

International Crimes Tribunal-1
Old High Court Building, Dhaka, Bangladesh.
ICT-BD [ICT-1] Case No.06 of 2017

Present:

Justice Md. Shahinur Islam, Chairman
Justice Amir Hossain, Member
Justice Md. Abu Ahmed Jamadar, Member

Chief Prosecutor

Vs.

(1) Md. Khalilur Rahman Mir @ Khalilur Rahman (2) Md. Shamsuzzaman (Kalam) (3) Md. Abdullah (4) Md. Rois Uddin Azadi @ Akkel Ali (5) Md. Abdul Latif , (6) A.F.M Faizulla @ Abul Fallah @ Faizulla [**absconding**] (7) Md. Abdur Razzak Mondol[**absconding**] (8) Sirajul Islam @ Tota Mondol [**absconding**] and (9) Md. Alim Uddin Khan [**absconding**]

For the prosecution:

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Zead Al Malum, Prosecutor

Mr. Hrishikesh Saha, Prosecutor

Mr. Mukhlesur Rahman Badal, Prosecutor

Mr. Md. Shahidur Rahman, Prosecutor

Mr. Abul Kalam, Prosecutor

Mr. Md. Zahid Imam, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

Ms. Rezia Sultana Begum, Prosecutor

For the Defence:

Mr. Abdus Shukur Khan, Advocate: For accused (1) Md. Khalilur Rahman Mir @ Khalilur Rahman

Mr. Abdus Shukur Khan, State defence Counsel: For four (04) absconding accused (2) A.F.M Faizulla @ Abul Fallah @ Faizulla (3) Md. Abdur Razzak Mondol (4) Sirajul Islam @ Tota Mondol (5) Md. Alim Uddin Khan.

Mr. Abdus Sattar Palwan, Advocate: For four (04) accused (6) Md. Shamsuzzaman (Kalam) (7) Md. Abdullah and (8) Md. Rois Uddin Azadi @ Akkel Ali and (9) Md. Abdul Latif.

(After correcting the clerical errors relating to serial nos. of accused: corrected vide order no.33 dated 08.03.2021)

Date of Delivery of Judgment: 11 February, 2021

JUDGMENT

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

I. Introductory Words

1. The case in which we are going to render our verdict today involves as many as 04 charges arraigning the accused persons for abetting, facilitating, participating and contributing the commission of offences of crimes against humanity as enumerated in The International Crimes (Tribunals) Act, 1973. Out of 11 accused one accused Nurul Amin Shahjahan @ Shahjahan died after commencement of trial, on framing charges and thus proceeding so far as it related to him stood abated. Another accused Md. Abdul Malek Akanda @ Abul Hossain @ Abul Member died too on

07.06.2019 and thus proceedings so far as it related to him stood abated by an order dated 03.07.2019. Thus, the trial eventually ended against 09 accused of whom 05 have been in prison and the rest 04 accused remained absconded.

2. On closure of summing up of cases on part of both sides, the Tribunal sent the 06 accused to prison with direction to produce them on the date to be fixed for pronouncement of verdict. On closure of summing up on 26.01.2020 long one year has been elapsed and the Tribunal could not function normally due to situation amid Covid-19 pandemic. Pursuant to issuance of production warrant on 09.02.2021 the prison authority has produced the five (05) accused today before this Tribunal [ICT-1].

3. In course of trial, both the prosecution and the defence provided highest assistance to go with the proceeding in accordance with law. We endorse the stamp of our appreciation to their worthy performance and assistance.

4. The charges framed against the accused persons relate to the events allegedly committed around the localities under the Police Station-Gafargaon [now Pagla] of District-Mymensingh. The atrocities were allegedly perpetrated in 1971, during the war of liberation, directing the civilian population, aiming to terrorize and wipe out the pro-liberation Bengali civilians, in furtherance of policy and plan of the Pakistani occupation army.

5. Now, today this Judgment is being rendered by this Tribunal [ICT-1] for the prosecution of persons allegedly responsible for the serious offences as enumerated in the International Crimes (Tribunals) Act, 1973 committed in violation of international humanitarian law in the territory of Bangladesh in 1971. Having jurisdiction under section 10(1) (j), section 20(1) and section 20(2) of the International Crimes (Tribunals) Act, 1973[Act No. XIX of 1973] this ‘Tribunal’ known as International Crimes Tribunal-1 [ICT-1] hereby renders and pronounces the following unanimous judgment.

II. Formation and Jurisdiction of the Tribunal

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

7. The Act No. XIX enacted in 1973 which is meant to prosecute, try and punish the offences of crimes against humanity, genocide and system crimes committed in 1971 in violation of customary international law is *ex-post facto* legislation. It is fairly permitted. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally to be provided to the person accused of crimes against humanity.

8. We reiterate that the Act of 1973 has been enacted to prosecute, try and punish not only the ‘armed forces’ but also the perpetrators who belonged to ‘auxiliary forces’, or who committed the offences as an ‘individual’ or a ‘group of individuals’ or ‘organization’. It is manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be brought to justice under the Act.

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

III. Brief Historical Background

10. In August, 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone of Pakistan was named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

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

12. The history goes on to depict that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. But defying the democratic norms Pakistan Government did not care to respect this overwhelming majority. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7th March, 1971, called on the Bangalee nation to struggle for independence if people’s verdict is not respected. In the early hour of 26th March, 1971 following the onslaught of **“Operation Search Light”** by the Pakistani Military on 25th March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

13. In the War of Liberation that ensued, all people of the then East Pakistan unreservedly supported and participated in the call to free

Bangladesh but a small number of Bangalee, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League joined and/or collaborated with the Pakistani occupation army to aggressively resist the conception of independent Bangladesh and most of them started committing and facilitating as well the perpetration of dreadful atrocities directing civilian population in the territory of Bangladesh, in 1971. This is now a settled history of which this Tribunal takes judicial notice as permitted by the Act of 1973 and the ROP.

14. The Pakistani occupation army's appalling brutality directing civilian population of Bangladesh was designed and planned in furtherance of policy-- the policy to wipe out the pro-liberation Bengali civilians. It is now well settled history. The atrocities for which the accused persons stood trial were not isolated from the policy and plan of the Pakistani occupation army who started its 'mayhem' since 25 March 1971 which was calculated to stamp out the pro-liberation Bengali civilians. Millions of brave sons and daughters laid their lives, during the war of liberation for the cause of long cherished independence and self determination.

15. But enormously grave and recurrent horrific atrocities directing the Bengali civilians in the territory of Bangladesh starting since 25

March 1971 did not thrive to foil the highest sacrifice of the nation. The nation always pays tribute and homage to the blood of millions of patriotic martyrs and innocent people and mothers and daughters who sacrificed their supreme honour.

16. It is now an undisputed history that the local collaborators actively and knowingly 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. This settled history needs no further document to prove.

17. The history says that the Pakistani army had no friends in Bangladesh—except a few traitors who took extreme culpable stance against the war of liberation and they belonged to the ideology of pro-Pakistan political parties, e.g. Muslim League, the Convention Muslim League, the Jamaat-E-Islami [JEI] and the Nizami-E-Islami. The people belonging to these pro-Pakistan political parties enthusiastically assisted and facilitated to further the policy and plan of the Pakistani occupation army by forming Razakar Bahini, Al-Badar Bahini, the *Para militia* forces.

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

“During the liberation war in Bangladesh, there were about eighty thousand Pakistani soldiers, twenty five thousand militia, twenty five thousand civilian forces, and fifty thousand Razakars, Al-Badr, and Al-Shams members. ”

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

19. But countless atrocious resistance on part of thousands of local collaborators, particularly belonging to Razakar Bahini could not impede the nation’s valiant journey to freedom. Undeniably the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle and immense sacrifices.

IV. Brief account of the Accused

20. Before we render our decision on adjudicating charges framed based on evidence tendered let us have a look what has been stated in the formal charge about the identity and status the accused persons had in 1971. The following are the brief account of the nine (09) accused persons that will essentially portray the ideology, status and mindset they had in 1971 during the war of liberation:

(i) Md. Khalilur Rahman Mir @ Khalilur Rahman

Accused Md. Khalilur Rahman Mir @ Khalilur Rahman [62], son of late- Nazmul Haque Mir alias Nazim Uddin alias Nesa Mondol and late-Aklima Khatun of Village-Sadhua, Police Station-Pagla (former Gafargaon), District- Mymensingh was born on 10.08.1955 (according to his National Identity Card). He studied up to class V. In the Provincial council election in 1970, he used to campaign in favour of nominated candidate of Jamaat-E-Islami. In 1971 during the liberation war, he joined in the Razakar Bahini and his name finds in serial No.317 in the list of Niguari Union, Razakar Bahini. He actively participated in committing heinous crimes directing civilian population, in 1971, prosecution alleges.

(ii)Md.Samsuzzaman (Kalam) @ Abul Kalam

Accused Md. Samsuzzaman (Kalam) @ Abul Kalam (65), son of late Alhaj Abul Kashem and Most. Ashrafun Nesa of Village- Sadhua, Police Station- Pagla (former Gafargaon), District- Mymensingh; at present- village- Ramasshorpur, Police Station- Atgharia, District- Pabna was born on 05.03.1952 (according to his National Identity Card).He passed S.S.C in 1968 from Hossainpur High School. In the Provincial council election in 1970, he used to campaign in favour of nominated candidate of Jamaat-E-Islami. In 1971 during the liberation war, accused Md. Samsuzzaman (Kalam) alias Abul Kalam joined in the Razakar Bahini and his name finds place in serial No.253 of the list of Niguari Union, Razakar Bahini. In 1971 he was

engaged in accomplishing barbaric crimes directing civilians, prosecution alleges.

(iii)Md. Abdullah

Accused Md. Abdullah(62),son of late Habibur Rahman alias Hokka Moulavi and late-Rafiqunnesa of village-Sadhua under Police Station- Pagla (former Gafargaon), District-Mymensingh; at present- 49 Modhubag, Police Station-Dakhin Khan, DMP, Dhaka. Was born on 01.03.1954, according to his National Identity Card. He studied Hebjul Quran up to 4 years from Kishoreganj Jamia Emdadia Madrasa. In the Provincial council election in 1970 he was engaged in campaigning in favour of nominated candidate of Jamaat-E-Islami. In 1971, during the liberation war, he as a follower of local Peace Committee leader joined in the Razakar Bahini of local Niguari Union and was engaged in committing heinous crimes, prosecution alleges.

(iv)Md. Rois Uddin Azadi @ Akkel Ali

Accused Md. Rois Uddin Azadi alias Akkel Ali (74), son of late-Samed Ali Mondol @ Samir Uddin Mondol @ Somu Mondol and late Jamila Bewa @ Modur Ma, of village-Olali, Police Station-Pagla(former Gafargaon), District-Mymensingh, at present village-Kakonhat Paurasova (Notunpara), Police Station-Godagari, District-Rajshahi was born on 15.04.1943, according to his National Identity Card. He studied up to Dawra from Jamia Islami Madrasa,

Tantibazar, Dhaka in the year of 1976. In the Provincial council election in 1970 he was affiliated with the campaigning in favour of Moulana Anisur Rahman Murshidabadi, a nominated candidate of Jamaat-E-Islami. In 1971, during the liberation war, he joined in the Razakar Bahini of local Niguari Union and actively participated in accomplishing atrocious activities around the localities by collaborating with the Pakistani occupation army, prosecution alleges.

(v)A.F.M Faizulla @ Abul Fallah @ Faizulla[Absconding]

Accused A.F.M Faizulla alias Abul Fallah alias Faizulla (66), son of late Abdul Majid Khan and late Jahanara Begum alias Samala Khatun of village – Sadhua, Police Station- Pagla (former Gafargaon), District- Mymensingh. According to his National Identity Card, his date of birth is 11.01.1951. He passed the SSC examination from Basiya High School in 1968. In 1971, his father Abdul Majid Khan was the local leader of East Pakistan Nezam-E-Islami and being inspired by his father he was involved with the local Politics. In the General Election of 1970, he played a vital role in election campaign in favour of the candidate nominated by Jamat-E-Islami. In 1971, he joined in locally formed Razakar Bahini and his name finds place in serial No. 254 in the list of Niguary Union Razakar Bahini. In 1971, during the liberation war he participated and collaborated with the Pakistani occupation army in committing crimes directing civilians of the localities, prosecution alleges.

(vi)Md. Abdur Razzaq Mondol [Absconding]

Accused Md. Abdur Razzaq Mondol (64), son of late Abdul Helim Mondol alias Helim Member and late Amena Khatun, of village Olali, Police Station- Pagla (former Gafargaon), at Present: village-Sholahasia, House No-M/249, Police Station- Gafargaon, District-Mymensingh was born on 02.11.1951, according to his National Identity Card. From 1975 to March 27, 2000 he served in Bangladesh Army as Habildar. In 1971, he sided with the Pakistan and Joined in locally formed Razakar Bahini and his name finds place in serial No.276 of the list of Niguary Union Razakar Bahini. He as a member of Razakar Bahini actively participated and in committing atrocious crimes, in 1971, prosecution alleges.

(vii)Sirajul Islam @ Tota Mondol [Absconding]

Accused Sirajul Islam alias Tota Mondol [66]is the son of Noor Box @ Panu Mondol and late-Hasen Banu of Village-Olali, Police Station- Pagla (former Gafargaon), District-Mymensingh. He studied up to Class VIII. In 1971, during the liberation war, he joined in the locally formed Razakar Bahini and his name finds place in serial No.278 of the list of Niguary Union Razakar Bahini. In 1971 he actively participated in accomplishing atrocious activities directing civilian population, prosecution avers.

(viii)Md. Alim-Uddin Khan [Absconding]

Accused Md. Alim-Uddin Khan (77), son of Late-Abdul Gofur Khan and Late-Amena Khatun of village–Sadhua, Police Station-Pagla (former Gafargaon), District-Mymensingh was born on 15.01.1939, according to his National Identity Card. He studied up to class VIII in Kandhipara Askor Ali High School under Pagla Police Station, District- Mymensingh. He was a supporter of the Muslim League. In 1971, he joined the Razakar Bahini and his name finds place in serial no. 316 of the list of Niguary Union Razakar Bahini. In exercise of his membership in Razakar Bahini he participated in committing heinous crimes directing civilian population, prosecution alleges.

(ix)Md. Abdul Latif

Accused Md. Abdul Latif (58), son of Late-Hossen Ali Mir alias Hossen Munshi and Late-Hamida Khatun of village-Tolali, Police Station- Pagla (former Gafargaon), District- Mymensingh was born on 26.06.1959, according to his National Identity Card. He passed Dakhil from Garuran Khalilia Senior Madrasa in 1972 and he passed Fazil from the same Madrasa in 1975. He also passed Kamil from Muktagacha Abbachia Madrasa in 1986. In 1971, he joined in the locally formed Razakar Bahini and his name finds place in serial No.283 of the list of Niguary Union Razakar Bahini. He was engaged

in carrying out criminal activities directing civilians, prosecution alleges. Presently the accused is performing as an Assistant President of Gafargaon Upazila Ulama League and President of Ulama League, Niguary Union.

V. Procedural History

Investigation

21. The Investigation Agency of the Tribunal, constituted under the Act of 1973 started the task of investigation pursuant to complaint register serial no. 40 dated 16.10.2014, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by (1) Khalilur Rahman Mir (2) Md. Shamsuzzaman (Kalam) (3) Md. Abdullah (4) Md. Abdul Malek Akanda [**died on 07.06.2019, after framing charges**] (5) Md. Rois Uddin Azadi (6) Md. Abdul Latif , (7) A.F.M Faizulla [absconding] (8) Md. Abdur Razzaq Mondol [absconding],(9) Sirajul Islam @ Tota Mondol[absconding], (10) Md. Alim Uddin Khan[absconding] and (11) Nurul Amin Shahjahan [**died after framing charges**]

22. During investigation i.e. at pre-trial stage the Investigation Officer through the Chief Prosecutor brought it to the notice of the Tribunal by filing applications on different dates that accused (1) Khalilur Rahman Mir (2) Md. Shamsuzzaman Kalam (3) Md. Abdullah (4) Md. Abdul Malek Akanda [**died on 07.06.2019, after framing charge**] (5) Md. Rais Uddin Azadi had been in jail in

connection with other cases under The Penal Code and The Special Powers Act, 1974 and prayed for their production before this Tribunal, for the purpose of showing them arrested in connection with this case. Accordingly, on Tribunal's order and in execution of Production Warrant issued those five (05) accused were brought before the Tribunal when they were sent to prison, showing them arrested as prayed for, in connection with this case.

23. In between 13.11.2016 and 17.11.2016 the five [05] accused persons detained in prison were interrogated by the Investigation Officer as permitted by Tribunal's order dated 25.10.2016.

24. The Investigation Officer [IO] submitted its report together with documents and materials collected and statement of witnesses, on wrapping up of investigation before the Chief Prosecutor on 20.02.2017 against in all 11 suspect accused persons of whom 06 [six] could not be arrested.

Submission of Formal Charge

25. 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 05.04.2017 under section 9(1) of the Act of 1973 before the Tribunal alleging that the eleven accused persons had committed the offences of crimes against humanity and also for complicity in committing such crimes narrated

in the formal charge during the period of War of Liberation in 1971 around the localities under the Police Station-Gafargaon of District-Mymensingh.

Taking Cognizance of Offences

26. On 26.10.2017 the Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) (a)(b)(g)(h) of the Act of 1973, by application its judicial mind to the Formal Charge and materials and documents submitted therewith.

Legal Step taken in respect of absconding accused

27. Out of eleven[11] accused six[06] accused Md. Abdul Latif, A.F.M Faizulla, Md. Abdur Razzaq Mondol, Sirajul Islam @ Tota Mondol, Md. Alim Uddin Khan and Nurul Amin Shahjahan [**died after framing charges**] could not be arrested, at pre-trial stage.

28. After having the report in execution of warrant of arrest issued against those six(06) accused the Tribunal, for the purpose of holding proceedings in absentia against them, by its order dated 26.10.2017 directed publication of notice in two national daily news papers, asking them to surrender.

29. But these six(06) accused did not turn up despite such notification and as such treating them absconded the Tribunal by its order dated 15.11.2017 fixed 24.12.2017 for hearing on charge framing matter

by appointing state defence counsel, at the cost of Government, to defend these absconding accused persons.

Surrender of one accused

30. At this stage, on 22.12.2017 one accused Md. Abdul Latif surrendered before the Tribunal and by engaging counsel prayed for bail and on hearing, the same was rejected and the accused Md. Abdul Latif was sent to prison.

Hearing on Charge Framing Matter and order rendered on it

31. Then on 24.12.2017 and 17.01.2018 hearing on charge framing matter took place when both sides placed their respective submission. The learned counsel defending the accused Md. Abdul Malek Akanda **[died on 07.06.2019, after framing charge]** submitted an application seeking discharge. On hearing the learned prosecutor Mr. Md. Shahidur Rahman and the learned defence counsels Mr. Abdus Sattar Palwan, Mr. Masud Rana and learned state defence counsel Mr. Abdus Shukur Khan order on framing 04 charges was rendered on 04.03.2018.

Examination of Prosecution Witnesses

32. After placing opening statement on 15.09.2019 prosecution started examining witnesses to substantiate charges framed. Defence duly cross-examined the witnesses. On behalf of accused Md. Shamsuzzaman Kalam one witness has been examined as D.W.1 who proved some papers which have been marked exhibited. Despite

the provision contemplated in law the other accused persons refrained from examining any witness and adducing any documentary evidence as well.

Summing up by both sides

33. Prosecution started placing summing up on 15.09.2019 by drawing attention to the oral and documentary evidence relied upon. Next, the learned defence counsels and state defence counsel duly placed their respective argument. In this way summing up ended on 26.01.2020 and the case was kept in CAV (for delivery and pronouncement of judgment).

VI. Applicable laws

34. We consider it imperative to focus on the laws relating to trial of accused for the offences enumerated in the Act of 1973. It will leave space of knowing the rights of parties ensued in the Act of 1973. Provisions contemplated in the Act of 1973 and the ROP formulated under the Act indisputably ensure the right of defence which relates to the notion of fair trial. Procedure permitted adequately in ensuring rights of both sides.

35. We reiterate that the proceedings before the Tribunal [ICT-BD] are guided by the International Crimes (Tribunals) Act, 1973, the Rules of Procedure 2010 [ROP] formulated by the Tribunal-1 under the powers given in section 22 of the Act. Section 23 of the Act of

1973 explicitly prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872.

36. Tribunal is authorized to take judicial notice of any fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act]. Even the Tribunal shall not be bound by technical rules of evidence and may admit any evidence which it deems to have probative value [section 19(1) of the Act of 1973].

37. We also restate that the Tribunal shall have discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)]. Section 10(1) (f) of the Act of 1973 provides right to examine witnesses, in support of defence case, if any.

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

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

40. Atrocities as arraigned in the charges were committed in wartime situation. In this regard, the Tribunal notes that in adjudicating culpability of the persons accused of criminal acts, context and situation prevailing at the relevant time i.e. the period of war of liberation in 1971 [March 25 to December 16 1971] is to be inevitably considered together with facts and circumstances divulged.

VII. Summing Up

Summing up: By the prosecution

41. Mr. Md. Shahidur Rahman, the learned prosecutor started placing summing up by portraying the profile of the accused persons that they had in 1971. Next, drawing attention to the testimony of prosecution witnesses and the documents proved and marked as exhibits the learned prosecutor submitted that being imbued by the ideology of pro-Pakistan political parties the accused persons having affiliation with the locally formed Razakar Bahini not only took visible stance against the war of liberation but also participated, by their conscious act and conduct, in committing numerous crimes around the localities under the Police Station-Gafargaon of District-Mymensingh.

42. The learned prosecutor continued arguing that the accused persons were actively involved in committing the heinous crimes to further policy and plan of the Pakistani occupation army. The witnesses vividly described the participation of accused persons in carrying out atrocious activities constituting the offences of crimes against humanity of which they have been arraigned.

Summing up: By the defence

43. Mr. S.M Shahjahan and Mr. Abdus Sattar Palwan, the learned defence counsels placed summing up in favour of accused persons who have been defended by them. Mr. Abdus Shukur Khan, the learned state defence counsel also argued innocence of the accused persons being defended by him. Chiefly it has been submitted on part of defence that the accused persons were not Razakars; that they were not involved with the alleged crimes for which they have been indicted; that accused Md. Abdul Latif was a minor boy in 1971 and thus he did not get enrolled in Razakar Bahini; that accused Md. Abdullah's name does not find place in the alleged Razakar lists relied upon by prosecution. It could not be proved as to which accused actually participated in effecting alleged killings of civilians. The learned counsels defending the accused persons placed summing up in categorized way drawing attention to testimony of witnesses which may be well addressed at the time of adjudicating the charges.

Rebuttal: Prosecution

44. On rebuttal, it has been submitted on part of prosecution in response to defence argument that accused Md. Abdullah may be lawfully prosecuted and found guilty based on evidence if it is proved that as an 'individual' he participated in accomplishing the crimes arraigned. The learned prosecutor argued that crimes arraigned were the upshot of systematic attacks. Those were system crimes and not isolated crimes. In context of war of liberation such atrocities were committed by the group of attackers and thus it is not essential to prove actually which accused committed which crime. All the accused persons forming part of the Joint Criminal Enterprise [JCE] shall be held liable for the crimes committed. It is to be resolved how the accused persons had acted to further policy and plan of the criminal mission, the learned prosecutor added.

VIII. Legal Aspects

45. Some common legal aspects involved in almost all the cases under the Act of 1973 before this Tribunal have already been adjudicated by rendering finding on vivid discussion in the earlier disposed of cases. Therefore, we do not deem it necessary to reiterate the extensive discussion on the settled legal issues.

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

46. Tribunal reiterates that Tribunal acts to adjudicate the arraignments brought chiefly eyeing on the provisions contained in the Act of 1973 and settled international jurisprudence and legal propositions. Offences including the offences of crimes against humanity are not isolated crimes. Those were allegedly committed in the territory of Bangladesh in 1971 during the war of liberation, in violation of international humanitarian laws.

47. The case involving the facts of committing atrocious criminal acts constituting the alleged offences is chiefly founded on oral evidence presented on part of prosecution. The locals, relatives of victims and sufferers of appalling activities came on dock and memorized what they experienced and observed during the atrocious attacks launched in 1971 in and around their localities.

48. In the case in hand, apart from the direct witnesses some are hearsay witnesses. But merely for this reason their testimony cannot be kept aside from consideration. Hearsay testimony is not inadmissible *per se* in a trial of offences enumerated in the Act of 1973. Its probative value is to be evaluated taking other relevant facts and circumstances into account and the other evidence may lend corroboration to the hearsay evidence.

49. It should not be forgotten that the witnesses testified the events they experienced long more than four decades back. Obviously, due to lapse of long channel of time they may not be able to memorize the exact date or time or distance or direction of crime sites from one place. But the core essence of the horrific principal event always remains imprinted in the human memory, if a person really had opportunity to see the event of grotesque nature. Thus, it is to be viewed taking all the realities into account for the purpose of rational assessment as to how far their testimony on material facts inspires credence and carries value.

50. The case in hand deals with the offences of crimes against humanity, committed in violation of international humanitarian law. In a criminal trial involving the crime known as 'group crime' or 'system crime', two things require to be adjudicated. One is commission of the offence in question and another one is culpability of the person or persons accused of such offence.

51. The person or persons arraigned may not have physical participation in committing offences of crimes against humanity. But his or their conscious act or conduct--- amid, prior or subsequent to the event, lawfully makes him or them responsible for the offences perpetrated, if his or their act or conduct is found to have had

substantial effect and contribution on the commission of such crime. It is now settled jurisprudence.

52. Tribunal experienced that in many instances, the defence has alleged inconsistencies and contradictions between the statements made to IO and their evidence at trial. The Tribunal notes that the earlier statement of a witness made to IO is composed by investigating officer and it does not carry any evidentiary value.

53. It has already been settled by the Appellate Division, in the case of *Abdul Quader Molla* that the contradiction can be drawn from the statements made by a witness in his ‘examination-in-chief’ only, not with respect to a statement made to the investigating officer of the case in course of investigation” [**Page 196 of the Judgment in *Abdul Quader Molla Case***]. The Appellate Division, in the case of *Abdul Quader Molla* has observed that

“ Even if it is assumed that contradiction of the statements witnesses can be drawn in the manner provided under section 145 of the Evidence Act, it may best be said that the witnesses omitted to make some statements before the investigating officer as they were not asked properly, and those omissions cannot altogether be treated or witnesses can be drawn in the manner provided under section 145 of the Evidence Act, it may best be said that the witnesses omitted to make some statements before the investigating officer as they were not asked properly, and those omissions

cannot altogether be treated or termed as contradiction within the meaning of sub-rule (ii) of rule 53 of the Rules. The contradiction can only be drawn from statements made by the witnesses in course of their examination-in-chief. [**Justice S.K Sinha, Judgment Page 198,199**]

54. Tribunal further notes that the statements made to IO were not taken under solemn declaration and were not taken by any judicial body. Thus, no probative value is attached to the statements made to IO. The settled view of the Tribunal is that the truthfulness of direct sworn testimony made before the Tribunal is subject to the test in cross-examination by the defence.

55. In view of the observation of the Apex Court on the issue of ‘contradiction’ is inevitably binding upon this Tribunal and thus in assessing the evidence of witnesses the Tribunal shall remain cautious keeping it in mind that *"there is no scope to draw contradiction of the statement of a witness made in course of examination-in-chief with his/her earlier statements made to the investigating officer or other agency."*

56. It has already been settled that in a case under the Act of 1973 ‘hearsay evidence’ is admissible and it may be taken into consideration if supported by other evidence and inspires credence.

The phrase ‘other evidence’ includes relevant facts, circumstances and testimony of ocular witnesses.

57. The matter of weighing hearsay evidence depends as to what extent the question of hearsay evidence is clarified by other evidence and it is proved to be reliable. In this regard, the decision in the case of *Limaj* it has been observed that “whether any weight, and if so, what weight will attach to [hearsay opinion] will depend to what extent the question of hearsay is clarified by other evidence and it is shown to be reliable [Archbold International criminal Courts: page 751: 9-104: HEARSAY]. Thus, keeping this settled legal position in mind the Tribunal will take advantage to weigh the probative value of hearsay evidence of witnesses, if made before the Tribunal, in relation to any of charges framed against the accused.

X. Did the accused persons belong to the locally formed Razakar Bahini-- an Auxiliary Force?

58. Prosecution alleges that the accused persons were the active members of locally formed Razakar Bahini, the auxiliary force as defined in section 2(a) of the Act of 1973. It has also been contended that prior to 1971 the accused persons were actively associated with the pro-Pakistan political party and they knowingly sided with the Pakistani occupation army, to further their policy and plan.

59. Prosecution argued that all the accused belonged to locally formed Razakar Bahini. Testimony of witnesses belonging to the crime localities together with the documentary evidence Exhibit-II and III indisputably prove it, the learned prosecutor added. Defence could not malign the authoritativeness of the documents relied in this regard.

60. On contrary, defence argued that these accused were not Razakars and thus they cannot be found guilty of the offences alleged. The witnesses testified falsely terming the accused persons as Razakars. The alleged documents have been created for the propose of implicating the accused persons with the alleged offences.

61. It is alleged by the prosecution that the accused persons in exercise of their membership and close affiliation with the locally formed Razakar Bahini were culpably engaged in accomplishing the crimes arraigned, by launching systematic attacks. Tribunal notes that Razakar Bahini was formed as an 'auxiliary force' to collaborate with the Pakistani occupation army, to further policy and plan calculated to annihilate the pro-liberation civilians, in 1971 during the war of liberation.

62. Additionally, it is now settled history that a group of pro-Pakistan people as individuals too had acted as traitors by joining the criminal

activities carried out by Razakar Bahini and Pakistani occupation army, in 1971. Besides, the Act of 1973 permits to prosecute and try even an ‘individual’ or ‘group of individuals’ who allegedly committed offences enumerated in the Act.

63. Thus, before we move to adjudicate the arraignments brought let us resolve the issue involving the alleged affiliation and membership of accused persons with the locally formed Razakar Bahini

64. Razakar force was formed in May 1971 with the aim of resisting the ‘*miscreants*’ and to wipe out the ‘*anti state elements*’ with the aid of army [Source: ‘**The Daily Dainik Pakistan**’, 16 May 1971]. The Razakar force was composed of mostly pro-Pakistani Bengalis. Razakars were actively associated with many of the atrocities committed by the Pakistan Army during the 9-month war of liberation in 1971. On September 7, 1971, Pakistan Defence Ministry through an official order elevated the members of the Razakar Bahini to the status of ‘auxiliary force’ of the Pakistan Armed Forces. Defence does not dispute it. In this way ‘Razakar Bahini’ became infamous armed auxiliary force created for ‘operational purpose’ maintaining ‘static relation’ with the armed force for their operational and other purposes.

