

International Crimes Tribunal-1 [ICT-1]

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

Old High Court Building, Dhaka, Bangladesh

ICT-BD [ICT-1] Case No. 05 of 2015

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

Present:

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Judge Md. Abu Ahmed Jamadar, Member

The Chief Prosecutor

Vs

(1) Md. Amir Ahmed @ Razakar Amir Ali

(2) Abul Kalam @ Md. AKM Monsur [absconded]

(3) Md. Joynal Abedin and

(4) Md. Abdul Quddus

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Zead-Al-Malum, Prosecutor

Mr. Zahid Imam, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

Mr. Abul Kalam, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

For the Accused Md. Abdul Quddus

Mr. Syed Mijanur Rahman, Advocate, Bangladesh Supreme Court and

Mr. Muhammad Tarikul Islam, Advocate, Bangladesh Supreme Court

For the accused Md. Joynal Abedin and Abul Kalam @ AKM Monsur [absconded]

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

For the accused Md. Amir Ahmed @ Razakar Amir Ali

Mr. Masud Rana, Advocate, Bangladesh Supreme Court

Date of delivery of Judgment: 13 March, 2018

JUDGMENT

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

I. Introductory Words

1. Four accused (1) Md. Joynal Abedin (2) Md. Abdul Quddus (3) Md. Amir Ahmed @ Razakar Amir Ali and (4) Abul Kalam @ AKM Monsur [absconded] have been indicted for the atrocious criminal activities constituting the offences of ‘extermination’ as crimes against humanity committed in the localities under Police Station- Sudharam of District- Noakhali in 1971, during the war of liberation of Bangladesh, as arraigned in charge nos. 01. Three accused Md. Amir Ahmed alias Razakar Amir Ali, Abul Kalam alias A.K.M. Monsur and Md. Joynal Abedin have been indicted for the criminal acts constituting the offences of crimes against humanity as narrated in charge no. 02 and two accused Md. Amir Ahmed alias Razakar Amir Ali and Abul Kalam alias A.K.M. Monsur have been indicted for the offences brought in charge no.03.

2. Prosecution avers that in 1971 the accused persons got themselves enrolled as members of locally formed Razakar Bahini, an 'auxiliary force' created aiming to collaborate with the Pakistani occupation armed force in carrying out its criminal activities intending to annihilate the pro-liberation Bengali civilians, civilians belonging to Hindu religious group in furtherance of policy and plan.

3. The trial took place in presence of the accused (1) Md. Joynal Abedin (2) Md. Abdul Quddus and (3) Md. Amir Ahmed @ Razakar Amir Ali who have been in detention since pre-trial stage. Accused Abul Kalam @ AKM Monsur remained absconded and thus trial against him took place in his absentia after compliance with necessary legal requirements.

4. Pursuant to issuance of production warrant the prison authority has produced the accused (1) Md. Joynal Abedin (2) Md. Abdul Quddus, (3) Md. Amir Ahmed @ Razakar Amir Ali today before this Tribunal [ICT-1].

5. Now, this Judgment is being rendered by this Tribunal [ICT-1] for the prosecution of persons who allegedly incurred liability for the accomplishment of serious offences as enumerated in the International Crimes (Tribunals) Act, 1973 committed in grave violation of international humanitarian law in the territory of

Bangladesh in 1971, during the war of liberation. Having jurisdiction under section 10(1) (j), section 20(1) and section 20(2) of the International Crimes (Tribunals) Act, 1973[Act No. XIX of 1973] this ‘Tribunal’ known as International Crimes Tribunal-1 [ICT-1] hereby renders and pronounces the following unanimous judgment.

II. Formation and Jurisdiction of the Tribunal

6. It is to be reiterated that The International Crimes (Tribunals) Act, 1973 [Act No. XIX of 1973] enacted in our sovereign parliament is meant to prosecute crimes against humanity, genocide and system crimes perpetrated in violation of customary international law is an *ex-post facto* legislation. Prosecuting and trying internationally recognised crimes under such legislation is fairly permitted. The Act of 1973 does have the merit and means of ensuring the standard of universally recognized safeguards. And it is being maintained duly at all stages of proceedings before the Tribunal.

7. We reiterate too that the Act of 1973 has been enacted to prosecute, try and punish not only the 'armed forces' but also the perpetrators who belonged to ‘auxiliary forces’, or who committed the offence in the capacity of an ‘individual’ or a ‘group of individuals’ or ‘organisation’. It is manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima*

facie found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be prosecuted and tried under the Act.

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

III. Historical backdrop and Context

9. The offences for which the accused persons have been indicted were not isolated crimes. Those are recognized as international crimes as the same happened in war time situation. The events narrated in the charges framed just form part of appalling atrocities directing pro-liberation civilians, Hindu civilians, intellectuals constituted the offences of crimes against humanity and genocide committed in the territory of Bangladesh in 1971 during the nine-month bloody war of liberation.

10. The nation and particularly the new generation must know the backdrop of horrific crimes committed in 1971 by the Pakistani

occupation army and their local collaborators. We consider it expedient to note that the verdict of a court of law is not only meant to render its decision on the arraignment brought. It must also reflect the truth, behind the commission of horrific criminal acts

11. In portraying the historical background, in succinct, 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.

12. 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.

13. 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.

14. 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.

15. 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 culpably collaborated with the Pakistani occupation army to aggressively resist the conception of independent Bangladesh and most of them committed and facilitated as well the commission of atrocious activities directing the pro-liberation civilian population, to further the 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.

16. The Pakistani occupation army's widespread appalling 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**]

17. History testifies that Pakistani army who started its monstrous 'mayhem' since 25 March 1971 intending to liquidate the pro-liberation Bengali civilians, to resist their aspiration of self determination.

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

19. It is now an undisputed history that the local collaborators especially belonging to auxiliary forces actively assisted the Pakistani occupation army in accomplishing their policy and plan to annihilate the pro-liberation Bangalee civilians. The local collaborators truly had acted as notorious traitors. It is now a settled history which needs no further document to prove.

20. In 1971, the Pakistani occupation army had no companion 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 Nezami-i-Islami. Forming Razakar, Al-Badar-- Para militia forces was intended to collaborate with them and the Pakistani occupation armed force-- it is now settled history.

21. Prosecution avers that accused persons being the potential members of Razakar Bahini, a militia force 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, in grave breach of Geneva Convention. It is now a settled history.

22. 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 25^h March 1971 ten millions of Bengali civilians were forced to deport under the horrors of dreadful violence and brutality spread over the territory of Bangladesh.

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

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

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

24. The untold atrocious resistance on part of thousands of local collaborators belonging to Razakar Bahini, Al-Badar Bahini could not impede the nation’s valiant journey to freedom. Undeniably, the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle and immense sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and for achieving independent motherland. The nation shall remain ever

indebted to those best sons and daughters of the soil who paid supreme sacrifices for an indelible motherland – **Bangladesh.**

IV. Brief Account of the Accused Persons

25. Before we start adjudicating the arraignments brought we consider it necessary to make portrayal of the accused persons as has been narrated in the formal charge.

(i) Accused Md. Amir Ahmed alias Razakar Amir Ali

Accused Md. Amir Ahmed alias Razakar Amir Ali [70], son of late Mozaffar Ahmed Chaprashi and late Rahela Khatun of Village Uttar Fakirpur, Police Station-Sudharam, District-Noakhali, at present House No. 11, Road No. 4, Ward No. 4, Flat No. 5 [first floor], Uttar Fakirpur, Police Station-Sudharam, District-Noakhali was born on 18.07.1945. He studied up to Class VI in the Pourakallan High School, Maizdi, Noakhali. In 1971, he was an active worker of Muslim League and now he is involved with the politics of Bangladesh Nationalist Party [BNP]. In 1971, during the war of liberation he participated in the anti-liberation activities and for collaborating with Pakistani occupation army he joined Razakar Bahini and committed the offences of genocide, murder, plundering, arson and other crimes against humanity, prosecution alleges.

(ii) Abul Kalam alias A.K.M. Monsur[absconded]

Accused Abul Kalam alias A.K.M. Monsur [67], son of Haji Aftabuddin Ahmed and late Rokaiya Begum of Village Nandanpur,

Police Station-Sudharam, District-Noakhali, at present (1) 150/A, Bazaar Road, Savar Uttarpara [own house], (2) C72/3, Mazidpur, Afsar Garden, Birulia Road [own house], and (3) B/1, Savar Bazaar Bus Stand, Monsur Ali Super Market [own business centre], Police Station-Savar, District- Dhaka, was born on 01.01.1948. He passed B.A. examination from Noakhali College. In 1971, he was an active leader of Muslim League. Thereafter, he joined the Bangladesh Nationalist Party [BNP] and became an active leader of that political party and now he is the Joint Secretary of the central committee of Zia Parishad and the Convener of Zia Parishad of Dhaka District. In 1971, during the war of liberation he joined armed Razakar Bahini to collaborate with the Pakistani occupation army and as the Razakar commander he set up Razakar camp within the campus of PTI, Noakhali and he himself and under his leadership a group of 50/60 armed Razakars in collaboration with the Pakistani occupation army committed the offences of genocide, murder, plundering , arson and other crimes against humanity in the locality of Sudharam Police Station, District Noakhali, prosecution alleges . After the independence of Bangladesh he fled away from his locality and took shelter at Savar, Dhaka, prosecution also alleges.

(iii) Md. Joynal Abedin

Accused Md. Joynal Abedin [73], son of late Sekander Miah and late Safia Khatun of Village-Syedpur [Natun Dewan Bari], Police

Station-Sudharam, District-Noakhali was born on 01.01.1942. He studied up to Class X. In 1971, during the war of liberation he joined the local armed Razakar Bahini to collaborate with the Pakistani occupation army and actively participated in the anti-liberation activities and he also committed the offences of genocide, murder, plundering , arson and other crimes against humanity in the locality of Sudharam Police Station, District Noakhali, prosecution alleges.

(iv) Md. Abdul Quddus

Accused Md. Abdul Quddus [84], son of late Abdus Salam and late Hayetunnesa of Village-Laxmi Narayanpur, Police Station-Sudharam, District-Noakhali, at present (i) House No. 106, Azimpur [Shah Saheb Bari, first floor, opposite of Azimpur graveyard], and (ii) House No. 26, Sheikh Saheb Bazaar Mandir Goli [second floor], Police Station-Lalbag, D.M.P, Dhaka was born on 15.10.1931. He studied up to class VII. During the war of liberation in 1971, he was an active leader of Muslim League and actively participated in the anti-liberation activities, and he joined the local armed Razakar Bahini to collaborate with the Pakistani occupation army and he committed the offences of large scale killing, plundering, arson as other crimes against humanity, prosecution alleges.

V. Procedural History of the Case

26. The investigation Agency of the Tribunal constituted under section 8 of the Act of 1973 initiated investigation by appointing Md. Helal Uddin as Investigation Officer pursuant to information recorded as complaint register's serial no.45 dated 16.11.2014, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the five accused persons.

27. During investigation, the IO prayed for securing arrest of the accused persons on 05.10.2015 through the Chief Prosecutor. The Tribunal on hearing the application issued warrant of arrest against all the accused persons. Accordingly, accused Md. Amir Ahmed @ Amir Ali, Md. Yusuf and Md. Joynal Abedin were produced before the Tribunal on 06.10.2015 in execution of warrant issued. These accused were then sent to prison. The other accused Abul Kalam @ AKM Monsur could not be arrested. Accused Md. Abdul Quddus was also produced before the Tribunal on 07.10.2015 in execution of warrant and he was sent to prison.

28. The IO submitted its report together with documents collected and statement of witnesses, on conclusion of investigation, before the Chief Prosecutor on 31.08.2015 bringing arraignment against five suspect accused persons.

29. Afterwards, the Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, on

completion of investigation, submitted the 'Formal Charge' under section 9(1) of the Act of 1973 on 05.10.2015 before this Tribunal against the accused (1) Md. Amir Ahmed @ Razakar Amir Ali, (2) Abul Kalam @ AKM Monsur, (3) Md. Yusuf, (4) Md. Joynal Abedin and (5) Md. Abdul Quddus as there have been sufficient materials in support of their culpability and participation in committing the commission of the offences of crimes against humanity and during the period of War of Liberation in 1971 around the locality under police station- Sudharam of District- Noakhali, as narrated in the formal charge

30. The 'formal charge' submitted discloses that the accused persons allegedly participated, facilitated and had complicity in the commission of the alleged diabolical offences by launching systematic attack directing civilian population and they appear to have had allegedly acted in furtherance of common purpose and design in accomplishing such offences, being part of JCE and therefore, all the 05[five] accused persons have been prosecuted jointly as permissible under Rule 36 of the Rules of Procedure, 2010 of this Tribunal-1.

31. Thereafter, on 14.10.2015 the Tribunal, under Rule 29(1) of the Rules of Procedure [ROP], took cognizance of offences as mentioned in section 3(2) of the Act of 1973 having found *prima facie* case in consideration of the documents submitted together

with the Formal Charge, statement of witnesses submitted by the prosecution. At this stage, it was found that accused Abul Kalam @ AKM Monsur could not be arrested yet and as such the Tribunal by its order dated 24.11.2015 directed the enforcement agency to submit report in execution of warrant of arrest issued at pre-trial stage against the three accused persons.

32. On getting the report in execution of WA it appeared that the three accused Abul Kalam @ AKM Monsur remained absconded and thus for holding trial in *absentia*, the Tribunal on 18.01.2016 ordered publication of notification in 02 national daily newspapers as required under law.

33. After publication of such notification asking the above accused to surrender before this Tribunal within the time-frame mentioned therein the Tribunal proceeded to keep up the proceedings in *absentia* against him and fixed the date 31.05.2016 for hearing the charge framing matter. Mr. Gaji MH Tamim, Advocate was appointed state defence counsel to defend the absconding accused Abul Kalam @ AKM Monsur.

34. On 31.05.2016 it was brought to notice of the Tribunal that the accused Md. Yusuf died on 19.05.2016 in Dhaka medical College Hospital due to heart disease. Thus, the proceedings so far as it related to this accused stood abated, the Tribunal rendered its order in this regard on 31.05.2016.

35. On hearing about charge framing matter, the Tribunal framed charges on three counts against the all four accused persons. All the four accused have been indicted in charge no.01; three accused in charge no.02 and two accused in charge no. 03 on 20.06.2016. The charges so framed were read over and explained in Bangla to the accused Md. Amir Ahmed @ Razakar Amir Ali, Md. Joynal Abedin and Md. Abdul Quddus who were present on dock, as brought from prison when they pleaded not guilty and claimed to be tried according to law. The charges so framed however could not be read over and explained to the accused Abul Kalam @ AKM Monsur as he remained absconded.

36. In course of trial prosecution adduced and examined in all 15 witnesses including the Investigation Officers [IO] intending to substantiate the arraignments brought in the charges framed. Defence however duly cross-examined all the witnesses examined.

37. On closure of prosecution evidence, defence refrained from adducing and examining any witness. And thus, date was fixed for placing summing up. Finally, both parties advanced their respective summing up which got ended on 24.01.2018 and 06.02.2018. The Tribunal then kept the case CAV, for delivery and pronouncement of its judgment and sent the accused Md. Amir Ahmed @ Razakar Amir Ali, Md. Joynal Abedin and Md. Abdul Quddus to prison with direction to produce them on call.

VI. Summing up [Argument]

Summing up by the Prosecution

38. **Mr. Zahid Imam** the learned prosecutor, in advancing summing up drew attention to the oral testimony and the documents to substantiate the contention that all the four accused belonged to Razakar Bahini. The witnesses testified in this regard had reason of knowing the accused persons and their identity in 1971. The reason they testified could not be impeached by the defence. He also submitted that accused Abul Kalam @ A. K.M Monsur was the commander of Razakar Bahini. In this respect the learned prosecutor drew attention to the documents which have been proved and marked as Exhibited-3 series [Prosecution documents volume: page 101]

39. The learned Prosecutor then drawing attention to the evidence tendered argued that four[04] accused have been indicted in charge no.01 which relates to mass killing and they participated in accomplishing the criminal mission, in exercise of their membership in Razakar Bahini and culpably collaborated with the Pakistani occupation army. The 03 accused as have been indicted in charge no.02 and 02 accused as indicted in charge no.03 culpably and actively participated in committing the offences. However, the detail argument on each charge may be well addressed while the charges will be adjudicated independently.

Summing up by the defence

40. Mr. Syed Mijanur Rahman defending the accused Md. Abdul Quddus submitted that this accused did not belong to Razakar Bahini as alleged by the prosecution. The person who prepared the alleged list of Razakars has not been adduced as witness despite citing him as witness and as such defence could not have opportunity of cross-examining him to question the authenticity and reliability of the said list. Now, merely on the basis of this list it cannot be said that this accused belonged to Razakar bahini, in 1971. Oral evidence tendered in this respect does not inspire credence as the reason the witnesses claimed of knowing this accused and his alleged identity is not at all believable, the learned defence counsel added.

41. The learned defence counsel in placing argument on the arraignment brought against this accused submitted that presence of this accused with the group of attackers at the crime site could not be proved as the testimony of P.W.s shall seem to be gravely contradictory to each other. P.W.01 a direct witness to the event of attack did not testify anything implicating this accused. P.W.04 is a hearsay witness. However, detail argument advanced on the event narrated in charge no.01 and this accused's complicity may be well addressed while the same is adjudicated.

42. Mr. Gaji MH Tamim the learned counsel engaged for accused Joynal Abedin and as state defence counsel defending the absconding accused Abul Kalam @ AKM Monsur in advancing argument first questioning the authoritativeness of the list Exhibit-6 submitted that these two accused did not belong to Razakar Bahini. Next, the learned defence counsel argued in relation to arraignments brought in the charges and in advancing argument on it the learned counsel chiefly placed his submission drawing attention to inconsistencies and impracticability of testimony tendered by the prosecution. However, argument placed in this regard may be well addressed while the charges shall be adjudicated independently.

43. Mr. Masud Rana the learned counsel defending the accused Amir Ahmed @ Razakar Amir Ali submitted that this accused was prosecuted under the Collaborators Order, 1972 and discharged. He could have been prosecuted under the said Order of 1972 if really he had any kind of involvement and complicity with any of offences for which now he has been charges with under The Act of 1973. The learned defence counsel further submitted that it was not practicable for the witnesses to identify this accused as they did not know him beforehand. Prosecution could not prove this accused's membership in Razakar Bahini by adducing any authoritative document.

VII. Whether the accused persons belonged to locally formed Razakar Bahini, an auxiliary force created to collaborate with the Pakistani occupation army in 1971 during the war of liberation.

44. Prosecution alleges that the accused persons were engaged in committing the offences under adjudication which happened in 1971 during the war of liberation, in exercise of their membership in Razakar Bahini, an auxiliary force.

45. The learned prosecutor Mr. Zahid Imam submitted that defence does not dispute that the three accused persons excepting the accused Abdul Quddus were prosecuted under The Collaborators Order, 1972 for the criminal acts carried out in 1971 directing the innocent civilians and their property. The papers forming part of the volume of prosecution document [page 188, 203 of the volume] shall effectively demonstrate that the accused Abul Kalam @ AKM Monsur, Amir Ahmed @ Razakar Amir Ali and Md. Joynal Abedin were Razakars and in exercise of their affiliation with said *militia* force they were engaged in carrying out criminal activities in 1971, the learned prosecutor added.

46. Mr. Syed Mijanur Rahman the learned counsel defending the accused Abdul Quddus submitted that this accused had no nexus with Razakar Bahini' that the list of Razakar[Exhibit-6] is not authoritative and that there has been nothing to show that this accused was prosecuted under The Collaborators Order, 1972. All these collectively negate that this accused was a Razakar.

47. Mr. Gaji MH Tamim the learned counsel engaged for accused Joynal Abedin and as state defence counsel defending the absconding accused AKM Monsur vehemently questioned the authoritativeness of the alleged list of Razakars [Exhibit-6]. It has been submitted the list prepared by the local Muktijodha Sangsad is not authoritative; the person who prepared it has not been examined and thus defence could not have opportunity to cross-examining him to refute its credibility. The learned counsel also submitted that the alleged list [Exhibit-6] does not show that these two accused were involved in committing any of crimes alleged

48. Mr. Masud Rana the learned counsel defending the accused Amir Ahmed @ Razakar Amir Ali submitted that this accused did not belong to Razakar Bahini and that it was not practicable to identify this accused allegedly accompanying the group of attackers, as testified by the witnesses. In fact the witnesses were not at all acquainted with this accused beforehand.

49. The International Crimes (Tribunals) Act, 1973 permits to prosecute even an 'individual' or 'group of individuals' for the offences as enumerated in the Act. That is to say, mere failure to prove membership in Razakar Bahini an accused cannot be exonerated if he is found to have had participation and complicity with the commission of the offences alleged even in the capacity of an 'individual'. However now let us see how far the prosecution

has been able to prove the fact of accused persons' affiliation with the locally formed Razakar Bahini.

