

# **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. 04 of 2016**

[Charges: Participating, committing, aiding and contributing the commission of offences constituting crimes against humanity and genocide as specified in section 3(2)(a)(c)(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**

**Md. Reaz Uddin Fakir**

**For the Prosecution:**

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Mokhlesur Rahman, Prosecutor

Mr. Hrishikesh Saha, Prosecutor

Mr. Abul Kalam, Prosecutor

Ms. Rezia Sultana, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

Mr. Syed Sayedul Haque, Prosecutor

Mr. Sheikh Mosfeq Kabir, Prosecutor

**For the Accused Md. Reaz Uddin Fakir**

Mr. Syed Mijanur Rahman, Advocate, Bangladesh Supreme Court

Mr. Muzahedul Islam , Advocate, Bangladesh Supreme Court

**Date of delivery of Judgment: 10 May, 2018**

**JUDGMENT**

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

**I. Introductory Words**

1. Accused Md. Reaz Uddin Fakir has been indicted for the atrocious criminal activities constituting the offences of ‘genocide’ and offences as crimes against humanity committed in the localities under Police Station- Fulbaria of District- Mymensingh in 1971, during the war of liberation of Bangladesh. This accused has been prosecuted in charge nos. 01, 03, 04 and 05. Accused Md. Waz Uddin [died at pre-trial stage] was indicted in absentia for the arraignment narrated in charge no.02. But after framing charges prosecution brought it to notice of the Tribunal that this accused died at pre-trial stage and charge was framed based on misconceived report submitted by the law enforcing agency, in execution of warrant of arrest issued on prayer of the investigation officer and thus proceedings continued only against accused Md. Reaz Uddin Fakir.

2. The case thus involves prosecution of sole accused Md. Reaz Uddin Fakir allegedly responsible for the offences committed in

serious violations of International Humanitarian Law Committed in the locality under Police Station–Fulbaria of District- Mymensingh in 1971, during the war of liberation.

3. Prosecution avers that in 1971 the accused got himself enrolled as a member of locally formed Al-Badar Bahini, an ‘auxiliary force’ created aiming to collaborate with the Pakistani occupation armed force in carrying out its criminal activities intending to liquidate the pro-liberation Bengali civilians, civilians belonging to Hindu religious group in furtherance of policy and plan.

4. The trial took place in presence of the accused Md. Reaz Uddin Fakir. Pursuant to issuance of production warrant the prison authority has produced the accused Md. Reaz Uddin Fakir today before this Tribunal [ICT-1].

5. Now, having considered all of the evidence presented in course of trial, along with the submissions advanced during summing up on part of both sides the Tribunal [ICT-1] is now going to deliver its judgment for the prosecution of individual accused Md. Reaz Uddin Fakir 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.

6. Having authority 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] thus hereby renders and pronounces the following unanimous judgment.

## **II. Formation and Jurisdiction of the Tribunal**

7. The Statute known as The International Crimes (Tribunals) Act, 1973 [Act No. XIX of 1973], an *ex-post facto* legislation was enacted in our sovereign parliament and it is meant to prosecute crimes against humanity, genocide and system crimes perpetrated in violation of customary international law. 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.

8. 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’--- Razakar Bahini or Al-Badar Bahini , 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 of 1973.

### **III. Historical backdrop and Context**

9. The offences for which the accused person has been indicted were 'system crimes' or 'group crimes' and not isolated crimes. Those are recognized as international crimes as the same happened in war time situation, in violation of laws of war and customary international law. 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. 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.

11. In 1952 the Pakistani authorities attempted to impose 'Urdu' as the only State language of Pakistan ignoring Bangla, the language of the majority population of Pakistan. 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.

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

13. 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 the Father of the Nation declared Bangladesh independent immediately before the Pakistani authorities arrested him.

14. 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 got engaged in committing and facilitating as well the committing the untold atrocious activities directing the pro-liberation civilian population, to further the policy and plan of annihilating the dream of self-determination of the 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.

15. The Pakistani occupation army's widespread and systematic 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**]

16. 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.

17. 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.

18. 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.



19. 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.

20. 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.

21. 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<sup>h</sup> March 1971 ten million of Bengali civilians were forced to deport under the horrors of dreadful violence and brutality spread over the territory of Bangladesh.

22. 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]**

23. 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 Person**

24. Before we start adjudication of indictments brought and accountability of the accused for the crimes alleged we consider it relevant to focus on the brief account of the accused person which is as below:

##### ***Accused Md. Reaz Uddin Fakir***

Accused Md. Reaz Uddin Fakir [65], son of late Nayeb Ali Fakir and late Bibijan of Village- Bhalukjan [Purbo Para, Ward No. 6], Police Station-Fulbaria, District-Mymensingh was born on 21.01.1949 [as per National Identification Card]. He passed SSC Examination in 1966 from Fulbaria Pilot High School. He also passed H.S.C Examination in 1968 from Muktagacha College. He was involved in the politics of Jamaat-e-Islami [JEI]. During the war of liberation in 1971, he became a member of Islami Chatra Sangha [ICS] and was involved in the commission of crimes against humanity and genocide, in exercise of membership in local Al-Badar Bahini, prosecution alleges.

#### **V. Procedural History of the Case**

25. The Investigation Agency of the Tribunal constituted under section 8 of the Act of 1973 initiated investigation by appointing Md. Aatur Rahman as Investigation Officer pursuant to information recorded as complaint register serial no.38 dated 12.10.2014, in

respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the three accused persons.

26. During investigation, the IO prayed for arrest of the accused persons through the Chief Prosecutor. The Tribunal on hearing the application issued warrant of arrest against the two-suspected accused on 11.08.2015. Accordingly, two accused Amjad Ali and Md. Reaz Uddin Fakir were arrested and on the way of producing them by a prison van before the Tribunal suspected accused Amjad Ali received serious blow on his head due to an accident and he succumbed to injuries on 04.09.2015 after he got admitted in Dhaka Medical College Hospital. Another accused Md. Waz Uddin could not be arrested in execution of warrant issued.

27. The IO on permission of the Tribunal interrogated the detained accused Md. Reaz Uddin Fakir at the safe home of the Investigation Agency on 12.10.2015, for the purpose of carrying effective and proper investigation.

28. The IO submitted its report together with documents collected and statement of witnesses, on conclusion of investigation, before the Chief Prosecutor on 18.02.2016 against two accused Md. Reaz Uddin Fakir and Waz Uddin . 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 before this Tribunal against the accused (1) Md. Reaz Uddin Fakir and (2) Waz Uddin 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 'genocide' during the period of War of Liberation in 1971 around the locality under police station- Fulbaria of District Mymensingh, as narrated in the formal charge.

29. 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 Hindu religious group 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, the 02[two] accused persons have been recommended for prosecuted jointly as permissible under Rule 36 of the Rules of Procedure, 2010 of this Tribunal-1.

30. Thereafter, on 29.03.2016 the Tribunal, under Rule 29(1) of the Rules of Procedure [ROP], took cognizance of offences as mentioned in section 3(2) (a)(c)(g)(h) of the Act of 1973 having found *prima facie* case in consideration of the formal charge and

the documents submitted therewith and the statement of witnesses. At this stage, it was found that one accused Waz Uddin could not be arrested yet and as such the Tribunal directed the enforcement agency to submit report in execution of warrant of arrest issued at pre-trial stage against the accused Md. Waj Uddin Fakir.

31. On getting the report in execution of W/A it appeared that the accused Waj Uddin Fakir remained absconded and thus for holding trial in *absentia*, the Tribunal on 16.05.2016 ordered publication of notification in 02 national daily newspapers as required under law. After publication of such notification asking the accused Md. Waz Uddin Fakir to surrender before this Tribunal within the period mentioned therein the Tribunal proceeded to keep up the proceedings in *absentia* against him and fixed the date for hearing the charge framing matter.

32. Tribunal at the same time appointed Mr. Gazi M.H Tamim, Advocate to defend the absconding accused Md. Waz Uddin as state defence counsel, at the cost of the Government. Prosecution was directed to provide the copy of formal charge to the appointed state defence counsel.

33. On hearing about charge framing matter on 22.11.2016, the Tribunal framed charges on five counts against two accused i.e.

Md. Reaz Uddin Fakir and Md. Waz Uddin, by rendering decision on 11.12.2016. The charges so framed were read over and explained in Bangla to the accused Md. Reaz Uddin Fakir present on dock, as brought from prison when he 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 other accused Md. Waz Uddin as he remained absconded, as the report submitted by the law enforcement agency in execution of the warrant of arrest issued by the Tribunal.

34. But on 31.01.2017 prosecution brought it to notice of the Tribunal that the accused Md. Waz Uddin died on 07.05.2016 i.e. at pre-trial stage. Misconceived report submitted by the law enforcing agency in execution of the warrant of arrest issued by the Tribunal allowed the proceedings including rendering charge framing decision to go on, although the accused already died. The misconceived report submitted by the law enforcement agency rather obstructed proceedings and thus the Tribunal asked the Superintendent of Police, Mymensingh to explain such blatant negligence, by appearing in person before the Tribunal.

35. On 16.02.2017 the Superintendent of Police, Mymensingh appearing in person before the Tribunal tendered unconditional apology for the misconceived report in execution of warrant of

arrest issued against suspect accused Md. Waz Uddin. Thus, it appeared patently that the accused Waj Uddin Fakir died at pre-trial stage and consequently even formal charge should not have been pressed against him. In this circumstance only one accused Md. Reaz Uddin Fakir who has been detained in prison faced the trial. Mr. Syed Mijanur Rahman the learned counsel defended this accused.

36. In course of trial prosecution adduced in all 19 witnesses including the Investigation Officer [IO] and of them 17 witnesses have been examined intending to substantiate the arraignments brought in the charges framed. Two witnesses [P.W.13 and P.W.18] have been tendered and defence declined to cross-examine them. Defence however duly cross-examined all the witnesses examined.

37. At a stage of trial, prosecution with the leave of the Tribunal submitted a gazette date 21.07.2017 with a prayer to take it into account.

38. On closure of prosecution evidence, defence refrained from adducing and examining any witness. And thus, date was fixed for placing summing up which started on 07.02.2018. During summing up, both parties advanced their respective argument which got



ended on 21.03.2018. The Tribunal then kept the case CAV, for delivery and pronouncement of its judgment and sent the accused Md. Reaz Uddin Fakir to prison with direction to produce them on call.

## **VI. Summing Up**

### **Summing up by the Prosecution**

39. On closure of prosecution evidence defence declined to adduce and examine any witness and as such next date was fixed for summing up [argument] of case to be advanced by both sides.

40. Accordingly Mr. Hrishikesh Saha, the learned prosecutor started placing summing up on 07.02.2018. In course of summing up the learned prosecutor drawing attention to the document it relies upon and the sworn testimony of witnesses examined submitted that the accused Md. Reaz Uddin Fakir was a potential member of locally formed Al-Badar Bahini in 1971. The 15 P.W.s are residents of crime localities and thus they had occasion of knowing the accused beforehand and as such their oral unshaken testimony in this regard also proves accused's identity in exercise of which he was engaged in committing alleged atrocious activities, the learned prosecutor added.

### **Summing up by the Defence**

41. Mr. Syed Mijanur Rahman the learned defence counsel in course of summing up chiefly submitted that this accused did not belong to Razakar or Al-Badar Bahini and he had no complicity with the offences alleged in any manner. Drawing attention to the documentary evidence Exhibits-3 and 4 the learned defence counsel submitted that those are not authoritative; that the author of the Exhibit-3 has not been cited and examined as witness and thus prejudiced has been caused to the defence. Unexplained inordinate delay in prosecuting the accused not only casts doubt on the allegations brought but leads to his acquittal as well, the learned defence counsel added.

42. Next, the learned defence counsel argued on charges drawing attention to the testimony tendered. The core of argument pressed was that the events described by the witnesses were not disputed but evidence presented by the prosecution implicating the accused was not reliable and the witnesses testified being tutored. However, the comprehensive argument advanced in relation to charges may be well addressed when the charges will be resolve.