65. Mr. S.M Shahjahan the learned counsel defending the accused Md. Abdullah submits that it could not be proved that this accused belonged to locally formed Razakar Bahini. The alleged list of Razakars Exhibit-III does not demonstrate this accused's name as Razakar. Thus, mere depending on oral testimony it is not sufficient, safe and sound in arriving at decision in this regard.

66. Mr. Abdus Sattar Palwan the learned counsel defending three accused Md. Shamsuzzaman (Kalam), Md. Abdullah and Md. Rois Uddin Azadi @ Akkel Ali argued that the alleged Razakar list Exhibit-II does not state the name of these three accused as Razakars; that Exhibit-III is not a credible document, though it shows the name of these accused as Razakars.

67. Mr. Abdus Shukur Khan the learned defence counsel for accused Md. Abdul Latif submits that accused Md. Abdul Latif admittedly was a minor boy in 1971 which negates his alleged affiliation in Razakar Bahini in any manner. Mere stating his name in the alleged Razakar list does not prove that this accused was a member of locally formed Razakar Bahini.

68. In respect of accused Akkel Ali the learned defence counsel Mr. Abdus Sattar Palwan submits that in 1971 this accused was not physically fit to get enrolled in Razakar Bahini as his one hand was

disabled which is admitted. Thus, there was no likelihood of his being enrolled in Razakar Bahini.

69. On appraisal of testimony of witnesses it transpires that all the nine (09) accused were members of locally formed Razakar Bahini. But prosecution documents Exhibit-II and III, the lists of Razakars state the name of 08 accused excepting accused Md. Abdullah.

70. Next, it appears that date of birth of accused Md. Abdul Latif is 26.6.1958, according to the formal charge. That is to say, in 1971 he was simply a boy of 12 years old. P.W.10 also admits that in 1971 this accused was a minor boy and student of class VII. However, he [P.W.10] saw him with Razakar Abul Falah and other Razakars. But mere seeing this accused present at the crime scene does not tend to conclude that he in exercise of his membership in Razakar Bahini accompanied the gang to further policy and plan. However, the intention of his alleged presence with the gang of attackers at the crime sites, if found true, may be well resolved through adjudicating the charges.

71. It is to be noted further that in 1971 individuals between the ages of 18-45 were to be recruited as Razakars. If it is so, we do not find any reason to deduce that this accused Md. Abdul Latif was a

member of locally formed Razakar. We fail to understand on what basis his name has been shown in the alleged list of Razakars.

72. This accused Md. Abdul Latif has been indicted in charge nos.03 and 04. Mere seeing this accused, a boy of 12 years old in 1971 with Razakar or Razakars as testified by P.W.10 needs to be adjudicated rationally whether he as an 'individual', sharing common intent opted to accompany the Razakars in committing offences arraigned in those two charges. Mere framing charge does not make it proved that an accused was a Razakar.

73. More than four decades after the commission of atrocious activities in 1971 during the war of liberation it is challenging indeed to collect documents necessary to substantiate a particular fact. Despite such challenge prosecution relies upon some documents collected during investigation and the same go compatibly with the testimony of witness's which inspires credence so far as the same relate to affiliation of eight accused with locally formed Razakar Bahini.

74. We are to chiefly adjudicate whether the act and conduct of accused parsons forming part of attack facilitated and contributed to the commission of offences alleged. Owing mere membership in the peace committee or Razakar Bahini itself does not make an individual criminally liable for any of offences enumerated in the Act

of 1973 if he is not found to have had participation in the commission of those offences alleged. Membership in any such organization formed to collaborate the Pakistani occupation army may hardly be considered as a visible and strapping indication of accused person's mindset and the stance he took in 1971 during the war of liberation.

75. The list of Razakars **Exhibit-II and III** showing name of accused persons excepting accused Md. Abdullah and accused Md. Abdul Latif could not be questioned substantially. We do not find any reason whatsoever to discard credibility of the lists in its entirety.

76. P.W.02 Md. Abdul Latif Kha stated that in the first part of Bangla month Aswin [in 1971] Razakar Bahini was formed in their locality led by Reaz Uddin Moulana and Helim Mondol and Abul Falah (accused) son of Mazid Moulana, was its Commander. Razakar camps were set up at Trimohini and Baroihati.

77. P.W.04 also stated that at the end of April and first of May Peace Committee was formed under the supervision of Helim Mondol [now dead], Riaz Uddin Moulana [now dead], Abdul Kader Chairman [now dead], Advocate Solaiman [now dead]. Later on, Razakar and Pakistani Army Camps were established in Trimohini and Baroihati Bazar [*market place*]. Accused Abul Falah, Razzak Mondol, Abdul Malek [**died on 07.06.2019, after framing charge**], Akkel Ali and

many more joined in the Razakar force. Defence does not appear to malign this fact.

78. P.W.03 Nizam Uddin Kha is a resident of Village-Sadhua Purbopara under police station-Pagla [previously Gafargaon] of District Mymensingh. He testified that in 1971 Reaz Uddin Moulana, Helim Mondol, Alim Uddin Master(accused) and many others of their locality formed Razakar Bahini and established its camps at Trimohini Bazar and Baroihati Bazar. The local Razakar Bahini was formed of Abdur Razzak, Tota Mondol, Akkel Ali, Abdullah and several others and Abul Falah was its commander.

79. The above version excepting alleged membership of accused Md. Abdullah in Razakar Bahini remained undisputed. It gets corroboration from Exhibit-II and II the lists of Razakars. True, accused Md. Abdullah's name does not find place in those lists. However, it is to be seen whether he as an 'individual' participated in committing the crimes arraigned.

80. Now, mere failure to prove formal affiliation of accused Md. Abdullah and Md. Abdul Latif with the Razakar Bahini, on grounds stated herein above do not make them readily absolved of liability. It is to be adjudicated whether they are found to have had accompanied the gang formed of Razakars in carrying out attacks alleged. However, whether these two accused participated in accomplishing

the attacks arraigned as individuals may be well adjudicated on due evaluation of evidence presented.

81. It is thus not imperative to prove accused persons' formal membership in Razakar Bahini by providing more and more documents for determining their criminal liability for the offences alleged. Besides, status and association of accused persons who were allegedly engaged in the commission of horrific atrocious activities became an anecdote around the crime locality.

82. We reiterate that section 3(1) of the Act of 1973 provides that Tribunal shall have power to try and punish even an 'individual' for the offences enumerated in the Act. However, at this stage it stands well proved from the authoritative documents that the 07 accused i.e. accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Abdur Razzaq Mondol (3) Md. Rois Uddin Azadi @ Akkel Ali(4) Md. Alim Uddin Khan (5) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (6) Sirajul Islam @ Tota Mondol and (7) Md. Khalilur Rahman Mir @ Khalilur Rahman belonged to locally formed Razakar Bahini.

83. Finally, we express the view that the core thing that needs to be seen is whether the accused persons collaborated with the group of attackers formed Razakars in carrying out atrocious activities constituting the offenses as arraigned in the charges to be framed and in such case, it will be sufficient to prove as to whether an accused,

even as an individual, actively collaborated the group of Razakars intending to facilitate , abet and contribute to the commission of crimes alleged, by his act and conduct. Burden of proving it squarely lies upon prosecution. Now, mere failure to prove any accused's membership in local Razakar Bahini cannot make him readily absolved of liability in carrying out alleged atrocious activities.

XI. Way of Adjudication of Charges

84. The instant case involving the offences of ‘system crimes’ committed in 1971 during the war of liberation chiefly rests upon ocular testimony. Most of witnesses the relatives of victims, as it appears, have narrated what they experienced, in course of attacks carried out. However, due to the context prevailing in war time it was impracticable to witness the detail of the events carried out. It should be kept in mind too that the alleged horrific event happened about five decades back, in 1971 and as such naturally memory of live witness might have been faded. Nevertheless, glaring contradiction and inconsistency in testimony of witnesses on material particular shall be taken into account to find out truth. At the same time we need to keep in mind that invaluable documents could have been destroyed. Collecting and organizing evidence was a real challenge for the prosecution.

85. Keeping the above reality in mind, in adjudicating the charges involving the offences of crimes against humanity we are to thus depend upon (i) facts of common knowledge (ii) available documentary evidence (iii) old reporting of news paper, books etc. if any, having probative value (iv) relevant facts (v) circumstantial evidence (vi) careful and rational evaluation of witnesses' core and consistent version (vii) political status, position and conduct of the accused at the relevant time and (viii) the jurisprudence evolved on these issues in our Apex Court and the observations of *ad hoc* tribunals on these matters as well, if deemed necessary to adjudicate any point of law.

86. Role of accused persons during the war of liberation in 1971 undeniably has to be kept in mind in determining their liability for the offences of which they have been charged with. In this regard Tribunal-2[ICT-BD] already recorded its observation in the case of *Muhammad Kamaruzzaman* [ICT-BD Case No.03 of 2012, Judgement 09 May 2013, para 89] that

“in the prosecution of crimes against humanity, principally accused's status, position, association, authority, conduct, activities, link with the state organization, political party are pertinent issues even prior to the alleged events. In determining alleged culpability of the accused, all these

factors have to be addressed and resolved as well.”

Adjudication of Charge No.01

(07 accused indicted: 01 accused died after framing charges)

[Event no. 01 as narrated at pages 42-48 of the Formal Charge: Offence of ‘abduction’, ‘confinement’, ‘torture’, ‘looting’, ‘arson’ and ‘murder’ of Shahabuddin Khan @ Khoka Kha of village Sadhua, Police Station- Pagla, District- Mymensingh]

87. That on 16 August 1971 at about 12.00 P.M the accused (1) AFM Faizulla alias Abul Fallah @ Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Alim Uddin Khan, (4) Md. Abdullah, (5) Md. Abdur Razzaq Mondol, (6) Md. Rois Uddin Azadi @ Akkel Ali and (7) Nurul Amin Shahjahan @ Shahjahan [died after framing charges] being accompanied by 10/12 other Razakars by launching attack at village- Sadhua under Police Station-Pagla, District- Mymensingh encircled the house of Shahabuddin Khan @ Khoka Kha, an organizer of the war of liberation, Hashem Khan and Anisur Rahman Khan and the accused Md. Shamsuzzaman (Kalam) @ Abul Kalam and their accomplices forcibly captured Shahabuddin Khan @ Khoka Kha, started torturing and looted households. Detained Abul Hashem received severe blood injury due to torture inflicted to him. Anisur Rahman was also brutally tortured when he attempted to ran away from the hideout, on being captured.

Thereafter, the accused persons and their accomplices had left the site taking the detained victim Shahabuddin Khan @ Khoka Kha with them, defying his mother's appeal at Trimohini Razakar camp where he was subjected to torture in seven-day captivity. On 23-08-1971, in the night, the accused persons killed the detained victim Shahabuddin Khan @ Khoka Kha and threw away his dead body in the river which could not be found even.

Therefore, the accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Alim Uddin Khan, (4) Md. Abdullah, (5) Md. Abdur Razzaq Mondol, (6) Md. Rois Uddin Azadi @ Akkel Ali and (7) Nurul Amin Shahjahan alias Shahjahan [**died after framing charge**] have been charged for participating, facilitating, abetting and substantially contributing to the commission of the offence of 'abduction', 'confinement', 'torture', 'looting', 'arson' and 'murder' as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Presented

88. Seven (07) accused have been indicted in this charge which involves the deliberate criminal acts constituting the offences of abduction, confinement, torture and murder as crimes against humanity. One accused Nurul Amin Shahjahan @ Shahjahan died

after the trial commenced, by framing charges. The charge framed arraigns that a group formed of Razakars being accompanied by the accused persons indicted had carried out prohibited acts forming systematic attack at village- Sadhua under Police Station-Pagla, District-Mymensingh, in violation of international humanitarian law.

89. It has been alleged that group of attackers formed of Razakars including the accused persons indicted. One non-combatant freedom-fighter Shahabuddin Khan @ Khoka Khan was the principal victim of the event. He was eventually shot to death, taking him away to Razakar camp on forcible capture. The charge framed arraigns. In addition to killing, the gang allegedly had carried out devastating activities and had caused deliberate torture to victim and others, indictment alleges. Before we move to weigh the evidence presented let us see what the witnesses narrated while testifying before the Tribunal.

90. P.W.01 Md. Tajul Islam Khan (60) is a resident of village – Sadhua under Police station – Pagla (Previously Gafargaon) of District-Mymensingh. He is allegedly a direct witness to the facts materially related to the event alleged in charge no.01. In 1971 he was a student of class VII.

91. P.W.01 stated that on 30th Sravan[Bangla month] , 1971 at about 12:00 P.M. he , his father, his cousins Habibur Rahman Khan and

Anisur Rahman Khan were repairing the water pump at Sadhua village, nearer to Sakra Bil [swamp], south to Khoka Kha's house. Then several Razakars led by Razakar Commander Foyez Ullah arrived there. Seeing them he [P.W.01] went into hiding inside a nearer bush wherefrom he [P.W.01] saw Razzak Razakar forcibly capturing Khoka Kha from the swamp when Kalam Razakar tortured him by inflicting rifle blow. They looted household and set many houses including that of Khoka Kha on fire and they took away detained Khoka Kha and his [P.W.01] cousin Siraj Khan toward Trimohini Razakar camp.

92. P.W.01 next stated that his [P.W.01] cousin brother Siraj Khan was subjected to torture in captivity at the Razakar camp and on 05 Bhadra [1971] he was set at liberty. He [P.W.01] heard from Siraj Khan that Khoka Khan detained at the Razakar camp was killed in night. On the following day i.e. on 6th Bhadra Razakars Kalam, Razzak and Tota circulated around the locality that detained Khoka Khan was killed that night.

93. In respect of knowing the accused persons P.W.01 stated that the Razakars he named were the residents of their neighbouring locality who used to move around the locality and thus he knew them beforehand.

94. In cross-examination done on part of accused Md. Shamsuzzaman (Kalam), Md. Abdullah and Md. Rois Uddin Azadi @s Akkel Ali, P.W.01 stated in reply to defence question put to him that accused Shamsuzzaman Kalama's father's name is Kashem Sheikh and accused Abdullah's Father's name is Abdur Rahman @ Khoka Moulavi; that Khoka Khan did not go to India to receive training and none of Khoka Khan's brother and father was freedom fighter and Khoka Khan was a student prior to 1971 and used to do farming.

95. P.W.01 denied defence suggestions that he did not see or hear the alleged event; that whatever he testified implicating accused personas was untrue and tutored; that Khoka Khan was engaged in subversive activities in 1971 and as such he was killed by law enforcing forces.

96. P.W.04 Hafiz Uddin Ahmed [64] is a resident of village –Rouha under Police station – Pagla (Previously Gafargaon) of District-Mymensingh. He is one of the survived victims of the event alleged in charge no.02. In respect of the event alleged in charge no.01 he is a hearsay witness.

97. After narrating the event arraigned in charge no.02 implicating the accused persons indicted P.W.04 simply stated that he heard that Razakars also killed Khoka Kha [victim of charge no.01], Taru Kha

[victim of charge no. 03] and many others of their locality. In respect of knowing the accused persons he stated that he knew the accused persons beforehand as they were from their neighbouring locality.

98. P.W.11 Nurul Haque alias Renu Mia [73] is a resident of Village-Sadhua under Police station-Pagla of District- Mymensingh. He is one of the survived victims of the event alleged in charge no. 04. He is a hearsay witnesses in respect of the event arraigned in charge no.01

99. In addition to narrating what he experienced in respect of the event alleged in charge no.04 P.W.11 stated that he heard that the Razakars had also killed Khoka [victim of charge no.01] and Taru Kha[victim of charge no.03] of his village and that he knew the accused persons beforehand as they were from the locality around their house.

100. P.W12 Md. Habibur Rahman Khan (63) is a resident of village –Sadhua under Police station – Pagla (Previously Gafargaon) of District-Mymensingh. He is a direct witness to the facts materially related to the event alleged. In 1971 he was a student of class VIII.

101. In respect of the event alleged in charge no.01 P.W.12 stated that on 16th August, 1971 at about 12 P.M. he, Tajul Islam Khan [P.W.01], and Anisur Rahman Khan were repairing the water pump

on the bank of Sakra swamp. His cousin Khoka Khan came to Sakra swamp to take bath when they saw Razakar Abul Kalam, Alim Uddin Khan, Abdullah, Abdur Razzak, Akkel Ali, Shahjahan (now dead) headed by Razakar commander Foyez Ullah arriving there from the west end. Then Razakar Abul Kalam, Abdullah, and their cohort Razakars moved to his [P.W.12] cousin Abul Hashem's house wherefrom they forcibly captured him. Razakar commander Abul Falah, Razzak, Akkel Ali also captured Khoka Khan from the swamp at gun point and tied down Khoka Khan and another cousin Siraj Khan. Being scared he [P.W.12] went into hiding inside a nearer bush wherefrom he saw the Razakars causing torture to Khoka Khan and Siraj Khan. Khoka Khan's mother requested Abul Falah to spare her son, but he kicked her down. Then the attackers looted Khoka Khan's house and set it on fire and later moved back towards west taking the detained Khoka Khan and Siraj Khan with them.

102. P.W.12 next stated that 20/25 minutes after the gang quitted the site he [P.W.12] came back home when seriously wounded his cousin Anisur Rahman Khan told them that Razakars had mercilessly tortured him when they were on their way to Trimohini Razakar camp taking Khoka Khan and Siraj Khan with them .

103. P.W.12 also stated that six days later, on 22nd August detained Siraj Khan came back from the camp, being freed and disclosed that Khoka Khan [another detainee] would be killed on the night. Later

on, Razakar Kalam, Razzak and Tota circulated around the locality that on the night of 23 August Razakars had killed the detainee Khoka Khan and his dead body was dumped in the river. They did not have trace of Khoka Khan's body.

104. In respect of reason of knowing the accused persons he [P.W.12] stated that the Razakars he named were the residents of their village and localities, nearer to their village and thus he knew them beforehand.

105. In cross-examination done on part of the accused persons indicted in this charge, defence suggested P.W.12 that whatever he testified about the event was untrue and tutored; that Khoka Khan was not killed in the manner he testified and that he was killed as a result of some other event ; that accused Akkel Ali was a disabled person in 1971 and thus he did not join in Razakar Bahini; that the accused persons were not Razakars and that what he heard about the alleged event was untrue and tutored. P.W.12 denied all the defence suggestions.

106. P.W.13 Md. Abul Hashem Khan (66) is a resident of village – Sadhua under Police station – Pagla (Previously Gafargaon) of District-Mymensingh. He is a direct witness to the attack arraigned. In 1971 he was 18/19 years old. He is cousin brother of Khoka Khan, one victim of the event arraigned.

107. In respect to the event of attack alleged P.W.13 stated that on 16th August, 1971 at about 12:00 P.M. a group formed of Razakar Abul Falah, Abul Kalam, Alim Uddin, Shahjahan (now dead), Tota, Razzak Mondol, Akkel Ali and their 10/12 cohort Razakars had launched attack at their house. Razakar Abdullah and Kalam forcibly captured him [P.W.13] and took him near the Sakra swamp [Bil] with beating. Then Razakar Abul Falah, Razzak, Tota forcibly captured his [P.W.13] cousin brother Khoka Khan from the swamp who was taking bath there, at gun point and started beating him. P.W.13 stated that he and Khoka Khan were receiving training to join liberation war and thus the Razakars had forcibly captured Khoka Khan. They also detained his [P.W.13] another cousin brother Siraj Khan who too was receiving war training.

108. What happened next? P.W.13 continued stating that Khoka Khan's [one detainee] mother came to the site of event and appealed to Razakar commander Abul Falah to set her son at liberty. But they kicked her down. Then some Razakars looted Khoka Khan's house and set it on fire and then moved back toward Trimohini Razakar camp taking the detained Khoka Khan and Siraj Khan with them. He[P.W.13] After 20/25 minutes of their departure came back home and after a while his cousin Anis Khan being seriously wounded came to the house and told them that Razakars had brutally tortured

him while the gang of Razakars was on move toward the camp, taking Khoka Khan and Siraj Khan with them.

109. P.W.13 next stated that on 22nd August Siraj Uddin Khan [one detainee] being freed from the camp came back home and disclosed that he and detainee Khoka Khan were subjected to torture in captivity at the Razakar camp and detainee Khoka Khan would be killed. On the following day Razakar Akkel Ali and Tota announced in the locality that they had killed Khoka Khan and dumped his body in the river. His body could not be traced even after many searches.

110. In respect of knowing the accused persons he (P.W.13) stated that he knew them beforehand as they were from the same locality and they even used to move together.

111. In cross-examination done on part of accused Md. Shamsuzzaman (Kalam), Md. Abdullah and Md. Rois Uddin Azadi @ Akkel Ali, P.W.13 stated in reply to defence question put to him that he and Khoka Khan did not go to India to take training but he used to assist the freedom fighters as their accomplice. P.W.13 denied defence suggestion that Khoka Khan [victim] died in hands of police over a different event; that these accused were not involved with the event he testified and that these accused were not Razakars;

that what he testified implicating these accused was untrue and tutored.

112. Above cross-examination appears to have been adopted by the state defence counsel defending the absconding accused Abul Fallah @ Faizullah, Abdur Razzak Mondol, Alim Uddin Khan and P.W.13 has been suggested on part of these absconding accused that they were not Razakars and were not involved with the event he testified. P.W.13 denied this defence suggestion.

113. P.W14 Md. Anisur Rahman Khan (65) is a resident of village – Sadhua under Police Station – Pagla (Previously Gafargaon) of District-Mymensingh. He is a direct witness to the facts materially related to the first phase of the event alleged. He is a cousin brother of victim Khoka Khan.

114. P.W.14 stated that on 16th August, 1971 at about 12 PM he, his cousin Habibur Rahman, Tajul Islam, Khoka Khan and Sirajul Islam Khan were engaged in repairing the water pump on the bank of Sakra swamp, south to their house. Khoka Khan was taking his bath at Sakra swamp when Razakar Kalam, Alim Uddin Khan, Abdullah, Abdur Razzak, Akkel Ali, Shahjahan (now dead), Razakar commander Foyez Ullah and their 10/12 cohorts besieged them.

Razakar Abdur Razzak captured Khoka Khan from the swamp at gun point and started beating him.

115. What happened next in conjunction with the attack? P.W.14 continued stating that Razakar Abul Kalam and Abdullah moved to their [P.W.14] house wherefrom they forcibly captured his [P.W.14] cousin Abul Hashem and dragged him out with beating. With this he [P.W.14] went into hiding inside a bush at the west. P.W.14 also stated that several Razakars looted Khoka Khan's house and torched it with fire and then moved back toward west taking captured Khoka Khan and Siraj Khan with them. The gang also dragged him [P.W.14] out of the hideout and inflicted torture, while the gang was moving back to Trimohini Razakar camp taking detained Siraj Uddin Khan and Khoka Khan with them. Razakars also carried out looting the house of Khoka Khan and set it on fire.

116. P.W.14 further stated that after a while he went back home and disclosed everyone that Razakars took away Khoka Khan and Siraj Khan [on forcible] to Trimohini Camp. Next, on 22nd August Siraj Khan [one detainee] being freed from camp returned back home and told them that Khoka Khan would be killed that day. Two days later, Razakar Kalam and Tota circulated around their locality that Khoka Khan was killed on the night of 23rd August and his body was dumped in the river. They did not have trace of the dead body. In respect of

reason of knowing the accused persons he (P.W.14) stated that he knew them beforehand as they were their neighbors and from their neighboring localities.

117. In cross-examination P.W.14 stated in reply to defence question that he was engaged with politics of Awami League since prior to the war of liberation ensued. P.W.14 denied defence suggestions that the accused persons were not Razakars and were not involved with the event he testified; that Khoka Khan[victim] was killed by police over a different event and that what he testified implicating the accused persons was untrue and tutored.

118. P.W.15 Jobayer Ahmed @ Sondhi [69] is a resident of Village Sadhua under Police Station-Pagla of District Mymensingh. In addition to narrating the event arraigned in charge no.04 he testified what he heard about the event alleged in this charge no.01.

119. P.W.15 stated that he heard that the Razakars he named [indicted in this charge] had killed Khoka Khan of their village. In cross-examination, P.W.15 denied defence suggestion that he did not hear the event of killing Khoka Khan.

Finding on Evaluation of Evidence

120. The event arraigned in this charge was carried out in context of the war of liberation in 1971, around the locality of village- Sadhua under Police Station-Pagla, District- Mymensingh. Naturally , it was not possible of observing the event by the whole population of the locality attacked and in such dreadful situation one might have opportunity of experiencing fraction of the event happened. Keeping it in mind we need to go on with the course of evaluation of evidence adduced on part of prosecution.

121. This charge rests upon 07 witnesses i.e. P.W.01, P.W.04, P.W.11, P.W.12, P.W.13, P.W.14 and P.W.15. Of them P.W.04, P.W.11 and P.W.15 are hearsay witnesses and the rest four i.e. P.W.01, P.W.12, P.W.13 and P.W.14 are direct witnesses to the facts materially linked to the event of attack arraigned which eventually ended in brutal killing of victim Khoka Khan detained in protracted captivity at Razakar camp, on forcible capture.

122. In its response at the stage of summing up , prosecution drawing attention to the evidence, documentary and oral submits that the accused persons indicted in this charge were members of locally formed Razakar Bahini and had affiliation with Trimohini Razakar camp ; that they intending to further the policy and plan of the Pakistani occupation army deliberately carried out systematic attack that resulted in forcible capture of pro-liberation unarmed civilians;

devastating activities, detaining civilians and annihilation of one pro-liberation civilian. The criminal acts constituted the offences of crime against humanity and not any isolated crime.

123. The learned prosecutor also submits that it has been proved that the gang of attackers was led by accused AFM Faizulla @ Abul Fallah @ Faizulla and accused Kalam and Razzak actively and aggressively participated in perpetrating the criminal acts, in course of first phase of attack and the rest three accused i.e. accused Md. Abdullah, Md. Rois Uddin Azadi @ Akkel Ali and Md. Alim Uddin Khan consciously accompanied the gang and aided and facilitated in accomplishing the policy of the criminal mission. Plan of the attack was designed to annihilate a potential pro-liberation civilian who used to provide assistance to the freedom-fighters. In this way all the six accused had consciously acted being part of 'collective criminality', sharing common purpose. All these have been proved by the facts unveiled in evidence presented and defence could not impeach credibility of evidence relied upon in any manner. Thus, all the six accused incurred liability of committing the offences arraigned.

124. Mr. S.M Shahjahan the learned counsel defending the accused Md. Abdullah in placing his argument drew attention to the documentary evidence and oral testimony relied upon by the prosecution. The learned defence counsel submitted that this accused

did not belong to Razakar Bahini and the prosecution document, the alleged Razakar list Exhibit-III does not state the name of this accused showing him member of locally formed Razakar Bahini and thus it is not credible that he being part of the gang formed of Razakars got engaged in participating and facilitating the criminal acts alleged. Testimonial evidence presented implicating this accused thus cannot be acted upon in arriving at decision as to his guilt alleged, the learned defence counsel added.

125. The learned defence counsel also argued that P.W.01 is not a direct witness and had no knowledge about the alleged event; that P.W.04 has not implicated this accused with the commission of the alleged event; that testimony of P.W.12 simply demonstrates that he allegedly participated in dragging out the victim but he has not been implicated with the event of alleged killing and since this accused was not a Razakar testimony implicating him is not credible and he had no nexus with the Razakar camp. Thus, this accused deserves acquittal.

126. The learned defence counsel also argued that inconsistent testimony of witnesses does not demonstrate beyond reasonable doubt that the accused Md. Abdullah was a co-perpetrator of the offences allegedly committed. Testimony of P.W.12 simply demonstrates that this accused allegedly participated in dragging out the victim but he has not implicated him with the event of alleged

killing of victim. Thus and since this accused had no nexus with the Razakar camp it is not credible that he being part of the gang formed of Razakars allegedly had acted in committing the killing.

127. Mr. Abdus Sattar Palwan, the learned counsel defending the accused Md. Shamsuzzaman (Kalam) and Md. Rois Uddin Azadi @ Akkel Ali argued that the prosecution witnesses are not credible as their testimony is inconsistent to each other; that one hand of Accused Akkel Ali was dysfunctional in 1971 and as such his alleged participation in committing crimes was impracticable; that prosecution failed to show how and by whom the victim was allegedly killed. Victim Khoka was killed by police over a different event, the learned defence emphasized this defence case.

128. It has been also argued by the learned defence counsel that all these cumulatively create reasonable doubt as to complicity and involvement of these accused with the crimes alleged. Alleged act of causing torture to the victim in captivity at the camp cannot be treated as part of activities carried out by JCE and that there is no proof of nexus between the alleged conduct of these accused and the actual commission of torture of the detainees and alleged murder of one detainee , the learned defence counsel emphatically submitted.

129. Mr. Abdus Shukur Khan, the learned state defence counsel defending the absconding accused A.F.M Faizulla @ Abul Fallah @ Faizulla ,Md. Abdur Razzak Mondol and Md. Alim Uddin Khan and as engaged counsel for accused Md. Abdul Latif has submitted that prosecution has failed to prove by credible evidence or circumstance that there had been co-operation between the members of the group and these accused; that mere alleged presence of accused Md. Abdul Latif at the crime site, even if believed to be true does not amount to his participation as at the relevant time he was admittedly a minor boy of 12 years; that in absence of intent on part of these accused to commit the criminal acts they cannot be held responsible merely for their presence with the group at the crime site as it had no substantial effect to the actual perpetration of crimes alleged leading to the act of alleged killing .

130. First, it transpires from the arraignment brought in this charge that the group of attackers formed of Razakars including the six (06) accused persons who have been indicted in this charge. One non-combatant potential follower of freedom-fighters Shahabuddin Khan @ Khoka Khan was the principal victim of the event. He was eventually shot to death, after taking him away to Razakar camp on forcible capture. The charge framed arraigns. In addition to killing, the gang allegedly had carried out looting the house of the victim and

brunt it down and had caused deliberate torture to victim and others, in course of first phase of attack, indictment alleges.

131. Tribunal notes that corroboration is not a matter of rule, in a case involving offences enumerated in the Act of 1973 as the same are known as ‘international crimes’ committed in context of war of liberation, in violation of international humanitarian law. Testimony of even a single witness, if it carries credence may suggest unerring conclusion. However, now we require adjudicating that-

- i. the event of attack was carried out on the date, time and place alleged;
- ii. that a group formed of Razakars accompanied by the six accused persons indicted in this charge participated in conducting the attack, sharing common purpose and intent;
- iii. that two victims were kept in captivity at Razakar camp, after taking them there on forcible capture effected in course of first phase of attack;
- iv. that the attack eventually ended in killing one detained victim;
- iv. that the accused persons, being part of collective criminality contributed and participated in perpetrating the crimes arraigned.

132. In view of charge framed it depicts that seven (07) accused (1) AFM Faizulla alias Abul Fallah @ Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Alim Uddin Khan,(4) Md. Abdullah, (5) Md. Abdur Razzaq Mondol, (6) Md. Rois Uddin Azadi @ Akkel Ali and (7) Nurul Amin Shahjahan @ Shahjahan have been indicted in this charge. Of them accused Nurul Amin Shahjahan @ Shahjahan died after commencement of trial and thus proceedings against him stood abated. Now, we require seeing whether the rest six (06) accused indicted committed the alleged crimes, arraigned in the charge no.01.

