled together with the presence of accused persons with the gang when it launched the attack at the house of victim lead to the unerring conclusion that all the accused as co-perpetrators had acted pursuant to a common purpose and the same criminal intention to further the agreed design.

497. Act and conduct of accused persons at the first phase of the attack had a causal link even to the killing the detained victim. Therefore, the accused persons are equally liable under the doctrine of Joint Criminal Enterprise [JCE- Basic Form] for all criminal acts including the act of brutal killing.

498. On careful consideration of the evidence of P.Ws. we are of the view that those witnesses corroborated each other as to core essence of the event arraigned and the presence of the accused person being part of the criminal enterprise. Therefore, the defence submission that there is no direct evidence to implicate the accused persons in the killing has no leg to stand on.

499. In view of above reasoned findings we arrive at unanimous decision that the prosecution has been able to prove beyond reasonable doubt that accused (1) Khan Akram Hossain, (2) Sheikh Md. Ukiluddin, (3) Md. Mokbul Mollah (4) Khan Ashraf Ali (5) Rustam Ali Mollah (6) Sheikh Idris Ali and (7) Sheikh Rafiqul Islam alias Babul participated, facilitated, abetted and substantially contributed, by their culpable act and conduct forming part of systematic attack in committing the commission of offences of ‘**confinement**’, ‘**abduction**’, ‘**torture**’, ‘**other inhumane act**’ and ‘**murder**’ as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 read with section 4(1) of the Act, 1973.

Adjudication of Charge No.06:[12 accused indicted of whom 04 died during trial and 01 died on 17.10.2023]

**[Narrated as event no. 06: page 54-58 of the Formal Charge]
[Offences of confinement torture and murder of Ukil Uddin Majhi and rape upon his daughter as crimes against humanity committed at village-Udankhali under police station-Kachua of District-Bagerhat]**

500. Charge: That on 16 October 1971 at about 04:00 P.M the accused Md. Maniruzzaman Howlader (**died during trial**), Md. Hashem Ali Sheikh (**died during trial**), Md. Ajahar Ali Sikder (**died on 17.10.2023**) and Md. Mokbul Mollah by launching

attack at the house of Ukil Uddin Majhi of village Udankhali attempted to effect forcible capture of Ukil Uddin Majhi a pro-liberation civilian but on failure to capture him the gang took his daughter Taslima Begum away to Kachua Razakars camp on forcible capture where she was subjected to rape in protracted captivity for 07 days.

During captivity of Taslima Begum at Kachua Razakar camp the father of the victim moved to the camp and appealed for his daughter's release. The victim was then however released on condition of bringing her again to the camp, seven days later.

In continuation of the attack, on 02 November 1971 at about 03:00 P.M. the accused Md. Maniruzzaman Howlader (**died during trial**), Md. Ajahar Ali Sikder (**died on 17.10.2023**), Md. Mokbul Mollah and Md. Hashem Ali Sheikh (**died during trial**) being accompanied by their 7/8 cohort Razakars attacking the house of Ukil Uddin Majhi again forcibly detained his daughter and Ukil Uddin Majhi was subjected to torture when he attempted to protect his daughter and then he was taken away to the wooden bridge on Alipur canal located nearer to the house of the victim where he was slaughtered and shot to death and his body was thrown into the canal.

Then the gang took away Taslima Begum the daughter of Ukil Uddin Majhi again to the Razakar camp on forcible capture and she was subjected to rape by the accused (1) Khan Akram Hossain, (2) Idris Ali Mollah (**died during trial**), (3) Sheikh Md. Ukiluddin, (4) Md. Mokbul Mollah (5) Md. Hashem Ali Sheikh (**died during trial**) (6) Khan Ashraf Ali, (7) Sultan Ali Khan (**died during trial**), (8) Rustam Ali Mollah, (9) Sheikh Idris Ali , (10) Sheikh Rafiqul Islam alias Babul , (**11**) Md. Maniruzzaman Howlader (**died during trial**), and (12) Md. Ajahar Ali Sikder (**died on 17.10.2023**) in captivity till 16 December, 1971. The victim was rescued there from by the freedom-fighters.

Therefore, the accused (1) Khan Akram Hossain, (2) Idris Ali Mollah (**died during trial**) (3) Sheikh Md. Ukiluddin (4) Md. Mokbul Mollah (5) Md. Hashem Ali Sheikh (**died during trial**) (6) Khan Ashraf Ali (7) Sultan Ali Khan (**died during trial**) (8) Rustam Ali Mollah (9) Sheikh Idris Ali (10) Sheikh Rafiqul Islam alias Babul (**11**) Md. Maniruzzaman Howlader (**died during trial**) and (12) Md. Ajahar Ali Sikder (**died on 17.10.2023**) participated, facilitated, abetted and substantially contributed, by their culpable act and conduct forming part of systematic attack to the commission of offences of

‘confinement’, ‘abduction’, ‘torture’ , ‘rape’ and ‘murder as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 read with section 4(1) of the Act,1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses Examined

501. This count of charge involves arraignment of abduction, torture and murder of Ukil Uddin Majhi and rape upon his daughter Taslima Begum keeping her unlawfully confined in protracted captivity at Razakar camp which constituted the offences as crimes against humanity and the attack was committed at village-Udankhali under police station-Kachua of District Bagerhat. The arraignment rests upon testimony of eight (8) witnesses who have recounted the event standing on dock as P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, P.W.21, P.W.22 and P.W.26.

502. Of these witnesses P.W.21 Taslima is the victim of sexual ravishment and P.W.22 is a direct witness to facts chained to the event. The rest witnesses are freedom-fighters and they allegedly rescued the detained victim and other women kept detained from Kachua Razakar camp, after independence achieved and they heard the event from rescued victim Taslima

(P.W.21). Before weighing the narrative made first let us see what they testified before Tribunal on oath.

503. **P.W.10 Alhaj Shikder Habibur Rahman (65/66)** is a resident of village-Bichot under police station-Kachua of District Bagerhat. In addition to charge nos. 02 and 04 P.W.10 stated also in respect of the arraignment brought in this charge. In 1971 he joined the war of liberation as a freedom-fighter. He was a platoon commander.

504. Before describing the event arraigned P.W.10 stated that around 100 people of their localities including the accused persons joined in Razakar Bahini and received training from Pakistani armed forces and set their camps at Kachua, Doiboggohati and Teligati.

505. P.W.10 stated that on 16th December, 1971 following instruction of their Captain Tajul Islam he (P.W.10) and his 20/25 co-freedom fighters of their platoon moved to Kachua Razakar camp and on arriving there they heard screaming from a locked room of the camp and then they rescued Taslima Begum (victim) from the camp by breaking the locked door.

506. P.W.10 next stated that they came to know from the rescued girl (victim P.W.21) that at the end of October in 1971 Razakars on failure to get her father Ukil Uddin Majhi captured unlawfully detained her (victim Taslima Begum) and took her away to Kachua Razakar camp. She(victim) also disclosed that Razakars Moniruzzaman Howlader (**died during trial**), Hashem Ali Sheikh (**died during trial**), Ajahar Shikder (**died on 17.10.2023**) and Mokbul Molla, Alim Molla committed recurrent rape upon her in captivity.

507. P.W.10 continued stating that the rescued victim Taslima also disclosed that one week later she was permitted to return back home with her father Ukil Majhi and she was set released from the camp. But ten days later, for defying the condition to send her to the Razakar camp again the armed Razakars she named by launching attack again at their house got the victim and her father captured and on the way of taking them away toward the Razakar camp they had killed Ukil Uddin Majhi and the victim Taslima (P.W.21) was again kept in captivity at the Kachua Razakar camp where she was subjected to recurrent rape.

508. P.W.10 also stated that on being informed they [P.W.10 and his co-freedom-fighters] rescued three other women including one Kamala Rani Karmaker kept confined in another room of the Razakar camp. They (rescued victims) informed that Razakars Akram Kha, Ashraf Kha, Sultan Ali Kha (**died during trial**), Idris Sheikh, Idris Molla (**died during trial**), Rafiqul Islam @ Babul, Ukil Sheikh and some other Razakars sexually ravished them recurrently. They (P.W.10 and his co-freedom fighters) then facilitated the rescued victims to return back to their relatives. Finally, P.W.10 stated that the Razakars he named were from neighboring villages and that's why he knew them beforehand.

509. P.W.10 has been cross-examined in respect of the event arraigned in charge nos. 02 and 04. But it appears that no cross-examination has been done to refute what the P.W.10 testified in relation to the event arraigned in charge no.06.

510. However, it has been affirmed in cross-examination of P.W.10 that he is a freedom-fighter. In reply to defence question P.W.10 stated that in the first part of April in 1971 he moved to India for receiving freedom-fighter's training and then he joined in the freedom-fighters' camp set up at Dhopakhali High

School, on returning back. P.W.10 also stated in reply to defence question put to him that he could not tell the name of all the accused. But P.W.10 stated that Moktar Ali was the father of Razakars Ashraf Kha and Akram Kha.

511. **P.W. 12 Hanif Kha (70)** is a resident of village-Hazrakhali, under police station- Kachua of District Bagerhat. P.W.12 is a freedom fighter and he in addition to the event arraigned in charge no.02 also narrated facts related to the event arraigned in this count of charge i.e. charge no.06.

512. P.W.12 stated that on the day the victory achieved (16 December, 1971) he and his co-freedom-fighters being led by their Commander Habibur Rahman moved to Kachua Razakar camp and on arriving there they heard screaming of women from inside a locked room of the camp and then they by breaking the lock of the room rescued a girl named Taslima (victim). She (rescued victim) disclosed them that first she was kept in protracted captivity at the camp and was subjected to rape; that at a stage, her father made her released from captivity.

513. P.W.12 also stated that the victim(Taslina) also disclosed that few days prior to the victory the Razakars (as named in

describing the event arraigned in charge no.02 i.e. Razakars Hashem (**died during trial**), Md. Moniruzzaman Howlader (**died during trial**), Ajahar Ali Sikder (**died on 17.10.2023**), Mokbul Molla and their cohorts) again by launching attack at their (victim) house got her and her father Ukil Uddin Majhi forcibly captured and on the way of taking them away toward the Razakar camp they gunned down her father to death and she was kept confined at the camp where she was subjected to recurrent rape.

514. P.W.12 next stated that Taslima (rescued victim) disclosed that Razakars Hashem Sheikh (**died during trial**) and the Razakars he (P.W.12) named [Razakars Hashem Sheikh (**died during trial**), Moniruzzaman Howlader(**died during trial**), Ajahar Ali Sikder (**died on 17.10.2023**) and Mokbul Molla] committed misdeed upon her. They (P.W.12 and his co-freedom-fighters) also rescued three other ravished girls from the adjacent room by breaking its lock.

515. In cross-examination, defence simply suggested to P.W.12 that the accused persons were not Razakars; that he did not know them; that they were not engaged with any of the alleged events; that he did not witness or hear what he testified and that

what he testified was untrue. P.W.12 denied all these suggestions blatantly.

516. It appears that in cross-examination the fact of rescuing the victim girls from the Razakar camp and hearing the event from them does not seem to have been controverted and denied even.

517. **P.W.13 Md. Mojibur Rahman (66/67)** is a resident of village- Charfultola under police station-Kachua of District Bagerhat. He is a freedom-fighter. In addition to the event arraigned in charge no.02 P.W.13 recounted how and when they rescued the victim Taslima from Kachua Razakar camp.

518. P.W.13 stated that on 16th December, 1971 on instruction of Captain Zia Uddin they the 50 freedom fighters moved back to Kachua Thana locality. Then they headed toward Kachua Razakar camp wherefrom they rescued one girl Taslima (P.W.21) from one room and three other detained girls from another room of the camp.