50. The settled history says that in 1971 Razakar Bahini was created to collaborate with the Pakistani occupation army in carrying out brutal atrocious activities directing the civilian population, to further policy and plan. Naturally, for the reason of activities carried out by such infamous militia force a member of it became well known to the locals for his notorious acts and it may thus be proved even by oral testimony of the witnesses particularly who experienced and observed the acts related to the commission of horrific offences alleged. We consider that there can be no bar to rely solely upon oral testimony in determining a particular fact.

51. It transpires that the four accused excepting the accused Md. Abdul Quddus were prosecuted under The Collaborators Order, 1972 for the criminal acts perpetrated in 1971 during the war of liberation. First, mere non-existence of any case on the events alleged does not straight way create any doubt as to commission of offences for which the accused Md. Abdul Quddus has been indicted now. Besides, now the accused Md. Abdul Quddus is facing trial for the offences specified in the Act of 1973 and not for the offences punishable under the Penal Code. The offences alleged are recognised as 'international crimes' committed in violation of customary international law.

52. Next, mere non-prosecution of accused Md. Abdul Quddus under the Collaborators Order, 1972 cannot by itself readily lead to the conclusion that this accused Md. Abdul Quddus was not a Razakar. We do not agree with the defence submission advanced in this regard.

53. What we find in the case in hand in support of affiliation of accused Md. Abdul Quddus with the locally formed Razakar Bahini? First, a report dated 26/07/2015 of Sudharam Police Station transmitted to the Police Super , Noakhali[Prosecution Documents Volume page-219] demonstrates that accused Md. Abdul Quddus was involved with pro-Pakistan political Party Muslim League since prior to 1971. Second, the list of Razakars prepared by Bangladesh Muktijodha Sangsad, Sadar Thana Command [prosecution Documents Volume pages: 125-133; relevant page 130] shows that name of this accused Md. Abdul Quddus finds place in serial no. 60. We do not find any reason to discard the information contained in these two documents. Defence does not dispute that accused Md. Abdul Quddus was involved with the politics of Muslim League. Thus, it rather lends assurance to the truthfulness of information about his membership in Razakar Bahini as stated in the list **[Exhibit-6]**.

54. Now, let us eye on the papers relating to prosecution of three other accused under The Collaborators Order, 1972. The documents

forming part of the prosecution documents volume [page 188,203 of the volume] speaks a lot. It appears that accused Amir Ahmed @ Razakar Amir Ali, Md. Joynal Abedin and Abul Kalam @ AKM Monsur were prosecuted under The Collaborators Order, 1972. Defence does not dispute it.

55. It has been argued on part of the defence that already they have been prosecuted under the said Order of 1972 and were acquitted. They could have been prosecuted even for the accusation as have been brought now if really they were involved in committing such offences.

56. The letter dated 4.6.2015 [page 188 of the Prosecution documents Volume] states information about the of cases against accused Amir Ahmed @ Razakar Amir Ali and accused Abul Kalam @ AKM Monsur and this admitted paper shows that accused Amir Ahmed @ Razakar Amir Ali was ‘discharged’ and accused Abul Kalam @ AKM Monsur was convicted and sentenced to suffer imprisonment for 05[five] years.

57. Additionally, the list of Ministry of Home Affairs dated 05.04.2010 [page 159, Prosecution Documents Volume] demonstrates that name of the accused Amir Ahmed @ Razakar Amir Ali finds place in serial no.38 of the list. We do not find any reason to keep this document aside from consideration. It together

with the admitted fact of prosecuting him under The Collaborators Order, 1972 amply suggests his membership in Razakar Bahini.

58. The above admitted paper does not show that accused Amir Ahmed @ Razakar Amir Ali was 'acquitted' after full trial. It is not clear too that for the 'same criminal acts' he was so prosecuted. Thus, prosecution under The Collaborators Order, 1972 does not provide any benefit to the accused and does not create bar to prosecute under the Act of 1973. Defence does not claim that accused Abul Kalam @ AKM Monsur is now being prosecuted under The Act of 1973 for the 'same offence' for which he was so convicted and sentenced under The Order of 1972.

59. Besides, the words 'Same offence' and 'same criminal act' always may not carry same notion of offence. In the case in hand, it appears that the criminal acts for which the accused was prosecuted were the scheduled offence of the Collaborators Order, 1972. The offences punishable under the Penal Code were the scheduled offences of the said Order. Despite prosecuting under the said Act the accused was not ultimately tried and found guilty of those offences. On this score as well plea of bar in prosecuting for the 'same offence' goes on air, even if it is taken.

60. Accused Md. Joynal Abedin was prosecuted under The Collaborators Order, 1972. It is admitted. Besides the relevant

document in this regard [**page 203 of the Prosecution Documents Volume**] also speaks it. But it does not make it clear that this accused got acquittal after full trial and he was so prosecuted for the ‘same criminal acts’ for which now he is being prosecuted under The Act of 1973.

61. The above admitted papers stating information about prosecution of the three accused under The Collaborators Order, 1972 do not provide any hint as to their non-involvement with the offences for which they have been prosecuted now under The Act of 1973.

62. Therefore, in absence of anything contrary it is unerringly concluded that the accused Amir Ahmed @ Razakar Amir Ali and Md. Joyal Abedin were merely prosecuted under a different legislation which was destined to try the offences punishable under the Penal Code as scheduled in the said legislation and now they have been prosecuted not for the ‘same offence’.

63. This being the position, we are in unmistakable disposition that these two accused cannot have the shield of the principle of double jeopardy as enshrined in Article 35(2) of the Constitution. Additionally, it would be incorrect to interpret that double jeopardy does occur even if a person is said to have been prosecuted further for the ‘same offence’ if it is found that he was merely prosecuted and in the end not tried and punished.

64. The above admitted documents rather have proved that these three accused were members of locally formed Razakar Bahini and accused Abul Kalam @ AKM Monsur was its potential member, in addition to their complicity in committing criminal acts in 1971, during the war of liberation.

65. The list of Razakars [**Exhibit-6 : page 116-133 of the Prosecution Documents Volume-4**] also shows that accused Abul Kalam @ AKM Monsur, Amir Ahmed @ Razakar Amir Ali and Md. Joynal Abedin were Razakars. Its authoritativeness gets assurance from the documents relating to prosecution under The Collaborators Order, 1972. Thus non examination of the person who signed on it does not diminish the probative value and authenticity of the list. We do not agree with the defence submission that the defence has been prejudiced for non-examination of the Upazila Commander Md. Kamal Uddin, Noakhali Muktiyodha Sangsad who prepared and signed the list.

66. It transpires from some reports published in two daily newspapers [**Exhibit-3 Series: page 99-112 of the Prosecution Documents Volume-04**] that accused Abul Kalam @ AKM Monsur was a notorious Razakar who in exercise of his significant dominance over this Bahini was engaged in carrying out recurrent criminal activities directing civilian population in 1971, during the

war of liberation. Some of reports got published long before initiation of investigation of the instant case under the Act of 1973.

67. These reports together with the information contained in other documents as already discussed prove active affiliation of the accused Abul Kalam @ AKM Monsur, Amir Ahmed @ Razakar Amir Ali and Md. Joynal Abedin with the locally formed Razakar Bahini.

68. Oral testimony of the prosecution witnesses too lends assurance to the finding that all the four accused persons belonged to locally formed Razakar Bahini as rendered above, on cumulative appraisal of documents and related papers.

69. Razakars became known around their locality for their notoriety. In 1971 during the war of liberation, the Razakars had to maintain close nexus and affiliation with the Pakistani occupation army stationed in their locality, in exercise of their membership in Razakar Bahini, it may safely be presumed.

70. On totality of evidence tendered in respect of affiliation of the accused persons with the locally formed Razakar Bahini it reveals patently that the accused were seen moving very often around the locality and bazaar as testified by the witnesses examined and as such the witnesses had fair occasion of knowing them beforehand.

This rational reason of knowing the accused persons beforehand remained uncontroverted.

71. Nexus and affiliation with Razakar Bahini which was created to collaborate with the Pakistani occupation army became anecdote, especially for its notoriety around the locality of witnesses examined. This logical proposition together with the oral evidence suggests the conclusion that all the four accused were associated with the locally formed Razakar Bahini

72. We have found it revealed that all the accused were the residents of villages nearer to many of witnesses. Thus, the P.W.s knew them beforehand and thus they were quite capable of recognizing the accused persons accompanying the group in launching alleged attacks as narrated in the charges. The admitted documents forming part of Prosecution Documents Volume together with oral testimony have thus made it unerringly proved that four accused persons Abul Kalam @ AKM Monsur, Amir Ahmed @ Razakar Amir Ali, Md. Joynal Abedin and Md. Abdul Quddus were the members of locally formed Razakar Bahini.

VIII. General Considerations Regarding the Evaluation of Evidence in a case involving the offences of Crimes against Humanity, genocide

73. The accused persons who were the members of 'auxiliary force' as defined in section 2(a) of the Act of 1973 have been charged for the offences enumerated in section 3(2) of the Ac of 1973. The

offences for which they have been indicted were ‘system crimes’ committed in violation of international humanitarian law in the territory of Bangladesh in 1971.

74. The present case so far as it relates to the alleged facts of criminal acts constituting the alleged offences is predominantly founded on oral evidence presented by the prosecution. Mostly the victims and witnesses who allegedly experienced the facts materially related to the principal events came on dock to testify.

75. The alleged offences were committed in context of war of liberation in 1971. Section 23 of the Act of 1973 provides that provisions of the Criminal Procedure Code, 1898(V of 1898), and the Evidence Act, 1872(I of 1872), shall not apply in any proceedings under the Act of 1973. Section 19(1) of the Act provides that the Tribunal shall not be bound by technical rule of evidence and it shall adopt and apply to the greatest possible extent non technical procedure and may admit any evidence which it deems to have probative value.

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

77. The Tribunal notes that context of committing such crimes and totality of its horrific contour prevailing in war time situation naturally leaves little room for the people to witness the criminal acts forming part of attack. Besides, due to lapse of long passage of time it may not always be reasonable to expect the witness to recall every detail with precision.

78. In the case in hand, prosecution depends mostly on testimony made before the Tribunal by the witnesses of whom some are victims and direct witnesses. It is to be noted that the testimony of even a single witness on a material fact does not, as a matter of law, require corroboration. The established jurisprudence makes it clear that corroboration is not a legal requirement for a finding to be rendered.

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

80. The evolved international criminal jurisprudence forces us to keep it in mind too that an insignificant discrepancy does not tarnish witness's testimony in its entirety. Any such discrepancy needs to be contrasted with surrounding circumstances and testimony of other witnesses.

81. Inconsistency itself should not be the sole consideration to exclude the entire evidence, particularly on material fact, cannot be excluded. 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**].

82. Appraisal 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.

83. We consider it jurisprudentially appropriate and logical if, in the process of appraisal of evidence, we separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon.

84. In dealing with the offence of crimes against humanity which is known as ‘group crime’ it would be immaterial to argue that the accused was not the actual perpetrator or he himself physically participated to the commission of the criminal acts. It is to be determined how the accused's act or conduct or prohibited act formed part of systematic attack directed against the civilian population that resulted in perpetration of crimes as enumerated in section 3(2) of the Act of 1973 were committed. Prosecution even

is not required to identify the actual perpetrator. This has been now a settled proposition.

85. It is now also settled too that even hearsay evidence is admissible in determining the material facts related to the principal event of crimes. However, mere admission of hearsay evidence does not render it carrying probative value. Such hearsay evidence is to be weighed in context of its credibility, relevance and circumstances.

IX. Adjudication of Charges

Adjudication of Charge No. 01

[Offences of extermination, confinement, torture and other inhumane acts committed at villages Sreepur and Sonapur under Police Station Sudharam, District Noakhali]

86. Charge: That on 15 June, 1971 at about 02.00 P.M. a group of 20/25 armed Razakars including Razakars accused (1) Md. Amir Ahmed alias Razakar Amir Ali (2) Abul Kalam alias A.K.M. Monsur [absconded] (3) Md. Joynal Abedin, (4) Md. Abdul Quddus and accused Md. Yusuf [died during trial] accompanied by 70/75 Pakistani occupation army men being divided into 03[three] groups simultaneously launched attack on villages Sreepur and Sonapur under Police Station Sudharam, District Noakhali and having captured more than one hundred unarmed civilians from those villages, of them 41 [forty one] people as named in the formal charge submitted by the prosecution were inhabitants of those villages and the other people were unknown, tortured them

inhumanely and thereafter shot them all to death, and the accused persons and their accomplices also having plundered the houses of those villages set them on fire.

Thereby, the accused **(1) Md. Amir Ahmed alias Razakar Amir Ali (2) Abul Kalam alias A.K.M. Monsur [absconded] (3) Md. Joynal Abedin, and (4) Md. Abdul Quddus** have been charged for participating, abetting, facilitating, contributing and complicity in committing large scale killing of unarmed civilians constituting the offence of extermination, confinement, torture and other inhumane acts [plundering and arson] as crimes against humanity as part of systematic attack directing against unarmed civilians as specified 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

87. Prosecution adduced and examined in all five witnesses to substantiate this charge and the witnesses have been examined as P.W.01, P.W.02, P.W.03, P.W.04 and P.W.05. Now let us first see what the prosecution witnesses examined have testified.

88. P.W.01 Md. Samsuddin [64] is a resident of village-Sreepur under Police Station-Sudharam of District-Noakhali. He is a direct witness to the facts materially related to the event alleged. In 1971 he [P.W.01] was a first year student of Intermediate class in

Chowmuhini College. He started organizing training to join the freedom-fight at the local Ahmedia Adarsha High School.

89. P.W.01 stated that local leaders of Muslim League, Jamat-E-Islami and other pro-Pakistan political parties formed peace committee and then Razakar Bahini was formed of 40/50 Razakars including the accused Md. Amir Ahmed @ Amir Ali, Abul Kalam @ AKM Monsur, Ali, Md. Yusuf [died during trial], Md. Joynal Abedin and Md. Abdul Quddus in Noakhali Sadar Thana, on instruction of the local peace committee leaders. A Razakar camp was established at Noakhali Maizdi railway station under the guidance of those accused persons and accused Md. Amir Ahmed @ Amir Ali was is commander.

90. In respect of the event alleged P.W.01 stated that on 15 June, 1971 he had been at their own house. At about 02:00/02:30 P.M he came to the field of Ahmedia Adarsha High School when he saw 50/60 Razakars and 20/25 Pakistani occupation army moving by 12/14 vehicles through the main road towards Noakhali. Pakistani occupation army got stationed in Noakhali on 22 April.1971 and formed their camp at the Technical School and College at Chowmuhini, P.W.01 added.

91. P.W.01 next stated that remaining in hiding inside a bush he [P.W.01] saw the troops and Razakars heading towards their village Sreepur, being divided in three groups. A group of Razakars

accompanied by the accused Md. Joynal Abedin and Yusuf [died during trial] and 7/8 army men entering at the field of Ahmedia School when the army men gunned down Tota Mia and Yasin, two motor mechanics to death as identified by the accused Md. Joynal Abedin and Yusuf [died during trial]. He [P.W.01] could see it from a distance of 20/25 feet, remaining in hiding inside the bush. The group then moved towards the village on foot.

92. P.W.01 continues testifying that the second group of 4/5 Razakars and 8/10 army men being guided by accused Amir Ahmed @ Amir Ali and accused Abdul Kalam @ Monsur by launching attack at the house of Sufi Abdur Rashid and Abdul Malek of the same house of village Sreepur shot Abdur Razzak the father of Abdur Rashid to death as identified by those two accused. The army men also gunned down Ali Karim, Ali Hossain and Ali Haider the three sons of Syed Munshi to death as identified by Razakars. He [P.W.01] could observe the events remaining in hiding inside the bush.

93. P.W.01 next stated that in conjunction with the attack the third group formed of 5/6 Razakars and 7/8 army men being accompanied by Razakar commander Humayun by launching attack at the house of Abdul Kader at village Sonapur gunned down Abdul Kader and his brother to death as identified by Razakars and then the Razakars and army men also shot 3/4 neighbouring

civilians including Khayer and Humayun to death. He [P.W.01] saw this event remaining inside the bush. The group then headed towards east and killed civilians they found and burnt down houses.

94. P.W.01 also stated that on the same day before the dusk the Pakistani occupation army and Razakars had left the sites at villages Sreepur and Sonapur by their vehicles and then he [P.W.01] came out of the bush. He and the villagers then found 40 dead bodies of civilians lying scattered at places. The dead bodies were brought to their houses by their relatives and on the following day they buried those bodies. The Pakistani army and Razakars killed more than hundred civilians, by launching attack on 15 June, 1971. A commemorative plaque has been established in front of Ahmedia School gate to memorize 40 martyrs.

95. In respect of reason of knowing the accused P.W.01 stated that the accused persons were the residents of his neighbouring village and they used to move around local bazaars and as such he knew them beforehand.

96. In cross-examination by accused Md. Amir Ahmed @ Amir Ali it has been affirmed that P.W.01 was a freedom fighter and he received training in India. P.W.01 in reply to defence question stated that accused Amir Ahmed's native village Ujjalpur was about one and half kilometer far from their [P.W.01] house and accused

Amir Ahmed is a resident of Noakhali Municipality; that there had been houses to 200/250 feet north of the Ahmedia School field; that their [P.W.01] house was about 200 feet far from the school-field and that they did not lodge any case against accused Amir Ahmed, prior to this case, over the killing of his relatives.

97. Defence suggested the P.W.01 that he had not been at his village on the date of alleged event; that he did not see any event he narrated; that Amir Ahmed was not involved with the event of alleged attack and that he testified implicating this accused out of rivalry and being tutored. P.W.01 denied all these suggestions blatantly.

98. In cross-examination done on part of accused Md. Abdul Quddus, P.W.01 stated in reply to question put to him that the bush where he remained in hiding at the time of launching attack was at the western side of the Ahmedia School; that in 1971 accused Abdul Quddus had a shop near the Noakhali circuit house. P.W.01 denied the suggestions put to him that what he testified was tutored and impracticable and that being influenced by the group of rivals in Dhaka New Market shops owners association he testified falsely implicating this accused.

99. In cross-examination by the accused Md. Joynal Abedin and Abul Kalam @ AKM Monsur P.W.01 denied the suggestions put to him that these accused did not belong to Razakar Bahini; that he

did not know them and that being influenced by the political counterpart of these two accused he[P.W.01] testified falsely implicating these accused. P.W.01 denied all these suggestions.

100. It however appears that the event of the attack followed by indiscriminate killing of unarmed civilians remained uncontroverted. Defence simply denied their involvement and complicity with the event which ended in brutal killing of civilians.

101. P.W.02 Md. Zahid Hossain Minto [60] is a resident of crime village Sreepur under Police Station Sudharam of District Noakhali. He is a relative of some of victims. In 1971 he was a student of class X of Ahmedia High School. His family sided with the war of liberation. He claims that he witnessed the attack launched at their house when his brothers and relatives were shot to death,

102. In respect of the event of attack P.W.02 stated that on 15 June, 1971 at about 02:00/02:30 P.M a group Pakistani army being accompanied by local Razakars accused Md. Amir Ahmed @ Razakar Amir Ali, Abul Kalam @ AKM Monsur, Md. Yusuf [died during trial], Md. Joynal Abedin and other Razakars arriving on the main road near Ahmedia High School got divided into three groups and then launched attack at their village Sreepur, Sonapur and neighbouring localities. At about 02:30 P.M a group formed of 10/12 army men and the five accused Razakars attacked their house and the five accused dragging his two brothers Ali Hossain, Ali

Haider and brother's friend Moinuddin out from the rest room and then the army men gunned them down to death. His [P.W.02] mother attempted to save the victims when he [P.W.02] remained stood with his mother and saw the event.

103. P.W.02 also stated that at a stage, his [P.W.02] father came out of the room when his cousin brother Wadud and sister's husband Abdul Awal came there to save his [P.W.02] father. But at a stage of altercation, the army men fired gunshot to them. Then the army men and Razakars destructed their house and looted valuables.

104. P.W.02 went on to state that the Pakistani occupation army and Razakars shot to death his[P.W.02] brother Ali Karim and Yasin to death at the field of Ahmedia School when a group was engaged in carrying out the attack at their house. Later on they found their dead bodies lying there. After the group of attackers had left their house they arranged treatment of Wadud and sister's husband Abdul Awal bringing them in hospital and they got survived. In conjunction with the attack the Pakistani occupation army and Razakars killed more than hundreds of civilians of their village including his [P.W.02] brother's son Kashem. On the following day, they buried the dead bodies of their relatives. A memorial has been built up in front of the gate of Ahmedia High School, to preserve their sacrifice and the names of their family martyrs find place on it.