133. It appears that the documents relied upon by the prosecution does not state that accused Md. Abdullah belonged to Razakar Bahini. But mere non membership in Razakar Bahini this accused cannot be readily absolved of liability, particularly if it is proved that in exercise of his culpable association with the local Razakars he got involved consciously in carrying out the attack, as an 'individual'. Thus, we do not agree in what has been advanced on this matter by the learned counsel defending the accused Md. Abdullah. We are to see whether he remained with the gang at the crime scene as mere spectator or enthusiastically opted to join the attackers to further policy and plan and knowing the consequence and sharing common intent.

134. In its discussion the Tribunal will deal with such evidence as is necessary for the purposes of the decision. It will, thus, concentrate on the most salient and core parts of the peripheral evidence. Tribunal notes that in proving the offences of crimes against humanity it is not required to show that all the members of the group of attackers actively participated in perpetrating the crimes arraigned.

135. It is now settled jurisprudence that 'system crime' is committed by plurality of persons and all the persons need not be shown to have had physical participation in committing crimes. If it is proved that an accused knowing consequence accompanied the group of attackers at the crime scene we need to adjudicate whether such presence assisted and encouraged the gang and thereby substantially contributed in accomplishing the criminal acts.

136. On cautious appraisal of evidence presented it has been unveiled that P.W.01 witnessed how and when the attackers initiated the attack. Testimony of P.W.01 manifests that accused Razzak, Kalam led by Razakar Commander Foyez Ullah participated actively and aggressively in accomplishing forcible capture of unarmed victim, looting and abduction. It gets corroboration from P.W.12, another direct witness.

137. Additionally, it also transpires from testimony of P.W.12 that accused Alim Uddin Khan, Md. Abdullah and Akkel Ali were also with the group when it carried out the attack. Presumably, P.W.01 might not have space of seeing the activities of these three accused as well by accompanying the gang due to reason of not staying at same hiding place. Thus, mere omission in implicating these three accused by the P.W.01 does not readily make the testimony of P.W.12 unbelievable in its entirety.

138. Besides, testimony of P.W.12 so far as it relates to presence of these three accused i.e. accused Alim Uddin Khan, Md. Abdullah and Akkel Ali as well at the crime site with the gang could not be controverted in any manner by the defence. Testimony of P.W.01 unerringly suggests that on sensing the attack P.W.01 managed to go into hiding wherefrom he saw accused Razzak, Kalam led by Razakar commander Foyez Ullah and their accomplice Razakars launching attack. Due to horrific state of situation arising out of the attack launched P.W.01 might not have seen the activities of three other accused Alim Uddin Khan, Abdullah and Akkel Ali who accompanied the gang. The attack was not concentrated simply on the act of forcible capture of victim Khoka Khan. Facts unveiled lead to conclude that the accused persons accompanying the gang were engaged in carrying out different devastating activities including looting , setting the house on fire, causing prohibited acts to others, in course of first phase of attack

139. It patently transpires from uncontroverted testimony of P.W.12, another direct witness that Razakar commander Abul Falah, Md. Abdur Razzaq Mondol , Akkel Ali also actively participated in effecting forcible capture of victim Khoka Khan from the swamp at gun point and they tied down Khoka khan and Siraj Khan.

140. How and what criminal acts were carried out, after causing forcible capture of victims, in course of first phase of attack? Testimony of P.W.12 a direct witness reveals that remaining in hiding inside a nearer bush he [P.W.12] saw the Razakars causing torture to Khoka Khan and Siraj Khan. Uncontroverted testimony of P.W.12 demonstrates that victim Khoka Khan's mother requested accused Abul Falah to spare her son, but he kicked her down. Then the attackers looted Khoka Khan's house and set it on fire and later moved back toward west taking the detained Khoka Khan and Siraj Khan with them. The role the accused Abul Falah had played, as found from unimpeached evidence of P.W.12 strengthens the conclusion that he was in leading and commanding position of Razakars forming the gang and by abusing such position he commanded his accomplices in conducting criminal acts.

141. All the above proved criminal acts collectively formed a systematic attack directing unarmed pro-liberation civilians. Pattern of attack launched suggests concluding that the attack was designed

and calculated to further policy and plan of extinction of pro-liberation civilians.

142. What happened next after the gang had left the site taking detained Khoka Khan and Siraj Khan with them? Testimonial evidence of P.W.12 demonstrates that Anisur Rahman Khan a victim who was subjected to torture, in course of the attack disclosed that Razakars had mercilessly tortured him, on their way back to Trimohini Razakar camp, taking Khoka Khan and Siraj Khan with them. Defence could not dislodge it. Thus, it stands proved that two civilians were taken away to Razakar camp, on forcible capture. Such prohibited and unlawful acts constituted the offences of 'abduction'.

143. Defence does not seem to have made attempt to controvert the narrative made by P.W.12 in relation to criminal acts accomplished by launching first phase of attack, till quitting the crime site taking away two detainees with them.

144. It also stand proved that the same group formed of accused persons indicted and their cohorts continued carrying out activities till they moved back to Razakar camp, taking two detainees with them. Evidence presented also depicts that later on one detainee Siraj Uddin Khan however returned back on release and he narrated that they were brutally subjected to torture in captivity. Another detainee

Khoka Khan was shot to death later on. Defence could not impeach this crucial fact. Causing inhumane treatment to detainees in captivity constituted the offences of 'confinement' and 'torture'.

145. It appears that another direct witness P.W.13 stated in reply to defence question that he and Khoka Khan did not go to India to take training but he used to assist the freedom fighters as their accomplice. P.W.13 denied defence suggestion that Khoka Khan [victim] died in hands of police over a different event. It appears that defence does not seem to have made any attempt to prove such defence. However, Tribunal notes that mere putting such cloudy suggestion as specific defence case does not negate the event of attack that resulted in killing one detained civilian, after keeping him in protracted captivity.

146. Tribunal further notes that failure to establish specific defence case does not prove the arraignment brought, true. But since the defence stands on a specific defence it was its obligation to prove it. Here we see that the defence did not care in taking any initiative to prove this specific defence case by adducing any kind of evidence, to cast doubt on prosecution. Thus, such baseless defence case seems to be a futile attempt to escape from the proved arraignment.

147. It stands affirmed too in cross-examination of P.W.13 that the victim Khoka Khan used to assist the freedom fighters as their accomplice. This admitted fact leads to the indisputable conclusion that this was the cause of launching attack directing him and his households. This conclusion negates the above unfounded defence case as well.

148. It transpires that P.W14 Md. Anisur Rahman Khan, cousin brother of victim Khoka Khan was taking his bath at Sakra swamp when the accused persons and their 10/12 cohorts besieged them. It is demonstrated from his unshaken narrative that accused Abdur Razzak Mondol and his accomplices actively participated in effecting capture of victim Khoka Khan from the swamp at gun point and started beating him. Thus, accused Abdur Razzak Mondol ardently and actively participated in carrying out criminal acts to materialize the purpose of the criminal mission, we conclude.

149. P.W.14 Md. Anisur Rahman Khan also described how the victims Khoka Khan and Siraj Khan were taken away to Razakar camp and how he [P.W.14] was dragged out of the hideout and was subjected to torture by the accused Razakars, in conjunction with the attack. It could not be denied even in cross-examination. It thus adds firm assurance to the fact of launching attack on the date and time.

150. It stands proved that P.W.13 was subjected to torture and beating, in conjunction with the initial phase of the attack. P.W.13 testifies that accused Kalam and Md. Abdullah had played active role in causing torture to him [P.W.13] and it gets corroboration from P.W.12 and P.W.14 who also witnessed these two accused causing torture to Hashem [P.W.13], on capture.

151. Thus, we see that accused Md. Abdullah was with the gang not as a mere bystander or spectator. Rather, it may be irresistibly inferred that he, sharing common intent and purpose of the gang, remained stayed at the crime site intending to actively facilitate achieving goal of the criminal mission.

152. The learned defence counsel argued that P.W.13 is not a credible witness as he testified the alleged event also implicating one accused Tota who has not been indicted in this charge. Yes, it emerges from testimony of P.W.13 that accused Falah, Razzak and Tota actively participated in causing forcible capture of victim. But accused Tota has not been indicted in this charge. Now, the question is whether the testimony of P.W 13 in its entirety shall go on air, for the reason of such exaggeration?

153. Tribunal notes that in a case 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.

154. Thus, merely for the reason of any such exaggeration one's testimony in its entirety shall not for all time be kept aside from consideration. For such addition or exaggeration does not go to the root of the event. Thus, we are not prepared to reject the evidence of P.W.13, in its entirety on the ground that there has been exaggeration in his testimony.

155. All the direct witnesses relied upon to substantiate this charge consistently stated that accused Akkel Ali and Tota two days after release of one detainee Siraj Khan from captivity circulated the fact of annihilation of detained victim Khoka Khan around the locality. It stands proved that Accused Akkel Ali was along with the group that had carried out criminal activities to further the purpose of the attack. This fact together with the assistance and approval this accused had provided in committing the crimes in course of first phase of attack is sufficient to deduce that he was consciously 'concerned' even with the killing, the upshot of the first phase of attack.

156. Additionally, we may safely infer that circulating the killing of one detainee Khoka Khan was intended to spread horrific

intimidation and coercion among the pro-liberation civilian population of the locality. Such act was rather filled with perverse aggressive attitude. Circulating the killing of detained Khoka Khan was a post killing act of accused Akkel Ali which together with his participation in first phase of attack proves his 'concern' and affiliation with the gang of attackers and Razakar camp.

157. Circulation of the fact of killing the victim by accused Akkel Ali indisputably adds assurance as to his participation in the attack as well which ended in killing of detained victim Khoka Khan. One Tota has not been indicted in this charge. Besides, mere participation in circulation of the information about victim's killing does not make him liable for the crimes committed in any manner.

158. Uncontroverted testimony of P.W.12, a direct witness leads to the conclusion that accused Falah, Razzak and Akkel were actively engaged in accomplishing forcible capture of principal victim Khoka Khan.

159. It also stands proved by uncontroverted consistent testimony of four direct witnesses that the gang formed of accused persons and their accomplice Razakars, before quitting the site carried out looting at Khoka Khan's house and torched it on fire and then moved back

toward to Trimohini Razakar camp taking forcibly captured Khoka Khan and Siraj Khan with them .

160. Such devastating activities rather demonstrate fair indicia of extreme aggressive attitude of the gang of attackers which gravely contravened fundamental right to normal livelihood of unarmed pro-liberation civilians. Such organized aggression was not only to civilians of a locality but a deliberate threat to the humanity.

161. Consistent narrative made by P.W.01, P.W.12, P.W.13 and P.W.14 in relation to forcible detention of Siraj Khan and Khoka Khan demonstrates that the gang of attackers accompanied by the accused persons materialized its designed plan of keeping them in protracted captivity at Razakar camp where they were subjected to torture and few days later detainee Siraj Khan was set at liberty. Then Siraj Khan coming back home told that Khoka Khan detained at the camp would be killed. This crucial fact remained unshaken.

162. The Defence submitted that most of the witnesses who claimed that they saw the accused persons indicted in this charge at the site and at the time of launching the attack did not know the accused persons.

163. But from testimony of live prosecution witnesses it is reasonably found that they had rationale of knowing the accused persons as they had occasion to know them even since prior to the crimes committed. Defence denied it. But mere denial is not sufficient to attack credibility of a certain fact. Their evidence, in this regard, could not be dislodged in any manner by the defence.

164. Tribunal notes that it is now well settled that the object of cross-examination is to get out desirable facts relating to the arraignment intending to tarnish the examination-in-chief. The other object of cross-examination is to bring out facts which go to diminish or impeach the trustworthiness of the witness. But in the case in hand, it appears that defence simply denied what has been testified by the witnesses in relation to the arraignment. Besides, trend of cross-examination does not seem to have diminished trustworthiness of witnesses.

165. Tribunal further notes that credibility of a witness may be determined by way of cross-examination in respect of his integrity, his ability to disclose facts, his consistency in his statement. It transpires that most of witnesses relied upon in respect of the event arraigned in this charge had natural occasion of observing facts related to the attack arraigned and we do not find any reason of disbelieving them.

166. On totality of evidence presented it has been divulged that all the six accused persons and their accomplice Razakars forming group of attackers had carried out the first phase of attack and they did it in exercise of their explicit affiliation with the locally formed Razakar Bahini and to further the object of the criminal mission.

167. It also transpires that in conjunction with the attack accused Md. Shamsuzzaman (Kalam) @ Abul Kalam and Md. Abdur Razzaq Mondol led by Razakar Commander Foyez Ullah deliberately and actively participated in effecting forcible capture of victim Khoka Khan and other pro-liberation civilians.

168. It stands proved too that the accused AFM Faizulla @ Abul Fallah @ Faizulla was the commander of locally formed Razakar Bahini. He was the main actor in conducting the designed attack. Evidence tendered proves that the attack was carried out by the gang of Razakars led by this accused AFM Faizulla @ Abul Fallah @ Faizulla. His commanding position in locally formed Razakar Bahini, as found proved is indisputably a probative indication of his conscious and deliberate act of leading the gang of Razakars to further common design calculated to effect forcible capture of pro-liberation civilians, we may safely deduce it.

169. The Tribunal notes that crimes being dealt with under the Act of 1973 are 'system crime' and not isolated crimes. These were

committed in a context of war of liberation of Bangladesh. An individual even for his single act or conduct, prior, amid or subsequent to the commission of the offence may be held responsible for such 'system crime', if such act or conduct had substantial contributing effect on the commission of offences by the principal perpetrators. It is to be perceived on rationale evaluation of evidence and circumstances whether such act or conduct contributed and facilitated the principals in committing the crimes.

170. In proving the offences of crimes against humanity it is not required to show that all the members of the group actively participated in perpetrating the crimes arraigned. If it is proved that an accused accompanied the group of attackers at the crime scene we need to adjudicate whether such presence encouraged the gang in accomplishing the criminal acts.

171. It also emerges that the three other accused Alim Uddin Khan, Md. Abdullah, Akkel Ali were with the gang of attackers knowing consequence and sharing common intent of the gang. Of them accused Alim Uddin Khan and Akkel Ali too belonged to Razakar Bahini, already we got it proved. Thus, it may be unerringly concluded that they were with the gang at the crime scene not as mere spectators. Rather, they by their such presence at the crime scene provided 'assistance', 'encouragement' and 'moral support' which

obviously had ‘substantial effect’ on the perpetration of the crimes which resulted in detaining civilians, causing devastating activities and killing one detainee and in this way they had acted as co-perpetrators to materialize the criminal mission which ended in killing of one detainee Khoka Khan.

172. Tribunal recalls that "encouragement" is a form of conduct which may lead to criminal responsibility for aiding and abetting a crime committed by launching attack. **The ICTY Appeals Chamber** has held that—

"The encouragement or support need not be explicit; under certain circumstances, even the act of being present on the crime scene (or in its vicinity) as a 'silent spectator' can be construed as the tacit approval or encouragement of the crime. **[Brdanin Appeal Judgment, ICTY, para.277, referring to Tadic Appeal Judgment, ICTY, para.229]**

173. Accused Alim Uddin Khan and Akkel Ali belonged to locally formed Razakar Bahini and they had association with the Razakar camp, as found proved. Presumably, they did not opt to remain with the gang as mere ‘silent spectators’. Their proved presence at the crime scene with the gang of attackers indisputably indicates their explicit approval and encouragement in accomplishing the criminal acts, in conjunction with the first phase of attack.

174. P.W.13 testifies that accused Abdullah too had played active role in causing torture to him [P.W. 13] and it gets corroboration from P.W.12 and P.W.14 who also witnessed this accused causing torture to Hashem [P.W.13], on capture. Defence could not refute in any manner.

175. The unlawful act the accused Md. Abdullah had carried out in course of attack manifests the irresistible conclusion that he being a pro-Pakistan individual consciously opted to join the gang, sharing common intent. Thus, accused Md. Abdullah too incurred liability for the acts leading to abduction, confinement, torture and the killing, the upshot of the attack.

176. Finally it transpires from consistent version made by P.W.01, P.W.,12 and P.W.14 that at the relevant time i.e. when the attack was launched they together were engaged with the task of repairing the water pump at Sadhua village, nearer to Sakra Bil [swamp], south to victim Khoka Kha's house. Defence could not controvert it in any manner. The alleged event happened in day time. Thus, staying of these three witnesses together at the place nearer to the crime scene made it practicable to them of seeing the movement of the group of attackers and its activities, we infer it.

177. All the direct witnesses claim to have observed the prohibited activities carried out by the group of attackers. Their testimony

depicts that the accused Razakars they saw accompanying the gang were from the same and neighbouring locality and thus these witnesses naturally knew them beforehand. Defence could not bring anything by cross-examining them to make it untrue or unbelievable.

178. What happened next to taking away the detained civilians including Khoka Khan on forcible capture? Tribunal notes that there is sufficient evidence to establish beyond reasonable doubt that the accused persons belonging to Razakar Bahini took away the detained unarmed civilians on forcible capture to the Razakar camp where they were subjected to serious mental and bodily harm. The detainees were subjected to grave ill-treatment in prolonged captivity amounting to 'torture'.

179. On close appraisal of evidence tendered we may justifiably conclude that the circumstances surrounding the commission of acts of torture leave no doubt that the accused persons indicted being part of the designed criminal plan carried out such acts intending to extract information of freedom-fighters.

180. Keeping civilians unlawfully detained is rather unlawful deprivation of a group of discriminated civilians of their freedom which is a grave breach of the Geneva Conventions of 1949. In the case in hand, the event happened in phases. First, two civilians were

forcibly captured, by launching attack and they were taken away to Razakar camp where they were kept confined.

181. The next phase of attack involved the act of causing torture keeping the captured civilians in captivity at the camp for days together. Eventually, one detainee excepting the victim Khoka Khan was set at liberty in exchange of ransom money. But the victim Khoka Khan had to face brutal destiny as he was finally shot to death.

182. Considering the war time situation direct evidence is not expected to prove the act of killing the detainee Khoka Khan. But it has been found well proved that the victim was kept in captivity at Razakar camp where he was subjected to recurrent torture to which the accused persons were engaged and concerned. One detainee returned back from captivity in exchange of ransom money. But the detainee Khoka Khan could not return back and he could not be traced even, after causing his death, it stands proved.

183. From the facts unveiled from evidence as discussed above it is manifested that one night detainee Khoka Khan was taken out of the Razakar camp and was then shot to death. All the facts related to the phases of attack cumulatively suggest the unmistakable conclusion that the accused persons affiliated with the Razakar camp were responsible for the annihilation of detainee Khoka Khan.

184. Besides, since it is proved that all accused persons had actively acted in keeping the victim detained at Trimohini Razakar camp on taking him there on forcible capture it may be sturdily deduced that none but the accused persons were responsible for and concerned with even the killing, the upshot of the attack.

185. Proved acts of the accused persons had a causal effect on the perpetration of the act of killing the victim Khoka Khan. Furthermore, participation may occur before, during or after the act is committed. It may be presumed from the proved participation in accomplishing criminal acts during the first phase of attack that the accused persons knew the precise crime which was intended to be perpetrated, at the end.

186. We have found it proved that three accused Kalam, Razzak led by accused Falah were engaged actively in committing the offences of abduction and confinement leading to brutal killing of victim and thus they incurred key liability. Accused Kalam, Razzak led by accused Falah were the key perpetrators in accomplishing the designed criminal acts forming part of systematic attack. It also stands proved that accused Md. Abdullah, Alim and Akkel Ali also were with the gang and substantially facilitated and encouraged the commission of crimes, knowing consequence.

187. It should be borne in mind that an act of killing the detained victim was not committed with previous notice to any of witnesses, soliciting their presence. Killing the detained victim was the end result of attack by accomplishing his abduction. Thus, naturally, none witnessed the act of killing. Body of victim could not be traced. Defence could not refute it. On the following day one accused and his accomplice Razakar circulated around the locality the act of killing. All these could not be impeached in any manner.

188. In absence of anything contrary and eying on the role the accused persons had during the first phase of attack as discussed above, it may be indisputably concluded that the accused persons who were engaged in taking away the victim on forcible capture were 'concerned' also in perpetrating the act of annihilation of the victim detained at Razakar camp.

189. It has been unveiled unerringly that killing of one detained victim Khoka Khan was the upshot of the systematic attack carried out in a designed way under the leadership of accused AFM Faizulla @ Abul Fallah alias Faizulla. The attack at its first phase was full of horrific action. Act of devastating acts including looting and setting the house on fire and causing atrocious torture constituted the offences of crimes against humanity.

190. All those criminal acts happened in context of war time situation, directing civilian population in a systematic manner. In such context killing even of a single civilian on discriminatory grounds constitutes the offence of crime against humanity. It is now well settled jurisprudence. **ICTR Trial Chamber** in the case of **Seromba** observed that --

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

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

191. It has been argued on part of accused Akkel Ali that he was a disabled person in 1971 and still now he is disabled and thus he did not allegedly facilitate the gang in accomplishing the crimes by launching attack. The learned defence counsel submits too that one hand of this accused was dysfunctional and thus he was not in position to act as a co-perpetrator by accompanying the armed gang of Razakars.

192. It has already been proved that accused Akkel Ali belonged to Razakar Bahini formed locally. Thus, merely for the reason that at the relevant time one hand of accused Akkel Ali was dysfunctional it cannot be deduced that he was at the crime site as a mere bystander. Rather, totality of facts suggests concluding that he facilitated the

commission of criminal acts by remaining present at the crime site consciously, sharing common purpose of the gang.

193. Facts unveiled lead to the conclusion that the accused Alim Uddin Khan, Md. Abdullah and Akkel Ali willingly participated in the joint criminal enterprise[JCE] intending to materialize the object of the designed attack and they were aware of natural and reasonable consequence that crimes would be committed against the civilian population, by launching such attack. Their acts were indisputably specifically directed to assist, encourage or lend moral support to the perpetration of crimes arraigned.

194. The three accused AFM Faizulla @ Abul Fallah @ Faizulla, Md. Alim Uddin Khan and Md. Abdur Razzaq Mondol indicted in this charge cannot be considered merely as absentee accused. Evading trial for the offences of which they have been charged with signifies their culpability too. Remaining in such deliberate absconsion is a material incriminating circumstance which lends further assurance as to guilt of these three accused who have been found criminally liable for the criminal acts forming part of systematic attack.

195. Culpability for crimes against humanity requires that the perpetrator had the relevant knowledge of the underlying attack. It appears that facilitating and promoting the commission of offences

were the aim of the all the accused of the joint criminal venture. Thus, it is not required to show that all the accused had acted actively. Presence of the accused persons at the crime scene accompanying the gang, knowing consequence thus tantamount to their 'participation' in the criminal acts, in execution of the common design.

196. The settled jurisprudential proposition is that the basic form of JCE(JCE-I) attributes individual criminal liability when all members of the collective criminality are found to have acted knowingly pursuant to a common plan or design and possessed the same criminal intent, even if each member of the gang carried out a different role within the JCE.

197. The Tribunal notes that JCE is a form of co-perpetration that establishes personal criminal liability. The expression 'common purpose', 'awareness of foreseeable consequence' of act or conduct, and 'intent' are the key factors which are linked with the notion of JCE liability. It has been found manifested that all the accused persons were deliberately engaged in conducting the attack directing civilian population, sharing common purpose and being aware of the consequence of their acts. In fact section 4(1) of the Act of 1973 refers to JCE-I liability which has been well evolved through judicial pronouncement in the case of *Tadic* [ICTY].

198. In the case in hand, all the accused indicted in charge no.01, by their act and conduct participated and facilitated the perpetration of offences by the joint criminal enterprise [JCE]. Thus, all the six accused are held responsible for the crimes committed, under the doctrine of JCE-1. In this regard we recall the observation of **ICTY** in the case of *Limaj* that--

“Where, however, the accused knows that his assistance is supporting the crimes of a group of persons involved in a joint criminal enterprise and shares that intent, then he may be found criminally responsible for the crimes committed in furtherance of that common purpose as a co-perpetrator.”

(*Limaj*, **ICTY** , (Trial Chamber), November 30, 2005, para. 510)

199. Each accused arraigned in charge no.01 had acted in concert with others, to commit the alleged offenses, we conclude. Participating in a joint criminal enterprise as a co-perpetrator amounted to "committing". We further reiterate that ‘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. In this regard it has been observed by the **ICTY Trial Chamber 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." [**Case No. IT-97-24-T, Judgment: 31 July 2003, Para-528**]

200. Based on facts and circumstances unveiled together with the above evolved legal proposition we arrive at an unerring decision that all the six (06) accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Alim Uddin Khan, (4) Md. Abdullah, (5) Md. Abdur Razzaq Mondol, (6) Md. Rois Uddin Azadi @ Akkel Ali in the enterprise perceptibly predicted the end result of their acts. They were aware that the group's criminal actions were 'most likely to lead to the killing the detained victim,' and knowing it they consciously facilitated the criminal enterprise in accomplishing its criminal mission.

201. The Tribunal finds it proved beyond reasonable doubt that the accused persons participated in the attacks and that the accused persons indicted were fully aware that their actions formed part of a systematic attack. The accused persons were not only "concerned in the killing" by providing substantial contribution and assistance to the commission of the crime in the knowledge that the crime was

going to be committed, but they consciously participated in perpetrating the brutal killing of a pro-liberation civilian for the reason that he was an organizer of war of liberation. Prosecution has been able to establish it.

202. On cautious appraisal of evidence presented as evaluated above we eventually arrive at agreed decision that the prosecution has been able to prove that the accused (1) AFM Faizulla @ Abul Fallah @ Faizulla (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam (3) Md. Alim Uddin Khan, (4) Md. Abdullah (5) Md. Abdur Razzaq Mondol and (6) Md. Rois Uddin Azadi @ Akkel Ali are found criminally liable for the offences of '**abduction**', '**confinement**', '**torture**', '**looting**', '**arson**' and '**murder**' as crimes against humanity as specified 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.02:

[05 accused indicted: 01 accused died after framing charges]

[Event no. 02 as narrated at pages 48-55 of the Formal Charge: Offences of 'abduction', 'confinement', 'torture', 'looting' and 'killing' of Noor Hossain Bepari @ Nuru Bepari of village-Rouha, Police Station- Pagla, District- Mymensingh]

203. That on 22 September 1971 at about 12.30A.M the accused (1) AFM Faizulla alias Abul Fallah @ Faizulla, (2) Md. Abdul Malek Akanda @s Abul Hossain @ Abul Member [died on 07.06.2019,

after framing charge], (3) Md. Rois Uddin Azadi @ Akkel Ali, (4) Md. Abdur Razzaq Mondol and (5) Md. Alim Uddin Khan being accompanied by 7/8 other Razakars and some Pakistani occupation army men by launching attack at the house of Noor Hossain Bepari @ Nuru Bepari , an organizer of the liberation war and a freedom-fighter of village-Rouha under Police Station- Pagla, District-Mymensingh forcibly captured Hafiz Uddin, Shahidul Islam (Dulal) and Abdul Karim Bepari from the shop of Hafiz Uddin, in front of Noor Hossain's house.

In conjunction with the attack the gang also detained Tamiz Uddin Bepari (now dead), Gias Uddin Bepari (now dead), Siraj Uddin alias Siru Bepari, Kashem Ali Bepari (now dead) and Noor Hossain Bepari from the 'Bepari house' and kept them tied up with rope with other detainees and were subjected to torture. The group of attackers, in conjunction with the attack looted the shops and households. Afterwards, the 08 detainees along with looted valuables were taken away to the Baroihati Bazar Razakar camp where they were kept in captivity for 3 days and later on 05 detainees got release in exchange of 5000 Rupees as ransom. Similarly, 02 other detainees Tamiz Uddin and Abdul Karim got release on 26 September 1971 from captivity in exchange of 7000 Rupees. On 26-09-1971, at night about 9.00 P.M. the accused Razakar Commander (1) AFM Faizulla @ Abul Fallah @ Faizulla , accused (2) Abdul Malek Akanda @

Abul Hossain @ Abul Member [died on 07.06.2019, after framing charge], (3) Akkel Ali, (4) Abdur Razzaq and (5) Alim Uddin Khan along with their armed accomplices brought out the detainee Noor Hossain Bepari on the bank of the river Kalibana (Chorhi Ghat), where he was shot to death and his dead body was thrown in the river, His dead body could not be found.

Therefore, the accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Abdul Malek Akanda @ Abul Hossain @ Abul Member [died on 07.06.2019, after framing charge], (3) Md. Rois Uddin Azadi @ Akkel Ali, (4) Md. Abdur Razzaq Mondol and (5) Md. Alim Uddin Khan have been charged for participating, facilitating, abetting and substantially contributing to the commission of the offence of '**abduction**', '**confinement**', '**torture**', '**looting**' and '**murder**' as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Presented

204. Total six (06) witnesses have been examined in support of this charge. Of them three (03) are alleged to be the survived victims and one (01) is the wife of one survived victim. The rest two (02) other witnesses are hearsay witnesses. However, before weighing

credibility and probability of what the witnesses narrated first let us see what they have testified before Tribunal.

205. P.W.02 Md. Abdul Latif Kha (77) is a resident of village – Rouha under Police station – Pagla (Previously Gafargaon) of District-Mymensingh. He is one of the survived victims of the event alleged. In 1971 he was a farmer.

206. Before testifying about the event alleged P.W.02 stated that being ignited by Bangabandhu's epic speech of 7th march, he [P.W.02] started taking grounding to take part in liberation war under the leadership of Noor Hossain Bepari. In the first part of Bangla month Aswin [in 1971] Razakar Bahini was formed in their locality led by Reaz Uddin Moulana and Helim Mondol and Abul Fallah son of Majid Moulana, was its Commander. Razakar camps were set up at Trimohini and Baroihati.

207. In respect of the event alleged P.W.02 stated that he heard from people that on 5th Aswin, 1971 at night many Razakars including Razakar commander Abul Fallah, Md. Abdul Malek Akanda @ Abul Hossain @ Abul Member [died on 07.06.2019, after framing charge], Abdur Razzak, Akkel Ali, Alim Uddin and their cohorts took away 5/6 persons including Noor Hossain Bepari, Siru Bepari,

Tamij Uddin Bepari and Karim Bepari to Baroihati Razakar camp, on forcible capture.

208. P.W.02 next stated that on 7th Aswin, 1971 at about 11:00/12:00 P.M. Razakar Abul Fallah, Abdul Malek [died on 07.06.2019, after framing charge], Abdur Razzak, Akkel Ali, Alim Uddin and their cohorts took him [P.W.02] away to Baroihati Razakar camp on forcible capture from their house and he was subjected to torture in captivity to extract information about the freedom-fighters' camp.

