

International Crimes Tribunal-1 [ICT-1]

**[Tribunal constituted under section 6 (1) of the Act No. XIX of 1973]
Old High Court Building, Dhaka, Bangladesh**

ICT-BD [ICT-1] Case No. 03 of 2016

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

Before

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

The Chief Prosecutor

Vs

- (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz [absconded]**
- (2) Md. Ruhul Amin alias Monju [absconded]**
- (3) Md. Abdul Latif**
- (4) Abu Muslim Mohammad Ali [absconded]**
- (5) Md. Najmul Huda [absconded] and**
- (6) Md. Abdur Rahim Miah [absconded]**

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor
Mr. Syed Haider Ali, Prosecutor
Mr. Syed Sayedul Haque, Prosecutor
Mr. Mushfiqur Rahman, Prosecutor

For the Accused Md. Abdul Latif

Mr. Khandaker Rezaul Alam, Advocate, Bangladesh Supreme Court

For the five absconded Accused

Mr. Gaji MH Tamim [State defence Counsel],
Advocate, Bangladesh Supreme Court

Date of delivery of Judgment: 22 November, 2017

JUDGMENT

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

I. Introductory Words

1. This case involves arraignments of barbaric criminal activities carried out in 1971 in the territory of Bangladesh during the war of liberation directing the non combatant pro-liberation civilians constituting the offences of ‘crimes against humanity’ as enumerated in Section 3(2) of the International Crimes (Tribunals) Act, 1973.

2. Six accused persons (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz[absconded], (2) Md. Ruhul Amin alias Monju[absconded], (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali [absconded], (5) Md. Najmul Huda [absconded] and (6) Md. Abdur Rahim Miah[absconded] have been indicted on three counts for the atrocious criminal activities constituting the offences of ‘abduction’. ‘confinement’ , ‘murder’ and ‘other inhuman acts’ as crimes against humanity committed in the locality under Police Station Sundarganj of the then Gaibandha Sub-Division in 1971, during the war of liberation of Bangladesh. Prosecution alleges that the accused persons got themselves enrolled as members of locally formed Razakar Bahini, an ‘auxiliary force’ formed to collaborate with the Pakistani occupation armed force in carrying out its activities aiming to wipe out the pro-liberation Bengali civilians, in furtherance of policy and plan.

3. Of six accused persons five i.e. (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz[absconded] ,(2) Md. Ruhul Amin alias Monju[absconded], (3) Abu Muslim Mohammad Ali[absconded], (4) Md. Najmul Huda[absconded] and (5) Md. Abdur Rahim Miah[absconded] have been tried in absentia, in compliance with the provisions contained in the Act of 1973 and the ROP as they could not be arrested in execution of warrant of arrest issued by this Tribunal nor they surrendered to stand trial. Only the accused Md. Abdul Latif has been in detention since the proceedings commenced on framing charges. Pursuant to issuance of production warrant the prison authority has produced this accused person today before this Tribunal [ICT-1].

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

II. Jurisdiction of the Tribunal

5. We reiterate that the Act No. XIX enacted in 1973 is meant to prosecute crimes against humanity, genocide and system crimes as enumerated in the Act, committed in violation of customary international law. Prosecuting, trying and punishing not only the ‘armed forces’ but also the perpetrator[s] who belonged to ‘auxiliary forces’, or who culpably participated in committing the offence enumerated in the Act as an ‘individual’ or a ‘group of

individuals’ or ‘organisation’ under the Act of 1973, an *ex post facto* legislation is fairly permitted. In the case in hand, the accused persons have been arraigned for committing the alleged offences in exercise of their membership in and potential affiliation with the ‘auxiliary force’-- the Razakar Bahini.

6. The offences for which the accused persons stood trial were ‘system crimes’ and not isolated crimes as those were committed in context of ‘armed conflict’. 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.

7. The Tribunal is governed by its guiding legislation ‘The International Crimes (Tribunals) Act of 1973[Act No. XIX of 1973]’ and by the Rules of Procedure [ROP] 2010 formulated by the Tribunal [ICT-1] under the power conferred in section 22 of the principal Statute. Pursuant to the Act of 1973, the Tribunal [ICT-1] has the authority and jurisdiction to prosecute persons responsible for the offences enumerated in section 3(2) of the Act committed in violations of international humanitarian law in the territory of Bangladesh in 1971, during the war of liberation. This Tribunal set up under the Act of 1973 is absolutely a domestic Tribunal but aimed to try ‘internationally recognized crimes’ or ‘system crimes’ committed in 1971 in the territory of Bangladesh.

8. Having jurisdiction under section 10(1) (j), section 20(1) and section 20(2) of the International Crimes (Tribunals) Act, 1973[Act No. XIX of 1973] this ‘Tribunal’ known as International Crimes Tribunal-1 [ICT-1] hereby renders and pronounces the following judgment.

III. Brief Historical Background

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

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

11. The history goes on to portray that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman, the father of the nation became the majority party of Pakistan. But deliberately defying the democratic

norms Pakistan Government did not care to respect this overwhelming majority. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman, the father of the nation in his historic speech of 7th March, 1971, called on the Bangalee nation to struggle for independence. It is to be noted with immense pride that the historic March 7 speech of Bangabandhu Sheikh Mujibur Rahman, the father of nation has been recognised by the UNESCO as a world documentary heritage. The 7 March blazing speech of Bangabandhu calling on the freedom-loving Bangalees indispensably mobilized and inspired the whole nation, excepting a few pro-Pakistan people to get prepared for the war of liberation. In the early hour of 26th March, following the onslaught of “Operation Search Light” by the Pakistani Military on 25th March, Bangabandhu Sheikh Mujibur Rahman declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

12. In the War of Liberation that ensued in 1971, all people of the then East Pakistan unreservedly supported and participated in the call to make their motherland Bangladesh free but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League joined and/or

collaborated with the Pakistan occupation army to aggressively resist the conception of independent Bangladesh and most of them committed and facilitated as well the commission of systematic and widespread appalling atrocities directing civilian population in the territory of Bangladesh, in 1971, to further their policy and plan of annihilating the dream of self determination of Bengali nation. This is now a settled history of which this Tribunal takes judicial notice as permitted by the Act of 1973 and the ROP.

13. The Pakistani occupation army's terrible brutality directing civilian population of Bangladesh was planned and in furtherance of policy-- the policy to wipe out the pro-liberation Bengali civilians. The Appellate Division, in the case of *Abdul Quader Molla* has observed that –

“The way the Pakistani Army had acted, surpasses anything that could pass for legitimate use of force. It had resorted to wanton murder of civilians, including women and children in a deliberate plan to achieve submission by stark terror. [Appellate Division, *Abdul Quader Molla Judgment*, 17 September 2013 page 39]

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

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

16. In 1971, the Pakistani army had no friends in Bangladesh—except a few traitors who took stance against the war of liberation and they belonged to the ideology of pro-Pakistan political parties, e.g Muslim League, the Convention Muslim League, the Jamaat-e-Islami [JEI] and the Nizam-i-Islami. We have already observed in the case of Muhammad Kamaruzzaman, Ali Ahsan Muhammad Mujahid that JEI culpably and actively assisted and facilitated the Pakistani occupation army by forming Razakar, Al-Badar-- Para militia forces, intending to collaborate with them.

17. It is now settled history that Jamat E Islami [JEI] with intent to provide support and assistance to the Pakistani occupation army by forming peace committee, armed Razakar and Al-Badar force obtained government's recognition for those *para militia* forces. JEI started acting antagonistically since the beginning of the war of liberation and it ended in killing of intellectuals. It is found from a

report published in **The Daily Sangram 17 April 1971** that a delegation team comprising of members of Central Peace Committee including Professor Ghulam Azam [also the then Amir of Jamat E Islami] in a meeting with the Governor of East Pakistan Lt. General Tikka Khan expressed solidarity and their adherence to the armed forces.

18. Prosecution avers that accused persons did not keep them distanced from the strategy of JEI to further the policy and plan of the Pakistani occupation army in carrying out barbaric atrocities against the non combatant pro-liberation civilians that resulted in commission of offences enumerated in the Act of 1973. Victims of their target of criminal acts in grave breach of Geneva Convention were the civilians in occupied territory of Bangladesh. It is now a settled history

19. The settled history also speaks that the ‘aggression’ that resulted in untold violation of civilians’ rights and their indiscriminate killings in the territory of Bangladesh started with launching the ‘operation searchlight’ was in grave breaches of Geneva Convention 1949. After the ‘operation search light’ on the night of 26th March 1971 ten millions of Bengali civilians were compelled to deport under the horrors of dreadful aggression and brutality spread over the territory of Bangladesh.

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

21. There have been examples of prosecutions of persons allegedly responsible for crimes against humanity even many decades after the acts transpired. In the late 1990s French courts convicted Maurice Papon for atrocities committed in occupied France during World War II. Papon was almost ninety years old at the time, but he was found guilty and sentenced to a term of imprisonment [<http://www.enotes.com/crimes-against-humanity-reference/crimes-against-humanity>]

22. Finally, the untold atrocious resistance on part of thousands of local collaborators could not impede the nation's valiant journey to freedom. Undeniably the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle and immense sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination. The nation shall remain ever indebted to those best sons and daughters of the soil who paid supreme sacrifices for an indelible motherland – **Bangladesh.**

IV. Brief account of the Accused Persons

23. The following are the brief account of the six accused persons which will essentially provide the ideology, status and mindset they had in 1971 during the war of liberation:

(i) Accused Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz [absconded]

Accused Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz (65), son of late Banes Ali and late Bibijan of Village Chachia Mirganj, Police Station Sundarganj, District Gaibandha, at present David Companypara, Police Station and District Gaibandha was born on 01.03.1957 [as per National ID Card]. He was a Member of the Central Committee of Bangladesh Jamaat-e-Islami and he was elected as a Member of Parliament from Gaibandha constituency for the sessions of 2001-2006. During the war of liberation in 1971 he was an active Member of Jamaat-e-Islami and he formed Peace Committee and Razakar Bahini in his locality and led those in aiding Pakistani occupation army in the locality of the then Gaibandha Sub-Division in carrying out atrocious activities directing unarmed pro-liberation civilians, prosecution alleges.

(ii) Md. Ruhul Amin alias Monju [absconded]

Accused Md. Ruhul Amin alias Monju (61) son of late S.M.A. Jobbar and Mst. Jomila Khatun of Village Dharmapur, Matherhat, Police Station Sundarganj, District Gaibandha, at present Masterpara, PDB Lane, Police Station and District Gaibandha was

involved in forming Peace Committee and Razakar Bahini in his locality and used to collaborate with the Pakistani occupation army in 1971 in committing the system crimes constituting the offences of crimes against humanity in the locality of the then Gaibandha Sub-Division, prosecution alleges.

(iii) Md. Abdul Latif

Accused Md. Abdul Latif (61), son of late Foim Uddin Bepari and late Moyjan Begum of Village Pachgasi Santiram, Police Station Sundarganj, District Gaibandha was an active Member of Jamaat-e-Islami and a local leader of Sundarganj Upazila, District Gaibandha and was associated with the commission of offences in 1971 during the war of liberation of which he has been indicted, prosecution alleges.

(iv) Abu Muslim Mohammad Ali (absconded)

Accused Abu Muslim Mohammad Ali (59), son of late Dosim Uddin alias Solim Uddin and Maijan Begum of Village Santiram, presently Purbo Jhinia, Police Station Sundarganj, District Gaibandha was born on 01.03.1957. During the war of liberation in 1971, he was an active Member of Islami Chhatra Sangha and associated with the commission of offences of which he has been charged prosecution alleges.

(v) Md. Najmul Huda (absconded)

Accused Md. Najmul Huda (60), son of late Roich Uddin Sarker and late Jobeda Khatun of Village Santiram, Police Station

Sundarganj, District Gaibandha, at present House No. 46, Kajipara Road, Khortoil Paschim Para, P.O. Sataish, Ward No. 51, Police Station Tongi, District Gazipur was born on 01.09.1955. During the war of liberation in 1971 he was an active Member of Jamaat-e-Islami and was affiliated with the commission of atrocious activities of which he has been charged, prosecution alleges.

(vi) Md. Abdur Rahim Miah (absconded)

Accused Md. Abdur Rahim Miah (62), son of late Siddiquir Rahman and late Amena Khatun alias Saleha Begum of Village Paschim Belka, Police Station Sundarganj, District Gaibandha, at present House No. 106, Baluadanga, Road No. 2, Police Station Kotwali, District Dinajpur was born on 01.01.1953. During the war of liberation in 1971 he actively participated in the anti-liberation activities and collaborated with the Pakistani occupation army in carrying out atrocious activities around his locality, prosecution alleges.

V. Procedural History

24. The investigation Agency of the Tribunal started investigation pursuant to information recorded as complaint register no.41 dated 26.10.2014, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the six accused persons.

25. During investigation, the IO prayed for arrest of the accused persons on 26.11.2015 through the Chief Prosecutor. The Tribunal on hearing the application issued warrant of arrest against all, the six accused persons.

26. The IO submitted its report together with documents collected and statement of witnesses, on conclusion of investigation, before the Chief Prosecutor and thus the Chief Prosecutor informing the Tribunal about submission of report prayed time for placing the formal charge.

27. Finally, 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' under section 9(1) of the Act of 1973 on 20.3.2016 before this Tribunal alleging that the accused by (1) Accused Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz ,(2) Md. Ruhul Amin alias Monju (3) Md. Abdul Latif (4) Abu Muslim Mohammad Ali (5) Md. Najmul Huda and (6) Md. Abdur Rahim Miah being the members of locally formed Razakar Bahini an auxiliary force of the Pakistani occupation army had committed , substantially contributed and facilitated the commission of the offences of crimes against humanity, and they had complicity in committing such crimes as narrated in the formal charge during the period of War of Liberation in 1971 around the locality under police station Sundarganj of the then Sub-Division Gaibandha.

28. The 'formal charge' submitted discloses that the accused persons allegedly participated, facilitated and had complicity in the commission of the alleged diabolical offences in the course of the same transactions and they appear to have allegedly acted in furtherance of common plan and design to the accomplishment of such offences, and therefore, all the 06[six] accused persons may be jointly prosecuted as permissible under Rule 36 of the Rules of Procedure, 2010 of this Tribunal-1.

29.. Thereafter, on 24.03.2016 the Tribunal, under Rule 29(1) of the Rules of Procedure [ROP], took cognizance of offences as mentioned in section 3(2) (a)(g)(h) of the Act of 1973 having found *prima facie* case in consideration of the documents together with the Formal Charge, statement of witnesses submitted by the prosecution and also passed an order directing the enforcement agency to submit report in execution of warrant of arrest issued against the accused persons earlier, at pre-trial stage.

30. On getting the execution report it appeared that all the six accused persons remained absconded and thus for holding trial in *absentia*, the Tribunal on 19.04.2016 ordered publication of notification in 02 national daily news papers as required. After publication of such notification asking all the accused persons to surrender before this Tribunal within the time-frame mentioned therein the Tribunal proceeded to keep up the proceedings in *absentia* and fixed the date for hearing the charge framing matter.

Tribunal appointed Mr. Gazi M.H. Tamim, Advocate to defend all the six absconding accused persons as State defence counsel. At the same time prosecution was directed to provide the copy of formal charge to the appointed defence counsel.

31. On hearing about charge framing matter, the Tribunal framed charges on three counts against the all six accused persons on 28.6.2016. The charges so framed could not be read over and explained to the accused persons as they remained absconded.

32. Later on, pursuant to the warrant of arrest issued earlier the enforcement agency causing arrest of one accused Md. Abdul Latif produced him to the Cognizance Magistrate Court, Sundarganj Gaibandha on 18.08.2016 when he was sent to jail by issuing a custody warrant. Afterwards, by its order dated 23.8.2016 this Tribunal, being informed about it, issued production warrant with a direction to produce the accused Md. Abdul Latif before this Tribunal on 28.08.2016 and accordingly he was produced before this Tribunal on the date so fixed when Mr. Khandakar Rezaul Alam, Advocate got engaged to defend him by submitting vokalatnama and appointment of state defence counsel to defend him stood cancelled. In this way the accused Md. Abdul Latif started facing the proceedings being detained in prison.

33 In course of trial prosecution adduced in all 15 witnesses including two Investigating Officers [IOs] and of them 13 have

been examined intending to substantiate the accusation brought in the charges framed. Two witnesses have been tendered and defence did not cross-examine them. Defence however duly cross-examined all the witnesses examined.

34. On closure of prosecution evidence, defence refrained from adducing and examining any witness despite a date was fixed for this purpose. Finally, both parties advanced their respective summing up which got ended on 09.5.2017. The Tribunal then kept the case CAV, for delivery and pronouncement of its judgment and sent the accused Md. Abdul Latif to prison with direction to produce him on call.

35. It is to be noted that on closure of argument[summing up] advanced by both sides the Tribunal headed by the former Honourable Chairman Justice Anwarul Haque kept the case CAV[for rendering judgment] by its order dated 09.5.2017.

36. But few days later the Honorable former Chairman went on leave for undergoing medical treatment in home and abroad and finally he passed away on 13 July 2017 at BSMMU, Dhaka. As a result the post of the Chairman fell vacant and the proceedings of all the cases pending before the Tribunal remained halted till reformation of the Tribunal.

37. Afterwards, the Government by an official gazette dated 11.10.2017 by declaring the post of the Chairman vacant due to his death reconstituted the Tribunal by appointing Chairman and two Members under section 6(1) of the Act of 1973. The new panel of Judges started working on 12.10.2017 when taking up the case record it ordered for hearing summing up afresh to be advanced by both sides on 22.10.2017, for ends of justice with direction to inform both sides and to issue production warrant to produce the accused Md. Abdul Latif before the Tribunal on the date fixed

38. Summing up of cases placed by both sides got closure on 23.10.2017 and then the Tribunal kept the case CAV, for delivery and pronouncement of its judgment and sent the accused Md. Abdul Latif to prison with direction to produce him on call.

VI. Applicable laws

39. It is to be reiterated that the provisions as contemplated in the International Crimes (Tribunals) Act 1973 and the Rules of Procedure 2010 formulated by the Tribunal [ICT-1] under the powers given in section 22 of the Act are applicable to the proceedings before the Tribunal. Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872. Tribunal is authorized to take judicial notice of fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act].

40. Any evidence if it is considered to have probative value [Section 19(1) of the Act] may be admitted by the Tribunal. The Tribunal shall have discretion to consider even the hearsay evidence by weighing its probative value [Rule 56(2)]. The defence shall have liberty to cross-examine prosecution witness on his credibility and to take contradiction of the evidence given by him [Rule 53(ii)]. Defence shall have right to examine witnesses [Section 10(1) (f) of the Act of 1973].

41. In the judgment of *Abdul Quader Molla* it has been observed by the Appellate Division that “Sub-rule (ii) of rule 53, speaks of ‘contradiction of the evidence given by him’. This word ‘contradiction’ is qualified by the word ‘examination-in-chief’ of a witness. So, 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 *Abdul Quader Molla Judgment*]. “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.” [Page 205 of the *Abdul Quader Molla Judgment*].

42. In the case of **Muhammad Kamaruzzaman** it has also been observed by the **Appellate Division** 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 107-108-of Muhammad Kamaruzzaman Judgment].

43. Since the Act of 1973 is meant to prosecute and try the persons responsible for the offence of crimes against humanity, committed in violation of customary international law, the Tribunal however is not precluded from seeking guidance from international reference and relevant jurisprudence, if needed to resolve legal issues or crucial matters substantially related to adjudication of event constituting the offences alleged and culpability of the accused persons therewith.

VII. Summing up [Argument]

Summing up by the Prosecution

44. Mr. Sayed Sayedul Haque the learned prosecutor started placing argument by submitting that the Pakistani occupation army got stationed in Gaibandha in the mid of April 1971 which was followed by setting up two camps-- one in Gaibandha and another one in Sundarganj. Afterwards, Razakar Bahini was formed locally of accused persons and the accused Abdul Aziz alias Ghoramara Aziz was made its commander. Oral testimony shall depict that the accused persons being Razakars used to carry out atrocious activities around the locality of Sundarganj in collaboration with the Pakistani occupation army and it remained unshaken, the learned prosecutor added.

45. The learned prosecutor further submitted that the reports published in the daily Janakantha on 16.2.2001[Exhibit3] and the list of Razakars [Exhibit-7] also demonstrate beyond reasonable doubt that the accused Abdul Aziz alias Ghoramara Aziz was a potential Razakar having culpable affiliation with the Pakistani occupation army. The names of other five accused persons find place in the list Exhibit-7 which adds assurance as to their membership in the locally formed Razakar Bahini. Defence could not taint the authoritativeness of these documents in any manner.

46. The learned prosecutor also submitted that almost all the P.W.s have testified that the accused persons belonged to Razakar Bahini and they knew them since prior to the events as they used to carry out looting of households and livestock around the locality. Defence could not refute it in any manner by cross-examining the P.W.s and there has been no reason to disbelieve the P.W.s.

47. Next, Mr. Sayed Sayedul Haque the learned prosecutor submitted that the evidence tendered shall demonstrate that the accused persons belonging to Razakar Bahini were culpably engaged in committing systematic attack directing pro-liberation civilians that resulted in abduction, confinement and murder of unarmed civilians constituting the offences of crimes against humanity. The events narrated in three charges are the fragmented

picture of the atrocities committed by them around the locality of Sundarganj.

48. In arguing on indictment the learned prosecutor Mr. Sayed Sayedul Haque drew attention to the materially incriminating part of the testimony of witnesses examined intending to establish the nexus, participation and complicity of the accused persons with the commission of the crimes for which they have been charged with. However, we consider it appropriate to address the argument advanced on each charge independently when we will go on to adjudicate the same.

Summing up on behalf of accused Md. Abdul Latif

49. Mr. Khandaker Rezaul Alam the learned counsel engaged for accused Abdul Latif who faced trial being present submitted that it could not be proved by documentary or oral evidence that this accused belonged to locally formed Razakar Bahini. The documentary evidence relied upon by the prosecution in this regard does not carry any evidentiary value and the same has not been proved by examining the person engaged in preparing the same. It has been further submitted that the list of Razakars Exhibit-9 states the name of some other village against one Md. Abdul Latif and as such the name of Md. Abdul Latif as has been shown therein does not prove that the name of the accused finds place in the said list as a member of Razakar Bahini.

50. The learned defence counsel finally argued on each charge drawing attention to the evidence tendered by the prosecution when he submitted that the prosecution failed to prove this accused's involvement and complicity with the commission of the offences alleged. The witnesses examined by the prosecution are not reliable and their testimony does not carry value and this accused has been falsely implicated in this case. Finally, the learned defence counsel submitted that this accused is a person of old age and thus his old age may be taken into account as a mitigating factor if he is found guilty, in awarding sentence. However, the submission agitated in respect of each charge may be well focused while we will go on for adjudicating the charges independently.