105. Finally, P.W.02 stated that he knew the accused persons beforehand as they were residents of nearer localities and he [P.W.02] had occasions of seeing them at local bazaars.

106. In cross-examination by accused Md. Abdul Quddus P.W.02 stated that victims Ali Hossain, Ali Karim and Ali Haider were his step brothers; that their house was about 35/40 feet far from Ahmedia High School; that the house of his cousin brother Wadud was about 100/150 yards far from that of their own. P.W.02 also stated in reply to defence question that the Pakistani occupation army had left the crime locality three hours after they launched attack; that he knew accused Quddus since 07 years prior to the event as he saw him hat-bazars and he was about 40/45 years old in 1971, but he [P.W.02] could not say what was his [accused Quddus] profession.

107. P.W.02 denied the defence suggestion that accused Md. Abdul Quddus was not a Razakar; that he did not see this accused with the group while it launched the attack and that what he testified implicating this accused was untrue and tutored.

108. In cross-examination done on part of accused Md. Joynal Abedin and Abul Kalam @ AKM Monsur P.W.02 expressed ignorance as to which villages these two accused belonged. P.W.02

also could not say as to where these accused used to live after the independence.

109. The event followed by brutal killing as has been narrated in examination-in chief remained even undenied in cross-examination. Defence simply suggested that he[P.W.02] testified implicating these two accused out of local rivalry and being influenced by their political counterpart. P.W.02 denied it straightway.

110. In cross-examination by accused Amir Ahmed @ Amir Ali P.W.02 stated in reply to defence question that Pakistani occupation army came to their locality for once. P.W.02 stated that he could not say in 1971 in which village accused Amir Ahmed used to reside and he did not know any of his family members.

111. The event of attack followed by indiscriminate killing of civilians as testified by P.W.02 remained totally undenied. Defence simply suggested that he [P.W.02] did not know this accused; that this accused was not a Razakar and had no involvement with the event he narrated and what he testified was untrue.

112. P.W.03 Md. Abdul Khaleque [61] is from village-Sonapur under Police Station- Sudharam of District- Noakhali. He is the younger brother of Abdur Rab Bachchu, one of victims and experienced the event happened. In 1971 he was a student of Intermediate first year of Noakhali Government College.

113. P.W.03 stated that after the war of liberation ensued, at the end of March accused Amir Ali, Abul Kalam @ AKM Mosur, Md. Yusuf[now dead], Md. Joynal Abedin , Md. Abdul Quddus and others formed peace committee and Razakar Bahini in their locality and formed camps at Maizdi railway station and PTI.

114. In respect of the event of attack that resulted horrific killing of civilians and destruction of properties P.W.03 stated that their house was adjacent to east of the rail line. On 15 June, 1971 at about 02:00/02:30 P.M he had been near the rail line adjacent to their house when he saw 70/80 Pakistani occupation army and the accused persons arriving on the Sonapur main road by two buses and 8/10 covered army vans. Getting down from the vehicles they first fired a blank gunshot and then being divided into two groups they launched attack at Sonapur and Sreepur villages. A group of army and Razakars accompanied by accused Joynal Abedin and Yusuf [now dead] gunned down Yasin and Ali Karim @ Tota at the place east to Ahmedia school field. Being panicked on seeing it he [P.W.03] came back home and disclosed the event to his elder brother Abdur Rab Bachchu.

115. P.W.03 further stated that after a short while he saw Pakistani occupation army being accompanied by accused Amir Ahmed @ Amir Ali, Abul Kalam @ AKM Monsur, and Md. Abdul Quddus coming towards their house and with this he [P.W.03] and his

brother Abdur Rab Bachchu attempted to flee by running towards east of their house when the army men and Razakars started indiscriminate gun firing that resulted in death of his[P.W.03] brother and he[P.W.03] saved his life by jumping into a ditch. Later on, coming out of the ditch he went into hiding inside a paddy field wherefrom he could hear indiscriminate gun firing, hue and cry and also could see flames of fire. About one to one and half hour later, he came out of the paddy field when the Pakistani occupation army and Razakars had left the sites and found his[P.W.03] brother Abdur Rab Bachchu's dead body lying in the courtyard of their house. He also saw dead bodies of 10/15 civilians including Abdul Kader, Abdul Aziz, Humayun Kabir, Abul Khayer, Abu Taher, Abul Kashem, Mijanur Rahman. Sakhayet Ullah, Serajul Haque, Nur Ahammad of their village lying at different places.

116. P.W.03 also stated that on that day by launching attack the Pakistani occupation army and Razakars killed more than hundreds of civilians and burnt down houses. They being panicked took shelter at village-Aswadia leaving the dead bodies of his brother, Abdul Kader and Abdul Aziz guarded under an elderly man in front of their house. On the following day they buried the dead bodies. A memorial has been built in front of Ahmedia School and beside the Maizdi Shaheed Minar to honour the martyrs who laid lives in the event he narrated.

117. In respect of reason of knowing the accused P.W.03 stated that the accused used to come to their shop in connection with business and he had occasion of meeting them as the residents of their locality and thus he knew them beforehand.

118. In cross-examination on part of accused Md. Joynal Abedin and Abul Kalam @ AKM Monsur [absconded] P.W.03 stated that the Pakistani occupation army and Razakars had left the village Sonapur at about 03:30/04:00 P.M; that after independence he did not see these two accused and that he could not say what was the profession of these two accused in 1971. P.W.01 denied the defence suggestion that he did not know the accused persons and these accused were not the members either of peace committee or Razakar Bahini. Defence however did not make attempt to refute the event constituting the offence as testified by P.W.03.

119. In cross-examination by accused Md. Abdul Quddus P.W.03 stated that at the relevant time he was standing on the rail line, about 20/25 yards far from the place the army men got position; that in 1971 their house and the house of Abdul Kader and Abdul Aziz were adjacent to the rail line. P.W.03 stated in reply to defence question that he knew accused Abdul Quddus beforehand as he [the accused] along with his friend Nazir Ahmed very often used to come to their restaurant nearby Noakhali rail station. P.W.03 expressed ignorance about the father's name of this

accused. P.W.03 denied the defence suggestion that he did not see the event he testified and that this accused was not a Razakar or member of peace committee and what he testified implicating this accused was untrue and tutored. Defence does not appear to have even denied the event of attack as narrated by P.W.03.

120. In cross-examination by accused Md. Amir Ahmed @ Amir Ali P.W.03 stated in reply to defence question that accused Amir Ahmed's house was about three miles far from that of their [P.W.03] own; that this accused's father's name was Mozaffar Ahmed. P.W.03 denied the defence suggestion that accused Amir Ahmed was not involved with the event he testified; that he did not know this accused beforehand and that he was not a Razakar or members of peace committee. Defence however does not seem to have even denied the event of attack that resulted killing of unarmed civilians as testified by the P.W.03.

121. P.W.04 Md. Abul Kalam [65] is a resident of village-Sonapur under Police Station- Sudharam of District Noakhali. He is a direct witness to the act of attack at their house that resulted in killing of his relatives. The rest of his testimony relating to criminal activities carried out at their village and neighbouring villages that resulted in killing of numerous civilians by the army men and the accused Razakars is hearsay.

122. P.W.04 testified that on 15 June, 1971 had been at their house when one of their neighbour, an elderly woman coming to their house told them to quit the house as Pakistani occupation army and Razakars had arrived at their village. With this he[P.W.04] looking outside found a group of 20/30 Pakistani army men and Razakars encircling their house. Then Razakars and Pakistani army men dragged out his [P.W.04] cousin brother Chowdhury Mia and Bachchu Mia, his uncle Abul Khayer, Humayun and Saber Mia from different rooms and detaining them in courtyard shot them to death there. He[P.W.04] then attempted to escape by running towards east when they fired gun-shot directing him that resulted injury on his left arm and left chest[at this stage of P.W.04 demonstrated the mark of injury he sustained]. He [P.W.04] then went into hiding inside a nearer bush and got fainted. He had to undergo treatment in hospital for 20/22 days.

123. P.W.04 further stated that later on he heard from neighbour Khalek Mia, freedom-fighters Kamal Mia, Atique Mia and the locals that accused Md. Amir Ahmed, Monsur, Yusuf, Joynal, Quddus and other Razakars and army men , on the day of the event he[P.W.04] narrated looted households, burnt down houses and carried out killings. On 15 June, 1971 Pakistani occupation army and Razakars by launching attack at their village and neighbouring villages killed more than hundreds of civilians and a

commemorative plaque has been built to memorize the martyrs in front of Ahmedia School.

124. P.W.04 saw the attack at their house that resulted in killing of his family inmates. He somehow survived despite receiving bullet hit injury. P.W.04 does not testify that the accused were with the group of attackers.

125. But P.W.04 later on heard that the accused were with the army men in attacking their[P.W.04] house and also in carrying out killings and prohibited acts around their village and neighbouring villages. This part of hearsay evidence carries probative value and inspires credence as it gets corroboration from the evidence of other P.W.s.

126. In cross-examination by the accused persons P.W.04 stated in reply to defence question that their house was about 20/22 yards far from Ahmedia School; that the army men and Razakars attacked their house just about 20 minutes after their neighbour an elderly woman informed about the arrival of attackers at their village; that the army men and Razakars kept them detained in courtyard for about 6/7 minutes ; that the locals knew that he[P.W.04] was associated with Awami League and Sangram Committee and received training at Ahmedia school.

127. P.W.04 denied the suggestions put to him on part of all the accused persons that the accused were not Razakars; that they were not involved with the event testified and that what he heard about complicity of accused persons was untrue and tutored.

128. It appears that no effort has been made, by cross-examining P.W.04, on part of any of accused person to refute the event of attack and facts materially related to it that resulted in killing of numerous civilians of crime villages, on the date and time testified.

129. P.W.05 Md. Abu Taher Babu [58] a resident of village Sonapur under Police Station- Sudharam of District Noakhali is a direct witness to material facts including the attack launched at their house that resulted in killing of his relatives. In 1971 P.W.05 was 13/14 years old and a student of class VI.

130. P.W.05 stated that on 15 June, 1971 in afternoon when he had been playing in the field of Ahmedia school he saw 40/45 Pakistani occupation army and 15/20 Razakars including accused Amir Ahmed, Monsur, Yusuf[now dead], Joynal and Quddus getting down from some covered vans of army arrived on the main road. On seeing it he ran away to house and then heard one gun firing. He [P.W.05] then told his uncle Serajul Haque Kalam to run away as the army and Razakars were heading towards their locality. Few minutes later, he [P.W.05] saw Razakars including the Razakars he named and army men coming to their[P.W.05] house and thus

he[P.W.05] went into hiding inside a bush nearer to their house. At that time the others excepting his [P.W.95] uncle also ran away from house.

131. P.W.05 next stated that remaining inside the bush he[P.W.05] could see those Razakars including the accused persons and Pakistani army men gunning his[P.W.05] uncle Serajul Haque down to death at the courtyard of their house. Before the group of attackers had left the site it looted households and set their house on fire. Then they returned back home and found his[P.W.05] uncle's dead body lying in the courtyard and on the following day the dead body was buried.

Finding with Reasoning on Evaluation of Evidence

132. Mr. Zahid Imam the learned prosecutor submitted that in all 05 witnesses [P.W.01, P.W.02, P.W.03, P.W.04 and P.W.05] have been examined to substantiate the arraignment brought in this charge. This charge involves the offence of 'extermination' which was carried out by the group formed of Pakistani occupation army, the four accused persons and their accomplice Razakars, the learned prosecutor submitted. The event of the attack that resulted in killing hundreds of civilians including 40 residents of villages Sonapur ad Sreepur remained undisputed and the P.W.s consistently testified that the accused persons being part of the joint criminal enterprise [JCE] accompanied the group at the crime site knowingly and consciously and they substantially facilitated the

execution of the criminal mission directing the pro-liberation civilians, the learned prosecutor added.

133. Mr. Syed Mujanur Rahman the learned counsel being assisted by Mr. Tareque the learned counsel defending the accused Md. Abdul Quddus submitted that if really this accused had any complicity in perpetrating any offence alleged he could have been prosecuted under The Collaborators Order, 1972. Rather, the document collected during investigation [page 197 of the Prosecution Documents Volume] demonstrates that no case was initiated against this accused for any of criminal acts committed in 1971 during the war of liberation. It creates reasonable doubt as to his alleged involvement and complicity with the commission of alleged offence as narrated in charge no.01. The learned defence counsel further alleges that the evidence tendered fails to connect the accused Md. Abdul Quddus to the crimes committed as narrated in charge no.01, because this accused played no part in the alleged invasion.

134. Mr. Gaji MH Tamim the learned counsel engaged for accused Joydal Abedin and as state defence counsel defending the absconding accused Abul Kalam @ AKM Monsur submitted that the witnesses examined by the prosecution intending to substantiate this charge did not know the accused persons; that they had no reason of knowing these accused beforehand; that it was not

practicable of seeing the event of attack as they testified; that the witnesses made exaggerated version , being tutored implicating these accused which creates reasonable doubt as to involvement of the accused persons in accomplishing the alleged crimes

135. Mr. Masud Rana the learned counsel defending the accused Amir Ahmed @ Razakar Amir Ali submitted that the witnesses examined by the prosecution testified what they saw and experienced when the alleged attack was launched. But long 45 years after the alleged event happened it is not possible to recall what they witnessed. The human memory does not permit it. It has been further submitted that there was no reason of knowing or recognizing this accused as has been testified; that this accused was not with the group of attackers ; that the witnesses were interested and they testified being tutored implicating this accused with the alleges offence.

136. At the outset we express our view that mere non-existence of any case on the events alleged under the Collaborators Order, 1972 does not readily create any doubt as to commission of offences for which the accused persons have been indicted now for the offences specified in the Act of 1973. The offences alleged are recognised as ‘international crimes’ committed in violation of customary international law and the laws of war. These were not punishable under the ordinary Penal Code. Tribunal further notes that delay in

bringing prosecution against the accused persons under the Act of 1973 is no bar.

137. However, this charge involves killing of one hundred unarmed civilians including 41 residents of villages Sreepur and Sonapur under Police Station- Sudharam of District- Noakhali constituting the offence of ‘extermination’. A gang formed of Pakistani occupation army and Razakars accompanied by the accused persons allegedly carried out the barbaric and deliberate attack which happened in day time, as averred by the prosecution.

138. It transpires that all the four accused persons have been indicted for the criminal acts constituting the offence of participating, abetting and substantially contributing to the commission of the offence of ‘extermination’ as crimes against humanity. Prosecution requires proving that—

(i) A group of Pakistani occupation army and Razakars launched systematic attack at villages Sonapur, Sreepur and neighbouring localities under Police Station-Sudharam of District-Noakhali on 15 June, 1971;

(ii) The accused persons were consciously with the group sharing common intent and purpose;

(iii) Targets of the attack were the pro-liberation unarmed civilians;

(iv) The attack continued for hours together;

(v) The attack eventually resulted in large scale killings of non-combatant civilians;

(vi) The accused persons substantially contributed and facilitated in accomplishing the criminal mission of indiscriminate killing of civilians.

139. In all 05 witnesses have been examined to substantiate the arraignment brought in this charge. The witnesses narrated what they observed and experienced-- happened in conjunction with the attack.

140. We reiterate that 'system crime' or 'group crime' committed in war time situation in fact is the upshot of series of acts and activities and an accused may not have participation to all phases of the event. Next, pattern of attack suggests the rational inference that no individual had opportunity of witnessing all the phases of the attack as the mayhem happened in war time situation and it was extremely horrific in nature. The witnesses examined in support of this charge testified what they experienced, remaining in hiding.

141. An individual might have had opportunity to see or know or experience a particular phase or act or conduct of the accused forming part of systematic attack that eventually resulted in the event which was significantly related to the commission of principal crimes. However, on integrated evaluation of evidence tendered by these 05 witnesses we have to arrive at decision.

142. At the same time we need to go on with the task of evaluation of evidence keeping it in mind that **“proof does not mean rigid mathematical formulae since “that is impossible”**. However, proof must mean such evidence as would induce a reasonable man to come to a definite conclusion.

143. It remained undisputed that the gang of attackers chiefly formed of Pakistani occupation army. It stands proved too that the Pakistani occupation army got stationed in Noakhali on 22 April.1971 and formed their camps at the Technical School and College at Chowmuhini. Be that as it may, it would not have been possible for the gang of army men to move towards the crime villages without the active and substantial assistance of their local collaborators, especially belonging to Razakar Bahini, an auxiliary force.

144. It has been found that P.W.01 Md. Samsuddin, a resident of village-Sreepur saw 50/60 Razakars and 20/25 Pakistani occupation army moving by 12/14 vehicles through the main road stated that on 15 June, 1971 at about 02:00/02:30 P.M when he had been in field of Ahmedia Adarsha High School and then P.W.01 went into hiding inside a bush wherefrom he further saw the troops and Razakars heading towards their village Sreepur, being divided in three groups.

145. P.W.01 also saw a group of Razakars accompanied by the accused Md. Joynal Abedin and Yusuf [died during trial] and 7/8 army men entering in the field of Ahmedia School when the army men gunned down Tota Mia and Yasin, two motor mechanics to death as identified by the accused Md. Joynal Abedin and Yusuf [died during trial]. He [P.W.01] could see it from a distance of 20/25 feet, remaining in hiding inside the bush. The group then moved towards the village on foot. Defence simply denied it in cross-examination. But it however could not impeach this crucial part of testimony of P.W.01 in any manner.

146. Thus, the above piece of version made by P.W.01, a direct witness to a significant fact related to the attack proves it that Razakars including accused Md. Joynal Abedin actively and culpably accompanied the troops, in accomplishing the initial phase of the attack. It stands proved too that two civilians Tota Mia and Yasin were shot to death at the initiation of the attack as identified by the accused Md. Joynal Abedin. Such conscious culpable act of this accused lawfully points to his culpable part even in all phases of the attack.

147. Arrival of the gang being accompanied by accused Md. Amir Ahmed @ Razakar Amir Ali, Abul Kalam @ Monsur, Md. Yusuf [died during trial], Md. Joynal Abedin and other Razakars on the main road near Ahmedia High School and gunning down Ali Karim the brother of P.W.02 and Yasin to death at the field of Ahmedia

School, as testified by the P.W.01 has been corroborated by P.W.02 Md. Zahid Hossain Minto, a resident of crime village Sreepur.

148. P.W.01 also saw a group accompanied by accused Amir Ahmed @ Razakar Amir Ali and accused Abdul Kalam @ Monsur also launching attack at the house of Sufi Abdur Rashid of village Sreepur when they shot Abdur Razzak the father of Abdur Rashid to death as identified by those two accused. The army men also gunned down Ali Karim, Ali Hossain and Ali Haider the three sons of Syed Munshi to death as identified by Razakars, P.W.01 testified.

149. The act of killings is found to have been corroborated by P.W.02 who testified that his two brothers Ali Hossain, Ali Haider and brother's friend Moinuddin were also shot to death by army men and Razakars.

150. It is also found from evidence of P.W.01 that another group of Razakars and army men attacking the house of Abdul Kader at village Sonapur gunned down Abdul Kader and his brother and 3/4 neighbouring civilians including Khayer and Humayun to death as identified by Razakars.

151. The above version remained unshaken in cross-examination. There has been no reason of disbelieving P.W.01. It thus has been unveiled patently from unshaken version of P.W.01 that accused

Md. Joynal Abedin, Amir Ahmed @ Razakar Amir Ali and accused Abdul Kalam @ Monsur were consciously with the gang when it carried out atrocious activities directing civilians. Defence could not refute it.

152. P.W.03 Md. Abdul Khaleque resident of village -Sonapur corroborating P.W.01 and P.W.02 testified that accused Joynal Abedin and Yusuf[now dead] gunned down Yasin and Ali Karim @ Tota to death at the place east to Ahmedia School field.

153. It has also been divulged from unshaken testimony of P.W.03 that he saw, in conjunction with the attack, the Pakistani occupation army being accompanied by accused Amir Ahmed @ Amir Ali, Abul Kalam @ AKM Monsur, and Md. Abdul Quddus coming towards their house and started indiscriminate gun firing that resulted in death of his[P.W.03] brother. Defence could not impeach it.

154. According to testimony of P.W.01 he saw three accused Joynal Abedin, AKM Monsur and Amir Ahmed @ Amir Ali accompanying the gang while according to two other direct witnesses P.W.02 and P.W.03 four accused including Abdul Quddus were with the gang while it carried out criminal activities at places of villages Sreepur and Sonapur.

155. Defence drawing attention to such inconsistency as to presence of the accused Abdul Quddus with the gang at the crime sites submitted, during placing summing up that this accused's involvement with the launching attack suffers from reasonable doubt.