209. What happened next? What the P.W.02 experienced in captivity at the Razakar camp? P.W02 went on testifying that at the Razakar camp he saw the victims including Noor Hossain Bepari being tortured mercilessly. He (P.W.02) saw the perpetrators torturing the detained Noor Hossain Bepari hanging him upside down for extracting information about freedom fighter's camp.

210. P.W.02 also stated that on the night at about 10:00 /10:30 P.M. the Razakars he named [accused persons] took away detainee Noor Hossain Bepari west to the camp and 10/15 minutes later he [P.W.02] heard sound of gun firing from that end. Razakars coming back to the camp told him [P.W.02] that they had killed Noor Hossain Bepari and would kill him too if he failed to provide information about freedom fighters' camp.

211. P.W02 continued testifying that eventually in exchange of ransom money and a goat Razakar Abul Fallah set him free. He [P.W.02] knew the Razakars he named beforehand as they were from their locality and their neighboring locality.

212. In cross-examination P.W.02 in reply to defence question admits that in 1971 one wrist of accused Akkel Ali was impaired. P.W.02 denied the defence suggestions that he did not see the event he testified; that he was not kept detained at Razakar camp on forcible capture; that what he testified about the killing of detainee Noor Hossain Bepari was untrue and tortured; that he testified out of political rivalry; that the accused persons were not Razakars and were not involved with the event alleged.

213. P.W.04 Hafiz Uddin Ahmed [64] is a resident of village –Rouha under Police station-Pagla (Previously Gafargaon) of District-Mymensingh. He is one of the survived victims of the event alleged.

214. Before testifying the event alleged P.W.04 stated that after Bangabandhu's speech on 7th March, he [P.W.04] along with Khoka Khan, Abdul Mazid, Helal Uddin, Abdul Hai and many other youths started taking groundwork at Baroihati Araj Ali Khan high school premise intending to take part in liberation war under the leadership of Noor Hossain Bepari.

215. In respect of forming peace committee and Razakar Bahini in their locality P.W.04 stated that at the beginning of April and May, 1971, peace committee was formed in their locality led by Reaz Uddin Moulana (now dead), Helim Mondol (now dead), Abdul Kader chairman (now dead), Advocate Solaiman (now dead). Few days later, Razakar camp and Pakistani army camps were set up at Trimohini and Baroihati bazaar. Abul Fallah, Razzak Mondol, Abdul Malek [died on 07.06.2019, after framing charge], Akkel Ali and many other joined Razakar Bahini and used to visit those two camps and were engaged in carrying out atrocious activities around the localities.

216. About the event alleged P.W.04 testified that on 22nd September, 1971 Wednesday at about 12:00/12:30 A.M. (midnight), he[P.W.04], his younger brother Dulal, his uncle Abdul Karim were sleeping at the shop, nearer to their house while they heard screaming of female inmates from their house. At that time, they were asked to open the door of the shop. Being scared they did not open the door and thus later the door was broken.

217. P.W.04 continued testifying that Razakar Abdul Malek [died on 07.06.2019, after framing charges] and Razakar Oilla (now dead) entered into the shop and forcibly captured him[P.W.04] and other Razakars tied up his uncle and his younger brother and took them to

their [P.W.04] house where he found his grand-father Kasom Ali Bepari, his sons Gias Uddin Bepari, Siraj Bepari, his [P.W.04] father Tamij Uddin Bepari detained tying them up. His [P.W.04] uncle Noor Hossain Bepari was also captured dragging him out of dwelling hut and was kept detained with them, tying him up.

218. What happened next in conjunction with the attack? P.W.04 went on narrating that after causing their forcible capture Razakars Abdul Malek [died on 07.06.2019, after framing charge], Abdur Razzak, Akkel Ali, Abul Fallah, Oilla (now dead), Habibullah (now dead) and several other Razakars looted many household, shop and got the valuables bagged and made them forced to carry looted valuables when the Razakars moved back to Baroihati Razakar camp. At the camp they [detainees] were kept tied down in one Sultan's room and they found others detained there.

219. P.W.04 next stated that on the following day the perpetrators tortured them mercilessly taking them in the field of Baroihati Angaria Hurmut Ali Fazil Madrasa and took them back to camp again. Next day (Friday) they released him [P.W.04], Kasom Ali Bepari, Siraj Uddin Bepari, Dulal Bepari, and Gias Uddin Bepari. But Razakars tortured Noor Hossain Bepari brutally to extract information about freedom fighters whereabouts.

220. P.W.04 also stated that at the time of setting them at liberty Razakar Abul Fallah, Malek [died on 07.06.2019, after framing charge] demanded ten thousand taka as ransom for securing other three detainees' release. Accordingly after coming back home they collected seven thousand taka and gave it to the Razakars on Saturday. With this his [P.W.04] father and his uncle Abdul Karim got release but not the detainee Noor Hossain Bepari.

221. P.W.04 finally stated that on next day, Oilla Razakar [now dead] circulated around the locality that they had killed detainee Noor Hossain Bepari and dumped his body into the river. His body could not be traced. In respect of knowing the accused persons he [P.W.04] stated that the accused Razakars were from their neighboring localities and Razakar Md. Abdul Malek Akanda @s Abul Hossain @ Abul Member[died on 07.06.2019, after framing charge] used to visit his relatives' houses, adjacent to their house and thus he knew them beforehand.

222. In cross-examination P.W.04 in reply to defence question put to him stated that in 1971 Moulana Mohiuddin was the Chairman of Peace Committee; that one wrist of accused Akkel Ali was impaired but his another hand and body parts were fully functional.

223. P.W.04 denied the defence suggestions that the accused persons were not Razakars and were not involved with the event alleged; that he did not know the accused persons; that the event he testified did not happen and that what he testified implicating them was untrue and tutored; that the accused persons did not belong to Razakar Bahini and were not involved in the alleged event.

224. P.W.05 Mst. Jomila Khatun [78] is a resident of village –Rouha under Police station – Pagla (Previously Gafargaon) of District-Mymensingh. She is a direct witness to the first phase of the event alleged. She was the wife of one survived victim Foyez Uddin Bepari and in 1971 she had been at her conjugal home at village- Rouha. Victim Noor Hossain Bepari who was eventually killed, as arraigned was the younger brother of her husband.

225. About the event of attack alleged, P.W.05 testified that on 5th Aswin, 1971 Wednesday at about 12:00/12:30 A.M. (midnight) two Razakars breaking the door of their room dragged out her husband on forcible capture. With this she and her mother-in-law went into hiding adjoining to house wherefrom she could see the perpetrators beating her husband and that at a point of torture her husband had gone free and went into hiding.

226. P.W.05 also stated that she saw Razakars Abdul Malek [died on 07.06.2019, after framing charge], Abul Fallah, Abdur Razzak, Akkel Ali, Alim Uddin and their cohorts detaining her husband's elder brother Tamij Bepari, Noor Hossain Bepari, Kasem Ali, her husband's younger brother Gias Uddin Bepari, son of her husband's elder brother Hafiz Uddin, her cousin brother Siru Bepari, Dulal Bepari who were kept tied down at the courtyard. Razakars looted valuables from the house and then moved back toward Baroihati bazaar taking the detainees with them.

227. P.W.05 stated that three days later detainees Hafiz Uddin, Dulal Bepari, Siru Bepari, Kashem Ali and Gias Uddin were set at liberty in exchange of ransom money and they coming back home told that other detained persons would also be freed in exchange of taka 10,000/-. Later Tamij Bepari and Karim Bepari were also freed in exchange of taka 7,000/- but not Noor Hossain Bepari. After being freed Karim Bepari let them know that Razakar Abul Fallah, Razzak Mondol, Akkel Ali, Alim Uddin and Abdul Malek [died on 07.06.2019, after framing charge] had killed Noor Hossain Bepari.

228. In respect of reason of knowing the accused persons P.W.05 stated that the Razakars she named were from their neighboring localities and accused Abdul Malek [died on 07.06.2019, after

framing charge] used to visit his relative's house which was adjacent to their [P.W.05] house and that is why she knew them beforehand.

229. In cross-examination P.W.05 stated in reply to defence question that all the family inmates could not go into hiding at the time when attack was launched at their house; that her mother-in-law managed to go into hiding near the courtyard of their house and that when the attack was launched, nobody could escape as they were kept tied down.

230. P.W.05 denied defence suggestions that two days prior to 05 Aswin, 1971 she went to her paternal house; that the accused persons were not Razakars and were not involved with the events alleged; that the event she testified implicating the accused persons was untrue and tutored; that accused persons did not go to her conjugal home on the day of the event happened.

231. P.W.08 Abdul Karim [73] is a resident of village-Rouha under Police station-Pagla (Previously Gafargaon) of District-Mymensingh. He is another survived victim of the event alleged. Victim Noor Hossain Bepari who was eventually killed, as arraigned was the brother of P.W.08.

232. About the event alleged P.W.08 testified that on 5th day of Aswin, 1971 at about 12:00/12:30 A.M. (midnight,) he (P.W.08), Dulal Bepari and Hafiz Uddin were sleeping at the shop of Hafiz Uddin Master, adjacent to their house when some people started calling from outside. Being scared they did not open the door. At a stage, they broke down the door and being asked Hafiz Uddin had left the shop. Then Razakar Abul Falah, Razzak, Alim Uddin Kha, Malek [died on 07.06.2019, after framing charge], Akkel Ali and Oilla (now dead) captured them forcibly and brought them at the courtyard of their house, tying them up by causing torture. There he also saw the other Razakars detaining his uncle Kashem Ali Bepari, Khoka Bepari, Siraj Bepari and Tamij Uddin Bepari. Next, he [P.W.08] saw Razakars Malek [died on 07.06.2019, after framing charge], Akkel Ali and Razzak bringing there his [P.W.08] elder brother Noor Bepari on capture. The accused persons then started looting their house and shop. Next they along with the looted household were taken away to Baroihati Razakar camp.

233. What happened next? P.W.08 went on testifying that they were subjected to torture in captivity at Razakar camp for extracting information about freedom-fighters. On the following day detained Dulal Bepari, Kashem Ali Bepari, Siraj Bepari, Khoka Bepari and Hafiz Uddin were set at liberty for bringing ransom money. Hafiz Uddin Bepari collected taka 7,000/- and gave it to the Razakars and

then he [P.W.08] was set at liberty but they did not make the detainee Noor Hossain Bepari freed. Being freed from the camp P.W.08 remained stayed around the bazaar instead of going back to house while at about 10:00 PM he saw that the perpetrators taking Noor Hossain Bepari toward the Bana River and few minutes later he heard gunshot.

234. P.W.08 also stated that on the following morning Razakar Oilla [now dead] made it circulated around the locality that Noor Hossain Bepari was gunned down to death on the bank of the river, in the preceding night. In respect of reason of knowing the accused persons P.W.08 stated that he knew the accused persons beforehand as they were from their localities.

235. In cross-examination P.W.08 stated in reply to defence question that the house of relative of accused Malek [died on 07.06.2019, after framing charge] was adjacent to their house. P.W.08 denied defence suggestions that the accused persons were not Razakars and were not affiliated with the event alleged; that he did not know the accused persons; that accused Rois Uddin was physically challenged in 1971 and could not move; that his [P.W.08] brother victim Noor Hossain Bepari died normally and no event he testified happened and that what he testified implicating the accused persons indicted was untrue and tutored.

236. P.W.12 Md. Habibur Rahman Khan (63) is a resident of village-Sadhua under Police station-Pagla (Previously Gafargaon) of District-Mymensingh. He chiefly testified the event arraigned in charge no.01. In respect of charge no.02 P.W.12 is a hearsay witness.

237. After narrating the event arraigned in charge no.01, as a direct witness P.W.12 stated that he heard from people that the Razakars he named [as perpetrators of the event arraigned in charge no.01] took away Noor Hossain Bepari on unlawful capture and was shot to death.

238. In cross-examination P.W.12 denied the defence suggestion that he did not hear the event of killing Noor Hossain Bepari; that the Razakars he named were not involved with the alleged event and that the accused persons were not Razakars.

239. P.W.15 Jobayer Ahmed @ Sondhi (69) is a resident of Village Sadhua under Police Station-Pagla of District Mymensingh. His testimony chiefly relate to the event arraigned in charge no.04. In respect of the event arraigned in charge no.02 P.W.15 is a hearsay witness.

240. After making the account in relation to the event arraigned in charge nbo.04 P.W.15 simply stated that he also heard from people that the Razakars he named [indicted in charge no.04] killed Nuru Bepari [Noor Hossain Bepari]. In cross-examination P.W.15 denied defence suggestion that the accused persons were not Razakars; that in 1971 accused Abdul Latif was 11 years old; that the accused persons were not involved with the alleged event and that he did not hear the alleged event of killing of Noor Hossain Bepari.

Finding on Evaluation of Evidence Presented

241. The essence of the charge framed is that the gang formed of accused Razakars and their accomplices had launched attack at the house of Noor Hossain Bepari @ Nuru Bepari, an organizer of the liberation war of village-Rouha under Police Station- Pagla, District-Mymensingh and forcibly captured eight (08) civilians including Noor Hossain Bepari, looted the shops and households and took the detainees away to Baroihati Razakar camp where they were subjected to torture in captivity. Few days later, seven (07) detainees got release in exchange of ransom money. But detained Noor Hossain Bepari was eventually shot to death by the accused persons taking him on the bank of the nearby river.

242. Five (05) accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Abdul Malek Akanda @ Abul Hossain alias Abul

Member, (3) Md. Rois Uddin Azadi @ Akkel Ali, (4) Md. Abdur Razzaq Mondol and (5) Md. Alim Uddin Khan have been indicted in this charge. Of them accused Md. Abdul Malek Akanda @ Abul Hossain alias Abul Member died on 07.06.2019, after framing charge and thus now we are to adjudicate the arraignment brought against 04 accused indicted in this charge.

243. Prosecution adduced and examined in all six (06) witnesses to substantiate the arraignment brought in this charge. Out of six (06) witnesses four (04) are direct witnesses to the facts materially related to the event of attack. Of these four witnesses three (03) i.e. P.W.02 Md. Abdul Latif Kha (77) ,P.W.04 Hafiz Uddin Ahmed (64) and P.W.08 Abdul Karim (73) are survived victims and P.W.05 Mst. Jomila Khatun (78), the wife of one survived victim is a direct witness to facts chained to the first phase of attack. The two (02) other witnesses are hearsay witnesses.

244. The learned prosecutor Mr. Md. Shahidur Rahman argued that it has been proved by the corroborative testimony of direct witnesses that the accused persons and their accomplice Razakars by carrying out planned and designed attack directing civilians not only conducted devastating activities, the attack directing pro-liberation civilians resulted in forcible capture of eight civilians who were taken away to Razakar camp where they were kept in prolonged

captivity. The detained civilians were subjected to inhumane torture in the name of extracting information about the freedom fighters. Few days later, all the detainees excepting one Noor Hossain Bepari got escaped from captivity in exchange of ransom money. But detainee Noor Hossain Bepari was shot to death which has been proved from uncontroverted testimony of survived victims and relevant facts. The attack was systematic and on discriminatory grounds, the learned prosecutor argued.

245. The learned prosecutor also argued that the evidence tendered in support of this charge patently demonstrates that Bengali civilians who took stance in support of the war of liberation were the key targets of the Pakistani occupation army and the Razakar Bahini, an auxiliary force created to further policy and plan. The event of attack was conducted under command of accused Razakar AFM Faizulla @ Abul Fallah @ Faizulla. Prevailing context naturally did not leave space of seeing the act of killing the victim. But crucial facts observed and experienced by survived victims were indisputably chained to the act of killing and participation of accused persons therewith. Defence could not refute these crucial facts in any manner.

246. Mr. Abdus Shukur Khan, the learned state defence counsel defending three (03) absconding accused A.F.M Faizulla @ Abul Fallah @ Faizulla, Md. Abdur Razzak Mondol and Md. Alim Uddin

Khan chiefly argued that the witnesses relied upon by the prosecution in support of this charge are not reliable and they did not know the accused persons and thus their testimony implicating these accused does not inspire credibility. The witnesses testified out of political rivalry.

247. Mr. Abdus Sattar Palwan, the learned engaged counsel defending the accused Md. Rois Uddin Azadi @ Akkel Ali drawing attention to the admitted fact revealed in cross-examination of P.W.04 that in 1971 one wrist of accused Akkel Ali was impaired and thus he was not a member of Razakar Bahini and did not take part in any criminal activity by launching alleged attack. The witnesses have falsely testified implicating him with the alleged event.

248. In view of above, prosecution requires proving that –

- (i) The gang formed of accused persons and their accomplice Razakars had launched systematic attack on the date and time and at the place arraigned to actuate the object of the criminal mission;
- (ii) That the gang forcibly captured eight civilians including Noor Hossain Bepari;
- (iii) That the gang had carried out looting and devastating activities;

- (iv) That the detainees were taken away to Baroihati Razakar camp;
- (v) That the detainees were subjected to brutal torture in captivity;
- (vi) That one victim Noor Hossain Bepari was eventually shot to death; and
- (vii) That the accused persons being part of the criminal enterprise were actively engaged even with the killing of one unarmed pro-liberation civilian.

249. Now let us concentrate to the testimony of witnesses. P.W.02 Md. Abdul Latif Kha (77) is a resident of village-Rouha under Police station – Pagla (Previously Gafargaon) of District-Mymensingh. He is one survived victim of the event arraigned in this charge.

250. It transpires that uncontroverted testimony of P.W.02 proves that in the first part of Bangla month Aswin [in 1971] Razakar Bahini was formed in their locality led by Reaz Uddin Moulana and Helim Mondol and Abul Fallah (accused) son of Majid Moulana, was its Commander. Razakar camps were set up at Trimohini and Baroihati.

251. The above version gets corroboration from testimony of P.W.04 which reveals that at the beginning of April and May, 1971, peace committee was formed led by Reaz Uddin Moulana (now dead),

Helim Mondol (now dead), Abdul Kader chairman (now dead), Advocate Solaiman (now dead) in their locality. Afterward, Razakar camp and Pakistani army camps were set up at Trimohini and Baroihati bazaar. Accused Abul Fallah, Razzak Mondol, Abdul Malek[now dead], Akkel Ali and many other joined Razakar Bahini and used to visit those two camps and were engaged in carrying out atrocious activities around the localities. Thus, existence of Razakar camps in the localities under police station-Pagla [Gafargaon] stands proved.

252. The above crucial facts seem to be chained to the fact of affiliation of accused persons with the locally formed Razakar Bahini and its camps and it lends assurance too to the fact of their concern and participation in conducting the attack. At the same time such unimpeached version leads to unerring conclusion that Razakar camps were set up at Trimohini and Baroihati and accused Abul Fallah was its commander.

253. P.W.02 heard that gang of Razakars accompanied by the Razakar commander accused Abul Fallah and other accused Abdul Malek [died on 07.06.2019, after framing charges], Abdur Razzak, Akkel Ali, Alim Uddin and their cohorts took away 5/6 persons including Noor Hossain Bepari, Siru Bepari, Tamij Uddin Bepari and

Karim Bepari to Baroihati Razakar camp, on forcible capture, by launching a designed attack.

254. In respect of the event of taking away numerous civilians including Noor Hossain Bepari on forcible capture, P.W.02 is a hearsay witness. Hearsay evidence is not inadmissible per se if other facts and evidence lend assurance to it. But P.W.02 is a survived victim. He too was kept detained in captivity at Razakar camp. Thus, naturally he [P.W.021] had fair opportunity of seeing the brutal treatment caused to the co-detainees in captivity at the same Razakar camp. It lends corroboration to what he heard about the first phase of attack which resulted in taking away 5/6 civilians including Noor Hossain Bepari on forcible capture.

255. It emerges from testimony of P.W.02 Md. Abdul Latif Kha, a survived victim that two days later the five accused Razakar Abul Fallah, Abdul Malek [died on 07.06.2019, after framing charges], Abdur Razzak, Akkel Ali, Alim Uddin and their cohorts took him [P.W.02] away to Baroihati Razakar camp on forcible capture from their house and he was subjected to torture in captivity to extract information about the freedom-fighters' camp.

256. The above crucial version of P.W.02 could not be diminished in any manner by the defence. P.W.02, one survived victim also saw the

detained victims including Noor Hossain Bepari being tortured mercilessly at the Razakar camp. Thus, during protracted captivity at the Baroihati Razakar camp naturally P.W.02 had opportunity of seeing the aggressive unlawful activities of accused persons done to the detainees.

257. We got it proved from consistent testimony of witnesses that victim Noor Hossain Bepari @ Nuru Bepari was an organizer of the liberation war. Defence could not refute it. It also transpires that during captivity at Razakar camp P.W.02 witnessed torturing the detained Noor Hossain Bepari hanging him upside down for extracting information about freedom fighter's camp. It mirrors brutal attitude of Razakars toward the pro-liberation civilians.

258. When and how the life of detained victim Noor Hossain Bepari came to an end? It stands proved from unimpeached testimony of survived victim P.W.02 that on one night the accused Razakars he named took away detainee Noor Hossain Bepari west to the camp. P.W.02 saw it being detained at the camp. 10/15 minutes later he [P.W.02] heard sound of gun firing. Since then the detainee Noor Hossain Bepari could not be traced. Thus, seeing taking away the victim west to the camp was a fact chained to annihilation of victim by gun shot. Defence could not dislodge it.

259. Seeing the brutal act of causing torture to detained victim Noor Hossain Bepari in captivity at Razakar camp as testified by survived victim P.W.02 provides assurance to the hearsay version that has been stated by him in relation the fact of taking away Noor Hossain Bepari to Baroihati Razakar camp on forcible capture, by launching attack.

260. P.W.02, in cross-examination admits that in 1971 one wrist of accused Akkel Ali was impaired. But merely for this reason his presence with the gang, in exercise of his membership in locally formed Razakar Bahini cannot be turned down. Rather, presence of this accused with the gang sharing intent to activate the mission itself is sufficiently indicative as to his culpable mindset which imbued him to extend assistance, facilitation and support in accomplishing the object of criminal mission. Thus, he cannot absolve of liability.

261. Besides, defence by cross-examining the P.W.02 could not impeach the truthfulness of narrative he made which is crucially chained to the killing of detainee Noor Hossain Bepari, the upshot of the calculated and systematic attack. It also stands unimpeached that the victim was significantly associated with the war of liberation as an organizer and it may be deduced that this was the reason of detaining him at Razakar camp to extract information about the

freedom fighters' camp. But eventually the brave detainee Noor Hossain Bepari had to sacrifice his life.

262. P.W.04 Hafiz Uddin Ahmed [64], another survived victim stated that after Bangabandhu's speech on 7th March, he [P.W.04] along with many other youths started taking ground work at Baroihati Araj Ali Khan high school premise intending to take part in liberation war under the leadership of Noor Hossain Bepari[victim of the event arraigned in charge no.02] . It proves too that victim Noor Hossain Bepari took firm stance in support of the war of liberation and started leading the organizing activities. This fact could not be shaken by the defence.

263. Testimony of P.W.04 demonstrates that on 22nd September, 1971 Wednesday at about 12:00/12:30 A.M. (midnight), Razakar Abdul Malek [died on 07.06.2019, after framing charges] and Razakar Oilla (now dead) entered into the shop and forcibly captured him [P.W./04] and other Razakars tied up his uncle and his younger brother and took them to their [P.W.04] house where he found his grand-father Kashem Ali Bepari, his sons Gias Uddin Bepari, Siraj Bepari, his [P.W.04] father Tamij Uddin Bepari kept detained tying them up. His [P.W.04] uncle Noor Hossain Bepari was also captured dragging him out of dwelling hut and was kept detained with them, tying him up.

264. What happened next? Testimony of P.W.04 goes to show that after effecting forcible capture of numerous civilians Razakars Abdul Malek [died on 07.06.2019, after framing charges], Abdur Razzak, Akkel Ali, Abul Fallah, Oilla (now dead), Habibullah (now dead) and several other Razakars looted household, shop and got the valuables bagged and made them [detainees] forced to carry the looted valuables when the Razakars moved back to Baroihati Razakar camp.

265. The above is the scenario of the initial phase of the attack as portrayed by P.W.04, one survived victim. It stands proved that all the four accused indicted in this charge along with their accomplice Razakars participated, aided and assisted in carrying out devastating activities, torture and abduction of unarmed civilians , by launching a designed attack. Such prohibitory acts carried out in course of first phase of attack could not be impeached. Defence simply denied this crucial part of ocular version of P.W.04. Thus, and in absence of anything contrary the pertinent narrative of P.W.04 relating to first phase of attack carries credibility.

266. It is found proved too that the accused Razakars were from their [P.W.04] neighboring localities and Razakar Malek[died on 07.06.2019, after framing charges] used to visit his relatives houses, adjacent to their[P.W.04] house . It could not be diminished in cross-

examination. Thus, naturally P.W.04 knew them beforehand. Be that as it may, there is no reason to deduce that P.W.04 did not know the accused persons and he testified implicating them falsely.

267. What consequence the detainees had to face after they were taken at Baroihati Razakar camp? Next phase of the event happened after keeping the captured detainees confined at the Razakar camp. It transpires from uncontroverted testimony of P.W.04, one survived victim that the perpetrators tortured them [detainees] mercilessly taking them in the field of Baroihati Angaria Hurmut Ali Fazil Madrasa and took them back to camp again. P.W02, another survived victim also saw the detained victims including Noor Hossain Bepari being tortured mercilessly at the Razakar camp.

268. It also reveals that on the following day P.W.04 and other detainees got release. But Razakars continued torturing Noor Hossain Bepari brutally to extract information about freedom fighters' whereabouts. It gets corroboration from testimony of P.W.04. Presumably, victim Noor Hossain Bepari was the key target of the accused Razakars as he was a potential organizer of the war of liberation.

269. P.W.04 finally stated that on next day, Oilla Razakar [now dead] circulated around the locality that they had killed detainee Noor Hossain Bepari and dumped his body into the river. It remains

undisputed. Circulating the episode of killing of one detained civilian was intended to spread intimidation around the locality, we conclude. Besides, killing the victim Noor Hossain Bepari gets corroboration from testimony of P.W.02, one survived victim.

270. What the P.W.02 experienced during his captivity at the Razakar camp, before he got spared in exchange of ransom money? P.W.02 saw the perpetrators taking the victim Noor Hossain Bepari out of the camp and 10/15 minutes later he [P.W.02] heard sound of gun firing. At that time P.W.02 was in confinement at the camp. Thus, this decisive narrative leads to the irresistible conclusion that it was quite likely for P.W.02 of seeing and experiencing the activities carried out by the accused Razakars as he [P.W.02] too was kept confined at the same camp till the killing happened.

271. Context and situation did not leave space of seeing the act of accomplishing the killing of one victim in the dark of night at a place nearer to Razakar camp. But the above chained facts unerringly prove that the accused persons were actively 'concerned' with the annihilation of the victim Noor Hossain Bepari. It is not required to prove which accused was the actual perpetrator.

272. P.W.02 also stated that accused Razakars coming back to the camp told him [P.W.02] that they had killed Noor Hossain Bepari

and would kill him too if he failed to provide information about freedom fighters' camp. But eventually in exchange of ransom money and a goat Razakar Abul Fallah (commander) set him free. By way of such intimidation and unlawful acts the accused persons and their accomplice Razakars made the normal livelihood of non-combatant civilians of the locality enormously traumatized which constituted the offence of 'torture'.

273. P.W.05 Mst. Jomila Khatun [78] is the wife of one survived victim Foyez Uddin Bepari. In 1971 she had been at her conjugal home at village- Rouha. Victim Noor Hossain Bepari who was eventually killed was the younger brother of her husband.

274. Corroborating survived victims she [P.W.05] also stated that she saw Razakars Abdul Malek [died on 07.06.2019, after framing charges], Abul Fallah, Abdur Razzak, Akkel Ali, Alim Uddin and their cohorts detaining her husband's elder brother Tamij Bepari, Noor Hossain Bepari, Kasem Ali, her husband's younger brother Gias Uddin Bepari, son of her husband's elder brother Hafiz Uddin, her cousin brother Siru Bepari, Dulal Bepari who were kept tied down at the courtyard. Razakars looted valuables from the house and then moved back toward Baroihati bazaar taking the detainees with them. Thus it transpires that the male inmates of the house attacked

were forcibly captured, in course of the attack launched. In no way it could be impeached by cross-examining this P.W.05

275. We also got it from uncontroverted testimony of P.W.05 that three days later detainees Hafiz Uddin, Dulal Bepari, Siru Bepari, Kashem Ali and Gias Uddin were set at liberty in exchange of ransom money. But not Noor Hossain Bepari as he was an organizer of war of liberation. After being freed Karim Bepari let them know that Razakar Abul Fallah, Razzak Mondol, Akkel Ali, Alim Uddin and Abdul Malek [died on 07.06.2019, after framing charges] were engaged in perpetration of crimes at Razakar camp and had killed Noor Hossain Bepari.

276. In cross-examination P.W.05 stated in reply to defence question that all the family inmates could not go into hiding at the time when attack was launched at their house; that her mother-in-law managed to go into hiding near the courtyard of their house and that when the attack was launched, nobody could escape as they were kept tied down.

277. It appears from the trend of above cross-examination of P.W.05 that the fact of launching attack has been rather admitted. The male inmates of the house were taken away on capture, by launching attack on the midnight, it stands proved. They were kept confined at

the camp. Later on, they got release in exchange of ransom money. But one detainee Noor Hossain Bepari was not set at liberty. Why?

278. Already it transpires that victim Noor Hossain Bepari was a potential organizer of the war of liberation. At the time of effecting his detention he was non-combatant. Defence could not negate it in any manner that Noor Hossain Bepari was eventually annihilated for the reason of his sturdy stance in favour of war of liberation and he was kept in protracted captivity at Razakar camp for extracting information about the freedom-fighters.

279. Based on above discussion it transpires unerringly that all phases of attack were carried out by the group formed of Razakars including the accused persons indicted. Presumably, the Razakars being imbued by the policy and plan of the Pakistani occupation army had orchestrated the attack, in exercise of their affiliation in Razakar Bahini, an auxiliary force which was created to collaborate with the Pakistani occupation army.

280. P.W.08 Abdul Karim (73) is a resident of village –Rouha under Police station-Pagla (Previously Gafargaon) of District-Mymensingh. He is another survived victim of the event alleged. His uncontroverted testimony also proves the attack launched at mid night by the gang formed of accused persons and their cohorts.

281. It also reveals from testimony of P.W.08 that at the relevant time he [P.W.08] along with Dulal Bepari and Hafiz Uddin were sleeping at the shop of Hafiz Uddin Master when the perpetrators accompanied by accused Razakar Abul Fallah, Razzak, Alim Uddin Kha, Malek [died on 07.06.2019, after framing charges], Akkel Ali and Oilla (now dead) breaking down the door tied them up on forcible capture. P.W.08 also corroborates the fact of effecting forcible capture of other inmates including Noor Hossain Bepari, the principal victim.