Summing up by the State defence Counsel defending five absconding accused

51. Mr. Gaji M.H Tamim the learned state defence counsel defending the five absconding accused started his argument opposing the contention that the accused persons belonged to Razakar Bahini formed locally. He submitted that the reason of knowing the accused persons as testified by the witnesses does not make it proved that the accused were Razakars and accused Abdul Aziz alias Ghoramara Aziz was the Razakar commander. The documentary evidence i.e a list of Razakars prepared by the local Muktijodhdha Command and reports published in the daily news papers were not authoritative and true and the same were just to

malign the political image of the accused Abdul Aziz alias Ghoramara Aziz.

52. Next, the learned state defence counsel placed his argument on each charge and in doing so it has been chiefly submitted that the witnesses are not reliable and the version they made does not inspire credence as it was not practicable of seeing the alleged killing as narrated in charge nos. 02 and 03 and the accused persons were not involved with any of alleged atrocious events narrated in the charges. However, the argument pressed by the learned state defence counsel may be well addressed while we will go on to adjudicate the charges independently.

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

53. The Act of 1973 permits to prosecute even an 'individual' for the commission of any of offences enumerated in section 3 of the Act. However, the accused persons are alleged to have had membership in the locally formed Razakar Bahini and accused Abdul Aziz alias Ghoramara Aziz was its commander.

54. Long four and half decades after the atrocities committed in 1971 it was indeed a challenge to collect evidence to substantiate this crucial issue. However, prosecution relied upon oral and documentary evidence as well intending to make this matter

proved. At the outset let us eye on the documents relied upon by the prosecution.

55. The report titled *ÓnZv al P j YZivtRi tnvZv MvBevÜvi tNvogviv AvmRR GLb RvqvvtZi AvigiÓ* published in the daily Janakantha on 16.02.2001[Exhibit-3] narrates that—

Ó.....tmw`tbi tmB ivRvKvit`i GKRB Avāj AvmRR GLb MvBevÜv tRjv RvqvvtZi Avigi |Avāj AvmRR gny³ht^xi mgq tRjvi ivRvKvi KgvÜvi inmvte `mqZ; cvj bKvtj gny³thv^{xv} nZ" Avi jYcvU, AmmsthvtMi gva`tg Îvtmi ivRZ; Kvtqg KtiwQj | GB ivRvKvi KgvÜvi Zvt`i mnthvMxt`i gvidZ Mötgi gta` tK gny³thv^{xv}, Kviv gny³ht^xi mg_ R tLvB wbtq wbePvti Zvt`i AZ`vPvi PvjvZ | Avāj AvmRR gny³thv^{xv}t`i Îvm wQj | tm gny³thv^{xv}t`i cvLi gZ wj Kti nZ`v KiZ | G Kvity cwk evmbx GB ivRvKvi KgvÜvi Avāj AvmRRtK cy`vi inmvte GKwU w`j w`tqWj |.....Ó

56. Another report titled *ÓtNvogviv AvmRR Avi Zvi P`vjv mvjynZ`v Kti 18 tPqvi g`vb-tg`vi tKÓ* published in the daily Bhorer Kagoj on 14.12.2007 [Exhibit-4] also narrates that—

Ó.....GKvÉti AvmRR wQj agvBUvvi gv`tmvi QvÎ | ZLbB `mqZ; cvq ivRvKvi KgvÜvtii | Avi tMvUv DctRjv Rto`iiaKti `ckwPK wbhvZb |Gme KvtR AvmRtRi mt½ ivRvKvi mijyl ReYvic³ iaj Avngb h³ ntq nZ`v jYb, al P Pwjtq fvwZKi cwi tek `Zix Kti |ivRvKvi KgvÜvi AvmRtRi K`vú wQj cxm KvgwUi tPqvi g`vb gvtVinU evRvtii ReYvtii evortZ |gny³ht^x weRq AR³bi ci cxm KvgwUi tPqvi g`vb ReYvi GK cymn cvmj tq Ptj hvq tmSv` Avite | cDvÉtii cUcwieZ³bi ci wdti Avtmb t`tk | wbtRi Aciva XvKvi Rb` Mto tZvtj b wR bvtg GKwU Ktj R | ivRvKvi KgvÜvi AvmRRi GjvKv Qvtob | wdti Avtmb IB GKB mgtq, Gici bvbvfvte c³ve we`vi Kitz`vtKb | RvqvvtZi ivRbvwZ`iia`ntj Zvi mt½ RvwZ nb ||Ó

57. The above two reports speak a lot. The learned state defence counsel Mr. Gaji M.H Tamim questioning the authoritativeness of those reports submitted that the same were intended to malign the political image of accused Abdul Aziz alias Ghoramara Aziz and the concerned reporters have not been examined by the IO and as such the same do not carry any value.

58. We do not find reason to concede with the above submission. First, those two reports are found to have been published in two national daily news papers long 13 years and 07 years respectively before the investigation against the accused persons started under the Act of 1973. Thus, it cannot be said that the reports have been prepared for the purpose of accusing the accused Aziz in this case, out of political motivation. Second, there has been nothing to show that the accused Abdul Aziz alias Ghoramara Aziz had made any attempt to protest the reports by making any statement defying such reports.

59. The above reports also depict that another accused Ruhul Amin, the son of local Peace Committee Chairman Jabbar was also a Razakar and a close accomplice of accused Abdul Aziz alias Ghoramara Aziz. It remained undisputed that said Jabbar was the Chairman of the local Peace Committee. This uncontroverted fact also adds assurance as to the narrative made in those reports in respect of accused Ruhul Amin's membership in the Razakar Bahini.

60. In view of above we do not find any reason whatsoever to keep those reports [Exhibit-3 and 4] aside from consideration. Taking the narratives made therein into account we may safely conclude that the accused Abdul Aziz alias Ghoramara Aziz was a notorious Razakar Commander of locally formed Razakar Bahini and another accused Ruhul Amin [absconded] was one of his accomplices. It also divulges from those reports that accused Abdul Aziz alias Ghoramara Aziz along with his accomplices had carried out recurrent atrocious activities around the locality of Sundarganj targeting the pro-liberation civilians and the Hindu community. Although now he and his five accomplices have been prosecuted for three events of attacks that resulted chiefly in abduction, confinement and killing of civilians. Presumably, due to lapse of long passage of time the Investigation Agency did not have sufficient materials and evidence in support of other prohibited acts constituting the offences. But merely for this reason the truthfulness of the reports as highlighted above shall not be diminished.

61. The unimpeached fact that the accused Ruhul Amin, the son of Jabbar, the Chairman of the locally formed Peace Committee as found in the report published in the daily Bhorer Kagoj [Exhibit-04] and his father Jabbar had quitted the country after the independence achieved also lends assurance as to Ruhul Amin's membership in Razakar Bahini and his complicity in committing atrocious activities during the war of liberation around the locality.

62. The name of the accused Abdul Aziz alias Ghoramara Aziz, Ruhul Amin and four other accused persons find place in the list of local Razakars Exhibit-09, prepared by the Bangladesh Muktijoddha Sangsad, Sundarganj Upazila Command on 09.09.2010 and thus it too is another proof of all the accused persons' membership in locally formed Razakar Bahini. Mere absence of mentioning the accused Abdul Aziz alias Ghoramara Aziz as the Commander of Razakar Bahini in this list does not lessen the value of narrative made in the reports in the two daily news papers, as discussed above.

63. For the reasons made above based on the documentary evidence we arrive at decision that the accused Abdul Aziz alias Ghoramara Aziz was the commander of locally formed Razakar Bahini and five other accused persons too belonged to it.

64. Mr. Khandaker Rezaul Karim the learned counsel defending the accused Md. Abdul Latif submitted that the list of Razakars Exhibit-9 does not prove this accused's membership in locally formed Razakar Bahini as it does not state correct name of accused's village. This accused before the Tribunal is not the Razakar Md. Abdul Latif whose name finds place in the list Exhibit-9.

65. It is to be noted that it has just been denied in cross-examination of P.W.s that this accused Md. Abdul Latif was a Razakar and no

suggestion has been put to any of P.W.s examined that this accused was not the person whose name finds place in the list Exhibit-9 as a Razakar nor any document has been brought to notice of the Tribunal to substantiate such averment. Now, mere error in stating village's name in the list does not taint the information contained therein particularly when accused's father's name has been correctly stated therein. The above submission thus does not seem to have any merit.

66. What the oral testimony tendered transpires in respect of membership of the accused persons in locally formed Razakar Bahini? P.W.01 Md. Liakat Ali Sarker alias Raja Mia stated that Razakar camps were also set up at Sundarganj CO Office, Dharmapur Matherhat government Primary School and Belka High School under the headship of Sheikh Abdul Jabbar, the leader of Sundarganj Jamaat E Islami [JEI]. P.W.01 also stated that accused Abu Saleh Md. Abdul Aziz @ Ghoramara Aziz was the Commander of Sundarganj Razakar Bahini and his associates were accused Md. Ruhul Amin @ Manju, accused Abu Muslim Mohammad Ali, accused Md.Abdul Latif, accused Md. Nazmul Huda, accused Md. Abdur Rahim Mia and more than hundreds of Razakars.

67. Setting up of Razakar camps under the headship of Sheikh Abdul Jabbar, the leader of Sundarganj Jamaat E Islami [JEI] and the Chairman of local Peace Committee as stated by P.W.01 goes

with the narrative made in the reports published in the daily Bhorer Kagoj[Exhibit-4]

68. The above uncontroverted version leads to conclude that being a local P.W.01 had natural occasion of knowing about the formation of Razakar Bahini and setting up its camps at places including Matherhat government Primary School and active association of the accused persons therewith.

69. P.W.03 Md. Abdul Jobber Ali also consistently stated that the accused persons used to carry out atrocious activities around their locality, and thus, they knew them beforehand. The reason seems to be rational. Being the locals naturally it was practicable of being aware which Razakars, after forming Razakar camp at Matherhat used to carry out prohibited acts directing civilians.

70. In cross-examination, in reply to question put to him P.W.03 Md. Abdul Jobber Ali stated that he could not say on which date Md. Abdul Latif joined the Razakar Bahini and that he [accused Md. Abdul Latif] went into hid after the independence achieved. In this way defence has rather affirmed it that accused Md. Abdul Latif was a member of Razakar Bahini and he fled away after the independence achieved. Why he had to go into hid? This fact also prompts to irresistible conclusion that accused Md. Abdul Latif was engaged in carrying out recurrent atrocious activities and prohibited

acts around the locality of Sundarganj in exercise of capacity of his membership in the local Razakar Bahini.

71. Testimony of P.W.04 Zahir Uddin [74] , a resident of village Panchgachi Shantiram under Police Station Sundorganj of Gaibandha [now district] in respect of accused persons' association with the Razakar Bahini formed and its camps set up at places including Matherhat also corroborate to what has been testified in this regard by the P.W.01 , P.W.02 and P.W.03.

72. Defence does not deny the version made by P.W.04 on this matter and thus it stands proved that the accused persons being members of locally formed Razakar Bahini an auxiliary force of Pakistani occupation army were associated with the Razakar camp set up at Matherhat Primary School and accused Ghoramara Aziz was its commander.

73. Defence even does not deny what has been narrated by the P.W.04 on this issue and thus it stands proved that the accused persons being members of locally formed Razakar Bahini an auxiliary force of Pakistani occupation army were associated with the Razakar camp set up at Matherhat Primary School and accused Ghoramara Aziz was its commander.

74. It has been reaffirmed in cross-examination of P.W.06 Md. Abdul Karim Sarker that a Razakar camp existed at Matherhat which was about less than one mile far from his [P.W.06] house. It

also transpires from cross examination of P.W.06 that the Razakars committed looting the houses of civilians of their village. This version affirms the fact that after forming Razakar Bahini the accused persons and their accomplice Razakars used to carry out prohibited acts around the locality as stated by the P.W.s. Thus, naturally the witnesses testified had reason of being acquainted to the identity of the accused persons engaged in carrying out such wrong doings as the members of Razakar Bahini. Besides, the house of accused Ruhul Amin was about one –one and half miles far from that of P.W.06 and the accused Abu Muslim Md. Ali was a resident of village Shantiram, as stated in cross-examination. These two accused persons were the residents of village nearer to the house of P.W.06 and naturally it also made him familiar with them and their activities.

75. The fact of setting up Razakar camp at Matherhat has been affirmed in cross-examination of P.W.07 Md. Abdur Rashid Sarker. It also transpires from what has been stated by the P.W.07 in cross-examination in reply to question put to him by the defence that the Razakars of the said camp [Matherhat] started looting at village since setting up camp at Matherhat.

76. We have also got it from the evidence of P.W.09 Md. Makbul Hossain that they saw the Razakars guarding bridge and looting at village and thus they knew them. P.W.10 Sree Prokash Chandra Bormon also made the similar version which remained unshaken.

Additionally, it transpires from cross-examination that the house of accused Ruhul Amin alias Manju was about 100 yards far from that of P.W.10. Thus, P.W.10 had justified reason of knowing the identity of accused persons including the accused Ruhul Amin who was a close associate of accused Abdul Aziz alias Ghoramara Aziz, as already found.

77. P.W.11 Md. Rezaun Nabi testified the event occurred on 09 October 1971 as narrated in charge no.01. It is found from his unshaken evidence that since prior to the event the accused Razakars used to take away cattle and chick to Razakar camp by way of burgle from the house of their village. P.W.12 Md. Nurul Haque consistently stated the reason of knowing the accused persons beforehand corroborating the P.W.11. The house of this P.W.11 was about 100 yards far from that of accused Ruhul Amin, as stated in cross-examination. Thus, we are convinced with what has been stated by the P.W.11 in respect of the reason of knowing the accused Razakars beforehand.

78. Active association of accused Md. Abdul Latif with the Matherhat Razakar camp has been re-affirmed in cross-examination of P.W.12 as he stated in reply to defence question that accused Md.Abdul Latif used to stay at Matherhat Razakar camp since April, 1971 till the event happened[as narrated in charge no.01.

79. On integrated evaluation of oral testimony of above witnesses the residents of the crime locality it transpires that they had reason of knowing the accused persons beforehand. The recurrent wrong doing carried out at the village of the witnesses naturally made them acquainted with the identity of the accused persons. It stands proved that after the Pakistani occupation army got stationed in Gaibandha Razakar Bahini formed under the significant initiation of Abdul Jabbar the father of accused Ruhul Amin. Said Abdul Jabbar was the Chairman of the local Peace Committee—defence does not dispute it. Setting up Razakar camp at places including Matherhat also stands proved. The accused persons had close affiliation with this camp. After getting enrolled in Razakar Bahini the accused persons and their accomplices started carrying out prohibited acts at their village by looting households and cattle—it stands proved too. All these cumulatively if taken into account together with the documentary evidence as already discussed it stands proved beyond reasonable doubt that the accused Abdul Aziz alias Ghoramara Aziz was the commander of locally formed Razakar Bahini and the other five accused persons were its members and active associates in accomplishing recurrent wrong doings till the events narrated in the charges. And they did it to further the policy and plan of the Pakistani occupation army.

80. What was the object of creating the Razakar force in 1971? It is now settled that it 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. From totality of evidence tendered as already discussed it stands proved that the accused persons despite being Bengali took stance with the Pakistani occupation army by getting enrolled in Razakar Bahini in the name of preserving solidarity of Pakistan.

81. Razakar force was formed 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]. Peace Committees were also formed with the identical plan. Ghulam Azam the then Amir of Jamat E Islami and member of Central Peace Committee almost since the beginning of war of liberation started appealing the Pakistan government for arming the people who believed in solidarity of Pakistan and to combat the ‘miscreants’ [Source: **The Daily Sangram, 21 June 1971, Press conference of Ghulam Azam; see also The daily Sangram 20 June 1971**]. In the case in hand it emerges too that Abdul Jabbar, the father of accused Ruhul Amin had played the key role in forming Razakar bahini and its camps in places under Sundarganj Police Station. Said Abdul Jabbar was the Chairman of local Peace Committee.

82. Razakars, an auxiliary force was thus formed to collaborate with the Pakistani occupation army to further the policy of annihilating the Bengali nation—it is now well settled. Pro-Pakistan political parties including Jamat E Islami, Muslim League etc. had played key role in forming this auxiliary force and they symbolized the pro-liberation Bengali people as their ‘enemies’ and ‘miscreants’.

83. Infamous Razakar Bahini was thus an ‘auxiliary force’ as defined in section 2 of the Act of 1973 as it had acted maintaining ‘static relation’ with the armed force for ‘operational’ purpose.

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

IX. Adjudication of Charges

Adjudication of Charge No.1

[Abduction, confinement, torture, murder and plundering at Village Malibari under Gaibandha Sadar Police Station]

85. **Charge:** That on 09 October, 1971 at about 8.00 / 8.30 A.M. a group of 25/30 Pakistani occupation army men accompanied by Razakars accused (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz, (2) Md. Ruhul Amin alias Monju, (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali, (5) Md. Najmul Huda, and

(6) Md. Abdur Rahim Miah along with other 14/15 Razakars having launched attack on Village Malibari under Gaibandha Sadar Police Station, District Gaibandha [previously Gaibandha Sadar Police Station of Gaibandha Sub-Division under District Rangpur] captured Ganesh Chandra Barman son of late Chandra Barman from his house and tortured him and then having tied him up by a rope with a tree near the house of Md. Mokbul Hossain set fire to his lungi which caused blister upon his body and then the accused persons and their accomplices also tortured on his blister by a stick in presence of his wife, son and others. The accused persons and their accomplices also plundered the houses of the persons of the said village by detaining them whenever they came forward to help him [Ganesh Chandra Barman] out. Thereafter, the accused persons started torturing the uncle of Md. Mokbul Hossain i.e. Mohammad Ali [now dead] and Md. Mansur Ali alias Amin by confining them altogether at the residence of Md. Mokbul Hossain and at about 10.00 A.M. the accused persons took them all away to Dariapur bridge and killed Ganesh Chandra Barman by throwing him therefrom in an overturning manner by binding his hands and legs. After flinging Ganesh Chandra Barman, the accused persons and their accomplices lobbed pebbles and bricks so that he could not float on the river. The dead body of Ganesh Chandra Barman could not be traced even.

Then the accused persons and their accomplices released Md. Mokbul Hossain from the Dariapur bridge and after crossing the river by boat set Md. Mansur Ali alias Amin free and took away Mohammad Ali [now dead] to Kamarjani Pakistani occupation army camp from where he was released on the next day [10.10.1971] on recommendation of a Bihari [non-Bengali].

Thereby, the accused (1) (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz, (2) Md. Ruhul Amin alias Monju, (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali , (5) Md. Najmul Huda, and (6) Md. Abdur Rahim Miah have been charged for participating , abetting, facilitating, contributing and complicity in the commission of offences of abduction, confinement, torture, murder and plundering [other inhumane act] as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Examined

86. Prosecution, in order to prove the arraignment brought in this charge against the accused persons adduced in all 05 witnesses of whom 04 have been examined as P.W.09, P.W.10, P.W.11 and. Another one i.e P.W.13 has been tendered. Defence cross-examined all the P.W.s excepting P.W.14. Of these 05 witnesses P.W.09 is a

direct witness to the event of causing death of victim Ganesh at the place near the Dariapur Bridge. P.W.10 is the son of victim Ganesh and he testified what he observed till his father and three of their neighbours were forcibly taken towards Dariapur Bridge. Now let us see first what the P.W.s have testified.

87. P.W.09 Md. Mokbul Hossain [77] is a resident of village Malibari under Police Station and District [now] Gaibandha. He was a school teacher in 1971. He stated that on 08 October 1971 Dariapur Bridge was detonated to broken by the freedom fighters following which on 09 October, 1971 at about 08:00/08:30 A.M accused Razakars Commander Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz, Md. Ruhul Amin alias Manju, Md. Abdul Latif, Abu Muslim Md. Ali, Md. Najmul Huda , Md. Abdur Rahim Mia and their accomplice Razakars by launching attack at their village Malibari forcibly captured their neighbour Ganesh from his house and bringing him in front of their[P.W.09] house tied him up with a mango tree and started causing torture. On getting information he [P.W.09], his uncle Md. Ali [now dead] and neighbour Mansur Ali rushed there to rescue Ganesh. But the accused persons and their accomplices became angry and assaulted them as well.

88. P.W.09 next stated that at about 11:00 A.M they four including Ganesh were taken to the place nearer the Dariapur Bridge wherefrom Ganesh was thrown to the river Ghaghot, putting him inside a sack and started throwing brick pieces to it so that the sack

could not be flown. Afterwards Ganesh or his dead body could not be traced, P.W.09 added.

89. P.W.09 also stated that on that day at about 11:30 A.M the Razakars, after throwing Ganesh into the river set him free and thus he came back home. Mansur [a detainee] was set released after the Razakars crossed the river and his [P.W.09] uncle Md. Ali was taken to Pakistani army camp at Kamarjani, Gaibandha where he was kept detained and on the following morning at about 10:30 A.M his [P.W.09] uncle got released therefrom.

90. In respect of reason of knowing the accused persons P.W.09 stated that he saw the accused persons guarding the bridge and they used to carry out looting at village and thus he knew them beforehand.

91. On cross-examination by the accused Md. Abdul Latif's house was about four kilometers far from that of his [P.W.09] own. P.W.09 denied the defence suggestion that this accused was not a Razakar and he was not involved with the event he narrated and what he testified implicating this accused was untrue. Defence however does not appear to have denied the act of forcible capture of Ganesh , taking him away along with three others including P.W.09 to the place near the Dariapur bridge and the act of throwing Ganesh into the river by putting him inside a rucksack.

92. In cross-examination, the state defence counsel defending the five absconding accused simply denied what has been testified by the P.W.09. But it does not appear to have made any effort to refute what has been narrated on material particulars related to the event of attack and causing deliberate death of detained Ganesh. P.W.09 in reply to defence question stated that he used to move very often through the place at the side of Matherhat Razakar camp.

93. P.W.10 Sree Prokash Chandra Barman [58] is the son of victim Ganesh Chandra Barman. In 1971 he was 13 years old. He testified how the accused persons and their accomplices took away on forcible capture from their house. He is a direct witness to the first phase of the event.

94. P.W.10 stated that on 09 October, 1971 at about 08:00/08:30 A.M a group of 15/16 Razakar's including accused Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz, Md. Ruhul Amin alias Monju, Md. Abdul Latif, Abu Muslim Mohammad Ali, Md. Najmul Huda and Md. Abdur Rahim Miah besieging their house forcibly captured his father Ganesh Chandra Barman and took him in front of their neighbour Makbul Hossain's house, about 50 yards far from their house where the Razakars started torturing him by tying him up with a mango tree. P.W.10 further stated that then their neighbours Makbul Hossain [P.W.09], Mohammad Ali and Mansur rushed there and appealed for Ganesh's release but

ignoring it accused Abdul Aziz alias Ghoramara Aziz and accused Md. Abdul Latif started beating them too which he [P.W.10] could see remaining in hiding along with his mother inside a bamboo bush behind their house. The Razakars and accused persons then set his father on fire and started moving towards the Dariapur Bridge taking Ganesh and three other detainees with them.

95. P.W.10 next stated that at about 01:00/02:00 P.M detainee Makbul Hossain[P.W.09] returned back home, on getting release and disclosed that the accused and their accomplice Razakars had killed his[P.W.10] father Ganesh by throwing him into the river Ghaghot.