519. P.W.13 also stated that Taslima (rescued victim) informed them that Razakars he (P.W.13) named i.e. Razakar Moniruzzaman (**died during trial**), Hashem Sheikh (**died during trial**), Ajahar Ali Sikder (**died on 17.10.2023**) and

Mokbul Molla committed rape upon her keeping in captivity at the camp and then her (victim) father at a stage got her released and took her back home.

520. P.W.13 continued stating that Taslima (rescued victim) also disclosed that seven days later those Razakars going to their home again forcibly captured her and her father and on the way of taking them away toward Razakar camp they gunned down her father to death and had kept her in captivity at the Razakar camp where she was subjected to sexual ravishment.

521. P.W.13 also stated that the three other rescued women too disclosed that Razakars Ashraf Ali Molla, Akram Kha, Sultan Ali Kha (**died during trial**), Idris Ali Sheikh, Idris Ali Molla (**died during trial**), Rafiqul Islam, Ukil Uddin Sheikh, Rustom Ali and other Razakars ravished them keeping in captivity. P.W.13 finally stated that then they handed over the rescued women to their relatives.

522. It appears that in cross-examination of P.W.13 the fact of rescuing the detained and ravished victim girls from the Kachua Razakar camp and hearing the event from them does not seem to have been controverted and denied even specifically.

523. In cross-examination, defence simply suggested P.W.13 that the accused persons were not Razakars; that he did not know them; that they were not engaged with any of the alleged events; that he did not witness or hear what he testified and that what he testified was untrue. P.W.13 denied all these suggestions blatantly.

524. **P.W.14 Abu Jafar Mallik (65/66)** is a resident of village-Atharogati under police station- Kachua of District Bagerhat. He is a freedom fighter. In addition to charge nos. 04, 05 and 07 P.W.14 testified also in respect of the event arraigned in this count of charge i.e. charges no. 06. P.W.14 accompanied his co-freedom-fighters (P.W.10, P.W.12, P.W.13, P.W.16) when sexually ravished women including Taslima (P.W.21) were rescued from captivity of the Kachua Razakar camp.

525. P.W.14 stated that on 16th December, 1971 at around 11:00 A.M. being led by their Commander Habibur Rahman entered the Kachua Razakar camp and they on making search of the camp rescued one woman named Taslima from a room and she disclosed that after killing her father she was subjected to misdeed in captivity at the camp. They also rescued three other ravished women by unbolting another room of the camp. Of

those three one Kamala Rani Karmakar disclosed that after killing her husband she was brought at the Razakar camp.

526. P.W.14 continued stating that the rescued women also disclosed that the Razakars he (P.W.14) named i.e. Razakars Moniruzzaman Howlader (**died during trial**), Hashem Ali Sheikh (**died during trial**), Mokbul Molla, Ajahar Ali Sikder (**died on 17.10.2023**), Sultan Kha (**died during trial**), Ashraf Kha, Akram Kha, Idris Molla (**died during trial**), Idris Sheikh, Rustom Molla, Mokched Didar (now dead), Ukil Uddin Sheikh and Babul Sheikh got them unlawfully captured and committed misdeed upon them in captivity at Razakar camp. Finally, P.W.14 stated that he knew the Razakars he named as they were from their neighbouring localities.

527. It appears that in cross-examination no effort has been made to controvert what the P.W.14 stated in relation to fact of recovery of four rape victims and what he heard from them.

528. However, in cross-examination, defence simply suggested P.W.14 that the accused were not Razakars; that he did not know them; that they were not engaged with the alleged event; that he did not hear the event he testified; that what he testified was untrue and that he was not a freedom fighter.

529. **P.W.16 Sohrab Nakib (71/72)** is a resident of village-Bilkul under police station- Kachua of District Bagerhat. He too is a freedom-fighter and accompanied the freedom-fighters when they rescued the rape victims from the Kachua Razakar camp. In addition to the events arraigned in charge nos. 04 and 05 P.W.16 also testified how the victims were rescued and what they heard from the victims.

530. P.W.16 stated that on 16th December 1971 on instruction of their commander Habibur Raham they the freedom-fighters on making search of Kachua Razakar camp rescued sexually ravished woman Taslima and on hearing from her they also rescued other ravished women detained in another room of the camp.

531. P.W.16 also stated that they heard from the ravished women that the Razakars he (P.W.16) named i.e. Razakars Moniruzzaman Howlader (**died during trial**), Ajahar Ali Sikder (**died on 17.10.2023**), Hashem Ali (**died during trial**), Mokbul, Akram Kha, Idris Molla (**died during trial**), Rustom Molla, Idris Sheikh, Ukil Uddin Sheikh, Rafiqul Islam Babul, Mokched Didar (now dead) and Ashraf Kha committed beastly misdeed upon them keeping them detained in captivity at the camp.

532. P.W.16 recounted too that they discovered broken bangle and blood stained cloths inside those two rooms. Finally P.W.16 stated that the Razakars he named were from their locality and neighbouring localities and thus he knew them beforehand.

533. It appears that in cross-examination no effort has been made to contradict what the P.W.16 stated in relation to fact of recovery of rape victims and what he heard from them.

534. However, in cross-examination, defence simply suggested P.W.16 that the accused were not Razakars; that he did not know them; that they were not engaged with the alleged event; that he did not hear the event he testified; that what he testified was untrue and tutored.

535. **P.W.21 Taslima Begum (65) is the victim of** beastly sexual ravishment. She is a resident of village- Uttar Madhobkathi under police station- Kachua of District Bagerhat. In 1971 she was an unmarried teen of 15/16 years and used to stay at her parental home at Udankhali village. Her father Ukil Uddin Majhi was pro-liberation minded boatman who used to facilitate the freedom fighters in crossing the river. P.W.21 is the ocular witness to the act of the killing of her father.

536. P.W.21 in stating the first phase of attack testified that on 29th Ashwin in 1971 at around 04:00 P.M. when she had been at her father's home a group formed of Razakars Hashem (died during trial), Mokbul, Abdul (now dead) and their 10/12 cohort Razakars coming to their house started searching her father and being failed to get her father, they took her away on forcible capture to Kachua Razakar camp where she was kept in unlawful confinement for 08 days. Keeping her in captivity at the camp Razakars Abdul (now dead), Mokbul, Sultan (**died during trial**) and 10/12 other Razakars committed sexual ravishment upon her in each night. Eight days after her unlawful confinement at the camp her father begged her release when the Razakars made her freed.

537. P.W.21 continued stating that on 15th Kartik in 1971 Razakars Abdul (now dead), Mokbul, Sultan (died during trial) and their 10/12 cohorts Razakars again coming to their home got her and her father unlawfully detained and started taking them away and on the way the Razakars had slaughtered and killed her father by gunshot taking him on the Udankhali bridge and abandoned his dead body. Then the Razakars took her away to Razakar camp and had kept her confined in a room for about one month and the Razakars she named used to commit grave

and recurrent sexual misdeed upon her in each night. Those Razakar also committed ravishment upon 2/3 women keeping them confined at this camp.

538. Finally, P.W.21 stated that after the independence achieved freedom fighter commander Habib and other freedom fighters rescued her and escorted her to home. She knew the Razakar Mokbul and Abdul (now dead) beforehand as they were their next door neighbours. She could recognize the other Razakar Sultan as during her confinement at the camp she heard others calling him by his name.

539. In cross-examination on behalf of Mokbul Molla P.W.21 stated that she was 17/18 years old when she got married; that 02 years after the victory of Bangladesh she got married at Uttar Madhabdi village; that they were 07 siblings during 1971; that after the victory of Bangladesh accused Mokbul continued residing at his own home.

540. P.W.21 however denied the defence suggestion that she did not know the accused Mokbul Molla and he did not belong to Razakar Bahini and that this accused was not involved with the event she testified; that she did not experience the alleged event and what she testified was untrue and tutored.

541. In cross-examination on behalf of absconding accused Sultan Ali Khan (**died during trial**),, the cross-examination done on part of accused Mokbul Molla has been adopted. In cross-examination also P.W.21 stated in reply to defence question that she did not see Razakar Sultan (**died during trial**), in 1971 but she heard his name. P.W.21 denied the defence suggestion that she did not know the accused; that what she testified was untrue and that being influenced she testified against the accused falsely.

542. **P.W.22 Md. Mostafa Kamal (64)** is a resident of village- Char Sonakur under police station- Kachua of District Bagerhat. His ancestral home is at Uttar Madhobkathi. In 1971 he used to reside at his ancestral home and was a student of class II of Madhobkathi Alia Madrasa. After passing class V in 1970 in primary school he got admitted in Alia Madrasa. He is a direct witness to facts related to the event of second attack arraigned in this count of charge i.e. charge no.06.

543. P.W.22 stated that on 2nd November,1971 while he was on move toward Jatrapur market along with his father, at around 03:00/03:30 P.M. they witnessed few Razakars beating Ukil

Uddin Majhi tying him up. Among those Razakars he recognized Razakars Monir Howlader (**died during trial**), Hashem Ali (**died during trial**), Ajahar Ali Sikder (**died on 17.10.2023**), Mokbul Molla and Abdul Molla (now dead). Apart from those Razakars, there were more than 7/8 Razakars accompanying the group.

544. P.W.22 continued stating that when they came nearer to the bridge, they heard the sound of gunshot and with this Ukiluddin fell down and then the Razakars cut down his trachea and threw his dead body in the canal. At that time Taslima was kept detained on that bridge and then the Razakars took her away toward south end.

545. What happened next? P.W.22 stated after the Razakars had left the site he along with his father and some villagers recovered Ukil Uddin's dead body from the canal and keeping it on the bridge he along with his father then moved toward Bazar.

546. P.W.22 continued stating that on arriving at Bazar he heard that the said Razakars prior to this event by launching attack at Ukil Uddin Majhi's house forcibly captured Taslima as they did not find her father Ukil Uddin and took her away to Kachua

Razakar camp where she was kept confined for seven (07) days. Afterward, Taslima's father got her freed on condition of bringing Taslima at the camp again seven days later. But after 10 days as Taslima was not brought to the camp again the Razakars by launching attack at Ukil Majhi's house unlawfully detained Taslima and her father and detaining them unlawfully brought on Udankhali Bridge.

547. P.W.22 finally narrated that after independence achieved freedom-fighter commander Habibur Rahman and other freedom-fighters rescued Taslima from Kachua Razakar camp and brought her back home. He (P.W.22) heard from Taslima and other people that Razakars Ashraf Ali Kha, Akram Ali Kha, Sultan Ali Kha (**died during trial**), Rustom Molla, Idris Molla (**died during trial**), Mokched Didar (now dead), Ukil Uddin Sheikh, Idris Ali Sheikh, Rafiqul Islam Babul, Monir Howlader(**died during trial**), Hashem Ali Sheikh (**died during trial**), Ajahar Ali Sikder (**died on 17.10.2023**),, Abdul; Molla (now dead) and Mokbul Molla committed recurrent sexual ravishment upon Taslima keeping her in captivity at the Razakar camp.

548. In cross-examination done on behalf of present four accused P.W.22 stated in reply to defence questions put to him that he was born on 01.10.1956; that his father died in 2011 though he could not recall the exact date; that his mother passed away in 2018 and could not recall the date of death of his mother.

549. P.W.22 denied defence suggestions that he did not know the accused persons in 1971; that he did not see them; that he did not witness and hear what he testified; that the accused persons were not Razakars; that the accused persons he implicated were not involved with the incident alleged; that being influenced by the opponents he testified implicating the accused.