282. The above version of P.W.08 could not be diminished in any manner. Rather, it portrays conducting the first phase of attack which seems to have been consistently corroborated by P.W.02, P.W.04 and P.W.05. Corroborating these direct witnesses P.W.08 too testified that the detainees were subjected to torture; that later on some detainees were set at liberty from captivity, excepting Noor Hossain Bepari.

283. It transpires that P.W.08 knew the accused persons beforehand as they were from their locality. Thus, it was fairly possible of knowing the accused persons, the residents of the same vicinity. Besides, it has been affirmed in cross-examination that the house of relative of accused Malek [died on 07.06.2019, after framing

charges] was adjacent to their (P.W.08) house. Be that as it may, it was quite natural of being acquainted with him and other accused.

284. It also transpires that after being released from Razakar camp P.W.08 had been staying at bazaar, nearer the camp instead of going back to home instantly while he saw that at about 10:00 P.M the accused perpetrators were taking Noor Hossain Bepari out of the camp and after a while he heard gunshot.

285. The above crucial version is chained to the act of killing indeed and it gets consistent corroboration from P.W.04 who had been in detention at the same camp at the relevant time and had natural occasion of seeing the accused persons taking the victim out of the camp. In cross-examination it has been suggested to P.W.08 as defence case that victim Noor Hossain Bepari died normally and no event he testified happened. P.W.08 denied it. However, this defence case seems to be a cloudy assertion which in no way taints credibility of P.W.08's testimony.

286. P.W.12 Md. Habibur Rahman Khan and P.W.15 Jobayer Ahmed @ Sondhi are hearsay witnesses. They chiefly testified as direct witnesses to the events arraigned in charge nos. 01 and 04 respectively. In respect of the event arraigned in this charge no.02 they simply stated what they heard about the attack leading to

detention of numerous civilians and killing of one detainee Noor Hossain Bepari.

287. We restate that this charge does not rest upon testimony of any hearsay witness. As many as four direct witnesses including three survived victims came on dock and testified what terrifying activities they experienced. However, being inhabitants of the locality P.W12 and P.W.15 had natural space of hearing and knowing the event. Besides, their hearsay version gets corroboration from the testimony of direct witnesses, the survived victims.

288. It has been chiefly argued on part of defence that the witnesses testified falsely; that they had no reason of knowing the accused persons and that the narrative they made in Tribunal does not carry credibility and value.

289. We disagree with the above hazy argument. There has been no reason of disbelieving the witnesses of whom some are survived victims who naturally had fair juncture of experiencing the atrocious acts of accused persons. Mere insignificant inconsistency between the testimonies of witnesses does not make it unbelievable. We are to eye on core essence of testimony made and to weigh it in rationale way. Next, mere putting suggestion denying what has been testified

in examination-in-chief is not sufficient to shed any degree of doubt to the narrative made by direct witnesses, the survived victims.

290. Tribunal reiterates that the prosecution case requires standing on its own legs. It is well settled that the onus is always lies upon the prosecution to prove, affirmatively the commission of offences alleged and liability of accused persons arraigned. In the case in hand, defence takes plea that the accused persons have been implicated falsely by the witnesses.

291. But it appears that no satisfactory explanation on part of defence seems to have been furnished as to why the accused persons have been falsely implicated. Rather, consistently corroborative evidence of survived victims and direct witnesses indisputably proves that the accused persons being part of collective criminality had acted consciously in carrying out systematic attack which resulted in killing one pro-liberation civilian, after keeping him in prolonged detention along with other civilians at Baroihati Razakar camp.

292. It has been divulged from evidence that the acts carried out by the accused persons in conducting attack were different and varied in character. But it transpires that all the accused persons' acts were done intending to actuate the same common intention.

293. It may be unerringly inferred from the facts divulged that all the accused persons indicted in this charge had acted in unison to put effect a JCE (Joint Criminal Enterprise). The accused persons voluntarily participated in the enterprise and intended the criminal result. Thus, criminal responsibility may be imputed to all participants in the common enterprise as they were aware about predictable consequence of the common design.

294. The commission of crimes as found proved constitute manifestations of collective criminality, in pursuance of a common criminal purpose and plan. Such 'collective criminality' was chained to the factual circumstances leading to the killing perpetrated by the armed group of Razakars of Baroihati camp with which the accused persons had close affiliation.

295. In adjudicating liability for the crimes committed we require to see whether there was a 'causal nexus' between the upshot of the group's intention and the different actions of the accused persons forming part of the group. Facts unveiled indisputably demonstrate that there was a dense causal link between the group members' accountability for the 'illegal confinement' of a number of civilians at the Razakar camp and foreseeability that such confinement could lead to the further crime of killing of any of detained victims.

296. The proved facts of causing brutal torture in captivity to detained victims and killing one victim were the 'natural and foreseeable' consequence of participation of accused persons in the joint criminal enterprise (JCE). Thus, there is no need to prove as to which accused person or persons actually committed these crimes or which accused person or persons intended to commit them including the brutal killing.

297. Besides, it has been found proved from testimony of one survived victim that the accused persons took away victim Noor Hossain Bepari from the camp toward the bank of the nearer river and just few minutes later he heard gun firing from that end. It could not be refuted by the defence. This pertinent fact irrefutably proves that all the accused persons were actually concerned with the act of killing constituting the offence of crime against humanity.

298. Killing one detained victim was thus the upshot of the systematic attack to actuate the common object of the gang. It is now well settled proposition that --a 'single murder' may constitute a crime against humanity if it is perpetrated within the context of a widespread or systematic attack.

299. Having considered the facts and circumstances and pattern of attack we are convinced to deduce unerringly that all the accused being part of 'collective criminality' got knowingly engaged in such

atrocious acts, in violation of international humanitarian law. It is not required to show which accused actually had actuated the killing of victim by gun shot. We reiterate that personal commission is merely one of the modes of responsibility. An accused can also be found guilty of a crime enumerated in the Act of 1973 on the basis of his act and conduct constituting the act of approval, encouragement and abetment that substantially facilitated the commission of crime.

300. Tribunal also restates that commission of offence can be done not only by physical participation. It may also be done otherwise, directly or indirectly, by positive acts, whether individually or jointly with others. In this regard it has been observed by the **ICTY Trial Chamber** 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. Dead body of victim Noor Hossain Bepari could not be traced or recovered. But it does not negate the fact of brutal annihilation of the victim. The event happened not in times of normalcy and thus it is inappropriate to apply rules of some national systems that require the production of a body as proof to death.

302. The act of killing the victim constituted the offence as crime against humanity happened in war time situation. Thus, victim's death may be established by circumstantial evidence provided that the *only* reasonable inference is that the victim is dead as a result of the acts or omissions of the accused.

303. It has been argued by the learned state defence counsel that it is not likely to memorize what happened more than four decades back and thus narrative made by the witnesses does not carry any credibility.

304. We are not ready to agree with the above defence submission. We reiterate that in dealing with the arraignments involving barbaric atrocious events occurred in 1971 during the war of liberation we are to keep it in mind that the event happened in enormously shocking context and narrative made by the witnesses in Tribunal, chiefly on core aspect of the event they experienced with trauma may remain still alive in their memory.

305. Research on human cognition suggests that a piece of information or act causing immense trauma, once it is stored in long-term memory, stays alive. Thus, we conclude that trauma stored in

their episodic memory the survived victims have reliably portrayed the horrific event.

306. The facts and circumstances lead us to deduce that acts of accused persons at all phases of the event had explicit causal nexus with the upshot of the attack, the killing. All the four accused are thus found guilty of the act of torture, confinement, 'abduction' and 'murder' of one detained civilian as they all 'participated' in perpetrating such atrocious criminal acts and all had a common criminal design to actuate the purpose and plan.

307. To be a part of a common criminal design, a person needs only provide assistance to the execution of the common plan or purpose. Although there is no direct evidence as to who actually committed the killing, all the accused were nonetheless guilty of the killing because it was the ending result of their 'participation' in 'collective criminal activity'. It is manifested from proved facts chained to the ending segment of the attack.

308. Facts proved together with settled legal proposition suggest deducing that each accused had acted individually, or in concert with other accused to commit the alleged offences including the offence of killing, in violation of international humanitarian Law. All the four (04) accused (1) AFM Faizulla alias Abul Fallah @ Faizulla, (2)

Md. Rois Uddin Azadi @ Akkel Ali, (3) Md. Abdur Razzaq Mondol and (4) Md. Alim Uddin Khan forming part of the joint enterprise intended it to occur. All these four accused knew the predictable and potential consequence of their participation in the joint criminal enterprise [JCE] by committing the crimes in systematic manner, we conclude. Thus, they incurred equal liability.

309. It is now well settled that the offence of ‘torture’ consists of the infliction, by act or omission, of severe pain or suffering, whether physical or mental. It stands proved that the attack was carried out collectively and in systematic manner with seriousness directing non-combatant civilians. Purpose was to extract information about freedom-fighters’ camps under grave intimidation, coercion and by inflicting arbitrary torture to detainees in captivity.

310. The method and pattern of the attack as manifested in consistent narrative of direct witnesses reflect intense antagonistic attitude of accused persons to the pro-liberation civilians. Such deliberate persecuting act of accused persons was aimed to pour out information about freedom-fighters’ camps which was indisputably arbitrary and detrimental to the fundamental right of unarmed pro-liberation civilians, the detainees.

311. The revenge and abhorrence leading to capture and liquidate the counterpart, the detained pro-liberation civilians, pursuant to

designed plan prompted the accused persons to conduct the attack directing the civilian population which in the end resulted in destructive activities and killing. We are forced to deduce it, in view of facts divulged from the evidence tendered.

312. Thus, the 'context' itself leads us to conclude that the criminal acts carried out by the accused persons being conscious part of the criminal enterprise indisputably formed part of 'systematic attack' directed against the unarmed Bengali civilian population.

313. Defence could not dislodge the proved atrocious acts of accused persons forming part of first phase of attack. Besides, we do not find any rationale to ditch the consistently corroborative testimony tendered in this regard merely on argument of a shady character, advanced on part of defence. Mode of participation of accused persons in the first phase of attack in accomplishing forcible capture of a number of unarmed civilians thus offers unerring indication of accused persons' 'participation' even to the succeeding criminal acts leading to the event of killing one detainee Noor Hossain Bepari.

314. Tribunal retells that liability concerning the offences enumerated in section 3(2) of the Act of 1973 under the doctrine of JCE [Basic Form] need not involve the physical commission of crimes by all the members of the JCE. Thus, it is irrelevant to demonstrate with specificity as to how the accused persons being the

members of the enterprise had acted, to further the agreed object of the criminal mission. Legal proposition evolved in this regard in the ICTY may be cited here as relevant which is as below:

“If the agreed crime is committed by one or other of the participants in a joint criminal enterprise such as has already been discussed, all the participants in that enterprise are equally guilty of the crime regardless of the part played by each in its commission.”

[Vasiljevic, ICTY Trial Chamber, Judgment: November 29, 2002, para 67]

315. It transpires patently that participation and conscious facilitation of accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Rois Uddin Azadi @ Akkel Ali, (3) Md. Abdur Razzaq Mondol and (4) Md. Alim Uddin Khan indicted in causing unlawful detention of victims at Razakar camp substantially contributed the act of accomplishment of killing the victim Noor Hossain Bepari and thus they are liable even for the principal crime, the killing. In this regard, we may recall the observation of the ICTY Trial Chamber, in the case of Tadic that-

“In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the

commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question”

[Prosecutor v. Tadic, ICTY Trial Chamber, Case No. IT- 94-1-T, Judgment]

316. Facts emerged in evidence of witnesses lead to the irresistible conclusion that the attack leading to confinement, torture and killing were carried out in pursuance of a common criminal design of which all the four accused were aware. We have got it proved that all the four accused were active part of the criminal mission which constitutes unmistakable manifestations of ‘collective criminality’ and it ended in annihilation of one unlawfully detained civilian by gun shot.

317. The facts and circumstances emerged lead to conclude that the accused persons had acted pursuant to ‘agreement’ or ‘understanding for the common plan’. It need not be tangible but may be inferred. This view finds support from the observation made by the ICTY which is as below:

“The existence of an agreement or understanding for the common plan, design or purpose need not be express, but may be inferred from all the circumstances.”

[*Tadic* Appeal Judgement, para. 227; see also *Krnojelac* Trial Judgement, para. 80]

318. Having considered the totality of the evidence, and in particular the evidence concerning participation of accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Rois Uddin Azadi @ Akkel Ali, (3) Md. Abdur Razzaq Mondol and (4) Md. Alim Uddin Khan in effecting forcible capture of victim Noor Hossain and other unarmed civilians we arrive at irresistible finding that the attack was systematic directing civilians. All the accused arraigned had acted with knowledge of the broader context and consequence of the attack which ended in killing one detained victim.

319. From the totality of the evidence of what occurred at the time of first phase of attack and at the Razakar camp, the only reasonable inference that may be unerringly drawn is that the four (04) accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Rois Uddin Azadi @ Akkel Ali, (3) Md. Abdur Razzaq Mondol and (4) Md. Alim Uddin Khan had acted intentionally in executing the killing of a pro-liberation civilian. In this way the accused persons in exercise of their membership in locally formed Razakar Bahini, an auxiliary force of Pakistani occupation army had carried out atrocities around the locality.

320. In view of reasoned discussion as made herein above on rational appraisal of evidence presented we deduce that prosecution has been able to prove that the accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Rois Uddin Azadi @ Akkel Ali, (3) Md. Abdur Razzaq Mondol and (4) Md. Alim Uddin Khan knowingly and consciously participated, aided and substantially contributed, by their act and conduct forming part of systematic attack to the commission of offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**murder**’ as ‘crimes against humanity’ as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus they are criminally liable under section 4(1) of the Act of 1973.

Adjudication of Charge No.03:

[09 accused indicted]

[Event no. 03 as narrated at pages 55-61 of the Formal Charge: Offences of ‘abduction’, ‘confinement’, ‘torture’, ‘looting’, ‘arson’ and ‘killing’ of Jaidhar Khan @ Taru Kha of village-Sadhua, Police Station- Pagla, District- Mymensingh]

321. That on 24 September 1971, after *Asar* prayer, a group formed of the accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Abdur Razzaq Mondol, (4) Sirajul Islam @ Tota Mondol, (5) Md. Abdullah, (6) Md. Khalilur Rahman Mir @ Khalilur Rahman, (7) Md. Rois Uddin Azadi @ Akkel Ali, (8) Md. Abdul Latif and (9) Md. Alim Uddin Khan, their 7/8 accomplice Razakars and 4/5 Pakistani occupation army men by launching attack at village- Sadhua, Police Station-

Pagla, District- Mymensingh forcibly captured Jaidhar Khan @ Taru Kha, the father of Abdul Majid [now dead], a freedom fighter and caused brutal torture to him tying him up and then took him away to the Trimohini Bazar Razakar camp.

On the following day, the elder brother of the detainee went to the Razakar camp and saw the accused Razakars torturing his brother brutally to get the information of his freedom fighter son and other freedom fighters. At that time the brother of the detained victim was also subjected to torture when he requested for his brother's release. Six days later, on 30 September, 1971 in the night the detained Jaidhar Khan @ Taru Kha was shot to death taking him on the bank of the river Shutia and his dead body could not be traced even.

Therefore, the accused (1) AFM Faizulla alias Abul Fallah alias Faizulla, (2) Md. Shamsuzzaman (Kalam) alias Abul Kalam, (3)Md. Abdur Razzaq Mondol, (4)Sirajul Islam alias Tota Mondol,(5) Md. Abdullah, (6) Md. Khalilur Rahman Mir alias Khalilur Rahman, (7)Md. Rois Uddin Azadi alias Akkel Ali, (8) Md. Abdul Latif and (9) Md. Alim Uddin Khan have been charged for actively participating, facilitating, abetting and substantially contributing to the commission of the offence of '**abduction**', '**confinement**', '**torture**', '**looting**', '**arson**' and '**murder**' as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1)

of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Evidence of Witnesses Presented

322. In order to establish the arraignment brought in this charge prosecution depends upon ocular testimony of nine witnesses of whom four i.e. P.W.03, P.W.06, P.W.07 and P.W.15 are alleged to have experienced facts significantly related to the event involving forcible capture of an unarmed pro-liberation civilian Taru Kha and keeping him confined at Razakar camp. The event allegedly ended in victim's killing. Group of attackers formed of accused Razakars having nexus with the camp at Trimohini bazaar and Pakistani occupation army men.

323. P.W.03 Nizam Uddin Kha [67] is a resident of Village-Sadhua Purbopara under police station-Pagla [previously Gafargaon] of District-Mymensingh. He allegedly saw the facts related to the event. Before testifying about the alleged event he stated that, in 1971 Reaz Uddin Moulana, Helim Mondol, Alim Uddin Master and many others of their locality formed Razakar Bahini and established its camps at Trimohini Bazar and Baroihati Bazar. The local Razakar Bahini was formed of Abdur Razzak, Tota Mondol, Akkel Ali, Abdullah and several others and Abul Fallah was its commander.

324. In respect of the event arraigned P.W.03 stated that on 7th Aswin, 1971 after *Asar* prayer he saw the Razakars he named [Abdur Razzak, Tota Mondol, Akkel Ali, Abdullah, Abul Fallah, Alim Uddin Master] taking away Taru Kha, on forcible capture toward Trimohini by boat, by launching attack at his house as his son Abdul Majid was a freedom-fighter and he [Taru Kha] himself used to help the freedom fighters by providing boat.

325. P.W.03 next stated that later on, he heard from Taru Kha's brother that he had gone to Trimohini Razakar camp to rescue his brother's release. But Abul Fallah [accused] kicked him out. Two days later, he [P.W.03] heard from Razakar Salamat Kha (now dead) that Razakars had killed Taru Kha and dumped his body in the river. In respect of reason of knowing the accused persons, he [P.W.03] stated that the accused persons were their neighbouring residents and thus he knew them beforehand.

326. In cross-examination P.W.03 stated in reply to defence question that there had been army and Razakars camps at Trimohini Bazaar. P.W.03 denied the defence suggestions that Abdul Majid [son of the victim] was not a freedom fighter; that Taru Kha was killed by local dacoits; that the accused persons were not Razakars and were not engaged with the event alleged and that what he testified implicating them was untrue and tutored.

327. P.W.04 Hafiz Uddin Ahmed (64) is a resident of village –Rouha under Police station – Pagla (Previously Gafargaon) of District-Mymensingh. He is one of the survived victims of the event arraigned in charge no.02 and he chiefly testified in support of this charge. In respect of the event alleged in charge no.03 P.W.04 is a hearsay witness.

328. After testifying the event arraigned in charge no.02, P.W.04 simply stated that he heard that Razakars had killed Khoka Kha, Taru Kha and many others. In respect of knowing the accused persons he (P.W.04) stated that the accused Razakars were from the neighboring localities and Razakar Malek used to visit his relative's home, adjacent to their [P.W.04] house.

329. In cross-examination P.W.04 stated that in 1971 the left hand of accused Akkel Ali was impaired but his another hand and body parts were fully functional. P.W.04 denied the defence suggestion that he did not hear the event of alleged killing of Taru Kha and that what he testified was untrue.

330. P.W.06 Md. Ali Hossain khan (65) is a resident of Village Sadhua under Police Station-Pagla (previously Gafargaon) of District Mymensingh. Victim Jaidhar Khan @ Taru Khan was his

uncle. He is a direct witness to the event alleged. In 1971 he was a student of class X.

331. In narrating what he experienced in conjunction with the attack P.W.06 stated that on 24th September, after *Asar* prayer a group formed of Razakars and Pakistani army men besieged their house. Among the Razakars he could recognize Abul Fallah, Alim Uddin Khan, Abul Kalam, Khalil Mir, Abdullah, Razzak, Tota Mondol, Akkel Ali, and Latif Moulana. He [P.W.06] next saw Razakars Razzak, Tota Mondol, Abul Fallah and Abul Kalam beating his uncle Taru Khan, an organizer of the war of liberation, on forcible capture. His (P.W.06) aunt [wife of victim Taru Kha] crying aloud requested Abul Falah to stop beating. But Abul Fallah kicked her down.

332. P.W.06 also stated that he saw the whole event remaining stayed in hiding inside the jungle about 100 yards far from their house. P.W.06 also stated that the group of perpetrators took away his uncle tying him up, by boat and set the house on fire after carrying out looting.

333. P.W.06 next stated that on the following day his [P.W.06] father moved to Trimohini Razakar camp and requested Abul Fallah [accused] to set Taru Kha free but Abul Fallah tortured him too. Being back his [P.W.06] father told them about what happened at the

camp and also disclosed that his [P.W.06] uncle [detained Taru Kha] was being subjected to brutal torture in captivity.

334. Finally, P.W.06 stated that six days later, they heard from Razakar Salamat Kha (now dead) that Razakars had killed Taru Kha and dumped his body in the river. He [P.W.06] knew the accused persons beforehand as they were from their neighbouring village.

335. In cross-examination P.W.06 stated in reply to defence question that Afazuddin the second son of Taru Kha filed a case about his father's killing in 1972. P.W.06 denied the defence suggestions put to him that accused Md. Rois Uddin Azadi @ Akkel Ali was a physically disabled person in 1971; that he and other accused were not Razakars.

336. P.W.06 also stated in reply to defence question that 4/5 Pakistani occupation army men were with the gang when it attacked their house. P.W.06 denied the defence suggestion that the accused persons were not with the group of attackers and that Razakar Salamat Khan and his 4/5 cohort Razakars had attacked their house and that he did not see the event of attack and what he testified was untrue.

337. P.W.07 Momena Khatun (64) is a resident of village-Sadhua under Police station-Pagla (previously Gafargaon) of District-

Mymensingh. She is the daughter-in-law of the victim and had occasion of seeing the activities conducted in course of attack as she had been at her conjugal home, at the relevant time.

338. Before testifying the event alleged she(P.W.07) stated that in 1971 her father-in-law Taru Khan used to assist freedom-fighters and her brother-in-law Abdul Majid went to India for receiving training to join the war of liberation.

339. P.W.07 stated, in respect of the event arraigned, that on 7th Aswin, 1971, after *Asar* prayer Razakar Abul Fallah, Razzak Mondol, Alim Uddin, Kalam, Abdullah, Tota Mondol, Akkel Ali, Latif being accompanied by Pakistani occupation army encircled their house while she had been inside her mother-in-law's room. Razakars Razzak, Tota Mondol, Abul Fallah, Abul Kalam dragged out her [P.W.07] father-in-law [Taru Khan] and started beating him. Her [P.W.07] mother-in-law requested to stop beating her husband. But Abul Fallah kicked her down. At this stage, she [P.W.07] herself too started crying to let go her father-in-law but accused Razzak, Tota harassed and kicked her down. Then the gang of perpetrators looted their house, burnt it down and took away captured Taru Kha toward Trimohini, by boat.

340. P.W.07 next stated that on the following day, her uncle-in-law Jamdhar Khan moved to Trimohini Razakar camp to rescue his

brother. But coming back home he told them that he was beaten too when he made request to set the detained Taru Kha free and he also saw her (P.W.07) father-in-law Taru Kha being brutally tortured in captivity.

341. P.W.07 also stated that six days later, Razakar Salamat Khan [now dead] of their village informed them that Razakars had killed Taru Kha and dumped his body in the river. They could not have trace of the dead body. In respect of knowing the accused persons P.W.07 stated that she knew the accused persons beforehand as they were from their neighbouring villages.

342. In cross-examination P.W.07 denied defence suggestions put to her that she did not know the accused persons; that her husband initiated a case over the event alleged in 1972; that her father-in-law Taru Kha was killed by dacoits; that the accused persons were not from her neighbouring locality; that she did not see what she testified; that the accused were not with the gang when it attacked their house and that the accused persons did not belong to Razakar Bahini.

343. P.W.11 Nurul Haque @ Renu Mia (73) is a resident of Village Sadhua under Police station-Pagla of District Mymensingh. He is a hearsay witness. He is a key witness to facts related to the event arraigned in charge no.04. P.W.11 after narrating the event arraigned

in charge no.04 simply stated that he heard that Taru Kha of their village was killed by Razakars. In cross-examination P.W.11 denied the defence suggestion that he did not hear the event of killing Taru Kha.

344. P.W.12 Md. Habibur Rahman Khan [63] is a resident of village –Sadhua under Police station – Pagla (Previously Gafargaon) of District-Mymensingh. He is a direct witness to the facts materially related to the event arraigned in charge no.01. At the end of testimony he made P.W.12 simply stated that he heard that Razakars he named [implicating with the event arraigned in charge no.01] killed Taru Kha taking him away on forcible capture. In cross-examination P.W.12 denied the defence suggestion that the accused persons did not belong to Razakar Bahini and were not involved with event he testified. Defence however does not seem to have denied that P.W.12 heard the event of killing Taru Kha.

345. P.W.15 Jobayer Ahmed @ Sondhi [69] is a resident of Village Sadhua under Police Station-Pagla of District Mymensingh. In addition to narrating the event arraigned in charge no.04, P.W.15 simply stated that he heard that Razakars he named [implicating with the event arraigned in charge no.04] killed Taru Kha of their village. In cross-examination P.W.15 denied the defence suggestion that he did not hear the event of killing Taru Kha; that the accused persons

he named were not Razakars and were not engaged in killing he testified.

346. P.W16 Rashida Khatun [65] is a resident of Village Sadhua, under Police Station-Pagla (previously Gafargaon) of District Mymensingh. She is the daughter of victim Taru Kha. She testified what she experienced in conjunction with the attack launched at their house.

347. Before testifying the facts related to the event of attack alleged P.W.16 stated that in 1971 her father and brother used to assist freedom fighters by arranging food and shelter for them and also in many other forms. Her [P.W.16] brother Abdul Mazid was a freedom fighter.

348. In respect of the event arraigned P.W.16 stated that on the 7th day of Bengali month Aswin, 1971 Razakars and Pakistani army men after *Asar* Prayer attacked their house. At that time they were present at home when Razakars and Pakistani occupation army men forcibly captured her [P.W.16] father. She could recognize Khalil Mir, Abdur Razzaq, Abdullah, Abul Kalam, Akkel Ali, Abul Fallah, Tota Mondol, Alim Uddin who started beating her father(victim Taru Khan) while she along with her mother and sister-in-law Momena requested them to let her [P.W.16] father go . But Razakar Razzaq kicked down her mother and snatched away the ornaments of her

sister-in-law and then moved back taking her [P.W.16] detained father with them, by a boat.

349. P.W.16 next stated that two days later, her uncle Jamdhar Kha rushed to Trimohini Razakar Camp and requested Razakar Fallah to set her [(PW16) father at liberty when in turn her uncle was subjected to torture and was thrown to river. Coming back home her [P.W.16] uncle told them that Razakars Razzaq and Fallah tortured her father and had burnt several parts of his body.

350. What happened next? P.W.16 finally stated that seven days later, Razakar Salamat Kha[now dead] , one of their neighbouring residents and Razakar Bachchu Kha[now dead] coming to their house disclosed that her[P.W.16] father (victim) had been killed and his body was dumped into the river (at this stage of testimony P.W.16 burst into tears). They could not recover his dead body. In respect of knowing the accused persons she [P.W.16] stated that she knew the accused persons beforehand as they were from their neighbouring localities.

351. In cross-examination P.W.16 in reply to defence question stated that her brother Afaj Uddin initiated a case over the event. P.W.16 denied the defence suggestions put to her that she did not know the accused persons; that the accused persons were not Razakars; that accused Akkel Ali was physically challenged; that what she testified

implicating the accused persons was untrue and tutored; that the event she testified did not happen; that her father [Taru Kha] was killed by dacoits; that she did not see what she testified; that the accused persons were not with the gang when it attacked their house.

352. P.W17 Abul Kashem (66) is a resident of Village Sadhua, under Police Station-Pagla (previously Gafargaon) of District Mymensingh. Prosecution tendered him with the P.W.16, a direct witness. Defence declined to cross-examine him.

353. D.W.01 Md. Al Amin Sheikh, the son of accused Md. Shamsuzzaman (Kalam) @ Abul Kalam testified as the sole defence witness chiefly intending to negate alleged complicity of his father, accused Md. Abdullah, Md. Rois Uddin Azadi @ Akkel Ali and Md. Abdul Latif with the event of attack leading to killing Taru Kha. D.W.01 proved the photocopy of certified copy of the charge sheet submitted in the case involving killing Taru Kha initiated by his son Afazuddin in 1972 and the document has been marked as Exhibit-D.

354. D.W.01 stated that his father and Md. Abdullah, Md. Rois Uddin Azadi @ Akkel Ali and Md. Abdul Latif were not made accused in the said earlier case. Prosecution does not appear to have cross-examined the D.W.01 on this matter.

Finding on Evaluation of Evidence presented

355. All the nine (09) accused have been indicted in this charge. Arraignment brought in this charge involves the act of keeping Jaidhar Khan @ Taru Kha, the father of freedom-fighter Abdul Majid in protracted captivity at Razakar camp, on forcible capture and eventually he was shot to death. The gang of attackers formed of accused persons, their cohort Razakars and 4/5 Pakistani occupation army men, charge framed alleges.

356. First phase of attack in accomplishing forcible capture of victim Jaidhar Khan @ Taru Kha happened in day time and devastating activities were also carried out in course of this phase of attack, the charge framed alleges. Second phase of the event that resulted in extinction of victim after keeping him in protracted captivity at Razakar camp happened few days later, the arraignment alleges.

357. In order to establish the arraignment brought in this charge prosecution depends upon ocular testimony of a number of witnesses of whom four i.e. P.W.03, P.W.06, P.W.07 and P.W.16 are alleged to have experienced the facts materially related to the event involving devastating activities, forcible capture of an unarmed civilian Taru Kha, keeping him confined at Razakar camp. The event allegedly ended in victim's killing. Group of attackers formed of accused Razakars having nexus with the camp at Trimohini bazaar and Pakistani occupation army men, charge framed alleges.

358. Mr. Shahidur Rahman the learned prosecutor drawing attention to the evidence tendered argued that the accused persons were notorious Razakars of the crime localities; that they committed the crimes with which they have been indicted in extremely aggressive manner, to further policy and plan of Pakistani occupation army; that the direct witnesses, the near relatives of victim had fair opportunity of observing the criminal activities carried out by the accused persons, in conjunction with the first phase of attack that also resulted in looting and arson.

359. The learned prosecutor next argued that the victim was taken away to Razakar camp where he was kept confined for days together and later on he was shot to death and his body could not be traced. The act of forcibly taking away the victim and keeping him confined at Razakar camp were indisputably linked even to the act of his killing. The accused persons incurred liability also for killing the detained victim Taru Kha. Their proved participation in first phase of attack made them concerned with the act of killing the victim. Direct evidence adduced and crucial facts unveiled together proved that the accused persons committed the offences of crimes against humanity.

360. Mr. S.M Shahjahan the learned counsel defending the accused Md. Abdullah argued that since this accused was not a Razakar

testimony implicating him with the alleged event is not credible; that his nexus with Razakar camp could not be proved even. The learned defence counsel further submits that the I.O as P.W.18 admits that the earlier case initiated in 1972 over the same event of killing was not against this accused. This accused could have been prosecuted in the said earlier case if really he had any involvement with the criminal acts constituting the offence of alleged killing of Taru Khan. But it was not done. Now he has been falsely implicated in this case and thus deserves acquittal.