96. In respect of reason of knowing the accused persons P.W.10 stated that the accused persons he named used to carry out recurrent looting of cattle and households in their village[during the war of liberation] and he[P.W.10] very often used to see them moving through roads and that is why he knew them beforehand.

97. In cross-examination by accused Md. Abdul Latif P.W.10 stated that Dariapur Bridge was about three miles far from their house. P.W.10 denied the defence suggestion that he did not know this accused; that this accused did not belong to Razaker Bahini and that he was not involved with the alleged killing of his father. Any effective effort does not seem to have been made on part of this accused to refute what has been testified by the P.W.10 in his

examination-in-chief. Even the testimony made on material particular remained undenied.

98. Next, in cross-examination done on part of the five absconded accused P.W.10 stated that accused Ruhul Amin Manju's house was about 100 yards away from their house. P.W.10 however expressed ignorance about the name of these five accused persons. Defence simply denied what has been testified by P.W.10 implicating these five accused. But no effectual attempt is seen to have been made to discard or shake credibility of the description made in examination-in-chief.

99. P.W.11 Md. Rezaun Nabi [57] He is a direct witness to the act of forcible capture of Ganesh and causing torture to him. He stated that on 09 October, 1971 at about 08:30 a group of 14/15 armed Razakars including accused Razakars Commander Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz, Md. Ruhul Amin alias Manju, Md. Abdul Latif, Abu Muslim Md. Ali, Md. Najmul Huda, Md. Abdur Rahim Mia on raiding the house of their neighbour Ganesh and detaining him took away at the place in front of their [P.W.11] house where tying Ganesh up with a mango tree they started torturing him. At a stage his [P.W.11] brother Makbul, uncle Mohammad Ali and neighbour Mansur Ali moved there to rescue Ganesh when they were also beaten up by the Razakars. With this he moved to his uncle from their courtyard when the Razakars had

beaten him up too. Afterwards, the Razakars looted the households of their house and had beaten up the inmates. At about 12:00 A.,M the Razakars had left the place taking detained Ganesh and three others with them towards Dariapur bridge . P.W.11 also stated that on being freed his [P.W.11] brother Makbul[P.W.09] returned back home at about 02:00/02:30 P.M and disclosed that the Razakars putting Ganesh Chandra Barman inside a rucksack threw him into the river Ghaghot from the place near Dariapur Bridge.

100. P.W.11 also stated that his uncle Mohammad Ali got release on the following day at about 05:00 P.M and returned back home and his detained neighbour Mansur also got release later on. In respect of reason of knowing the accused persons P.W.11 stated that during the wear of liberation the accused persons used to loot cattle and households from their village for taking the same at Razakar camp.

101. In cross-examination done on part of the accused Md. Abdul Latif P.W.11 stated that he underwent treatment after he was beaten up by the Razakars; that Dariapur Bridge was about three kilometers far from their house. P.W. 11 denied the suggestion put to him by the defence that he did not know this accused and this accused was not a Razakar and was not involved with the event he narrated.

102. On cross-examination by the state defence counsel defending the five absconding accused persons P.W.11 stated that accused Abu Muslim Md. Ali was a resident of village Shantiram, about three kilometers far from their[P.W.11] house ; that the house of accused Ruhul Amin Manju was about 100 yards far from that of their own, at village Dharmapur Matherhat. P.W.11 however expressed ignorance as to of which village accused Najmul Huda and Md. Abdur Rahim Mia were the residents and that whether the accused Abdul Aziz alias Ghoramara Aziz was a student in 1971. P.W.11 denied the defence suggestion that he did not know these accused persons; that they did not belong to Razakar Bahini; that they were not associated in committing the event narrated and that what he testified was untrue and tutored.

103. P.W.12 Md. Nurul Haque [65] was a neighbour of victim Ganesh Chandra Barman. In 1971 he was 20 years old. He testified that on 09 October, 1971 at about 08:00/08: 30 A.M a group of 14/15 Razakars accompanied by accused Razakars Commander Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz, Md. Ruhul Amin alias Manju, Md. Abdul Latif, Abu Muslim Md. Ali, Md. Najmul Huda, Md. Abdur Rahim Mia detained Ganesh Chandra Barman , their neighbour on raiding his house. The Razakars tied Ganesh up with a mango tree in front of Makbul Hossain's house when three of their neighbours Makbul Hossain Master, Mohammad Ali and Mansur Ali attempted to rescue Ganesh but

they were also detained and subjected to torture. P.W.12 stated that he saw all these acts remaining in hiding inside a nearer bamboo bush.

104. P.W.12 also stated that in conjunction with the attack some Razakars entering inside the house of Makbul Hossain had beaten up inmates including his cousin brother Rezaun Nabi [P.W.11] and looted the household. Afterwards, the accused and their accomplices tying up Ganesh and three other detainees took them away with them towards Dariapur Bridge. At that time he, Abdus Salam, Prokash Chandra Barman [P.W.10] and Rezaun Nabi [P.W.11] of their village started following the Razakars but they compelled to come back as they were chased with anger by Razakars.

105. P.W.12 next stated that on the same day at about 02:00/02:30 A.M Makbul Hossain Master [P.W.09] disclosed him that the Razakars and accused persons putting Ganesh inside a sack had thrown into the river Ghaghot which resulted in his death. On getting release coming back after dusk Mansur also told it adding that detained Mohammad Ali was taken to Kamarjani army camp by the Razakars and Mohammad Ali returned back home on the following day and he also described that packing Ganesh insides a sack the Razakars had thrown him into the river and thus caused his death. Dariapur Bridge was about three kilometers far from their

house, P.W.12 added. Finally, P.W.12 stated that the accused persons used to carry out looting households from their village and thus he knew them beforehand.

106. In cross-examination, in reply to question put to him by the accused Md. Abdul Latif P.W.12 stated that accused Md. Abdul Latif had been staying at Matherhat Razakar camp till the event; that at the time of event the Dariapur Bridge was in concrete position; that accused Abdul Latif was a resident of village Shantiram. P.W.12 denied the suggestion put to him that Ganesh's death was natural and he did not know anything about the event.

107. On cross-examination by the state defence counsel defending the absconding five accused P.W.12 expressed ignorance about the father's name of accused Abdul Aziz alias Ghoramara Aziz, Abu Muslim Md. Ali, Md. Najmul Huda and Md. Abdur Rahim. P.W.12 however in reply to defence question stated that accused Abdul Aziz alias Ghoramara Aziz was a resident of village Chachia Mirganj, accused Abdur Rahim was a resident of village Belka and accused Najmul Huda was a resident of village Shantiram and accused Ruhul Amin was the son of Abdul Jabbar.

108. P.W.13 Md. Abdus Salam [60], a resident of village Malibari of Police Station and now District Gaibandha has been tendered by the prosecution. Defence declined to cross-examine him.

Finding with Reasoning on Evaluation of Evidence

109. The learned prosecutor Mr. Sayed Sayedul Haque submitted that the accused persons targeted Ganesh, a pro-liberation civilian and thus by launching attack they detained him and he was subjected to torture by taking him away on forcible capture. Witnesses including one of victim's neighbours who attempted to rescue Ganesh testified the fact of detention and causing torture. Defence does not dispute the act of killing Ganesh. It simply denied complicity of accused persons with the event.

110. The learned prosecutor further submitted that the witnesses examined in support of this charge consistently testified the fact of causing torture and killing Ganesh by throwing him to the river putting him inside a rucksack. P.W.09 testified all the phases of the event while the four other P.W.s described what they observed about detention of and causing torture to Ganesh and the act of plundering. Defence could not impeach what they testified and as such it stood proved by the evidence tendered that the accused persons actively and culpably participated in committing the offence of murder of Ganesh, the upshot of the attack. The witnesses testified that they knew the accused persons beforehand as they, after forming Razakar Bahini in Sundarganj, used to carry out unlawful atrocious activities around their locality, the learned prosecutor added.

111. On contrary, Mr. Gaji M.H Tamim the learned state defence counsel defending the absconding five accused persons submitted that the witnesses examined in support of this charge are not reliable; that they had no rational reason of knowing the accused persons; that some of P.W.s were tender aged in 1971 and as such it is not practicable to recollect what they allegedly experienced; that their testimony suffers from inconsistencies and the witnesses have testified being tutored out of political rivalry. Prosecution failed to prove the accusation brought against these accused persons, the learned state defence counsel added.

112. Mr. Khandaker Rezaul Alam the learned counsel defending the accused Md. Abdul Latif argued that this accused was not affiliated with the Razakars and did not act in any manner in committing the alleged offence of murder. The witnesses examined by the prosecution are not reliable.

113. It transpires that according to the arraignment brought the act of killing Ganesh Chandra was the upshot of the attack the accused persons and their accomplices launched at the house of the victim. This charge also involves the act of abduction, confinement, torture and looting households, in conjunction with the attack. No Pakistani army was with the group of attackers – a group of Razakars accompanied by the accused persons had carried out the criminal activities forming part of systematic attack as depicted

from the evidence tendered. Although the charge framed alleges that the Pakistani army men were also with the group of Razakars in launching the attack. However, omission to mention Pakistani army men's presence with the group does not render the fact of launching attack by the group of Razakars accompanied by the accused persons. Besides, defence does not appear to have been able to turn down the fact of launching attack. Three neighbours including P.W.09 who attempted to get Ganesh rescued were also detained and taken away forcibly along with the principal victim Ganesh Chandra Barman towards the killing site, the charge framed arraigns.

114. However, we are to adjudicate whether any such event of attack happened and whether the accused persons participated in carrying out deliberate criminal acts intending to accomplish the common design and purpose that eventually resulted in calculated killing of Ganesh Chandra Barman, causing mental harm to three of his neighbours by detaining them unlawfully and also by looting households and beating up inmates of one of victim's neighbours.

115. The event which ended in killing Ganesh Chandra Barman, as arraigned in this charge happened in phases and in day time.

Prosecution requires proving that-

- (a) First, by launching attack Ganesh was forcibly captured from his house;

(b) Second, the detainee was taken at the place in front of the house of P.W.11 where he was subjected to torture;

(c) Third, three neighbours rushed to rescue Ganesh when they too were kept detained and tortured by the group of Razakars and the Razakars also vandalized the house of Makbul Hossain with the act of beating the inmates;

(d) And finally, Ganesh Chandra Barman along with three other detainees were forcibly taken towards the Dariapur Bridge wherefrom the Razakars packing Ganesh inside a rucksack threw into the river that resulted in his death.

116. P.W.10 is the son of the victim Ganesh Chandra Barman. His unshaken testimony demonstrates that the accused persons and their accomplices forcibly captured his father and took away first at the place in front of the house of P.W.11 where he was subjected to torture. P.W.09 is one of neighbours of victim Ganesh who instantly rushed to the said place to rescue Ganesh. Direct testimony of this P.W.09 also corroborates P.W.10 in proving the fact of forcible capture of Ganesh.

117. It also transpires from consistently corroborating evidence of P.W.09 and P.W.10, the direct witnesses that the victim Ganesh along with his three neighbours who attempted for Ganesh's release were taken to the place near the Dariapur Bridge. This phase of the

event remained totally unshaken. There has been no reason of disbelieving P.W.09 and P.W.10.

118. P.W.09, one of three detainees was also forcibly taken away towards the Dariapur Bridge. It remained unrefuted. Testimony of P.W.09 goes to show that after taking them and Ganesh there the Razakars putting Ganesh inside a sack threw into the river Ghaghot which resulted in his death.

119. Defence could not shake the fact that after throwing Ganesh into the river P.W.09 was set released and he came back home on the same day. P.W.10 the son of the victim testified that he heard the concluding phase of the event i.e the killing of his father from P.W.09. Disclosing the fact of killing to the son of the victim Ganesh has been corroborated by P.W.09, a direct witness to the final phase of the attack. Therefore, it stands proved that Ganesh's killing was the upshot of his detention on forcible capture and causing torture to him, before he was taken to the killing site, the place near the Dariapur Bridge by the accused persons and their accomplice Razakars.

120. The unimpeached version of P.W.11, another direct witness to the attack that resulted in Ganesh Chandra Barman's forcible capture, causing torture upon him and three neighbours who attempted to rescue Ganesh also lends corroboration to what has been testified by P.W.09 and P.W.10 on material particular. It is

however also depicted from testimony of P.W.11 that in conjunction with the attack the Razakars had looted the households and beaten the inmates of their [P.W.11] house.

121. It has been argued by the defence that P.W.09, P.W.10 and P.W.11 claim to have witnessed the act of detaining the victim Ganesh Chandra Barman. But the testimony they have made does not seem to be consistent to each other. For P.W.11 stated that in conjunction with the act of taking away the victim and three of his neighbours forcibly the Razakars had looted the households of their[P.W.11] house and had beaten him[P.W.11] and their family inmates. But this version made by P.W.11 does not go with what has been testified by P.W.09 and P.W.10.

122. The learned defence counsel further submitted that accused persons' alleged involvement with the event of capture followed by alleged killing of victim Ganesh Chandra Barman shall seem to be reasonably doubted as the inconsistent testimony of the witnesses does not inspire credence and thus benefit thereof goes in favour of the accused persons.

123. Having regard to such submission, it is to be noted that only 'reasonable doubts' belong to the accused. Otherwise any practical system of justice will then break down and loses credibility with the community. Mere shadowy doubts and marginal mistakes, or other, can not deter the court from holding an accused criminally

responsible for the crime—it has now become a settled jurisprudence. In **Dharam Das Wadhvani Vs. State of U.P. (1974) 4 SCC 267**) it has been observed that-

“The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct.” [*See also the page 118 of Sayed Md. Qaiser Judgment: ICT-BD-2*]

124. It is true that P.W.09 and P.W.10 have not stated the act of looting and beating the inmates of P.W.11's house. But merely for this reason what they have testified on material particulars cannot be turned down to be untrue. First, the act of looting the households and beating the inmates of the house of P.W.11 remained unshaken. Defence could not impeach it in any manner by cross-examining this P.W.11. Second, it gets corroboration from unimpeached testimony of P.W.12, another direct witness and a neighbour of victim Ganesh Chandra Barman and thus, it cannot be said that P.W.11 has made exaggeration or testimony of P.W.11 is inconsistent to that of P.W.09 and P.W.10, merely for the reason that P.W.09 and P.W.10 have omitted to narrate the act of looting and beating the family inmates of P.W.11. Finally, it is to be noted that in narrating an event happened long more than four decades back

inconsistency or omission may naturally occur in witness's testimony.

125. The description the witnesses made in Tribunal may naturally suffer from omission or exaggeration or inconsistency but it however does not readily taint the core aspect of the event experienced by the witnesses that remains retained in their long-term memory. Besides, considerable lapse of time obviously affects the ability of witnesses to recall facts they heard and experienced with sufficient and detail precision.

126. Additionally, omission does not tantamount to inconsistency and the same itself should not be the sole consideration to exclude the entire evidence, particularly tendered on material fact. **The ICTR Appeal Chamber** laid its view that--

“The presence of inconsistencies within or amongst witnesses’ testimonies does not per se require a reasonable Trial Chamber to reject the evidence as being unreasonable”

[Muhimana, (Appeals Chamber), May 21, 2007, para. 58].

127. Assessment of the evidence is to be made on the basis of the totality of the evidence presented in the case before us. The Tribunal, however, is not obliged to address all insignificant inconsistencies, if occur in witnesses’ testimony. In this regard, we

may recall the decision of the ICTR Appeal Chamber given in the case of **Muhimana** that,

“The Appeals Chamber reiterates that a Trial Chamber does not need to individually address alleged inconsistencies and contradictions and does not need to set out in detail why it accepted or rejected a particular testimony.”

[ICTR Appeals Chamber, Judgment May 21, 2007, para. 99]

128. We reiterate that in adjudicating the offences as crimes against humanity we are to chiefly concentrate to the core essence of testimony tendered. Due to lapse of long passage of time one may not be able to recollect the detail precision of an event happened decades back. We are to keep it in mind that the event happened in startling context and narration made by the witnesses in court chiefly on core aspect of the event may remain still alive in their memory. Research on human cognition suggests that a piece of information, once it is stored in long-term memory, stays alive.

129. P.W.09, one of survived abductees and P.W.10 the son of victim Ganesh Chandra Barman have testified before the Tribunal what they experienced and observed, chiefly based on episodic memory. They may not be able to recall the event with detail precision and exactitude of the event of horrific criminal acts forming part of attack followed by killing Ganesh Chandra Barman. But their narration stored in their episodic memory has reliably portrayed the event of abduction of Ganesh Chandra Barman and

three of his neighbours followed by the act of Ganesh's killing and accused persons' participation, facilitation they contributed and culpable complicity therewith.

130. It is to be noted that the events narrated in all the three charges allegedly happened just after the Dariapur Bridge was detonated by the freedom fighters on 08 October, 1971. We may infer it indisputably that the attacks the group of Razakars including the accused persons had launched directing the civilian population of the crime village were in context of war of liberation. The attacks were thus 'systematic' and organised intending to annihilate the pro-liberation civilians.

131. Undeniably, under the horrific context the specific offences were committed by a group of members of auxiliary force of Pakistani occupation army directing pro-liberation civilians and the crimes were thus not isolated in nature. We are driven to the conclusion that it happened to further policy and plan to diminish and wipe out the aspiration of self-determination of Bengali nation. Thus, this 'context' itself prompts us to conclude that the criminal acts carried out by the accused persons indisputably formed part of 'systematic' attack directed against the unarmed Bengali civilian population. This is the key element to constitute the offences of 'crimes against humanity' as mentioned in section 3(2)(a) of the Act of 1973.

132. Already in the preceding deliberation we have rendered reasoned finding that all the six accused persons belonged to locally formed Razakar Bahini and the accused Abdul Aziz alias Ghoramara Aziz was in leading position of such locally created Bahini, an auxiliary force and had culpable and active affiliation with the Pakistani army stationed in the then Gaibandha subdivision. It irresistibly suggests that the accused persons had carried out the attack directing unarmed civilians to further policy and plan of the Pakistani occupation army. Presumably, Ganesh Chandra Barman was perceived to be an aide of the freedom fighters and thus he was targeted by the accused persons and their accomplices.

133. On integrated evaluation of evidence adduced it depicts that all the four witnesses[P.W.09, P.W.10, P.W.11 and P.W.12] examined in support of this charge have stated that the accused persons, during the war of liberation used to carry out the act of looting around their village very often and this was the reason of knowing them beforehand. Defence could not refute it. Rather, it stands affirmed in cross-examination of P.W.12 that a Razakar camp existed at Matherhat and accused Md. Abdul Latif had been staying there since its creation.

134. It is true that some of P.W.s, in cross-examination expressed ignorance about the father's name of some of accused and the villages of which they were residents. But does such failure make

the testimony of P.W.s unreliable? We are to resolve it in rational way.

135. It is to be noted that a person may be well known to others by virtue of his fame or notoriety he achieved by his activities, deeds, movement, occupation etc. he carried out around the locality. Mere ignorance about father's name of accused persons does not render the reason of knowing them as stated by the P.W.s untrue. However, carrying out recurrent unlawful and prohibited act of looting around the crime village during the war of liberation in 1971 made a fair and reasonable space to the villagers of knowing the accused persons. Naturally, they became known to the civilians for their notoriety, we may safely infer it.

136. It is not essential to know one's father's name to prove knowing that person's identity. We have got it from testimony of the witnesses that the accused persons became familiar to them and the villagers of the crime village as they [the accused] used to carry out the act of looting households recurrently during the war of liberation around the crime village, remaining stayed and associated at and with the Matherhat Razakar camp. It is to be noted that it already stands proved that a Razakar camp existed at Matherhat. It transpires that in cross-examination the event narrated by the P.W.12 and that the accused Md. Abdul Latif was a Razakar have not been denied even.

137. We have already concluded that the murder of Ganesh Chandra Barman, an unarmed civilian took place pursuant to a systematic attack launched directing civilian population. It is to be noted here that the offence of murder as crime against humanity need not be carried out against a multiplicity of victims. **The Appeal Chamber of ICTR** has observed in the case of *Nahimana, Barayagwiza and Ngeze*, that-

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

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

138. It has already been proved that the criminal acts of accused persons formed part of 'systematic attack' as the same were carried out in context of the war of liberation and thus the offences constituted were not isolated ones. Therefore, and in view of settled jurisprudence we are forced to conclude that although Ganesh Chandra Barman alone was the victim of the offence of killing, the related criminal acts facilitated in causing his deliberate death constituted the offence of 'murder' as crime against humanity.

139. It stands proved beyond reasonable doubt from the evidence of P.W.09, P.W.10 [the son of victim Ganesh], P.W.11 and P.W.12 that the accused persons and their accomplices forcibly captured Ganesh from his house, took him in front of Makbul Hossain's house where they caused torture to him tying him up with a mango tree. The evidence also demonstrates that three of victim's neighbours including P.W.09 were also detained and beaten when they attempted to get Ganesh released.

140. The above phase of attack ended in killing Ganesh Chandra Barman by taking him near the Dariapur Bridge along with three of his neighbours including P.W.09 who witnessed how Ganesh was thrown to the river Ghaghot packing him inside a rucksack. This act was done collectively by the accused persons and their accomplices. There has been nothing to indicate that the accused persons got themselves distanced while the detained victim and three other detainees including P.W.09 were taking towards the killing site, the place near the Dariapur Bridge. Besides, defence could not bring anything by cross-examining P.W.09 to make his testimony in respect of this phase of event untrue.

141. Defence could not impeach even what has been testified in relation to coming back of three detainees including P.W.09 from the clutch of Razakars, after causing death of Ganesh Chandra Barman. It has been proved that P.W.09 got release on the same

day in the afternoon, Makbul Hossain was set at liberty in the evening and detained Mansur Ali was taken to Kamarjani army camp by the accused persons and their accomplices and on the following day he got release. Such prohibited acts constituted the offence of '**abduction**'. It may be inferred unerringly that the accused persons substantially contributed and facilitated the act of taking away Mansur Ali to Kamarjani army camp where he was in captivity for one day. It also depicts what level of affiliation of the accused persons had with the army stationed in the then Gaibandha sub-division.

142. Why the three neighbours of victim Ganesh were so detained unlawfully and did such act constitute any offence? Yes, unlawfully detaining protected civilians of course was a prohibited act and such act indisputably causes mental harm to them. Besides, causing death of Ganesh by throwing him into the river packing him inside a rucksack in front of three other detainees who eventually survived made them to experience a grave trauma which obviously inflicted 'mental harm' to them constituting the offence of '**other inhuman act**'.

143. It has also been divulged patently from evidence of P.W.11 and P.W.12 that in conjunction with the first phase of attack the accused persons and their accomplices had carried out looting at the house of P.W.11 and beaten their [P.W.11] family inmates and

P.W.11 as well. It happened when the neighbours rushed to rescue detained Ganesh. The act of such beating amounts to a 'gross or blatant denial' of a fundamental right of a civilian, laid down in international customary or treaty law.

144. Presumably, the accused persons and their accomplices became heated with the attempt of getting Ganesh released. Such criminal acts forming part of the attack intending to broaden terror constituted the offence of '**other inhuman act**' as it inflicted explicit 'mental harm' to the affected civilians, we conclude. It was done to make the perpetration of the principal crime, the killing of detained Ganesh Chandra Barman unimpeded and the accused persons did it knowingly to materialize their culpable plan, purpose and design.