43. In respect of charges the learned prosecutor submitted argument drawing attention to the oral testimony of P.W.s on material particulars. Defence could not refute the event of attacks that resulted in commission of horrific crimes. It however simply denied accused person's participation and complicity therewith, the

learned prosecutor added. Let the detail argument made on it and factual matrix be addressed when the charges be adjudicated independently.

## **VII. Does Unexplained Delay Frustrate Prosecution Case?**

44. At the outset, we consider it expedient to address the defence submission agitated on the aspect of ‘unexplained delay’ in prosecuting the accused.

45. The settled legal proposition is that mere delay does not create any clog in bringing criminal prosecution. But the defence argued that unexplained inordinate delay of long more than four decades occurred in prosecuting the accused impairs the truthfulness of the case and casts doubt on the allegations brought. But we do not concede with this submission.

46. The Tribunal first notes that time bar should not apply to the prosecution of human rights crimes. Neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity. Article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted and opened for signature, ratification and accession by General Assembly resolution 23 (XXIII) of 26 November 1968 provides protection against even any statutory

limitation in prosecuting crimes against humanity, genocide etc. Thus, criminal prosecutions are always open and not barred by time limitation.

47. Additionally, we have already recorded our reasoned finding in the case of *Muhammad Kamaruzzaman* that—

“Indubitably, a prompt and indisputable justice process cannot be motorized solely by the painful memories and aspirations of the victims. Indeed it requires strong public and political will together with favourable and stable political situation. Mere state inaction, for whatever reasons, does not render the delayed prosecution readily frustrated and barred by any law.

**[The Chief Prosecutor v. Muhammad Kamaruzzaman, ICT-BD(ICT-2) Case No. 03 of 2012, Judgment 09 May, 2013, para 102]**

48. Thus, mere delay, occurred in bringing prosecution, taking the context prevailed since last couple of decades into account, does not impair the prosecution case the effective adjudication of which fundamentally rests on evaluation of totality of evidence to be presented by the prosecution.

**VIII. Whether the accused person belonged to locally formed Al-Badar, a para militia force created to collaborate with the Pakistani occupation army in 1971 during the war of liberation**

49. Who was Md. Reaz Uddin Fakir in 1971? What was his role during the period of nine months in 1971? What he did and for whom? Had he link, in any manner, with the Pakistani occupation force any of its para militia forces created intending to execute organizational policy or plan or common purpose. All these being relevant need to be resolved.

50. Prosecution avers that accused Md. Reaz Uddin Fakir was a member of Al-Badar Bahini and in exercise of affiliation with such para militia force created by the Pakistani occupation army he got engaged in conducting atrocious activities directing defenceless civilians, in violation of international humanitarian law. Burden lies upon the prosecution to prove this fact.

51. Mr. Hrishikesh Saha the learned prosecutor drawing attention to the documents which have been marked as Exhibits-3 and 4 submitted that this accused was a member of Al-Badar Bahini. Authoritativeness of these documents could not be refuted and thus the same carries probative value, the learned prosecutor added.

52. The learned prosecutor further submitted that these documents got corroboration from oral testimony of competent witnesses who had fair and natural occasion of knowing the identity and stance the accused took with the policy and plan of the Pakistani occupation army.

53. On contrary, **Mr. Syed Mijanur Rahman** the learned defence counsel questioning the authoritativeness of the book marked as Exhibit-3 submitted that the author of it has not been examined as witness and it contains inconsistent information. The learned defence counsel went on to submit too that the document Exhibit-4[relevant page nos. 39-43] is not authoritative as it contains ‘Valuka’ instead of ‘Valukjan’ as the village of this accused. It has been further submitted that page 47 of this document does not state that this accused was Razakar or Al-Badar. Rather it simply narrates that he took stance against the war of liberation. If it is so, prosecution failed to prove that the accused was a Razakar or a member of Al-Badar Bahini.

54. The learned defence counsel also submitted that oral testimony tendered in respect of this issue does not seem to be reliable for the reason of lapse of long passage of time.

55. First, it is not correct to say that in case of failure to prove accused’s membership with any of para militia forces he shall be exonerated. Even an ‘individual’ can be prosecuted, tried, and punished for the offences enumerated in the Act of 1973 committed in 1971 during the war of liberation.

56. We reiterate that it is really challenging indeed to collect series of documents intending to prove a fact, especially long more than four decades after the atrocities happened. Besides for some obvious reasons, particularly after the darkest night of 15 August 1975 numerous documents related to atrocities could have been destroyed availing the space provided in the regime existed.

57. The Tribunal thus notes that it cannot be said that merely for the reason of non-citing or non-examining the author of a book the narrative made therein cannot be considered, particularly when other evidence including oral testimony demonstrates and inspires credence. Thus, we cannot keep the document Exhibit-3 aside from consideration agreeing with the submission made by the defence. However, we must weigh the authoritative nature of narrative made therein together with the oral testimony presented in this regard.

58. Next, the document Exhibit-4[relevant page-47] does not speak of accused's membership either in Razakar Bahini or Al-Badar Bahini, true. But it states that accused took stance against the war of liberation. This information contained in this document as well may be considered, as relevant to resolve the issue. But merely on the ground agitated by the defence this document readily shall not be allowed to go on air.

59. We take notice of the narrative made in the book titled **'History of the Liberation War'**. The author of the book 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]**

60. Tribunal-2 has already observed in the case of Chief prosecutor v. Muhammad Kamaruzzaman that Al-Badar which was created by JEI and had acted as its 'action section', 'fascist body' and 'armed wing' in 1971[ICT- BD case No.03 of 2012, Judgment 09 May 2013, para 605]. Razakar Bahini too was created as an auxiliary force of the Pakistani occupation army, aiming to further parallel policy and plan. Who got enrolled in those two para militia forces? Obviously, those people who took stance against the war of liberation of the Bengali nation opted to get affiliated with those



para militia forces. Thus, the narrative made in Exhibit-4[page-47] is quite pertinent in arriving at decision on the issue.

61. The history says Al-Badar Bahini and Razakar Bahini, both were para militia forces were created with the similar goal and objective and it was annihilation of pro-liberation Bengali civilians, Hindu religious group, freedom fighters and intellectuals intending to cripple the nation. Thus, in 1971, during the war of liberation the term 'Razakar' became synonymous to the term 'Al-Badar' particularly to the civilians of rural area of the territory of Bangladesh. We may presume it safely. Now let us see what the witnesses testified about the identity the accused had in 1971.

62. P.W.01 stated that accused Md. Reaz Uddin Fakir was a local leader of Jamaat-E-Islami and was a resident of his neighbouring village. It gets corroboration from what has been testified by P.W.03. Testimony of P.W.03 demonstrates that he however could recognize accused Md. Reaz Uddin Fakir as he led the Razakars. In 1971 accused Md. Reaz Uddin Fakir was a leader of Jamaat-E-Islami and thus he knew him beforehand.

63. P.W.04 heard his father and uncles that accused Razakar Md. Reaz Uddin Fakir, Md. Waj Uddin [now dead], and Amjad Ali [now dead] were with the group of Razakars at the time of the event of attack [of killing as narrated in charge no.01]. In narrating the

event described in charge no.05 the P.W.05 stated that accused Md. Reaz Uddin Fakir was the uncle of her [P.W.05] husband's brother's wife and thus she knew him beforehand.

64. In this segment of judgment, we are not going to determine the act of accompanying the troops in conducting attacks as narrated in charges as claimed by the witnesses in their sworn testimony. This issue may be well resolved later. But cumulative evaluation of testimony of P.W.01, P.W.03, P.W.04 and P.W.05 unerringly leads to the conclusion that accused Md. Reaz Uddin Fakir was a leader of Jamaat-E-Islami and he carried out activities in exercise of his potential position in locally formed Razakar Bahini. The narrative made in the Exhibnit-3 and 4 consistently go with it.

65. P.W.14 stated that she knew the accused Md. Reaz Fakir beforehand as she saw him since her early years. P.W.15 echoing same version stated that he knew the accused Md. Reaz Fakir since boyhood as he [accused] was a resident of their locality. P.W.16 also stated that accused Md. Reaz Uddin Fakir was a resident of their locality who was seen often moving in local Bazaar Haat. P.W.14, P.W.15 and P.W.16 could recognize the accused Md. Reaz Uddin Fakir accompanying the gang or group of attackers at the time of launching attacks they narrated.

66. Presence of accused at the crime sites with the squad at the time of launching attack intending to materialize the culpable common purpose is a crucial fact in issue which is related to adjudication of accountability of the accused and thus it may be well determined at the time of adjudicating the charges. But now it reveals that the accused was closely affiliated with the locally formed Al-Badar Bahini, Razakar Bahini and the Pakistani occupation army stationed at Asim Bazar under Fulbaria Police Station.

67. It has been unveiled from uncontroverted testimony of P.W.10 that in May, 1971 Pakistani occupation army got stationed at Asim Bazaar under Fulbaria Police Station by setting up its camp there with the assistance of accused Md. Reaz Uddin fakir, Waj Uddin Fakir [now dead] and Amjad Ali [now dead] and they started carrying out prohibited acts around the locality. P.W.10 also stated that all the locals knew accused Md. Reaz Uddin Fakir as he was a 'Razakar'. We found from evidence of P.W.11 that after independence he saw the accused Md. Reaz Uddin Fakir moving around the bazar of the locality and the people used to say that he was 'Razakar'.

68. Providing assistance in setting up army camp and carrying out prohibited acts around the locality as testified by P.W.10 lend assurance to the fact that accused Md. Reaz Uddin Fakir was a

potential member of locally formed Al-Badar Bahini, a parallel para militia force created to further common purpose and policy.

69. It may be inferred that to the witnesses the residents of rural locality 'Razakar' and 'Al-Badar' did not make any difference as both remained engaged jointly in conducting similar atrocious activities intending to activate common purpose and as such presumably they in their sworn testimony might have stated the accused as a 'Razakar'. It is significant to note that the defence could not refute it in any manner. It simply denied it in cross-examination. But mere denial is not enough to cast doubt on a fact testified in examination-in-chief, if the same inspires reasonable credence.

70. The version of P.W.10 and P.W.11 inspires strong credence. In 1971, during the war of liberation an individual affiliated with any of para militia forces became broadly known to the locals for his notoriety. Most of witnesses in narrating the event of attacks stated that the accused was a 'Razakar', true. But the documents marked as Exhibit-3 speaks of accused's affiliation in 'Al-Badar Bahini'.

71. In view of deliberation made herein above, we are convinced in arriving at decision that Exhibit-3 and 4 together with the unshaken and reliable oral testimony that the accused Md. Reaz Uddin Fakir

was a potential member of locally formed 'Al-Badar' Bahini, a para militia force parallel to Razakar Bahini.

### **IX. General Considerations Regarding the Evaluation of Evidence in a case involving the offences of Crimes against Humanity, Genocide**

72. In the case in hand, Md. Reaz Uddin Fakir is the sole accused who has been tried for 'group crimes'. He was a member of 'Al-Badar' Bahini, a para militia force created to collaborate with the Pakistani occupation army in carrying out atrocious activities, to further policy and plan. The offences for which he has been indicted were 'system crimes' committed in violation of international humanitarian law and the laws of war, in the territory of Bangladesh in 1971.

73. The present case as far as it relates to the alleged facts of criminal acts forming part of systematic attack constituting the alleged offences are predominantly founded on oral evidence presented by the prosecution. Mostly the victims and witnesses who allegedly experienced the atrocities materially related to the principal crimes came on dock to testify.

74. All the alleged offences were committed in context of war of liberation in 1971 and those were not isolated crimes. Section 23 of the Act of 1973 expressly 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. Further, 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.

75. Thus, 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 hearsay or circumstantial evidence. It is now settled jurisprudence.

76. The Tribunal notes too 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.

77. 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 rule of requirement for a finding to be rendered.

78. However, onus squarely lies upon the prosecution to establish the commission of the events of attack and 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 the accused has been arraigned.

79. The evolved international criminal jurisprudence suggests keeping it in mind too that an insignificant discrepancy which may naturally occur does not tarnish witness's testimony in its entirety. Any such discrepancy needs to be contrasted with surrounding circumstances and testimony of other witnesses. It is now internationally settled jurisprudence 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, ICTR Appeal Chamber, May 21, 2007, para. 58**].