156. It remained undisputed that a gang formed of Pakistani occupation army and Razakars including the accused persons arrived on the road adjacent to Ahmedia School field by vehicles. The attack happened in phases at places of villages Sonapur and Sreepur by the members of the gang, being divided into groups. The attack continued for three hours. Naturally, it might not have been possible or practicable for all the witnesses of seeing all activities carried out by each member of the enterprise.

157. Considering the horrific situation prevailing at the time of the attack launched and trauma sustained a witness may not be able to portray detail precision or his testimony may suffer from natural inaccuracy. But mere inaccurate statements cannot, on their own, constitute false testimony. 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’.

158. Additionally, we should not forget too that there is higher likelihood that the traumatic events under investigation and the trauma incurred by witnesses have an intense impact on witnesses when witnesses testify in court. The witness may not be able to recall every detail with precision. The ICTR in the case of *Nyiramasuhuko* has considered this issue by making observation as below:

“Many witnesses lived through particularly traumatic events and the Chamber recognises that the emotional and psychological reactions that may be provoked by reliving those events may have impaired the ability of some witnesses to clearly and coherently articulate their stories. Moreover, 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*, ICTR-98-42-T, Judgement, 24 June 2011, para. 179]

159. We may thus assume it lawfully that for such valid reason and horrific situation P.W.01 could not have opportunity of seeing the accused Abdul Quddus accompanying the group. P.W.01 testified

what he experienced and witnessed, without making any exaggeration and as such his evidence rather inspires credence.

160. Thus, merely on the basis of testimony of P.W.01 we cannot arrive at decision as to involvement and complicity of accused Md. Abdul Quddus with the activities' of the criminal enterprise. For the purpose of arriving at decision in this regard we are to rather evaluate the evidence of four other witnesses, in integrated way.

161. Further, inconsequential inconsistency by itself does not taint the entire evidence made by witness before the Tribunal. This principle adopted in trial of crimes against humanity is compatible with the evolved jurisprudence as well as with the Act of 1973. It has been observed by the ICTY trial Chamber in the case of Prosecutor *v. Mico Staisic & Stojan Jupljan* that--

“In its evaluation of the evidence, in assessing potential inconsistencies, the Trial Chamber took into account: the passage of time, the differences in questions put to the witnesses at different stages of investigations and in-court, and the traumatic situations in which many of the witnesses found themselves, not only during the events about which they testified, but also in many instances during their testimony before the Trial Chamber. Inconsequential inconsistencies did not lead the Trial Chamber to

automatically reject evidence as unreliable.”

[Prosecutor v.Mico Staisic & Stojan Jupljan Case No. IT-08-91-T 27 March 2013]

162. What the P.W.02, another direct witness’s account demonstrates? P.W.02 stated that the five accused Razakars [including the accused Md. Abdul Quddus] attacked their house and dragged his [P.W.02] two brothers Ali Hossain, Ali Haider and brother’s friend Moinuddin out from the rest room and then the army men gunned them down to death. This version could not be dislodged in cross-examination and as such it lends assurance as to presence of accused Md. Abdul Quddus at the crime site which was indeed culpable in nature.

163. Defence, in cross-examination, questioned practicability of seeing the gang launching attack as testified by the P.W.02. But it has been revealed in cross-examination that the house of P.W.02 was about 35/40 feet far from Ahmedia High School and that the house of his cousin brother Wadud was about 100/150 yards far from that of their own. Thus, it was practicable of witnessing the criminal acts that resulted in killing of his [P.W.02] dear ones, as testified.

164. Now the question is whether the P.W.02 knew the accused Md. Abdul Quddus beforehand. It has been found that P.W.02 in

reply to defence question put to him in cross-examination stated that since 07 years prior to the event he knew the accused Md. Abdul Quddus as he had occasions of seeing him at hat-bazars. P.W.02 however could not say what the profession of accused Md. Abdul Quddus was. But mere ignorance of accused's profession does not readily diminish the other reason of knowing him, if it seems to be believable and natural.

165. Besides, It has already been found that the accused Md. Abdul Quddus belonged to Razakar Bahini, an auxiliary force. It is now settled history which we may take into judicial notice that in 1971, during the war of liberation a Razakar became known around his locality for the notoriety and infamous activities of this auxiliary force and its members.

166. However, we got it proved from evidence of P.W.02 that reason of seeing the accused persons beforehand and knowing them and the attack launched stood affirmed in cross-examination. The large-scale killing is not disputed. Crime sites as testified by P.W.02 were not far from each other. Coming Wadud to save P.W.02's father, in conjunction with the attack was practicable as his house was nearer to that of P.W.02, we consider.

167. Testimony of P.W.03, a direct witness demonstrates too that in conjunction with the attack he saw Pakistani occupation army being accompanied by accused Md. Amir Ahmed @ Amir Ali,

Abul Kalam @ AKM Monsur, and Md. Abdul Quddus coming towards their house and with this he [P.W.03] and his brother Abdur Rab Bachchu attempted to flee by running towards east of their house when the army men and Razakars started indiscriminate gun firing that resulted in death of his[P.W.03] brother and he[P.W.03] saved his life by jumping into a ditch.

168. The reason of knowing the accused beforehand has been affirmed as P.W.03 stated in reply to defence question put in cross-examination that he knew accused Md. Abdul Quddus beforehand as he [the accused] along with his friend Nazir Ahmed very often used to come to their restaurant nearby Noakhali Rail Station.

169. P.W.04 a direct witness to the fact materially related to the principal offence. Defence could not impeach that P.W.04 saw the act of launching attack at their house that resulted in killing of his family inmates; that he somehow survived despite receiving bullet hit injury.

170. P.W.04 subsequent to the event heard that all the accused persons were with the army men in attacking their [P.W.04] house and also in carrying out killings and prohibited acts around their village and neighbouring villages. This part of hearsay evidence carries probative value and inspires credence as it gets corroboration from the evidence of other P.W.s.

171 . P.W.05 Md. Abu Taher Babu, a resident of village Sonapur is a direct witness to a particular fact related to the principal crimes. He saw the gang accompanied by all the accused persons gunning down his uncle Serajul Haque to death at their house. Defence could not refute it in any manner. It simply denied what the P.W.05 testified implicating the accused persons. But mere denial is not sufficient to question credibility of narrative made in examination-in-chief.

172. P.W.05 saw the group accompanied by all the accused persons moving towards their house. P.W.5 went into hiding inside a bush. If we accept that it was not practicable of seeing the act of killing remaining inside the bush still we may safely conclude that the squad committed the killing of P.W.05's uncle. For after the gang had left the site P.W.05 and others coming back home found dead body of the victim Serajul Haque lying in the courtyard. Thus, this fact is sufficient to prove that the gang accompanied by all the accused persons was responsible for causing this victim's death.

173. P.W.05 knew the accused persons since 2/3 months prior to the event as he saw them moving in different bazaars and making gossip at tea stall when the people used to whisper that they were Razakars. This reason of knowing the accused persons beforehand as testified by P.W.05 could not be impeached in cross-examination. Thus, the version of P.W.05 as to identifying all the

four accused persons accompanying the gang or criminal enterprise at the crime sites seems to be fairly natural.

174. Defence does not appear to have made any effort to refute the above crucial facts materially related to the systematic attack and accused persons' complicity therewith. It also transpires that the reasons the P.W.05 stated in respect of knowing the accused persons beforehand was natural which made him able of recognizing the accused persons accompanying the gang of army men in launching the attack.

175. We reiterate that in 1971 in context of war of liberation, affiliation of an individual with Razakar Bahini and its notoriety made him well-known to the locals. Besides, defence could not bring anything contrary by cross-examining this P.W.05 which may justifiably lead to infer that what he testified suffers from falsehood and the P.W.05 is not reliable.

176. The rational evaluation of the evidence of direct witnesses as discussed above unerringly suggests to conclude that the criminal enterprise formed of Pakistani occupation army accompanied by all the four accused persons belonging to locally formed Razakar Bahini had carried out the systematic attack directing unarmed civilians of villages Sreepur and Sonapur .

177. It remained undisputed that the attack continued till the dusk—for couple of hours. Defence as it appears does not question the act of launching attack that resulted in mass killing. It simply denied the complicity and involvement of the accused persons in accomplishing the attack. But mere denial as to accused persons' involvement is not sufficient when the defence fails to refute what has been testified by the witnesses on material particulars.

178. The above thus leads us to conclude that on the date and time the gang formed of Pakistani occupation army with the active and culpable assistance and contribution of all the four accused and their accomplice Razakars launched attack which continued for hours together. There has been no reason of falsely implicating the accused persons with the criminal mission. Rather their affiliation in locally formed Razakar Bahini, as already proved lends further assurance as to their participation in accomplishing the attack.

179. Besides, the Pakistani occupation army men were not acquainted with the localities and the civilians to be targeted. Obviously they had to move on to the crime sites with the culpable and active assistance of the accused persons who belonged to the Razakar Bahini, an auxiliary force. And the accused persons sharing common purpose consciously and knowing the consequence of the act of accompanying the troops remained stayed

with them at the crime sites intending to substantially facilitate in perpetrating the crimes.

180. Now, we require seeing how many civilians were liquidated, in conjunction with the attack and why those civilians were targeted? It stands proved from the evidence of P.W.01 that later on 40 dead bodies of civilians were found lying scattered at places and on the following day the dead bodies were buried by their relatives. The Pakistani army and Razakars by launching attack killed more than hundred civilians, by launching attack on 15 June, 1971, P.W.01 testified. Defence does not dispute it, as it appears from the cross-examination of P.W.01.

181. We have got it too from the evidence of P.W.02 that the Pakistani occupation army and Razakars killed more than hundreds of civilians of their village including his [P.W.02] brother's son Kashem. It remained unimpeached.

182. P.W.03 also, after the gang had left the sites, saw dead bodies of 10/15 civilians including Abdul Kader, Abdul Aziz, Humayun Kabir, Abul Khayer, Abu Taher, Abul Kashem, Mijanur Rahman. Sakhayet Ullah, Serajul Haque, Nur Ahammad of their village lying at different places.

183. P.W.05 stated that the Razakars and Pakistani occupation army continued staying around their village and crime sites till dusk when they carried out criminal activities that resulted in killing hundreds of civilians including 41 residents of villages Sonapur and Sreepur.

184. The above unimpeached version of resident of crime villages proves the indiscriminate killing of numerous pro-liberation civilians, by launching systematic and deliberate attack, in execution of the planned criminal mission to which all the four accused persons were conscious part.

185. The learned counsel defending the accused Md. Abdul Quddus submitted that other accused Amir Ahmed @ Amir Ali, AKM Monsur and Md. Joynal Abedin were prosecuted under The Collaborators Order, 1972--but prosecution does not claim that accused Md. Abdul Quddus as well was prosecuted and tried under The Order of 1972 for any criminal acts constituting the offences punishable under the Penal Code. The learned defence counsel for the accused Md. Abdul Quddus went on to argue that accused Abdul Quddus could have been prosecuted under The Collaborators Order, 1972, if really he had involvement with the alleged offence. This accused has not been indicted for the offences narrated in two other counts of charges and all these together reasonably indicate

that this accused has been falsely implicated in this case, the learned defence counsel added.

186. We are not convinced with the argument as agitated by the learned defence counsel. First, there can be no room to deduce readily that an individual was not involved in committing any criminal acts constituting the offence enumerated in the Act of 1973 as he was not prosecuted and tried under The Collaborators Order, 1972. Second, mere non prosecution under The Collaborators Order, 1972 does not unerringly suggest that the accused Md. Abdul Quddus was not involved in committing any atrocious activities, 1971, in exercise of his membership in Razakar Bahini. Third, being indicted only for the offences narrated in charge no.01 out of three counts of charges does not tend to conclude his innocence.

187. We are to see, on evaluation of evidence tendered, whether the accused persons participated in launching attack, by their act and conduct that resulted in indiscriminate killing of numerous civilians.

188. In the case in hand, in determining the liability of the accused persons we are to see whether (i) the accused took '*consenting part*' in the commission of the crime(ii) the accused were '*connected*' with the enterprise(iii) the accused persons ' had nexus

with the Pakistani occupation army, the principal perpetrators or the group of attackers.

189. We reiterate that the Pakistani occupation army men were not familiar with the localities and the civilians to be targeted. Obviously they had to move to execute the criminal mission with the culpable and active support of the accused persons who belonged to the Razakar Bahini, an auxiliary force. We have found on careful evaluation of evidence adduced that all the accused persons did not make them distanced from the squad till it ended. Rather they remained stayed with the gang and accused Abul Kalam @ AKM Monsur, Amir Ahmed @ Amir Ali and Md. Joynal Abedin visibly acted in facilitating commission of killings when the accused Md. Abdul Quddus knowingly remained present at the crime sites with the squad.

190. It stands proved that hundreds of civilians of villages Sreepur and Sonapur were killed in conjunction with the attack launched by the squad formed of the Pakistani occupation army men and Razakars including the accused persons. Defence does not dispute the killings. It was in true sense was 'large scale' in nature. The nature of the attack and the scale of killing hundreds of unarmed pro-liberation civilians violating customary international law and the laws of war forces to conclude that the perpetrators deliberately

opted to wipe out the civilians who visibly sided with the war of liberation.

191. It is a settled history that in 1971, just after independence was declared by Bangabandhu Sheikh Mujibur Rahman the Father of the Nation the Pakistani occupation army and their local collaborators especially belonging to auxiliary forces, peace committee and pro-Pakistan political parties started treating the pro-liberation Bangalee civilians as their ‘counterpart’ and during the nine-month war of liberation they continued carrying out horrific prohibited acts directing pro-liberation civilian population, to further policy and plan.

192. Unimpeached account made by witnesses shows sufficiently and unerringly that the event of attack was intended to accomplish indiscriminate massacre that resulted in deaths of numerous pro-liberation civilians. We find it beyond reasonable doubt that the *actus reus* requirement of large scale killings, to constitute the offence of ‘extermination’ as crime against humanity, is met.

193. It is now settled that ‘extermination’ differs from ‘murder’. It has been observed by the ICTR that -- ‘Extermination as a crime against humanity is . . . distinguishable from murder as it requires that the killings occur on a mass scale’. [ICTR, *Zigiranyirazo*, (Trial Chamber), December 18, 2008, para. 431]’. In the case in

hand, it may lawfully be concluded that indiscriminate killing of numerous unarmed civilians was intended to cripple the pro-liberation community or civilian population of the crime villages which was rather a 'mass destruction' --- the key element of the offence of 'extermination'.

194. In the case in hand, the attack directing pro-liberation villagers and other civilians was launched on discriminatory grounds that resulted in a large number killings which amounts to the offence of 'extermination', we conclude. It is now settled jurisprudence that the term 'population' does not require that an offence of crimes against humanity be directed against the entire population of a particular geographic territory.

195. In the case in hand, the targeted civilians belonged to pro-liberation civilian population and they did not take any direct and active part in hostility of any kind. But the manner of attack which eventually resulted in large scale killing leads to conclude that the criminal enterprise targeted them treating the members of the pro-liberation group.

196. Integrated evaluation of the evidence tendered and considering the scale and pattern of the event, we are convinced that the accused persons by their act of accompanying the troops at the

crime sites rather instigated, aided and abetted the principal perpetrators.

197. We may safely conclude too that the accused persons were aware that their presence with the Pakistani occupation army at the crime sites would encourage the atrocious criminal conduct of the principal perpetrators, the army men and it lends the impression that the accused persons endorsed the killings, sharing common purpose and intent.

198. The pattern and scale of the killings of unarmed pro-liberation civilians and the length of time the perpetrators took in accomplishing annihilation of such a large number of victims prove that the killings were deliberate and intentional to which the accused persons were 'active' and 'consenting' part.

199. Totality of evidence suggests the only reasonable inference that all the accused persons by accompanying the squad chiefly formed of Pakistani occupation army participated in the JCE indisputably intending to kill pro-liberation civilians on a mass scale. The notion of joint criminal enterprise [JCE] arises when two or more persons join in a common and shared purpose to commit a crime.

200. In the case in hand, the attack directing pro-liberation villagers and other civilians was launched on discriminatory grounds that

resulted in a large number killings which amounts to the offence of ‘extermination’, we conclude. The manner of attack which eventually resulted in large-scale killing leads to the conclusion that the criminal enterprise targeted those treating members of the pro-liberation group.

201. In the case in hand, we are to see whether (i) the accused took ‘*consenting part*’ in the commission of the crime(ii) the accused was ‘*connected*’ with plans or enterprise(iii) the accused ‘belonged to’ the perpetrator organisation or group.

202. Act of accompanying the troops in exercise of membership in Razakar Bahini a *militia* force created to collaborate with the Pakistani occupation army itself indicates that all the four accused persons, being part of JCE intentionally participated to execute the plan of accomplishing a mass killing by providing assistance, approval and encouragement to the actual perpetrators.

203. Besides, it stands proved from the evidence tendered by direct witnesses that accused Md. Joynal Abedin, Abul Kalam @ AKM Monsur and Amir Ahmed @ Amir Ali substantially aided and facilitated killing of some of civilians, in conjunction with the attack, as the same happened on identification of victims by them and in this way they knowingly participated in the killing mission.

204. It stands proved too that all the four accused were with the group of attackers and they were aware that their act of accompanying the gang and consequence thereof. In order to infer the *mens rea* the accused must intend that his or her acts will lead to the criminal result. The *mens rea* is, in this sense, no different than if the accused committed the crime alone.

205. Thus, conscious participation of all the four accused persons in JCE substantially impacted on the attackers in accomplishing the large-scale killings and it by itself constituted their *mens rea*. The material element of a JCE [basic form] is the 'common purpose'.

206. It may be unerringly concluded, from the facts and circumstances unveiled that the accused persons, their accomplice Razakars and the members of Pakistani armed forces carried out the attack, sharing common purpose.

207. Liability under the doctrine of JCE [basic form] need not involve the physical commission of a specific crime by all the members of JCE but may take the form of assistance in, or contribution to, the execution of the common purpose. It is now well settled proposition that 'contribution' in facilitating commission of the principal crimes does not necessarily require participation in the 'physical commission' of the crime, but liability accrues where the accused is found to have had conscious and

intentional presence , sharing intent, at the site or sites where unlawful and prohibited acts were being committed. It is sufficient to trigger his individual criminal responsibility as ‘participant’ under the doctrine of JCE-I [Basic Form]. All the four accused persons thus incurred liability, being part of JCE for the perpetration of the mass killing.

208. On cumulative evaluation of evidence tendered we are convinced to conclude that the accused persons were with the group not as mere spectators, the discussion as made above suggests it. Their affiliation with the army and auxiliary force fairly suggests concluding that knowing consequence of their act of accompanying the troops at the sites would sufficiently contributed in accomplishing the culpable mission. We reiterate that it would not have been possible for the members of Pakistani armed force to locate the sites and civilians to be targeted without the active assistance of accused.

209. We found it proved that accused Md. Amir Ahmed @ Razakar Amir Ali, Md. Joynal Abedin, Abul Kalam @ AKM Monsur and Md. Abdul Quddus were with the troops and they did not get distanced from it till the criminal mission of mass killing ended. Of those accused persons, as it stands proved accused Md. Joynal Abedin, Abul Kalam @ AKM Monsur and Md. Amir Ahmed @ Razakar Amir Ali actively participated in committing killing of

some of civilians. Their mode of participation to the commission of the crimes seems to be graver than that of accused Md. Abdul Quddus.

210. Accused Md. Abdul Quddus remained engaged in launching attacks at the crime villages by accompanying the troops, sharing common intent. It also proves that the accused persons had ‘concern’, ‘endorsement’, ‘moral support’ and ‘assistance’ to the army men the actual perpetrators in carrying out atrocities directing civilians. There can be no room to deduce that mere presence of the accused persons at the crime sites does not make them responsible for the crimes happened. Rather, their presence with the gang of attackers at the crime sites together with their membership in the locally formed Razakar Bahini constitutes ‘participation’. In this regard it has been observed by the **ICTY** that--

“Mere presence constitutes sufficient participation under some circumstances so long as it was proved that the presence had a significant effect on the commission of the crime by promoting it and that the person present had the required *mens rea*.”

[ICTY: *Aleksovski*, (Trial Chamber), June 25, 1999, para. 64]

211. Criminal liability for the offence of extermination should be ascribed only on the basis of intentional conduct of the accused. In determining the mental state of accused in committing

extermination it is to be seen whether the accused intended the killing and was quite aware that his act[s] formed part of the criminal mission of accomplishing the ‘mass killing event’. Thus, mental state of the accused persons is to be inferred from facts and circumstances unveiled together with the act and conduct the accused persons had shown in conjunction with the attack.

212. The **ICTR** has observed in the case of **Niyitegeka** that---

‘The material element of extermination consists of any one act or combination of acts which contributes to the killing of a large number of individuals.’

[ICTR Trial Chamber, May 16, 2003 para 450].