145. On cautious evaluation of facts unveiled from the evidence tendered we arrive at a decision that defence failed to create doubt as to accused persons' complicity, concern and participation in carrying out all those criminal activities that resulted in brutal killing of Ganesh Chandra Barman, a non combatant civilian, by cross-examining the P.W.s. It simply denied that the accused persons were not with the group of perpetrators, at any phase of the event of attack. But it is not sufficient to keep testimony of a witness aside from consideration. It has been observed by the **Appellate Division** in the case of *Delwar Hossain Sayedee* that-

It is to be remembered that the object of cross examination is to bring out desirable facts of the case modifying the examination-in-chief and to impeach the credit of the witness. The other object of cross examination is to bring out facts which go to diminish or impeach the trustworthiness of the witness. [**Criminal Appeal Nos.39-40; judgment 13 September, Pages-138-139**]

146. In the case in hand, defence, as it appears, failed to impeach what has been narrated by the witnesses in relation to the event, facts materially relevant to it and accused persons' participation and complicity therewith and it could not diminish the trustworthiness of the witnesses even.

147. It stands proved that collective and conscious criminal acts of all the six accused persons facilitated the commission of offences for which they have been charged with. It is to be noted that prosecution is not required to prove which accused committed which criminal act or by whom the detainees were tortured and Ganesh Chandra Barman was killed. We reiterate that the doctrine of JCE [basic form] allows an acceptance of the same level of responsibility for every member of the group of attackers who was part of common design and objectives of the attack, even if not physically involved in the actual commission of the crime.

148. It is now jurisprudentially settled that the basic form of JCE concerns cases where 'all participants to the criminal enterprise possess the same criminal intention to commit a crime'. It is

immaterial to see which member of the group actually perpetrated the crime, with intent. Totality of evidence tendered in the case in hand suggests to the unerring inference that all the six accused persons consciously accompanied the group in all phases of the attack, with common intent and thus they all are equally liable for accomplishing the killing the principal offence. All the accused, by their act and conduct provided practical assistance, encouragement, moral support which had substantial effect upon perpetration of the principal crime.

149. The facts materially related to the killing Ganesh as unveiled from unimpeached testimony of four witnesses indisputably prove that all the six accused persons had conscious 'concern' and 'participation' in committing the act of 'abduction', 'unlawful detention', causing 'mental harm' and killing as well i.e all of them were physically present and culpably concerned in all the phases of the event that ended in barbaric killing of Ganesh Chandra Barman and thus they being part of a 'criminal enterprise' are found equally responsible under the theory of JCE [Basic Form] for the commission of the offences in question.

150. On rational evaluation of evidence provided by the prosecution it transpires patently that the act and conduct of the accused persons and culpable presence with the group of Razakars in accomplishing the act of forcible capture of Ganesh Chandra

Barman , detaining three neighbours of Ganesh and taking them all forcibly to the place near the Dariapur Bridge, flinging Ganesh into the river packing him inside a rucksack which resulted in his death are chained together and all the six accused were conscious part thereof which impels to the unerring conclusion that the accused persons actively participated , facilitated and substantially contributed to the commission of the event of killing as well.

151. On cumulative and rational evaluation of evidence and circumstances revealed we arrive at decision that prosecution has been able to prove it beyond reasonable doubt that the group of Razakars comprising of accused (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz (2) Md. Ruhul Amin alias Monju, (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali , (5) Md. Najmul Huda, and (6) Md. Abdur Rahim Miah by launching attack forcibly captured Ganesh Chandra Barman , also detained three of his neighbours and tortured them, looted households of civilians and had beaten them and pursuant to common design and plan the accused persons and their accomplices took the victim and three other detainees forcibly to the place near the Dariapur Bridge wherefrom Ganesh was thrown into the river packing him inside a rucksack that resulted in his death. In this way all the six accused persons being part of the enterprise and by their act and conduct forming part of systematic attack in materializing the culpable mission were ‘concerned’, took ‘participation’ , ‘aided’ and

substantially 'contributed' to the actual commission of the killing and thereby they are found **guilty** for the offences of '**abduction**', '**other inhuman act**' and '**murder**' as crime against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus all the six accused persons incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge No. 02

[Abduction, confinement , torture and murder of Boyez Uddin of Village Pachgasi Shantiram, Police Station Sundarganj, District Gaibandha]

152. **Charge:** On 09 October, 1971 in the morning a non-combatant pro-liberation civilian freedom-fighter Boyez Uddin son of late Alam Uddin of village Pachgasi Shantiram, Police Station Sundarganj, District Gaibandha went to Gaibandha for his family urgency and in the afternoon when he was returning home at 4.00 P.M. the Razakars accused (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz (2) Md. Ruhul Amin alias Monju, (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali , (5) Md. Najmul Huda, and (6) Md. Abdur Rahim Miah along with other Razakars captured him on the Matherhat bridge and took him away to the Razakar camp situated at Matherhat Government Primary School and tortured him whole night having kept him confined there.

On 10 October, 1971 in the morning the accused persons and their accomplices were taking away detained Boyez Uddin to

Sundarganj Pakistani occupation army camp situated at the C.O [Circle Officer] Office, and when the accused persons and their accomplices along with Boyez Uddin reached Majumdar hat, they were attacked by the villagers and the persons who came to the hut and then the accused opened fire. As a result the attackers fled away and then the accused persons and their accomplices took away Boyez Uddin to Sundarganj Pakistani occupation army camp.

Thereafter, the accused persons in collaboration with the Pakistani occupation army men, after brutally torturing Boyez Uddin for 03[three] days keeping in captivity at the Sundarganj Pakistani occupation army camp, on 13 October, 1971 in the afternoon killed him by gun shot by taking him on the bank of the river Teesta nearby the said camp and buried his dead body with soil along with other dead bodies. Subsequently, a Bodhdhovumi has been established on the east side of the Sundarganj Upazilla Office memorizing the prodigious sacrifice of the martyrs.

Thereby, the accused (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz, (2) Md. Ruhul Amin alias Monju, (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali, (5) Md. Najmul Huda, and (6) Md. Abdur Rahim Miah are hereby charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of abduction, confinement, torture and murder as crimes against humanity as part of systematic attack directed against

unarmed civilian as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which you the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Examined

153. Prosecution adduced eight witnesses of whom 07 have been examined by the prosecution as P.W.01, P.W.02, P.W.03, P.W.04, P.W.05, P.W.06 and P.W.07 to substantiate this charge. Of these seven witnesses examined P.W.04 and P.W.05 are cousin brothers of victim Boyez Uddin. The rest five witnesses are the sons of some of victims of the event narrated in charge no.03. They in addition to the event as listed in charge no.03 testified some facts materially related to the act of abduction and unlawful confinement of Boyez Uddin and also the event of his killing that happened with the event of killing 13 Chairmen and Members as listed in charge no.03. P.W.08 has been tendered by the prosecution. These witnesses testified the facts relevant to both the events arraigned in charge nos. 2 and 03.

154. Some of those witnesses are direct witnesses to the facts materially related to the act of abducting, confining and killing Boyez Uddin and they also narrated what they experienced and observed in relation to keeping the Chairmen and Members in confinement at the Sundarganj army camp which ended with their and Boyez Uddin's brutal killing as well on 13 October, 1971[as

narrated in charge no.03]. Now, let us see what the witnesses testified in relation to the event narrated in charge no.02.

155. P.W.01 Md. Liakat Ali Sarker alias Raja Mia[60] was a student of class X in 1971 of Dharmapur DDM High School under Sundarganj Police Station of the then Gaibandha Sub-Division. In addition to testify the account of the event of forcible capture of the victim Boyez Uddin P.W.01 narrated when the Pakistani occupation army came to Gaibandha and about the setting up of Razakar camps around their locality and who were the members of this auxiliary force.

156. P.W.01 testified that in the mid of April, 1971 the Pakistani occupation army got stationed in Gaibandha Sadar and had set up its camps at Gaibandha Helal Park and Sundarganj CO Office. Afterwards Razakar camps were also set up at Sundarganj CO Office, Dharmapur Matherhat government Primary School and Belka High School under the headship of Sheikh Abdul Jabbar, the leader of Sundarganj Jamaat E Islami [JEI].

157. P.W.01 also stated that accused Abu Saleh Md. Abdul Aziz @ Ghoramara Aziz was the Commander of Sundarganj Razakar Bahini and his associates were accused Md. Ruhul Amin @ Manju, accused Abu Muslim Mohammad Ali, accused Md. Abdul Latif, accused Md. Najmul Huda, accused Md. Abdur Rahim Mia and more than hundreds of Razakars.

158. Next, P.W.01 stated that in 1971 he [P.W.01] and his father used to assist the freedom-fighters and provide them information about activities' of Razakars and Pakistani army when they[freedom-fighters] used to move around their locality through river. In the night of Shab-e-Barat on 08 October 1971 the freedom-fighters had blown up Dariapur bridge of Sadar Thana by detonating bomb. On 09 October, 1971 Boyez Uddin, a student of Gaibandha College was detained by the accused persons when he arrived near the Matherhat Bridge, on the way to his home from Gaibandha, P.W.01 added.

159. P.W.01 in testifying the act of forcible capture of the victim Boyez Uddin stated that on 09 October, 1971 he[P.W.01] had been in his class at Dharmapur DDM School when he heard hue and cry and then coming out of class he moved towards Matherhat Bridge adjacent to Dharmapur Matherhat Razakar camp and nearer to his school where he found Boyez Uddin detained by 13/14 Razakars including accused Abu Saleh Md. Abdul Aziz @ Ghoramara Aziz, accused Md. Ruhul Amin @ Manju, accused Abu Muslim Mohammad Ali, accused Md. Abdul Latif, accused Md. Najmul Huda and accused Md. Abdur Rahim Mia and also saw those Razakars taking Boyez Uddin away towards Dharmapur Matherhat Razakar camp.

160. P.W.01 also stated that on the following morning [10 October, 1971] at 7:00 A.M when he had been at a place nearer the Dharmapur Matherhat Razakar camp he saw the six accused Razakars already he named taking Boyez Uddin whom they detained on the preceding day towards Sundarganj Army camp. When the accused arrived at a place nearer Majumdarhat along with the detainee Boyez Uddin the local people besieging them attempted to get Boyez Uddin freed and with this accused Abu Saleh Md. Abdul Aziz @ Ghoramara Aziz and accused Md. Abdul Latif fired 6/7 rounds blank from the rifles in their hands, and thus, the people got dispersed and the accused persons started moving again towards the Sundarganj army camp taking detained Boyez Uddin with them. He [P.W.01] along with some people of their locality followed them up to Sundarganj and they returned back after seeing the accused persons taking the detained victim Boyez Uddin inside the Sundarganj army camp, P.W.01 added.

161. P.W.01 is the son of martyr Mansur Ali Sarker, Member of No.10 Shantiram Union Parishad who was also kept in captivity when he and other 12 Chairmen and Members appeared at the Sundarganj army camp on 11 October 1971 to attend a meeting as asked earlier by the accused persons and later on he was killed along with other detainees including Boyez Uddin on 13 October at the time of dusk, on the bank of the river Teesta nearer to the Sundarganj army camp.

162. It is to be noted that the accused persons have been arraigned in charge no.03 for the event of killing 13 Chairmen and Members of Union Councils after unlawfully detaining them at the same army camp.

163 How and when the act of killing of Boyez Uddin detained at the Sundarganj army camp happened on 13 October, 1971? It transpires from the testimony of P.W.01 that on that day he and the relatives of some of other detainees rushed to Sundarganj army camp and started moving around the place nearer the camp till immediate before the dusk as they came to know from the locals that the detainees would be killed on that day. Before the dusk he [P.W.01] and relatives of five detainees went into hid inside a bush at the south to the house of Haji Alim Uddin, nearer to the Pakistani army camp wherefrom at a stage they saw the accused Razakars Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz, accused Md. Ruhul Amin alias Manju, accused Abu Muslim Mohammad Ali, accused Md. Abdul Latif, accused Md. Najmul Huda and accused Md. Abdur Rahim Mia and other Razakars taking 14 detainees including his [P.W.01] father and Boyez Uddin towards the bank of the river Teesta, 200 yards far from the army camp tying them up with rope where they made them stood in a line and then gunned them down to death.

164. In reply to question put to him in cross-examination on behalf of the five absconding accused P.W.01 stated that curfew ended

after detained Boyez Uddin was taken away to Sundarganj army camp and that after raising loud uproar the people present had left the site [the place nearer Majumdarhat]. In cross-examination, P.W.01 stated the reason of knowing the accused Md. Nazmul Huda and accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz.

165. P.W.01 however denied the suggestions put to him in cross-examination that he did not see the event he narrated; that he did not know the accused persons and that what he testified implicating these five accused persons was untrue.

166. Next, in cross-examination on behalf of the accused Md. Abdul Latif, present on dock, P.W.01 stated that the bank of the river Teesta was about 200 yards far from Sundarganj army camp.

167. It also reveals from the cross-examination of P.W.01 by the accused Md. Abdul Latif that the bank of the river Teesta, the killing site was about 200 yards far from Sundarganj army camp. It has been suggested to P.W.01 that at the time of the event of 10 October, 1971 accused Md. Abdul Latif had no firearms in his hand and he did not open fire. P.W.01 denied it.

168. Defence [accused Md. Abdul Latif] does not appear to have made effort to refute the facts materially related to the phases of the event that resulted in killing of the detained victim Boyez Uddin,

by cross-examining the P.W.01. It simply suggested that this accused was not a Razakar and the dead bodies of the detainees were not left on the bank of river Teesta, after killing them there. P.W.01 blatantly denied it.

169. P.W.02 Rafiqul Islam Pramanik [59] the son of Martyr Lutfar Rahman Pramanik, one of victims of the event narrated in charge no.03. He also testified what he heard and experienced in relation to the event narrated in charge no.02 involving the act of abduction, confinement and killing of Boyez Uddin.

170. In respect of taking away Boyez Uddin to Matherhat Razakar camp on forcible capture P.W.02 is a hearsay witness. P.W.02 stated that their house was nearer to the said Razakar camp and thus, he heard that in the evening on 09 October 1971 the accused Abu Saleh Md. Abdul Aziz @ Ghoramara Aziz, accused Md. Ruhul Amin @ Manju, accused Abu Muslim Mohammad Ali, accused Md. Abdul Latif, accused Md. Najmul Huda and accused Md. Abdur Rahim Mia and 12/14 Razakars detained Boyez Uddin of village Panchgachi when he , on the way to his house , arrived at the place near the Matherhat bridge and took him away to Matherhat Razakar camp.

171. Next phase of the event involves the act of taking the detained victim to Sundarganj army camp from Matherhat Razakar camp. In respect of this phase P.W.02 is a direct witness. He[P.W.02]

stated that on 10 October 1971, in the morning, when the accused persons he already named arrived at Majumdarhat , on the way to the Sundarganj army camp taking the detained Boyez Uddin with them they the locals requested the accused persons to set Boyez Uddin released and with this accused Abu Saleh Md. Abdul Aziz @ Ghoramara Aziz, accused Md. Ruhul Amin @ Manju, and accused Md. Abdul Latif fired 6/7 rounds blank and thus they [the local people and P.W.02] being feared got quitted.

172. The ending phase of the event involved the act of killing Boyez Uddin when the 13 detained Chainmen and Members were also killed as narrated in charge no.03 and it happened just before dusk on 13 October 1971.

173. P.W.02 stated that in the afternoon on 13 October 1971 he and his uncle Harunur Rashid went to Sundarganj when they heard from the locals that the detainees were subjected to torture at the army camp and on that day they would be killed. On hearing this they started returning back to house when they met the relatives of some other detainees kept confined at the army camp and then they remained in hiding inside a bush, south to the house of one Alim Haji on the bank of the river Teesta, 300/400 yards far from the army camp. Just before the dusk they saw the accused persons and their 15/20 accomplice Razakars taking his[P.W.02] detained father Lutfar Rahman Pramanik, Boyez Uddin and 12 other detained

Chairman and Members tying them up with rope towards the bank of the river Teesta where they made them stand in a line and then gunned them down to death. Seeing this event they started crying and then however returned back home [at this stage of testifying the event P.W.02 broke down with shedding tears].

174. In cross-examination done on part of the accused Md. Abdul Latif P.W.02 stated that DDM High School was about ¼ mile far from the Matherhat Razakar camp; that he went to the army camp at Sundarganj by bicycle; they did not know it earlier that his detained father and other detainees would be killed and that they remained in hiding inside a bush on the bank of the river Tista as there was no other place to go into hid.

175. P.W.02 stated in reply to question put to him by the defence that they did not have trace of his father after his killing. P.W.02 denied the suggestions put to him that the accused Md. Abdul Latif was not a Razakar; that he was not involved with the event he narrated and that the event he testified did not happen.

176. On cross-examination on behalf of the five absconded accused persons P.W.02 stated in reply to question put to him that he could not say correctly whether his father's name finds place in the list of martyrs; that he has applied to get his father's name enlisted as a martyr and the relatives of other martyrs have also initiated such appeal.

177. P.W.02 stated in reply to defence question that accused Abu Saleh Md. Aziz alias Ghoramara Aziz was elected Member of Parliament for once; that he could not say whether this accused continued living at his own house even after the independence and that accused Md. Ruhul Amin alias Manju was elected UP Chairman for once. P.W.02 denied the defence suggestions that in 1971 accused Abu Saleh Md. Aziz alias Ghoramara Aziz was a boy of 14 years of age; that he was not a Razakar; that what he testified was untrue and that he did not see or hear any fact related to the event he narrated.

178. P.W.03 Md. Abdul Jobber Ali [58] is the son of martyr Bais Uddin one of the victims of the event narrated in charge no.03. In relation to the event of abduction and confinement of Boyez Uddin [the victim of the event narrated in charge no.02] P.W.03 is a hearsay witness. But it transpires that he[P.W.03] along with the relatives of victims[of the event as listed in charge no.03] detained at the Sundarganj army camp saw the act of killing the 13 detainees along with Boyez Uddin taking them on the bank of the river Teesta on 13 October 1971.

179. P.W.03 stated that he heard on 10 October 1971 from the locals that the accused Abu Saleh Md. Abdul Aziz @ Ghoramara Aziz, accused Md. Ruhul Amin @ Manju, accused Abu Muslim Mohammad Ali, accused Md. Abdul Latif, accused Md. Najmul

Huda and accused Md. Abdur Rahim Mia and other Razakars took away Boyez Uddin of village Panchgachi Shantiram to Matherhat Razakar camp on forcible capture in the evening on the preceding day when he was on the way to his house from Gaibandha and he was subjected to torture in captivity. Boyez Uddin was student of Gaibandha Government College and associated with the politics of Chatra League [the student wing of Awami League]. He also heard that on that day [10 October, 1971] the Razakars took away Boyez Uddin to Sundarganj army camp from Matherhat Razakar camp where he was kept detained.

180. What the P.W.03 observed and experienced on 13 October 1971? P.W.03 stated that he went to Sundarganj in the afternoon on 13 October, 1971 and went to one Abdul Alim's house nearer to the army camp where the detained Chairman and Members were subjected to torture in captivity and then he [P.W.03] came out of Abdul Alim's house when he met relatives of some detainees there and they together started moving to Sundarganj bazaar and on the way they heard from locals that on that day the detainees would be killed. On hearing this they, after Asar prayer, went into hid inside a bush adjacent to Abdul Alim's house, 300/350 yards east to the army camp and nearer to the bank of the river Teesta. Just before dusk they saw the accused Razakars he already named and their accomplice Razakars dragging the detained Boyez Uddin , his[P.W.03] father and 13 other detained Chairman and Members to

the bank of the river Teesta tying them up with rope and then made them stand in a line and the accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz, accused Md. Ruhul Amin @ Manju, accused Abu Muslim Mohammad Ali, accused Md. Abdul Latif, accused Md. Najmul Huda and accused Md. Abdur Rahim Mia gunned them down to death with rifles in their hands [at this stage of making testimony P.W.03 broke down shedding tears profusely].

181. Finally, P.W.03 stated that at about 08:00/09:00 P.M. [on 13 October, 1971] they returned back home and started crying together disclosing the event. The accused persons used to carry out atrocious activities around their locality, and thus, he knew them beforehand, P.W.03 added.

182. In cross-examination on part of the accused Md. Abdul Latif P.W.03 stated in reply to defence question that accused Md. Abdul Latif's house was about 4/5 miles far from that of their; that he could not say on which date Md. Abdul Latif joined the Razakar Bahini and that he went into hid after the independence achieved. P.W.03 however denied the defence suggestions that this accused was not a Razakar and not involved with the event narrated and that what he testified was untrue.

183. On cross-examination on behalf of the five absconded accused persons P.W.03 stated in reply to defence question that he did not know it earlier that his father and others detained at Sundarganj

army camp would be taken to the bank of the river Teesta. P.W.03 next stated that he did not apply for getting his father's name enlisted in the martyr-list. Defence does not appear to have cross-examined this P.W.03 on material particulars. It simply denied what has been testified and suggested that he [P.W.03] did not know these five accused persons and that they were not involved with the event he narrated. P.W.03 manifestly denied it.

184. P.W.04 Zahir Uddin [74] is a resident of village Panchgachi Shantiram under Police Station Sundarganj of Gaibandha [now district]. He is a direct witness to some pertinent facts relevant to the principal event as narrated in charge nos.02. Victim Boyez Uddin [charge no.02] was the son of his [P.W.04] father's sister.

185. In addition to narrating the facts he experienced P.W.04 stated that in mid of April 1971 the Pakistani occupation army had set up its camps at Helal Park of Gaibandha Sadar and Sundarganj CO Office. At that time peace committee was also set up in Sundarganj Thana under headship of Abdul Jabbar [now dead] a local Jamaat e Islami leader who organised a Razakar camp at Matherhat Primary School of Sreepur Union under Sundarganj Police Station. The Razakars associated with the said camp started committing looting and criminal acts around the localities. P.W.04 also stated that accused Abu Saleh Md. Abdul Aziz @ Ghoramara Aziz, accused Md. Ruhul Amin @ Manju, accused Abu Muslim Mohammad Ali,

accused Md. Abdul Latif, accused Md. Najmul Huda and accused Md. Abdur Rahim Mia and other Razakars were affiliated with the said Razakar camp.

186. In relation to the fact of apprehending Boyez Uddin, P.W.04 stated that on 09 October 1971 he [P.W.04] had been at their house when he heard from others that on that day in evening accused Abu Saleh Md. Abdul Aziz @ Ghoramara Aziz, accused Md. Ruhul Amin @ Manju, accused Abu Muslim Mohammad Ali, accused Md. Abdul Latif, accused Md. Najmul Huda and accused Md. Abdur Rahim Mia and other Razakars forcibly captured Boyez Uddin from a place at Matherhat bridge when he was on his way to home from Gaibandha and then they took him away to the Razakar camp. On hearing it he [P.W.04] and Azizul Haque the elder brother of Boyez Uddin rushed to Matherhat and then the people they found present there asked them –‘ do not move forward, they will detain you too if you move, go back home’. With this they returned back home.