550. In cross-examination done on behalf of the seven absconded accused P.W.22 stated that in 1971 he knew few people from Bisharkhola village namely Razakars Ahmed Ali Shikdar, Ajahar Ali Sikder (**died on 17.10.2023**) and Master Afsar Sikder, Chairman Khaleq Mridha; that he knew freedom-fighter Abdul Hakim of village Udankhali and he was brother of martyr Ukil Uddin (father of victim Taslima).

551. P.W.22 denied the defence suggestions that there was no Razakar camp in their area; that he testified falsely implicating the accused in this case and made untrue narrative; and that what he testified was tutored.

552. **P.W.26 S.M. Bazlur Rahman (69/70)** is a resident of village- Mechokhali under police station- Kachua of District Bagerhat. P.W.26 was employed in East Bengal Regiment before the great Liberation War ensued. Before the war of liberation ensued, he came home with two months long leave. Before 26th March, Major M.A. Jalil and local Member of Parliament Sheikh Abdur Rahman requested him to guide the local people with basic training of being freedom fighters.

553. P.W.26 before narrating the event arraigned stated that after the beginning of Liberation War, one day of third week of April, local Jamaat-E-Islami and Muslim League leaders arranged peace meeting at Kachua CO Office. Being informed of it, he (P.W.26) stayed beside the CO office wherefrom he observed the formation of Peace Committee and Razakar Bahini. Razakar Moniruzzaman (**died during trial**), was made commander of Razakar Bahini and Ajahar Ali Shikder (**died on 17.10.2023**),, Mokbul Mollah, Abdul Ali Mollah, Rustom Ali Molla, Sultan Ali (**died during trial**), Idris Ali (**died during**

trial), Mokched Ali Didar, Sheikh Md. Ukiluddin, Rafiqul Islam Babul, Hashem Ali Sheikh(**died during trial**), Akram Hossain Khan, Ashraf Ali Khan, Idris Ali Sheikh and many more joined the Razakar Bahini and they received their training at the Pakistani army camp at Bhuter Bari in Khulna and formed their camps at Kachua CO Office, Doibogohati and Morrelganj and started committing crimes against humanity and devastating activities and causing torture to civilians irrespective of their religion around the localities.

554. P.W.26 continued stating that under such situation, he along with others moved to India to receive training of freedom fighters. On having training he came back Bangladesh in September, 1971 along with 350/400 freedom fighters and he was the commander of this group of freedom-fighters. They then got engaged in fighting being segregated into groups by setting camps around the localities.

555. In narrating the event arraigned P.W.26 stated that on 16th December 1971 he sent his assistant commander Sikder Habibur Rahman and some other freedom-fighters to Kachua Razakar camp. There they found Taslima (victim) and three other girls in miserably tormented condition. Being informed of it, he (P.W.26) moved to Kachua Razakar camp and on asking

Taslima (P.W.21) disclosed that the Razakars he (P.W.26) named on the way of taking her and her father away on unlawful detention toward the Razakar camp gunned down her father to death and she was kept confined at the camp and was subjected to recurrent rape.

556. P.W.26 also stated that Taslima (victim) disclosed him too that Razakar commander Moniruzzaman (**died during trial**), Razakars Ajahar Ali Sikder (**died on 17.10.2023**), Mokbul Molla, Abdul Ali Molla (now dead), Rustom Ali Molla, Sultan Ali (**died during trial**), Idris Ali (**died during trial**), Mokched Didar (now dead), Sheikh Md. Ukil Uddin, Rafiqul Islam Babul, Hashem Ali Sheikh(died during trial), Akram Hossain Khan, Ashraf Ali Khan. Idris Ali sheikh and their cohort Razakars committed recurrent rape and misdeeds upon her. These Razakars used to call each other by their name when they used to commit ravishment upon her and thus she (Taslima) became aware of their name and identity.

557. No effort on part of defence appears to have been done to refute the facts testified by the P.W.26. However, P.W.26 denied defence suggestion that he did not know the accused in 1971; that he did not witness and hear what he stated; that the

accused persons were not Razakars and were not involved with the event he narrated and that what he testified was untrue.

Reasoning with Finding on Evaluation of Evidence

558. **Mr. Rana Das Gupta**, the learned prosecutor argued, drawing attention to the testimony of witnesses including the victim that the accused persons in exercise of their affiliation with locally formed Razakar Bahini had carried out the recurrent aggression directing pro-liberation civilians Ukil Uddin Majhi and his daughter Taslima (P.W.21). Uncontroverted testimony of victim Taslima (P.W.21), the key witness proves it beyond reasonable doubt that she was sexually violated in captivity at Kachua Razakar camp and in conjunction with the second attack Taslima's father Ukil Uddin Majhi was gunned down to death.

559. It has been also argued that testimony of victim Taslima (P.W.21) does not suffer from any doubt. The other witnesses are freedom fighters who, after independence achieved, rescued the victim from that camp. P.W.22 is a direct witness who had opportunity of seeing the act of taking away the victim and her father on forcible capture and the act of gunning down victim's father to death on the way of taking them away. All these pertinent facts chained to the event arraigned were deliberate

and designed and happened in context of the war of liberation, in violation of international humanitarian law and the laws of war.

560. The learned prosecutor also submitted that the freedom fighters also rescued some other women from the Razakar camp. One Kamala Rani Karmaker too was kept confined at the camp and she too was subjected to rape. She is the victim of the event arraigned in charge no.07. She could not be examined before Tribunal as she already died during trial. Her statement made to the IO deserves to be taken into evidence under section 19(2) of the Act of 1973 and it too also shows that in addition to Taslima other women too were kept confined at the Kachua Razakar camp where they were subjected to barbaric sexual ravishment. Defence could not refute all these facts constituting the offences as crimes against humanity and participation of accused persons therewith.

561. On contrary, **Mr. Gazi M.H. Tamim**, the learned defence counsel argued that the testimony of freedom fighters is inconsistent with that of alleged victim P.W.21. In respect of alleged involvement of accused persons indicted with the event arraigned the witnesses' testimony suffers from patent

inconsistency. Victim P.W.21 does not seem to have implicated all the accused indicted with the criminal acts leading to her father's killing, her confinement at the camp and the act of alleged recurrent ravishment. Statement of Kamala Rani Sarker made to the IO is not compatible with what has been testified by the freedom-fighters. Inconsistent narrative of witnesses creates sufficient doubt particularly as to alleged involvement of the accused persons with the event arraigned and benefit of such doubt goes in favour of the accused persons.

562. It appears that the arraignment brought in this count of charge rests upon testimony of P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, P.W.21, P.W.22 and P.W.26. Of these witnesses P.W.21 Taslima is the victim. She is the star witness in respect of this count of charge. In addition to her, P.W.22 is a direct witness to facts chained to the first phase of the event arraigned. The rest six (06) witnesses are freedom-fighters. They testified crucial facts chained to the event arraigned.

563. According to the charge framed accused Md. Maniruzzaman Howlader (**died during trial**), Md. Hashem Ali Sheikh (**died during trial**), Md. Ajahar Ali Sikder (**died on**

17.10.2023) and Md. Mokbul Mollah being part of the group of attackers forcibly captured Taslima (P.W.21) and had kept her confined first for seven days when she was subjected to rape and at a stage the victim was set released.

564. Next, it is arraigned that ten days later the above four accused and their cohorts were engaged in getting again forcibly captured Taslima and her father and on the way of taking them away toward Kachua Razakar camp Taslima's father Ukil Uddin Majhi was gunned down to death and Taslima was kept confined at Kachua Razakar camp for second time.

565. The charge framed arraigns that in course of captivity of Taslima at the Razakar camp she was subjected to rape by all the accused (1) Khan Akram Hossain, (2) Idris Ali Mollah, (3) Sheikh Md. Ukiluddin, (4) Md. Mokbul Mollah (5) Md. Hashem Ali Sheikh (6) Khan Ashraf Ali, (7) Sultan Ali Khan, (8) Rustam Ali Mollah, (9) Sheikh Idris Ali , (10) Sheikh Rafiqul Islam alias Babul , (11) Md. Maniruzzaman Howlader and (12) Md. Ajahar Ali Sikder . Of them three accused Idris Ali Mollah, Md. Hashem Ali Sheikh and Sultan Ali Khan died during trial and one accused Md. Ajahar Ali Sikder **died on** 17.10.2023, after closure of summing up.

566. In view of above P.W.21 Taslima is the key witness. She is the victim and according to charge framed she witnessed how and who accomplished her father's killing and committed recurrent sexual violence upon her in captivity.

567. Let us first eye on what has been recounted by P.W.21 the victim who lost her father in conjunction with the attack. The event arraigned happened in phases. It stands proved that first, on 29th Ashwin in 1971 at around 04:00 P.M. a group formed of Razakars Md. Hashem Ali Sheikh (**died during trial**), Mokbul, Abdul (now dead) and their 10/12 cohort Razakars took away the victim Taslima to Kachua Razakar camp on unlawful capture as the gang did not find her father Ukil Uddin Majhi available at home, by launching attack.

568. Why Ukil Uddin Majhi was so targeted? It is evinced from unimpeached testimony of P.W.21 Taslima that her father was a boatman and used to assist freedom-fighters in crossing river. Yes, presumably it was the reason of targeting him intending to resist the civilians who took stance in favour of the war of liberation.

569. We got it stands proved from ocular testimony of P.W.21 Taslima (victim) that she was kept confined at Kachua Razakar

camp first for seven days, on forcible capture and she was subjected to recurrent rape. According to P.W.21 not the all accused indicted but two accused Md. Hashem Ali Sheikh (**died during trial**) and Md. Mokbul Mollah being part of the group participated in accomplishing her forcible capture.

570. Uncontroverted testimony of P.W.21 Taslima demonstrates that she was kept in unlawful confinement first for 08 days at the camp. Keeping her in captivity Razakars Abdul (now dead), Md. Mokbul Mollah, Sultan Ali Khan (**died during trial**) and 10/12 other Razakars committed sexual ravishment upon her in each night and eight days after her father begged her release when the Razakars made her freed.

571. Based on testimony of victim Taslima (P.W.21) it thus stands proved that three accused Md. Hashem Ali Sheikh (**died during trial**) Md. Mokbul Mollah and Sultan Ali Khan (**died during trial**) indicted were engaged in accomplishing the first phase of the event leading to victim's Taslima's unlawful capture, confinement at Kachua Razakar camp and committing sexual ravishment upon her.

572. Ocular testimony of P.W.21 demonstrates that she got freed on appeal of her father but on condition of bringing her again at the camp. Defence does not seem to have made any effort to refute this version of P.W.21. Presumably, victim's father readily agreed with such unlawful condition to secure his defenceless daughter's release from captivity.

573. What happened to the victim Taslima (P.W.21) again after cessation of her such first captivity of seven days? It stands proved from uncontroverted testimony of P.W.21 that the gang of Razakars ten days later again by launching attack at their house got her and her father's forcibly captured and on the way of taking them away toward the Kachua Razakar camp the Razakars slaughtered and gunned down her father to death on the bridge. Who facilitated and contributed to the accomplishment of killing of Ukil Uddin Majhi, the father of Taslima (P.W.21)?

574. It has been divulged from testimony of P.W.21 that Razakars Abdul (now dead), Md. Mokbul Mollah, Sultan Ali Khan (**died during trial**) and their 10/12 cohorts Razakars forming a group were engaged in accomplishing the killing and taking her (P.W.21) away to the Kachua Razakar camp where they committed recurrent rape upon her.

575. We have already noted that the other witnesses are freedom-fighters and they after the victory achieved rescued Taslima and other detained women from the Razakar camp. Let us see what they testified. Testimony of P.W.10 [freedom-fighter] demonstrates that he heard from victim Taslima that the 04 accused Md. Moniruzzaman Howlader (**died during trial**), Hashem Ali Sheikh (**died during trial**), Ajahar Shikder (**died on 17.10.2023**),, Mokbul Molla and their cohorts forming part of the group took her away to the Razakar camp. It gets corroboration from P.W. 22, a direct witness to the fact occurred in course of the first phase of the event when annihilation of Taslima's father was accomplished.