213. The above observation of the ICTR leads us to conclude that not the physical participation of an accused in accomplishing killing but his act or conduct is to be assessed in determining his liability for the crimes committed. Conscious presence at the crime sites with the criminal enterprise is sufficient for holding him criminally liable. The accused persons knew the designed scheme of collective murder and took part to enforce the murderous scheme—it has been found proved beyond reasonable doubt.

214. The act of killing was perpetrated in a collective pattern that eventually resulted in mass killing constituting the offence of

‘extermination’ as crimes against humanity. The **ICTR** Trial Chamber in the case of *Ndindabahizi* has observed that –

“Extermination requires that the perpetrator intend to commit acts directed at a group of individuals collectively, and whose effect is to bring about a mass killing.”

[Ndindabahizi, ICTR Trial Chamber, July 15, 2004, para 479]

215. ‘Extermination’ refers to killing on a vast scale and is directed towards numerous members of civilian population or members of a collection of individuals. Knowledge of the vast ‘murderous enterprise’ is sufficient for holding the accused persons criminally responsible for the offence committed.

216. ‘Knowledge’ of the vast ‘murderous enterprise’ is sufficient for holding the accused persons criminally responsible for the offence committed if he is found to have been with the gang of attackers at the crime sites.

217. In the case in hand, it stands proved that all the four accused persons were part of the common plan and design to single out hundreds of civilians of a particular geographical territory as they had conscious ‘concern’ with the ‘killing squad’, in exercise of their membership in auxiliary force.

218. On cumulative evaluation of evidence and circumstances revealed it is proved beyond reasonable doubt that the 'killing operation' directing pro-civilians was carried out by launching same attack which continued for hours together, with similar notoriety, and by the perpetrators belonging to Pakistani occupation army being accompanied by Razakars including the accused persons in execution of same 'murderous scheme' to which all the four accused persons were conscious part.

219. Why the accused persons remained stayed with the gang at crime sites? It may safely be inferred that they too were conscious part of the enterprise, in exercise of their membership in auxiliary force and being aware of the consequence provided assistance and aid to the gang in carrying out horrific mass killing.

220. The pattern of mass killing which continued for hours together demonstrates that the attack was intended to cause mass death of civilians with the active assistance of Razakars including the accused persons which constituted the offence of extermination. In respect of act and contribution of an accused to a mass killing constituting the offence of extermination the **ICTR** observed in the case of *Mpambara that--*

“The [perpetrator’s] act need not directly cause any single victim’s death, but must contribute to a mass killing event. As to

the nature of the contribution required, a standard of ‘sufficient contribution’ has been adopted in some cases, assessed according to ‘the actions of the perpetrator, their impact on a defined [victim] group, and awareness [by the accused] of the impact on the defined group.’

[ICTR Trial Chamber, *Mpambara*, September 11, 2006, para. 9]

221. It is not required to show which accused caused death of which civilian. Keeping this settled jurisprudence in mind we are convinced to express the view that direct and physical perpetration need not mean physical killing; other acts can constitute direct participation, it is now well settled. Thus, it is sufficient to prove their criminal liability if their act or conduct substantially assisted, contributed, facilitated and impacted to the perpetration of the collective killing constituting the offence of extermination.

222. In the case in hand, we find that the attack was launched in the villages Sreepur and Sonapur under Police Station-Sudharam of District- Noakhali. The Pakistani occupation army engaged in launching the attack got stationed in Noakhali. The accused persons and their accomplice Razakars were affiliated in the locally formed Razakar Bahini. The army men thus obviously had to execute its ‘criminal mission’ with the assistance, aid and contribution of the accused persons belonging to Razakar Bahini.

223. Accomplishing large-scale killing of hundreds of pro-liberation civilians of rural areas would not have been possible without the active assistance and contribution of the accused persons belonging to auxiliary force. Their presence at the crime sites with the gang of army men indisputably had impact and causal link in targeting the civilians and the accused persons knowingly aided and assisted to execute the murderous enterprise. In this regard we recall the observation of **ICT-BD-1** in the case of *Shamsuddin Ahmed and 04 others* which are as below:

“Presence of the accused persons in the crime-site, combined with their membership in local Razakar Bahini and their knowledge of the criminal enterprise are considered sufficient to find them guilty for the crimes committed by the enterprise. Accused may be said to have aided and abetted in accomplishing the principal offence if it is found that he accompanied the group at the crime site ‘knowing the intent’ of the perpetrators belonging to the group. Act of accompanying the group ‘sharing intent’ in perpetrating the principal offence makes an accused part of the criminal enterprise.”

[ICT-1, ICT-BD Case No.01 of 2015, the Chief Prosecutor vs. Shamsuddin Ahmed and 04 others, Judgment: 3 May, 2016]

224. Thus, all the four accused persons participated in committing the collective killing. It has been observed by the ICTR Trial Chamber in the case of *Mpambara* that—

“The *actus reus* of the offence is that the perpetrator participates with others in a collective or ongoing mass killing event.”

[*Mpambara*, ICTR Trial Chamber, September 11, 2006, para. 9]

225. In view of deliberation made above on evaluation of evidence presented and settled related legal proposition we are convinced to conclude unanimously that the prosecution has been able to prove beyond reasonable doubt the event of horrific concurrent attack directing pro-liberation civilians of villages Sreepur and Sonapur that resulted in killing of hundreds defenceless civilians constituting the offence of ‘extermination’. It also stands proved beyond reasonable doubt that all the four accused persons consciously and being part of the criminal enterprise by their acts, conducts and act of common ‘understanding’ , forming part of systematic attack participated, facilitated, abetted, contributed to the commission of such crimes.

226. Therefore, the accused (1) Abul Kalam @ AKM Monsur (2) Amir Ahmed @ Razakar Amir Ali, (3) Md. Joynal Abedin and (4) Md. Abdul Quddus who were part of 'collective criminality' incurred liability under section 4(1) of the Act of 1973 and are held

responsible accordingly for the offence of '**extermination**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act.

Adjudication of Charge No. 02

[Offences of murder, abduction, confinement, torture and other inhumane acts committed at villages-Paschim Karimpur and Devipur under Police Station-Sudharam, District-Noakhali]

227. Charge: That on 13 September, 1971 at about 05.30 A.M. [at the time of fajar prayer] a group of 15/20 armed Razakars under the leadership of accused Razakars (1) Md. Amir Ahmed alias Razakar Amir Ali, (2) Abul Kalam alias A.K.M. Monsur, and (3) Md. Joynal Abedin accompanied by 8/10 Pakistani occupation army men besieged the house of freedom-fighter Ali Ahmed at village Paschim Karimpur under Police Station Sudharam, District Noakhali and having detained unarmed freedom-fighter Ali Ahmed from his house tortured him. At that time while the wife of freedom-fighter Ali Ahmed tried to resist the accused Razakars and their accomplices, accused Md. Joynal Abedin inflicted rifle blow on her shoulder that resulted in grievous injury.

Thereafter, the accused persons and their accomplices having taken away detained unarmed freedom-fighter Ali Ahmed with you headed towards west when unarmed freedom-fighters Nurunnabi, Abul Kalam alias Kala and Abdul Halim had been staying in a

nearby house. Then the accused and their accomplices having captured unarmed freedom-fighter Abul Kalam alias Kala tortured him when other two freedom-fighters Nurunnabi and Md. Abdul Halim tried to flee away towards north to save their lives. But the accused Razakars and their accomplices having seen them running chased them and started firing shots to kill them and consequently unarmed freedom-fighter Md. Abdul Halim sustained bullet hit injury on his head, but another unarmed freedom-fighter Nurunnabi luckily managed to escape.

In conjunction with the same attack, the accused persons and their accomplice other Razakars and Pakistani occupation army men by torturing detained unarmed freedom-fighters Ali Ahmed and Abul Kalam alias Kala took them away to the wooden bridge of Chattar Khal [canal] situated at a place which was half kilometer far from their house and shot Ali Ahmed to death there and threw his dead body in the Khal [canal], and torturing another unarmed freedom-fighter Abul Kalam alias Kala went away towards west and thereafter, the accused persons and their accomplices having killed Abul Kalam alias Kala and his dead body could not be traced even.

In conjunction with the same attack the accused persons and their accomplice other Razakars and Pakistani occupation army men having gone to village Devipur under Sudharam Police Station

tried to capture freedom-fighter Abdul Malek but it was in vain. Then the accused persons and their accomplices having plundered the house of freedom-fighter Abdul Malek set it on fire.

Thereby, accused (1) Md. Amir Ahmed alias Razakar Amir Ali (2) Abul Kalam alias A.K.M. Monsur, and (3) Md. Joynal Abedin have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of murder, abduction , confinement, torture and other inhumane acts [plundering and arson] as crimes against humanity as part of systematic attack directing against unarmed civilians as specified 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

228. Prosecution adduced and examined in all five witnesses to substantiate this charge and the witnesses have been examined as P.W.06, P.W.07, P.W.08, P.W.09 and P.W.10. Of these witnesses P.W.07 and P.W.10 were co-freedom fighters of two victims. They and three other witnesses voiced what they experienced and saw in conjunction with the attack that eventually resulted in killing of two non-combatant freedom-fighters. Now let us first see what the prosecution witnesses examined have testified.

229. P.W.06 Md. Ali Haider [57] is a resident of village-Karimpur under Police Station-Sudharam of District-Noakhali. In 1971 he was 13/14 years old. He stated that on 13 September, 1971 at about 05:00/05:30 A.M he came out to the west bank of their pond for getting washed when he saw a group of Pakistani occupation army and Razakars entering inside the house of freedom-fighter Nurunnabi. With this he [P.W.06] running back to home informed it to his [P.W.06] elder brother freedom-fighter Ali Ahmed. Then he and his brother saw some army men being accompanied by accused Abul Kalam, Joynal, Amir Ali and other Razakars encircling their house. Next, the three accused Razakars dragged his [P.W.06] brother out from dwelling hut and accused Abul Kalam inflicted rifle blows to his neck, tying him up in the courtyard. At that time he [P.W.06] had been with his mother when defying his mother's request the three accused and army men took his brother [Ali Ahmed] away towards the house of freedom-fighter Nurunnabi. Following them he [P.W.06] could see some Razakars and army men bringing detained freedom-fighter Kala from the house of Nurunnabi. At that time Nurunnabi attempted to flee when keeping his [P.W.06] brother and Kala guarded under some army men and Razakars the three accused, their accomplices and some army men started chasing Nurunnabi and fired gun shot. The army men and Razakars then took his [P.W.06] brother and Kala to

Chattar Canal Bridge, about half kilometer far. He [P.W.06] was also on move behind them.

230. P.W.06 next stated that keeping the two detainees guarded under 5/6 Razakars and army men at the Chattar canal the three accused, their accomplices and army men started heading towards the village Devipur. Afterwards he [P.W.06] saw fumes of fire from the end of village Devipur. Afterwards, the three accused and their accomplices returned back at Chattar canal bridge when he [P.W.06] started following them and saw accused Abul Kalam after having talk with army men gunned down his brother Ali Ahmed to death on the bridge and abandoning his dead body they then moved towards west taking another detainee Kala who could not be traced even. Later on his [P.W.06] brother's dead body was buried at their house.

231. P.W.06 also stated that in evening, on the day of the event he heard from locals that in conjunction with the attack the army men and Razakars burnt down the house of Abdul Malek of village Devipur.

232. In respect of knowing the accused beforehand P.W.06 stated that he knew the three accused beforehand; that accused Joynal was a resident of village Syedpur and accused Abul Kalam was a

resident of village Nandanpur, both were half kilometer far from their [P.W.06] house.

233. P.W.06 in cross-examination done on part of accused Md. Joynal Abedin and absconding accused Abul Kalam @ AKM Monsur stated in reply to defence question that his mother lodged a case with Sudharam Police Station over the event of his brother's killing, but could not say who were made accused in that case. It has been affirmed in cross-examination that the house of accused Abul Kalam was about half kilometer far from that of their own. P.W.06 stated too that the case his mother initiated was not disposed of by rendering judgment. P.W.06 denied the defence suggestion that these two accused were not Razakars; that he did not know them; that they were not involved with the event he testified and that the accused got acquittal in the case initiated by his [P.W.06] mother.

234. In cross-examination done on behalf of accused Md. Amir Ahmed @ Amir Ali P.W.06 stated in reply to defence question that he did not see anybody of Nurunnabi's house when the Pakistani occupation army and Razakars entered Nurunnabi's house; that he could identify accused Amir Ali as two other accused at the time of the attack were calling him by his name. P.W.06 also stated that he did not see anybody of Paiker Bari, when the army men, Razakars

and accused persons were heading towards village Devipur from the bridge.

235. P.W.06 denied the defence suggestion that he did not see the event he testified; that this accused was not associated with the event he narrated and that what he testified was untrue and tutored . Defence however does not appear to have denied the facts materially related to the principal crime and also the fact that this accused belonged to Razakar Bahini.

236. P.W.07 Md. Abdul Halim [75] is a freedom-fighter. He is a resident of village-Karimpur under Police Station-Sudharam of District-Noakhali. He is a direct witness to the act of forcible capture of his brother's son Ali Ahmed, a freedom-fighter.

237. P.W.07 stated that he went to Meghalaya, India for receiving training of freedom-fight. On receiving training he returned back and reported to commander Ali Ahmed Chowdhury of zone-c under sector-2 and he was then attached with the Gopalbari camp under Begumganj Police Station wherefrom he participated in operations against Razakars and Pakistani occupation army as directed by the camp commander Mahmud Ullah.

238. P.W.07 next stated that on 12 September, 1971 he and his co-freedom-fighters Nanda Lal Kuri, Nurunnabi, Kala and his brother's

son Ali Ahmed came to their house on leave. He [P.W.07] and Ali Ahmed arrived at his [P.W.07] house at about 01:00 A.M and Nurunnabi and Kala went to Nurunnabi's house when Nanda Lal Kuri moved to his own house.

239. The above was how and when the P.W.07 and his co-freedom fighters including the victims came to their house from their camp, on leave. What happened next? Rest of his testimony is hearsay, but related to the event.

240. P.W.07 stated that on 12 September, 1971 in early morning his mother went to the bank of their pond when she saw Razakars and army men coming forward from the eastern side. Seeing it his mother running back home and told his [P.W.07] wife to make him awake. He[P.W.07] then awaking opened the door and saw the army men and Razakars including the accused Razakars Md. Amir Ahmed @ Amir Ali, Razakar commander Abul Kalam @ AKM Monsur and Joynal Abedin dragging the freedom-fighter Ali Ahmed out and tying him up in the courtyard started assaulting by rifle. With this he [P.W.07] ran away towards the house of Faraeji, north to their house when he discovered his co-freedom-fighter Nurunnabi on the road and he [Nurunnabi] asked him to move towards north-east corner. He [P.W.07] then attempted to move accordingly when gun firing started and he received bullet hit injury on his left ear and he became unconscious.

241. P.W.07 further stated that on getting his conscious back he returned to his old house where his aunty arranged his treatment. His uncle Akabbar later on disclosed that his [P.W.07] brother's son Ali Ahmed was shot to death at the bridge of Chattar canal by the Pakistani occupation army and Razakars, taking him there on forcible capture from his house.

242. P.W.07 next stated that after the Pakistani occupation army and Razakars had left the site he moved to his house and on his way he met his co-freedom-fighter Nurunnabi [P.W.10] at Jamidarhat Bazar. After arriving at house his brother's son Ali Haider [P.W.06], Seraj Ahmed and Mokbul Ahmed [P.W.08] disclosed that accused Abul Kalam @ AKM Monsur gunned down Ali Ahmed to death taking him at the bridge of Chattar canal. They also told that those perpetrators carried out looting and burning down the house of their co-freedom-fighter Abdul Malek and they also took away freedom fighter Kala on forcible capture from the house of Nurunnabi and since then he could not be traced even.

243. In respect of knowing the accused persons P.W.07 stated that they had the list of Razakars with them, during the war of liberation; that the accused Joynal Abedin son of Sekendar was a resident of village Syedpur; that accused Monsur's house was nearer to their house at village Nandanpur and accused Amir

Ahmed was a resident of village Fakirpur adjacent to Maizdi town. He [P.W.07] knew them beforehand.

244. P.W.07 has been cross-examined by the three accused. But defence, in cross-examination does not appear to have made any effort to impeach what has been testified on material particulars related to the principal offence. However, P.W.07 stated in reply to defence question that there had been many people at Jamidar Hat where he met there Nurunnabi, on his way back to home after the event. P.W.07 also stated that he could not identify the other Razakars excepting the three accused when they attacked their house. P.W.07 denied the defence suggestions that he did not see the accused persons with the group; that he could not recognise any of three accused; that none of them was Razakar and that no event as has been narrated by him did not happen.

245. P.W.08 Md. Mokbul Ahmed [76] was a resident of village-Karimpur under Police Station-Sudharam of District-Noakhali. He is the cousin brother of freedom-fighter Ali Ahmed [one of victims]. In 1971 he had been staying at his grand-father's house.

246. P.W.08 stated that on 13 September 1971, in early morning, just before *fajar* prayer his [P.W.08] mother told him that his cousin brother Ali Ahmed arrived at house. Then he [P.W.08], coming out of the mosque about 300 yards far from their house

after saying fajar prayer, heard gun-firing. With this he started running towards house when he saw Pakistani army and Razakars arriving at the west side of their house. On seeing them he [P.W.08] went into hiding under the water of a paddy field besides the road wherefrom he saw Razakars Abul Kalam, Joynal, Md. Amir Ahmed @ Amir Ali, their accomplices Razakars and Pakistani occupation army coming towards west taking away freedom-fighters Ali Ahmed and Kala away tying them up. At that time the three accused and other Razakars were guiding the troops to move on. He [P.W.09] then started going behind the army men and Razakars, coming out of the paddy field. The Razakars and accused got halted on the bridge over the Chattar canal, about half kilometer far. He [P.W.08] then went into hiding inside the water, west to the bridge. Then keeping the detainees there guarded under 5/7 Razakars and army men the three accused and some army men headed towards village Devipur. Few minutes later, he [P.W.08] saw fumes of fire from the end of Devipur village and 15/20 minutes later the accused persons and the army men came back on the bridge and then accused Abul Kalam after having talk with the army men gunned down his [P.W.08] cousin brother Ali Ahmed to death and threw the dead body to the canal.

247. P.W.08 further stated that next the three accused Razakars, their accomplices and army men moved towards west taking another freedom-fighter Kala with them and he could not be traced

even. At about 05:00 P.M he heard that Razakars and army men burnt down the house of freedom-fighter Malek of village Devipur. They buried the dead body of Ali Ahmed at their house, after finding it in the canal.

248. P.W.08 finally stated that accused Abul Kalam @ AKM Monsur was Razakar commander and he was a resident of their [P.W.08] neighbouring village Nandanpur; that accused Md. Joynal Abedin son of Sekendar Ali was his neighbour and their house was known as 'Dewan Bari' and that he saw accused Amir Ahmed @ Amir Ali moving around their locality and as such he knew him beforehand.

249. P.W.08 has been cross-examined by the accused persons. In reply to defence question P.W.08 stated that he could not identify other Razakar excepting the three accused persons and that he could not say whether these three accused were engaged in carrying out killing around their locality prior to the event he narrated. P.W.08 also stated that brother of accused Joynal used to move with him[P.W.08] and he[P.W.08] had movement to their house and that accused Monsur remained in hiding quitting locality after the independence and that their house[P.W.08] was about half kilometer far from the Chattar canal bridge.

250. P.W.08 also stated in reply to defence question that he heard, after the event that freedom-fighter Malek's house was burnt down in conjunction with the attack ; that the paddy field where he remained in hiding was 3-4 feet below from the road and under three-feet water. P.W.08 denied the defence suggestions that he did not see the event he narrated; that these accused were not Razakars; that he did not know these accused persons and that what he testified was untrue and tutored.

251. P.W.09 Md. Abu Zaher [75] is a resident of village-Karimpur under Police Station-Sudharam of District- Noakhali. He is direct witness to the attack and facts materially related to the principal offence. In 1971 he was 28/29 years old.

252. P.W.09 stated that on 13 September 1971 in early morning at the time of fajar prayer he became panicked on hearing indiscriminate gun firing and thus he went into hiding inside a bush, south to their house. 10/15 minutes later he saw Razakars Amir Ahmed @ Amir Ali, Abul Kalam @ AKM Monsur, Joynal Abedin, their accomplice Razakars and Pakistani occupation army moving towards west taking detained freedom-fighters Ali Ahmed and Kala with them tying them up.

253. P.W.09 next stated that he also saw Ali Haider, the brother of Ali Ahmed[detainee], Seraj[now dead], Makbul Ahmed and his

mother[now dead] and sister Najuba going behind the gang and then he[P.W.09] also joined them coming out of the bush and got halted at a place 200/250 yards far from Devipur Chattar canal bridge wherefrom he saw the accused Razakars and some army men heading towards village Devipur keeping the detained Kala and Ali Ahmed guarded under some Razakars and army men at the bridge.