187. P.W.04 went on to state that on the following day i.e on 10 October, 1971 in morning he, Azizul Haque, Tofazzal and some of their villagers moved to Majumdar Haat when they saw the accused persons being accompanied by other Razakars taking away detained Boyez Uddin towards Sundarganj army camp from Mather Haat Razakar camp. Then they requested the Razakars to set Boyez

Uddin free. With this the Razakars started blank firing and thus they got dispersed and then they [Razakars] moved towards Sundarganj army camp taking detained Boyez Uddin with them.

188. P.W.04 also stated that following the Razakars they arrived at Sundarganj and eventually they saw the Razakars taking detained Boyez Uddin inside the Sundarganj army camp. Afterwards, they started coming back to home as they could not enter the camp. P.W.04 next stated that Boyez Uddin used to assist the freedom fighters and this was the reason of detaining him at army camp on forcible capture.

189. Coming back home they moved to Saim Uddin the Chairman of their union to have consultation as to how to get Boyez Uddin released. Saim Uddin told them that he would try to get Boyez Uddin released when he would go to the Sundarganj army camp on the following day to attend a meeting, P.W.04 added.

190. P.W.04 stated that on the following day i.e on 13 October 1971 at about 11:30 AM he and his two cousin brothers [Boyez Uddin's brothers] again rushed to Sundarganj where they met Liakat Ali, Rafiqul, Abdul Jabbar, Abdul Karim, Abdur Rashid the relatives of chairmen and members and others detained at the army camp. During their staying there they heard that the detainees were subjected to torture at Sundarganj army camp in previous night and they would be killed on the day [13 October 1971] at any time.

With this, after saying Asar prayer, they and the relatives of detained chairmen and members went into hid inside a jungle at the southern side of one Alim Uddin's house and therefrom just immediate before Magrib prayer they could see accused Abu Saleh Md. Abdul Aziz @ Ghoramara Aziz, Md. Ruhul Amin @ Manju, Abu Muslim Mohammad Ali, Md. Abdul Latif, Md. Najmul Huda and Md. Abdur Rahim Mia and other Razakars taking the detained Boyez Uddin and 13 chairmen and members tying up with rope towards the bank of the river Teesta, 200 yards north east of the army camp, where they were gunned down to death. After dusk they returned back home and disclosed the event to family members.

191. The accused persons used to move around their locality and thus he [P.W.04] could know them since prior to the event, P.W.04 stated.

192. On cross-examination by the accused Md. Abdul Latif P.W.04 stated that Boyez Uddin used to stay at a mess in Gaibandha to continue his study and used to move occasionally by bicycle from home. In reply to question put to him by the defence P.W.04 stated that on 10 October 1971 he and his cousin brothers went to Sundarganj on foot; that the bank of the river Teesta was about one *bigha* north to the Sundarganj army camp; that their home was

about six miles far from Sundarganj Thana and that on 13 October 1971 they came back home at about 08:30 PM from Sundarganj.

193. On cross-examination done on part of the five absconded accused persons P.W.04 stated that they did not sue over the event of killing Boyez Uddin. Defence chiefly denied what has been testified by P.W.04 implicating these accused persons. P.W.04 denied the suggestions put to him by the defence that the accused persons were not Razakars and were not involved with the event alleged in any manner, that the accused persons had been at their locality after the independence achieved and that he testified untrue version being influenced by the rivals of the accused persons. P.W.04 blatantly denied it.

194. P.W.05 Azizul Haque Sarker [88], the elder brother of victim, Boyez Uddin testified what he saw when the detained victim was taking away to Sundarganj army camp from Matherhat Razakar camp where he was kept detained on 09 October 1971 by forcibly capturing him at about 04:00 P.M. from a place nearer Matherhat bridge when he was on the way back to home from his college by the accused Abu Saleh Md. Abdul Aziz @ Ghoramara Aziz, accused Md. Ruhul Amin @ Manju, accused Abu Muslim Mohammad Ali, accused Md. Abdul Latif, accused Md. Najmul Huda and accused Md. Abdur Rahim Mia and other Razakars.

195. P.W.05 stated that on the day of detaining his brother they attempted to move to Matherhat Razakar camp to get him released. But the people present there made them refrained and thus they returned back home. On 10 October at about 07:00 A.M when the said accused Razakars arrived at Majumdarhat along with detained Boyez Uddin, on the way to Sundarganj army camp, he [P.W.05] and other people requested them to set Boyez Uddin released but the Razakars fired blank gun shots which made the people dispersed and then the said accused Razakars and their accomplices started moving towards Sundarganj army camp taking detained Boyez Uddin with them. They [P.W.05 and other people] followed them till detained Boyez Uddin was taken inside the army camp set up at Sundarganj CO Office and then they returned back therefrom.

196. In cross-examination on behalf of accused Md. Abdul Latif suggestion has been put to P.W.05 that this accused was not with the Razakars when they detained Boyez Uddin from the place nearer Matherhat Bridge. P.W.05 denied this suggestion.

197. P.W.06 Md. Abdul Karim Sarker [69] is the son of a victim of the event narrated in charge no.03. In 1971 he [P.W.06] had been working as Stenographer in Social Welfare Office in Gaibandha and his father was the Chairman of no.09 Chaparhati Union. He [P.W.06] testified that in the mid of April, 1971 the Pakistani occupation army got stationed in Gaibandha and they set up their

camps at Gaibandha Helal park and Sundarganj CO Office; that Razakar camp was set up at Matherhat Primary School nearer to the house of Abdul Jabbar Khan [now dead] the local Jamat leader; that accused Abdul Aziz alias Ghoramara Aziz was the commander of Matherhat Razakar camp and other accused persons were his associates.

198. In respect of forcible capture of Boyez Uddin P.W.06 stated that on 09 October, 1971 at about 04:30 P.M while he arrived at the place near the Matherhat Razakar camp on his way back to house from Gaibandha he heard hue and cry and learnt from people that the Razakars took away Boyez Uddin of village Pachgasi Shantiram on forcible capture. Then he [P.W.06] moved to the Razakar camp and could see through the opened window that the accused Abdul Aziz alias Ghoramara Aziz, Md. Ruhul Amin alias Manju, Md. Abdul Latif, Md. Abu Muslim Md. Ali, Md. Najmul Huda, Md. Abdul Rahim Mia and some of their accomplices were causing torture to detained Boyez Uddin. Seeing this he [P.W.06] came back his house.

199. In respect of taking detained Boyez Uddin away to Sundarganj army camp from Matherhat Razakar camp on the following day by the accused persons P.W.06 is a hearsay witness.

200. P.W.06 testified that on 13 October, 1971 just before the dusk he and the relatives of victims [of the event narrated in charge nos. 02 and 03] saw, remaining in hiding inside a bush, the accused persons and their accomplice Razakars taking the detained persons including Boyez Uddin towards the bank of the river Teesta where they were gunned down to death.

201. In cross-examination P.W.06 in reply to defence question stated that about 20/30 Razakars were attached at Matherhat Razakar camp ; that the said camp was about one mile far from their house; that the Razakars had carried out looting at the houses of Rabindra Nath, Rahim Uddin, Akbar Ali and others of their village; that their house was about one mile far from that of accused Md. Abdul Latif; that no Pakistani army was present at the time of accomplishing the phase of the event happened on 13 October , 1971 [killing detainees]. P.W.06 denied the defence suggestion that he did not know the accused persons; that the accused persons were not the members of Razakar Bahini and they were not involved with the event alleged.

202. P.W.07 Abdur Rashid Sarker [65] is the son of one of victims of the event narrated in charge no.03. Boyez Uddin the victim of the event as narrated in charge no.02 was his [P.W.07] maternal uncle. He [P.W.07] is a hearsay witness about the act of forcible capture of Boyez Uddin that happened on 09 October, 1971. He

[P.W.07] is however direct witness to the next phase of the event i.e taking detained Boyez Uddin away to Sundarganj army camp on the following day.

203. In respect of taking away the detained victim to the Sundarganj army camp on the following day P.W.07 testified that on 10 October, 1971 at about 07:00 A.M he went to Majumdarhat where he found many people assembled and at a stage he saw the Razakars the accused persons and their accomplices taking away Boyez Uddin tying up his hands towards Sundarganj army camp when the people present there attempted to get Boyez Uddin released. But the accused Abdul Aziz alias Ghoramara Aziz, Ruhul Amin Manju and Md. Abdul Latif fired blank from the firearms in their hands and with this the people got dispersed and the accused persons took away Boyez Uddin to Sundarganj army camp.

204. In respect of killing the victim and other detainees on the bank of the river Teesta happened on 13 October 1971 P.W.07 stated that on that day they the relatives of many of detainees had been staying around the army camp at Sundarganj aiming to have information about their detained relatives and on that day just before the dusk he and the relatives of other detainees remaining in hiding inside a bush, about 50/60 yards far from the killing site saw the accused persons and their accomplices heading towards the bank of the river Teesta, 200 yards far from the army camp taking

the detainees including Boyez Uddin with them and then they were shot to death there.

Finding with Reasoning on Evaluation of Evidence

205. In placing argument, drawing attention to the testimony of seven P.W.s examined in support of this charge the learned prosecutor Mr. Sayed Sayedul Haque submitted that some of these witnesses observed the accused persons taking away the victim Boyez Uddin to Matherhat Razakar camp on forcible capture, some observed the accused persons taking away the detained victim to Sundarganj army camp on the following day and some have testified how the victim along with other detainees[victims of the event narrated in charge no.03] were taken to the bank of the river Teesta on 13 October 1971 just before the dusk where they were gunned down to death.

206. The learned prosecutor further argued that the fact of abduction, detention and killing the victim remains undisputed. The learned prosecutor also added that the victim, a student of Gaibandha College was associated with the politics of Chatra League the student wing of Awami League, the key pro-liberation political party and was engaged in providing information to the freedom fighters and this was the reason of targeting him intending to annihilate, to further policy and plan of the Pakistani occupation

army. Defence could not refute the version of the P.W.s made on facts materially related to the principal offence.

207. Mr. Gaji M.H Tamim the learned state defence counsel defending the absconding five accused persons submitted that none of these five accused persons was involved with the commission of the offence alleged; that the witnesses relied upon by the prosecution in support of this charge are not reliable and their testimony suffers from inconsistencies which taint the truthfulness of what they have narrated implicating the accused persons.

208. Attacking reliability of the witnesses examined in support of this charge Mr. Khandaker Rezaul Alam the learned counsel defending the accused Md. Abdul Latif submitted that the testimony tendered does not prove this accused's involvement in any manner in perpetrating the alleged offence of murder.

209. It appears that this charge relates to 'abduction', 'confinement' and 'killing' of Boyez Uddin son of late Alam Uddin of village Pachgasi Shantiram, Police Station Sundarganj, District Gaibandha. The event of attack thus happened in phases and ended in killing the detained Boyez Uddin. The phases of the event about which the witnesses testified are—

- (1) detaining the victim at Matherhat Razakar camp on forcible capture on 09 October, 1971
- (2) taking the detained victim to the Sundarganj army camp on the following day

- (3) keeping the victim detained at the army camp till the dusk of 13 October, 1971;
- (4) the killing took place by taking the detained victim on the bank of the river Teesta, 200 yard far from the army camp.

210. Abduction of Boyez Uddin took place on 09 October, 1971 and since then he was kept detained first at Matherhat Razakar camp and then at the Sundarganj army camp till accomplishment of his killing on 13 October, 1971, the charge framed alleges.

211. The event as listed in charge no.03 depicts that 13 Chairmen, Members were made detained at the Sundarganj army camp on 11 October when they appeared there to attend a meeting as asked by the accused persons on the preceding day.

212. Finally, extinction of lives of all the detainees activated by committing same act, at the same site and by the same perpetrators. On 13 October 1971 just before the dusk the 13 detainees[victims of the event arraigned in charge no.03] and detained Boyez Uddin, the victim of charge no.02 were taken together by the accused persons and their accomplices at the killing site where they all were brutally shot to death, both the charges framed arraign.

213. Naturally, it was not practicable for an individual to see or observe all the phases of the event as it happened in war time situation. It transpires that the witnesses examined testified facts they experienced or heard. The facts materially relevant to the principal offence they testified have to be evaluated in integrated

way, in arriving at a decision. However, now let us weigh and evaluate the evidence tendered in support of the arraignment.

214. P.W.01 Md. Liakat Ali Sarker alias Raja Mia saw the accused and their accomplices taking away the victim Boyez Uddin to Matherhat Razakar camp on forcible capture from the place near the Matherhat Bridge when he was on the way back to his house from Gaibandha. On the following day, P.W.01 also saw the accused and their accomplices taking the detained victim away to Sundarganj army camp scrapping resistance of the locals-- it emerges from his testimony which remained unshaken.

215. The above two phases of criminal acts happened in day time and thus P.W.01 had fair opportunity of seeing the same. Defence could not impeach it by cross-examining P.W.01.

216. In cross-examination of P.W.01 by the accused Md. Abdul Latif it stands re-affirmed that at the time of taking away the detained victim Boyez Uddin to Sundarganj army camp on 10 October, 1971 accused Md. Abdul Latif had been with the group of Razakars. Mere denying the fact of carrying firearms by the accused Md. Abdul Latif does not diminish the fact of his being with the group of Razakars while they were taking away the detained victim Boyez Uddin towards Sundarganj army camp.

217. In cross-examination of P.W.01 by the absconding five accused persons the act of taking away the victim Boyez Uddin to Sundarganj army camp on forcible capture and that the people present at the place nearer Majumdarhat attempted to get back the detained victim by raising uproar but failed, as testified by the P.W.01 also appear to have been re-affirmed.

218. The act of taking the detained victim to Sundarganj army camp by the accused persons led by accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz and their cohorts as testified by P.W.05 and the other P.W.s impels irresistible conclusion that all the accused were physically concerned with and actively participated in the act of abducting the victim on the preceding day and detaining him first at the Matherhat Razakar camp, on forcible capture. Defence could not impeach this fact materially related to the commission of the principal crime occurred later on.

219. In cross-examination on behalf of accused Md. Abdul Latif suggestion has been put to P.W.05 that this accused was not with the Razakars when they detained Boyez Uddin from the place nearer Matherhat Bridge. P.W.05 denied this suggestion. But by putting this suggestion it has been rather affirmed that Boyez Uddin was so forcibly captured by a group of Razakars.

220. Similarly, it has been affirmed too in cross-examination that the detained Chairmen, Members and Boyez Uddin were gunned

down to death as defence suggested that the killing was committed by other accused Razakars, taking them on the bank of the river Teesta from the army camp. Defence simply suggested that the accused Md. Abdul Latif was not with the group when it happened. P.W.05 blatantly denied it.

221. By cross-examining the P.W.05 on behalf of the absconding five accused persons the fact of killing the detainees including Boyez Uddin taking them on the bank of the river Teesta, the killing site, remained unshaken as well. Defence simply put suggestion that these accused persons were not involved with the killing and forcible capture of the victim Boyez Uddin which the P.W.05 denied. The version made by P.W.05 on this pertinent aspect cannot be scarped terming untrue, in absence of anything contrary.

222. P.W.02 Rafiqul Islam Pramanik, another direct witness consistently corroborates the phase of the event involving the act of taking the detained victim to Sundarganj army camp on the following day from Matherhat Razakar camp, as testified by P.W.01 and P.W.05. There has been no reason of disbelieving him.

223. According to P.W.02, at a stage, just before the dusk he [P.W.02] saw the accused persons and their 15/20 accomplice Razakars taking his [P.W.02] detained father Lutfar Rahman

Pramanik, Boyez Uddin [victim of charge bno.02] and 12 other detained Chairmen and Members tying them up with rope towards the bank of the river Teesta where they made them stand in a line and then gunned them down to death.

224. The above unimpeached version of P.W.02 leads to the indisputable conclusion that victim Boyez Uddin was gunned down to death along with the Chairmen and Members who were also kept detained later on at the same army camp.

225. P.W.03 Md. Abdul Jobber Ali, a son of one of victims of the event narrated in charge no.03 is a hearsay witness in respect of forcible capture of Boyez Uddin, taking him away to Sundarganj army camp. He however testified what he and the relatives of some of detained victims of charge no.03 observed on 13 October, just before the dusk when they remained stayed around the army camp. P.W.03 also corroborates that all the six the accused persons were also with the group of Razakars in taking the detained Chairmen , Members and Boyez Uddin to the bank of the river Teesta from the army camp where they were gunned down to death.

226. P.W.04 Zahir Uddin witnessed the phase of the attack that happened on the following day when the accused persons and their accomplices were taking away the detained victim Boyez Uddin to Sundarganj army camp from Matherhat Razakar camp. And his testimony in relation to this crucial fact forming part of attack

provides corroboration to what has been testified by P.W.01, P.W.06 and P.W.07, the direct witnesses to this act. Defence could not make it tainted in any manner, by cross-examining the witnesses.

227. It reveals that after taking away Boyez Uddin on forcible capture, P.W.06 moved to Matherhat Razakar camp and could see Boyez Uddin detained there, through its window.

228. The unshaken testimony of P.W.07 demonstrates that on the following day detained Boyez Uddin was taken away to Sundarganj army camp. P.W.07 saw it. Thus, the testimony of P.W.06 and P.W.07 forms a chain which proves Boyez Uddin's forcible capture, his detention first at Matherhat Razakar camp and then at Sundarganj army camp.

229. It also transpires that on 13 October 1971 P.W.04 had been around the army camp in Sundarganj along with relatives of victims detained at the camp [of charge nos.02 and 03] when he just before the dusk saw the accused persons and their accomplices taking the detained Boyez Uddin and 13 chairmen and members tying them up with rope towards the bank of the river Teesta, 200 yards north east to the army camp, where they were gunned down to death.

230. It emerges too from the uncontroverted evidence that in the afternoon on 13 October 1971 P.W.4, P.W.05—the cousin brothers

of victim Boyez Uddin and the relatives of some of the detained Chairmen and Members [victims of the event as narrated in charge no.03] had been around the army camp in Sundarganj. Presumably, they remained stayed there with agony for having information about their dear ones detained at the camp.

231. Defence could not shake what has been testified by P.W.04 in respect of forcible capture of Boyez Uddin and keeping him and the chairmen and Members of UP in captivity at the Sundarganj army camp. It stands affirmed too that the bank of the river Teesta the killing site was nearer to the army camp at Sundarganj.

232. It could not be impeached by cross-examining all the seven P.W.s that it was impracticable of seeing the accused persons and their accomplice Razakars taking the detained civilians to the bank of the river Teesta, remaining in hiding inside a bush. Rather, the distance between the army camp and the bank of the river Teesta, the killing site as unveiled in cross-examination leads to believe that it was fairly practicable of seeing the appalling event of killing, remaining inside a bush nearby it. No indication whatsoever could be demonstrated by cross-examining these prosecution witnesses that the version they made suffers from any degree of doubt.

233. It is to be noted that mere denial is not sufficient to make the testimony of a witness tainted. In absence of any reason the sworn testimony of P.W.s in respect of the criminal acts that eventually

resulted in atrocious killing of civilians carries value and inspires credence.

234. The act of shifting Boyez Uddin to Sundarganj army camp after keeping him in captivity at Matherhat Razakar camp on forcible capture by the accused persons and their accomplice Razakars leads to an unerring conclusion that the accused persons, especially the accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz by virtue of his commanding position over the locally formed Razakar Bahini had close and culpable nexus with the Pakistani army stationed in Sundarganj and they opted to carry out such criminal acts intending to collaborate with the Pakistani occupation army, in furtherance of plan and policy of annihilating pro-liberation civilians.

235. All the six accused persons are thus found to have had active and physical participation in abducting the victim Boyez Uddin and they culpably facilitated to keep him unlawfully detained at Sundarganj army camp. The accused persons had carried out such criminal acts knowing consequence thereof and thus, were consciously 'concerned' with the act of 'confinement' of the victim Boyez Uddin which ended with his brutal killing, the facts unveiled from evidence presented impel this unerring conclusion.

236. The unimpeached version of seven P.W.s , the direct witnesses to the crucial fact of taking the detained victim along with 13 detained Chairman and Members towards the bank of the river Teesta, the killing site by all the six accused persons and their cohorts proves precisely that the accused persons were the physical participants to the commission of killing 14 civilians including Boyez Uddin. It already stands proved that before accomplishing the act of killing the victim was kept unlawfully confined at the Sundarganj army camp which was substantially facilitated by the accused persons.

237. It may thus be irresistibly concluded that intention of the accused persons under the headship of accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz in abducting Boyez Uddin was to accomplish his killing, to further common design and plan.

238. It also may be inferred legitimately that the accused persons using the advantage of their inevitable nexus with the Pakistani army stationed at the Sundarganj army camp made them culpably and consciously engaged in carrying out atrocious activities to further policy and plan of the Pakistani occupation army.

239. Being elected a Member of Parliament as a candidate of JEI after the independence, as admitted by P.W.02, does not diminish the criminal antecedent of the accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz and his culpable involvement with the

atrocious criminal activities carried out in 1971. Similarly, electing UP Chairman does not exonerate accused Md. Ruhul Amin alias Manju from the liability of committing atrocious crimes in 1971, if his participation and complicity therewith proved to be true.

240. In the night of Shab-e-Barat on 08 October 1971 the freedom-fighters had blown up Dariapur bridge of Sadar Thana by detonating bomb, as testified by the P.W.01. Defence does not dispute it. Seemingly this attack on part of the freedom fighters made the accused persons and their cohorts belonging to locally formed Razakar Bahini, an auxiliary force of the Pakistani occupation army extremely antagonistic to the civilians who were not the party to hostility and then on 09 October, 1971 they started launching attack in different manner that resulted in forcible capture, abduction, confinement, torture and killing of unarmed civilians [as narrated in all the three charges framed].

241. At the same time we may safely conclude from the proved fact of keeping Boyez Uddin in protracted confinement at the Sundarganj army camp that all the six accused persons, especially the accused Abu Saleh Md. Abdul Aziz alias Georama Aziz used to maintain a close and culpable nexus with the said camp and the army men stationed there.

242. Rational analysis of evidence tendered forces us to the conclusion that all the accused persons were in common agreement to detain Boyez Uddin at the army camp pursuant to common design and plan and finally by virtue of close nexus and affiliation with the army camp they got it unproblematic to take the detainees out therefrom on 13 October, 1971 intending to accomplish the act of their annihilation on the bank of the river Teesta, nearer to the camp.

243. Unimpeached testimony of the seven P.W.s who observed the act of taking the detainees to the killing site by the accused persons and their cohorts, remaining in hiding inside a bush nearer to it indisputably depicts that the event of detention of Boyez Uddin on forcible capture ended with his brutal killing happened on 13 October, 1971 along with other detainees. And the accused persons deliberately and culpably participated in all the phases of the event in agreement of common purpose, rational analysis of facts leads to conclude it.

244. The fact of remaining stayed of the relatives of detained victims around the Sundarganj army camp and later on going into hid inside a bush was natural indeed. For the near ones of ill fated detainees of course might have had tried even facing all likely risks to get information about the detainees and to save their lives. But in the end they, as mere spectators, experienced the catastrophic

ending of lives of their dear ones --- Boyez Uddin and 13 detained Chairmen and Members [as listed in charge no.03].