80. Appraisal of the evidence is to be made based on the totality of the evidence presented in the case before us. The Tribunal, however, is not obliged to address all insignificant inconsistencies, even if occur in witnesses' testimony. We require separating the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon, in determining accused's accountability.

81. We reiterate that 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.

82. 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 legal proposition.

83. Finally, it is now well settled too that even hearsay evidence is not inadmissible *per se*. 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 and also together with other evidence tendered.

## **X. Adjudication of Charges**

### **Adjudication of Charge No.01**

**[Abduction, confinement, torture and murder of Abdul Mazid, Shahidullah Master, Jamshed Ali and unknown two others]**

**84. Charge:** That on 22.08.1971 at about 10.00 A.M. under the leadership of Razakar Amjad Ali [now dead] accused Al-Badar commander Md. Reaz Uddin Fakir, Razakar Md. Waz Uddin [now dead] along with other 10/15 armed Razakars forcibly captured Abdul Mazid, a resident of Ward No. 2 of Fulbaria Sadar, from near the house of Kuddus Shikder and took him away to the Razakar camp where he was subjected to torture in captivity.

In conjunction with the same attack the accused and his cohort Razakars on the same day [22.08.1971] at about 01.00 P.M forcibly captured Shahidullah Master of village Kalaipar and Jamshed Ali of village Chak Lauripara and few others from the area of Fulbaria Sadar auto-rickshaw stand and took them away to the Razakar Camp where they were subjected to torture in captivity.

Thereafter, on 25.08.1971 at about 10.00 A.M. the accused and his cohort Razakars brought out the detained victims --Abdul Mazid, Shahidullah Master, Jamshed Ali and unknown two others

blindfolded from the Razakar camp and took them on the bank of the river Bana near Eidgah of village Rangamatia where they were shot to death, in presence of many villagers and threw their bodies into the river.

Thereby, the accused Md. Reaz Uddin Fakir has been hereby charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of ‘abduction’, ‘confinement’, ‘torture’ and ‘murder’ as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act for which the accused has incurred liability under section 4(1) of the said Act.

## **Evidence of Witnesses Examined**

85. This charge arraigns that five civilians were unlawfully detained by a group formed of 10/15 armed Razakars and accused Md. Reaz Uddin fakir and his cohorts and later on, the detainees were shot to death on the bank of the river Bana.

86. Prosecution adduced in all four witnesses who have been examined as P.W.01, P.W.02, P.W.03 and P.W.04 to substantiate the event narrated in this charge and complicity and liability of the

accused. Of them three but P.W.02 are direct witnesses. Defence duly cross-examined them. Now, let us have a look what these witnesses testified.

87. P.W.01 Md. Fazlul Haque [58] is a resident of village Fulbaria under Police Station-Fulbaria of District-Mymensingh. In 1971 he was a student of class VIII. His elder brother Abdul Mazid was a freedom-fighter. He is a hearsay witness to the fact of forcible capture of his brother.

88. P.W.01 stated that on 22 August, 1971 in the afternoon his brother freedom-fighter Abdul Mazid came to Fulbaria Baby stand when local Razakar commander Amjad Ali [now dead], Razakar Waj Uddin [now dead] and Al-Badar Commander Md. Reaz Uddin fakir and their accomplice Razakars attempted to detain his [P.W.01] brother and with this his brother tried to escape by running towards Janani Cinema Hall, east to the house of Quddus. But the Razakars apprehended him from the place near the house of Quddus and took him away to the Razakar camp set up at Fulbaria Police Station. His [P.W.01] uncle Abdus Salam informed them of it coming to their house.

89. In respect of keeping his brother detaining at Razakar camp P.W.01 next stated that then he moved to the Razakar camp and saw the Razakars and Al-Badars he named causing torture to his

brother. On the following day he took meal for his brother detained in Razakar camp when he saw four including Shahidullah Master [father of P.W.02] of village Kalaipar and Jamshed Ali of village Chakla detained in the said camp.

90. P.W.01 further stated that his brother was kept in captivity in the said Razakar camp for three days when he was subjected to torture that resulted in injuries. He [P.W.01] and his father appealed to accused Md. Reaz Uddin Fakir to set his brother released in response to which the accused told that his [P.W.01] brother was a freedom-fighter and thus he would be forwarded to court, after extracting information.

91. In respect of the fate of detained Abdul Mazid P.W.01 is a hearsay witness. He[P.W.01] stated that on 25 August, 1971 in the afternoon went to the Razakar camp but did not find his brother there and afterwards came to know that on that day in morning accused Md. Reaz Uddin Fakir and his accomplice Razakars and Al-Badar taking four detainees including his brother on the bank of the river Bana adjacent to Rangamatia Eidgah told the villagers-- '**look what consequence is to face if someone is freedom-fighter'** and then they shot them to death and threw the dead bodies into the river. The dead bodies could not be traced

92. P.W.01 also stated that he heard that eight civilians detained from Rishi Bari locality and two civilians detained from Asim locality were gunned down to death on the bank of the river Akhalia by the accused Md. Reaz Uddin fakir and his accomplices Razakars and Al-Badars. A commemorative plaque has been built in this site.

93. P.W.01 finally stated that accused Reaz Uddin Fakir was a local leader of Jamaat-E-Islami and was a resident of his neighbouring village and thus he knew him beforehand.

94. In cross-examination, P.W.01 stated in reply to defence question that there had been army camp at Ansar VDP Office in Fulbaria and also in Duk Bungalow in front of Thana and there had been a Razakar camp inside the Thana [Police Station].

95. P.W.01 also stated in cross-examination that Razakars remained stayed in Thana when his brother was kept detained there and his brother was kept detained inside the Thana lock-up; that he heard that his [P.W.01] father appealed Moulana Abdul Hamid, the President of local Nejam-E-Islami; that he could not say whether his father lodged any case regarding the killing of his brother.

96. P.W.01 also stated in reply to defence question that they along with family got sheltered at the house of his grand-mother under

Putijan Union, about six kilometer far from Fulbaria Sadar, after the Pakistani occupation army got stationed in their locality ; that his[P.W.01] uncle Abdus Salam going to his grand-mother's house at Putijan informed the fact of detaining his brother and then he and his father just before the dusk on the same day came back to their house in Fulbaria and on the following day he along with his father moved to the Razakar camp taking meal for his detained brother.

97. Defence simply denied what has been testified by the P.W.01 in respect of killing his brother and others after keeping them in captivity at the Razakar camp. It however could not controvert the material particulars stated by P.W.01 including the fact that the accused was a member of locally formed Al-Badar Bahini.

98. P.W.02 Md. Golam Faruk [48] is the son of victim Shahidullah Master. In 1971 he was 2/3 years old. He is a hearsay witness. P.W.02 stated that after he grown up he heard from his mother and uncles that on 22 August, 1971, in morning Razakars accused Md. Reaz Uddin Fakir, Amjad Ali[now dead], Waz Uddin [now dead] detained his father from Fulbaria Baby Stand and took him away to Razakar camp where he was subjected to torture for three days and on 25 August the accused Md. Reaz Uddin Fakir and his accomplices taking his detained father and two other detainees Abdul Mazid [ brother of P.W.01] and Jamshed Ali of village

Lauripara on the bank of the river Bana where they were shot to death, in presence of villagers.

99. In cross-examination P.W.02 denied the suggestion put to him that he testified falsely implicating the accused. P.W.02 stated that his uncle brought allegation over the event, but he could not say specifically about it.

100. Defence however does not seem to have denied that P.W.02 heard the event from his mother and uncles, after he grown up.

**101.** P.W.03 Abul Hossain Master [65] is a resident of village Rangamatia under Police Station- Fulbaria of District Mymensingh. In 1971 he was 20 years old. He is a direct witness to the phase of attack involving the killing the detainees.

102. P.W.03 stated that on 25 August 1971 a group of Razakars brought five detained civilians on the bank of the river Bana adjacent to Rangamatia Eidgah and then Razakars asked him [P.W.03] and others to go to the site and going there he saw five detainees standing in a line. Then the Razakars drawing their attention to the detainees uttered – **‘look what punishment the freedom-fighters deserve’**. With this the Razakars shot those five detainees to death and then they had to throw their dead bodies into water as ordered.

103. P.W.03 stated that he could not identify the victims, at the time of the event of killing. Few days later he knew that Jamshed Ali of Chaklaulipara, Abdul Matin of Fulbaria and Shahidullah Master of Kalaipar were of those five victims.

104. Finally, P.W.03 stated that he could not identify all the Razakars at the time of the event. He however could recognize accused Md. Reaz Uddin fakir as he led the Razakars. In 1971 accused Md. Reaz Uddin Fakir was a leader of Jamaat-E-Islami and thus he knew him beforehand.

105. In cross-examination P.W.03 stated in reply to defence question that he along with his cousin brother Hatem Ali, neighbour Rustom Ali, Darog Ali, Hashem Ali, Abdur Rahman Mondol, Mohammad Ali Jinnah and others remained present at the site when the event happened and that he saw making the dead bodies of victims, after they were shot to death, floated into the river.

106. P.W.03 denied defence suggestions that he did not see the event he narrated; that accused Md. Reaz Uddin Fakir was not a Razakar or local leader of Jamaat-E-Islami and that what he testified was untrue and out of political rivalry. Defence however does not dispute the killing happened at the site P.W.03 testified.



107. P.W.04 Mohammad Ali Jinnah testified that on 25 August 1971 at about 09:00/10:00 A.M he saw Razakars bringing five detained civilians on the bank of the river Bana, adjacent to Eidgah field, by a vehicle. Seeing this he then ran back to home and disclosed it.

108. P.W.04 next stated that 15/20 minutes later the Razakars coming to their house took away his [P.W.04] father and uncles towards the bank of the river Bana, on forcible capture. With this he[P.W.04] started going behind them and on the bank of the river Bana he saw the Razakars telling his[P.W.04] father and uncles drawing attention to 05 blind folded civilians detained there that --- **'look what castigation a freedom-fighter deserves'**.

109. P.W.04 also testified that then the Razakars gunned down the 05 detainees to death and ordered his [P.W.04] father and uncles to dispose of the dead bodies by throwing those into river.

110. P.W.04 next stated that after returning home he heard from his father and uncles that three of five victims were Shahidullah Master of village Kalairpar, Abdul Mazid of Fulbaria and Jamshed Ali of Chaklauri. He also heard that accused Md. Razakar Reaz Uddin Fakir, Md. Waj Uddin [now dead], and Amjad Ali [now dead] were with the group of Razakars at the time of the event [of killing] happened as disclosed by his father and uncles.

111. In cross-examination, P.W.04 denied defence suggestions that what he testified implicating the accused was untrue and tutored. P.W.04 denied it. Defence however does not seem to have made any effectual effort to impeach the version P.W.04 made in examination-in-chief, on material particulars.

### **Finding with Reasoning on Evaluation of Evidence**

112. This charge narrates the attack directing civilian population that started with forcible capture of non-combatant freedom-fighter, pro-liberation civilians, keeping them in protracted captivity at Razakar camp adjacent to the army camp set up in Fulbaria police station, and then the event ended in killing of five detainees taking them on the bank of the river Bana adjacent to local Eidgah field. The charge framed also arraigns that the act of killing was conducted after compelling presence of some of villagers at the killing site. Accused Md. Reaz Uddin Fakir being a potential member of Al-Badar Bahini and associated with locally formed Razakar Bahini led the group in accomplishing the principal crimes, the killing.

113. Mr. Hrishikesh Saha, the learned prosecutor submitted that in all four [04] witnesses have been adduced in support of this charge who have been examined as P.W.01, P.W.02, P.W.03 and P.W.04.

Of them three are direct witnesses to the facts materially related to the principal crimes and one P.W.02 is a hearsay witness. The learned prosecutor submitted that commission of the offence stands uncontroverted.