361. The learned defence counsel also argued that testimony of P.W.07 and P.W.08 together with the prosecution document do not prove that this accused was a Razakar and thus testimony implicating this accused is not credible and cannot be relied upon. Prosecution could not prove the indictment brought against this accused by credible evidence.

362. Mr. Abdus Sattar Palwan the learned counsel defending three accused Md. Shamsuzzaman (Kalam) @ Abul Kalam, Md. Abdul Latif and Md. Rois Uddin Azadi @ Akkel Ali drawing attention to the defence document Exhibit-D and statement of the I.O (P.W.18) made in cross-examination submits that on 5.4.1972 a case was initiated against 16 persons over the event arraigned in this charge. But admittedly none of these three accused was made accused in that

case. Now, they have been falsely implicated in this case. Testimony of witnesses implicating these three accused cannot be relied upon.

363. Mr. Abdus Shukur Khan the learned counsel defending the other absconding accused and the present accused Md. Abdul Latif indicted in this charge argued that prosecution could not establish complicity of this accused with the offences alleged; that the accused Abdul Latif was a minor boy in 1971 and he did not accompany the gang as alleged; that the inconsistent and contradictory testimony creates strong doubt as to alleged involvement of accused Khalil and Md. Abdul Latif; that the witnesses are not credible and they have testified falsely out of local rivalry.

364. The crimes alleged were the upshot of collective criminality. These happened in context of war of liberation in 1971. Relatives of victim came on dock to narrate the event they saw. Their testimony made before Tribunal should be assessed cumulatively. Core facts unveiled in their testimony is to be considered. Probability of the same is to be weighed in rationale way.

365. At the same time we require to asses inconsistency or glaring exaggeration, if any, on rationale way. Keeping all these in mind we require to see how far prosecution has been able to prove –

- (i) That a systematic attack was carried out on the day and time and at the vicinity alleged;
- (ii) That the group of attackers was formed of nine (09) accused persons and their accomplice Razakars and army men;
- (iii) That in course of attack devastating activities including torture were carried out;
- (iv) That in course of first phase of attack one pro-liberation civilian was forcibly captured and was taken away to Razakar camp;
- (v) That the detained victim was kept in protracted captivity for days together;
- (vi) That the accused persons eventually accomplished the act of killing the detained victim.

366. Now, let us evaluate the sworn narrative made by the direct witnesses. It appears that P.W.03 Nizam Uddin Kha [67] is a resident of Village-Sadhua Purbopara under police station-Pagla [previously Gafargaon] who claims to have had opportunity of seeing the facts crucially related to the first phase of attack launched.

367. Ocular testimony of P.W.03 demonstrates that he saw the gang of attackers accompanied by (06) accused Abdur Razzak, Tota Mondol, Akkel Ali, Abdullah, Abul Fallah, Alim Uddin Master taking away victim Taru Kha, by boat. The act of taking away the victim on forcible capture could not be shaken. It also depicts that

the reason of conducting such atrocious attack was that victim's son was a freedom-fighter and the victim used to assist the freedom-fighters.

368. The above version of P.W.03, a direct witness tends to prove the extreme aggression of the group of attackers toward the pro-liberation Bengali civilians who took stance in favour of war of liberation. Indeed the perpetrators were the notorious Razakars of locally formed Razakar Bahini. It already stands proved. Presumably, they consciously opted to further the policy and plan of the Pakistani occupation army intending to liquidate the freedom-fighters and the people who used to provide support to them.

369. It also transpires from testimony of P.W.03 that a futile attempt was made by victim's brother to secure victim's release and later on he [P.W.03] heard from one Razakar that the victim was eventually killed and his body was dumped in the river. These two unimpeached facts as testified by P.W.03 could not be refuted in any manner.

370. Defence case that victim Taru Kha was killed by local dacoits is simply a wasted defence and does not stand on any degree of credibility. In cross-examination, existence of Razakars camp at Trimohini Bazaar has been affirmed. Disclosure or circulation of the

brutal fact of killing by one local Razakar [now dead] affiliated with the camp as testified by P.W.03 was not impracticable.

371. P.W.06 Md. Ali Hossain Khan is a direct witness to the activities carried out in conjunction with the first phase of attack. Victim Jaidhar Khan @ Taru Khan was his uncle. P.W.06, corroborating P.W.03 testified how the group of attackers took away his uncle, the victim on forcible capture who was subjected to beating and how the accused Abul Falah kicked down victim's wife when she requested to stop beating her husband. It has also been unveiled from uncontroverted version of P.W.06 that the group of attackers set the house of victim on fire after carrying out looting, before they had left the site taking the detained victim with them.

372. It transpires that accused Abul Fallah having commanding position over the Razakars even physically abused the brother of the detained victim when he moved to camp and appealed for release of his brother. This pertinent fact could not be impeached.

373. It has been affirmed in cross-examination of P.W.06 that 4/5 Pakistani occupation army men were with the gang when it attacked their house. It has been made affirmed too in cross-examination by putting suggestion to P.W. 06, P.W.07 and P.W.16 that the accused persons were not with the gang when it conducted the attack at the

house of victim Taru Khan. That is to say defence intended to show that the attack was conducted but the accused persons were not with the gang. But anything contrary to could not be proved by defence.

374. It transpires that sensing attack P.W.06 went into hiding wherefrom he saw accused persons torturing his uncle Taru Kha on unlawful capture. The perpetrators did not care Taru Kha's wife's request to set him free. Rather, victim's wife was kicked down. The house was set on fire after looting household. All these cumulatively demonstrate the extreme aggression of the attackers to civilian population.

375. Defence could not impeach the above pertinent piece of version the P.W.06 has made. Besides, being an inmate of the house under attack P.W.06 had natural occasion of seeing and experiencing the prohibited acts forming part of attack conducted.

376. It is not disputed that Taru Kha was a potential pro-liberation civilian. Rather, it gets corroboration from unimpeached testimony of P.W.07, the daughter-in-law of the victim. According to her [P.W.07] version, in 1971 her father-in-law Taru Khan used to assist freedom-fighters and her brother-in-law Abdul Majid went to India for receiving training to join the war of liberation. We may safely conclude, taking all these uncontroverted facts that the family of

victim Taru Kha had potential stance in favour of the war of liberation. It could not be hidden to the traitors, the local Razakars.

377. Mr. Abdus Sattar Palwan the learned counsel defending the accused Md. Shamsuzzaman (Kalam) @ Abul Kalam, Md. Rois Uddin Azadi @ Akkel Ali, Md. Abdullah and Md. Abdul Latif argued that it has been admitted that in 1972 a case was initiated over the event by the son of the victim and that it has been admitted too by the P.W.18, the I.O who stated that none of these four accused was made accused in that case and thus now it is clear that they have been falsely implicated in this case.

378. In view of above submission, now, let us eye as to how far prosecution has been able to prove the alleged complicity and participation of all the nine (09) accused indicted in this charge. It appears that P.W.03 in his testimony has not implicated all the nine accused persons, true. Testimony of P.W.03 does not demonstrate participation of 03 accused Abul Kalam, Khalil and Md. Abdul Latif with the event arraigned. But it does not mean that P.W.03 did not at all see the event and for such omission his entire testimony shall go on air. Rest of testimony of P.W.03 deserves to be taken into consideration if it inspires credence.

379. Besides, even single witnesses' testimony is sufficient to prove a fact involving the horrific event of attack conducted in violation of

international humanitarian law. P.W.03 claims that the group of attackers formed of six (06) accused Razzak, Tota Mondol, Akkel Ali, Abdullah, Abul Fallah, Alim Uddin Master which carried out the attack.

380. But it is seen that only P.W.06 and P.W.16 implicated accused Khalil when P.W.03 and P.W.07 do not implicate him with the event of attack. All the four witnesses allegedly saw the attack carried out staying almost at the same place. Be that as it may, they all should have narrated the fact of presence of accused persons at the site consistently.

381. Similarly, it transpires that of alleged four direct witnesses P.W.06 and P.W.07 testified implicating accused Md. Abdul Latif. But two other P.W.s i.e. P.W. 03 and P.W.16 do not implicate this accused with the event of attack, despite the fact they witnessed the attack launched. Such glaring inconsistency on crucial fact i.e. act of accompanying the gang creates reasonable doubt as to presence of accused Md. Abdul Latif at the crime site.

382. Additionally, in 1971 accused Md. Abdul Latif was admittedly a minor boy of 12 years. Thus, the claim that he was Razakar cannot be accepted. We have already rendered our reasoned finding on it. Also, for the sake of argument if he was really seen present at the

crime site, at the relevant time as testified by P.W.06 and P.W.07 it cannot be deduced readily that he sharing common purpose and knowingly accompanied the gang of attackers. Mere presence of a person, even if it is true, at or around the crime site does not lead to conclude that he too was a member of the gang of attackers and participated in perpetrating criminal acts.

383. It is hard to believe that a minor boy of 12 years of age allegedly provided assistance or encouragement to the perpetrators belonging to Razakar Bahini. Prosecution should have paid due attention to it before recommending arraignment against him. We fail to understand why Md. Abdul Latif who was a minor boy at the relevant time has been chosen for being prosecuted for the alleged offences enumerated in the Act of 1973.

384. At best it may be inferred that at the time of carrying out the attack by the gang of Razakars and army men accused Md. Abdul Latif was just spotted around the scene. But it is not enough to prosecute and try him who was admittedly a juvenile at the relevant time; particularly when there is nothing to show that his presence had substantial effect on perpetration of crimes arraigned.

385. Thus, even if it is accepted to be true that the accused Md. Abdul Latif was present at the crime scene he cannot be held responsible in

any way for the crimes committed. Seeking or having assistance and encouragement of a minor boy by a gang of notorious armed Razakars in committing crimes by launching systematic attack is simply incredible.

386. Testimony of P.W.06, P.W.07 and P.W.16 depicts that accused Kalam was also with the group of attackers when the attack was launched. But, P.W.03, other direct witnesses does not corroborate the involvement of accused Md. Shamsuzzaman (Kalam) @ Abul Kalam, with the event of attack. Besides, this accused was not made accused in the case initiated in 1972 under the Collaborators Order, 1972 over the event arraigned. It is found admitted in cross-examination of the I.O (P.W.18).

387. Since admittedly the accused Md. Shamsuzzaman (Kalam) @ Abul Kalam was not made accused in the case initiated in 1972 over the same event leading to killing the victim now it creates reasonable doubt as to participation of accused Md. Shamsuzzaman (Kalam) @ Abul Kalam, with the event of attack as testified by the above three witnesses. The arraignment brought against accused Md. Shamsuzzaman (Kalam) @ Abul Kalam thus suffers from glaring contradiction on this material particular.

388. P.W.16 in her parrot like testimony made exaggeration by implicating 08 accused with the event. However, it stands proved

from her testimony that accused Abdur Razzaq, Abul Fallah, Alim Uddin, Md. Abdullah and Tota Mondol being part of the criminal enterprise participated in committing the crimes arraigned. In respect of accused Tota Mondol it appears that his participation and complicity has been contended by P.W.16 and it could not be controverted.

389. P.W.16 also implicated accused Md. Abdullah with the event. But it is to be seen too whether the accused Md. Abdullah was with the gang when it carried out the attack. Because, it is already found that Md. Abdullah was not made accused in the earlier case which was initiated in 1972 over the same event.

390. Thus, if we consider the testimony of P.W.16 abandoning exaggeration she made it is found proved that 04 accused **Abdur Razzaq**, Abul Fallah, Tota Mondol and Alim Uddin Khan were engaged in perpetrating the crimes arraigned, being part of the criminal enterprise.

391. Defence argued that on 5.4.1972 a case was initiated against 16 persons over the event arraigned in this charge. But none of the four accused Md. Shamsuzzaman (Kalam) @ Abul Kalam, Md. Abdul Latif, Md. Abdullah and Md. Rois Uddin Azadi @ Akkel Ali was made accused in that case.

392. First, it depicts that denying this fact P.W.07 the daughter-in-law testified implicating 08 accused including the three accused Md. Shamsuzzaman (Kalam) @ Abul Kalam, Md. Abdul Latif and Md. Rois Uddin Azadi @ Akkel Ali. Second, P.W.16 the daughter of victim admitting the fact of initiation of the case in 1972 by her brother testified implicating 08 accused including these three accused with the event of attack leading to killing her father.

393. But P.W.18 Monowara Begum the I.O (Investigation Officer) stated in cross-examination that accused Khalil, Abdur Razzak, Sirajul Islam @ Tota Mondol, Alim Uddin and AFM Faizulla were prosecuted under the Collaborators Order 1972. But there is no proof that such prosecution was initiated over the event arraigned in this charge no.03 and it ended in trial. Prosecution does not seem to have adduced any document whatsoever in this regard. Thus, now prosecuting them for the offences arraigned in relation to the event under the ICT Act, 1973 is no bar.

394. Further, it appears that the I.O (P.W.18) admits in his cross-examination that in 1972 a case was initiated over the event of killing Taru Khan [victim of charge no.03] by his son Afazuddin and present accused Md. Shamsuddin (Kalam), Md. Rois Uddin Azadi @ Akkel Ali, Md. Abdullah and Md. Abdul Latif were not made accused in

that case. The I.O stated it in light of papers forming part of the case diary.

395. Besides, photocopy of certified copy of charge sheet (Exhibit-D) submitted in respect of the case initiated in 1972 together with the narrative made by D.W.01 in his cross-examination goes to show that a case was initiated against 16 suspected accused over the event of killing Taru Khan under the Collaborators Order, 1972. Present accused Razzak, Fallah, Tota and Khalil were made accused in that case. But present accused Akkel, Latif, Abdullah and Kalam were not made accused in that earlier case. .

396. It appears that Afazuddin the initiator of the said earlier case under the Collaborators Order, 1972 over the event of killing Taru Kha was the son of victim Taru Khan. Thus, naturally these four accused if really were involved in the event of attack leading to killing of his father the witnesses, the daughter and daughter-in-law of the victim would have disclosed it to Afazuddin the son of victim. Thus, now, the narrative made by these witnesses implicating these four accused seems to be sheer exaggeration and does not carry credibility.

397. Be that as it may, if really these four accused Akkel, Latif, Abdullah and Kalam were involved in carrying out the attack leading to the killing of victim Taru Kha, as testified by P.W.07 and P.W.16

they would have been certainly made accused in the said case initiated in 1972 by the son of the victim, instantly after the event happened. Thus, now complicity of four accused Akkel, Latif, Abdullah and Kalam with the event of attack is not believable.

398. There is nothing to show that the said earlier case was ended on trial. There is no bar to prosecute a person for the offences enumerated in the Act of 1973 even if he was not made accused in such earlier case initiated over the same event, true. But since the event was allegedly witnessed by direct witnesses i.e. P.W.07 (daughter-in-law of victim) and P.W.16 (daughter of victim), as testified naturally these four accused could have been made accused and prosecuted in that case initiated by the son of the victim. But it was not done.

399. Now, thus and in absence of any explanation on it we are forced to deduce that testimony of P.W.07 and P.W.16 so far as it relates to involvement of these four accused Md. Shamsuzzaman (Kalam) @ Abul Kalam, Md. Abdul Latif, Md. Abdullah and Md. Rois Uddin Azadi @ Akkel with the event does not inspire any degree of credence. Their alleged involvement with the event suffers from serious doubt.

400. It may be justifiably inferred that testimony of P.W.07 and P.W.16 suffers from grave exaggeration and glaring contradiction

which create patent doubt as to alleged complicity and participation of these four accused. However, for this reason it does not mean that the rest of their testimony so far as it relates to the event of attack they witnessed and involvement of other accused persons therewith shall be kept abandoned in its entirety.

401. Now if reliance is placed upon the rest testimony of P.W03, a direct witness it transpires too that he (P.W.03) does not testify implicating 02 accused Md. Khalilur Rahman Mir @ Khalilur Rahman and Md. Abdul Latif. Non participation of accused Md. Khalilur Rahman Mir @ Khalilur Rahman and accused Md. Abdul Latif seems to have been corroborated by P.W07 and P.W.16 respectively. Besides, if really these two accused Md. Khalilur Rahman Mir @ Khalilur Rahman and accused Md. Abdul Latif were with the gang of attackers these two direct witness could have seen them accompanying the gang at the time of carrying out the attack. Thus, alleged participation and complicity of accused Md. Khalilur Rahman Mir @ Khalilur Rahman also stands reasonably doubtful.

402. Thus, on cumulative evaluation of testimony presented by witnesses, participation and complicity of these two accused Md. Khalilur Rahman Mir @ Khalilur Rahman and accused Md. Abdul Latif could not be proved beyond reasonable doubt, we conclude. We have already rendered our reasoned finding that accused Md. Abdul

Latif was a minor boy in 1971 and his mere presence even if believed cannot make him liable for the crimes committed by launching attack, particularly in absence of his any substantial contribution to the commission of crimes arraigned.

403. It appears that P.W.03, a direct witness does not corroborate the involvement of accused Md. Shamsuzzaman (Kalam) @ Abul Kalam, with the event of attack. Besides, admittedly accused Md. Shamsuzzaman (Kalam) @ Abul Kalam was not made accused in the case initiated in 1972 over the same event leading to killing the victim. All these cumulatively create doubt as to participation of accused Md. Shamsuzzaman (Kalam) @ Abul Kalam, with the event of attack. Glaring contradiction on this material particular creates serious doubt as to the arraignment brought against accused Md. Shamsuzzaman (Kalam) @ Abul Kalam,

404. On cumulative and rationale evaluation of testimony of all the four direct witnesses i.e. P.W.03, P.W.06, P.W.07 and P.W.16 we eventually arrive at unerring finding that four (04) accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Abdur Razzaq Mondol, (3) Sirajul Islam @ Tota Mondol and (4) Md. Alim Uddin Khan indicted in this charge were actively involved in accomplishing the criminal acts in course of first phase of attack.

405. However, involvement and alleged participation of five (05) other accused (1) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (2) Md. Khalilur Rahman Mir @ Khalilur Rahman, (3) Md. Rois Uddin Azadi @ Akkel Ali, (4) Md. Abdul Latif and (5) Md. Abdullah could not be proved beyond reasonable doubt.

406. It stands proved that the four (04) accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Abdur Razzaq Mondol, (3) Sirajul Islam @ Tota Mondol and (4) Md. Alim Uddin Khan and their accomplices forming part of the group by their culpable and deliberate conduct and act substantially assisted and contributed to actuate the object of the criminal mission, sharing common intent. They with mental awareness and intent had provided active and explicit contribution towards completion of the crimes, it stands proved. Thus, all these four (04) accused indicted in this charge were responsible for the criminal acts carried out, we emphatically and unerringly conclude.

407. P.W.07 Momena Khatun is the daughter-in-law of the victim and had occasion of seeing the activities conducted in course of attack. At the relevant time she had been at her conjugal home. It stands proved from her testimony that the group of attackers by launching attack the perpetrators dragged out her [P.W.07] father-in-law [victim Taru Khan] and started beating him. It appears that

P.W.07 knew the accused persons beforehand as they were from their neighbouring villages and thus and in absence of any reason this ocular narrative made by P.W.07 inspires credence.

408. It stands also proved that at a stage, her [P.W.07] mother-in-law requested to stop beating her husband. But accused Abul Fallah kicked her down. At a stage, accused Razzak, Tota harassed and kicked her down when she [P.W.07] herself too started crying to let her father-in-law freed. Thus, participation of accused Razzak and Tota in accomplishing the attack stands proved.

409. However, it also transpires from testimony of P.W.07, the daughter-in-law of victim that the gang of perpetrators looted their house, burnt it down and took away captured Taru Kha toward Trimohini, by boat. It could not be dislodged. Presumably, intending to actuate the object of the criminal mission the perpetrators opted to intimidate and coerce the civilians and inmates of the victim's family. In respect of knowing the accused persons P.W.07 stated that she knew the accused persons beforehand as they were from their neighbouring villages. It could not be impeached by the defence.

410. The crimes being dealt with under the Act of 1973 are 'system crime' and not isolated crimes. These were committed in a context of war of liberation of Bangladesh. It is now well settled that an

individual even for his single act or conduct, prior, amid or subsequent to the commission of the offence may be held responsible for such 'system crime', if such act or conduct had substantial contributing effect on the commission of offences.

411. In the case in hand, it stands proved that four (04) accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Abdur Razzaq Mondol, (3) Sirajul Islam @ Tota Mondol and (4) Md. Alim Uddin Khan and their accomplices forming part of the group actively and consciously participated in effecting forcible capture of victim Taru Kha, by launching designed attack.

412. What happened next? Testimony of P.W.07 demonstrates that on the following day, her uncle-in-law Jamdhar Kha moved to Trimohini Razakar camp to rescue his brother [victim]. But coming back home he told them that he was beaten too when he appealed to set the detained Taru Kha free and he also saw her father-in-law Taru Kha being brutally tortured in captivity.

413. The above piece of version related to the fact of keeping the victim detained at Razakar camp gets corroboration from testimony of P.W.16, the daughter of victim. P.W.07 also stated that six days later Razakar Salamat Khan [now dead] of their village informed them that Razakars had killed Taru Kha and dumped his body in the river. But they could not have trace of the dead body.

414. P.W16 Rashida Khatun is the daughter of victim Taru Kha. It transpires from her testimony that she herself experienced the attack launched at their house. She corroborated P.W.07 in respect of carrying out the attack at their house. It could not be refuted that in 1971 her (P.W.16) father and brother used to assist freedom fighters by arranging their food, shelter and also in many other ways. Her [P.W.16] brother Abdul Mazid was a freedom fighter. Presumably this was the reason of conducting the attack targeting the victims.

415. It stands proved that the attack was conducted in day time. At the relevant time P.W.16 had been at home. She saw the gang of attackers in accomplishing the criminal acts. She saw accused Razakar Razzaq kicking down her (P.W.16) mother and snatching away the ornaments of her sister-in-law. The gang then moved back taking her detained father with them, by a boat. The attack launched and criminal acts carried out in course of first phase of attack as testified by P.W.16 could not be dislodged by defence in any manner.

416. Already it is found on evaluation of testimony of P.W.03 and P.W.07, direct witnesses that presence of accused Khalil at the crime scene with the gang could not be proved consistently and credibly. Thus, it may be deduced that testimony of P.W.16 implicating the accused Khalil with the event of attack is sheer exaggeration. However, for this reason testimony of P.W.16 so far as it relates to

participation of accused Abdur Razzaq, Abul Fallah and Alim Uddin with the criminal mission does not go on air.

417. It stands proved that taking away the victim Taru Kha, on forcible capture to the Razakar camp was witnessed by P.W.16, the daughter of the victim. Defence could not controvert it. We find no reason to disbelieve testimony P.W.16 made in this regard. Her unshaken testimony too proves the attack in accomplishing unlawful capture of the victim.

418. Killing of the victim was the upshot of the attack. It has been found proved that victim was kept detained at Razakar camp. Naturally, none had occasion of seeing what occurred next. However, Hearsay testimony of P.W.16 also demonstrates that the victim was subjected to torture in captivity and it was witnessed by the uncle of P.W.16 who by going to Razakar camp attempted to get the victim released. But such attempt was in vain and her uncle too was subjected to torture when he appealed for release of the victim.

419. It reveals that two days later, her (P.W.16) uncle rushed to Trimohini Razakar Camp and requested Razakar Fallah to set her [(PW16) father (victim) at liberty when in turn her uncle was tortured and thrown into the river. Coming back home her [P.W.16] uncle

told them that Razakars Razzaq and Fallah tortured her father and had burnt several parts of his body.

420. What happened next? P.W.16 finally stated that seven days later, Razakar Salamat Kha[now dead] , one of their neighbouring residents and Razakar Bachchu Kha[now dead] coming to their house disclosed that her[P.W.16] father had been killed and his body was dumped into the river (at this stage of testimony P.W.16 burst into tears). They could not recover his (victim) dead body. In respect of knowing the accused persons she [P.W.16] stated that she knew the accused persons beforehand as they were from their neighbouring localities. Traumatic demeanor of P.W.16 as observed by Tribunal when she staying on dock was making narrative of the event she experienced adds assurance as to truthfulness of her version relating to torture and killing her detained father.

421. P.W.04 Hafiz Uddin Ahmed, P.W.11 Nurul Haque @ Renu Mia, P.W.12 Md. Habibur Rahman Khan and P.W.15 Jobayer Ahmed @ Sondhi, the residents of the locality attacked are hearsay witnesses in relation to this charge. They heard that Razakars had killed the victim. Their hearsay evidence in respect of annihilation of victim Taru Kha gets corroboration from facts unveiled in testimony of other direct witnesses, the relatives of victim who witnessed the facts related to the upshot of the attack.

422. In view of evaluation of evidence as made herein above Tribunal concludes that not the nine (09) accused indicted but four (04) accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Abdur Razzaq Mondol, (3) Sirajul Islam @ Tota Mondol and (4) Md. Alim Uddin Khan indicted were knowingly with the group of perpetrators, the Pakistani army men and they were quite aware of the substantial likelihood of the consequence of their act and conducts that effectively contributed to the commission of abduction, torture, indiscriminate destructive doings, in conjunction with the first phase of 'attack' leading to killing.

423. Prosecution however could not prove the arraignment brought against five (05) accused (1) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (2) Md. Khalilur Rahman Mir @ Khalilur Rahman, (3) Md. Rois Uddin Azadi @ Akkel Ali (4) Md. Abdullah and (5) Md. Abdul Latif . Their alleged complicity and participation with the event suffers from reasonable doubt.

424. It has been proved that the group of attackers was formed of four accused who are found guilty, their cohort Razakars and Pakistani occupation army men. The horrific event happened in war time situation. The victim was a non combatant civilian. And thus the criminal wrongs carried out were in violation of international humanitarian law.

425. Instead of protecting rights and properties of civilians the accused persons who are found criminally responsible rather got consciously engaged even in accomplishing the act of wanton destruction by causing looting and burning the house of civilians. Despite being local Bengali men the four (04) accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Abdur Razzaq Mondol, (3) Sirajul Islam @ Tota Mondol and (4) Md. Alim Uddin Khan being imbued and enthused by the policy and plan of the Pakistani occupation army had knowingly carried out all the prohibited activities constituting the offences of 'abduction', 'torture', 'confinement' and 'murder' as crimes against humanity.

426. The act of killing the victim did not happen in day time or inside the Razakar camp and not within the sight of other people. Thus, naturally none or any of relatives of victim had occasion of seeing the act of killing, the upshot of the attack. It is found proved that the victim was kept detained at Razakar camp for days together where he was subjected to torture and later on he was shot to death and his body could not be traced even.

427. Based on rational appraisal of evidence we got it proved that the four (04) accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Abdur Razzaq Mondol, (3) Sirajul Islam @ Tota Mondol and

(4) Md. Alim Uddin Khan had potential affiliation with the Razakar camp and they actively participated in keeping the victim in captivity at the camp, bringing him there on forcible capture.

428. Thus, on evaluation of facts unveiled it may be unerringly deduced that the four (04) accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Abdur Razzaq Mondol, (3) Sirajul Islam @ Tota Mondol and (4) Md. Alim Uddin Khan were knowingly 'concerned' even with the commission of the event of killing the detained victim. It is not required to show actually which accused or accused persons committed the act of killing. Tribunal notes that it has been observed 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, Judgment: May 7, 1997, para. 69]

429. It is now well settled that when two or more persons participate together in the commission of a particular crime may itself establish an understanding or arrangement amounting to an 'agreement' formed between them to commit that particular criminal act. The facts unveiled lead to believe that the event arraigned happened

pursuant to a common design of group of attackers to materialize its common purpose.

430. The chain of facts that led to the event of killing suggests that the entire event starting from the act of confining the victim happened pursuant to an understanding between the perpetrators intending to actuate the ‘common purpose’. Thus, no distinction can be drawn between the ‘finger man’ and the ‘trigger man’. All the four (04) accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Abdur Razzaq Mondol, (3) Sirajul Islam @ Tota Mondol and (4) Md. Alim Uddin Khan being part of the joint criminal enterprise [JCE] incurred liability. Gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question.

431. Joint criminal enterprise (JCE) liability is meant to cope with contributions to collective acts. Considering the nature of crimes we are of the view that every person forming the group who contributed to the commission of crime is considered a perpetrator regardless of the nature of his participation. This notion of perpetration is based on the principle that a plurality of persons implies a plurality of offences. Thus, whoever ‘contributes’ and ‘facilitates’ any cause to the perpetration of a crime, regardless of how close or distant the

cause from the upshot of the attack, he must be considered as co-author of the crimes.

432. It stands proved that the attack was carried out collectively, sharing common purpose and intent, in a systematic manner with extreme violence directing non-combatant civilians. On appraisal of evidence tendered it is found proved beyond reasonable doubt that in course of attack physical and mental torture were caused to civilians and relatives of victim. Looting and setting the house of victim on fire were also carried out which indisputable added extreme mental harm to inmates of the house attacked.

433. The systematic attack launched was aimed to capture and liquidate the counterpart, the detained pro-liberation civilian, pursuant to designed plan which prompted the perpetrators to conduct the attack directing the civilian population and in the end the attack resulted in destructive activities and killing. We are forced to deduce it, in view of facts divulged from the evidence tendered. Thus, this 'context' itself leads us to conclude that the criminal acts carried out by the accused persons being conscious part of the criminal enterprise indisputably formed part of 'systematic attack' directed against the unarmed Bengali civilian population.

434. The scheme and pattern of the attack reflect intense antagonistic attitude of accused persons to the pro-liberation civilians. Inflicting such deliberate persecuting act was indisputably arbitrary and detrimental to the fundamental right of unarmed civilians, the detainees. Razakar Bahini was formed to collaborate with the Pakistani occupation army to further its policy and plan. Freedom-fighters and pro-liberation Bengali people were treated as ‘*miscreants*’. In the case of *Ali Ahsan Muhammad Mujahid* the Tribunal [ICT-2] observed [ICT-BD Case No. 04 of 2012, Judgment 17 July 2013, para 163] that –

“The freedom-fighters and pro-liberation Bengali people were treated as ‘*miscreants*’. Even reward was announced for the success of causing their arrest or to provide information about their activities. Objective of such announcement was to wipe out the pro-liberation Bengali civilians to resist and defy the war of liberation which was the core policy of the Pakistani occupation armed forces.”

435. Defence could not dislodge the proved crucial acts of launching attack leading to confining the victim and his annihilation. We do not find any rationale to gully the consistently corroborative testimony tendered in this regard merely on argument of a shady character, advanced on part of defence.

436. Rather, it stands proved that participation of four (04) accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Abdur Razzaq Mondol, (3) Sirajul Islam @ Tota Mondol and (4) Md. Alim Uddin Khan in course of first phase of attack in accomplishing forcible capture of an unarmed civilian, the father of a freedom-fighter indisputably chained to ‘concern’ and ‘active participation’ of these four (04) accused persons even to the criminal acts leading to the event of killing the detained victim.