245. All the seven P.W.s could recognise the accused persons accompanying the group of perpetrators – when they forcibly captured Boyez Uddin, took him to Matherhat Razakar camp, shifted detained Boyez Uddin to Sundarganj army camp on 10 October, 1971 and finally when he along with other detainees were taking towards the killing site, the bank of the river Teesta from the army camp. All the phases of attack happened in day time and thus it was quite practicable of seeing the activities of the group of perpetrators whom the witnesses knew beforehand for their notoriety around the locality.

246. As to the reason of recognizing and knowing the accused persons the P.W.s stated that since formation of Razakar Bahini in their locality the accused persons being its members used to carry out the prohibited act of looting of civilians' households in their village and they [P.W.s] saw them moving around the locality very often. Defence simply suggested that the P.W.s did not know the accused persons beforehand but could not impeach it in any manner.

247. We have already rendered our reasoned finding that just after the Pakistani occupation army got stationed in Gaibandha in the mid of April , 1971 Razakar Bahini was formed creating its camps

at many places including Matherhat and that the accused persons and many others got enrolled as members of this auxiliary force. We have also got it divulged that accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz was a potential and notorious commander of this Bahini formed locally and he along with his accomplices used to carry out recurrent atrocious activities around the locality of Sundarganj targeting the pro-liberation non combatant civilians and the Hindu community.

248. We reiterate that fame or notoriety makes a man known to others. The criminal activities the accused persons used to carry out recurrently around the locality under Sundarganj Police Station naturally became anecdote which made the people and sufferers aware of and acquainted with the identity and activities of the accused persons. By doing such prohibited criminal acts the accused persons and their cohort Razakars substantially collaborated with the Pakistani army. During the war of liberation in 1971, it was of course well known to civilians as to who sided with the Pakistani occupation army and who were engaged in accomplishing criminal acts, as members of Razakar Bahini directing civilian population-- it may also be lawfully inferred.

249. This charge relates to the killing of single individual. However, the killing took place together with the killing of 13 other civilians, the Chairmen and Members [as listed in charge no.03]. It

is now jurisprudentially settled that an offence of murder as crime against humanity need not be carried out against a multiplicity of victims. Even a single murder of a non combatant civilian constitutes the offence of crime against humanity, provided it forms part of systematic attack against civilian population. It is now jurisprudentially settled that an act directed against a limited number of victims, or even against a single victim, can constitute a crime against humanity, provided it forms part of a 'systematic' attack against a civilian population.

250. Here we see that the act of abduction of Boyez Uddin on forcible capture, keeping him confined and finally causing his death by gunning down happened in context of the war of liberation. The attacks as narrated in charge nos.01 and 02 were launched just one day after the freedom fighters had blown up the Dariapur Bridge by detonating bomb. Boyez Uddin was a youth who actively sided with the war of liberation and the freedom fighters—evidence tendered demonstrates it unerringly. This was the reason of targeting him, no doubt. But any prohibited act directing even a single non combatant civilian in context of the war of liberation forms part of systematic attack—one of key elements to constitute the offence of crime against humanity.

251. On rational analysis of evidence tendered finally we arrive at decision that the prosecution has been able to prove that all the six

accused persons i.e. (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz (2) Md. Ruhul Amin alias Monju, (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali , (5) Md. Najmul Huda, and (6) Md. Abdur Rahim Miah being part of Joint Criminal Enterprise [JCE-Basic Form] were knowingly engaged in abducting Boyez Uddin--an unarmed civilian, keeping him confined first at Matherhat Razakar camp and later on in shifting the victim to Sundarganj army camp where he was kept in protracted captivity for couple of days. It may be presumed lawfully too that since Boyez Uddin who was finally killed remained in captivity at the army camp for couple of days was obviously subjected to torture.

252. It also stands proved beyond reasonable doubt that the accused persons and their accomplices, three days after Boyez Uddin was shifted at Sundarganj army camp, took him out of the army camp and bringing him on the bank of the river Teesta, about 200 yards far from the camp had shot him to death. All the seven P.W, s including P.W.04 and P.W.05, the two cousin brothers of the victim Boyez Uddin consistently testified what they observed and experienced when the accused persons were on move towards the bank of the river Teesta, the killing site along with the detained Boyez Uddin and 13 other detainees.

253. It is now well settled that in cases of 'collective criminality' every member of the joint endeavor may be held equally responsible as a co-perpetrators, even if materially and causally

remote from the actual commission of the crimes. But in the case in hand, we see that the accused persons, in all phases of the attack remained actively present with the group of perpetrators at the crime sites. And in this way, in furtherance of common agreement and purpose they by their act and conduct forming part of attack committed the act of 'abduction', 'confinement' and finally 'murder' of detained Boyez Uddin constituting the offences of crimes against humanity.

254. The facts and circumstances and pattern of phases of the attack and accused persons' culpable nexus therewith, as unveiled from the evidence tendered lawfully suggest the conclusion that all the six accused persons being part of collective criminality voluntarily participated in materializing the criminal plan and they did not keep themselves distanced even after shifting the victim to the Sundarganj army camp as they all had active participation also in accomplishing the killing of detained Boyez Uddin by taking him out of the army camp to the bank of the river Teesta, the killing site.

255. It has been proved from the evidence of P.W.04 and P.W.05 the two cousin brothers of the victim and five other P.W.s that the relatives of victims [as listed in charge no.03] also saw the accused persons and their cohorts taking the detainees including Boyez Uddin to the killing site at the relevant time. This decisive aspect

materially related to the commission of the principal offence justifiably hints a lot about concern and participation of all the six accused persons with the act of killing—the tragic end of the episode of the attack.

256. Since the accused persons were part of concerted plan and purpose all of them are equally liable for the crimes resulting death of the detained Boyez Uddin. All participants in the JCE are thus regarded as co-perpetrators of the criminal act[s] performed by the actual perpetrators and bear the same individual liability.

257. Prosecution is not required to prove which accused or which member of the group of perpetrators actually committed the act of killing the victim. For holding all the six accused responsible for the offence of killing it is enough to show that they all knowingly and to further common intent accompanied the group when it was heading towards the bank of the river Teesta the killing site taking the victim and other detainees from the army camp.

258. We have got it proved from the testimony tendered by the direct witnesses, as discussed above that all the six accused forming part of the group facilitated and aided in taking away the victim and other detainees kept in captivity at the army camp to the crime site and it legitimately suggests that they were ‘concerned’ in and had ‘complicity’ with the commission of the act of killing.

259. All the six accused persons being part of 'collective criminality' and by accompanying the group of perpetrators thus rendered substantial contribution to the act of keeping the victim in captivity at the Sundarganj army camp and causing his death later on by gun shot. In this way all of them aided and abetted the accomplishment of the act of killing, the principal offence.

260. The acts of aiding and abetting need not be tangible, but it may be well inferred from the acts of the accused forming part of the attack. It is now jurisprudentially settled that aiding and abetting includes all acts of assistance by acts that lend encouragement or support, as long as the requisite intent is present. We have found it proved that the accused persons remained physically and culpably associated with the group of perpetrators in all phases of the event which unerringly proves their requisite intent of accomplishing the killing of detained victim.

261. On totality of evidence adduced we are of the view that the prosecution has been able to prove beyond reasonable doubt that the (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz (2) Md. Ruhul Amin alias Monju, (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali, (5) Md. Najmul Huda, and (6) Md. Abdur Rahim Miah participated in abducting Boyez Uddin, facilitated his captivity first at Matherhat Razakar camp and then at Sundarganj army camp and finally being part of collective criminality participated in and had complicity with the commission of criminal

act of gunning the detained victim down to death, pursuant to common design and plan. In this way all the six accused persons being part of the enterprise and by their act and conduct forming part of systematic attack in materializing the culpable mission were 'concerned', took 'participation' , 'aided' and substantially 'contributed' to the actual commission of the killing and thereby they are found **guilty** for the offences of '**abduction**', '**confinement**' and '**murder**' as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz (2) Md. Ruhul Amin alias Monju, (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali , (5) Md. Najmul Huda, and (6) Md. Abdur Rahim Miah incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge No. 03

[Confinement, torture and murder of U.P. Chairmen and Members of different Union Parishads under Sundarganj Police Station]

262. Charge: That on 10 October, 1971, a group of Pakistani occupation army men accompanied by you Razakars accused (1) Abu Saleh Mohammad Abdul Aziz Miah alias Ghoramara Aziz, (2) Md. Ruhul Amin alias Monju, (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali , (5) Md. Najmul Huda, and (6) Md. Abdur Rahim Miah, for the purpose of killing pro-liberation civilian people, went to the houses of (i) Abdul Jalil Sarkar, U.P. Member,

No. 7 Ramjibon U.P (ii) Nabi Box Sarkar, U.P. Member, No. 9 Chaparhati U.P. (iii) Afsar Ali Khan, U.P. Member, No. 9 Chaparhati U.P. (iv) Bais Uddin Sarkar, U.P Member, No. 9 Chaparhati U.P (v) Gias Uddin Sarkar, U.P Member, No. 9 Chaparhati U.P (vi) Saimuddin Miah, Ex-Chairman, No. 10 Shantiram U.P (vii) Monsur Ali Sarkar, U.P Member, No. 10 Shantiram U.P (viii) Lutfur Rahman. Pramanik alias Badshah Miah, U.P Member , No. 10 Shantiram U.P (ix) Pocha Mamud Bepari, U.P Member, No. 10 Shantiram U.P (x) Toyes Uddin Ahmed, U.P Chairman, No. 13 Sreepur U.P (xi) Akbar Ali Sarkar, U.P Member, No. 13 Sreepur U.P (xii) Momtaz Ali Sarkar, U.P Member, No. 13 Sreepur U.P, and (xiii) Muslim Ali Sarkar , U.P Member, No. 13 Sreepur U.P, all are of Police Station Sundarganj of the then Sub-Division Gaibandha and gave them threat telling that they all had to be present at the Sundarganj Pakistani occupation army camp at 10.00 A.M. on the next day [11.10.1971], otherwise their houses would be set on fire and family members would be killed. In fear of their own and family members, all the above mentioned 13[thirteen] U.P Chairmen and Members on the next day [11.10.1971] went to the Pakistani occupation army camp situated at Sundarganj C.O [Circle Officer] office [presently Upazila Parishad]. Then you the accused persons wrongfully detaining two days in the said camp tortured them in order to obtain information of the freedom-fighters.

Thereafter, on recommendation of various persons Pakistani occupation army released another 3[three] captured persons, namely (1) Abdul Gafur Sarkar [now dead], U.P. Member, No. 6 Sarbanando U.P, (2) Abdul Aziz Moulovi [now dead], U.P Chairman, No. 10 Shantiram, and (3) Md. Soms Uddin Mondol [now dead], U.P Member, No. 13 Sreepur U.P.

Thereafter, on 13 October, 1971 you the accused persons killed the above mentioned 13[thirteen] U.P Chairmen and Members by firing gun-shots on the bank of river Teesta nearby the Pakistani occupation army camp and dumped their dead bodies there.

Thereby, you accused (1) Abu Saleh Mohammad Abdul Aziz Miah alias Ghoramara Aziz, (2) Md. Ruhul Amin alias Monju, (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali , (5) Md. Najmul Huda, and (6) Md. Abdur Rahim Miah have been charged for participating, abetting , facilitating, contributing and complicity in the commission of offences of confinement, torture and murder as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which you the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Examined

263. Prosecution, in order to establish the indictment brought in this charge adduced in all eight [08[witnesses of whom seven [07] have been examined as P.W.1 - P.W.07 and one [P.W.08] has been tendered by the prosecution. The event happened in phases. Naturally, the witnesses had no occasion of seeing what happened to the victims in captivity at the army camp in Sundarganj after they appeared there, as asked. However, some of these witnesses are relatives of victims and they have testified facts materially relevant to the principal crime, the killing. Before we weigh the worth and credence of the evidence tendered let us see what the witnesses testified in relation to the event as narrated in this charge.

264. P.W.01 Md. Liakat Ali Sarker alias Raja Mia[60] was a student of class X in 1971 of Dharmapur DDM High School under Sundarganj Police Station of the then Gaibandha Sub-Division. P.W.01 stated that in 1971 he [P.W.01] and his father used to assist the freedom-fighters and provide them with information about activities of Razakars and Pakistani army when they [freedom-fighters] used to move their locality through river. In the night of Shab-e-Barat on 08 October 1971 the freedom- fighters had blown up Dariapur Bridge under Gaibandha Sadar Thana by detonating bomb.

265. P.W.01 is the son of martyr Mansur Ali Sarker, Member of No.10 Shantiram Union Parishad who was also kept in captivity when he and other 12 Chairmen and Members of Union Councils appeared at the Sundarganj army camp on 11 October 1971 to attend a meeting as asked on the preceding day i.e on 10 October, 1971 by accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz, Ruhul Amin Manju, Md. Abdul Latif, Abu Muslim Mohammad Ali and Najmul Huda under threat of killing family inmates.

266. P.W.01 stated that since his father did not come back home on 11 October, 1971 he on the following day i.e on 12 October 1971 moved to the army camp at Sundarganj to have trace of his father when he had occasion of meeting the relatives of some of detainees staying around the camp and he however could not have any trace of his detained father.

267. What happened on 13 October, 1971? It transpires from the testimony of P.W.01 that on that day he and the relatives of some other detainees rushed to Sundarganj and started moving around the place nearer the army camp till immediate before the dusk as they knew from the locals that the detainees would be killed. Before dusk he [P.W.01] and relatives of five detainees went into hid inside a bush at the south to the house of Haji Alim Uddin, nearer to the Pakistani army camp wherefrom they saw the accused Razakars Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz,

accused Md. Ruhul Amin alias Manju, accused Abu Muslim Mohammad Ali, accused Md. Abdul Latif, accused Md. Nazmul Huda and accused Md. Abdur Rahim Mia and other Razakars taking 14 detainees including his [P.W.01] father and Boyez Uddin towards the bank of the river Teesta, 200 yards far from the army camp tying them up with rope where they made them stand in a line and then gunned them down to death.

268. In reply to question put to him in cross-examination on behalf of the five accused persons P.W.01 stated that he was associated with Chatra League the student wing of Awami League; that he took stance in favour of the war of liberation just 3-4 days after the historic speech of 07 March, 1971 and that they did not sue earlier seeking justice for the killing of his father. P.W.01 also stated that accused Najmul Huda was one-year senior to him [P.W.01] in the same school; that accused Abdul Aziz alias Ghoramara Aziz was a student of Fazil class in 1971. P.W.01 however expressed ignorance as to where the other accused persons used to study. P.W.01 denied the defence suggestion that in 1971 accused Abdul Aziz alias Ghoramara Aziz was 14 years old and that what he testified implicating these five accused was untrue and tutored.

269. In cross-examination by the accused Md. Abdul Latif, P.W.01 stated that Sundarganj CO Office was about 100 yards far from the bank of the river Teesta. P.W.01 denied the defence suggestion that

the detainees' dead bodies were not left abandoned on the bank of the river Teesta after their killing. By suggesting it defence has rather affirmed the fact of killing the detainees on the bank of the river Teesta.

270. P.W.02 Rafiqul Islam Pramanik [59] is the son of Martyr Lutfar Rahman Pramanik, one of victims of the event narrated in charge no.03. In respect of the fact of asking the UP Chairmen and Members under threat and coercion to remain present at the army camp P.W.02 stated that on 10 October, 1971 in the afternoon accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz, Md. Ruhul Amin Manju and Md. Abdul Latif came to their house and asked his father to remain present at the Sundarganj army camp on the following morning to attend a meeting in default their family inmates would be wiped out and their house would be set on fire. At that time [when his father was so asked by the accused persons] he [P.W.02] had been at their house, P.W.02 added.

271. P.W.02 stated that as asked with threat his father Lutfar Rahman Pramanik went to Sundarganj army camp on 11 October at about 09:00 A.M by a motor cycle. But he did not return back till the dusk and thus they started crying and then he and his uncle Harunur Rashid moved to Majumdarhat where they heard from locals that 14/15 Chairmen and Members including his [P.W.02] father were kept detained at the Sundarganj army camp.

272. P.W.02 stated that in the afternoon on 13 October 1971 he and his uncle Harunur Rashid went to Sundarganj when they heard from the locals that the detainees were subjected to torture at the army camp and on that day they would be killed. On hearing this they started returning back to house when they met the relatives of some of detainees and then they decided to remain in hiding inside a bush, south to the house of Alim Haji on the bank of the river Teesta-- 300/400 yards far from the army camp. Just before the dusk they saw the accused persons and their 15/20 accomplice Razakars taking his [P.W.02] detained father Lutfar Rahman Pramanik, Boyez Uddin [victim of charge no.02], 12 other detained Chairman and Members tying them up with rope towards the bank of the river Teesta where they made them stood in a line and then gunned them down to death, P.W.02 added. Seeing this event they started lamenting and then returned back home [at this stage of testifying the event P.W.02 broke down with shedding tears].

273. In cross-examination on behalf of accused Md. Abdul Latif P.W.02 stated in reply to question put to him that they remained in hiding inside a bush on the bank of the river Teesta as there was no other place to go into hid; that he did not have trace of his father's body after he was killed.

274. In cross-examination, chiefly what has been testified by the P.W.02 implicating the accused persons has been simply denied. Defence suggested P.W.02 that he did not know the accused

persons; that they were not Razakars; that accused Abu Saleh Md. Abdul Aziz was 14 years old in 1971 and the accused had no nexus with the commission of alleged offences he narrated. P.W.02 blatantly denied it.

275. P.W.03 Md. Abdul Jobbar Ali [58] is the son of martyr Bais Uddin, a member of no.09 Chaparhati Union in 1971. P.W.03 narrated that after getting the Pakistani occupation army stationed in Gaibandha Sundarganj Razakar Bahini was formed making accused Abdul Aziz alias Ghoramara Aziz its commander and the Razakars including the accused persons used to carry out criminal activities around the territory of Sundarganj Police Station.

276. P.W.03 next stated that on 10 October 1971 in the evening he heard from his grand-father Md. Bachcha Mamud Bepari that accused Abdul Aziz alias Ghoramara Aziz, Ruhul Amin alias Manju, Najmul Huda and Md. Abdur Rahim coming to their house searched for his[P.W.03] father, but finding him unavailable they left a message to his grand-father to secure attendance of his[P.W.03] father at Sundarganj army camp to be present at a meeting on the following day, in default their house would be burnt down and they would be killed.

277. P.W.03 then stated that on 11 October, 1971, his father considering the wellbeing of the family went to the army camp in Sundarganj as asked but he did not come back home. Then he and

his grand-father went to the house of Nabi Baksh, the Chairman of their UP when they heard that he too did not come back home. Afterwards, coming to local Mondoler Hat Bazaar he heard from the locals that (1) Afsar Ali Khan, Member of no.09 Chaparhati Union, (2) Gias Uddin Sarker, Member of no.09 Chaparhati Union, (3) Toyej Uddin Ahammad Chairman of no.13 Sreepur Union, (4) Akbar Ali, Member of no.13 Sreepur Union, (5) Muslem Ali, Member of no.13 Sreepur Union, (6) Momtaj Ali, Member of no.13 Sreepur Union, (7) Soim Uddin Mia, Chairman of no.10 Chaparhati Union, (8) Munsur Ali Sarker, Member of no.10 Chaparhati Union, (9) Lutfar Rahman Pramanik, Member of no.10 Chaparhati Union, (10) Pacha Bepari, Member of no.10 Chaparhati Union, (11) Abdul Jalil Sarker, Member, no.07 Ramjiban Union, (12) Nabi Baksh, Chairman of no.09 Chaparhati Union and his[P.W.03] father were kept detained at the army camp.

278. P.W.03 next stated that on 12 October, 1971 he and his elder brother Md. Javed Ali moved to Jamaat e Islami leader Gafur Moulana [now dead] with an appeal to initiate his father's release. On 13 October, 1971 in the afternoon he moved to Sundarganj and going to the house of one Abdul Alim adjacent to the army camp heard that the detained Chairmen and Members were subjected to torture and beating in the preceding night. He [P.W.03] came out of Abdul Alim's house and found relatives of some of detainees there whom he [P.W.03] disclosed the act of causing torture to the

detainees and then they started moving towards Sundarganj bazaar when they learnt from the locals that the detained Chairmen and Members would be killed on that day. On hearing this they, after Asar prayer, went into hid inside a bush adjacent to Abdul Alim's house -- about 300/350 yards far from Sundarganj army camp.

279. What happened next? P.W.03 and relatives of some of detainees remaining in hiding inside the bush, just before the dusk, saw the accused (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz, (2) Md. Ruhul Amin alias Monju, (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali, (5) Md. Najmul Huda, and (6) Md. Abdur Rahim Miah and accomplices taking 13 detained Chairmen and Members including his [P.W.03] father towards the bank of the river Teesta tying up their hands and waist with rope where they were made stood in a line and then the accused persons gunned them down to death and abandoned their bodies on the bank of the river [at this stage of making testimony, this P.W.03 started shedding tears].

280. Finally, P.W.03 stated that the accused persons used to carry out atrocious activities around their locality and thus he knew them beforehand.

281. In cross-examination, P.W.03 expressed ignorance about the date of accused Md. Abdul Latif's enrolment in Razakar Bahini; that accused Md. Abdul Latif went into hid after the independence

achieved. P.W.03 also stated in cross-examination that he did not know it earlier that his father and other detainees would be taken on the bank of the river Teesta from the army camp.

282. P.W.04 Zahir Uddin [74] is the cousin brother of Boyez Uddin, the victim of the event as listed in charge no.02. In 1971 he was 28 years old. It transpires from his testimony that on 10 October, 1971 they, when arrived at Majumdarhat, on their way back to home, heard from the locals that Razakars had asked Chairmen and Members of different Unions to remain present at Sundarganj army camp to attend a meeting on the following day. Later on, he, his cousin brothers Azizul Haque and Tofazzal Haque went to their Union Chairman Soim Uddin to have consultation to secure release of Boyez Uddin [the victim of charge no.02] when Soim Uddin told that on the following day he would go to the army camp to attend a meeting when he would try to get Boyez Uddin released.

283. P.W.04 next stated that on 11 October, 1971 at about 11:00 A.M. he and his two cousin brothers moved towards Sundarganj army camp to have trace of Boyez Uddin when they heard from the locals that (1)Toyeyz Uddin, (2) Momtaj Ali,(3) Akbar Ali, (4) Muslim Ali, (5) Soim Uddin, (6) Mansur Ali Sarker, (7) Lutfar Rahman Pramanik alias Badsha, (8) Pacha Mamud Bepari, (9) Nabi Baksh Sarker, (10) Bais Uddin, (11)Afsar Khan (12) Gias Uddin,

(13) Abdul Jalil -- the Chairmen and Members of different Unions who came at the army camp to attend meeting were kept detained there. On the following day i.e on 12 October 1971 P.W.04 again went to Sundarganj to have trace of Boyez Uddin the victim of charge no.02] when he had occasion of meeting the relatives of some of Chairmen and Members detained at the army camp.