114. The learned prosecutor submitted that P.W.01 the younger brother of victim A. Mazid saw the victims detained at Razakar camp. P.W.03 saw how the detainees were killed and it happened in presence of villagers who were forced to remain present at the site so that they could terrorize on observing the fate of pro-liberation civilians. Testimony of P.W.04 lends corroboration to the above fact as he also saw the victims taking away on the bank of the river Bana.

115. It has been further submitted that defence could not shake what has been testified by the P.W.03 and P.W.04. Hearsay testimony of P.W.02, son of one victim Shahidullah Master also inspires credence as it gets assurance from the ocular evidence of P.W.01, P.W.03 and P.W.04. Their unshaken testimony cumulatively proves that the accused Md. Reaz Uddin Fakir incurred liability under the theory of JCE [Basic form] as he is found to have had actively participated in the commission of the crimes, sharing common intent, the learned prosecutor added.

116. Mr. Syed Mijanur Rahman the learned defence counsel submitted that prosecution failed to prove the participation of the accused with the offences brought in this charge; that the witnesses relied upon in support of this charge are not reliable and they had no reason of recognizing this accused. The learned defence counsel further submitted that human memory does not permit to recall any fact happened long more than four decades back.

117. According to universally recognised jurisprudence and the provisions as contained in the ROP of the ICT-2 onus squarely lies upon the prosecution to establish accused's presence, acts or conducts forming part of attack that eventually resulted in actual commission of the offences of crimes against humanity as enumerated in section 3(2) of the Act of 1973 for which the accused has been arraigned. Assessment of the evidence is to be made on the basis of the totality of the evidence presented in the case before us and considering the context prevailing in 1971 in the territory of Bangladesh.

118. P.W.01 Md. Fazlul Haque, the brother of one victim freedom-fighter Abdul Majid heard the act of detaining his brother from his uncle Abdus Salam. Later on, he [P.W.01] moved to the Razakar camp where he saw the Razakars and Al-Badars causing torture to his brother. On the following day when he took meal for his

detained brother P.W.01 also saw four other including Shahidullah Master [father of P.W.02] detained at the camp.

119. It appears to have been affirmed as in cross-examination of P.W.01 that a group of Razakars had carried out the attack that resulted in victims' unlawful detention and the Razakars remained stayed in Thana. Defence does not dispute that a Razakar camp existed at Fulbaria Police Station.

120. It also stands unshaken that the father of P.W.01 appealed to accused Md. Reaz Uddin Fakir at the police station to set his [P.W.01] brother released but in response the accused told that his [P.W.01] brother was a 'freedom-fighter' and thus he would be forwarded to court, after extracting information.

121. The above version remained unrefuted and thus it sufficiently proves accused's nexus with the entire mission for extracting information in unlawful manner, by causing torture in captivity. Defence does not dispute that the victims were kept in confinement at Razakar camp for three days.

122. The above leads us to conclude that the victim Abdul Mazid was unlawfully detained intending to extract information, under coercion and threat which was prohibited act.

123. It also transpires from evidence of P.W.01 that his brother was kept in captivity for three days and despite appeal made to accused Md. Reaz Uddin Fakir his [P.W.01] brother was not set at liberty as he was a freedom-fighter. Thus, it was the reason of detaining the brother of P.W.01, in furtherance of policy and plan to which accused Md. Reaz Uddin Fakir was an active and conscious part.

124. Defence could not shake and dispute even that in the name of forwarding the detained freedom-fighter Abdul Mazid to the court eventually he was shot to death along with other detainees taking them on the bank of the river Bana and the bodies were thrown to the river.

125. It remains uncontroverted too that at the killing site i.e on the bank of the river Bana adjacent to Rangamatia Eidgah accused Md. Reaz Uddin Fakir and his accomplice Razakars and Al-Badar before gunning down the detainees to death told the villagers that -- **' look what consequence is to face if someone is freedom-fighter'**. There has been no reason to disbelieve this P.W.01. Thus, such grave brutal utterance indisputably proves not only presence of accused Md. Reaz Uddin Fakir but his active participation in accomplishing the principal crime, the killing as well.

126. The culpable words the accused uttered in presence of villagers just before the act of annihilation was executed not only caused untold pain and trauma to the villagers present at the site but it reflected extreme aggressive and brutal mindset of the accused Md. Reaz Uddin Fakir to the pro-liberation defenceless civilians. Defence could not impeach this piece of version made by P.W.01 that relates to the commission of the principal crimes and accused's active participation and complicity therewith.

127. P.W.02 Md. Golam Faruk [48] is the son of another victim Shahidullah Master. He was 2/3 years old in 1971. He heard the event from his mother and uncle when he grown up. Hearsay evidence cannot be turned down readily. It is to be weighed together with other evidence and circumstances unveiled. Hearing the event from mother and uncle is quite natural.

128. Besides, hearsay evidence is admissible, and the Tribunal can safely act upon it in arriving at decision on a fact in issue, provided it carries reasonable probative value [Rule 56(2) of the ROP]. This view finds support from the principle enunciated in the case of **Muvunyi** which is as below:

“Hearsay evidence is not per se inadmissible before the Trial Chamber. However, in certain circumstances, there may be good reason for the

Trial Chamber to consider whether hearsay evidence is supported by other credible and reliable evidence adduced by the Prosecution in order to support a finding of fact beyond reasonable doubt.”

**[Muvunyi, ICTY Trial Chamber, September 12, 2006, para. 12]**

129. Therefore, hearsay testimony of P.W.02 carries probative value as it is not anonymous in nature. He heard the event from those who had direct knowledge about the event and perpetrators including the accused Md. Reaz Uddin Fakir who participated in conducting the barbaric attack. Besides, his hearsay testimony gets significant corroboration from P.W.01 who is a direct witness to the facts materially related to the commission of the principal crimes and the culpable nexus of the accused Md. Reaz Uddin Fakir therewith.

130. P.W.03 Abul Hossain Master [65] is a resident of village Rangamatia under Police Station-Fulbaria of District-Mymensingh is a direct witness to the phase of attack involving the killing the detainees that happened on the bank of the river Bana. His testimony seems to be consistent to that of P.W.01. Defence does not dispute the killing happened at the site P.W.03 testified.



131. It transpires patently from evidence of P.W.03 that on 25 August, 1971 a group of Razakars brought five detained civilians on the bank of the river Bana adjacent to Rangamatia Eidgah when he [P.W.03] and others as asked by Razakars moved to the site and then the Razakars drawing their attention to the detainees uttered – **‘look what punishment the freedom-fighters deserve’**, just before the killing happened.

132. P.W.03 could recognize accused Md. Reaz Uddin Fakir as he led the group of Razakars. That is to say, accused Md. Reaz Uddin Fakir played the leading role in accomplishing the final phase of the attack, the killing of detained pro-liberation civilians. Remaining present of villagers at the killing site i.e on the bank of the river Bana as stated by P.W.03 stands affirmed even in cross-examination. Forcing other civilians to witness the consequence of freedom-fighters and pro-liberation civilians was intended to terrorize the civilians which rather caused serious mental trauma and harm to them. Such prohibited acts constituted the offence of ‘other inhumane act’, we conclude.

133. P.W.04 Mohammad Ali Jinnah [58] is a resident of village Rangumatia of Police Station-Fulbaria of District Mymensingh. He is a direct witness to the act of taking five detained civilians Razakars on the bank of the river Bana, adjacent to Eidgah field, by

a vehicle. The act of compelling villagers to remain present at the killing site, on the bank of the river Bana lends consistent corroboration to what has been stated in this regard by the P.W.04.

134. Evidence of P.W.04 demonstrates that his [P.W.04] father and uncles were forcibly taken from their house by the Razakars on the bank of the river Bana when the P.W.04 went behind them and saw the killing. Defence could not contest this crucial sworn version by cross-examining the P.W.04. Thus, P.W.04 had fair opportunity of seeing what happened after taking his father and uncles on the bank of the river Bana.

135. It may be legitimately presumed that the witness who was at the crime site might have experienced limited information during the happening of crime or event. But it is not unlikely that after the crime or event happened, the witness will hear more about the crime or event from other sources.

136. P.W.04 was one of civilians who were forced to remain present as a spectator on the bank of the river Bana at the time of the killing happened. It transpires that Razakars asked him [P.W.04] and others to go to the site and going there he saw five detainees standing in a line. Then the Razakars drawing their attention to the detainees uttered – **‘look what punishment the freedom-fighters deserve’**. With this the Razakars shot those five

detainees to death and then they had to throw their dead bodies into water as ordered.

137. The event of atrocities was committed not at times of normalcy and as such the villagers who were forced to remain present at the killing site had nothing to do for saving the detainees. Such coercive act was conducted, before the detainees were shot to death with intent to spread terror and coercion among the civilians and at the end spreading such coercive acts caused 'serious mental harm' to those who were forced to witness the act of horrific killing of pro-liberation civilians.

138. The utterance made by the perpetrators that '**look what castigation a freedom-fighter deserves**' was rather a grave threat to the civilians compelled to observe the killing. Mental harm and trauma those civilians were forced to sustain obviously constituted the offence of 'other inhumane act'.

139. The above version of P.W.04 remained unimpeached. Besides, it gets corroboration from what has been testified by P.W.03 who too had occasion of seeing the ultimate phase of the attack, the killing.

140. P.W.04 later on heard from his father and uncles that accused Razakar[Al-Badar] Md. Reaz Uddin Fakir, Md. Waj Uddin [now dead], and Amjad Ali [now dead] were with the group of Razakars at the time of the event of killing accomplished on the bank of the river Bana. It gets corroboration from the evidence of P.W.03.

141. It may thus be legitimately presumed that the witness who was at the crime site might have experienced limited information during the happening of crime or event. But it is likely that after the crime or event happened, the witness will hear more about the crime or event from other sources.

142. Besides, presence of accused at the Police station and refusal to set one victim at liberty as testified by P.W.01 unerringly leads to the conclusion that accused Md. Reaz Uddin Fakir did not keep him distanced from any phase of the event. Rather, it stands proved beyond reasonable doubt that the accused Md. Reaz Uddin Fakir played a dominating and active role in accomplishing the crimes, in exercise of his potential position in a para militia force.

143. Keeping the civilians unlawfully detained in camp for days together, on forcible capture was chained to the principal crime, the killing. Accused Md. Reaz Uddin Fakir was visibly concerned and connected with all the phases of the event till it ended in

annihilation of several civilians. Defence could not shake accused's involvement with the event in any manner.

144. On totality of evidences as evaluated above we arrive at decision that the prosecution has been able to prove the commission of crimes by launching systematic attack directing unarmed civilians and participation of accused Md. Reaz Uddin Fakir therewith. Therefore, the accused Md. Reaz Uddin Fakir is found criminally liable for substantially abetting, participating, contributing, facilitating and for complicity in the commission of offences of 'abduction', 'confinement', 'torture' and 'murder' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused person has incurred liability under section 4(1) of the said Act.

## **Adjudication of Charge No.02**

145. This charge involves the arraignment of abduction, confinement, torture and murder constituting the offences as crimes against humanity. It is to be noted that Md. Waz Uddin, another suspected accused who remained absconded died at pre-trial stage which was discovered after the decision rendered on framing charges treating him absconded on the basis of misconceived report of the law enforcing agency, in execution of warrant of arrest

issued by the Tribunal. Afterwards, proceedings so far as it related to Md. Waz Uddin stood abated when it was brought to notice of the Tribunal. Accordingly, the proceedings continued only against accused Md. Reaz Uddin Fakir.

146. In all 05 charges have been framed in this case. It appears that charge no.02 indicted only the accused Md. Waz Uddin . But since Md. Waz Uddin who was indicted in relation to this count of charge died at pre-trial stage, which was unfolded after framing charge the prosecution naturally refrained from pressing this charge. And thus, this charge remained unresolved.

### **Adjudication of Charge No. 03**

**[Offence of Genocide or in the alternative the offence of murder and rape as crimes against humanity committed at village Rishipara under Police Station- Fulbaria]**

147. **Charge:** That on 05.11.1971 at about 10.00 A.M. the accused Al-Badar commander Md. Reaz Uddin Fakir and accused Razakar Md. Waz Uddin along with 25/30 Razakars and another group of Pakistani occupation army jointly having besieged Rishipara village under Fulbaria Police Station of District Mymensingh abducted Basanti Rishi, wife of Mahinder Rishi [another victim], Geeta Rani Rishi, wife of Khoka Rishi and Nirmala Rishi, wife of Fatik Rishi and handed over them to Pakistani occupation army men who then forcibly raped them confining in the nearby jute field.