576. **P.W.22 Md. Mostafa Kamal** is a direct witness to facts related to the event of second attack arraigned. P.W.22 testified that he witnessed few Razakars beating Ukil Majhi tying him up. Among those Razakars he recognized Razakars Md. Maniruzzaman Howlader (**died during trial**), Md. Hashem Ali Sheikh (**died during trial**), Md. Ajahar Ali Sikder (**died on 17.10.2023**), Md. Mokbul Mollah and Abdul Molla (now dead) and apart from those Razakars, there were more than 7/8 Razakars. It could not be controverted by defence.

577. According to P.W.21, the victim the group formed of Razakars Abdul (now dead), Md. Mokbul Mollah, Sultan Ali Khan (**died during trial**) and their 10/12 cohorts Razakars accomplished the killing of her father and taking her away to Razakar camp. Presumably the reason of non stating name of other accused Razakars forming part of the group is that the victim P.W.21 had no reason of recognizing other members of the group. Tribunal notes that a rustic woman might not have space of knowing identity of all Razakars of the locality.

578. Be that as it may, totality of testimony of P.W.21 and P.W.22 cumulatively suggest concluding that the accused Md. Maniruzzaman Howlader (**died during trial**), Md. Hashem Ali Sheikh (**died during trial**), Md. Ajahar Ali Sikder (**died on 17.10.2023**), Md. Mokbul Mollah and Sultan Ali Khan (**died during trial**) were present with the gang and had participated in accomplishing the crimes arraigned. It suggests explicit concern of these accused also with the criminal activities done to Taslima keeping her in captivity at Razakar camp.

579. It could not be impeached that in course of next phase of attack the victim Taslima (P.W.21) was taken away (after killing her father) to Kachua Razakar camp where she was kept

confined and was subjected to recurrent sexual ravishment during her captivity.

580. P.W.21 knew the Razakar Md. Mokbul Mollah and Abdul (now dead) beforehand as they were their next door neighbour and she could recognize the other Razakar Sultan Ali Khan (**died during trial**) as during her confinement at the camp she heard others calling him by his name. This version makes the narrative of P.W.21 credible. Besides, it could not be controverted by defence.

581. It is evinced from totality of facts divulged from testimony of victim P.W.21 Taslima that Md. Mokbul Mollah, Sultan Ali Khan (**died during trial**), Md. Hashem Ali Sheikh (**died during trial**) and Abdul (now dead) actively participated in perpetrating the crimes arraigned including the killing of Ukil Uddin Majhi, the father of victim P.W.21 Taslima.

582. It stands proved too that eventually after the victory achieved on 16th December, 1971 the victim P.W.21 was rescued from captivity of Kachua Razakar camp. Defence could not refute the fact of rescuing. Act of such salvaging the victim itself proves her unlawful confinement at the Razakar camp.

583. How the victim got rescued and in which condition? Victim P.W.21 in recounting the phase of rescuing her stated that after the independence achieved freedom fighter commander Habib (P.W.10) and his co-freedom fighters rescued her and escorted her to home.

584. Above unimpeached version of victim P.W.21 is a crucial fact chained to her unlawful confinement at the Razakar camp and sustaining untold harm caused by grave misdeed to her supreme honour. It has been consistently corroborated from testimony of P.W.10's co-freedom-fighters P.W.12, P.W.13, P.W.14, P.W.16, and P.W.26.

585. Now let us eye on evidence of other witnesses, the freedom-fighters, examined as P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, and P.W.26 who allegedly rescued the victim Taslima (P.W.21) from Kachua Razakar camp after the independence achieved. Echoing same version they stated that they heard from the victim Taslima (P.W.21) that Razakars Moniruzzaman Howlader (**died during trial**), Ajahar Ali (**died on 17.10.2023**), Hashem Ali (**died during trial**), Mokbul, Akram Kha, Idris Molla (**died during trial**), Rustom Molla, Idris Sheikh, Ukil Uddin Sheikh, Rafiqul Islam Babul and

Mokched Didar (now dead) committed beastly misdeed upon her and three other victims who too were kept detained in captivity at the camp.

586. Hearsay testimony of P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, and P.W.26, the freedom-fighters who rescued the victim P.W.21 from Kachua Razakar camp have testified implicating all the accused indicted. Source of their hearsay testimony in this regard, is the victim Taslima (P.W.21), they claim.

587. But already we got it proved from ocular narrative of P.W.21 (victim) and P.W.22 that accused Md. Maniruzzaman Howlader (**died during trial**), Md. Hashem Ali Sheikh (**died during trial**), Md. Ajahar Ali Sikder (**died on 17.10.2023**),, Md. Mokbul Mollah and Sultan Ali Khan (**died during trial**) were involved with criminal acts carried out in committing the offences arraigned, by launching attack.

588. Tribunal notes that prosecution urged to take the statement of one witness Kamala Rani Karmakar made to the Investigation Officer (IO) into evidence as permitted under section 19(2) of the Act of 1973 as she already died. Tribunal considered the application.

589. The statement of one witness Kamala Rani Karmakar made to the Investigation Officer (IO) chiefly relates to the event arraigned in charge no.07.

590. It appears that Kamala Rani Karmakar is the victim of the event arraigned in charge no.07. This count of charge arraigns that Sreedham Karmakar the husband of Kamala Rani Karmakar was gunned down to death and she was taken away to Kachua Razakar camp.

591. On going through the statement of Kamala Rani Karmakar made to IO it appears that she was subjected to recurrent rape in captivity and eventually managed to flee from hospital where she was taken for treatment as she became sick. But it does not seem that she was rescued along with the victim Taslima (P.W.21) and other women detainees. Statement of Kamala Rani Karmakar made to IO is pertinently relevant in relation to the arraignment brought in charge no.07.

592. It has not been arraigned in the charge that three other women too were rescued along with P.W.21 by the freedom fighters, after independence achieved. It has been divulged in testimony of witnesses examined in Tribunal.

593. Next, victim P.W.21 Taslima has not stated it in her deposition before Tribunal that three other detained women too were rescued, although the freedom-fighters [P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, and P.W.26] consistently testified it.

594. However, P.W.21 states that 2/3 other women too were kept confined at the camp and were subjected to rape. Thus, version made by the freedom-fighters [P.W.10, P.W.12, P.W.13, P.W.14, P.W.16 and P.W.26] in respect of rescuing other detained women seems to be true which adds assurance also to the version of the P.W.21 that those women too were subjected to ravishment in captivity.

595. According to P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, and P.W.26, the freedom-fighters they first rescued Taslima and on hearing from her they also rescued other ravished women detained in another room of the camp and they heard from the ravished women that the accused Razakars indicted committed recurrent rape upon them.

596. Tribunal notes that P.W.21 Taslima too does not state that the freedom-fighters also rescued other women from another room of the camp when they rescued her (P.W.21). But it has

been divulged from ocular testimony of P.W.21 that Razakars committed ravishment also upon 2/3 women keeping them confined at this camp. Thus, in absence of anything contrary it may be justifiably presumed that those other women detainees too were rescued by the freedom-fighters.

597. Core essence of testimony of freedom-fighters' [P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, and P.W.26] collectively demonstrates that they heard the event also from other women detainees after they made them rescued. Merely for the reason of omission in stating it by the P.W.21 such statement of freedom-fighters does not suffer from doubt.

598. Keeping Kamala Rani Karmakar in unlawful confinement at Kachua Razakar camp and committing sexual violence upon her seems to be related to the charge no.07 which deserves to be determined independently.

599. However, rescuing Taslima (P.W.21) at the relevant time from the Kachua Razakar camp by the freedom-fighters stands proved. P.W.21 stated that 2/3 other women were kept confined at the camp. It could not be controverted.

600. Freedom fighters [P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, and P.W.26] rescued them. But Tribunal notes that P.W.21 Taslima omitted to state that the freedom-fighters also rescued other women from another room of the camp when they rescued her (P.W.21). Such omission does not diminish the fact that the freedom-fighters [P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, and P.W.26] rescued those women who were kept unlawfully detained at the camp. Obviously they were so kept confined not for any pious purpose. Naturally, even the other women rescued from the camp disclosed what horrific misdeed they had to face in captivity.

601. In adjudicating this count of charge we require chiefly adjudicating the arraignment brought i.e. keeping Taslima detained in captivity at Kachua Razakar camp; that she was sexually ravished; that on the way of taking her away toward the camp her detained father was gunned down to death.

602. The fact of rescuing other women from Kachua camp as narrated by the freedom-fighters [P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, and P.W.26] is a crucial fact relevant to the criminal activities carried out at that camp. P.W.21 Taslima might have forgotten to state the fact of rescuing other detained

women, although she testified that other detained women too were subjected to rape at the camp.

603. Keeping other women detained at the Razakar camp also gets corroboration from statement of Kamala Rani Karmakar made to the IO. She too was subjected to recurrent rape at the camp.

604. Since the other detained women were rescued along with P.W.21 the freedom-fighters [P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, and P.W.26] naturally had occasion of hearing from them what grave misdeed the Razakars had committed upon them in captivity. Mere exaggeration occurred in testimony of freedom-fighters so far as it relates to rescuing Kamala Rani Karmakar does not taint credibility of core essence of their testimony. In this regard we recall the observation of the **Appellate Division of Supreme Court of Bangladesh** rendered in the appeal preferred by **Motiur Rahman Nizami** which is as below:

“Though there are some minor contradictions and discrepancies in their evidence considering the very fact that these witnesses have deposed before the tribunal after a long period of 42 years, we do not think that these

minor discrepancies and contradictions in the evidence of the prosecution witnesses are fatal at all and these can raise any suspicion or doubt about the truth of their evidence or about the trustworthiness of the witnesses” [page 151; **CRIMINAL APPEAL NO.143 OF 2014. Motiur Rahman Nizami vs. Chief Prosecutor]**

605. It has been divulged from freedom-fighters’ [P.W.10, P.W.12, P.W.13, P.W.14, P.W.16, and P.W.26] ocular narrative that two other women too were kept confined at the camp and they rescued them. Mere omission of stating anything in this regard by P.W.21 does not disprove the statement of freedom-fighters and Kamla Rani Karmakar made to the IO, so far as it relates to the act of keeping the P.W.21 and other women in captivity at the Kachua Razakar camp.

606. P.W.21 Taslima is star witness in relation to the event arraigned in this count of charge. It is evinced that she was kept confined at Kachua Razakar camp for twice. First for few days when she was subjected to sexual ravishment and then was set released on condition to produce her again at the camp. But it stands proved that ten days after, the gang of Razakars again forcibly captured her along with her father Ukil Uddin Majhi.

607. The above ocular narrative recounted by P.W.21 Taslima remained unimpeached. We do not find any reason to disbelieve P.W.21. Tribunal notes that no woman shall opt to disgrace her dignity and self honour by telling fabricated story of her ravishment.

608. It also stands proved that on the way of taking away the victim Taslima and her father Ukil Uddin Majhi toward Razakar camp the gang had gunned down victims' father to death. In no way it could be refuted.

609. Testimony of P.W.21 is sufficient to prove that the gang of invaders annihilated the father of P.W.21 Taslima. Witnessing this brutal part of killing indubitably caused untold trauma to P.W.21 Taslima. Criminal acts of the invaders unveiled were obviously in gross violation of humanitarian law and the laws of war.