284. P.W.04 also narrated what he experienced on 13 October, 1971 when he went to Sundarganj. He stated that on that day at about 11:30 he arrived at Sundarganj when he found the relatives of some of detained Chairmen and Members present there and during their staying there they heard from the locals that the detainees were subjected to torture in captivity in the preceding night and they would be killed any time on that day. With this they, after Asar prayer, went into hid inside a bush in the south of one Alim Uddin's house wherefrom they could see the army camp.

285. P.W.04 further stated that just immediate before Magrib prayer they saw, remaining in hiding inside the bush, accused persons [name of accused persons has been stated] and their accomplices taking 13 detained Chairmen, Members and Boyez Uddin [victim of charge no.02] tying them up with rope towards the bank of the river Teesta, about 200 yards far from the army camp where they were gunned down to death and their dead bodies were

left abandoned there. On seeing this event they returned back home and told it to family inmates.

286. P.W.04 finally stated that during the war of liberation the accused persons used to move around their locality and that is why he knew them beforehand.

287. In cross-examination P.W.04 denied the defence suggestion that the accused were not Razakars and that they were not involved with the event testified. No indication whatsoever could be brought by cross-examining the P.W.04 to taint the credibility what he testified. Defence simply put suggestion that what the P.W.04 testified implicating the accused persons was untrue and tutored. P.W.04 denied it.

288. P.W.06 Md. Abdul Karim [69] is the son of victim Nabi Box Sarker. He stated that on 10 October, 1971 in evening accused Abdul Aziz alias Ghoramara Aziz and Ruhul Amin Manju coming to their house searched for his father but finding him unavailable they told him[P.W.06] to ask his father to remain present at Sundarganj army camp to attend a meeting on the following day in default they would kill them. P.W.06 also stated that accordingly his father went to the army camp at Sundarganj on the following day and later on they knew that his father and Chairman and Members who appeared at the army camp as asked were kept detained there.

289. Corroborating other P.W.s this P.W.06 also stated that he went to Sundarganj bazaar nearer to the army camp on 13 October, 1971 to have trace of his father when he met relatives of some of detained Chairmen and Members and at a stage on hearing from the locals that the detainees would be killed on that day they went into hid inside a bush adjacent to one Alim's house near the bank of the river Teesta. Just before the dusk they, remaining in hiding inside the bush, saw the six accused persons and their accomplices taking the 13 detained Chairmen, Members and Boyez Uddin, [victim of charge no.02] on the bank of the river Teesta and made them stood in a line and then gunned down them to death. The bush where they remained in hiding was 20 yards far from the killing site. On seeing the event of killing they became feared and shocked and returned back to home. Pakistani army and Razakars used to kill the pro-liberation civilians taking them on forcible capture on the bank of the river Teesta where his father was shot to death, P.W.06 added.

290. P.W.06 finally stated that since forming Razakar camp the accused persons very often used to carry out looting and causing torture at their village and he had occasion of seeing the accused when they used to move around and that is why he knew them beforehand.

291. In cross-examination, defence could not bring anything which can justifiably taint or shake what has been testified by the P.W.06.

Defence simply put suggestion that the accused persons were not Razakars; that they were not involved with the event happened and that what he testified implicating accused persons was untrue and false. P.W.06 denied it manifestly.

292. P.W.07 Md. Abdur Rashid [65] is the son of Gias Uddin Sarker, one of victims. His testimony depicts that on 10 October, 1971 all the six accused came to their shop at Shovaganj bazaar and searched for his father but finding him unavailable there they told him with threat to ask his father to attend a meeting at Sundarganj army camp on the following day. His father accordingly went to the army camp on the following day but he and other Chairmen and Members of different Unions were kept detained there when they attended at the camp as asked on the preceding day by the accused persons, later on he knew it from the locals.

293. P.W.07 next stated that on 13 October, 1971 at about 09:00 A.M. he went to Sundarganj and started trying getting information about his father. At a stage he heard that the denied Chairmen and Members would be killed on that day and then he and the relatives of some of detainees present there went into hid inside a bamboo bush in the south-west of one Alim's house, about 50/60 yards far from the army camp. Just before Magrib prayer they could see the accused and their accomplices taking his [P.W.07] father, the

detained Chairman, Members and Boyez Uddin [victim of charge no.02] on the bank of the river Teesta where they made them stand in a line and then shot them to death. On seeing this event they started crying and then returned back home.

294. P.W.07 finally stated that the accused persons used to carry out criminal activities like looting, torture and that is why he knew them beforehand.

295. Defence simply denied what has been testified in examination-in-chief. P.W.07 denied the defence suggestion that he did not know the accused persons that they were not engaged in accomplishing the alleged event of killing and that what he testified implicating the accused persons was untrue and tutored.

Findings with Reasoning on Evaluation of Evidence

296. This charge involves the brutal killing of 13 Chairmen and Members of Unions under Police Station Sundarganj of the then Sib-Division Gaibandha. The first phase of the attack involves the act of trickery and coercion the accused persons made in compelling the victims to appear at the Sundarganj army camp on 11 October to attend a meeting. Second phase relates to unlawfully detaining the victims at the army camp. The final phase involves the act of killing the detainees by taking them on the bank of the

river Teesta, 200 yards far from the camp which happened two days later after their unlawful confinement.

297. Mr. Sayed Sayedul Haque the learned prosecutor in advancing argument on this charge drew our attention to the testimony of witnesses who have narrated facts materially related to the principal crime, the killing of 13 sitting and former Chairmen and members of union councils under Sundarganj Police Station. Most of the witnesses examined are relatives of victims and they had natural occasion of seeing the phases of the event which ended in brutal killing. The victims were pro-liberation civilians who took stance in providing assistance to the freedom fighters and this was the reason of attacking them. The accused persons by adopting shrewd mechanism coerced and threatened the victims to remain present at Sundarganj army camp in the name of attending meeting. In this way the accused persons facilitated victims' unlawful confinement at the army camp when they attended there on the following day.

298. The learned prosecutor further submitted that the 13 civilians were kept detained at the army camp in Sundarganj for two days and finally on 13 October just before the dusk the accused Persons and their accomplice Razakars took them to the bank of the river Teesta where they were gunned down to death and the act of taking the detained victims at the killing site was witnessed by some of their relatives who came on dock to narrate it.

299. It has been also argued by the learned prosecutor that even if the testimony of the witnesses in respect of seeing the accused persons gunning the victims down to death is not believed being impracticable the very act of taking the detainees from the army camp to the killing site by the accused persons and their accomplice Razakars is sufficient to conclude that the accused persons were actively and culpably participated in the commission of the killing and they did it to further policy and plan of the Pakistani occupation army. Defence could not impeach the version the witnesses made in respect of their seeing the accused persons and their accomplices taking the detainees to the bank of the river, the killing site from the army camp which was about 200 yards far, as the unshaken evidence demonstrates, the learned prosecutor added emphatically.

300. Mr. Gaji M.H Tamim the learned state defence counsel defending the absconding five accused persons reiterated the submission he made in respect of charge no.02. It has been chiefly pressed by him that none of these five accused persons was involved with the commission of the offence alleged; that the witnesses relied upon by the prosecution in support of this charge are not reliable and their testimony suffers from inconsistencies which taint the truthfulness of what they have narrated implicating the accused persons. It was impracticable of seeing the accused and their cohorts gunning down the detainees to death on the bank of

the river Teesta as testified by the witnesses; that being aware about the information the witnesses allegedly knew that the detainees would be killed and then they went into hiding was not natural and practicable, the learned defence counsel added.

301. Mr. Khandaker Rezaul Alam the learned counsel defending the accused Abdul Latif argued that this accused was not with the group of Razakar in accomplishing the alleged offence of confinement of victims at the army camp and their killing later on. Evidence tendered by the prosecution in support of this charge does not appear to be reliable. The witnesses have testified being tutored. The witnesses did not have any reason of knowing the accused and his alleged nexus with the Razakar Bahini.

302. In view of arraignment brought prosecution requires proving that--

(a) The victims Chairmen and Members were compelled by the accused persons under threat and coercion to appear at Sundarganj army camp on 11 October, 1971 in the name of attending a meeting as a part of designed plan;

(b) The victims Chairmen and Members were kept detained when they appeared at the army camp;

(c) The victims Chairmen and Members remained in captivity at the army camp where Boyez Uddin, the victim of the event as listed in charge no.02 was also kept detained till they all were taken together out therefrom on 13 October just before the dusk; and

(d) The accused persons had active and culpable nexus and participation in committing the principal crime, the killing of numerous civilians.

303. At the outset it is to be noted that the act of killing Boyez Uddin [as listed in charge no.02] and killing 13 Chairmen and Members of different Unions happened at the same time and at the same killing site by the same group of Razakars. Already it has been proved that Boyez Uddin was kept detained at the Sundarganj army camp since 10 October, 1971 till his killing on 13 October, 1971. He was brought there on forcible capture by the group of Razakars accompanied by the accused persons.

304. But the victims of the event as listed in this charge no.03 were not brought at the army camp on forcible capture. In adjudicating this charge no.03 it transpires that 13 Chairmen and Members of different Unions were kept detained at the same army camp since 11 October, 1971 when they appeared there intending to attend a meeting, as asked by the accused persons on the preceding day.

305. Before evaluating the evidence provided by the witnesses, in respect of this charge, the Tribunal considers it indispensable to reiterate that even due to lapse of long passage of time a witness may be capable in narrating the 'core essence' of the event he witnessed and it happens because of the nature of the events. In making account of the 'essence' and 'fundamental elements' of the event experienced by the witness, the trauma he or she sustained

may be found to have been sandwiched with the memory that may result in incapability in portraying ‘detail precision’. But it never affects the ‘fundamental feature’ of his or her testimony. The ICTR in the case of *Nyiramasuhuko* has considered this issue by observing that –

“.....where a significant period of time has elapsed between the acts charged in the indictments and the trial, it is not always reasonable to expect the witness to recall every detail with precision.”

[ICTR, *The Prosecutor v. Pauline Nyiramasuhuko et al.*, ICTR-98-42-T, Judgement, 24 June 2011, para. 179]

306. P.W.03 is a direct witness to the act of leaving threatened message by the four of accused persons which made the father of P.W.03 panicked and he thinking the wellbeing of his family eventually went to the Sundarganj army camp on the following morning. That is to say, a coercive act compelled the father of P.W.03 in securing appearance at the army camp.

307. P.W.01, P.W.02, P.W.06 and P.W.07 are the sons of four victims. Their evidence patently demonstrates that the accused persons were actively engaged in compelling the victims Chairmen and Members to appear at the army camp in the name of attending a meeting under threat and coercion. Defence could not taint this fact leading to unlawful confinement of the Chairmen and Members at the army camp when they appeared there in any manner.

308. The act of asking the UP Chairmen and Members with threat to life and property obviously chained to the phase of their unlawful captivity at the army camp and killing them later on. This initial act covered with threat and coercion thus formed part of attack and such attack was launched based on common design and plan to which all the accused persons and their accomplice Razakars had explicit agreement. It is to be noted that any such agreement can be well inferred or perceived from the facts and circumstances unveiled. For direct evidence is not at all possible to be adduced to establish the fact of designing plan and agreement calculated to perpetrate a crime.

309. Keeping the Chairmen and Members of different Union detained at the army camp indisputably indicates that on the preceding day they were asked with threat and coercion by the accused intending to materialize their culpable design.

310. Detention of the victims of both the charge nos.02 and 03 ended in brutal extinction of their lives on 13 October, 1971, just before the dusk. This phase of horrific criminality relates to the concluding part of the events as narrated in both the charges and thus the testimony of the witnesses describing how they could see the concern and complicity of accused persons in accomplishing such killing inevitably relates also to the event of killing 13 Chairmen and Members .

311. We have already got it proved in adjudicating the charge no.02 that accused persons and their accomplices took the detained Boyez Uddin and 13 Chairmen and Members to the bank of the river Teesta where they made them stand in a line and then shot them to death. The killing site was about 200 yards far from the army camp.

312. In view of above we consider it inappropriate to reiterate vivid discussion of evidence tendered on this phase of event. Already it has been found proved beyond reasonable doubt that the 13 Chairmen and Members as well together with Boyez Uddin [victim of charge no.02] who was also kept in captivity at the same army camp were taken to the killing site, the bank of the river Teesta by the accused persons and their cohorts to further common agreement and design.

313. It has been affirmed in cross-examination of P.W.02 that he and relatives of victims remained in hiding inside a bush on the bank of the river Teesta and his [P.W.02] father was killed there and they did not have trace of his father's body.

314. In cross-examination of P.W.03 it has been rather re-affirmed that the 13 Chairman and Members of Unions were kept unlawfully detained at the Sundarganj army camp. Since the principal offence the killing of the detainees was physically perpetrated by the group of Razakars including the accused persons it may be unerringly presumed that the plan of taking the detainees on the bank of the

river Teesta got somehow leaked ahead the event of killing happened. It was thus natural for the relatives of detainees to remain stayed around the army camp. Untold agony imbued them to remain so stayed there, although it was indeed unfeasible to get their dear ones released from unlawful captivity. Last hope of getting back dear ones and knowing their destiny the relatives of some of detainees including P.W.03 prompted them to go into hid inside a bush-- we are forced to infer it. It was usual and consistent to human conduct. A person shall not leave any stone unturned for the cause of wellbeing of his dear and near ones.

315. P.W.04 heard from Soim Uddin, a former Union Chairman [one of victims of the event of killing as narrated in charge no.03] that he was asked by Razakars to attend a meeting to be held at the Sundarganj army camp on 11 October, 1971. This hearsay version remained unshaken. Thus, and since it gets corroboration from the facts unveiled carries credence.

316. The fact of unlawfully detaining a number of Chairmen and Members of different Unions when they appeared at the army camp in the name of attending meeting as asked earlier by the accused Razakars was such a fact that inevitably became known to the locals. Thus, hearing it from the locals as stated by the P.W.04 is believable and the hearsay version he made on it justifiably carries probative value which inspires credence.

317. The uncontroverted version in relation to taking the detainees out of the army camp and gunning them down to death on the bank of the river Teesta gets corroboration from the evidence of P.W.03. Defence could not impeach it in any manner. It has been affirmed in cross-examination that the bank of the river Teesta, the killing site was about one bigha far from Sundarganj army camp and that the relatives of victims came back home from Sundarganj on 13 October, 1971 at about 08:30 P.M.

318. The offence of killing was a 'group crime' and upshot of the attack that started in coercing the detainees to remain attended at the army camp. It appears proved that the accused persons did not keep them distanced from any phase of the event. In order to determine liability for actual commission of the principal crime it is not necessary to prove which accused had killed which detainee. Even if seeing the accused persons shooting the detainees to death as stated by the P.W.04 was impracticable remaining in hiding inside the bush, as argued by the defence it stands proved that not the army men but the accused and their accomplices took the detainees on the bank of the river Teesta, the killing site, bringing them out of the army camp which was about 200 yards far. Such act proves it beyond reasonable doubt that the accused persons were knowingly and consciously 'concerned' with the event of killing and they were part of 'collective criminality' which made them equally

liable for the crimes committed under the theory of JCE [Basic Form].

319. Presence of the accused persons at the killing site and providing substantial contribution in taking the detainees there bringing out of the army camp is sufficient to conclude unerringly that all the six accused persons being substantially guided by the accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz participated in committing the brutal killing of 14 unarmed pro-liberation civilians [including the victim of charge nno.02] to further common design and plan.

320. Acts and conduct of all the accused persons starting from asking the 13 victims with threat to appear at the army camp to the accomplishment of their horrific killing indisputably formed part of 'systematic attack' and thereby they culpably facilitated the commission of the principal crimes as 'participants'.

321. Detaining the 13 Chairmen and Members unlawfully at the army camp patently indicates that intention of asking them to appear at the army camp on 11 October, 1971 in the name of attending a meeting was rather intended to secure their smooth detention. Next, on 13 October, 1971 the act of gunning them down to death provides irresistible conclusion that killing of the Chairmen and Members was the key purpose of detaining them at the army camp, in violation of international humanitarian law.

322. It is to be noted that the doctrine of JCE [basic form] allows an acceptance of the same level of responsibility for every member of the group of attackers who was part of common design and objectives of the attack, even if not physically involved in the actual commission of the crime .

323. The basic characteristic of the crime of barbaric killing of numerous non combatant civilians as unveiled was that behind its commission there had been a collective and designed criminal plan with intent to implement which all the members of the group of attackers including the accused persons had acted at different levels of the attack and presumably each of them provided different contributions to the achievement of the final goal, the killing of detained civilians who were protected persons. Since the act of killing the 13 detained persons was the outcome of 'collective criminality' the accused persons being the members of the joint endeavor are held equally responsible as co-perpetrators. In this regard, we may recall the observation of the **ICTY Trial Chamber**, in the case of *Tadic* that-

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

from the commission of the act in question”
[Prosecutor v. Tadic, ICTY Trial Chamber, Case No. IT- 94-1-T, Judgment 7 May, 1997, paragraph 692]

324. The factual matrix proved by the prosecution unerringly points towards the accused persons as the active accomplices of the perpetrators forming the group of attackers, i.e. there is no escape from the conclusion that the crime was committed on substantial contribution, facilitation and assistance of the accused persons. Common design of all the accused persons was to cause death of a number of detained civilians and thus none of the group including the accused persons can evade the responsibility of the act of killing, we arrive at this unerring decision.

325. Taking the potential and dominating position of accused Abdul Aziz alias Ghoramara Aziz into account it may safely be concluded that he was the ‘key man’ who enthused his accomplice Razakars including the other accused persons in carrying out criminal activities

326. But now, all legal authorities agree that where a common design of a group of attackers exists and the group has carried out its purpose, then no distinction can be drawn between the ‘finger man’ and the ‘trigger man’. This view finds support from the observation made by the **ICTY Appeal Chamber**, in the case of *Tadic*, that –

“Although only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or villages, etc.), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question.”[ICTY Appeal Chamber, Tadic Case No.: IT-94-1-A, Judgment 15.7.1999, para 191]

327. Therefore, each one of the accused persons being part of the criminal enterprise was physically engaged in perpetrating the crime -- chain of facts, evidence presented and settled legal proposition lead to conclude it.

328. Finally, gunning down the detainees to death leads to the conclusion that intent of keeping them unlawfully detained at the army camp was to wipe them out, in execution of the common plan to which the accused persons were active part. It was not likely to know what happened to the detainees in captivity. But however keeping them in unlawful captivity for two days at the army camp suggests inferring that they were subjected to torture and quiz for extracting information about the freedom fighters and their activities around the locality. And it was done by the Pakistani occupation army stationed in Sundarganj in collaboration with the local potential Razakars, pursuant to a designed plan.

329. It is to be noted that the deliberate infliction of severe physical or mental pain or suffering caused to one in captivity in order to discriminate a victim constitutes the act of 'torture'. Thus, it may be concluded validly that even mere keeping the victims in protracted captivity had caused severe mental pains and sufferings which constituted the offence of 'torture'.

330. As a part of plan first the victims, the Chairmen and Members were coerced to come at the army camp in the name of attending a meeting. They accordingly went to the camp on the following morning either believing the asking of Razakars to be true or considering the wellbeing of the civilians of their locality. That is to say, the victims were deliberately misled by the accused persons and their accomplice Razakars. This act together with the act of accompanying the group in taking the detained victims two days later to the bank of the river Teesta, the killing site from the army camp in Sundarganj irresistibly proves that the accused persons were quite aware of the purpose of unlawful detention of the victims at the army camp and being aware of and agreeing with the ultimate intent they substantially contributed and facilitated the army men stationed in Sundarganj army camp to keep the victims detained there.

331. No army man accompanied the group which took the detainees to the killing site bringing them out of the army camp. No prosecution witness claims it. Only the accused persons and their

accomplice Razakars were engaged in taking the detained victims towards the killing site—the evidence adduced impels it. Presumably, the accused persons and their accomplice Razakars being entrusted by the army camp enthusiastically responded in doing such act which patently proves not only their stiff and culpable affiliation with the army camp but their participation in the commission of the killing of detained Chairmen and Members and they did it consciously to further the policy and plan of the Pakistani occupation army.

332. It is to be noted that an accused may participate in a joint criminal enterprise in various ways -- by personally committing the agreed crime as a principal offender or by assisting the principal offender in the commission of the agreed crime as a co-perpetrator, *i.e.* by facilitating the commission of the crime with the intent to further the plan of the enterprise.

333. In the case in hand, it has been found proved that all the six accused persons were with the group of Razakars when it was heading towards the bank of the river Teesta, the killing site taking the detainees with them. Defence does not dispute the killing of victims taking them out of the army camp nearer to the killing site.

334. The above material piece of fact is sufficient to lawfully infer that there had been an agreement and understanding for the common plan intending to execute which the accused persons

knowingly accompanied the group in taking the detainees to the killing site from the army camp, about 200 yards far. Thus, even if it is not proved that which accused or which Razakar killed which detainee it may safely and irresistibly be concluded that the accused persons also participated as co-perpetrators in committing the barbaric killing of detained civilians.

335. In an article titled '**Crimes against Peace in the Tokyo Trial**' published in the book '**Historical War Crimes Trials in Asia**', **2016 Torkel Opsahl Academic EPublisher Brussels XUE Ru** emphasizes that --Joint criminal enterprise is a theory of common purpose liability which permits the imposition of individual criminal liability on an accused for his knowing and voluntary participation in a group acting with a common criminal purpose or plan. As **Gideon Boas, James L. Bischoff and Natalie L. Reid** note:

The advantage of JCE lies in its utility in describing and attributing responsibility to those who engage in criminal behavior through oppressive criminal structures or organizations, in which different perpetrators participate in different ways at different times to accomplish criminal conduct on a massive scale.[**Gideon Boas, James L. Bischoff and Natalie L. Reid, Forms of Responsibility in International Criminal Law, vol. 1, Cambridge University Press, Cambridge, 2007, p. 9.**]

336. Here, it stands well proved that all the six accused persons were engaged in taking the detainees out of the army camp and brought them on the bank of the river Teesta , the killing site where they were gunned down to death. The act of coercing and intimidating the victims to remain present at the army camp, keeping the victims unlawfully confined at the army camp and finally taking them to the killing site together irresistibly prove a chain of methodical attack to which all the six accused persons knowingly and voluntarily participated in accomplishing the criminal design of killing on a massive scale.

337. According to the Joint Criminal Enterprise [Basic Form] all co-perpetrators, acting pursuant to a common design, possess the same criminal intention -- for instance, the designing of a plan among the co-perpetrators to kill, even where, in effecting this common design they nevertheless all possess the intent to kill.

338. The objective and subjective prerequisites for imputing criminal responsibility to a participant, under the theory of JCE, who did not, or cannot be proven to have, effected the actual act of killing are as follows: (i) the accused must voluntarily participate in one aspect of the common design by providing material assistance to or facilitating the activities of his co-perpetrators; and (ii) the accused, even if not personally effecting the killing, must nevertheless intend this result.