254. P.W.09 went on to state that about 15/20 minutes later he [P.W.09] saw the fumes of fire from the end of village Devipur. Afterwards, the accused Razakars and army men returned back to Chattar canal bridge and then accused Abul Kalam @ AKM Monsur after having some talk with army men gunned down detained Ali Ahmed to death there and threw his dead body to the canal and the gang then had left the site taking another detainee Kala with them and since then Kala could not be traced even. Dead body of Ali Ahmed was buried at his house as taken by their relatives. He [P.W.09] later on heard from Seraj, Makbul Ahmed and Ali Haider that the Razakars and army men burnt down the house of Malek of village Devipur.

255. In respect of reason of knowing the accused persons P.W.09 stated that the accused were the residents of his neighbouring villages and thus he knew them beforehand.

256. In cross-examination done on part of accused Md. Joynal Abedin and Abul Kalam @ AKM Monsur P.W.09 stated in reply to defence question that the Chattar canal bridge was about quarter kilometer far from their house; that their house was about half kilometer far from the house of freedom-fighter Ali Ahmed [victim] and that about 20/25 army men were present at the site when the event happened. P.W.09 denied the defence suggestions that he did not know the accused persons; that they were not involved with the event he narrated and that they were not Razakars.

257. In cross-examination by accused Md. Amir Ahmed P.W.09 denied the defence suggestion that this accused was not a Razakar; that he was not with the group when the event happened and that he did not see this accused during the war of liberation.

258. P.W.10 Md. Nurunnabi [66], a resident of village Karimpur under Police Station- Sudharam of District Noakhali is a freedom fighter. The victims of the event as narrated in charge nho.02 were his co-freedom-fighters. At the relevant time he had been at his house and as such had occasion of experiencing the attack and facts materially related to the principal crime. He is however a hearsay witness in respect of commission of the principal offence, the killing and participation of the accused persons in accomplishing the attack.

259. P.W.10 stated that he was engaged in freedom fight under the command of Ali Ahmed Chowdhury of Zone-C, Sector -2. On 12 September, 1971 he and his co-freedom-fighters Ali Ahmed, Abdul Halim, Abul Kalam Kala and Sree Nandalal Kuri started towards their house from the camp at Devicharanpur Gopalbari under Police Station-Begumganj, taking leave from their commander and arrived at Jamidar Haat in the midnight. Then he [P.W.10] along with his co-freedom fighters Ali Ahmed, Kala, Abdul Halim reached their village and Nandalal Kuri moved towards his house Ali Ahmed and Abdul Halim stayed at their house and Kala came to his[P.W.10] his house and remained stayed with him.

260. P.W.10 further stated that after arriving at Jamidarhat, on the way to their house, they guessed that some source of Pakistani occupation army could have located them and their presence in the locality.

261. P.W.10 next stated that on 13 September in the early morning at the time of fajar prayer his mother went to the pond, east to their house when she saw the Pakistani occupation army and Razakars moving and then she rushed back home and informed it to him. He [P.W.10] then ran out to a bush and asked his mother to get Kala awaken. He [10] then went into hiding inside a paddy field, east to their house where he found Abdul Halim, one of his co-freedom-fighters.

262. P.W.10 next stated Razakar accused Abul Kalam @ AKM Monsur, Amir Ahmed @ Amir Ali and Md. Joynal Abedin started gun firing targeting him when he remained in hiding in the paddy field and with this he, to save his own life, running to the east got hidden inside a bush and one hour later he heard gun firing. He remained in hiding inside the bush till 11:00 A.M and then coming out therefrom he went to his maternal grand-father's house at village Ratanpur.

263. P.W.10 also stated that on the same day at about 02:00/02:30 P.M his mother, being informed by him [P.W.10], came there and told that the army men and Razakars had quitted the locality. In evening at about 04:30 P.M. he [P.W10] then rushed to Jamidarhat when he found there his co-freedom-fighters Abdul Halim having bandage on head. Abdul Halim disclosed that he received bullet hit injury on his right ear when the Razakars fired gunshot targeting him [P.W.10].

264. At about 05:00 P.M he[P.W.10] also found Ali Haider the brother of freedom-fighter Abdul Halim, Makbul Ahmed, Seraj and Abu Jaher at Jamidarhat and from them he[P.W.10] heard that Razakars Abul Kalam @ AKM Monsur , Amir Ahmed @ Amir Ali, Joynal Abedin and their accomplice Razakars and army men took away Ali Ahmed and Kala on forcible capture to the bridge of Chattar canal where Razakar Abul Kalam @ AKM Monsur shot the

detainee Ali Ahmed to death and the gang then headed towards west taking another detainee Kala with them. He[P.W.10] also heard that the army men and Razakars burnt down the house of freedom-fighter Abdul Malek of village Devipur.

Finding with Reasoning on Evaluation of Evidence

265. Mr. Zahid Imam the learned prosecutor in advancing argument on this charge submitted that the group formed of Pakistani occupation army men , Razakars and three accused Abul Kalam @ AKM Monsur , Amir Ahmed @ Amir Ali and Joynal Abedin by launching a systematic attack forcibly captured un-armed freedom fighters Ali Ahmed and Kala from the houses where they remained stayed and took them away to the bridge on Chattar canal where accused Abul Kalam @ AKM Monsur shot the detainee Ali Ahmed to death and the gang took away another detained victim Kala with them and since then he could not be traced. Presumably Kala was also killed later on.

266. The learned prosecutor submitted that in all 05 witnesses examined in support of this charge. The P.W.s are the direct witnesses to the facts materially related to the principal offence. The victims along with their co-freedom fighters came to their home just on the preceding night. Presumably, the accused persons and their accomplices got this information leaked and then planned to wipe out the freedom fighters, the learned prosecutor added.

Defence could not shake the event that ended in killing of two detained freedom fighters. Defence simply denied participation and complicity of the accused persons in carrying out the criminal mission of annihilating non-combatant freedom-fighters.

267. Mr. Gaji MH Tamim and Mr. Masud Rana defending the three accused including the absconding accused Abul Kalam @ AKM Monsur submitted that the testimony of witnesses examined suffers from inconsistency, so far as it relates to material particular. Prosecution failed to prove that these three accused remained present at the crime sites intending to collaborate with the army men. There had been no rational reason of knowing these accused beforehand.

268. It appears that the event of systematic attack as narrated in this charge occurred in two phases. First, it secured forcible capture of two unarmed freedom-fighters. Second, the gang then moved towards Chattar Canal Bridge taking the detainees with them where one was gunned down to death and another detainee could not be traced at all. Both the phases were chained together. Of 05 witnesses examined in support of this charge 04 seem to be key witnesses as they had occasion of seeing material facts related to the attack that ended in killing.

269. It stands proved from evidence of P.W.s examined to substantiate this charge that two victims Ali Ahmed and Kala were freedom-fighters and were engaged in fighting the Pakistani occupation army and Razakars under commandership of Ali Ahmed Chowdhury of zone-C of sector-02. Defence does not dispute it.

270. We have found it proved too from the evidence tendered that just on the night of the preceding day these four freedom-fighters came to village Karimpur on leave and Kala and Nurunnabi got stayed at the house of Nurunnabi while Ali Ahmed and Kala ,his co-freedom fighter remained stayed at the house of Ali Ahmed. Defence could not refute this crucial fact. Even defence does not seem to have denied it in cross-examination. It may be thus inferred validly that the four non combatant freedom-fighters came to their houses to meet their family inmates.

271. It stands proved too that on the following morning the gang formed of army men and Razakars accompanied by three accused launched attack at the house of Nurunnabi and Ali Ahmed that resulted in forcible capture of Ali Ahmed and Kala. Freedom-fighter Nurunnabi managed to escape.

272. The victims and their co-freedom-fighters were non-combatant at the time of launching attack. Why the gang launched such

systematic attack? We have found it proved from evidence tendered that accused persons were known around the locality for their notoriety in exercise of membership in Razakar Bahini and accused Abul Kalam @ AKM Monsur was a resident of neighbouring locality of P.W.06, P.W.07. Accused Joynal Abedin was also a resident of neighbouring locality of P.W.07

273. It may be thus unerringly presumed that arrival of four freedom-fighters at the crime village somehow got leaked and without wasting time the accused persons, their accomplices accompanied by Pakistani occupation army designed a criminal mission to wipe out these four freedom-fighters. To further their policy and plan was the reason of the attack they launched on the following morning.

274. Now let us see how the attack was launched and two non combatant freedom fighters were unlawfully detained and annihilated and how the accused persons participated in perpetrating the crimes, on evaluation of evidence tendered.

275. P.W.06 Md. Ali Haider is the younger brother of victim Ali Ahmed. He saw some army men being accompanied by accused Abul Kalam, Joynal, Amir Ali and other Razakars encircling their house and then dragging out his [P.W.06] brother Ali Ahmed out from dwelling hut when accused Abul Kalam @ AKM Monsur

inflicted rifle blows to his[victim] neck, tying him up in the courtyard. Defence could not bring anything by cross-examining P.W.06 to taint this version.

276. Besides, there has been no reason of disbelieving P.W.06. Thus, it not only proves the first phase of attack that resulted in forcible capture of one victim Ali Ahmed but it confirms too that at the relevant time accused AKM Monsur was armed and played key role in accomplishing the attack.

277. After causing forcible capture of Ali Ahmed the gang moved towards Nurunnabi's house wherefrom they unlawfully detained Kala, a co-freedom-fighter of Nurunnabi who remained stayed there and Nurunnabi somehow managed to escape when he had to face a gun firing. This phase of attack as unveiled was chained to the next phase involving killing the detainees.

278. The fact of taking two detainees, two unarmed freedom-fighters towards the Chattar canal, the killing site and causing death of one detainee Ali Ahmed could not be refuted in any manner. Another detainee Kala, another non-combatant freedom-fighter could not be traced. Presumably, he was also wiped out later on. It is to be noted that to prove the offence of murder as crime against humanity finding dead body is not necessary as such crime happens

in war time situation and always the victim's dead body could not be traced or found.

279. Accused AKM Monsur was a resident of neighbouring locality of P.W.06 and thus it was fairly natural to know him beforehand, as testified by the P.W.0 06. His testimony demonstrates that he [P.W.06] saw the accused AKM Monsur causing death of Ali Ahmed by gun shot on the bridge over Chattar canal.

280. Victim Ali Ahmed was the brother's son of P.W.07 Md. Abdul Halim, a freedom-fighter. It remained undisputed that P.W.07 and his co-freedom fighters Ali Ahmed, Kala and Nandalal Kuri arrived at their houses, on leave of their commander just few hours before the attack was launched.

281. It has been also divulged that victims Ali Ahmed remained stayed at the house of P.W.07 while victim Kala and Nurunnabi got stayed at the house of Nurunnabi till the attack was launched. Another freedom-fighter Nandalal Kuri went to his own house.

282. From the corroborative testimony of P.W.06 and P.W.07 it transpires that the three accused were with the group of attackers when it launched attack intending to cause forcible capture of victims, the unarmed freedom-fighters. After causing forcible capture of Ali Ahmed the accused persons started assaulting him by

rifle. P.W.07, a direct witness to the fact materially related to the event of attack testified it.

283. The act of assaulting detainee Ali Ahmed, after causing his forcible capture as testified by P.W.07 gets assurance from the testimony of P.W.06, another direct witness. Defence could not refute this crucially related fact demonstrating mode of participation of the accused persons in committing the crimes.

284. P.W.08 the cousin brother of victim Ali Ahmed had been staying at the house of Ali Ahmed, at the relevant time. He remaining in hiding under the water of a paddy field besides the road saw Razakars Abul Kalam, Joynal, Md. Amir Ahmed @ Amir Ali, their accomplices Razakars and Pakistani occupation army moving towards west taking away freedom-fighters Ali Ahmed and Kala away tying them up. At that time the three accused and other Razakars were guiding the troops to move on. P.W.08 started going behind the gang. The Razakars and accused got halted on the bridge over the Chattar canal, about half kilometer far.

285. In respect of next phase of the event P.W.08 testified that accused Abul Kalam after having talk with the army men gunned down his [P.W.08] cousin brother Ali Ahmed to death and threw the dead body to the canal.

286. The above version lends corroboration to what has been testified by P.W.06 and P.W.07 in respect of forcible capture and killing the detainees and also the participation and complicity of the accused persons to the commission of the killing.

287. The first phase of attack involving unlawful detention of two unarmed freedom-fighters Ali Ahmed and Kala that happened on 13 September 1971 in early morning has been consistently narrated by P.W.09, another eye witness. He saw Razakars Md. Amir Ahmed @ Amir Ali, Abul Kalam @ AKM Monsur, Md. Joynal Abedin, their accomplice Razakars and Pakistani occupation army moving towards west taking detained freedom-fighters Ali Ahmed and Kala with them tying them up. This phase of attack was chained to the ending phase of attack that resulted in killing, as testified by P.W.09 could not be tainted in any manner, in cross-examination. P.W.09 could see the accused Abul Kalam @ AKM Monsur killing victim Ali Ahmed by gun shot on the bridge of Chattar canal, as he [P.W.09] too started going behind the gang when it was moving towards the Chattar canal bridge.

288. P.W.10 also corroborates the act of launching attack at the relevant time by the group formed of Pakistani occupation army and Razakars and he went into hiding in the paddy field when the accused Abul Kalam @ AKM Monsur, Md. Amir Ahmed @ Amir Ali and Md. Joynal Abedin started gun firing targeting him and

with this he, to save his own life, ran to the east and got hidden inside a bush till 11:00 A.M. Defence could not taint this version in cross-examination.

289. The above piece of unimpeached version of P.W.10 proves culpable and conscious presence of the three accused with the enterprise and they were equipped with fire arms. This is fair *indicia* of their conscious participation in launching attack which substantially contributed to the accomplishment of the killings, to further policy and plan.

290. P.W.10 however did not see the upshot of the event of attack. He later on heard from others as to the killing of two detained victims. His hearsay testimony in this regard gets corroboration from testimony of other direct witnesses and thus such hearsay evidence carries probative value.

291. On cautious evaluation of evidence tendered we may safely conclude that the act of forcible capture of two freedom-fighters and killing one of victims on the bridge of Chattar canal is not disputed. The P.W.s, the direct witnesses narrated facts materially related to the act of killing Ali Ahmed to which accused Abul Kalam @ AKM Monsur was an active participant. Another detainee freedom-fighter Kala could not be traced as he was taken away, after killing Ali Ahmed.

292. It transpires from integrated appraisal of evidence tendered that after gunning down Ali Ahmed to death the gang took away Kala with them and since then he could not be traced. The circumstances and relevant facts irresistibly suggest that Kala was also killed. It is to be noted that to prove the offence of murder as crime against humanity finding dead body of the victim is not required as such offence happened in war time situation. Besides, defence could not impeach the killing of these two non-combatant freedom-fighters, in any manner. There has been no reason of disbelieving these witnesses.

293. Additionally, the pattern of the systematic attack which ended in killing Ali Ahmed and Kala was intended to further policy and plan of the Pakistani occupation army, we conclude. It is to be noted that non-combatant member of counterpart, even in war time situation shall have right to remain protected—laws of war ensure it. But in the case in hand we see that in exercise of membership in locally formed notorious Razakar Bahini the three accused and their accomplices rather instigated, encouraged and participated in carrying out the attack by accompanying the Pakistani occupation army.

294. The accused persons' aggressive act to unarmed civilians reflected their notorious mindset to the pro-liberation Bangalee civilian population. Of the P.W.s who testified in support of the

arraignment brought in this charge two were co-freedom-fighters of the victims and three other were near relatives of victims. Naturally, they opted going behind the gang when it started heading towards the bridge of Chattar canal taking two detained victims with them, for the reason of bondage they had with them. It was thus practicable for those P.W.s of observing the activities the gang and accused persons carried out there, remaining in hiding inside the water of the canal.

295. Accused Abul Kalam @ AKM Monsur was a potential Razakar and was known to the P.W.s since prior to the event. P.W.07, a co-freedom-fighter of the victims stated that they had a list of Razakars of their locality with them. Naturally, during the war of liberation the freedom-fighters had to remain acquainted with the Razakars of the locality and their criminal activities.

296. The above leads us to conclude that the P.W.s had rational reason of knowing the accused persons beforehand and thus they could identify them accompanying the gang and participating in launching the attack and naturally could see them remaining with the gang till the phase of killing ended.

297. Tribunal notes that mode of participation in carrying out 'systematic attack' directing civilian population includes- (i) accompanying the group of attackers knowing culpable intention,

(ii) active role played in participation at crime site; (iii) culpable association with the squad committing crime; (iv) member of a criminal enterprise with knowledge of acts of the group and (v) culpable presence at the crime site.

298. It is to be reiterated that ‘system crime’ or ‘group crime’ committed in war time situation in fact is the upshot of series of acts and activities and an individual may not have participation to all phases of the event. Five witnesses including two co-freedom-fighters of the victims testified what they experienced and how the accused persons participated and facilitated in committing the principal crimes. In absence of anything contrary, their testimony inspires credence.

299. The victims were freedom-fighters, true. But at the relevant time they were non-combatant and came to their house on leave allowed by their commander. Thus, it cannot be said that the victims were not ‘civilians’ as they were linked to a particular side of the conflict. It is to be considered what their status was at the time of crimes committed.

300. It transpires that the victims were no longer in position in taking part in hostilities and they were no longer bearing arms as they came to their home from their camp, on leave of their commander. Besides, there has been nothing to show that at the

time of attack launched none of the victims or their co-freedom fighters even attempted to resist the gang of attackers and thus at the relevant time their status were non-combatant civilians. In this regard the principle enunciated by the ICTY is as below:

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

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

301. Defence argued that the testimony of P.W.s examined in support of this charge suffers from inconsistency and exaggeration. It was not practicable of seeing any part of the event of attack and thus complicity and presence of the accused persons with the group creates doubt. Long more than four decades after the event happened it is impracticable to memorize or recall what the witnesses experienced, defence added.

302. But we are not convinced to accept the above argument. With the lapse of long passage of time human memory is faded, true. But 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. We

reiterate that research on human cognition suggests that a piece of information, once it is stored in long-term memory, stays alive.

303. The core particular is the presence of armed accused at the site under attack and whether they were actively concerned in detaining non-combatant freedom-fighters and finally whether the victims were killed. Narrative made by direct witnesses, in the case in hand is chiefly based on episodic memory. Exactitude of the event of attack that resulted in killing, the witnesses may not always be able to recall it with detail or precision. But their narration stored in their episodic memory has reliably portrayed the event of forcible capture followed by the event of killing and accused persons' culpable complicity and participation therewith.

304. What we see in the case in hand about the role of accused persons in committing the crimes? It stands proved that the accused Md. Joynal Abedin and Md. Amir Ahmed @ Amir Ali, sharing common intent, accompanied the squad being equipped with fire arms till the attack ended in killing the victims, starting from the act of their forcible capture. It lends conclusion that these two accused as well played the role of physical participant in committing the crimes.

305. Tribunal notes that even a single or limited number of acts on the accused's part would qualify as a crime against humanity,

unless those acts may be said to be isolated or random. We have found it proved that accused Abul Kalam @ AKM Monsur Physically participated in perpetrating the principal crime, the killing.

306. The two other accused Md. Amir Ahmed @ Amir Ali and Joyal Abedin were with the gang with knowledge of acts of the criminal enterprise and they remained associated and culpably present with the gang in carrying out its prohibited and criminal activities that eventually resulted in killing of detained victims, two non-combatant freedom-fighters. These two accused were also conscious part of the criminal enterprise; facts unveiled irresistibly suggest concluding it. Thus, all the three accused can be held equally responsible under the doctrine of JCE[Basic Form] for the crimes committed as they have been found to have had ‘concern’, by their acts or conducts with the killing’.

307. Why the non-combatant freedom-fighters were targeted? It is now well settled that Razakar Bahini was formed to collaborate with the Pakistani occupation army in annihilating the Bengali nation. This auxiliary force and they symbolized the pro-liberation Bengali people and freedom-fighters as their ‘enemies’ and ‘miscreants’, to further policy and plan of Pakistani occupation army. We reiterate this settled history.

308. Detaining freedom-fighters just few hours after they got arrived at their home, by launching attack suggests irresistibly that the accused persons and their accomplices somehow knowing or sensing the coming of victims freedom-fighters at home culpably enthused the army men in designing the plan of attack intending to wipe out non-combatant freedom-fighters whom they termed ‘miscreants’. Without effective and substantial facilitation and assistance of accused persons belonging to Razakar Bahini and their accomplices it was rather not possible for the army men to locate the site and the civilians to be targeted.