610. Killing of defenceless father happened within the sight of Taslima (P.W.21) and then she was kept confined at Kachua Razakar camp in protracted captivity. Not only such confinement, the victim Taslima was subjected to recurrent barbaric sexual ravishment for days together and finally the

freedom-fighters rescued her, after the victory achieved on 16th December 1971.

611. Uncontroverted testimony of other witnesses i.e. the freedom-fighters in respect of rescuing the victim and other girls detained at the same Razakar camp gets corroboration from P.W.21.

612. On cumulative evaluation of evidence presented it reveals that the fact of rescuing P.W.21 (victim) from captivity proves her confinement. Such confinement was the outcome of her abduction. Version of P.W.21 makes it stands proved that she was subjected to sexual ravishment in captivity. It also stands proved that on the way of taking her and her father away the gang had gunned down her father to death.

613. Perhaps due to nexus of other accused indicted with the camp freedom fighters stated that they heard involvement also of those accused with the offences committed keeping women in captivity.

614. But there is rather nothing to show that the other accused indicted too were present at the camp or accompanied the gang in effecting forcible capture of the victim P.W.21 and her father

and killing her father on the way of taking away her toward the camp.

615. There is nothing to show even non-physical participation of other accused indicted with the perpetration of crimes arraigned. Prosecution does not seem to have been able to show by evidence or circumstances that the other accused too were engaged even by assisting, encouraging and providing moral support to the horrific act of victim's confinement, killing her father and committing rape upon her.

616. It has been proved that P.W.22 witnessed the act of taking away the victim P.W.21 and murder of her father. Sexual ravishment upon P.W.21 happened not in presence of other. P.W.21 is the victim and she is the best witness in this regard and we got it proved that she was subjected to rape in captivity at the camp. Rescuing other women detained at the Razakar camp is a fact relevant to the criminal activities carried out at the camp.

617. It is now well settled that in 1971 during the war of liberation Pakistani occupation army and their local collaborators used to commit the act of rape as a tool of

spreading terror and intimidation. Testimony of victim of the horrific criminal acts that sustained Taslima (P.W.21) is indeed gravely beastly and grave violation of human rights enshrined in the UDHR and international humanitarian law.

618. Victim P.W.21 not only lost her supreme worth, she also lost her father Ukil Uddin Majhi who took visible stance in support the war of liberation. The killing happened within the sight of the P.W.21. What a brutality! P.W.21 indeed still has been carrying the extreme trauma and pain she sustained.

619. Defence does not appear to have been able to taint the sworn narrative of victim P.W.21. Tribunal notes that a woman is not believed to portray an untrue account of bulldozing self worth. She will never opt to invite social stigma and dishonour by narrating fallacious account of ravishing self worth implicating a person who was not involved with the commission of offence. In this regard we recall the observation made by the Tribunal-1[ICT-BD] in the case of **Md. Esahaque Shikder** and four others which is as below:

“Our social pattern does not allow a woman to prefer bringing a false accusation of yellowing her supreme honour as it stamps stigma on her life,

and makes her social and family life devastated. Thus, we find no rationale to doubt the testimony of victims.”

[ICT-1 Judgment 13 August 2018; Md. Esahaque Shikder and four others para-388]

620. Uncontroverted testimony of P.W.21 (victim) and P.W.22 collectively proves active participation of five (05) accused (1) Md. Moniruzzaman Howlader (**died during trial**), (2) Hashem Ali Sheikh (**died during trial**) (3) Ajahar Shikder (**died on 17.10.2023**), (4) Mokbul Molla and (5) Sultan Ali Khan (**died during trial**) with the criminal activities carried out. Thus, they incurred liability for the crimes of abduction, confinement, murder and rape. Of these five accused Hashem Ali Sheikh, Sultan Ali Khan and Md. Moniruzzaman Howlader **died during trial** and one accused Ajahar Ali Sikder **died on 17.10.2023**.

621. In view of above, ocular narrative of P.W.21 (victim) and P.W.22, a direct witness to fact related to the event of attack collectively proves it patently that five (05) accused Md. Maniruzzaman Howlader (**died during trial**), Sultan Ali Khan (**died during trial**) and Md. Hashem Ali Sheikh (**died during trial**) accused Md. Ajahar Ali Sikder **Ajahar Shikder (died on 17.10.2023)** and Md. Mokbul Mollah were involved with

criminal acts carried out conducting the attack leading to abduction of P.W.21 Taslima and her father, killing her father, protracted confinement of Taslima and committing recurrent sexual violence upon her at Kachua Razakar camp. Prosecution however could not prove involvement and participation of rest accused persons indicted in this count of charge. But finding in respect of incurring liability by above three accused who died during trial and one accused Ajahar Ali Sikder **who died on 17.10.2023** them cannot be rendered as proceeding so far related to them has been terminated.

622. In light of above reasoned findings on evaluation of totality of evidence we are persuaded to conclude that the prosecution has been able to prove beyond reasonable doubt that accused **Md. Mokbul Mollah** in exercise of his affiliation with Razakar Bahini and having nexus with the Razakar camp substantially assisted, aided and committed the crimes of **‘confinement’, ‘abduction’, ‘torture’ , ‘rape’ and ‘murder’ as crimes against humanity** as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 constituting the offences of crimes against humanity and thereby he incurred criminal liability under section 4(1) of the Act.

Adjudication of Charge No.07 [12 accused indicted of whom 04 died during trial and 01 died on 17.10.2023]

[Narrated as event no. 07: page 58-61 of the Formal Charge]

[Offences of confinement’, ‘torture and ‘murder’ of Sreedham Karmakar and ‘rape’ as crimes against humanity committed at village-Gajalia under police station-Kachua of District-Bagerhat]

623. Charge: That on the first day of November, 1971 at about 10:00 A.M a group formed of the accused Md. Maniruzzaman Howlader (**died during trial**), Md. Hashem Ali Sheikh (**died during trial**), Md. Ajahar Ali Sikder (**died on 17.10.2023**), Md. Mokbul Mollah and their cohort armed Razakars by launching attack at Gajalia bazaar under police station-Kachua forcibly captured Sreedham Karmakar and his wife from their house and started causing torture to them and at a stage, shot him to death. Kamala Rani Karmakar the wife of Sreedham Karmakar was then taken away on forcible capture to Kachua Razakar camp where she along with two other women was kept confined. The victim Kamala Rani Karmakar was subjected to recurrent rape by the accused (1) Khan Akram Hossain, (2) Idris Ali **Mollah (died during trial)**, (3) Sheikh Md. Ukiluddin, (4) Md. Mokbul Mollah (5) Md. Hashem Ali Sheikh (**died during trial**) (6) Khan Ashraf Ali, (7) Sultan Ali Khan (**died during trial**), (8) Rustam Ali Mollah, (9) Sheikh Idris Ali , (10) Sheikh Rafiqul

Islam alias Babul , (11) Md. Maniruzzaman Howlader (**died during trial**) and (12) Md. Ajahar Ali Sikder (**died on 17.10.2023**). Victim Kamala Rani Karmakar became ill in captivity and thus she was sent to hospital wherefrom she managed to flee.

Therefore, the accused (1) Khan Akram Hossain, (2) Idris Ali Mollah (**died during trial**) (3) Sheikh Md. Ukiluddin (4) Md. Mokbul Mollah (5) Md. Hashem Ali Sheikh (**died during trial**) (6) Khan Ashraf Ali (7) Sultan Ali Khan (**died during trial**), (8) Rustam Ali Mollah, (9) Sheikh Idris Ali (10) Sheikh Rafiqul Islam alias Babul (11) Md. Maniruzzaman Howlader (**died during trial**) and (12) Md. Ajahar Ali Sikder (**died on 17.10.2023**) participated, facilitated, abetted and substantially contributed, by their culpable act and conduct forming part of systematic attack to the commission of offences of ‘**confinement**’, ‘**abduction**’, ‘**torture**’, ‘**rape**’ and ‘**murder**’ as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses Examined

624. This count of charge i.e. charge no. 07 involves offences of ‘confinement’, ‘torture’ and ‘murder’ of Sreedham Karmakar and ‘rape’ committed upon his wife Kamala Rani Karmakar keeping her confined at Kachua Razakar camp under police station-Kachua of District-Bagerhat. The arraignment brought in this charge rests on testimony of P.W.10, P.W.16, P.W.21 and P.W.25. Before we evaluate first let us see what the P.W.s testified in Tribunal.

625. It is to be noted that prosecution by filing an application has prayed to receive the statement of Kamala Rani Karmakar, the victim of sexual violence made to the IO into evidence as permitted under section 19(2) of the Act of 1973 as she died during trial. Tribunal allowed the application.

626. **P.W.10 Alhaj Shikder Habibur Rahman (65/66)** is a resident of village- Bichot under police station- Kachua of District Bagerhat. He is a freedom-fighter.

627. P.W.10 stated that on 16th December 1971 he and his 20/25 co-freedom fighters rescued Taslima (victim of the event arraigned in charge no.06 who testified as P.W.21) and on

hearing from her they also rescued three other women including Kamala Rani Karmakar detained in another room of the camp. They, the rescued women disclosed that the accused Akram Kha, Ashraf Kha, Sultan Ali Kha (**died during trial**), Idris Sheikh, Idris Molla (died during trial), Rafiqul Islam @ Babul, Ukil Sheikh and their accomplice Razakars committed recurrent sexual ravishment upon them. They then handed over the rescued victims to their relatives.

628. The fact of rescuing the women detained at the Kachua Razakar camp and hearing the event of grave misdeed committed upon them does not seem to have been denied even in cross-examination. However, P.W.10 denied the defence suggestion that what he testified implicating the accused persons was untrue.

629. **P.W.16 Sohrab Nakib (71/72)** is a resident of village-Bilkul under police station- Kachua of District Bagerhat. He is a freedom-fighter. In addition to the events arraigned in charge no.s 04, 05 and 06 he testified also in relation to the act of rescuing the women kept detained at the Razakar camp. He was present along with his co-freedom fighters when they rescued

Taslima (victim of the event arraigned in charge no.06) and other women detained in captivity at Kachua Razakar camp.

630. P.W.16 stated that on 16th December, 1971 they on instruction of their commander Habibur Rahman rescued the sexually ravished Taslima (victim of the event arraigned in charge no.06) and then on hearing from her they also rescued three other women kept detained in another room of the camp and they disclosed that Razakars committed beastly ravishment upon them. They found broken bangle and blood-stained clothes in that room.

631. **P.W.21 Taslima Begum (65)** is the victim of sexual ravishment (as arraigned in charge no.06). She is a resident of village- Uttar Madhobkathi under police station- Kachua of District Bagerhat.

632. P.W.21 stated that when she was kept confined at the camp where she found 2/3 other girls detained at the Razakar camp. Razakars she named i.e. Abdul (now dead), Mokbul, Sultan (**died during trial**) and their 10/12 cohorts Razakars committed rape upon them.

633. P.W.21 denied the defence suggestions that she had falsely implicated the accused in this case and made untrue testimony; that what she narrated did not happen; that she did not know the accused persons she named; that the accused persons did not belong to Razakar Bahini and that what she testified was untrue and tutored.

634. **P.W.25 Md. Latifuzzaman (65/66)** is a resident of village-Gozalia under police station- Kachua of District Bagerhat. He is a freedom-fighter.

635. Before narrating the event arraigned in charge no.07 P.W.25 stated that 24/25 days after the war of liberation ensued peace committee was formed after holding a meeting at the Kachua CO Office and later it formed Razakar Bahini. Being present at that meeting he (P.W.25) saw Abdul Ali Molla, Mokbul Molla, Ajahar Ali Sikder(**died on 17.10.2023**), Abul Hashem Sheikh (**died during trial**), Moniruzzaman(**died during trial**), Sheikh Idris Ali, Ashraf Ali Khan, Akram Ali Khan, Sultan Ali Kha (**died during trial**), n and many other declaring their joining in the Rzakar's Bahini.