437. Five (05) accused (1) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (2) Md. Khalilur Rahman Mir @ Khalilur Rahman, (3) Md. Rois Uddin Azadi @ Akkel Ali, (4) Md. Abdul Latif and (5) Md. Abdullah indicted in this charge for their alleged complicity and participation in accomplishing the attack by accompanying the gang of attackers could not be found proved beyond doubt by credible evidence.

438. On rational and total evaluation of evidence presented the matters which are found to have been proved beyond reasonable doubt are that –

- (i) A systematic attack was launched by the group formed of Pakistani occupation army, Razakars and the four (04) accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Abdur Razzaq Mondol, (3) Sirajul Islam @ Tota Mondol and (4) Md. Alim Uddin Khan ;

(ii) These four (04) accused remained actively stayed with the gang till it ended its criminal mission by effecting killing of detained victim Taru Kha;

(iii) Devastating activities too were carried out in conjunction with the first phase of attack;

(iv) Victim, an unarmed civilian Taru Kha was taken away to Razakar camp on forcible capture and he was kept confined at Razakar camp;

(v) Detained victim was eventually gunned down to death;

(vi) Intent of the criminal mission of which the four (04) accused persons had active part was to annihilate pro-liberation unarmed civilian, to further policy and plan.

439. In light of above evaluation finally we are persuaded to conclude that it has been proved unequivocally that four (04) accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Abdur Razzaq Mondol, (3) Sirajul Islam @ Tota Mondol and (4) Md. Alim Uddin Khan , in exercise of their affiliation in locally formed Razakar Bahini, by their aggressive act and conduct forming part of systematic attack consciously participated, aided, abetted and substantially contributed to the commission of the offences of '**abduction**', '**torture**', '**confinement**' and '**murder**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) and thus these accused persons are found **guilty and criminally liable** under

section 4(1) of the Act which are punishable under Section 20(2) of the Act.

440. Five (05) other accused (1) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (2) Md. Khalilur Rahman Mir @ Khalilur Rahman, (3)Md. Rois Uddin Azadi @ Akkel Ali, (4) Md. Abdul Latif and (5) Md. Abdullah indicted in this charge could not be found guilty or criminally responsible for the offences with which they have been charged.

Adjudication of Charge No.04:

[08 accused indicted: 01 accused died after framing charge]

[Event no. 04 as narrated at pages 61-67 of the Formal Charge: Offences of ‘abduction’, ‘confinement’, ‘torture’, ‘looting’, ‘arson’ and ‘murder’ of Toyob Ali Sarker of village- Sadhua, Police Station- Pagla, District- Mymensingh]

441. That on 27 September 1971, at about 9.00/10.00 A.M. a group formed of the accused (1) AFM Faizulla alias Abul Fallah alias Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Abdur Razzaq Mondol, (4) Md. Rois Uddin Azadi @ Akkel Ali, (5) Sirajul Islam @ Tota Mondol,(6) Md. Khalilur Rahman Mir @ Khalilur Rahman, (7) Md. Abdul Latif , (8) Nurul Amin Shahjahan @ Shahjahan [**died after framing charge**] , their 10/12 accomplices Razakars by launching attack at the house of pro-liberation civilian Toyob Ali Sarker of village- Sadhua, Police Station- Pagla, District-

Mymensingh looted the house and set it on fire , finding his son not available there.

Pursuant to object of the enterprise that launched attack on 27 September 1971 the accused persons being accompanied by their accomplice Razakars again launched next attack at the house of Toyob Ali Sarker, on, 30 September 1971, after *Asar* prayer and got Toyob Ali Sarker, his son Nurul Huda (now dead), Nurul Haq alias Renu Mia, neighbor Abdur Rashid alias Chhoto Mia, Lal Mia (now dead), Ibrahim (now dead), Moinuddin (now dead) forcibly captured when they were subjected to torture and took them all away on the bank of Panther Bill by boat. At one stage, the accused Razakar Commander Abul Fallah released the detainee Nurul Haq alias Renu Mia, in exchange of money. Brutally tortured detained victim Abdur Rashid alias Chhoto Mia was left abandoned in dying condition on the bank of Marshes bill. Later on, his relatives rescued him in unconscious condition and arranged his treatment.

Victim Toyob Ali was drowned into the water of the Marshes bill that resulted in severe injury and then was kicked out of the boat, in the middle of the Marshes bill. Three days later, his dead body could be found and it was buried in the family graveyard by his relatives.

Therefore, the accused (1) AFM Faizulla alias Abul Fallah alias Faizulla, (2) Md. Shamsuzzaman (Kalam) alias Abul Kalam, (3) Md. Abdur Razzaq Mondol, (4) Md. Rois Uddin Azadi alias Akkel Ali,

(5) Sirajul Islam alias Tota Mondol,(6) Md. Khalilur Rahman Mir alias Khalilur Rahman, (7) Md. Abdul Latif and, (8) Nurul Amin Shahjahan alias Shahjahan have been charged for participating, facilitating, abetting and substantially contributing to the commission of the offence of ‘**abduction**’, ‘**confinement**’, ‘**torture**’, ‘**looting**’, ‘**arson**’ and ‘**murder**’ as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act,1973 which are punishable under section 20(2) of the Act.

Evidence of witnesses presented

442. The event of attack arraigned happened in two phases. First phase of attack was allegedly carried out on 27 September 1971 and next phase of attack was conducted on 30 September 1971, pursuant to common object.

443. During first phase of attack the group formed of accused persons indicted and their cohorts carried out attack at the house of one pro-liberation civilian Toyob Ali Sarker of village- Sadhua, Police Station- Pagla, District- Mymensingh, looted the house and set it on fire , finding his son not available there.

444. In course of next phase of attack allegedly carried out on 30 September 1971, after *Asar* prayer the accused persons got Toyob Ali Sarker, his son Nurul Huda (now dead), Nurul Haq alias Renu

Mia, neighbor Abdur Rashid @ Chhoto Mia, Lal Mia (now dead), Ibrahim (now dead), Moinuddin (now dead) forcibly captured; the detainees were subjected to torture and then they were taken away toward the bank of Panther Bill (swamp) by boat.

445. Prosecution relies upon testimony of five witnesses – P.W.09, P.W.10, P.W.11, P.W.12 and P.W.15 to substantiate the charge. Of them P.W.10 Md. Abdur Rashid @ Chotu Miah (82) and P.W.11 Nurul Haque @ Renu Mia (73) are survived victims. P.W.15 is the son of the victim who later on heard the event of killing his father. P.W.12, a resident of the locality is a hearsay witness. Now, first let us see what the witness have testified before Tribunal.

446. P.W.09 Md. Momtaj Uddin (76) is a resident of Village Joydhorkhali under Police station-Pagla of District Mymensingh. He is a direct witness to the second phase of alleged attack that happened on 30 September 1971.

447. In testifying the first phase of attack alleged, P.W.09 stated that on 13th Aswin, 1971 he heard from his uncle Toyob Ali Sarkar's worker Roshmot Ali (now dead) that on 10th Aswin (three days prior to the second phase of attack) at about 9:00/10:00 A.M Razakar Razzak, Kalam, Tota, Akkel Ali, Khalilur Rahman, Latif Moulana, Abdus Samad Moulavi (now dead) led by Razakar Abul Fallah Md.

Foyez Ullah looted his uncle's house and burnt it down by setting fire, finding his uncle and his freedom-fighter son Zobaer Ahmed unavailable there.

448. P.W.09 next stated that after hearing the above he moved to his uncle's house. During his staying there, after *Asar* prayer, Razakars Razzak, Kalam, Tota, Akkel Ali, Khalilur Rahman, Latif Moulana, Abdus Samad Moulavi(now dead) and their cohorts led by Razakar Abul Fallah Md. Foyez Ullah besieged his(P.W.09) uncle's the house. With this he being scared went into hiding inside a bamboo bush east to his uncle's house wherefrom he could see that Razakars Khalil, Akkel Ali, Shahjahan starting causing torture to his cousin Nurul Haque and then he was set free in exchange of money . They also tortured his cousin brother Abdur Rashid Chutu Miah and at a stage they had left him abandoned guessing dead.

449. P.W.09 also stated that those Razakars forcibly captured his (P.W.09) uncle Toyob Ali Sarkar and after torturing took him toward Panthar Bil Ghat by a boat and then dumped him into the swamp. After the Razakars had left the site, his uncle's body could not be traced even on many searching. Three days later, his uncle's (Toyob Ali Sarkar) dead body was found floating in the swamp and then the body was buried down. His cousin brother Abdur Rashid Chutu Miah

became physically disabled due to torture inflicted to him by the above Razakars.

450. In respect of knowing the accused persons he (P.W.09) stated that he knew the accused persons beforehand as the mentioned Razakars were from the same locality and in childhood he (P.W.09) used to play with them.

451. In cross-examination done on part of three accused Md. Shamsuzzaman (Kalam), Md. Rois Uddin Azadi and Abdul Latif, P.W.09 stated in reply to defence question put to him that his father started living at village Joydhorkhali since 3/4 years prior to the war of liberation; that village Sadhua was about 7/8 miles east to village-Joydhorkhali; that his uncle Toyob Ali's house was at village-Sadhua and that the accused Razakar Kalam was not on dock of Tribunal. P.W.09 next stated in reply to question put by Tribunal that he did not see the Razakar Kalam after independence.

452. Defence suggested P.W.09 that accused Md. Rois Uddin Azadi @ Akkel Ali, Kalam and Abdul Latif were not Razakar; that they were not involved in the event he narrated and that Toyob Ali died while trying to cross the swamp. P.W.09 denied all these defence suggestions.

453. Above cross-examination has been adopted on part of rest four accused i.e. accused Khalilur Rahman, Abul Fallah Md. Faizulla, Abdur Razzak and Sirajul Islam @ Tota Mondol. In reply to question put to P.W.09 on part of these accused persons P.W.09 stated that in 1971 during the war of liberation a camp was set up at Gafargaon by the Pakistani occupation army.

454. P.W.10 Md. Abdur Rashid @ Chotu Miah (82) is a resident of Village Sadhua under Police station-Pagla of District Mymensingh. He is one of the survived victims of the alleged event.

455. In narrating the first phase of attack arraigned, P.W.10 stated that on 10th day of Bengali month Aswin, 1971 at about 9:00/10:00 A.M. Razakars Razzak, Kalam, Akkel Ali, Khalilur Rahman, Latif Moulana, Tota Razakar Abul Fallah Md. Foyez Ullah by launching attack at his uncle Toyob Ali Sarkar's house carried out looting and burnt down the house as they did not find his(P.W.10) uncle Toyab Ali Sarkar and his son freedom fighter Zobaer Ahmed Sondhi. He (P.W.10) saw the event remaining stayed in hiding inside the jungle adjacent to his uncle's house.

456. In respect of second phase of attack P.W.10 stated that three days later i.e. on 13th Aswin after *Asar* prayer, he, his uncle and some other people were engaged in a discussion while Razakars Abul Fallah Md. Foyez Ullah, Razzak, Kalam, Akkel Ali, Khalil, Latif

Moulana, Tota and their cohorts again besieging the house forcibly captured him (P.W.10) and had left him abandoned on the bank of swamp after causing torture. Those Razakars also forcibly captured his cousin brother Nurul Haque and then set him free in exchange of ransom money. These Razakars also captured his (P.W.10) uncle Toyob Ali Sarker and took him away toward Panthar swamp by a boat, caused torture to him and then dumped him in the swamp. After the Razakars had left the site his uncle's body could not be traced even after many searches. Three days later, his uncle's body was found floating in the swamp.

457. In respect of knowing the accused persons he (P.W.10) stated that he knew the accused persons beforehand as they were from the neighbouring localities.

458. In cross-examination done on part of accused Md. Shamsuzzaman (Kalam), Md. Rois Uddin Azadi @ Akkel Ali and Md. Abdul Latif, P.W.10 stated in reply to defence question put to him that his cousin Zobaer Ahmed Sondhi is an enlisted freedom-fighter and he receives government allowances. He also stated that accused Md. Abdul Latif was minor in 1971 and he was a student of class VII Madrasa student in 1971 and that he saw accused Md. Abdul Latif accompanying the Razakars Abul Falah and Razzak.

459. Defence suggested P.W.10 that accused Md. Rois Uddin Azadi @ Akkel Ali was a disabled person and he was not a Razakar; that these accused persons were not Razakars; that these accused persons were not involved in the incident as testified by him; that Toyob Ali died while trying to cross the swamp; that whatever P.W.10 testified implicating these accused was untrue and tutored. P.W.10 denied all these defence suggestions put to him.

460. The above cross-examination has been adopted on part of absconded accused Abul Fallah @ Md. Faizullah, Abdur Razzak, Sirajul Islam @ Tota Mondol and present accused Khalilur Rahman.

461. P.W.10 denied the defence suggestions that these accused were not Razakars; that they were not involved with the event he testified; that he did not see the alleged event ; that his uncle died while trying to cross the swamp and that whatever he testified implicating these accused was untrue or tutored.

462. P.W.11 Nurul Haque @ Renu Mia (73) is a resident of village-Sadhua under Police station-Pagla of District Mymensingh. He is one of the survived victims of the event alleged.

463. About the first phase of the event of attack P.W.11 testified that on 27th September at about 9:00/10:00 A.M. he had been at home when Razakars Razzak, Tota Mondol, Kalam, Akkel Ali, Khalilur Rahman, Latif Moulana, Shahjahan, Razakar Abul Fallah Md. Foyez

Ullah and their cohorts came to their house and started looking for his father and his younger brother Zobaer Ahmed Sondhi as his father was an organizer of war of liberation and his brother was a freedom-fighter. But finding them unavailable they (the gang) looted their house and then burnt it down. He (P.W.11) saw the event remaining stayed in hiding inside a bush nearer to their house.

464. In respect of the second phase of attack that happened three days later P.W.11 stated that on 30th September after *Asar* prayer, he, his father, brother and some other people were in a discussion when accused Razakar he named again besieged their house and captured him, his (P.W.11) father and his cousin brother Abdur Rashid Chotu Mia. Later, the accused Razakar Abul Fallah set him free in exchange of money. Then remaining stayed in hiding he saw that the perpetrators leaving Abdur Rashid Chotu Mia at the ghat after torture. However, they (the gang) took away his (P.W.11) father by boat and then dumped him in the swamp. After the Razakars had left the site, they could not have trace of his father's body. Three days later, his father's dead body was found floating in the swamp.

465. In respect of reason of knowing the accused persons P.W.11 stated that he knew the accused persons beforehand as they were from the localities around of their house.

466. In cross-examination done on part of accused Md. Shamsuzzaman (Kalam), Md. Rois Uddin Azadi and Md. Abdul Latif, P.W.11 stated in reply to defence question put to him that accused Shamsuzzaman was a student of Hosendia School of Pakondia Thana. P.W.11 denied the defence suggestions that accused Shamsuzzaman and Kalam is not the same person; that accused persons were not Razakars and they were not involved in the event he testified; that his brother was not a freedom-fighter.

467. In cross-examination done on part of accused Khalilur Rahman, Abul Fallah, Abdur Razzak and Sirajul Islam @ Tota Mondol P.W.11 stated that he took stance in support of the war of liberation and that in 1971 camps of Pakistani army were established at Gafargaon . P.W.11 denied the defence suggestions that he did not see the event he testified; that these accused were not Razakars; that they were not engaged with the event alleged; that Toyob Ali died while trying to cross the swamp and that what he testified implicating these accused was untrue and tutored.

468. **P.W.15 Jobayer Ahmed @ Sondhi (69)** is a resident of Village Sadhua under Police Station-Pagla of District Mymensingh. He is a hearsay witness to the event alleged. He is the son of the victim. At the time of the event arraigned he was engaged in war of liberation, being a freedom-fighter.

469. P.W.15 stated that after Bangabandhu delivered his epic speech on 7th march he was taking preparation to take part in war of liberation and at the beginning of May he went to India where he received training and after receiving training he came back at the first week of November. While he was fighting for liberation at Purbodhola of Netrokona he heard from the source that Razakars had killed his father Taiyeb Ali Sarkar.

470. P.W.15 continued narrating that on 9th December 1971, Gafargaon got liberated from the clutches of Pakistani army and on 10th December, he returned back to his house and knew from his mother, elder brother Nurul Hoque Renu, brother Nurul Huda (now dead), cousin Abdur Rashid Chotu Miah and others that on 27th September at about 10:00/11:00 A.M Razakar Razzak, Kalam,, Akkel Ali, Khalilur Rahman, Latif Moulana, Shahjahan, Razakar Abul Fallah Md. Foyez Ullah by launching attack at their house searched of his father Taiyeb Ali Sarkar and him(P.W.15). Being failed to find them, they looted the house and set it on fire.

471. P.W.15 next stated that he also learnt that on 30th September after Asar prayer, his father, brother Nurul Hoque Renu, cousin Abdur Rashid Chotu Miah, Ibrahim, Lal Miah and others were in a discussion when the Razakars he mentioned besieged their house and captured his brother Nurul Hoque Renu, cousin Abdur Rashid Chotu

Miah, and his (P.W.15) father and took them away to the boat dock. Later, these Razakars set his brother Nurul Hoque Renu free in exchange of ransom money and had left Abdur Rashid Choto Mia at the ghat after torture. However, they took his father by the boat and after torturing him threw him into the swamp. Three days later, his body was found floating in the swamp and it was later buried down.

472. In cross-examination done on part of accused Md. Shamsuzzaman (Kalam), Md. Rois Uddin Azadi alias Akkel Ali and Abdul Latif, defence suggested that accused Abdul Latif was 11 years old or that he was not a Razakar; that accused Shamsuzzaman and his mentioned Kalam is not same person; that Accused Kalam was not a Rajakar.P.W.15 blatantly denied to all these.

473. P.W.15 denied to defence suggestions that Akkel Ali was a disabled person in 1971 and because of that he did not join Razakars Bahini; that accused Abdullah was not a Razakar; that they were not involved in the event alleged; that whatever he testified is untrue and tutored.

474. In cross-examination done on part of absconded accused Abul Fallah alias Md. Faizulla, Abdur Razzak, Sirajul Islam @ Tota Mondol, present accused Khalilur Rahman, above mentioned cross-examination was accepted.

475. P.W.12 Habibur Rahman Khan, a resident of village-Sadhua under police station-Pagla (former Gafargaon) of District Mymensingh chiefly testified the event as listed in charge no.01. He however also testified what he heard about the event arraigned in this charge no.04. P.W.12 stated that he heard from the residents of the locality that Razakars took away Toyab Ali on forcible capture and had killed him. In cross-examination P.W.12 denied the defence suggestion that he did not hear the alleged killing of Toyab Ali and that Toyab Ali died when he was crossing the swamp.

Finding on Evaluation of Evidence

476. This charge rests upon five witnesses-- P.W.09, P.W.10, P.W.11, P.W.12 and P.W.15. Of them P.W.11 and P.W.15 are the sons of victim martyr Toyob Ali Sarker. P.W.11 and other direct witnesses had fair occasion of seeing the facts related to the event of attack. The attack arraigned happened in two phases.

477. The group of attackers formed of accused persons and their accomplice Razakars, the charge framed arraigns. The event alleged first happened on 27 September 1971, at about 9.00/10.00 A.M. when the attackers allegedly looted the house of Toyob Ali Sarker and set it on fire, finding him and his son(freedom-fighter) not available there. The charge framed arraigns.

478. Three days later second phase of attack at the same site i.e. at the house of Toyob Ali was carried out. The charge framed arraigns that the same group formed of accused persons and their accomplice Razakars had launched recurrent organized attack at the house of Toyob Ali Sarker of village- Sadhua, Police Station- Pagla, District- Mymensingh. In course of this phase of attack relatives including the son (P.W.11) were subjected to inhumane persecution and father of P.W.11 Toyob Ali Sarker was taken away on forcible capture toward the swamp by boat with torture caused to him (victim) and he was dumped in the swamp. Three days later, his dead body could be found floating in the swamp.

479. Mr. Shahidur Rahman the learned prosecutor drawing attention to testimony of five witnesses argued that both phases of attack launched at the house of Toyob Ali Sarker have been proved. The object of the criminal mission was to effect capture of Toyob Ali Sarker and his freedom-fighter son Zobaer Ahmed Sondhi. Evidence of direct witnesses goes to show that the gang of Razakars accompanied by the accused persons looted the house and set it on fire, finding Toyob Ali Sarker and his freedom-fighter son not available. The object was to attack and annihilate freedom-fighter and his pro-liberation father. Defence could not dislodge the event of attack launched by the accused persons and their accomplices.

480. Mr. Abdus Sattar Palwan the learned counsel defending the accused Md. Abdul Latif, Kalam and Akkel Ali argued that P.W.10 admits that in 1971 accused Md. Abdul Latif was a minor boy and this admitted fact negates his alleged membership in locally formed Razakar Bahini. P.W.11 states that accused Kalam used to stay at Pakondia for his study which negates his alleged presence at the crime scene accompanying the gang. These accused have been falsely implicated with the alleged events of attacks, the learned defence counsel added.

481. Mr. Abdus Shukur Khan, learned state defence Counsel for accused AFM Faizulla @ Abul Fallah @ Faizulla, Md. Abdur Razzaq Mondol, Sirajul Islam @ Tota Mondol and present accused Md. Khalilur Rahman Mir @ Khalilur Rahman argued that these accused were not affiliated with the locally formed Razakar Bahini; that the evidence of witnesses is not credible as they were not acquainted with the identity of accused persons and that in absence of evidence it cannot be deduced that the accused persons were engaged in causing death of victim Toyab Ali Sarker.

482. Eight (08) accused have been indicted in this charge. Of them one accused Nurul Amin Shahjahan @ Shahjahan died after commencement of trial and as such proceeding so far as it related to him stood abated. Now, we are to move evaluating evidence adduced

so far as it relates to **seven (07)** accused indicted. Out of them **four (04)** accused (1) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (2) Md. Rois Uddin Azadi @ Akkel Ali, (3) Md. Abdul Latif and (4) Md. Khalilur Rahman Mir @ Khalilur Rahman have been in prison and **three (03)** accused (5) AFM Faizulla @ Abul Fallah alias Faizulla, (6) Md. Abdur Razzaq Mondol and (7) Sirajul Islam @ Tota Mondol have been absconding. The absconding accused persons have been duly defended by the state defence counsel appointed at the cost of government.

483. The charge framed arraigns that on 30 September 1971 after *Asar* prayer, i.e. in day time the group formed of accused persons and their accomplice Razakars again had launched an organized attack at the house of Toyob Ali Sarker of village- Sadhua, Police Station- Pagla, District- Mymensingh. In course of this phase of attack numerous civilians were subjected to torture and victim Toyob Ali was taken away with torture. Three days prior to this phase of attack the same gang had attacked the house of the victim when they had carried out looting and devastating activities, charge framed alleges.

484. In view of allegation arraigned in this charge we now require to see how far the prosecution has been able to prove the facts as below:

- (i) The accused persons formed part of the gang of attackers;

- (ii) In course of first phase of attack the group carried out looting and arson at the house of Toyob Ali Sarker;
- (iii) That three days later, in course of second phase of attack at the same site the same gang brutally tortured inmates of the house on forcible capture;
- (iv) That the accused persons accompanying the gang took away Toyob Ali Sarker on forcible capture toward the swamp by boat;
- (v) That the detained victim was subjected to torture and the accused persons caused his death by dumping him in the swamp ;
- (vi) That the accused persons being part of collective criminality had carried out criminal activities leading to killing on pro-liberation civilian, sharing common intent.

485. It transpires that P.W.10, one survived victim had opportunity of seeing the criminal activities carried out by the accused persons during the first phase of attack. P.W.10 saw it remaining in hiding inside a nearer bush. It is manifested from uncontroverted testimony of P.W.10 that the gang accompanied by accused persons looted and burnt down the house of his uncle Toyob Ali Sarker. It was an explicit portrayal of aggression and antagonism to the pro-liberation civilians.

486. Evidence tendered also manifests that target of the gang was Toyob Ali Sarker and his freedom-fighter son Zobaer Ahmed Sondhi. First phase of systematic attack was carried out with extreme belligerence leading to looting and arson. The gang did not find their target there and thus presumably the gang became aggressive and had carried out devastating activities.

487. Such devastating criminal activities were the stamp of horrible attitude of the accused persons and their cohorts toward the war of liberation and pro-liberation civilians. Victim Toyob Ali Sarker was the uncle of P.W.10 and thus naturally being a family inmate he had fair occasion of experiencing these criminal activities, remaining in hiding.

488. P.W.11 Nurul Haque @ Renu Mia (73) is the son of victim Toyob Ali Sarker. It reveals that he too observed the criminal activities carried out by the accused persons and their cohorts, during the first phase of attack. Testimony of P.W.11 in respect of this part of attack gets consistent corroboration from P.W.10, another direct witness. Defence could not cast any degree of doubt on ocular testimony of P.W.11. Besides, we find no reason to disbelieve P.W.10 and P.W.11.

489. It transpires that P.W.10, a survived victim had alleged opportunity of seeing the criminal activities carried out by the seven

(07) accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Abdur Razzaq Mondol, (4) Md. Rois Uddin Azadi @ Akkel Ali, (5) Sirajul Islam @ Tota Mondol, (6) Md. Khalilur Rahman Mir @ Khalilur Rahman, (7) Md. Abdul Latif and their accomplices during first phase of attack. P.W.10 saw it remaining in hiding inside a neared bush.

490. Uncontroverted testimony of P.W.10 also manifests that the gang accompanied by accused persons looted and burnt down the house of his uncle Toyob Ali Sarker. It also transpires that target of the gang was Toyob Ali Sarker and his freedom-fighters son Zobaer Ahmed @ Sondhi. But the gang did not find them there and thus presumably the gang became violent and had carried out prohibited devastating activities. Toyob Ali Sarker was the uncle of P.W.10 and thus naturally being a family inmate he had fair opportunity of experiencing these criminal activities, remaining in hiding.

491. It stands already proved that in 1971 accused Md. Abdul Latif was a minor boy. In narrating the alleged event P.W.09, P.W.10 and P.W.11 stated that one 'Latif Moulana' accompanied the gang of Razakars. Already it has been found that this accused Md. Abdul Latif was not a Razakar as his tender age in 1971 did not permit him to get enrolled in Razakar Bahini. Be that as it may, testimony of witnesses implicating him terming 'Latif Moulana' simply does not carry any value. It seems to be significant exaggeration. However,

such exaggeration itself does not taint the testimony in its entirety. However, such deliberate exaggeration itself does not taint the testimony in its entirety.

492. In view of above it could not be proved that accused Md. Abdul Latif who was a minor boy in 1971 knowing consequence remained present at the crime site in accomplishing the attack. Mere parrot like saying that accused Md. Abdul Latif was present at the crime site with the gang does not lead to conclude that despite being a tender aged boy he was at crime site intending to participate or facilitated the object of attack.

493. It is now well settled that just on the basis of mere presence at the site it cannot be concluded that he sharing common purpose of the criminal enterprise facilitated and contributed to the commission of criminal acts. At best he was a mere spectator having no culpability. Thus, accused Md. Abdul Latif cannot be found responsible for the offences arraigned merely on the basis of his presence, even if it is accepted to be true.

494. In view of above it could not be proved that accused Md. Abdul Latif who was a minor boy in 1971 knowing consequence remained present at the crime site in accomplishing the attack. Mere parrot like saying that accused Md. Abdul Latif was present at the crime site

with the gang does not lead to conclude that despite being a tender aged boy he was at crime site intending to participate or facilitate the object of the criminal mission by launching attack, sharing intent.

495. But however, consistently corroborative evidence of P.W.11 (son of victim) and P.W.10, family inmate of the victim it is patently manifested that the rest six (06) accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Abdur Razzaq Mondol, (4) Md. Rois Uddin Azadi @ Akkel Ali, (5) Sirajul Islam @ Tota Mondol (6) Md. Khalilur Rahman Mir @ Khalilur Rahman consciously participated in accomplishing the attack to further common object and intent.

496. Drawing attention to the version made by P.W.09 on cross-examination learned defence counsel argued that this witness could not identify the accused Kalam present on dock and he did not see him after independence. Thus, his testimony implicating this accused does not carry value.

497. In response to above argument the learned prosecutor argued that identification of accused on dock itself does not carry value. P.W.09 did not see this accused Kalam after independence and thus due to reason of loss of long passage of time it may not be possible to identify a person whom he saw in 1971, more than four decades

back. Testimony of P.W.09 is to be assessed together with testimony of other witnesses.

498. We find substance in what has been argued by the learned prosecutor. Identification of an accused present on dock cannot be the means of proof of his complicity with the event arraigned. Mere failure to identify an accused on dock long more than for decades after the event happened one may not be able to recall or memorize the face of one accused particularly when he had no opportunity of seeing the accused since after independence. Thus, mere failure to identify accused Kalam, present on dock does not lead to conclude that P.W.09 has testified falsely, implicating the accused Kalam.

499. Razakar Abul Fallah Md. Foyez Ullah was Razakar commander. On his leadership the event of attack was carried out, the charge framed arraigns. Consistent testimony of P.W.09 and P.W.10 also manifests that this accused was the key perpetrator and other accused Razzak, Kalam, Akkel Ali, Khalilur Rahman, Tota Mondol were consciously and sharing common object remained stayed with the gang of attackers. It stands proved that these 06 accused actively and sharing common intent of the criminal mission participated in committing crimes by launching systematic attack leading to killing the father of a freedom-fighter.

500. Facts unveiled from uncontroverted testimony of witnesses demonstrate that the second phase of attack ended in effecting killing the victim who was taken away forcibly by the perpetrators accompanied by the accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Abdur Razzaq Mondol, (4) Md. Rois Uddin Azadi @ Akkel Ali, (5) Sirajul Islam @ Tota Mondol (6) Md. Khalilur Rahman Mir @ Khalilur Rahman.

501. Corroborative evidence of P.W.09, P.W.10 and P.W.11 indisputably demonstrates that the victim was subjected to torture when he was taken away on forcible capture toward the swamp by boat and since then the victim could not be traced till his dead body was found floating in the swamp, three days later.

502. The above crucial facts could not be impeached by the defence. In absence of anything contrary, it may be safely inferred that the accused persons and their accomplices engaged in taking away the victim on forcible capture were even concerned with and liable for the act of causing death of the detained victim whom they took away on forcible capture, by launching attack. Naturally, due to context prevailing none had opportunity of seeing the activities of perpetrators after the victim was taken away on forcible capture. But presumably, the victim was gravely subjected to torture and then was

dumped in the water of the swamp that resulted in his death and at a stage his dead body was found floating in the swamp, three days later.

503. Defence attempted to negate the attack which ended in killing the victim by putting specific suggestion to witnesses that victim Toyob Ali died while trying to cross the swamp. But it stands proved that the act of attack that resulted in forcibly taking away the victim was indubitably chained to the killing the victim and the six accused and their accomplices were engaged in committing such atrocities.