In conjunction with the same attack, the accused and his cohort Razakars on the same day [05.11.1971] having abducted (i) Ganen Rishi (ii) Refat Rishi (iii) Gogon Rishi (iv) Kalu Rishi (v) Mongla Rishi (vi) Dinesh Rishi (vii) Umesh Rishi, and (viii) Mahinder Rishi [husband of raped victim Basanti Rishi] took them away by torturing to the bank of the river near Valukjan bridge and then with intent to destroy, in whole or in part, the Hindu religious group shot them all to death there and threw their dead bodies in the river.

Thereby, the accused Md. Reaz Uddin Fakir has been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of genocide and abduction, confinement, torture and rape as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(c)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused person has incurred liability under section 4(1) of the said Act.

## **Evidence of Witnesses Examined**

148. Arraignment brought in this charge involves committing rape upon three women and killing eight civilians belonging to Hindu religious group, by launching attack at Rishipara where they used to reside. The charge frame also arraigns that such attack was with intent to destroy the Hindu religious group, in whole or in part. This charge rests upon 05 witnesses who have been examined as

P.W.14, P.W.15, P.W.16, P.W.17 and P.W.18. Of them P.W.14 is a rape victim and some of others are direct witnesses to the materially related facts. The accused was part of the criminal enterprise, the charge alleges. Now, let us see what has been unveiled in sworn testimony tendered by these witnesses.

149. P.W.14 Geeta Rani Rishi [64] is a resident of village-Gabtoli Koroitola Rishipara under Police Station- Muktagacha of District-Mymensingh. She stated that she had been at her parental home at village Rishipara under Police Station-Fulbaria of District Mymensingh, after the war of liberation ensued. She is a direct witness to the attack that also resulted in grave sexual violence upon her and her two neighbours.

150. P.W.14 stated that 18<sup>th</sup> Kartik [Bengali month] in 1971 at about 10:00 A.M a group of Pakistani occupation army being accompanied by accused Md. Reaz Fakir and his accomplice Razakars attacked their village Rishipara. Md. Reaz Fakir handed her [P.W.14] over to Biharis and Basanti Rishi and Nirmala Rishi too were handed over to Pakistani occupation army who taking them in the jute field violated their 'honour'.

151. P.W.14 also stated that accused Reaz Fakir, his accomplice Razakars and Pakistani army burnt down houses and took away eight of their neighbours including Ganen Rishi, Mongla Rishi,



Dinesh Rishi, Gyanen Rishi, Umesh Rishi, Mahendra Rishi towards Valukjan Bridge, on forcible capture. She [P.W.14] knew the accused Reaz Fakir beforehand as she saw him since her early years.

152. In cross-examination P.W.14 stated in reply to defence question that she got married two years prior to the event and she was nine-months pregnant, during the war of liberation; that she got married at ten years of her age and that she gave birth of a baby prior to the event. P.W.14 denied the defence suggestions that she did not know the accused Reaz Uddin Fakir and what she testified implicating the accused was untrue and tutored.

153. P.W.15 Digendra Rishi [65] is a resident of crime site of village-Rishipara under Police Station-Fulbaria of District-Mymensingh. He is the son of Reboti Rishi, one of victims.

154. P.W.15 stated that on 18<sup>th</sup> Kartik [a Bengali month] in 1971 a group formed of Pakistani occupation army, accused Razakar Commander Reaz Uddin Fakir and his accomplice Razakars by launching attack at Rishipara burnt down houses and took away eight including his father, Gogon Rishi, Kalu Rishi, Mongla Rishi, Dinesh Rishi, Umesh Rishi towards Valukjan Bridge, on forcible capture. He [P.W.15] saw it remaining in hiding inside a jute field.

155. P.W.15 also stated that at a stage of attack, accused Reaz Fakir and his accomplices forcibly captured three women including Gita Rani Rishi[P.W.14] and Nirmala Rishi and handed them over to Pakistani occupation army who committed rape upon them , taking them in a jute field.

156. P.W.15 next stated that he, remaining in hiding inside a jute field he saw the Pakistani army men gunning down the eight including his [P.W.14] father to death near the Valukjan Bridge. A commemorative plaque has been erected there in memory of the martyrs. He [P.W.15] knew the accused Reaz Uddin Fakir since boyhood as he [accused] was a resident of their locality.

157. In cross-examination in reply to defence question P.W.15 stated that Valukjan Bridge was about 200/300 yards far from their house; that he went into hide inside a jute field on hearing that the Razakars and army men besieged their Rishipara. P.W.15 denied the defence suggestions that he [P.W.15] did not see taking away three women of Rishipara forcibly; that accused Reaz Uddin Fakir was not a Razakar and that what he testified was untrue and tutored. P.W.15 stated too that Rishipara was Hindu dominated locality. Defence however does not seem to have denied even the fact of killing eight Hindu civilians taking them near the Valukjan Bridge, on forcible capture.

158. P.W.16 Jiban Rishi [55] the son of one of victims Dinesh Rishi also corroborates by testifying that when their house was set on fire, by launching attack he went into hiding inside nearer jute field wherefrom he saw the accused Reaz Uddin Fakir and army men taking away eight civilians including his [P.W.16] father, Mahindra, Gyanendra, Umesh, Reboti, Kailla, Mongla towards Valukjan bridge.

159. It was not practicable of seeing the committing physical invasion upon the women. P.W.16 was a resident of Rishipara and the son of one of victims who were shot to death at the place near Valukjan Bridge. Thus, naturally he[P.W.16] had opportunity of being aware of the barbaric act of sexual violence committed upon three women including Geeta Rani [P.W.14] of Rishipara by the army men, talking them forcibly in a jute field, in conjunction with the attack.

160 In respect of the phase of the killing it is evinced too that P.W.16 remaining in hiding inside the jute field he saw the Pakistani army men gunning down the eight detainees including his father to death near the Valukjan Bridge. Now the question is how he could recognise the accused? It remained unshaken that accused Md. Reaz Uddin Fakir was a resident of their locality and was seen often moving in local Bazaar Haat. Defence could not shake it in

any manner. Nevertheless, we may safely act upon the testimony the P.W.16 made stating presence of the accused at the killing site with the group.

161. P.W.16 Jiban Rishi [55] is the son of one of victims Dinesh Rishi and a resident of crime site Rishipara. He stated that on 18<sup>th</sup> Kartik [a Bengali month] in 1971 at about 10:00 A.M a group formed of Pakistani occupation army and Razakars being accompanied by accused Md. Reaz Uddin Fakir set the house on fire, by launching attack at Rishipara when he went into hiding inside a nearer jute field wherefrom he saw the accused Md. Reaz Uddin fakir and army men taking away eight civilians including his [P.W.16] father, Mahindra, Gyanendra, Umesh, Reboti, Kailla, Mongla towards Valukjan Bridge.

162. P.W.16 next stated that after causing forcible capture of eight the perpetrators committed rape upon three women including Geeta Rani [P.W.14] of Rishipara talking them forcibly in a jute field.

163. P.W.16 also stated that he could see, remaining in hiding inside the jute field, the Pakistani army men gunning down the eight detainees including his father to death near the Valukjan Bridge.

164. Accused Md. Reaz Uddin Fakir was a resident of their locality and was seen often moving in local Bazaar Haat and as such he [P.W.16] knew him beforehand.

165. In cross-examination P.W.16 stated in reply to defence question that the jute field inside which he remained in hiding was east to their house and that the Valukjan Bridge was about 10-20 minutes' walking distance from their house; that the Valukjan Bridge was east to their house. P.W.16 denied the defence suggestions that what he testified was untrue and tutored; that accused Reaz Uddin Fakir was not a Razakar and that he did not know the accused.

166. Defence however does not appear to have made any effort to refute what has been testified in respect of killing eight residents of Rishipara near Valukjan Bridge, on forcible and the fact of committing rape upon three Hindu Women of Rishipara.

167. P.W.17 Vanu Rishi [56] is a resident of crime site, the village Rishipara under Police Station-Fulbaria of District Mymensingh. He is a direct witness to the attack as narrated in charge no.03.

168. P.W.17 stated that on 18<sup>th</sup> Kartik[a Bengali month] in 1971 at about 10:00 A.M he had been at their house when a group of Pakistani occupation army, Razakars being accompanied by

accused Reaz Uddin Fakir by launching attack besieged Rishipara and with this he went into hiding inside a jute field. The attackers set the houses on fire. He, remaining in hiding, saw accused Reaz Uddin Fakir, his accomplice Razakars and army men taking away eight residents of Rishipara including Gogon, Mahindra, Reboti, Kalu, Mongla, Dinesh and Umesh towards Valukjan Bridge.

169. P.W.17 also stated that in conjunction with the attack, accused Reaz Uddin Fakir and his accomplices handed over three women including Geeta Rani [P.W.14], Basanti to army men who then committed rape upon them, taking in the jute field.

170. P.W.17 continued stating that remaining in hiding inside the jute field he saw the army men gunning down the eight detainees to death near the Valukjan Bridge where now a commemorative plaque has been created in memory of the martyrs.

171. P.W.17 finally stated that Rishipara was Hindu dominated locality. In 1971 the Razakars and army men used to wipe out defenceless civilians taking them near Valukjan Bridge. Accused Reaz Uddin Fakir's house was nearer to their house and thus he knew him beforehand.

172. In cross-examination, it appears that defence does not contest the truthfulness of the event that resulted in killing eight Hindu

civilians and committing rape upon three Hindu women, in conjunction with the attack. Defence simply put suggestions to P.W.17 that in 1971 he was five years old; that what he testified implicating the accused was untrue and tutored; that accused Reaz Uddin Fakir was not a Razakar and he did not know him. P.W.17 blatantly denied it.

173. P.W.18 Jhantu Rishi [60] a resident of Rishipara under Police Station- Fulbaria of District Mymensingh has been tendered and defence declined to cross-examine him.

### **Finding with Reasoning on Evaluation of Evidence**

174. Admittedly Rishipara was Hindu dominated locality. The charge framed alleges that a systematic attack was launched at Rishipara by a group formed of Pakistani occupation army being accompanied by the accused Md. Reaz Uddin Fakir and cohort Razakars. In conjunction with the attack three Hindu women were sexually violated by the army men on substantial facilitation of the accused and other Razakar, houses were torched and eight Hindu civilians were taken away on forcible capture towards the Valukjan Bridge where the army men gunned them down to death, prosecution alleges.

175. Mr. Hrishikesh Saha, the learned prosecutor submitted the charge no.03 involved the offence of genocide and genocidal rape as the same happened directing the Hindu civilians of Rishipara under Police Station-Fulbaria of District-Mymensingh, with intent to destroy the Hindu religious group, in whole or in part. This charge rests upon 05 witnesses who have been examined as P.W.14, P.W.15, P.W.16, P.W.17 and P.W.18. They by tendering sworn testimony have consistently proved that the attack that eventually resulted in killing eight [08] Hindu civilians and rape upon three Hindu women. The pattern of attack by itself suggests the inference that the intent of the attack was to destroy the Hindu religious community, in whole or in part, the learned prosecutor added. Rape victim Geeta Rani [P.W.14] and other direct witnesses described how the attack was launched and they narrated the active presence of the accused Md. Reaz Uddin Fakir with the gang.

176. The learned prosecutor drawing attention to the official gazette dated 21.7.2016 submitted that victims Geeta Rani, Basanti Rishi, the two rape victims have been recognized as freedom-fighters and their name finds place in serial nos. 116 and 117 of the gazette. The gazette has been kept with the record as it was filed on 12.12.2017. It indisputably lends unmistakable assurance to the commission of the offence of grave sexual violence committed, in conjunction with the attack, the learned prosecutor added.