636. In relation to the event arraigned P.W.25 testified that on 1st November 1971 at around 10/11 A.M. he and freedom fighter Syed Ali Sheikh being unarmed moved to Gozalia Bazar and then he went into hiding when he saw there Razakars Ajahar Ali Shikder (**died on 17.10.2023**), Moniruzzaman (**died during trial**),, Abdul Ali, Mokched Ali and their 8/10 cohorts. Remaining in hiding he witnessed the group of Razakars heading toward the house of Sreedham Karmakar (husband of Kamala Rani Karmakar). Afterward, Sreedham Karmakar was shot down to death and his wife was taken away to Kachua.

637. P.W.25 further stated that when they came to know that Kamala Rani Karmakar came back home, they went to visit her. Then Kamala Rani Karmakar disclosed that she was kept detained in Kachua Razakar camp and Razakars committed recurrent rape upon her and she got sick and was admitted in hospital. When she felt good in hospital, she managed to flee therefrom. Later she died.

638. In cross-examination P.W.25 denied defence suggestion that he did not know the accused in 1971; that he did not see them; that he did not witness what he stated; that the accused persons were not Razakars; that the accused he named were not

involved with the event arraigned; that being influenced by the opponents he implicated the accused.

639. Kamala Rani Karmakar is the victim of the event arraigned in this count of charge and this charge also arraigns that the gang of perpetrators after accomplishing killing Sreedham Karmakar by gunshot took away his wife Kamala Rani Karmakar to the Kachua Razakar camp. But she could not be examined as she died during trial.

Finding with Reasoning on Evaluation of Evidence

640. **Mr. Rana Das Gupta**, the learned prosecutor drawing attention to the testimony of witnesses submitted that it has been proved that the victim along with other women were kept confined in Kachua Razakar camp where they were subjected to recurrent sexual ravishment. Fact of rescuing other women detainees from the same Razakar camp related to the event arraigned could not be impeached.

641. It has been further submitted that the victim Kamala Rani Karmakar could not be examined before Tribunal as she already died, during trial. But the statement of this victim made to the IO deserves to be received into evidence as permitted under section 19(2) of the Act of 1973. Her statement made to the IO

depicts it patently that she and her husband were systematically attacked by the gang formed of accused Razakars when her husband was shot to death and she was forcibly taken away to the Kachua Razakar camp where she was subjected to recurrent rape in captivity. Based on her narrative made to the IO together with the facts unveiled collectively prove the arraignment.

642. On contrary, **Mr. Gazi M.H. Tamim**, the learned defence counsel argued that it could not be proved that the victim Kamala Rani Karmaker was allegedly rescued along with other women detainees. Taslima (P.W.21, the victim of the event arraigned in charge no.06) does not state the fact of rescuing Kamla Rani Karmakar from the Razakar camp. Testimony of witnesses relied upon are not credible. Alleged forcible capture and killing of Sreedham Karmakar the husband of Kamala Rani Karmakar could not be proved by credible evidence. No case was initiated over the event alleged just after the independence achieved and thus delayed prosecution creates sufficient doubt as to involvement of the accused persons with the alleged event. Therefore, the accused persons thus deserve acquittal of this count of charge.

643. It is pertinent to note that this count of charge arraigns that Kamala Rani Karmakar is the victim of the event arraigned and she was one of other rescued detainees. It reveals from her statement made to the IO.

644. The charge framed arraigns too that her husband Sreedham Karmakar was annihilated by gun shot when the group of Razakars had launched attack at their house and after killing her husband the invaders took her away to Kachua Razakar camp.

645. We got it proved from unimpeached testimony of P.W.21 Taslima (victim of the event arraigned in charge no.06) that in addition to her some other women too were kept confined at Kachua Razakar camp for days together and they were subjected to sexual violence. Naturally, any outsider had no occasion of seeing such criminal misdeeds carried out inside the camp. Naturally, being a co-detainee P.W.21 had fair opportunity of knowing and perceiving such misdeeds carried out at the camp. Defence could not taint it.

646. We chiefly require adjudicating that Kamla Rani Karmakar too was kept detained at the Kachua Razakar camp and she too was subjected to recurrent grave misdeeds and Kamal Rani

Karmakar's husband Sreedham Karmakar was annihilated, in conjunction with the attack conducted.

647. It transpires that P.W.10 is a freedom fighter and he accompanied his co-freedom fighters in accomplishing the mission of rescuing the detained women from Kachua Razakar camp. His testimony demonstrates that they on 16th December 1971 rescued Taslima (victim of the event arraigned in charge no.06) from the Razakar camp and on hearing from her they also rescued three other detained women including Kamala Rani Karmakar detained in another room of the camp.

648. P.W.10 heard from the rescued women that the accused Akram Kha, Ashraf Kha, Sultan Ali Khan (**died during trial**), Idris Sheikh, Idris Molla (**died during trial**), Rafiqul Islam @ Babul, Ukil Sheikh and their accomplice Razakars committed recurrent sexual ravishment upon them. Hearsay testimony of P.W.10 implicates seven (7) accused. Of them two accused Idris Ali Molla and Sultan Ali Khan died during trial.

649. The above core essence of version made by P.W.10 seems to be consistent to what has been stated by his co-freedom-fighter P.W.16. His testimony too depicts that other women detained in another room of the Razakar camp were rescued and

they disclosed the beastly misdeeds committed upon them by Razakars. At the time of rescuing them broken bangle and blood-stained clothes were found in that room. Defence could not refute it.

650. The fact of rescuing Kamala Rani Karmakar from the Kachua Razakar camp along with other detained women as testified by the P.W.10 seems to have been suffered from exaggeration. P.W.21 has not stated the fact of rescuing Kamala Rani Karmakar along with other detained women. Also the statement of Kamala Rani Karmakar made to the IO does not state it.

651. Tribunal notes that in a case involving horrific crimes happened long decades back it may be seen that a witness mixes a certain amount of exaggeration in testimony he made even when he makes a correct account to substantiate the arraignment. Part of such admixture of exaggeration may be the upshot of inadvertence and may be the very natural vagaries of observation and memory. Perceptibly it does not affect the credibility of a witness.

652. Therefore, merely for the reason of such exaggeration it cannot be deduced that committing sexual violence upon

Kamala Rani Karmakar and other women keeping them detained in captivity at Kachua Razakar camp is untrue. There is nothing incredible or incongruous about the account of freedom fighters so far as it relates to the act of unlawful confinement of Kamala Rani Karmakar at the Razakar camp for days together when she was subjected to recurrent rape. Statement of the victim Kamla Rani Karmakar made to the IO patently states it.

653. It is to be noted that the victim Kamala Rani Karmakar is the key witness, but she could not be examined in Tribunal as she died during trial. Prosecution by filing an application under section 19(2) of the Act of 1973 has prayed to receive her statement [which finds place in serial no.48 of the volume of statement of witnesses] made to the IO into evidence.

654. Sub-section (2) of section 19 of the ICT Act of 1973 embodies that: “(2) A Tribunal may receive in evidence any statement recorded by a Magistrate or an Investigation Officer being a statement made by any person who, at the time of the trial, is dead or whose attendance cannot be procured without an amount of delay or expense which the Tribunal considers unreasonable.”

655. In view of provision contemplated in Sub-Section (2) of section 19 of the ICT Act of 1973 it appears that statement recorded by the Investigating Officers of a person who at the time of trial is dead may be received in evidence. Tribunal thus ordered in affirmative in response to the prayer sought in this regard on part of prosecution and accordingly statement of Kamla Rani Karmakar made to the IO has been received into evidence.

656. Let us have a look to the statement of victim Kamla Rani Karmakar made to the IO which has been received into evidence as permitted under section 19(2) of the Act of 1973. It depicts from her statement that in the first part of November in 1971 a group formed of Razakars Md. Moniruzzaman Howlader (**died during trial**), Hashem Ali Sheikh (**died during trial**), Ajahar Ali Sikder (**died on 17.10.2023**), Mokbul Molla, Abdul Ali (now dead) and their 8/10 cohort Razakars by launching attack at their house started beating her husband Sreedham Karmakar on forcible capture and looting household and then gunned down her husband Sreedham Karmakar to death and took her away to Kachua Razakar camp where she found three other women detained and Razakars committed recurrent rape upon her and those three detained women and they continued

committing such grave misdeed for one month. As a result, she became sick and thus Razakars made her admitted in Kachua hospital wherefrom at a stage, she managed to flee and came back home. During her captivity at the camp she heard the name of Razakars she named.

657. We do not find any reason of disbelieving what has been stated by the victim Kamala Rani Karmakar to the IO. On going through the statement of Kamala Rani Karmakar made to IO it appears that she was subjected to recurrent rape in captivity at Kachua Razakar camp and eventually managed to flee from hospital where she was taken to undergo medical treatment as she became sick. But it does not seem that she was rescued by the freedom-fighters.

658. It depicts from the statement of Kamla Rani Karmakar made to the IO that in the first part of November in 1971 a group formed of Razakars Moniruzzaman, **(died during trial)** Hashem Ali Sheikh **(died during trial)**, Ajahar Ali Sikder **(died on 17.10.2023)**, Mokbul Molla, Abdul Ali (now dead) and their 8/10 cohort Razakars launched an attack at their house. It gets corroboration from ocular narrative of P.W.25.

659. P.W.25 is a direct witness to the fact related to the first phase of the event of attack conducted at the house of Sreedham Karmaker (husband of Kamala Rani Karmaker). Testimony of P.W.25 demonstrates that at the relevant time he (P.W.25) remaining in hiding saw the Razakars Ajahar Ali Shikder (**died on 17.10.2023**), Moniruzzaman (**died during trial**), Abdul Ali, Mokched Ali and their 8/10 cohorts launching attack. He witnessed the group of Razakars heading toward the house of Sreedham Karmakar (husband of Kamala Rani Karmaker). Afterward, Sreedham Karmakar was shot down to death and his wife (Kamal Rani Karmaker) was taken away to Kachua.

660. The above pertinent ocular version of P.W.25, a direct witness to the first phase of the attack could not be impeached. Rather, it gets explicit corroboration from the statement of victim Kamla Rani Karmakar made to the IO. It has been divulged from the ocular narrative of P.W.25 that he saw and recognised accused Ajahar Ali Shikder (**died on 17.10.2023**), Md. Moniruzzaman Howlader (**died during trial**), Abdul Ali (already died) and Mokched Ali (already died) accompanying the gang when it carried out the attack. However, it stands proved that the systematic attack resulted in killing Sreedham Karmaker, taking away his wife Kamala Rani Karmakar,

confining her at Kachua Razakar camp and committing sexual ravishment upon her.

661. This count of charge arraigns killing of a single unarmed civilian. Merely for this reason it cannot be said that the said murder does not constitute the offence of crime against humanity. The atrocities were carried out in context of war of liberation. The killing was not an isolated one. It was accomplished by launching systematic attack. The killing of Kamala Rani Karmakar's husband has not been questioned.

662. Therefore, it is not required to show killing of numerous civilians to constitute the offence of murder as crime against humanity. Tribunal reiterates that killing even of a single civilian on discriminatory grounds occurred in such context 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, ICTR Trial Chamber, December 13, 2006, para. 357:

663. Statement of Kamala Rani Karmakar and the testimony of P.W.10, P.W.16 and P.W.25 cumulatively demonstrates that in addition to Taslima (P.W.21) some three other including Kamala Rani Karmakar were kept unlawfully confined at Kachua Razakar camp for long one month when they were subjected to recurrent sexual ravishment.