339. Additionally, it has been observed by the **ICTY Appeal Chamber** in the case of **Ntakirutimana and Ntakirutimana**, that

“Murder as a crime against humanity under Article 3(a) does not require the Prosecution to establish that the accused personally committed the killing. Personal commission is only one of the modes of responsibility. [**Ntakirutimana and Ntakirutimana, (ICTY Appeals Chamber), December 13, 2004, para. 546**]

340. It is imperative to note that participation by ‘planning’ presupposes that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases. The evidence presented by the prosecution so far as it relates to the act, conduct, behaviour, active affiliation with the army camp convincingly impels to conclude that all the accused persons were concerned with the plan of designing the commission of the principal offence, the killing.

341. A crime against humanity involves the commission of certain prohibited acts committed as part of a widespread or systematic attack directed against a civilian population. Such crime is known as ‘group crime’ committed in the context of conflict or war. A person commits a crime against humanity when he or she commits a prohibited act that forms part of an attack. Now it is well settled. In the case in hand, act of coercing and intimidating civilians to secure their captivity, facilitating their unlawful protracted confinement at army camp and finally accompanying the group of Razakars in wiping out the detainees by the accused persons and

their cohort Razakars obviously formed 'systematic attack' intending to accomplish the designed mission of collective criminality. The facts and circumstances revealed force to the conclusion that all the accused persons voluntarily participated as co-perpetrators in all the phases by substantially facilitating to effect the killing, the upshot of the attack.

342. Unimpeached testimony of witnesses, the relatives of victims demonstrates that the victims were induced and coerced to remain present at the army camp and they accordingly appeared at the camp on the following morning. It may be validly presumed that the victims appeared at the army camp of their own accord-- nobody took them there forcibly. But such apparent consent on part of the victims was ensured by act of inducement or threat of force which cannot be considered to be real consent. Such threat or intimidation was calculated to terrify the Chairmen and Members and make them compelled to appear at the army camp, in the name of attending a meeting.

343. The victims were non-combatant civilians. The acts done to secure their confinement and killing formed part of 'attack' directing against 'civilian population' and 'population' does not mean the entire population. First, the victims at the time when they became prey of the attack were non combatant. Second, the attack directing them was not for any lawful purpose or necessity. Thus, the act of attack upon the victims was conducted treating them

adversary and it was obviously prohibited in customary international law.

344. On integrated evaluation of evidence tendered it appears that the prosecution has been able to prove it beyond reasonable doubt that all the six accused persons by coercive act facilitated the prohibited act of confining the victims, the 13 Chairmen and Members at Sundarganj army camp where they were subjected to torture and two days later they were shot to death by taking them on the bank of the river Teesta, nearer the camp.

345. The evidence tendered indisputably demonstrates that the accused persons and their cohort Razakars forming a group was engaged in taking the detainees to the killing spot and all the acts and conducts together unerringly suggest that the accused persons being part of collective criminality consciously participated and got engaged and concerned in and had 'complicity' with the commission of criminal act of gunning the detained victims down to death, pursuant to common design and plan. In this way all the six accused persons being part of the enterprise and by their act and conduct forming part of systematic attack in materializing the culpable mission were 'concerned', took 'participation' , 'aided' and substantially 'contributed' to the actual commission of the killing and thereby they are found **guilty** for the offences of '**confinement**', '**torture**' and '**murder**' as crimes against

humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz [absconding] (2) Md. Ruhul Amin alias Monju[absconding], (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali[absconding] , (5) Md. Najmul Huda[absconding], and (6) Md. Abdur Rahim Miah incurred criminal liability under section 4(1) of the Act of 1973.

X. Task of Investigation

346. Mr. Gaji MH Tamim the learned state defence counsel defending the 05 absconding accused questioning the fairness of the task of investigation submitted that the IO did not pay due attention to prosecute the other Razakars as stated in the list of Razakars **Exhibit-9** which has been relied upon by the prosecution. It, in other words, renders the investigation motivated.

347. We are not convinced with the above submission. First, mere membership in Razakar Bahini, an auxiliary force does not constitute an offence enumerated in the Act of 1973. The learned defence counsel also concedes it, on query of the Tribunal. The Statute permits to prosecute and try an individual or group of individuals or a person belonging to an auxiliary force who committed the offences enumerated in the Act of 1973. In the case in hand, defence could not bring anything by adducing any evidence or by cross-examining the P.W.s that also the other

Razakars as stated in the list **Exhibit-9** committed unlawful and prohibited acts in accomplishing such offences for which the present accused persons have been charged with.

348. Second, it is not correct to say that the present accused persons cannot be brought to justice unless the other Razakars as stated in the list **Exhibit-9** are not prosecuted.

349. Third, the list of Razakars **Exhibit-9** relates to identity of hundreds of Razakars of Sundarganj Police Station which includes the members of Razakar Bahini formed at Matherhat under Sundarganj Police Station and the present accused persons were affiliated with this Razakar camp, as found proved. The accused persons are found to have had perpetrated the barbaric crimes directing the civilians, the residents of the crime villages under Sundarganj Police Station. Seemingly, they got themselves engaged in planning and designing culpable sketch in exercise of their affiliation with the Razakar camp set up at Matherhat under Sundarganj Police Station. Presumably, the other Razakars as stated in **Exhibit-9** might not have engagement in any activity or the atrocious events accomplished by the Razakars associated with the Matherhat Razakar camp for which the present accused persons have been arraigned with.

350. Fourth, the Investigation Agency shall not be debarred from holding separate investigation even against any of Razakars as

named in the list **Exhibit-9** if it finds evidence and reason in doing so.

351. Therefore, agreeing with the defence submission there can be no room to deduce that the investigation suffers from unfairness, flaws and any ill motive. In the case in hand, we are to adjudicate how far the prosecution has been able to prove the arraignment brought against the accused persons by tendering evidence. Thus, non prosecution of the other Razakars as sated in the list **Exhibit- 9** does not create any clog to prosecute and try the present accused persons.

352. Mr. Gaji MH Tamim the learned state defence counsel attacking fairness and legality of investigation procedure also argued that the Investigation Officer did not make any effective investigation and he purposefully omitted to examine and cite the person who authored the report published in the Daily Janakantha in 2001[**Exhibit-7**] and the person who prepared the alleged list of Razakars **Exhibit-9** ; that the IO did not care to investigate into the allegations as narrated in the report published in the Daily Janakantha; that the IO could not collect any document whatsoever to show that accused Abdul Aziz @ Ghoramara Aziz was the commander of locally formed Razakar Bahini.

353. It is significant to note that the task of investigation under the Act of 1973 is a quite unique and challenging job for the officer

assigned with it. In holding investigation under the Act of 1973 the Investigation Officer had to deal with the alleged offences of crimes against humanity occurred long more than four decades back in violation of customary international law together with the matter of unearthing *prima facie* involvement and complicity of the accused therewith.

354. In the case in hand, the IO, as it appears, submitted the report on closure of investigation on the basis of evidence he could collect in relation to three atrocious events involving killing of numerous unarmed civilians. Now, mere failure to bring any other arraignment as narrated in the above news paper report seemingly due to non availability of evidence does not render the investigation flawed and it does not taint the prosecution case in any manner.

355. On total appraisal, we do not find anything flawed in the investigation task. The Tribunal notes that the Investigation Officers [P.W.14 and P.W.15] , in compliance with the norms and provisions contemplated in the Act of 1973 and the ROP, carried out the task of investigation on completion of which P.W.15 duly submitted 'report' before the Chief Prosecutor. Accordingly, the submission advanced by the learned state defence counsel does not carry any merit, we conclude.

XI. Conclusion

356. The three charges framed arose from some particular events occurred consistently and methodically in the rural locality under Police Station Sundarganj of the then Gaibandha Sub-Division, in context of the War of Liberation in 1971 and all the six accused persons arraigned of all the three charges have been found to have had conscious and culpable participation, substantial contribution and complicity in accomplishing the alleged crimes, by their acts and conduct forming part of systematic attack, in exercise of their potential membership in and affiliation with the locally formed Razakar Bahini. Of the six accused persons accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz the commander of locally formed Razakar Bahini was the 'mastermind' of designing plan of attacks directing pro-liberation civilians with intent to wipe them out—his dominating position and influence, as proved lead to this conclusion.

357. It is now undisputed fact of common knowledge that by forming Razakar Bahini an auxiliary squad the Pakistani occupation army started acting together in perpetrating the criminal acts by launching systematic attack throughout the territory of Bangladesh in 1971. The members of such auxiliary force remained engaged in providing culpable support and assistance to the Pakistani occupation army in carrying out its atrocious activities

with intent to liquidate the pro-liberation civilians and freedom-fighters terming them ‘anti-state elements’, ‘miscreants’ and this was the key purpose of forming such auxiliary squad of pro-Pakistan people.

358. The instant case involves joint trial of six accused –(1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz [absconding], (2) Md. Ruhul Amin alias Monju[absconding],(3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali[absconding], (5) Md. Najmul Huda[absconding] and (6) Md. Abdur Rahim Miah[absconding]. All of them belonged to locally formed Razakar Bahini and Accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz was its commander—already this issue has been resolved.

359. In the case in hand it stands proved too that all the events of attacks as narrated in the charges framed happened in day time, just immediate after the freedom-fighters had blown up Dariapur bridge of Sadar Thana by detonating bomb on 08 October 1971. Presumably, in the name of encountering the ‘freedom-fighters’ and their activities the accused persons deliberately designed plan to attack the unarmed pro-liberation civilians of the locality which eventually ended in killing numerous unarmed civilians,

360. Conducting such planned and systematic attacks directing civilian population would not have been possible without active, culpable and enthusiastic engagement of the accused persons

belonging to locally formed Razakar Bahini who knowingly participated in the enterprise under the leadership and command of accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz who for his extreme barbaric attitude achieved notoriety, as found proved from the reports published in the daily news papers [Exhibit-3 and 4].

361. In the case in hand, all the offences proved were diabolical in nature for which all the six accused persons are found to have had contribution, complicity and participation. The prohibited acts constituting the offences proved 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 undisputed history.

362. The Tribunal already rendered its reasoned decision, on adjudication of all the 03 charges, holding all the six accused persons criminally liable under the doctrine of JCE [Basic Form] which corresponds to section 4(1) of the Act of 1973 for the commission of crimes proved as listed in all the 03 charges [offence of ‘abduction’, ‘other inhumane act’, ‘confinement’, and ‘murder’ as crimes against humanity and therefore they be convicted for the offences, the ‘group crimes’ proved.

XII. VERDICT ON CONVICTION

363. For the reasons set out in our Judgement and having considered all evidence and arguments, we find—

All the six accused (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz [absconded], (2) Md. Ruhul Amin alias Monju [absconded], (3) Md. Abdul Latif, (4) Abu Muslim Mohammad Ali [absconded], (5) Md. Najmul Huda and (6) Md. Abdur Rahim Miah [absconded]

Charge No.1: GUILTY of ‘participating’, substantially ‘contributing’ and ‘aiding’ and also for complicity, by their culpable act and conduct forming part of attack, in accomplishment of the criminal acts constituting the offences of **‘abduction’, ‘other inhuman act’ and ‘murder’** as crimes against humanity as enumerated in section as specified in section 3(2)(a)(g)(h) of the Act of 1973 and thus all the six accused persons incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.2: GUILTY of ‘participating’, substantially ‘contributing’ and ‘aiding’ and also for complicity, by their culpable act and conduct forming part of attack, in accomplishment of the criminal acts constituting the offences of **‘abduction’, ‘confinement’ and ‘murder’** as crime against humanity as enumerated in section as specified in section 3(2)(a)(g)(h) of the Act of 1973 and thus all the six accused persons incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.3: GUILTY of ‘participating’, substantially ‘contributing’ and ‘aiding’ and also for complicity, by their culpable act and conduct forming part of attack, in accomplishment of the criminal acts constituting the offences of **‘confinement’, ‘torture’ and ‘murder’** as crime against humanity as enumerated in section as specified in section 3(2)(a)(g)(h) of the Act of 1973 and thus all the six accused persons incurred criminal liability under section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

XIII. Verdict on Sentence

364. Mr. Syed Haider Ali the learned prosecutor, during the closing submission, urged highest punishment taking the gravity and pattern of the offences and mode of participation of the accused persons who are found to have had complicity and conscious participation in committing the offences proved.

365. Conversely, the learned counsel defending the accused Md. Abdul Latif and the learned State defence counsel submitted that the accused persons have been prosecuted out of political rivalry and none of them was engaged in committing any of offences of which they have been arraigned and since prosecution failed to establish the charges brought they deserve acquittal.

366. The learned counsel defending the accused Md. Abdul Latif further submitted that this accused’s ‘old age’ may be taken into account as a ‘mitigating factor’.

367. On query, the learned counsel defending the accused Md. Abdul Latif submitted that such 'old age' deserves consideration for the purpose of awarding 'sentence'. This submission itself rather concedes that the accused Md. Abdul Latif was part of the group of perpetrators belonging to the locally formed Razakar Bahini and he committed the offences proved.

368. It is to be noted that the accused persons have been prosecuted and tried for the criminal acts they committed in 1971 during the war of liberation. And now their present age cannot stand as a mitigating factor. Only the way they participated in committing the crimes and the gravity of the offences need to be considered, and not the present age of any of accused persons.

369. It is now jurisprudentially settled that the form and degree of the participation of the accused in accomplishing the crime for which he is arraigned are the key factors in determining the gravity of the crime proved. The goal of awarding sentencing is to ensure that the sentence to be awarded shall reflect the totality of the criminal conduct and overall culpability of the convicted offender. Indisputably the sentence to be awarded must reflect the inherent gravity of the accused's criminal conduct.

370. We reiterate that the sentence to be awarded must be proportionate to the seriousness of the offence and mode of participation of the offenders who have been found guilty. In the

case in hand, all the six accused persons have been found equally responsible for the offences as narrated in all the three charges, under the doctrine of JCE[Basic Form]. The facts and circumstances and pattern of the attack lead to infer it lawfully that all the convicted accused persons got themselves consciously engaged being agreed to carry out the criminal acts to further common purpose and they did it pursuant to designed plan.

371. Charge no.01 relates to abduction of Ganesh Chandra Barman and three of his neighbours by the group of Razakars accompanied by the convict accused persons who taking the detainees at the place near Dariapur Bridge had killed Ganesh Chandra Barman by throwing him into the river putting him inside a rucksack. Three other detainees were set at liberty eventually. We have found it proved that the convicted accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz was a notorious commander of locally formed Razakar Bahini. Presumably, he led the group in perpetrating the principal crime [as listed in charge no.01] and his dominating position substantially facilitated his accomplice Razakars, the other five convicted accused persons in accomplishing the crime.

372. Boyez Uddin the victim of the event narrated in charge no.02 was first kept confined at Matherhat Razakar camp over which the convicted accused Md. Abdul Aziz alias Ghoramara Aziz had substantial control and domination. On the following day, the

detained victim was taken at the Sundarganj army camp by the group of Razakars led by the convicted accused Md. Abdul Aziz alias Ghoramara Aziz—it stands proved. It has been proved too beyond doubt that the act of killing the victim Boyez Uddin was the upshot of a designed plan which could not have been materialized without grave and aggressive plan to which all the convicted accused persons were part. All the six convicted accused persons were thus consciously concerned with the act of killing Boyez Uddin. Although, the convicted accused Md. Abdul Aziz alias Ghoramara Aziz, the commander of Razakar Bahini formed locally played the core and large role to further the designed plan of killing the detainee-- totality of evidence tendered leads this inference.

373. Similarly, in exercise of potential membership in Razakar Bahini associated with Matherhat Razakar camp and being imbued by the nexus with the locally stationed Pakistani occupation army all the six convicted accused got involved in carrying out the act of compelling the 13 Chairmen and Members of different Unions, under intimidation and coercion to appear at the Sundarganj army camp [as listed in charge no.03]. This trickery act was designed to secure those Chairmen and Members' unlawful confinement at the army camp.

374. The reasoned finding based on evidence tends to show it unerringly that close and culpable affiliation of the convicted

accused persons with the army camp made them able to take the detainees to the killing site, the bank of the river Teesta with the assistance of their accomplice Razakars, by bringing the detainees out of the army camp. All the six convicted accused persons thus equally participated and facilitated not only in keeping 13 protected civilians in protracted captivity but also in wiping them out by gunning them down to death, in violation of customary international law and the laws of war. The victims of the barbaric event [as listed in charge nbo.03] went through a gruesome death process, observed by their loved ones who have been carrying untold intense trauma till today.

375. The fact of blowing out the Dariapur Bridge by detonating bomb on 08 October 1971 by the freedom fighters was an event that eventually provided a message about the existence of the freedom fighters around the crime locality and it made the local Razakars led by convicted accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz infuriated and thus prompted them to attack the locality intending to wipe out the pro-liberation civilians.

376. It stands proved that the criminal acts of the convicted accused persons, as unveiled forming part of attacks were the outcome of deliberately designed culpable plan of which convict accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz was the 'Mastermind'

and the five other convicted accused persons were conscious part.—the facts and circumstances suggest to conclude it safely.

377. A person who abuses or wrongly exercises power deserves a harsher sentence than an individual acting on his own. Command position is more of an aggravating circumstance than direct participation. In the case in hand, the facts and circumstances force us to conclude that all the attacks were carried out under command of convicted accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz. But at the same time conscious engagement of five other convicted accused persons in committing the crimes especially as listed in charge nos. 02 and 03 demands consideration as one of aggravating factors in awarding sentence.

378. We have already recorded our reasoned finding, taking the doctrine of JCE [Basic Form] into account, that all the accused persons incurred equal liability for committing the offences narrated in all the three charges as they were conscious part of common plan and collective criminality.

379. The Tribunal reiterates that in fact section 4(1) of the Act of 1973 refers to JCE liability, although it has not been categorized in our Statute, as evolved through judicial pronouncement in the case of *Tadic* [ICTY]. It is admitted. The expression '*committed*' occurred in section 4(1) of the Act includes participation in JCE. Section 4(1) tends to cover the necessary elements of JCE,

especially JCE category 1 and 3. Accordingly, all the persons forming group of attackers incurred equal liability in accomplishing the crimes proved.

380. In the case in hand, in addition to active participation, commanding and dominating position of convict accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz in locally formed Razakar Bahini makes his liability aggravated, true. But the above settled proposition leads us to arrive at decision as well that the other five convicted accused persons are also found to have had participation in the mission agreeing with its purpose and intent and knowing the consequence of their act and conduct. All these together obviously aggravates their responsibility too.

381. The criminal events that resulted in murder of numerous protected civilians as narrated in all the three charges and causing mental and physical harm to the civilians and relatives of victims were the fragmented portrayal of the total horrific attack against the Bengali non-combatant pro-liberation civilians in the territory of Bangladesh in 1971. Letters of law does not consider the level of the offender, in awarding sentence. It considers the level and gravity of the offence for which the offender is found guilty. The offences proved were of gravest and appalling nature that shakes human conscience, the humanity and civilization.

382. The events of killings as narrated in charge nos.02 and 03 were enormously appalling indeed. We deem it appropriate to award sentence, considering not only the gravity and magnitude of the offences narrated in these charges but also the mode and level of participation of convicted accused persons together with their position, concern, agreement to the common purpose and intent.

383. 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 convicted accused persons 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**

That the accused—

(1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz **[absconding]**, son of late Banes Ali and late Bibijan of Village Chachia Mirganj, Police Station Sundarganj, District Gaibandha, at present David Companypara, Police Station and District Gaibandha,

(2) Md. Ruhul Amin alias Monju**[absconding]**, son of late S.M.A. Jobbar and Mst. Jomila Khatun of Village Dharmapur, Matherhat, Police Station Sundarganj, District Gaibandha, at present Masterpara, PDB Lane, Police Station and District Gaibandha,

(3) Md. Abdul Latif , son of late Foim Uddin Bepari and late Moyjan Begum of Village Pachgasi Santiram, Police Station Sundarganj, District Gaibandha,

(4) Abu Muslim Mohammad Ali[**absconding**] , son of late Dosim Uddin alias Solim Uddin and Maijan Begum of Village Santiram, presently Purbo Jhinia, Police Station Sundarganj, District Gaibandha,

(5) Md. Najmul Huda[**absconding**] , son of late Roich Uddin Sarker and late Jobeda Khatun of Village Santiram, Police Station Sundarganj, District Gaibandha, at present House No. 46, Kajipara Road, Khortoil Paschim Para, P.O. Sataish, Ward No. 51, Police Station Tongi, District Gazipur **and**

(6) Md. Abdur Rahim Miah [**absconding**] , son of late Siddiqur Rahman and late Amena Khatun alias Saleha Begum of Village Paschim Belka, Police Station Sundarganj, District Gaibandha, at present House No. 106, Baluadanga, Road No. 2, Police Station Kotwali, District Dinajpur---

are held guilty of offences of '**abduction**', '**other inhuman act**' **and** '**murder**' as crimes against humanity as listed in **charge No. 01** as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 and they be convicted accordingly and sentenced there under to suffer imprisonment for life till normal death under section 20(2) of the said Act.

Accused (1) Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz [**absconding**], (2) Md. Ruhul Amin alias Monju [**absconding**], (3) Md. Abdul Latif,(4) Abu Muslim Mohammad

Ali[**absconding**] , (5) Md. Najmul Huda[**absconding**] and (6) Md. Abdur Rahim Miah [**absconding**] are found guilty of the offences of **'abduction', 'confinement' and 'murder'** as crime against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no.02** and also of the offences of **'confinement', 'torture' and 'murder'** as crime against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no.03**. Accordingly, they be convicted and condemned to the sentence as below:

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

'Sentence of death' for the crimes as listed in **charge no.3** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

However, as the convict accused persons have been condemned to **'sentences of death'**, as above, the **'sentence of imprisonment for life'** awarded in respect of **charge no. 1** will get merged into the **'sentences of death'** as awarded above. The sentence of imprisonment for life awarded as above in respect of **charge no.01** shall be carried out under section 20(3) of the Act of 1973.

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

The convicted accused **(3) Md. Abdul Latif** [present on dock as brought from prison] be sent to the prison with conviction warrant accordingly.

Since the five convicted accused persons have been absconding the **‘sentence of death’** as awarded above shall be executed after causing their arrest or when they surrender before the Tribunal, whichever is earlier.

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

The 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.

Issue conviction warrant against the convicted accused Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz [**absconding**], Md.

Ruhul Amin alias Monju [**absconding**], Abu Muslim Mohammad Ali[**absconding**], Md. Najmul Huda [**absconding**] and Md. Abdur Rahim Miah [**absconding**].

The Secretary, Ministry of Home Affairs and the Inspector General of Police [IGP] are hereby directed to initiate effective and appropriate measure for ensuring the apprehension of the convict absconding accused Abu Saleh Md. Abdul Aziz alias Ghoramara Aziz [absconding], Md. Ruhul Amin alias Monju [absconding], Abu Muslim Mohammad Ali [absconding], Md. Najmul Huda [absconding] and (5) Md. Abdur Rahim Miah [absconding].

Let certified copy of this judgment be provided to the prosecution and the convict accused Md. Abdul Latif free of cost, at once.

If the absconding convict accused persons 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 Md. Abdul Latif be sent to the District Magistrate, Dhaka for information and necessary action.

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Judge Md. Abu Ahmed Jamadar, Member