309. In light of settled principle, culpable role of all the three accused persons as unveiled in locating the non-combatant freedom-fighters and executing the criminal mission substantially lent support and contribution as well in committing the brutal killings. All the three accused incurred liability for ‘committing’ such crimes. ‘Committing’ connotes an act of ‘participation’, physically or otherwise directly or indirectly, in the material elements of the crime charged through positive acts, whether individually or jointly with others. It has been observed by the **ICTY** in the case of *Stakic* that-

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

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

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

310. It is not required to prove which accused did which act, in conjunction with the attack. Although we have found it proved that all the three accused ‘participated’ and consciously ‘contributed’, being part of the joint criminal enterprise in executing the purpose of the criminal mission ‘**Participation**’ includes both direct participation and indirect participation. It has been observed by the ICTY in the case of **Kvocka** that--

“It is, in general, not necessary to prove the substantial or significant nature of the contribution of an accused to the joint criminal enterprise to establish his responsibility as a co-perpetrator: it is sufficient for the accused to have committed an act or an omission which contributes to the common criminal purpose.”

[Kvocka, ICTY Appeals Chamber, February 28, 2005, para. 421]

311. The factual matrix proved by the prosecution unerringly point towards the three accused persons as the active ‘participants’ of the group of perpetrators and as such there can be no escape from the conclusion that the crime was committed on substantial contribution and assistance of the accused persons.

312. On totality of evidence adduced we are of the view that the prosecution has been able to prove beyond reasonable doubt that the (1) Abul Kalam @ AKM Monsur, (2) Amir Ahmed @ Amir Ali and (3) Md. Joynal Abedin participated in abducting two non-combatant freedom-fighters and finally being part of collective criminality participated in and had complicity with the commission of criminal act of killing the victims, pursuant to common design and plan.

313. In this way, the accused (1) Abul Kalam @ AKM Monsur, (2) Amir Ahmed @ Amir Ali and (3) Md. Joynal Abedin participated, abetted and substantially contributed to the accomplishment of killing 02 non-combatant freedom-fighters, on forcible capture the outcome of systematic attack constituting the offence of ‘**abduction**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which is punishable under section 20(2) read with section 3(1) of the Act and thus the accused persons incurred liability under section 4(1) of the Act for the above offences.

Adjudication of Charge No. 03

[Offences of murder, abduction, confinement, torture and other inhumane acts committed at villages Ramhoritaluk, Devipur and Uttar Chakla under Police Station-Sudharam, District-Noakhali]

314. **Charge:** That on 13 September, 1971 at about 06.00 A.M. a group of 50/60 armed Razakars including accused Razakars (1) Md. Amir Ahmed alias Razakar Amir Ali, and (2) Abul Kalam

alias A.K.M. Monsur and another accused (3) Md. Yusuf [died during trial] accompanied by 150/200 Pakistani occupation army men simultaneously besieged the villages Ramhoritaluk, Devipur and Uttar Chakla and thereafter launched attack on the unarmed pro-liberation people of those villages and having captured about 300 [three hundred] unarmed pro-liberation people from those villages including 114 inhabitants of Ramhoritaluk village, 59 inhabitants of Devipur village and 38 inhabitants of Uttar Chakla village totaling 211 [two hundred and eleven] people [the names of them are mentioned in the formal charge submitted by the prosecution] took them away to Ramhoritaluk School/Union Board Office and tortured keeping them detained there. At the time of said attack the Razakars accused persons and their accomplices also having plundered the houses of those villages set fire to most of those houses.

Thereafter, in conjunction with the same attack the two Razakars accused persons along with another Razakar accused Md. Yusuf [died during trial] with the help of their accomplice other Razakars and Pakistani occupation army men took away 09[nine] detainees out of said detained about three hundred unarmed pro-liberation people, namely (1) Momin Ullah son of late Haji Fateh Ali (2) Nuruddin and (3)Shahabuddin, both sons of late Aminullah Miah (4) Serajul Haque son of late Raza Miah (5) Henju Miah son of late Haris Miah (6) Safiqullah son of late Anarullah (7) Zulfiqar Ali son

of late Isahaque (8) Anarullah alias Ana son of late Shamsul Haque all of village Ramhoritaluk, and (9) Ramjan Ali son of late Ahammad Ullah of village Uttar Chakla, Police Station Sudharam, District Noakhali, a little bit far towards south and then made them stood in a queue there and shot them all to death and left their dead bodies there. Thereafter, the accused Razakars and the Pakistani occupation army men told all other detained unarmed pro-liberation people that if they chanted the slogan 'Pakistan Jindabad', all of them would be set free , and then the detainees had to chant the slogan to save their lives. Thereafter, at about 11.00 A.M. the two accused persons and their accomplice Razakars and Pakistani occupation army left the crime site, on releasing the detainees.

Therefore, the accused (1) Md. Amir Ahmed alias Razakar Amir Ali and (2) Abul Kalam alias A.K.M. Monsur have been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of murder, abduction , confinement, torture and other inhumane acts [plundering and arson] as crimes against humanity as part of systematic attack directing against unarmed civilians as specified 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).

Evidence of Witnesses Examined

315. Prosecution adduced four witnesses who have been examined as P.W.11, P.W.12, P.W.13 and P.W.14, in support of the

arraignment brought in this charge. These witnesses narrated what they experienced, materially related to the attack that resulted in killing of civilians, prosecution alleges. Now let us see what these four witnesses testified before the Tribunal.

316. P.W.11 Md. Nurul Islam @ Nur Islam [62] a resident of village Ramhoritaluk of Police Station-Sudharam of District-Noakhali. In 1971 he was 16/17 years old and a student of class VII. He testified that on 13.09.1971 at about 06:00/06:30 A.M he had been at the field of Ramhoritaluk Primary school when his maternal grand-father[now dead] Ali Ahmed going to him informed that Pakistani army and Razakars besieged the villages Ramhoritaluk, Devipur and Uttar Chakla. He [P.W.11] then started moving towards south and on his way he saw Razakar Yusuf [now dead] and other Razakars in front of two shops and they told them not to flee. He [P.W.11] then went into hid inside a bamboo bush, west to the primary school and 5/6 minutes later he saw Pakistani army men and Razakars bringing about 300/350 civilians including his [P.W.11] father, uncles Ali Akbar, Zulfiqar Ali, Safiqullah, grand-father Serajul Haque, maternal Grand-father Mominullah Mia, uncle Nuruddin, Shahabuddin and Anarullah, Henju Mia, Ramjan Ali at the field of primary School where they started beating them tying them up.

317. P.W.11 went on to state that at about 09:00/09:30 A.M Razakar accused Md. Amir Ahmed @ Amir Ali, accused Abul Kalam @ AKM Monsur and their 10/12 accomplice Razakars came to the school field and consulted the army men and then one Bachchu Razakar[now untraced] segregating nine detainees—(1) Mominullah Mia, (2) Shahabuddin, (3) Nuruddin, (4) Safiqullah, (5) Zulfiqar Ali,(6) Serajul Haque, (7) Ramjan Ali, (8) Anarullah and (9) Henju Mia made them stood in a line at the south of the school. He[P.W.11] saw, remaining in hiding, the accused Amir Ahmed @ Amir Ali, Yusuf Ali[now dead], accused Abul Kalam @ AKM Monsur consulting with the army men and then those three Razakars gunned down those nine detainees to death. The army men and Razakars asked the other detainees kept in the field to chant the slogan ‘Pakistan Jindabad’. All the detainees loudly chanted the slogan and then the Pakistani occupation army and Razakars had left the school field and the detainees came back to their houses. He [P.W.11] also came out of the hiding place and found the dead bodies of his grand-father, uncle and other detainees he described. A monument has been built on the south of the school field in reminiscence of nine martyrs.

318. P.W.11 finally stated that accused Abul Kalam @ AKM Monsur was a resident of village Devipur, about one-one and half kilometer far from their house. At the time of the event he testified he heard accused AKM Monsur talking accused Amir Ahmed

calling his name and as such he knew him [accused Md. Amir Ahmed @ Amir Ali].

319. In cross-examination, P.W.11 stated in reply to defence question that their house was about 150 feet west-north to the Ramhoritaluk Primary School; that in 1971 accused AKM Monsur was 18/20 years old; that none of his family lodged any case over the event he described; that the Pakistani occupation army had its camp at Sudharam Police Station since prior to the event he narrated. P.W.11 also stated that about 150/200 army men came to their village at the time of the event of attack.

320. Defence suggested P.W.11 that he did not know the accused persons; that the accused persons were not Razakars and not with the gang at the time of the event he testified. P.W.11 denied it blatantly. Defence however, does not seem to have made any effort to refute the facts materially related to the brutal killing of nine civilians as testified by the P.W.11

321. P.W.12 Md. Azizuul Haque [65] is a resident of village-Ramhoritaluk under Police Station-Sudharam of District- Noakhali. In 1971 he was 19 years old. P.W.12 stated that on the night of 13 September, 1971 he had been staying at his father's shop at Khalifarhat Bazar, about half kilometer far from their house. In the early morning being awoken he heard that the Pakistani army and

Razakars had attacked their house. With this he started running towards their house and he saw 10/12 Razakars besieging their house. He could not enter inside the house as Razakar Yusuf[now dead] tied him up and took him to his[P.W.12] uncle Mominullah's house where he was kept detained with his captured uncle Mominullah, cousin brothers Nuruddin, Shahabuddin, neighbours Anarullah, Khurshid Alam, Zulfiqar and Fazlu Mia.

322. What happened next? P.W.12 stated that at about 07:00/07:30 A.M the Razakars took them away in the field of Ramhoritaluk Primary School where the Union Parishad Board Office too situated. They were made seated there in a line along with 200/300 detained civilians of their village and the Razakars started them beating to extract information about the freedom-fighters and their arms and ammunition.

323. Next phase of the attack happened at about 09:00/09:30 A.M when the accused Md. Amir Ahmed @ Amir Ali, Abul Kalam @ AKM Monsur and other Razakars arrived at the field, P.W.12 stated. He[P.W.12] stated further that those two accused on instruction of Razakar Yusuf[now dead] made his[P.W.12] uncle Mominullah, cousin brothers Nuruddin, Shahabuddin, neighbours Safiqullah, Anarullah, Serajul Haque, villagers Henju Mia, Zulfiqar Ali and Ramjan Ali segregated and took them to the north of the Board Office where they were made stood in a line. He[P.W.12]

then saw the accused Amir Ahmed @ Amir Ali, Abul Kalam @ AKM Monsur and Razakar Yusuf Ali[now dead] gunning those detainees down to death there and then they asked the other civilians kept detained in the field to chant slogan 'Pakistan Jindabad'. Then they being panicked chanted the slogan 'Pakistan Jindabad' and the gang and their accomplice Razakars had left the site. Later on, they buried the dead bodies of 09 martyrs.

324. P.W.12 also stated that on the same day at about 11:00/11:30 A.M he heard that the Pakistani army and Razakars destructed their shop at Khalifarhat bazaar, houses, and looted households and set those on fire.

325. In respect of knowing the accused persons P.W.12 stated that accused Amir Ahmed @ Amir Ali used to move around their locality and had business and accused Abul Kalam @ AKM Mansur was a resident of village Nandanpur, about 2/3 kilometers far from their [P.W.12] house and he used to visit Hat-bazaar of their locality and thus he knew them beforehand.

326. In cross-examination, defence chiefly denied what has been testified by the P.W.12 implicating the accused persons with the event of attack that resulted in killing of nine civilians. But it however could not impeach the truthfulness of the event and participation of the accused persons in accomplishing the principal

crime. P.W.12 denied the defence suggestion put to him that the accused persons were not Razakars and they were not involved with the commission of the crime.

327. P.W.13 Md. Khurshid Alam [75] is a resident of village Ramhoritaluk, the site where the event of attack happened. In 1971 he was 27/28 years old. In narrating the event of attack he testified that on 13 September, 1971 at about 06:00/06:30 A.M some Razakars and army men coming to the courtyard of their house tied him up and also dragged his cousin brother Akkas, uncle Zulfiqar, Badu Mia out from their house and then he along with other detained persons was taken towards the Board Office and on the way he also saw Razakars and army men bringing five civilians detained from the house of Aminullah Chairman. All the detainees were made assembled in the field of Ramhoritaluk Primary School adjacent north to the Board office. P.W.13 also stated that he saw about 300 civilians were kept in the field detained, bringing on forcible capture from villages Ramhoritaluk, Devipur and Uttar Chakla. Razakars and army men then started beating them to extract information about freedom-fighters.

328. What happened next? What the P.W.13 experienced afterwards? P.W.13 stated that at about 09:09:30 A.M, on the same day Razakars Amir Ali, Monsur [AKM Monsur] and their cohorts came to them and asked tom make the freedom fighters segregated.

In this way nine [09] detainees Momin Mia, Nuruddin, Shahabuddin, Anarullah, Serajul Haque, Shafique Master, Ramjan Ali, Zulfiqar and Henju Mia were made segregated when Chairman Aminullah appealed to set them at liberty to which Pakistani occupation army men responded positively but accused Razakar Amir Ali, Monsur and Yusuf [now dead] obstructed and then accused Amir Ali and, Monsur [AKM Monsur] and Yusuf [now dead] gunned those nine detainees to death there. Then the other detainees started chanting slogan 'Pakistan Jindabad' as ordered by Razakars and army men. Afterwards the Razakars and army men leaving the site headed towards south. They buried the dead bodies later on. He [P.W.13] also heard that the Razakars and army men on their way back looted and burnt down many houses. Finally, P.W.13 stated that accused Amir Ali and Monsur used to visit local bazaar when they saw them and thus he knew them beforehand.

329. Defence does not seem to have made effort to refute the material particulars related to the killing of nine detained civilians out of hundreds of civilians. Rather the event of killing has been affirmed as the P.W.13 stated in reply to defence question that Aminullah Chairman was the father of detainee Shahabuddin who was shot to death and that Isahaque Mia was the father of another detained victim Ramjan Ali. Accomplishing the act of killing 09 detained civilians formed the concluding phase of the event which

remained unimpeached. Even defence does not appear to have denied it in cross-examination.

330. Defence however simply suggested the P.W.13 that he did not know the accused persons and what he testified was untrue and that the accused were not Razakars. P.W.13 denied it.

331. P.W.14 Md. Humayun Kabir [75] is a resident of the village Ramhoritaluk under Police Station-Sudharam of District- Noakhali. In 1971 he was 27/28 years old and was engaged in taking care of the house of his uncle Aminullah.

332. P.W.14 stated that on 13 September, 1971 in the early morning, at about 06:00/06:30 A.M he and his uncle Aminullah had been at kachari Ghar of his uncle's house when about 20/30 Razakars and Pakistani army men arrived there and forcibly captured his uncle and he somehow managed to go into hide inside a bush, about 20/30 yards far. Few minutes later, he saw 4/5 Razakars bringing his cousin brothers Khurshid Alam, Akkas Mia, Badu Mia in front of their house. The Army men and Razakars then headed towards east taking those captured civilians and Aminullah, Mominullah, Shahabuddin, Nuruddin. He then started going behind them and at a stage he saw that the detainees were taken in the field of Ramhoritaluk School. He then remaining in hiding inside a bush, west to the school also saw that about 300/350 residents of villages

Devipur, Uttar Chakla and Ramhoritaluk were taken there on capture.

333. The above is the narration the P.W.14 made in relation to making the hundreds of villagers including the relatives and neighbours of P.W.14 assembled in the field of the school, on forcible capture. What happened next? What the P.W.14 testified in relation to next phase of the event?

334. P.W.14 stated that at about 09:00/09:30 A.M, on the same day he saw the accused Razakars Amir Ahmed @ Amir Ali, Abul Kalam @ AKM Monsur and some army men arriving in the school field and had talk with an army Major and then 09 of detained civilians were made segregated and taken to the south of the school where they were gunned down to death. He [P.W.14] remaining in hiding inside the bush heard the other detainees kept in the school field chanting the slogan 'Pakistan Jindabad'. And then the army men and Razakars had left the site. He then came out of the bush and saw the dead bodies lying.

335. He [P.W.14] also stated that he heard that on the way of returning back the gang looted the houses of civilians and burnt down the same. In respect of reason of knowing the accused persons P.W.14 stated that both the accused used to visit local bazaar and thus he knew them beforehand.

336. In cross-examination, defence simply denied the presence of the accused at the crime site, at the phase of attack subsequent to taking hundreds of villagers in the school field, on forcible capture. It does not deny that hundreds of villagers were brought in the school field, on forcible capture and that 09 of those were gunned down to death there.

Finding with Reasoning on Evaluation of Evidence

337. Mr. Zahid Imam the learned prosecutor argued that in support of the arraignment involving the act of killing 09 civilians and detaining hundreds of civilians as narrated in this charge in all 04 witnesses[P.W.11, P.W.12, P.W.13 and P.W.14] have been examined. Their direct testimony on crucial facts materially related to the principal crime inspires credence as to participation and complicity of the accused persons in committing the same. Defence could not refute it. Rather the event that ended with the killings remained unshaken.

338. Mr. Gaji MH Tamim and Mr. Masud Rana the learned counsel defending the accused Abul Kalam @ AKM Monsur and Amir Ahmed @ Amir Ali submitted, in course of placing argument that these two accused were not with the gang of attackers; that they were not Razakars and it was not practicable of seeing them accompanying the gang and that the witnesses examined had no

reason of knowing them beforehand. These accused persons have been falsely implicated in this case out of political rivalry.

339. This charge involves the act of unlawfully detaining hundreds of civilians of villages Devipur, Ramhoritaluk and Uttar Chakla under Police Station-Sudharam of District Noakhali which ended in brutal killing of nine civilians. The gang of attackers formed chiefly of Pakistani occupation army and the accused Amir Ahmed @ Amir Ali and Abul Kalam @ AKM Monsur and their accomplice Razakars accompanied the gang and substantially contributed and facilitated the commission of the principal offence of killings.

340. Prosecution relied upon four witnesses to substantiate the arraignment brought in this charge. The attack as it appears happened in day time, in phases. First, the villagers were forcibly captured and taken in the field of Ramhoritaluk Primary School. Second, the detainees were subjected to beating to extract information about the freedom fighters. Third, the two accused arrived in the field and deliberately separated 09 detainees and took them to a place west to the school where they were shot to death.

341. P.W.12 and P.W.13 are two of detainees and thus had fair occasion of seeing the acts carried out at all phases of the attack, prosecution avers. P.W.11 and P.W.14 are also direct witnesses to the facts materially related to the commission of the principal

crime. Now, let us evaluate the evidence tendered in rational manner aiming to arrive at a decision as to accusation brought.

342. In view of above, prosecution requires proving that-

- (i) The attack was launched at the crime villages that resulted in forcible capture of hundreds of villagers ;
- (ii) The accused persons got actively and culpably engaged in the next phase of the event involving the act of making the detainees assembled in the school field;
- (iii) The accused played culpable and substantial role in selecting 09 detainees to cause their death by gunshot ;
- (iv) The accused persons physically participated in perpetrating the killings;
- (v) On the way back from crime site the gang carried out destructive activities directing civilians properties;
- (vi) That the accused persons so participated in accomplishing the criminal mission, sharing common intent and to further policy and plan.

343. P.W.11 is a direct witness to the event of attack. He saw the gang formed chiefly of Pakistani army and their collaborators

including the accused Amir Ahmed @ Amir Ali and AKM Monsur bringing hundreds of civilians on forcible capture who were made assembled in the field of Ramhoritaluk Primary School. Testimony of P.W.11 demonstrates that accused AKM Monsur physically participated in wiping out 09 of those hundreds of detainees including his [P.W.11] relatives.

344. At the relevant time P.W.11 had been in the field of the school and on seeing the gang moving he went into hide inside a bamboo bush adjacent to the field. It remained unshaken. Thus it was quite natural of experiencing the atrocious activities carried out there by bringing the civilians there on forcible capture.

345. The accused Abul Kalam @ AKM Monsur was a resident of village Devipur, about one-one and half kilometer far from the house of P.W.11. This accused was 18/20 years old in 1971, P.W.11 stated in cross-examination. Thus, the reason of knowing the accused beforehand as testified by the P.W.11 inspires credence.

346. It has been affirmed in cross-examination of P.W.11 that the group of attackers formed of about 150/200 army men. Conduct of the accused persons indisputably suggests that they knowingly accompanied the gang, to further policy and plan.

347. P.W.12 is another direct witness. He was also detained along with his relatives, neighbours and hundreds of villagers and they were taken in the field of the primary school—the crime site. Defence could not refute it in any manner. The reason of knowing the accused persons beforehand as has been testified was likely. Besides, in 1971 during the war of liberation the people by engaging in notorious atrocious activities in exercise of their membership in Razakar Bahini an auxiliary force made them known to the locals.

348. It has not been denied in cross-examination that the P.W.12 together with his relatives and neighbours detained were made seated in the school field there in a line along with 200/300 detained civilians of their village and the Razakars started them beating to extract information about the freedom-fighters and their arms and ammunition.