664. Rape committed in war time situation causes a grave trauma to victim which never erases. Such devilish act was rather more than a ' bullet. The curse of devilish act of rape indisputably devastated the victim and her family and community as well. Indubitably Kamla Rani Karmakar the victim of grave sexual violence indeed suffered unspeakable mental blight till she died. The wounds the victim sustained left enduring scar even on the nation and the humanity too.

665. Presumably, when Kamala Rani Karmakar was made admitted in Kachua hospital she might not have opportunity of seeing or knowing the fate of two other detained women and that is why she did not state anything to the IO as to rescuing those two other detained women.

666. In respect of involvement and complicity of accused persons with the act of grave horrific misdeeds to the detained women at the Razakar camp P.W.10 is a hearsay witness. He testified how and when they the freedom fighters rescued detained women from Razakar camp. In narrating it P.W.10 stated that he heard from the women rescued that accused Razakars Akram Kha, Ashraf Kha, Sultan Ali Khan (**died during trial**), Idris Sheikh, Idris Molla (**died during trial**), Rafiqul Islam @ Babul, Ukil Sheikh committed grave misdeed upon them.

667. Defence could not refute the above piece of pertinent hearsay testimony. Hearsay evidence of P.W.10 is admissible and it carries probative value and credence. Presumably, P.W.10 heard it from the rescued women other than Taslima who were kept unlawfully confined in a different room of the camp.

668. It is now well settled that the accused may not have direct responsibility for the offence of murder or ill treatment or other crimes committed, but the prosecution is to prove that he was 'concerned' to the scheme or system which had a criminal outcome. In this regard it has been observed by the ICTY in the case of Tadic that--

“Actual physical presence when the crime is committed is not necessary . . . an accused can be considered to have participated in the commission of a crime . . . if he is found to be ‘concerned with the killing.’”

[Tadic, ICTY Trial Chamber, May 7, 1997, para. 691]

669. We have got it proved that the accused persons deliberately accompanied the gang in effecting forcible capture of the victim, by launching attack. Thus, act of culpable presence at the site attacked by accompanying the criminal gang forming part of attack indubitably had a ‘causal connection’ even with the act of sexual ravishment upon the detained victim, the ending phase of the attack, we deduce it justifiably.

670. It is to be noted that section 4(1) of the Act of 1973 refers to the doctrine JCE.[Basic Form]. Fundamentally the JCE requires that a group of individuals had a common plan, design, or purpose to commit a crime, that the accused participated in some way in the plan and that the accused intended the accomplishment of common plan or purpose.

671. In the case in hand in adjudication this count of charge it has been divulged that the accused persons’ culpable conduct

and acts and their nexus with the Kachua Razakar camp collectively lead to infer that they were consciously 'concerned' with the criminal acts happened in phases. It is thus sufficient indicative as to the fact that they were active part of the 'common plan and design' in furtherance of which the crimes arraigned were committed.

672. In light of collective evaluation of testimony of P.W.10 , P.W.16 and P.W.25 and statement of victim Kamala Rani Karmakar made to the IO we got it proved that accused (1) Md. Moniruzzaman Howlader (**died during trial**), (2) Ajahar Ali Sikder (**died on 17.10.2023**), (3) Mokbul Molla, 4) Akram Kha, (5) Ashraf Kha, (6) Sultan Ali Khan (**died during trial**) , (7) Idris Sheikh, (8) Rafiqul Islam @ Babul and (9) Sheikh Md. Ukiluddin in exercise of their affiliation with Razakar Bahini and its camp were consciously aided, participated and facilitated the crimes arraigned and thus they incurred liability. Prosecution has been able to prove it. However, of these nine accused two accused Sultan Ali Khan and Md. Maniruzzaman Howlader died during trial and one accused Ajahar Ali Sikder **died on 17.10.2023, i.e.** after closure of summing up.

673. Therefore, on totality of evidence and facts unveiled eventually we deduce that prosecution has been able to prove beyond reasonable doubt that the accused (1) Mokbul Molla, (2) Khan Akram Hossain (3) Khan Ashraf Ali (4) Sheikh Idris Ali, (5) Rafiqul Islam @ Babul and (6) Sheikh Md. Ukiluddin by their culpable act and conduct aided, abetted and participated in committing the criminal acts of **‘abduction’**, **‘confinement’**, **‘rape’** and **‘murder’** constituting the offences of crimes against humanity’ as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973.

XI. Conclusion

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

675. In the case in hand, the evidence led by the prosecution depicts that the accused persons are found to have had physically accompanied the group of perpetrators in conducting

the systematic attacks arraigned. They are also found to have had participated, abetted and substantially contributed, by their culpable act and conduct, to the commission of the crimes proved (**as arraigned in charges**) in exercise of their notorious alliance with locally formed auxiliary force, Razakar Bahini.

676. Based on evidence and facts unveiled chained to the events arraigned we have already arrived at the reasoned conclusion that all the seven (07) accused were ‘concerned’ as participants and had also abetted, facilitated and substantially contributed to the commission of the offences as arraigned in **charge nos. 4 and 5**.

677. On integrated evaluation of evidence tendered it stands proved that in respect of **charge nos. 1 and 3** six (6) accused indicted are found guilty for the crimes of ‘genocide’ and crimes against humanity’ respectively as arraigned in these two counts of charges.

678. It also stands proved that one (1) accused indicted in **charge no.2** are found accountable for the horrendous crimes against humanity. **Charge nos. 6 and 7** involves the offences of murder, rape and confinement. One (1) accused indicted in

charge no.6 is found criminally responsible for the horrendous crimes arraigned in charge no.6 while six (6) accused indicted in charge no.7 have been found guilty for the crimes arraigned.

679. One accused is found criminally liable for committing the offences of 'abduction', 'confinement' and 'murder' of non combatant civilians constituting the offences as crimes against humanity as arraigned in **charge no.2.**

680. Tribunal on cumulative evaluation of evidence presented arrived at decision that the accused persons in exercise of their culpable affiliation with locally formed Razakar Bahini had opted to conduct designed and systematic attacks directing civilian population leading to horrendous crimes. Obviously they had committed such prohibited activities in gross violation of recognized human rights and Geneva Convention to further policy and plan of Pakistani occupation army.

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

682. In adjudicating each count of charge we have recorded our reasoned finding that the accused persons incurred liability for the diabolical crimes proved. Accordingly, they are held criminally responsible under section 4(1) of the Act of 1973 and also under the doctrine of JCE- Form-I for the commission of crimes arraigned in the charges.

XII. VERDICT ON CONVICTION

683. Tribunal notes that proving the guilt or criminal liability of the accused persons indicted squarely lies upon the prosecution. In the case in hand, in proving seven (7) counts of charges brought against the accused persons, this settled standard has been found to be reasonably met as the accused persons indicted are found to have incurred liability for the dreadful crimes including killing of numerous defenceless civilians, sexual ravishment and dreadful devastation committed in 1971 during the war of liberation which have been proved beyond reasonable doubt.

684. Having meticulous and judicial appraisal of all the evidences presented before us and argument advanced by both sides and based upon settled and evolved jurisprudence, the Tribunal [ICT-BD-1] **UNANIMOUSLY** finds the accused-

Six (6) accused (1) Khan Ashraf Ali [absconding], (2) Khan Akram Hossain,(3) Rustom Ali Mollah [absconding], (4) Sheikh Md. Ukil Uddin, (5) Sheikh Idris Ali [absconding], (6) Sheikh Rafiqul Islam alias Babul [absconding],

[Charge No.1]: GUILTY of the offence of abetting, facilitating and contributing the actual commission of offence of **'genocide'** as enumerated in section 3(2)(c)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

One (1) accused (1) Md. Mokbul Mollah

[Charge No.2]: GUILTY of the offence of abetting, facilitating and contributing the actual commission of offences of **'abduction', 'confinement'** and **'murder'** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus he incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Six (6) accused (1) Khan Ashraf Ali [absconding], (2) Khan Akram Hossain (3) Rustom Ali Mollah [absconding], (4) Sheikh Md. Ukil Uddin, (5) Sheikh Idris Ali [absconding], and (6) Sheikh Rafiqul Babul Islam alias Babul [absconding],

[Charge No.3]: GUILTY of the offences of abetting, facilitating and contributing the actual commission of offences of **'confinement', 'torture'**

and ‘murder’ as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Seven (07) accused (1) Khan Akram Hossain, (2) Sheikh Md. Ukiluddin, (3) Md. Mokbul Mollah (4) Khan Ashraf Ali [absconding], (5) Rustom Ali Mollah [absconding], (6) Sheikh Idris Ali [absconding] and (7) Sheikh Rafiqul Islam alias Babul [absconding]

[Charge No.4]: GUILTY of the offence of abetting, facilitating and contributing the actual commission of offences of **abduction’, ‘torture’ and ‘murder’** as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Seven (07) accused (1) Khan Akram Hossain, (2) Sheikh Md. Ukiluddin, (3) Md. Mokbul Mollah (4) Khan Ashraf Ali [absconding], (5) Rustom Ali Mollah [absconding], (6) Sheikh Idris Ali [absconding] and (7) Sheikh Rafiqul Islam alias Babul [absconding]

[Charge No.5]: GUILTY of the offence of abetting, facilitating and contributing the actual commission of offences of **‘confinement’, ‘abduction’, ‘torture’, ‘other inhumane act’ and ‘murder’** as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes

(Tribunals) Act,1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

One (01) accused (1) Md. Mokbul Mollah

[Charge No.6]: GUILTY of the offence of abetting, facilitating and contributing the actual commission of offences of **‘confinement’**, **‘abduction’**, **‘torture’** , **‘rape’** and **‘murder’** as **crimes against humanity** as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act,1973 and thus he incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Six (06) accused (1) Md. Mokbul Mollah (2) Khan Akram Hossain (3) Khan Ashraf Ali [absconding] (4) Sheikh Idris Ali [absconding], (5) Rafiqul Islam @ Babul [absconding] and (6) Sheikh Md. Ukiluddin

[Charge No.7]: GUILTY of the offence of abetting, facilitating and contributing the actual commission of offences of **‘abduction’**, **‘confinement’** , **‘rape’** and **‘murder’** constituting the offences of crimes against humanity’ as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

XIII. VERDICT ON SENTENCE

685. **Mr. Rana Das Gupta**, the learned Prosecutor finally submitted that accused persons who are found criminally liable for the crimes arraigned should face the highest sentence, being a sentence of death, as they are proved to have had consciously abetted, substantially facilitated and participated to the commission of horrific criminal acts constituting the offences of causing brutal torture, mass rape, abduction, confinement and killing of numerous pro-liberation non-combatant civilians by launching systematic and designed deliberate attack, intending to further policy of the Pakistani occupation army.

686. The learned prosecutor also submitted that horrific pattern of killing of pro-liberation non combatant civilians and committing rape upon women keeping them in protracted captivity at Kachua Razakar camp deserves to be considered as ‘aggravating factor’ in awarding the highest sentence which will be appropriate. Only the highest sentence would be just and appropriate to punish those crimes causing incalculable torment to the victims, particularly the victims of mass rape that justifiably corresponds to their overall magnitude.

687. But no submission on sentencing matter drawing any mitigating factor, if any has been advanced on part of defence. Conversely, the learned defence counsel **Mr. Gazi M.H. Tamim** however simply submitted that prosecution failed to prove complicity and participation of accused persons with the commission of alleged offences and thus they deserve to be acquitted.

688. It is now well settled that consideration of the gravity of the conduct of the accused who are found guilty is normally the starting point for consideration of an appropriate sentence. Considering the intrinsic enormity of crimes they cannot evade the appropriate punishment for the crimes proved.