177. The learned prosecutor went on to argue that defence simply denied what has been testified by the P.W.s. But mere denial is not enough to refute the materially related facts testified. P.W.15, P.W.16 and P.W.17 are direct witnesses who saw the event remaining in hiding. Defence could not impeach it terming impracticable. Accused Md. Reaz Uddin Fakir and his cohorts' facilitated substantially assisted and aided the army men as they had no idea about the locality and the civilians to be targeted. Thus the accused being part of the enterprise and sharing common purpose and intent incurred liability for the entire organized criminal mission that ended in brutal killing of numerous Hindu civilians.

178. Mr. Syed Mijanur Rahman the learned defence counsel chiefly questioning credibility of witnesses submitted that the accused was not with the group of attackers; that the witnesses had no rational reason of recognizing the accused and that there has been no evidence to show that this accused participated in committing the offences alleged. The learned counsel however on query submitted that the event of attack happened was not disputed. There has been no accusation that this accused himself was the actual perpetrator and the P.W.16 and P.W.17 were tendered aged in 1971 and as such it is not practicable of recalling the event and thus they have testified being tutored.

179. The matters required to be proved are that a systematic attack was launched by a gang formed of Pakistani occupation army being accompanied by accused Md. Reaz Uddin Fakir and his accomplices at Rishipara a Hindu dominated village; that the attack resulted in destructive activities, rape upon women, abduction of eight civilians and killing them near Valukjan Bridge and that the accused had participation and complicity in accomplishing those atrocious activities.

180. P.W.14 Geeta Rani Rishi is a direct witness to the attack that also resulted in grave sexual violence upon her and her two neighbours. She knew the accused Md. Reaz Uddin Fakir beforehand as she saw him since her early years. According to her sworn testimony on 18<sup>th</sup> Kartik [Bengali month] in 1971 at about 10:00 A.M a group of Pakistani occupation army being accompanied by accused Reaz Fakir and his accomplice Razakars attacked their village Rishipara and then the accused handed her [P.W.14] over to Biharis and Basanti Rishi and Nirmala Rishi too were handed over to Pakistani occupation army who taking them in the jute field violated their 'supreme honour'. It also appears from cross-examination of P.W.14 that she was nine-months pregnant at the time of causing sexual violence upon her. What a brutality!

181. We have already rendered decision that the accused Md. Reaz Uddin Fakir was a potential member of a para militia force and had strong nexus with the Pakistani occupation army stationed in Fulbaria police station. In adjudicating the charge no.01 it has been evinced that the accused was one of active participants by leading the group of armed Razakars in committing the offences of abduction, confinement, torture and murder of five pro-liberation civilians.

182. Thus, now even in adjudicating this charge too we are convinced to infer it safely, on rational evaluation of evidence presented that it would not have been possible to locate the site and people to be targeted without the assistance and facilitation of the accused Md. Reaz Uddin Fakir and his accomplices. It may also be inferred that the accused and accomplices did not hesitate to hand over the Hindu women to the army men to satisfy their barbaric lust.

183. By such beastly act the accused Md. Reaz Uddin Fakir proved himself to be a monstrous one. He was a conscious part of a systematic attack launched directing a particular group of Bengali civilian population not for any just purpose or necessity. Thus, it is inferred that intent of the perpetrators was to cause destruction of livelihood of Hindu community.

184. It is evinced too that the perpetrators burnt down houses and took away eight of their neighbours including Ganen Rishi, Mongla Rishi, Dinesh Rishi, Gyanen Rishi, Umesh Rishi, Mahindra Rishi towards Valukjan Bridge, on forcible capture. Defence does not seem to have denied the fact of causing grave sexual violence upon three women including the P.W.14 and also the fact of taking away eight civilians, on forcible capture, as testified by the P.W.14. All those criminal acts forming part of attack indeed involved serious despondency and disadvantage to the victims of the attack.

185. P.W.15 Digendra Rishi the son of Reboti Rishi, one of victims, remaining in hiding inside a jute field saw the group formed of Pakistani occupation army, accused Razakar Reaz Fakir and his accomplice Razakars burning down houses at Rishipara by launching attack and taking away eight including his father, on forcible capture.

186. P.W.15 also corroborated the act of taking away three Hindu women including Geeta Rani Rishi [P.W.14] in a jute field where they were sexually violated, as handed over by the accused Reaz Uddin Fakir and his accomplices. It is not believable at all that P.W.15 came on dock to stigmatize the P.W.14 Geeta Rani Rishi by portraying an imaginary story of physical invasion upon a number of Hindu women including her. Defence could not impeach what has been narrated by the P.W.15, in any manner. Besides, defence

could not bring any reason, by cross-examining this P.W.15, of telling untrue story about accused's involvement with the attack.

187. Remaining in hiding inside a jute field P.W.15 saw the Pakistani army men gunning down the eight including his [P.W.14] father to death near the Valukjan Bridge. It appears that accused Md. Reaz Uddin Fakir was a resident of their locality and thus he [P.W.15] had fair occasion of knowing him beforehand.

188. P.W.16 Jiban Rishi [55] the son of one of victims Dinesh Rishi in testifying the attack consistently stated that the group of attackers accompanied by the accused Md. Reaz Uddin Fakir and his accomplices took away eight Hindu civilians of Rishipara including his [P.W.16] father towards Valukjan bridge.

189. It has been divulged too from his [P.W.16] evidence that the accused Md. Reaz Uddin Fakir and his accomplices handed over three women including Geeta Rani [P.W.14], Basanti to army men who then committed rape upon them, taking in a nearer jute field. It remained uncontroverted that accused Md. Reaz Uddin Fakir's house was nearer to their [P.W.17] house. Thus, it was quite practicable of seeing the accused accompanying the troops at the crime sites, in facilitating assistance. There has been no reason of discarding his testimony terming unreliable.

190. It transpires that P.W.17 Vanu Rishi, a resident of crime site, the village Rishipara also experienced the attack launched, saw the troops accompanied by the accused Md. Reaz Uddin Fakir taking away eight residents of Rishipara including Gogon, Mahindra, Reboti, Kalu, Mongla, Dinesh and Umesh towards Valukjan Bridge. It has also been consistently corroborated by P.W.17 that in conjunction with the attack three women including Geeta Rani [P.W.14], Basanti were sexually ravished by the army men taking them in a nearer jute field and as handed over by the accused Md. Reaz Uddin Fakir and his accomplices.

191. Remaining in hiding inside the jute field he also saw the army men gunning down the eight detainees to death near the Valukjan Bridge where now a commemorative plaque has been created in memory of the martyrs, P.W.17 stated.

192. The learned defence counsel Mr. Syed Mijanur Rahman questioning the credibility of evidence presented by P.W.16 and P.W.17 submitted that in 1971 they were tender aged and now they not competent to recall what they experienced and whether the accused was with the group of perpetrators and thus their testimony deserves to be kept aside from consideration.

193. Mr. Hrishikesh Saha, the learned prosecutor, in reply, drawing attention to the observation made by the Appellate Division in the case of Ali Ahsan Muhammad Mujahid submitted that mere tender age of the witness at the relevant time itself is not a ground to discard his testimony.

194. We are not with the submission made by the learned defence counsel. Mere tender age cannot be a ground to discard one's testimony if the same appears to be natural and gets corroboration from other evidence. Rather we find substance in what has been submitted by the learned prosecutor. It appears that in the case of *Ali Ahsan Muhammad Mujahid* the **Appellate Division of Bangladesh Supreme Court**, on this aspect, observed that --

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

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

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

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

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

196. In the case in hand it transpires that P.W.16 and P.W.17 were about 10/11 years old in 1971. But in view of above their testimony cannot be kept aside out of consideration terming unreliable. Besides, their testimony gets consistent corroboration from P.W.14 and P.W.15, two direct witnesses one of who is a victim of sexual violence. Next, there is no requirement that accountability of an accused must be determined on evidence of two or more witnesses. Even the court can act upon even a single witness if it is credible and the same may be accepted even if not corroborated.

197. P.W.14 Geeta Rani Rishi is a key direct witness in this case. Her unimpeached testimony indubitably proves the act of taking away eight Hindu civilians including her husband to the place at Valukjan Bridge, on forcible capture. Defence does not dispute such unlawful detention of defenceless civilians belonging to Hindu community.



198. We are not ready to keep aside the testimony of P.W.14 as she knew the accused Md. Reaz Fakir beforehand as she saw him since her early age. The above piece of evidence demonstrates that sexual violation, destructive activities, forcible capture of numerous Hindu civilians and taking them away – all these prohibited acts were conducted in conjunction with the attack.

199. The attack was indiscriminate in nature and it gravely harmed civilians, in violation of customary international law and laws of war which may qualify as direct attacks against civilians. The victims belonging to Hindu religious group were targeted in the context of systematic attack in 1971 were much more vulnerable. It is to be noted that a victim of ordinary criminal conduct does have far better means of defence. He or she can call neighbours or even defend himself or herself without having to fear. But the event of attack happened in context of war and the perpetrators were extremely antagonistic to Bengali civilians and civilians belonging to Hindu community.

200. But a perpetrator of mass atrocity or genocide or crimes against humanity committed in 1971 posed a greater threat because ordinary social correctives could not function properly for the reason of context prevailing at that time and thus public disapproval

of such criminal behavior, a strong counter incentive against such criminal conduct, was not available. And, the existing 'context' allowed the Pakistani occupation army and their local collaborators, the perpetrators to conduct the criminal acts without facing any social correctives or any kind of counter incentive on part of the victims under attack.

201. The above context pregnant 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 who truly had carried out such atrocious activities to further the policy and plan of the Pakistani occupation army.

202. The Tribunal notes that the evidence of P.W.14 consistently places the accused Md. Reaz Uddin Fakir at the scene of the crimes committed against her and two of her neighbours. It is significant to note that she has been consistent throughout her statements in her recollection that the accused was with the gang who substantially assisted and contributed to the army men in committing sexual violence upon them.

203. Sexual violence committed upon P.W.14 and other Hindu women was invariably an aggravated sexual assault as it was committed in war time situation upon defenceless women

belonging to a particular religious group and thus it was not simple sexual assault but sexual invasion which was used as a tool with intent to destroy the Hindu community constituting the offence of 'genocide', we conclude.

204. It thus stands well proved from the consistently corroborative evidence presented by the P.W.14[rape victim], P.W.15 [son of one of eight victims] , P.W.16[son of one of eight victims] and P.W.18 [a resident of Rishipara and a direct witness to the attack] that an organised attack was launched at the relevant time at Hindu dominated village Rishi Para, accused Md. Reaz Uddin Fakir was with the troops--knowing consequence and sharing common intent, three Hindu women were sexually ravished by the army men on substantial contribution of the accused Md. Reaz Uddin Fakir and his accomplices, the gang then took away eight Hindu civilians on forcible capture towards the place near Valukjan Bridge.

205. Valukjan Bridge was the killing site. We have it proved that the eight Hindu detainees were shot to death there. Besides, defence does not dispute it. Creating a commemorative plaque there in memory of the martyrs adds assurance too to the brutal killings.

206. P.W.16 Jiban Rishi [55] the son of one of victims Dinesh Rishi also corroborates by testifying that when their house was set on

fire, by launching attack he went into hiding inside nearer jute field wherefrom he saw the accused Md. Reaz Uddin Fakir and army men taking away eight civilians including his [P.W.16] father, Mahindra, Gyannedra, Umesh, Reboti, Kailla, Mongla towards Valukjan bridge.

207. It was not practicable of seeing the committing physical invasion upon the women. P.W.16 was a resident of Rishipara and the son of one of victims who were shot to death at the place near Valukjan Bridge. Thus, naturally he [P.W.16] had opportunity of being aware of the barbaric act of sexual violence committed upon three women including Geeta Rani [P.W.14] of Rishipara by the army men, talking them forcibly in a jute field, in conjunction with the attack.

208. P.W.17 Vanu Rishi a resident of the crime village Rishipara who too experienced the attack that resulted in sexual violence upon women, forcibly talking away eight Hindu civilians and causing their death by gun shot. Accused Md. Reaz Uddin Fakir's house was nearer to their house and thus he knew him beforehand. It remained uncontroverted. Thus, it was practicable of identifying him accompanying the gang at the crime sites when it conducted the criminal acts.