349. The above piece of undenied evidence unerringly proves the fact of detaining the P.W.12 and others who were taken in the school field, the killing site and purpose was to wipe out freedom-fighters on extracting information about them. The perpetrators thus targeted the civilians as they sided with the war of liberation, we may conclude legitimately.

350. What happened next to taking the P.W.12 and other civilians in the school field, on unlawful capture? It transpires too from testimony of P.W.12 that the accused persons arrived in the field and remained engaged in perpetrating the criminal acts that ended in killings. Therefore we may safely deduce that the accused persons who in exercise of their affiliation with the Razakar Bahini substantially contributed to the commission of the principal crimes.

351. Testimony of P.W.12 so far as it relates to complicity and participation of the accused persons with the phase of segregating 09 detainees that happened in the school field gets corroboration also from the testimony of P.W.11 who also had natural occasion of seeing and experiencing the killings and accused persons participation therewith. In absence of anything contrary, we do not find any reason to discard their testimony

352. P.W.13 Md. Khurshid Alam is one of civilians detained and taken in the field of Ramhoritaluk Primary School and as such had opportunity to witness the activities carried out there till the attack ended in killing 09 detainees. His unimpeached testimony corroborates P.W.11 and P.W.12 that the two accused Amir Ahmed @ Amir Ali and Abul Kalam @ AKM Monsur arriving in the field played key role in accomplishing the killing of 09 detained civilians.

353. Defence does not seem to have made any effort to refute the material particulars related to the killing of nine detained civilians out of hundreds of civilians, as testified by the P.W.13. Rather the event of killing has been affirmed in cross-examination as the P.W.13 stated in reply to defence question that Aminullah Chairman was the father of detainee Shahabuddin who was shot to death and that Isahaque Mia was the father of another detained victim Ramjan Ali. Even defence does not appear to have denied it in cross-examination.

354. It is found too from evidence of P.W.14 that the act of launching attack by the gang formed of Pakistani occupation army and Razakars that resulted in forcible capture of hundreds of villagers including the relatives of P.W.14 remained undisputed.

355. In cross-examination of P.W.14, defence simply denied the presence of the accused persons in the school field, the killing site, at the phase of attack subsequent to taking hundreds of villagers there, on unlawful capture. It does not deny that hundreds of villagers were forcibly captured and were brought in the school field and that 09 of those were gunned down to death.

356. Thus, rational appraisal of evidence tendered by the above four witnesses who we arrive at an unerring decision that by launching systematic attack the squad formed of Pakistani

occupation army and Razakars got hundreds of villagers of Ramhoritaluk, Uttar Chakla and Devipur. Defence does not dispute it. It could not be controverted even in any manner.

357. Next, we have found it proved that the detainees were taken in the field of Ramhoritaluk Primary School where they made assembled and then accused Amir Ahmed @ Amir Ali and Abul Kalam AKM Monsur appeared and they their cohorts started beating them to extract information about freedom-fighters. It too remained undisputed.

358. The prohibited act and conduct the accused persons had carried out directing the detained civilians also proves that purpose and intent of the perpetrators was to wipe out the freedom-fighters and pro-liberation civilians.

359. It stands proved as well that 09 of detained civilians were made separated and the accused persons gunned them down to death. It transpires from the evidence of P.W.13, one of survived detainees that the accused persons even ignoring the moderate attitude of army men brutally caused death of nine civilians by gun firing.

360. That is to say, the accused persons were armed when they appeared in the school field and they were extremely arrogant to the freedom-fighters and they played substantial role in getting the nine

victims separated. It would not have been possible to make 09 detainees separated among hundreds of detainees without active and culpable contribution of the accused persons.

361. Such conscious and barbaric prohibited act of the accused persons formed part of the systematic attack. And it was patently chained to the first phase of the attack that resulted in unlawful detention of hundreds of civilians who were taken in the school field and as a result the accused persons had ‘concern’ even with the first phase of the attack and incurred equal liability under the theory of JCE[Basic Form].

362. The Tribunal notes that JCE is a form of co-perpetration that establishes personal criminal liability. 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.

363. The accused persons knowingly joined the gang in the school field consciously and knowing consequence of their act and thereby they made them part of the criminal enterprise sharing ‘common purpose’ which includes ‘awareness of foreseeable consequence’ of act or conduct, and ‘intent’, the key factors involved with the notion of JCE liability.

364. 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. In line with the recognized principles almost common to all legal systems, a person who takes 'consenting part' in the commission of the crime or who is found to be 'connected with plans or enterprise' involved in the commission of crime.

365. Conduct of the accused persons as demonstrated from the evidence of witnesses including survived victims thus prove physical participation of both the accused and also fanned the flames of grave inducement on commission of the principal crimes, the killings.

366. In light of settled principle, culpable role of the accused persons as unveiled in locating the pro-liberation civilians substantially lent contribution, support and abetment in committing killing of numerous pro-liberation civilians. The existing 'context' allowed the Pakistani occupation army and their local collaborators, the perpetrators in accomplishing the criminal acts without facing any social correctives or any kind of counter incentive on part of the victims under attack. The context loaded of horrific climate of course did not allow the persons to resist or to make any counter effort to rescue the civilian under attack despite the opportunity of seeing the accomplishing the criminal act by the perpetrators.

367. Why the rest hundreds of detained civilians were spared despite bringing them in the school field on unlawful capture? Detaining hundreds of civilians and later on allowing them to walk free excepting 09 was intended to terrorize the civilian population of the locality with a message that they too would have to face such consequence if they sided with the war of liberation, we may infer it unerringly.

368. Causing untold trauma and mental harm by detaining civilians who eventually were spared constituted the offence of 'other inhuman act' as well. The detainees were subjected to physical assault as well as they were beaten intending to extract information about freedom-fighters. Additionally, unlawful detention itself caused mental harm to the victims. The accused persons remaining present in the school field physically participated in carrying out all these criminal acts. It has been proved.

369. It has also been divulged from the evidence of the witnesses examined that troops accompanied by the accused persons and their accomplices destructed shops at Khalifarhat bazaar, houses, and looted households and set those on fire, on their way back from the crime site. Defence could not refute it. Hearsay testimony on this fact carries probative value as it had a compatible nexus with the crimes of killings on detaining hundreds of civilians.

370. Destruction of civilians' property, in conjunction with the attack indubitably had grave detrimental effect on individuals' fundamental right to maintain normal and smooth livelihood and thus it caused enormous 'mental harm' to the victims. The object of such destructive activities was to terrorize the innocent civilians, which eventually constituted the offence of 'other inhumane act'.

371. By using the yard-stick of probability and on due and rational appreciation of the intrinsic value of evidence presented before us, in respect of facts materially related to the principal event of killing 09 civilians, we arrive at a finding that the prosecution has been able to prove beyond reasonable doubt that the accused (1) Abul Kalam @ AKM Monsur and (2) Md. Amir Ahmed @ Amir Ali, by their culpable act and conduct forming part of attack directing non combatant civilians are found criminally liable under section 4(1) of the Act of 1973 for participating, substantially abetting, facilitating and contributing in committing the criminal acts constituting the offences of '**abduction**', '**confinement**', '**other inhumane act**' and '**murder**' as **crime against humanity**' as specified in section 3(2) (a) (g)(h) of the Act which are punishable under section 20(2) read with section 3(1) of the Act.

X. Conclusion

372. The three charges framed in this case arose from some particular events occurred deliberately and in a systematic manner

in the rural locality under Police Station-Sudharam of District-Noakhali, in context of the War of Liberation in 1971. All the four accused persons 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 active and potential membership in and affiliation with the locally formed Razakar Bahini.

373. 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. It has been found proved too in the case in hand.

374. In the case in hand, four accused –(1) Abul Kalam @ AKM Monsur (2) Md. Amir Ahmed @ Amir Ali, (3) Md. Joynal Abedin and (4) Md. Abdul Quddus have been tried jointly. All of them belonged to locally formed Razakar Bahini and accused Abul Kalam @ AKM Monsur was its commander—already this issue has been resolved.

375. We found it proved too in the case in hand that all the events of attacks as narrated in the charges framed happened in day time,

targeting pro-liberation civilian population. The accused persons were culpably and consciously engaged in launching designed deliberate attack directing the unarmed pro-liberation civilians of the locality which eventually ended in killing numerous unarmed civilians. The accused persons were consciously and knowingly were with the gang formed chiefly of Pakistani occupation army.

376. Carrying out such systematic attacks directing civilian population would not have been possible without active, culpable, conscious and enthusiastic engagement of the accused persons belonging to locally formed Razakar Bahini. The accused persons thus knowingly participated in the enterprise.

377. In the case in hand, all the offences proved were diabolical in nature and committed in grave violation of international humanitarian law and laws of war . The prohibited acts constituting the offences proved were not divisible from the horrendous mayhem committed in the territory of Bangladesh in 1971 during the war of liberation.

378. The Tribunal already rendered its reasoned decision, on adjudication of all the 03 charges. In respect of charge no.01 all the four accused persons, for the offences brought in charge no.02 three accused and for the arraignments brought in charge no.03 two accused have been found criminally liable under the doctrine of

JCE [Basic Form] which corresponds to section 4(1) of the Act of 1973.

379. The accused persons are found criminally responsible for the commission of crimes proved as listed in these three [03] charges involving the offences of ‘abduction’, ‘confinement’, ‘other inhumane act’, ‘murder’, ‘extermination’ as crimes against humanity and therefore they be convicted for the offences, the ‘group crimes’ or ‘system crimes’ proved.

XI. VERDICT ON CONVICTION

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

All the four accused (1) Abul Kalam @ AKM Monsur [absconding] (2) Md. Amir Ahmed @ Amir Ali, (3) Md. Joynal Abedin and (4) Md. Abdul Quddus

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 offence of ‘**extermination**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus all the four 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.

Three accused (1) Abul Kalam @ AKM Monsur, (2) Md. Amir Ahmed @ Amir Ali and (3) Md. Joynal Abedin

Charge No.2: GUILTY of ‘participating’, substantially ‘contributing’ and ‘abetting’ and also for complicity, by their culpable act and conduct forming part of attack, in accomplishment of the criminal acts constituting the offence of ‘**abduction**’ 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 these three 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.

Two accused (1) Abul Kalam @ AKM Monsur and (2) Md. Amir Ahmed @ Amir Ali,

Charge No.3: GUILTY of ‘participating’, substantially ‘contributing’, abetting, facilitating and also for complicity, by their culpable act and conduct forming part of attack, in accomplishment the criminal acts constituting the offences of ‘**abduction**’, ‘**confinement**’, ‘**other inhumane act**’ and ‘**murder**’ as crimes against humanity as

enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus these two 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.

XII. Verdict on Sentence

381. Mr. Zahid Imam the learned prosecutor, during his 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 conscious contribution in committing the barbaric offences proved.

382. Conversely, the learned defence counsels and the learned State defence counsel submitted that the accused persons have been prosecuted out of political rivalry and prosecution failed to prove their involvement with any of offences alleged. They were not engaged, in any manner, in committing any of offences of which they have been arraigned and thus they deserve acquittal.

383. At the outset of this segment of verdict we consider it relevant to note that the nation feels immense pride that the historic March 7 speech of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation has been recently recognised by the UNESCO as a ‘world

documentary heritage'. The 07 March glowing speech of Bangabandhu calling on the freedom-loving Bangalees crucially activated and inspired the whole nation, excepting a few pro-Pakistan people to get prepared for the war of liberation.

384. The judgment which is being rendered today, in the great month of March not only aims to come out from the culture of impunity by punishing the offenders but to make an exposure of the truth -- the truth of horrific atrocious activities carried out in 1971 during the nine-month war of liberation in collaboration with the local pro-Pakistan people belonging to auxiliary forces. We do believe that this truth must make space to our new generation and the global community as well of knowing what ocean of blood the nation had to cross in achieving independence of its motherland--
Bangladesh.

385. In the case in hand, it has been found with great shame that the convicted accused persons, despite being Bengali consciously sided with the Pakistani occupation army and took culpable stance to wipe out the pro-liberation civilians in beastly manner.

386. 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 and status 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.

387. The objective 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 as well. 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 crimes proved. It is now well settled proposition.

388. Undeniably, the punishment to be awarded must reflect both the calls for justice from the persons who have directly or indirectly been victims and sufferers of the crimes, as well as to respond to the call from the nation as a whole to end impunity for massive human rights violations and crimes committed during the war of liberation in 1971, in the territory of Bangladesh.

389. 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 four accused persons have been found criminally responsible for the offences of which they have been arraigned, under the doctrine of JCE [Basic Form].

390. 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.

391. **Charge no.01** relates to ‘mass killing’ constituting the offence of ‘extermination’. By launching horrific attack hundreds of civilians including numerous residents of villages Sreepur and Sonapur were viciously killed. Pattern of attack was extremely horrendous in nature. All the four accused were with the squad and remained stayed with it till the criminal mission ended. We have found it proved that the convicted accused Abul Kalam @ AKM Monsur, Md. Joynal Abedin and Md. Amir Ahmed @ Amir Ali played active and extremely culpable role in accomplishing the killings which rather establishes their physical participation.

392. Physical participation of those three convicted thus aggravates their mode of liability. These three convicted accused were consciously engaged in contemplating designing the plan of committing crimes [**as listed in charge no.01**], at both the preparatory and execution phases. While conscious presence of the convicted accused Md. Abdul Quddus with the perpetrators lead to the unmistakable conclusion that he too was one of participants in

the JCE [Basic Form], sharing same criminal intent. However, his role as found was less crucial than that of the three other convicted accused in accomplishing the crimes [**as listed in charge o.01**].

393. Accused Abul Kalam @ AKM Monsur was a notorious potential Razakar of locally formed Razakar Bahini. The reports published in the Daily Janakantha and Bhorer Kagoj [**Exhibit-3 series**], prior to initiation of investigation of offences for which he and other accused have been indicted patently demonstrates how notorious the accused Abul Kalam @ AKM Monsur was in 1971. But surprisingly, this accused, who by this time has created his mega business world in the country, could not be arrested. It is gravely frustrating indeed. Accused Abul Kalam @ AKM Monsur was a notorious Razakar having significant dominance who substantially encouraged, assisted and contributed his accomplices forming the squad in perpetrating the principal crimes [**as listed in charge no.01**].

394. The victims of the event narrated in **charge no.02** were the non-combatant freedom fighters. They were forcibly captured just few hours after they came to their house from their camp on leave. At the time of the attack they were unarmed. The group formed of army men and the three accused and their accomplices first got the victims unlawfully detained and then took them on the bridge of Chattar canal where one victim was shot to death. Another victim

could not be traced. It has been found proved that the three accused arraigned in this charge had physical participation in accomplishing the attack that ended in killing.

395. The killing of freedom-fighters [**as listed in charge no.02**] was the upshot of a designed plan which could not have been materialized without grave and aggressive plan to which all the three convicted accused persons were culpable part. It aggravates their liability. All the three convicted accused persons were consciously and physically concerned with the act of killing - totality of evidence tendered leads this inference.

396. The **charge no.03** relates to killing 09 civilians on selecting them from hundreds of detained civilians. In adjudicating the **charge no.03** we have found it proved that in exercise of membership in Razakar Bahini and being imbued by the nexus with the Pakistani occupation army two accused Abul Kalam @ AKM Monsur and Md. Amir Ahmed @ Amir Ali got consciously and physically involved in carrying out the act of assaulting the detainees who were unlawfully made assembled in the field of Ramhoritaluk Primary School and then also in carrying out the act of killing 09 of those detained civilians.

397. The reasoned finding based on evidence tends to show it unerringly that these two convicted accused persons had close and

culpable affiliation with the Pakistani occupation army and they physically participated in gunning down 09 civilians to death, in violation of customary international law and the laws of war. The mode of participation of these two accused Abul Kalam @ AKM Monsur and Md. Amir Ahmed @ Amir Ali in committing the offences [as listed in charge no.03] deserves to be taken into account as an aggravating factor. The witnesses and survived victims of the barbaric event [as listed in charge no.03] indubitably went through a gruesome death process and have been carrying untold intense trauma till today.

398. 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 are the fragmented portrayal of the total untold horrific atrocities against the Bengali non-combatant pro-liberation civilians in the territory of Bangladesh in 1971.

399. Letters of law considers the level and gravity of the offence for which the offender is found guilty. In the case in hand, the offences proved were of gravest and appalling nature that shakes human conscience, the humanity and civilization.

400. The events of killings as narrated in all the three [03] charges were enormously appalling indeed. We deem it appropriate to

award sentence, considering not only the gravity and magnitude of the offences proved as 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.

401. The accused persons have been arraigned not for committing any isolated offence as codified and punishable in normal penal law and as such the arraignments brought under the Act of 1973 itself portray magnitude, gravity and diabolical nature of the crimes and in the event of success of prosecution in proving the charge the convicted accused persons must and must deserve just punishment.

402. 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) Md. Amir Ahmed alias Amir Ali , son of late Mozaffar Ahmed Chaprashi and late Rahela Khatun of Village-Uttar Fakirpur, Police Station-Sudharam, District-Noakhali, at present

House No. 11, Road No. 4, Ward No. 4, Flat No. 5 [first floor],
Uttar Fakirpur, Police Station-Sudharam, District-Noakhali ,

(2) Md. Joynal Abedin , son of late Sekander Miah and late Safia Khatun of Village-Syedpur [Natun Dewan Bari], Police Station-Sudharam, District-Noakhali,

(3) Abul Kalam alias A.K.M. Monsur[absconding], son of Haji Aftabuddin Ahmed and late Rokaiya Begum of Village-Nandanpur, Police Station-Sudharam, District-Noakhali, at present (i) 150/A, Bazaar Road, Savar Uttarpara [own house], (ii) C72/3, Mazidpur, Afsar Garden, Birulia Road [own house], and (iii) B/1, Savar Bazaar Bus Stand, Monsur Ali Super Market [own business centre], Police Station-Savar, District-Dhaka **AND**

(4) Md. Abdul Quddus , son of late Abdus Salam and late Hayetunnesa of Village-Laxmi Narayanpur, Police Station-Sudharam, District-Noakhali, at present (i) House No. 106, Azimpur [Shah Saheb Bari, first floor, opposite of Azimpur graveyard], and (ii) House No. 26, Sheikh Saheb Bazaar Mandir Goli [second floor], Police Station-Lalbag, D.M.P, Dhaka- are held **guilty** of the offence of '**extermination**' as crimes against humanity as listed in **charge No. 01** and as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus-

Accused **(1) Abul Kalam @ AKM Monsur [absconding]** , **(2) Md. Amir Ahmed @ Amir Ali** and **(3) Md. Joynal Abedin** accordingly be convicted and condemned to the sentence as below:

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

Accused **(4) Md. Abdul Quddus** be convicted and sentenced to suffer imprisonment of 20[twenty] years, for the offence of **'extermination'** as crimes against humanity **as listed in charge no. 01.**

Accused **(1) Abul Kalam @ AKM Monsur,(2) Md. Amir Ahmed @ Amir Ali** and **(3) Md. Joynal Abedin** are held **guilty** of offences of **'abduction'** and **'murder'** as crimes against humanity **as listed in charge no.02** and as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and accordingly, they be convicted and condemned to the sentence as below:

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

Accused **(1) Abul Kalam @ AKM Monsur** and **(2) Md. Amir Ahmed @ Amir Ali** are found **guilty** of the offences of **'abduction', 'confinement', 'other inhumane act'** and **'murder'** as crimes against humanity' **as listed in charge no.03** and as specified in section 3(2) (a)(g)(h) of the Act of 1973 and accordingly, they be convicted and condemned to the sentence as below:

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

The sentence of imprisonment for 20 years awarded to accused **Md. Abdul Quddus** 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 Md. Amir Ahmed @ Amir Ali, Md. Joynal Abedin and Md. Abdul Quddus [present on dock as brought from prison] be sent to the prison with conviction warrant accordingly.

Since the convicted accused Abul Kalam @ AKM Monsur has been absconding the **'sentence of death'** as awarded above shall be executed after causing his arrest or when he surrenders 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.

In view of sentence awarded as above , issue conviction warrant against the convicted accused (1) **Md. Amir Ahmed alias Amir Ali**, (2) **Md. Joynal Abedin**, (3) **Abul Kalam alias A.K.M. Monsur[absconding]** and (4) **Md. Abdul Quddus**.

The Secretary, Ministry of Home Affairs and the Inspector General of Police [IGP] are hereby directed to initiate rapid , effective and appropriate measure for ensuring the apprehension of the convict absconding accused Abul Kalam @ AKM Monsur.

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

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

Let a copy of this judgment together with the conviction warrant of the convicted accused **Md. Amir Ahmed alias Amir Ali, Md. Joynal Abedin, and Md. Abdul Quddus** 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