689. We reiterate that ‘no innocent person shall be convicted, let hundreds guilty be acquitted’—the principle has been changed in the present time. In this regard it has been observed by the Indian Supreme Court that--

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

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

690. In awarding sentence The Tribunal, must eye on the nature and extent of the offences committed, their scale, the role the convicted accused had played and mode of their participation to the perpetration of the horrendous crimes proved. At the same time the trauma and harm sustained by the victims and their families also significantly act in assessing the gravity of offences.

691. We emphatically reiterate that letters of law does not consider the level of the offender, in awarding sentence. It considers the level and gravity of the offence for committing which the offender is found guilty. In the case in hand, the offences proved were of gravest nature indeed that shake human conscience, the humanity and civilization. Victims and their dear ones have been still carrying the untold trauma and any degree of punishment to the accused persons who are found guilty may not even reduce their unspeakable pains.

692. However, in the case in hand, it has been proved that after effecting killing of dear ones the women were kept unlawfully confined for long one month at Kachua Razakar camp where

they were subjected to recurrent sexual ravishment [**as listed in charge nos. 6 and 7**].

693. We are of the view that war time rape upon women can be seen as raping the body of the whole community. The perpetrators' intention was to do severe wrong with their entire community, by committing such grave beastly misdeed upon them. The role the accused persons had played for committing these crimes was indeed an aggravating factor.

694. The war time rape victims are our great mothers and sisters. We cannot shut our eyes any more. The nation, the society must come forward to recognise and salute their sacrifices, to heal their wound, to compensate the barbaric wrongs done to them. Kamala Rani Karmakar, the victim of the event arraigned in **charge no.07** died during trial. However, she deserves posthumous honour that may reduce the pains and trauma of relatives and the community sustained.

695. The way the accused participated and facilitated the commission of the act of brutal killing of non-combatant civilians [**as listed in other charges**] inevitably aggravates liability of the convicted accused persons. The brutal acts the

accused had played in accomplishing the killings are detrimental to the notion of humanity.

696. The mode and degree of the participation of the convicted accused persons, as already found proved in committing the diabolical crimes, aggravates their culpability. It has been proved that convicted accused persons being active and willing part of the criminal enterprise participated in perpetrating the massive criminal operations directing civilian population. We consider it expedient to take all these factors into account too for weighing the aggravating circumstances.

697. The criminal acts constituting the offences of ‘crimes against humanity’ are currently considered to be particularly odious offences because they constitute a serious attack on human dignity or a grave humiliation of human beings, in gross violation of human rights and international humanitarian law.

698. Tribunal reiterates that the sentence to be awarded in a case involving the offences of severe nature as enumerated in the Act of 1973 must be proportionate to the gravity of the crimes proved. It has been echoed in the observation of the **Appellate Division of the Supreme Court of Bangladesh** in the case of **Motiur Rahman Nizami** 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." [**Criminal Appeal No. 143 of 2014, Judgment: 06 January 2016, Page 152**]

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

700. In respect of awarding sentence the **Appellate Division of Supreme Court of Bangladesh** has observed in the case of **A.T.M Azharul Islam** that—

“It is the duty of the Courts/Tribunals to award sentence commensurate with the gravity of the crimes. Imposition of lesser sentence causes injustice not only to the victims of crime but also to the whole society.....”

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

701. In view of reasoned deliberation as made above and considering the gravity of the offences, mode of participation of convicted accused persons in committing the offences proved and also keeping the factors as focused above into account we are of the **UNANIMOUS** view that justice would be met if the convicted accused (1) Khan Ashraf Ali [absconding] (2) Khan Akram Hossain (3) Rustam Ali Mollah [absconding] (4) Sheikh Md. Ukiluddin (5) Sheikh Idris Ali [absconding] (6) Sheikh Rafiqul Islam alias Babul [absconding] and (7) Md. Mokbul Mollah who have been found guilty beyond reasonable doubt for the horrendous crimes with which they have been charged are condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

**Hence, it is
ORDERED**

That all the Seven (07) accused –

(1) Khan Ashraf Ali [Absconding], son of late Moktar Ali Khan and late Shamsunnahar Begum of village-Teligati under police station-Morrelganj of District-Bagerhat,

(2) Khan Akram Hossain [younger brother of accused Khan Ashraf Ali], son of late Moktar Ali Khan and late Shamsunnahar Begum of village- Teligati under police station-Morrelganj of District-Bagerhat,

(3) Rustam Ali Mollah [Absconding], son of late Gafur Mollah and Jarina Begum of village-Josordi under police station-Kachua of District Bagerhat,

(4) Sheikh Md. Ukiluddin, son of late Sheikh Moslemuddin and Chufiya Begum of village-Chapri under police station-Morrelganj District- Bagerhat,

(5) Sheikh Idris Ali [Absconding], son of late Sheikh Afsar Ali and Fatema Begum of village-Josordi under police station-Kachua of District Bagerhat,

(6) Sheikh Rafiqul Islam alias Babul [Absconding], son of late Sheikh Showkat Ali and Jobeda Begum of village-Sannyasi under police station-Rampal of District Bagerhat,

AND

(7) Md. Mokbul Mollah , son of late Md. Safdar Mollah and Mosammat Chhutu Bibi of village-Udankhali under police station-Kachua of District Bagerhat, as have been convicted, they are sentenced as below:

Six (6) accused (1) Khan Ashraf Ali [absconding] (2) Khan Akram Hossain (3) Rustom Ali Mollah[absconding] (4) Sheikh Md. Ukil Uddin, (5) Sheikh Idris Ali [absconding] and (6) Sheikh Rafiqul Islam alias Babul[absconding]--

are found UNANIMOUSLY guilty of the offence of **‘genocide’** as enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 as arraigned

in **CHARGE NO. 1 [01charge]**. Accordingly, they the six accused be **UNANIMOUSLY** convicted and condemned to the **sentence as below for this charge**, under section 20(2) of the Act of 1973:

‘Sentence of death’ under section 20(2) of the International Crimes (Tribunals) Act, 1973 for the crimes as listed in **CHARGE NO. 1** and they be hanged by the neck till they are dead.

One (01) accused Md. Mokbul Mollah-

is found **UNANIMOUSLY guilty** of the offences of **abduction’**, **‘confinement’** and **‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 as arraigned in **CHARGE NO.2 [01charge]**. Accordingly, he the one accused be **UNANIMOUSLY** convicted and condemned to the **sentence as below for this charge**, under section 20(2) of the Act of 1973:

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

Six (6) accused (1) Khan Ashraf Ali [absconding], (2) Khan Akram Hossain (3) Rustom Ali Mollah [absconding], (4)

Sheikh Md. Ukil Uddin, (5) Sheikh Idris Ali [absconding], and (6) Sheikh Rafiqul Islam alias Babul [absconding]---

are found UNANIMOUSLY guilty of the offences of ‘**confinement**’, ‘**torture**’ and ‘**murder**’ as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as arraigned in **CHARGE NO. 3 [01charge]**. Accordingly, they the six (6) accused be **UNANIMOUSLY** convicted and condemned to the **sentence as below for this charge**, under section 20(2) of the Act of 1973:

‘**Sentence of death**’ under section 20(2) of the International Crimes (Tribunals) Act, 1973 for the crimes as listed in **CHARGE NO.3** and they be hanged by the neck till they are dead.

Seven (07) accused (1) Khan Ashraf Ali [absconding] (2) Khan Akram Hossain (3) Rustom Ali Mollah [absconding] (4) Sheikh Md. Ukil Uddin, (5) Sheikh Idris Ali [absconding] (6) Sheikh Rafiqul Islam alias Babul [absconding] and (7) Md. Mokbul Mollah--

are found UNANIMOUSLY guilty of the offences of ‘**abduction**’, ‘**torture**’ and ‘**murder**’, as ‘**crimes against humanity**’ enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 as arraigned in **CHARGE NOS. 4 and 5 [02charges]**. Accordingly, they [seven accused] be **UNANIMOUSLY** convicted and condemned

to the **sentence as below for these two charges**, under section 20(2) of the Act of 1973:

‘Sentence of death’ under section 20(2) of the International Crimes (Tribunals) Act, 1973 for the crimes as listed in **CHARGE NO. 4** and they be hanged by the neck till they are dead

AND

‘Sentence of death’ under section 20(2) of the International Crimes (Tribunals) Act, 1973 for the crimes as listed in **CHARGE NO. 5** and they be hanged by the neck till they are dead.

One (01) accused Md. Mokbul Mollah

is found **UNANIMOUSLY guilty** of the offences of **‘confinement’, ‘abduction’, ‘torture’ , ‘rape’ and ‘murder’** as **crimes against humanity** as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as arraigned in **CHARGE NO. 6 [01charge]**. Accordingly, he the one accused be **UNANIMOUSLY** convicted and condemned to the **sentence as below for this charge**, under section 20(2) of the Act of 1973:

‘Sentence of death’ under section 20(2) of the International Crimes (Tribunals)

Act, 1973 for the crimes as listed in **CHARGE NO.6** and he be hanged by the neck till he is dead

AND

Six (6) accused (1) Md. Mokbul Mollah (2) Khan Akram Hossain (3) Khan Ashraf Ali [absconding] (4) Sheikh Idris Ali [absconding] (5) Rafiqul Islam @ Babul [absconding] and (6) Sheikh Md. Ukiluddin—

are found UNANIMOUSLY guilty of the offences of ‘abduction’, ‘confinement’ , ‘rape’ and ‘murder’ as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973, as arraigned in **CHARGE NO.7 [01charge]**. Accordingly, they the six (6) accused be **UNANIMOUSLY** convicted and condemned to the **sentence as below for this charge**, under section 20(2) of the Act of 1973:

‘Sentence of death’ under section 20(2) of the International Crimes (Tribunals) Act, 1973 for the crimes as listed in **CHARGE NO.7** and they be hanged by the neck till they are dead

The ‘**sentences of death**’ as awarded above, in respect of all the seven counts of charges will get merged.

The sentence awarded shall commence from the date of this judgment as required under Rule 46(2) of the Rules of Procedure, 2010 (ROP) of the Tribunal-1[ICT-1].

Let the three (03) convicted accused (1) **Khan Akram Hossain**, (2) **Sheikh Md. Ukiluddin** and (3) **Md. Mokbul Mollah** present on dock be sent to prison together with the conviction warrant and a copy of this judgment. Let **conviction warrant** be issued accordingly.

Since four (4) convicted accused (1) **Khan Ashraf Ali** (2) **Rustam Ali Mollah** (3) **Sheikh Idris Ali** and (4) **Sheikh Rafiqul Islam alias Babul** have been absconding the ‘**sentence of death**’ as awarded above to them shall commence from the date of their arrest or surrender as required under Rule 46(2) of the Rules of Procedure, 2010 (ROP) of the Tribunal-1.

The ‘**sentence of death**’ as awarded 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.

Let a copy of the Judgment be transmitted together with the conviction warrant in respect of above four (4) absconding convicted accused to (1) the Senior Secretary, Ministry of Home Affairs and (2) the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka for information and necessary action and compliance and to initiate effective and appropriate measure for ensuring arrest of these four convicted absconding accused.

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

Let certified copy of the judgment be furnished to the prosecution and also to the three (3) convicted accused persons who are present in Tribunal, free of cost.

The three (3) convicted accused (1) **Khan Akram Hossain** (2) **Sheikh Md. Ukiluddin** and (3) **Md. Mokbul Mollah** present in Tribunal (as have been brought from prison) shall have right to prefer appeal to the Appellate Division of the Supreme Court of Bangladesh within 30 (thirty) days from the date of conviction and sentence awarded, as permitted in section 21(1)(2) of the Act of 1973.

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

Justice Md. Shahinur Islam, Chairman

Justice Md. Abu Ahmed Jamadar, Member

Justice K.M. Hafizul Alam, Member