209. It is true that with the lapse of passage of time human memory is faded. But the core of the traumatic event sustained even long time back never erases from human memory. The facts the above witnesses narrated involve 'episodic' in nature which retains in human memory for long. In describing such 'episodic' event inconsistency or exaggeration may naturally occur. But despite this reality we are to look at the core of the evidence presented on such 'traumatic episode' the witnesses experienced. Thus, we are not agreed with the learned defence counsel that the witnesses are not reliable merely for the reason that they coming on dock testified what happened long more than four decades back.

210. In respect of the phase of the killing it is evinced too that P.W.16 remaining in hiding inside the jute field he saw the Pakistani army men gunning down the eight detainees including his father to death near the Valukjan Bridge. Evidence presented by the P.W.16 lends corroboration to the narrative made by the P.W. 15 on the event of killing and accused's participation therewith.

211. Now the question is how he could recognise the accused? It remained unshaken that accused Md. Reaz Uddin Fakir was a resident of their locality and was seen often moving in local Bazaar Haat. Defence could not shake it in any manner. Nevertheless, we

may safely act upon the testimony the P.W.16 made stating presence of the accused at the killing site with the group.

212. Gabriela **Mischkowski** rightly pointed that –

“in practice, rape survivors are more or less routinely accepted as “vulnerable” rather than “threatened” for mainly two reasons: they are either perceived as too shameful to talk about “such things” in front of a public audience, or—based on a less prejudiced and more enlightened understanding of rape and its social implications—they are to be protected from public stigmatising.”

**[Gabriela Mischkowski, Medica Mondiale, Cologne, Germany: The trouble with rape Trials: Bangladesh Genocide and the Issue of Justice, a paper presented in the International conference held at Heidelberg University, Germany 4-5 July, 2013, publication of Liberation War Museum, Bangladesh, page 98]**

213. Statement of one of victims P.W.14 Geeta Rani Rishi in respect of barbaric misdeed done to her and her neighbours by the army men with the substantial; facilitation of accused and his cohorts could not be impeached by the defence in any manner.

214. Victim Geeta Rani Rishi [P.W.14] is the best and sole witness to the act of rape committed upon her and other women, in conjunction with the attack. We firmly believe that no women would prefer to bring a false accusation that stamps stigma on her life and makes her social and family life shattered.

215. We find no reason to disbelieve her [P.W.14] testimony. Besides, the gazette dated 21.7.2016 shows that recognition has been given to this victim and victim Basanti Rani as ‘freedom-fighters’. Prosecution submitted it during trial for taking it into judicial notice and the same has been kept with the record.

216. The Tribunal reiterates that war time rape victims cannot be viewed as mere women who lost their chastity. In fact, they fought by sacrificing their supreme self-worth, for the cause of our independence. Now recognizing those victims as ‘freedom-fighters’, as the gazette submitted speaks out indeed makes the nation immensely proud. Such recognition to the victims is rather a salute to them on part of the nation. The tribunal shall look ahead that the society, the nation, the state, the humanity and the world community must and must value the tormenting sacrifice and the valor of hundreds of thousands of mothers and sisters, breaking silence.

217. Now the question is how the accused Md. Reaz Uddin Fakir facilitated the commission of the offence. The victim stated that she was handed over to the army by accused. And it happened in devastating attack at the Hindu dominated Rishipara.

218. It is now well settled that an individual accused of the offence of ‘genocide’ or ‘crimes against humanity’ which is ‘group crime’ need not participate in all aspects of the criminal acts that eventually resulted in commission of the offences. Even a single act or conduct of the accused, amid, prior or after the principal offence may form part of the ‘attack’ if it had substantial effect in perpetrating the offence.

219. Further, the accused himself need not have participated in all aspects of the alleged criminal conduct. The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated.

220. In this regard, we may recall the observation of the ICTY Trial Chamber, in the case of **Tadic** that—

“In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates



international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.

**[Prosecutor v. Tadic, ICTY Trial Chamber, Case No. IT-94-1- T, Judgment 7 May, 1997, paragraph 692]**

221. It is not alleged that the accused had direct or actual participation to any of phases of the event of attack. He however participated by act of ‘abatement’, ‘assistance’ and ‘facilitation’ that involved prompting or endorsing the principal perpetrators to commit the offences in question.

222. Thus the act of facilitating in handing over the Hindu women, on capture obviously had a substantial effect on actual commission of sexual violence upon those women including the P.W.14. There had been a visible and strong ‘causal connection’ between such acts forming part of attack and the actual commission of the crime. In this way, accused not only abetted and facilitated to the commission of the offence of grave physical invasion but he consciously participated to its commission as well.

223. Defying the Article 27 of fourth Geneva Convention providing war time protection to women, the Pakistani occupation army and their local collaborators including the accused Md. Reaz Uddin Fakir are found equally responsible for committing indiscriminate sexual violence upon the helpless Hindu women.

224. The research on war time rape shows that in war time situation, the perpetrators assume the use of rape as an effective weapon of launching attack not simply against an individual, but against social and gender stigmas aiming for the advancement of societal break-down and destruction of a group.

225. We cannot agree with the defence argument that in absence of any proof as to physical participation of accused Md. Reaz Uddin Fakir with the sexual violence and any of killings he cannot be held responsible. Rather, accused's conscious and culpable act forming part of the attack, sharing common intent thus formed part of attack directed not only on the body of the victims belonging to Hindu religious group but it aimed to cripple the integrity of a family, a community, society and a protected group as well.

226. When rape is used as a weapon instead of a bullet, the weapon continues to exert its effect beyond the primary victim and it

eventually outrages the civility and the community which faced the attack. In other words, in the case in hand we conclude that such act using as a tool intended to destroy the Hindu community of Rishipara, in whole or in part and thus barbaric sexual violence committed upon numerous Hindu women constituted the offence of ‘genocidal rape’. **Tribunal-2[ICT-BD-2]** observed in the case of **Syed Md. Qaiser** that --

“In war time, a woman is raped intending to dehumanize and defeat the morals of counterpart and it leaves the society with long-term suffering as well. The curse of rape as a weapon, affects not only the life of an individual, but the entire family and community in which she lives.

**[Paragraph 714 of the judgment]**

227. Additionally, we reiterate the observation that this Tribunal-1 rendered in the case of Md. Moslem Prodhan and Syed Md. Hussain alias Hossain that –

".....it was rather **genocidal rape** as it was chosen as one of the worst ways of inflicting ‘serious bodily injury and mental harm’ upon the women presumably due to their membership in Hindu religious group intending to cause

destruction of religious belief, the will to live, and of life itself of the victims belonging to a protected group."

228. The assistance and encouragement may consist of physical acts, verbal statements, or even mere presence-it is now settled. What we see in the case in hand? Accused Md. Reaz Uddin Fakir remained present at the crime site with the gang; that he actively assisted in handing over the victims women to the army men and such acts were conducted in conjunction with the attack that ended in killing eight Hindu civilians, taking them at the place near Valukjan Bridge on forcible capture and after setting the houses of Rishipara on fire.

229. It is evinced that the accused did not leave the massacre site until the attack ended in killing. Genocidal intent was also shared by all participants in the JCE, including the accused. The culpable presence of the accused at the crime sites, however, may be perceived as significant indicia of his encouragement or support or assistance to the principal perpetrators

230. Act of sexual violence committed upon the Hindu women, in conjunction with the attack, by creating a coercive and horrific situation formed an integral part of the course of destruction of a

group. For rape and sexual violence not only resulted in physical and psychological destruction of Hindu women but by such acts grave harm was caused to their families and their communities and thus it was intended to the destruction of the Hindu religious group, either as a whole or in part.

231. 'Special intent' an element to constitute the offence of 'genocide' can be well inferred from the facts and circumstances divulged from evidence tendered. Hindu religious group is a 'protected group' as mentioned in the Genocide Convention 1948. Violating the prohibition contained therein the perpetrators the Pakistani occupation army being assisted, encouraged, abetted, and facilitated by the accused person and his cohorts conducted the criminal acts directing the Hindu population of Rishipara obviously with intent to cause physical and psychological destruction of Hindu religious group which constituted the offence of 'genocide' was committed.

232. The witnesses who came on dock to testify the event were the residents of the crime village Rishipara. They also could have been killed. However, they got survived. But at the time of conducting the attack they obviously felt the sense of utter helplessness and extreme fear for their family and near ones' safety as well as for their own safety. It was a traumatic experience indeed from which

one will not quickly – if ever– recover. And thus the Tribunal concludes that ‘serious mental harm’ was caused even to the survivors. Causing such serious mental harm formed integral part of ‘destruction’ of a community.

233. All the victims and survived sufferers belonging to Hindu religious group were the residents of village Rishipara which was predominantly Hindu populated. Pattern of attack and other circumstances unveiled indisputably prompt to the conclusion that the intent of the perpetrators was to destroy the Hindu religious group of the crime locality, to further policy and plan. This genocidal intent gets further assurance from the proved criminal act of conducted by the troops on tacit encouragement and approval of the accused Md. Reaz Uddin Fakir and his cohorts.

234. The accused Md. Reaz Uddin Fakir has been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of ‘genocide’ and ‘abduction’, ‘confinement’, ‘rape’ , ‘torture’ and murder as crimes against humanity. In course of attack the perpetrators burnt down houses of civilians, abducted eight civilians to the Valukjan Bridge, the killing site, and committed sexual violence upon women. All these prohibited criminal acts were done to the Hindu civilians of Rishipara.

235. Those criminal acts indisputably caused serious bodily and mental harm to the rape victims and survivors and also to the individuals who had occasion of seeing the atrocities carried out. Collectivity of those crimes committed was intended to cause destruction of Hindu religious group, we conclude. This 'special intent' was attached to the offence of 'genocide'.

236. It is not needed to show that the destruction the perpetrators sought was directed at every member of the Hindu religious group of the crime village. The facts and number of victims together demonstrate that the intention was to destroy a substantial part of the Hindu group of the crime village. Women including P.W.14 were subjected to sexual violence and eight Hindu civilians were annihilated brutally because of their membership in Hindu religious group. War time rapes upon women, using as a method of destruction, because of their membership in a protected group were a prelude to 'genocide'.

237. It may also be inferred legitimately that the act of sexual violence which remained undisputed was committed upon the defenceless and panicked Hindu women under a coercive situation. Accused Md. Reaz Uddin Fakir actively remained present at the crime site with the group of perpetrators by providing culpable

assistance and aid and thus his 'concern' and 'culpable engagement' in launching attack directing the Hindu civilians is sufficient to establish his liability for all the criminal acts conducted in accomplishing physical invasion, burning down house and killing eight Hindu civilians.

238. In respect of the notion of 'participation' it may be noted that the accused Md. Reaz Uddin Fakir too was a 'participant' to the crimes committed as he knowing consequence of his act and conduct assisted, abetted, facilitated and substantially contributed in carrying out the horrific attacks directing the Hindu religious group.

239. The notion of '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 Trial Chamber in the case of *Stakic* [that

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



of the definition of the substantive offence”.

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

240. In light of above principle, act and conduct of accused Md. Reaz Uddin Fakir as demonstrated particularly from the evidence of victim and direct witnesses prompt to the conclusion that accused person had played active and culpable role consciously in locating Rishipara and its Hindu inhabitants and thereby he that substantially lent support and abetment to the principals in committing the horrific crimes.

241. In the case in hand the defence could not impeach the facts materially related to the participation of accused in committing the crimes the outcome of the attack launched at Hindu dominated village Rishipara. Defence merely denied in cross-examination that this accused was not with the gang of attackers. Such mere denial is not at all sufficient to taint the truthfulness of witnesses' sworn testimony, the object of cross-examination. In this regard we recall the observation made by the Appellate Division of Bangladesh Supreme Court in the Appeal of Delwar **Hossain Sayedee** which is as below:

“It is to be remembered that the object of cross examination is to bring out desirable

facts of the case modifying the examination-in-chief and to impeach the credit of the witness. The other object of cross examination is to bring out facts which go to diminish or impeach the trustworthiness of the witness. [**Sayedee's Appeal Judgment, (AD) , page 138-139**]

242. Culpable role the accused played in conjunction with the attack being present with the group of attackers at the crime site constituted 'committing' the offence of 'genocide'. Thus, we are persuaded to observe that the accused had direct participation in the *actus reus* of the crime. It is now settled that it is not required to show his direct participation in the commission of crimes.