504. The manner of attack conducted and the fate of the detained victim lead to deduce that the accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Abdur Razzaq Mondol, (4) Md. Rois Uddin Azadi @ Akkel Ali, (5) Sirajul Islam @ Tota Mondol (6) Md. Khalilur Rahman Mir @ Khalilur Rahman were actively engaged in conducting criminal acts including forcible confinement of victim Toyob Ali Sarker. Facts and circumstances suggest that these accused persons being part of joint criminal enterprise had carried out such prohibited acts in systematic manner to further culpable design and common purpose.

505. P.W.15, one son of the victim was a freedom-fighter. On returning back home, he heard the tragic event of his father's killing. It already stands proved that P.W.11, another son of victim and P.W.09, P.W.10 witnessed the organised attack leading to forcible capture of victim Toyob Ali Sarker and devastating activities carried out by the group formed of accused persons and their accomplices, in course of first phase of attack. Naturally, P.W.15 returning back home heard the event from family inmates and others, as he testified, we infer it unerringly. Thus, hearsay testimony of P.W.15 having found corroborated by direct witnesses carries probative value. It could not be shaken in cross-examination of P.W.15 that he was a valiant freedom-fighter. It may be thus inferred that this was the reason of launching recurrent attack at their house.

506. In 1971, during the period of war of liberation the entire population of the locality attacked had no scope of seeing the atrocious activities carried out by the Pakistani occupation army and their local notorious collaborators belonging to Razakar Bahini. But such horrendous atrocities eventually transformed to anecdote which became known to the residents of the locality. Be that as it may, hearsay testimony of P.W.12 which demonstrates that he heard the event of killing Toyob Ali Sarker carries value. Besides, such hearsay narrative of P.W.12 gets corroboration from the direct witnesses including one son (P.W.11) of the victim.

507. Defence argued that in absence of evidence to connect the accused persons with the alleged killing of the victim they cannot be held responsible. But we are not agreed with this futile argument. In war time situation naturally, none had opportunity of seeing all the activities of perpetrators after the victim was taken away on forcible capture. But apparently the victim was subjected to grave torture and then was dumped in the water of the swamp that resulted in his death and at a stage his dead body was found floating in the swamp. Thus, it would be immaterial to argue that the accused persons indicted were not the actual perpetrators or none of them himself physically participated to the commission of the killing.

508. The act of killing the victim was the upshot of the attack to which all these six accused persons are found to have had active participation. Thus, it is to be adjudicated whether in furtherance of attack directed against the civilian population the alleged crimes including the killing as enumerated in section 3(2) of the Act of 1973 were committed. It is not the 'act' but the 'attack' is to be systematic in nature and even a single act forms part of the 'attack'.

509. Crimes arraigned in this charge did not result from the criminal susceptibility of single individual[s] forming part of the group. But the attack to which all the six (06) accused were active part constitutes unmistakable manifestations of '**collective criminality**'. On eyeing on uncontroverted corroborative testimony on crucial

facts we are forced to conclude that the six (06) accused persons had acted in pursuance of common agreement or understanding for the common plan in conducting the attack. Common agreement or understanding need not be tangible. This view finds support from the observation made by the **ICTY** which is as below:

“The existence of an agreement or understanding for the common plan, design or purpose need not be express, but may be inferred from all the circumstances.”

[Tadic Appeal Judgement, para. 227; see also Krnojelac Trial Judgement, para. 80]

510. In adjudicating this charge it transpires indisputably that pursuant to prearranged and designed plan all the six accused had acted in concerted manner pursuant to the common plan and common intention. The active and passive role played by all the accused under the headship of accused AFM Faizulla @ Abul Fallah @ Faizulla, in conjunction with the attack is sufficient to infer that they all were consciously engaged in the criminal enterprise, sharing common intention.

511. Based on facts and circumstances we arrive at an unerring decision that six accused (1) AFM Faizulla @ Abul Fallah alias Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md.

Abdur Razzaq Mondol, (4) Md. Rois Uddin Azadi @ Akkel Ali, (5) Sirajul Islam @ Tota Mondol (6) Md. Khalilur Rahman Mir @ Khalilur Rahman in the enterprise obviously predicted the result of their prohibited acts. They were aware that the group's criminal actions were "most likely to lead to the killing the detained victim," and knowing it they willingly facilitated the criminal enterprise, by forcibly taking away the detained victim with them by boat.

512. Tribunal retells that liability concerning the offences enumerated in section 3(2) of the Act of 1973 under the **doctrine of JCE [Basic Form]** need not involve the physical commission of crimes by all the members of the JCE. Thus, it is irrelevant to demonstrate with specificity as to how the accused persons being the members of the enterprise had acted, to further the agreed object of the criminal mission. Legal proposition evolved in this regard in the **ICTY** may be cited here as relevant which is as below:

“If the agreed crime is committed by one or other of the participants in a joint criminal enterprise such as has already been discussed, all the participants in that enterprise are equally guilty of the crime regardless of the part played by each in its commission.”

[Vasiljevic, ICTY Trial Chamber, Judgment: November 29, 2002, para 67]

513. It has been proved that non-combatant victim Toyob Ali Sarker, the father of a freedom-fighter, was subjected to inhumane torment on forcible capture, before causing his death by dumping in the swamp.

514. The first phase of attack was carried out in day time and within sight of relatives of victim. Such torture was rather a blatant blow to human rights. The vulnerable spectators too sustained enormous mental injury by observing such violence. It was rather a crime of terror against the pro-liberation civilian population of the locality attacked which was indeed grave violation of international humanitarian law.

515. The attack and its upshot as found proved explicitly portray what extent of aggression the Razakars and people affiliated with it had in attacking the pro-liberation civilian population in 1971. The six (06) accused in fact forming part of the pack of wolves had acted not only against civilian population but against humanity. There is no way to calculate the trauma and pain the victim's freedom-fighter son and relatives sustained.

516. On rational and integrated evaluation of evidence presented on part of prosecution it has been found proved beyond reasonable doubt that the six (06) accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md.

Abdur Razzaq Mondol, (4) Md. Rois Uddin Azadi @ Akkel Ali, (5) Sirajul Islam @ Tota Mondol (6) Md. Khalilur Rahman Mir @ Khalilur Rahman by their culpable act and conduct forming part of systematic attack consciously aided, abetted, substantially contributed and participated in committing the offences of **‘abduction’, ‘confinement’, ‘torture’, ‘looting’ ‘arson’ and ‘murder’** as **‘crimes against humanity’** enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus these six(06) accused persons are found **guilty and criminally liable** under section 4(1) of the Act which are punishable under Section 20(2) of the Act.

517. Accused Md. Abdul Latif indicted in this charge is found **not guilty or criminally liable** for the offences of which he has been charged with.

XII. Conclusion

518. In the case in hand, arraignments brought in four charges involve some atrocious events of systematic attack carried out methodically directing pro-liberation civilians of rural vicinities under Police Station-Pagla (former Gafargaon) of District Mymensingh, in context of the War of Liberation in 1971.

519. AFM Faizulla @ Abul Fallah @ Faizulla is found to have abused his commanding position he had in locally formed Razakar Bahini which deliberately prompted perpetration of crimes directing civilian population. Accused Md. Abdur Razzaq Mondol and Md. Shamsuzzaman (Kalam) @ Abul Kalam in aggressive manner actively participated in committing the crimes, it stands proved.

520. Tribunal notes that all the eight (08) accused have been found guilty for offences of which they are charged with. One accused Md. Abdul Latif arraigned in charge nos. 3 and 4 could not be found guilty. We have rendered reasoned finding on it.

521. The eight accused who are found guilty for the crimes arraigned had cognizant and culpable participation, by aiding and substantially contributing to the perpetration of dreadful crimes. Their act and conduct, in exercise of their potential membership in and affiliation with the locally formed Razakar Bahini formed part of systematic attack.

522. It has been found proved that the eight (09) accused persons knowingly participated and aided and assisted in materializing the criminal mission with intent to intimidate, causing arbitrary harm and to wipe out the pro-liberation civilians. Criminal acts carried out by these accused in collaboration with the Pakistani occupation army

formed fragmented part of the horrific mayhem conducted throughout the territory of Bangladesh in 1971.

523. Atrocious activities were carried out with intent to liquidate the pro-liberation civilians perceiving them ‘anti-state elements’, ‘miscreants’, to further the key purpose and policy of forming such auxiliary squad.

524. In the case in hand , presumably, in the name of encountering the ‘freedom-fighters’ and pro-liberation civilians the activities the accused persons deliberately carried out pursuant to designed plan to attack the unarmed pro-liberation civilians of the locality which eventually ended in killing of four unarmed civilians, as arraigned in four charges.

525. On rational evaluation of evidence tendered the eight accused persons are found to have had culpable participation in accomplishing devastating activities, unlawful confinement, torture in captivity, as arraigned. Offences proved were gravely detrimental to fundamental rights of civilians which were committed in violation of laws of war and international humanitarian law.

526. The prohibited acts constituting the offences are known as ‘system crimes’ or ‘group crimes’. Those crimes were not divisible from the horrendous atrocities committed in the territory of

Bangladesh in 1971 during the war of liberation. It has now become an undeniable history.

527. The Tribunal, in adjudicating all the charges, already rendered its reasoned decision holding the eight (08) accused persons criminally liable under section 4(1) of the Act of 1973 for the commission of crimes proved [offences of ‘abduction’, ‘confinement’, ‘torture’, ‘murder’ as crimes against humanity].

XIII. Verdict on Conviction

528. Now, for the reasoned findings based on rational appraisal of evidence rendered in our Judgment and having considered argument advanced, we **UNINAMOUSLY** find—

Six(06) accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Alim Uddin Khan, (4) Md. Abdullah, (5) Md. Abdur Razzaq Mondol, (6) Md. Rois Uddin Azadi @ Akkel Ali—

Charge No.01: GUILTY of abetting, facilitating and contributing to the commission of the offence of offences of ‘abduction’, ‘confinement’, ‘torture’, ‘looting’, ‘arson’ and ‘murder’ as crimes against humanity as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Four (04) accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Rois Uddin Azadi @ Akkel Ali, (3) Md. Abdur Razzaq Mondol and (4) Md. Alim Uddin Khan—

Charge No.02: GUILTY of abetting, facilitating and contributing to the commission of the offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’, ‘**looting**’ and ‘**murder**’ as ‘crimes against humanity’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Four (04) accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Abdur Razzaq Mondol (3) Sirajul Islam @ Tota Mondol and (4) Md. Alim Uddin Khan—

Charge No.03: GUILTY of abetting, facilitating and contributing to the commission of the offences of ‘**abduction**’, ‘**torture**’, ‘**confinement**’, ‘**looting**’, ‘**arson**’ and ‘**murder**’ as ‘crimes against humanity’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Five (05) accused 1) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (2) Md. Khalilur Rahman Mir @ Khalilur Rahman, (3)Md. Rois Uddin Azadi @ Akkel Ali, (4) Md. Abdul Latif and (5) Md. Abdullah---

Charge No.03: NOT GUILTY indicted in this charge [charge no.03].

Six (06) accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3) Md. Abdur Razzaq Mondol, (4) Md. Rois Uddin Azadi @ Akkel Ali, (5)

Sirajul Islam @ Tota Mondol (6) Md. Khalilur Rahman Mir @ Khalilur Rahman-

Charge No.04: GUILTY of abetting, facilitating and contributing to the commission of the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘looting’, ‘arson’ and ‘murder’ as ‘crimes against humanity’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

One (01) accused Md. Abdul Latif—

Charge No.04: NOT GUILTY indicted in this charge [charge no.04]

XIV. VERDICT ON SENTENCE

529. Mr. Shahidur Rahman the learned Prosecutor concluded his argument by making submission that accused persons who have been found guilty for the crimes of which they have been arraigned should face the highest sentence, as they are proved to have had abetted, substantially facilitated and participated to the commission of criminal acts constituting the offences of causing atrocious torture, mental harm, abduction, confinement and killing. Accused AFM

Faizulla @ Abul Fallah @ Faizulla's dominant position in Pagla Thana Razakar Bahini together with the mode of his aggressive participation in committing the crimes enhances his liability.

530. Drawing attention to the potential position of accused AFM Faizulla @ Abul Fallah @ Faizulla in Razakar Bahini and his dominance over the camps the learned prosecutor further submitted that this accused who has been indicted in all the four charges was the key actor and his commanding position deserves to be treated as aggravating factor. Under his command all the barbaric crimes as narrated in four charges were perpetrated. The other accused persons found guilty for crimes proved also incurred liability as they too participated, facilitated and aided the perpetration of crimes, sharing common design. Pattern and extent of the crimes committed together with the mode of participation of these accused persons justifiably suggests capital punishment.

531. In respect of sentencing matter it has been simply submitted on part of defence that since prosecution failed to prove the guilt of the accused persons they deserve acquittal.

532. Section 20(2) of the Act of 1973 contemplates that –‘upon conviction of an accused person, the Tribunal shall award sentence of death or such other punishment proportionate to the gravity of the crime as appears to the Tribunal to be just and proper.’

533. At the same time Tribunal notes that sentence of whatever degree to be awarded shall never heal the trauma and pain of victims and relatives of victims. However, they shall find a bit solace even long about five decades after the untold shock and harm they sustained if appropriate sentence is awarded to the accused persons, considering the gravity and extent of the crimes proved, the learned prosecutor emphasized.

534. We reiterate too that in awarding sentence, the Tribunal, must eye on the nature, seriousness 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 crimes proved. However, let us have glance to the factors unveiled which may reasonably justify the sentence to be awarded to the convict accused persons.

535. In the case in hand we have found it proved that in 1971 all the seven (07) convicted accused had close affiliation with the Razakar Bahini formed locally in the localities of police station Pagla(Gafargaon) of District Mymensingh. Another convicted accused Md. Abdullah having pro-Pakistan ideology had close affiliation with the locally formed Razakar Bahini. It is now settled that Razakar Bahini was created to act as an auxiliary force of the Pakistani occupation army intending to execute its policy and plan

of resisting and annihilating the pro-liberation civilians, by committing genocide and crimes against humanity in 1917.

536. Convict accused AFM Faizulla @ Abul Fallah @ Faizulla has been found guilty for the arraignments brought in all the four charges. It stands proved that this accused was in commanding position of the locally formed Razakar Bahini. Facts related to attacks proved indisputably demonstrate that accused AFM Faizulla @ Abul Fallah @ Faizulla was the architect of all the attacks launched directing unarmed pro-civilian population. Abusing his commanding position in leading the gang formed of Razakars constitutes an aggravating factor.

537. It has been proved that the other convicted accused persons in exercise of their affiliation with local Razakar Bahini being led and commanded by accused AFM Faizulla @ Abul Fallah @ Faizulla participated, assisted, aided and abetted in perpetrating the crimes proved. It should be taken into account in awarding sentence to these accused persons.

538. We reiterate that it is now jurisprudentially settled that gravity of offence is the 'litmus test' for the purpose of arriving at decision in respect of the issue of appropriate and just sentence to be awarded. We are to determine the aggravating factors, by weighing the

intrinsic gravity of the crimes proved and the form and level of contribution of the convicted accused in accomplishing the crimes.

539. In awarding sentence, the Tribunal, must eye on the nature, seriousness and extent of the offences committed, their scale, the role the convicted accused had played and mode of his participation to the perpetration of the crimes proved.

540. In the case in hand, all the eight (08) convicted accused persons have already been found guilty for the offences of which they have been indicted. Only one accused Md. Abdul Latif (arraigned in charge nos.03 and 04) is found not guilty.

541. Mode of participation of accused Md. Abdur Razzaq Mondol and Md. Shamsuzzaman (Kalam) @ Abul Kalam in committing horrific crimes of which they are found guilty seems to be gravely passive which deserves to be considered in awarding sentence.

542. Convict accused AFM Faizulla @ Abul Fallah @ Faizulla and Md. Abdur Razzaq Mondol have been found guilty for the offences arraigned in all the **four (04) charges**. It stands proved that convicted accused Md. Abdur Razzaq Mondol by his active and passive acts substantially facilitated the commission of crimes arraigned in these

four charges under the command of accused AFM Faizulla @ Abul Fallah @ Faizulla.

543. We got it proved too that accused Md. Shamsuzzaman (Kalam) @ Abul Kalam also being part of the criminal enterprise actively and consciously and in most deliberate manner facilitated and participated in perpetrating the crimes as arraigned in **charge nos. 1 and 4.**

544. Convict accused Md. Alim Uddin Khan indicted in **charge nos. 1, 2 and 3**, accused Md. Abdullah indicted in **charge nos. 1** have **been found** guilty for aiding and providing substantial support in committing the offences arraigned in these charge.

545. Convict accused Sirajul Islam @ Tota Mondol has been found guilty for the crimes arraigned in **charge nos. 3 and 4** as he knowingly accompanied the gang of perpetrators and thereby provided assistance to actuate the object of the criminal mission.

546. Convict accused Md. Khalilur Rahman Mir @ Khalilur Rahman has been found guilty for the accusation arraigned in **charge no.04.** He too is found to have aided and assisted the gang by accompanying it in launching attack.

547. Excepting convict accused Md. Abdullah all the accused got knowingly engaged in committing horrific crimes directing unarmed civilians, in exercise of their membership in locally formed Razakar Bahini. Accused Md. Abdullah who is found to have had his participation in conducting attack proved **[as listed in charge no.01]** by maintaining close affiliation with the local Razakars and their camps.

548. Mode of participation of five (05) convicted accused (1) Md. Alim Uddin Khan, (2) Md. Abdullah, (3) Sirajul Islam @ Tota Mondol, (4) Md. Khalilur Rahman Mir @ Khalilur Rahman and (5) Md. Rois Uddin Azadi @ Akkel Ali in accomplishing the attacks for which they have been arraigned shows that they knowingly got engaged in collective criminality by aiding and assisting the gang and thus responsibility they incurred for the crimes of which they have been found guilty is considered lesser. While the three (03) other convicted accused AFM Faizulla @ Abul Fallah @ Faizulla, Md. Abdur Razzaq Mondol and Md. Shamsuzzaman (Kalam) @ Abul Kalam incurred graver liability for the crimes of which they are found guilty.

549. It is now settled that the gravity of the crimes committed by the convicted person stems from the degree of his participation in the crimes. The offences as listed in all the four charges relate to the

commission of killing 04 unarmed pro-liberation civilians by launching systematic attack and the three (03) convict accused (1) AFM Faizulla @ Abul Fallah @ Faizulla, (2) Md. Abdur Razzaq Mondol and (3) Md. Shamsuzzaman (Kalam) @ Abul Kalam, as found proved, were actively and deliberately engaged in all the phases of the attacks including the phase of killing the abductees captured forcibly. The five (05) other convict accused being part of collective criminality aided, assisted to materialize the criminal design. And thus they had acted as accessories.

550. Culpable act of active and direct participation of three(03) accused convict accused AFM Faizulla @ Abul Fallah @ Faizulla, Md. Abdur Razzaq Mondol and Md. Shamsuzzaman (Kalam) @ Abul Kalam in causing death of pro-liberation civilians, as already proved, reflects their antagonistic and notorious attitude and gross abuse of their membership in local Razakar Bahini which constitutes an aggravating factor.

551. Finally, viewing on the atrocities proved in the case in hand and mode of participation of convicted accused persons therewith what sentence would be appropriate and harsher —being sentenced to be executed or to spend the rest of life in prison? In some cases it may be viewed that ‘imprisonment till rest of life’ is harsher of the two

options. Spending rest of life in prison shall reprimand and punish the convicted accused in each moment of the rest of their life.

552. In view of above discussion and considering the nature and proportion to the gravity of offences and also keeping the factors as discussed above into account we are of the view that justice would be met if the convict accused (1) AFM Faizulla @ Abul Fallah @ Faizulla,(2) Md. Shamsuzzaman (Kalam) @ Abul Kalam,(3) Md. Abdur Razzaq Mondol,(4) Md. Khalilur Rahman Mir @ Khalilur Rahman,(5) Md. Alim Uddin Khan, (6) Md. Abdullah, (7) Md. Rois Uddin Azadi @ Akkel Ali and (8) Sirajul Islam @ Tota Mondol, who have been found guilty beyond reasonable doubt for the crimes proved are **condemned and sentenced** as below, under the provision of section 20(2) of the Act of 1973.

Hence it is ORDERED

(i) That the accused **Md. Khalilur Rahman Mir *alias* Khalilur Rahman [62] (absconding)** , son of late- Nazmul Haque Mir alias Nazim Uddin alias Nesa Mondol and late-Aklima Khatun of Village-Sadhua, Police Station-Pagla (former Gafargaon), District-Mymensingh found **UNANIMOUSLY guilty** of the offences of ‘**murder**’, ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**arson**’ as ‘**crimes against humanity**’ enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge no**

4 [01 charge]. Accordingly, he be **UNANIMOUSLY** convicted and condemned to the **sentence as below for this charge**, under section 20(2) of the Act of 1973:

Sentence of imprisonment for twenty (20) years for the crimes as listed in **charge no.4.**

(ii) That the accused **Md. Samsuzzaman (Kalam) @ Abul Kalam** (65), son of late-Alhaj Abul Kashem and Most. Ashrafun Nesa of Village- Sadhua, Police Station- Pagla (former Gafargaon), District- Mymensingh; at present- village- Ramasshorpur, Police Station- Atgharia, District- Pabna found **UNANIMOUSLY guilty** of the offences of ‘**murder**’, ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**arson**’ as ‘**crimes against humanity**’ enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge nos. 1 and 4 [02 charges]**. Accordingly, he be **UNANIMOUSLY** convicted and condemned to the **sentence as below for these two (02) charges**, under section 20(2) of the Act of 1973:

Sentence of imprisonment for life till biological death for the crimes as listed in **charge no.1; and**

Sentence of imprisonment for life till biological death for the crimes as listed in **charge no.4.**

The sentence of imprisonment so awarded above **in respect of charge nos.1 and 4** shall run **concurrently.**

(iii). That the accused **Md. Abdullah(62),son of late Habibur Rahman alias Hokka Moulavi** and late-Rafiqunnesa of village-Sadhua under Police Station- Pagla (former Gafargaon), District-Mymensingh; at present-49 Modhubag, Police Station-Dakhin Khan, DMP, Dhaka found **UNANIMOUSLY guilty** of the offences of ‘**murder**’, ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**arson**’ as ‘**crimes against humanity**’ enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge no. 1 [01 charge]**. Accordingly, he be **UNANIMOUSLY** convicted and condemned to the **sentence as below for this one (01) charge**, under section 20(2) of the Act of 1973:

Sentence of imprisonment for twenty (20) years for the crimes as listed in **charge no.1**.

(iv) That the accused **Md. Rois Uddin Azadi @ Akkel Ali (74)**, son of late Samed Ali Mondol @ Samir Uddin Mondol alias Somu Mondol and late Jamila Bewa alias Modur Ma, of village-Olali, Police Station- Pagla(former Gafargaon), District-Mymensingh, at present village- Kakonhat Paurasova (Notunpara), Police Station-Godagari, District- Rajshahi found **UNANIMOUSLY guilty** of the offences of ‘**murder**’, ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**arson**’ as ‘**crimes against humanity**’ enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge nos. 1, 2 and 4 [03 charges]**. Accordingly, he be **UNANIMOUSLY**

convicted and condemned to the **sentence as below for these three (03) charges**, under section 20(2) of the Act of 1973:

Sentence of imprisonment for twenty (20) years for the crimes as listed in **charge no.1;**

Sentence of imprisonment for twenty (20) years for the crimes as listed in **charge no.2; and**

Sentence of imprisonment for twenty (20) years for the crimes as listed in **charge no.4.**

The sentence of imprisonment so awarded above **in respect of charge nos. 1,2 and 4** shall run **concurrently.**

(v) That the accused **A.F.M Faizulla @ Abul Fallah @ Faizulla (66)**, son of late Abdul Majid Khan and late Jahanara Begum alias Samala Khatun of village – Sadhua, Police Station- Pagla (former Gafargaon), District- Mymensingh found **UNANIMOUSLY guilty** of the offences of ‘**murder**’, ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**arson**’ as ‘**crimes against humanity**’ enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge nos. 1,2,3 and 4 [04 charges]**. Accordingly, he be **UNANIMOUSLY** convicted and condemned to the **sentence as below for these four (04) charges**, under section 20(2) of the Act of 1973:

Sentence of imprisonment for life till biological death for the crimes as listed in **charge no.1;**

Sentence of imprisonment for life till biological death for the crimes as listed in **charge no.2;**

Sentence of imprisonment for life till biological death for the crimes as listed in **charge no.3; and**

Sentence of imprisonment for life till biological death for the crimes as listed in **charge no.4.**

The sentence of imprisonment so awarded above **in respect of charge nos. 1,2,3 and 4** shall run **concurrently.**

(vi) That the accused **Md. Abdur Razzaq Mondol (64)**, son of late Abdul Helim Mondol alias Helim Member and late Amena Khatun, of village – Olali, Police Station- Pagla (former Gafargaon), at Present: village- Sholahasia, House No-M/249, Police Station- Gafargaon, District-Mymensingh found **UNANIMOUSLY guilty** of the offences of ‘**murder**’, ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**arson**’ as ‘**crimes against humanity**’ enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge nos. 1,2,3 and 4 [04 charges]**. Accordingly, he be **UNANIMOUSLY** convicted and condemned to the **sentence as below for these four (04) charges**, under section 20(2) of the Act of 1973:

Sentence of imprisonment for life till biological death for the crimes as listed in **charge no.1;**

Sentence of imprisonment for life till biological death for the crimes as listed in **charge no.2;**

Sentence of imprisonment for life till biological death for the crimes as listed in **charge no.3; and**

Sentence of imprisonment for life till biological death for the crimes as listed in **charge no.4.**

The sentence of imprisonment so awarded above **in respect of charge nos. 1,2,3 and 4** shall run **concurrently.**

(vii) That the accused **Sirajul Islam @ Tota Mondol [66]**, son of Noor Box alias Panu Mondol and late-Hasen Banu of Village-Olali, Police Station- Pagla (former Gafargaon), District-Mymensingh found **UNANIMOUSLY guilty** of the offences of ‘**murder**’, ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**arson**’ as ‘**crimes against humanity**’ enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge nos. 3 and 4 [02 charges]**. Accordingly, he be **UNANIMOUSLY** convicted and condemned to the **sentence as below for these two (02) charges**, under section 20(2) of the Act of 1973:

Sentence of imprisonment for twenty (20) years for the crimes as listed in **charge no.3; and**

Sentence of imprisonment for twenty (20) years for the crimes as listed in **charge no.4**

The sentence of imprisonment so awarded above **in respect of charge nos. 3 and 4** shall run **concurrently.**

(viii) That the accused **Md. Alim-Uddin Khan (77)**, son of Late-Abdul Gofur Khan and Late-Amena Khatun of village–Sadhua, Police Station-Pagla (former Gafargaon), District-Mymensingh, at Present: Village-Beldia, Police Station-Sreepur, District-Gazipur found **UNANIMOUSLY guilty** of the offences of ‘**murder**’, ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**arson**’ as ‘**crimes against humanity**’ enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge nos. 1,2 and 3 [03 charges]**. Accordingly, he be **UNANIMOUSLY** convicted and condemned to the **sentence as below for these three (03) charges**, under section 20(2) of the Act of 1973:

Sentence of **imprisonment for twenty (20) years** for the crimes as listed in **charge no.1;**

Sentence of **imprisonment for twenty (20) years** for the crimes as listed in **charge no2 and**

Sentence of **imprisonment for twenty (20) years** for the crimes as listed in **charge no.3.**

The sentence of imprisonment so awarded above **in respect of charge nos. 1,2 and 3** shall run **concurrently.**

(ix) That the accused **Md. Abdul Latif (58)**, son of Late-Hossen Ali Mir alias Hossen Munshi and Late-Hamida Khatun of village-Tolali, Police Station- Pagla (former Gafargaon), District- Mymensingh found **UNANIMOUSLY NOT GUILTY** of the offences of

‘murder’, ‘abduction’, ‘confinement’, ‘torture’ and ‘arson’ as ‘crimes against humanity’ enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge nos. 3 and 4 [02 charges]**. Accordingly, he be **UNANIMOUSLY ACQUITTED** of these two (02) charges. He be released at once if not wanted in connection with any other case.

The sentence of imprisonment as awarded above shall commence from the date of this judgment or from the date of arrest or surrender of the absconded accused as required under Rule 46(2) of the Rules of Procedure, 2010(ROP) of the Tribunal-1[ICT-1].

The four (04) convicted accused (1) Md. Khalilur Rahman Mir @ Khalilur Rahman (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam (3) Md. Rois Uddin Azadi @ Akkel Ali and (4) Md. Abdullah, **[present on dock as brought from prison]** be sent to the prison **with conviction warrant** accordingly.

Since the accused Md. Abdul Latif has been acquitted of two charges he be released at once from prison, if not wanted in any other case. Let the release order be issued accordingly. Prison authority shall take instant and necessary measure in this regard.

Let the conviction warrant against the **four (04) absconding convicted accused** (1) AFM Faizulla @ Abul Fallah @ Faizulla,(2) Md. Alim Uddin Khan,(3) Md. Abdur Razzaq Mondol and (4) Sirajul

Islam @ Tota Mondol who have been sentenced as above also be issued at once.

The convicts are at liberty to prefer appeal before the Appellate Division of the Supreme Court of Bangladesh against their conviction and sentence within 30 [thirty] days of the date of order of conviction and sentence as per provisions of section 21 of the International Crimes (Tribunals) Act, 1973.

The Secretary, Ministry of Home Affairs and the Inspector General of Police [IGP], Bangladesh Police are hereby directed to initiate effective and appropriate measure for ensuring arrest of the convict absconding accused (1) AFM Faizulla alias Abul Fallah alias Faizulla,(2) Md. Alim Uddin Khan,(3) Md. Abdur Razzaq Mondol and (4) Sirajul Islam @ Tota Mondol.

Let certified copy of this judgment be provided to the prosecution and the convict accused (1) Md. Khalilur Rahman Mir @ Khalilur Rahman (2) Md. Shamsuzzaman (Kalam) @ Abul Kalam (3) Md. Rois Uddin Azadi @ Akkel Ali and (4) Md. Abdullah, at once.

If the absconding convict accused persons (1) AFM Faizulla alias Abul Fallah @ Faizulla,(2) Md. Alim Uddin Khan,(3) Md. Abdur Razzaq Mondol and (4) Sirajul Islam @ Tota Mondol are arrested or surrender within 30[thirty] days of the date of order of conviction and sentence they will be provided with certified copy of this judgment free of cost.

Let a copy of this judgment together with the conviction warrant of the convict accused (1) Md. Khalilur Rahman Mir @ Khalilur Rahman(2) Md. Shamsuzzaman (Kalam) @ Abul Kalam, (3)Md. Abdullah and (4) Md. Rois Uddin Azadi @ Akkel Ali be sent to the **District Magistrate, Dhaka** for information and necessary action.

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member