243. 'Committing' may be done individually or jointly with others. Accused had incurred liability under the theory of **JCE [Basic From]**. It is now settled that participation in a joint criminal enterprise is more akin to direct perpetration or accomplice liability. Being part of the enterprise the accused Md. Reaz Uddin Fakir played a key 'co-ordinating role', in exercise of his affiliation with the *para militia* force in perpetrating the crimes proved.

244. It stands proved that the accused Md. Reaz Uddin Fakir as a co-perpetrator participated in the common design whereby such participation took the form of assistance in, or a substantial contribution to, the execution of the common plan or purpose of liquidating civilians of Hindu religious group of village Rishipara. Taking it into account together with the evidence tendered it may safely be concluded that the accused participated and substantially facilitated even in accomplishing the criminal acts that resulted in abduction, torture, sexual abuse and killing of numerous Hindu civilians of the said village.

245. The proved facts materially related to the sexual violence , killing and destructive activities indisputably offer convincing suggestion that the accused Md. Reaz Uddin Fakir had conscious 'concern' and 'participation' in committing the act of grave sexual abuse upon Hindu women , destruction of properties by burning by creating coercive situation and finally killing of numerous Hindu civilians as well, and thus, he is found responsible for the commission of all the criminal acts of the enterprise with 'genocidal intent'.

246. Finally what we find to have been proved in this case? In view of deliberation made herein above it stands proved beyond reasonable doubt that --

- (i) The Hindu religious group of village Rishipara was the target of the attack;
- (ii) The group of attackers formed of Pakistani occupation army, accused Md. Reaz Uddin Fakir and his accomplice Razakars;
- (iii) The accused Md. Reaz Uddin Fakir did not keep him distanced from the gang of attackers till the attack ended in killing happened at the place near Valukjan Bridge;
- (iii) All the victims belonged to Hindu community;
- (iv) Three Hindu women including P.W.14 were sexually ravished on substantial facilitation of the accused, in conjunction with the attack;
- (v) Houses of Hindu civilians were burnt down;
- (iv) 08 Hindu civilians were forcibly captured and were taken to the killing site where they were shot to death;
- (viii) Intent of the attack was to destroy the Hindu religious group, in whole or in part;
- (ix) Collectivity and pattern of criminal acts directing the civilians of Hindu religious group constituted the

offence of 'genocide' as enumerated in section 3(2) (c)

(i) (ii) of the Act of 1973, and

(x) Accused Md. Reaz Uddin Fakir a potential member of a para militia force was conscious, active and culpable part of collectivity of the criminal acts and thus incurred liability under the doctrine of JCE [Basic Form].

247. On integrated evaluation of evidence adduced thus leads us to the conclusion that the prosecution has been able to prove it beyond reasonable doubt that the accused Md. Reaz Uddin Fakir belonged to *para militia force* Al-Badar Bahini being accompanied by a group of Pakistani occupation army and his accomplices had carried out the systematic attack that eventually resulted in sexual violence upon Hindu women, detaining numerous Hindu civilians and killing them together with destructive activities. The accused person consciously acted in JCE, sharing common purpose and he incurred liability as co-perpetrator, for the crimes proved.

248. Therefore, the accused Md. Reaz Uddin Fakir is found criminally liable for substantially abetting, participating, contributing, facilitating and for complicity in the commission of offences of '**genocide**' as enumerated in section 3(2)(c)(i)(ii) (g)(h) of the Act of 1973 which are punishable under section 20(2) of the

said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

## **Adjudication of Charge No. 04**

**[Extermination, abduction, confinement and torture committed at Asimbazar, Bashdi and Valukjan under Fulbaria Police Station]**

**249. Charge:** That on 13.11.1971 at about 12.00/01.00 P.M. the accused Al-Badar commander Md. Reaz Uddin Fakir along with other 30/40-armed Razakars entered Asimbazar under Fulbaria Police Station of District Mymensingh by firing indiscriminate shots and then the villagers having been frightened began to run hither and thither. Then the accused person and his cohort armed Razakars killed many innocent unarmed villagers and having confined many others tortured them, and after having tortured 13[thirteen] innocent unarmed villagers took them away to Valukjan Bridge under Fulbaria Police Station and slaughtered them all to death there and threw their dead bodies in the Akhalia river. At the time of said incident the accused person and his cohort armed Razakars killed at least 43 [forty three] unarmed civilians including (i) Ismail Hossain Master (ii) Asim Uddin Mullah (iii) Momtaz Ali (iv) Tayob Ali (v) Yeasin Ali (vi) Dulal Miah (vii) Abdul Karim (viii) Abdul Kader (ix) Habibur Rahman Talukder (x) Abdul Malek (xi) Jobed Ali (xii) Abdul Rashid alias Nosu (xiii) Pagu Miah (xiv) Nousher Ali (xv) Sekander Ali (xvi) Panchab Ali (xvii) Hari Mohan Dey (vxiii) Abinash Chandra Dey (xix)

Baloram Karmakar (xx) Sabed Ali (xxi) Aroz Ullah (xxii) Banu Miah, and (xxiii) Ramesh Chandra Dey. Subsequently, a monument was built at the place of incident inscribing the names of the martyrs for cause of their great sacrifice.

Thereby, the accused Md. Reaz Uddin Fakir has been charged for participating, abetting, facilitation, contributing and complicity in the commission of offences of extermination, abduction, confinement and torture as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused person has incurred liability under section 4(1) of the said Act.

## **Evidence of Witnesses Examined**

250. Prosecution in support of this charge examined as many as 05 witnesses and they are P.W.07, P.W.08, P.W.09, P.W.10 and P.W.11. Of them P.W.10 is a direct witness to some crucial facts materially related to the event of attack. P.W.07, P.W.09 and P.W.11 are freedom-fighters and P.W.08 is the son of one of victims—they are hearsay witnesses. Before weighing the probative

value and credence of their evidence first let us see what they have testified on dock.

251. P.W.07 Md. Belayet Hosen Molla [60] is the son of victim Asim Uddin Molla, a freedom-fighter. In 1971 he was a student of class VIII. He is a hearsay witness. At the relevant time he had been at their house and later on he heard the event of attack from the locals.

252. P.W.07 stated that in 1971 there existed Pakistani army camp and Razakar camp at Asim Bazaar under Fulbaria Police Station. On 13 November, 1971 in early morning a battle started between freedom-fighters and Pakistani occupation army and Razakars and it continued for 4/5 hours and at a stage Pakistani army and Razakars reached back. His [P.W.07] father also joined the battle and on that day at about 10/11 A.M freedom-fighters and the people started cheering on victory.

253. P.W.07 next stated that on the same day at about 12/01P.M a group of armed Razakars being accompanied by Amjad Ali[now dead], Md. Waz Uddin [now dead] and Al-Badar accused Md. Reaz Uddin fakir suddenly attacked civilans and freedom-fighters at the place of village Bashdi nearer to Asim Bazaar when the freedom-fighters and civilans were on move towards their home and caused



death of civilians and freedom-fighters by indiscriminate gun firing and 13 including his[P.W.07] father Asim Uddin Molla sustained bullet hit injuries.

254. In respect of next phase of the attack P.W.07 stated that the Razakars then dragged on 13 injured tying them up their legs with rope to Asim Bazaar where they were subjected to inhuman torture. Then the Razakars took those 13 injured victims away towards Valukjan Bridge by a truck where they were bayoneted to death and their dead bodies were thrown into the river of Akhalia [at this stage of tendering testimony P.W.07 started shedding tears].

255. Finally P.W.07 stated that a commemorative plaque has been erected near the Valukjan Bridge and it reflects the name of 25 martyrs including his [P.W.07] father.

256. In cross-examination P.W.07 stated in reply to defence question put to him that he could not say how many army men got stationed at the army camp set up at Asim Bazaar; that he heard the event from people. P.W.07 however denied the defence suggestion that what he testified implicating the accused was untrue and out of rivalry.

257. Defence does not appear to have made any effort to refute the material facts and that accused Md. Reaz Uddin Fakir was a

member of Al-Badar Bahini and that detainees were brutally liquidated at the site near the Valukjan Bridge, taking them there on forcible capture.

258. P.W.08 Md. Nazrul Islam [54] is a resident of village-Betbaria under Police Station-Fulbaria of District Mymensingh. In 1971 he was 8 years old. He is a hearsay witness. He is the son of martyr Nowsher Ali, one of victims.

259. P.W.08 stated that he heard from his grand-father Foyez Uddin Mondol and many others that on 13 November, 1971 the freedom-fighters attacked the camp of Pakistani occupation army and Razakars set up at Asim Bazaar. The battle continued for 3-4 hours and at a stage the Pakistani army and Razakars retreated and then freedom-fighters got their camp captured.

260. P.W.08 continued stating that 2/3 hours later the people started coming back to their home and shops when a group of Razakars and AL-Badar suddenly attacked the civilans and started gun firing that resulted in death of numerous civilans and many including his[P.W.08] father got injured and then they were subjected to torture and were taken away near the Valukjan Bridge by a truck where they were slaughtered and their dead bodies were dumped into the river. They could not trace his father's dead body.

261. Defence simply put suggestion to P.W.08 that he was not eight years old in 1971. P.W. denied it. Defence did not cross-examine this P.W.08, in true sense intending to refute the testimony made on material particular.

262. P.W.09 Md. Abdus Salam [65] a resident of village Betbaria under Police Station-Fulbaria of District Mymensingh is a freedom fighter. In 1971 he was 17/18 years old. He is a hearsay witness as to the event of killing civilians at Asim Bazaar and Valukjan Bridge.

263. P.W.09 stated that in 1971 after receiving training of freedom fight he heard from people when he remained stationed at their camp at Majhirhat Reaz Uddin Fakir, Md. Waz Uddin[now dead] and Razakar Amjad Ali[now dead] looted cattle from Betbaria locality.

264. P.W.09 next stated that on 13 November, 1971 in morning they the freedom-fighters attacked Asim Bazaar Razakar camp and at a stage the Razakars moved back and they returned back to their Enayetpur camp.

265. P.W.09 also stated that he heard that on the same day accused Reaz Uddin Fakir, Waz Uddin and their accomplice Razakars by

launching attack at Asim Bazaar killed 20/30 civilians. He[P.W.09] also heard that in conjunction with the attack the Razakars took away 13 civilians including his[P.W.09] brother Abdur Rashid, his two maternal uncles Karim and Kadir @ Kadu to Valukjan Bridge on forcible capture from village Bashdi and detainees were slaughtered there and their dead bodies were made floated in the river . Three days later his brother's dead body could be recovered and it was then buried bringing at home.

266. Finally, P.W.09 stated that he did not know the accused Reaz Uddin Fakir. After independence the people indicating him [accused] used to say that he [accused Reaz Uddin Fakir] and his accomplices had killed his brother. A commemorative plaque has been erected near the Valukjan Bridge and it reflects the name of his [P.W.09] brother as well, P.W.09 added.

267. In cross-examination P.W.09 stated that they did not initiate any case in police station over the event of his brother's killing; that accused Reaz Uddin Fakir's houses is near Valukjan Bridge. P.W.9 denied the defence suggestion that what he testified implicating the accused was untrue and being tutored by the counterpart of the accused and that the accused was not a Razakar. Defence could not seem to have made attempt to refute that P.W.09 did not hear the event or that it was not practicable of learning it.

268. P.W.10 Dr. Abdul Awal [60] is a resident of village Bashdi under Police Station-Fulbaria is a direct witness to facts materially related to the event of attack. In 1971 he was SSC examinee. He is a direct witness to the battle that took place at Asim Bazaar. He however heard the attack that occurred later on and resulted in killing civilians by a group of Razakars.

269. P.W.10 stated that in May, 1971 Pakistani occupation army got stationed at Asim Bazaar under Fulbaria Police Station by setting up its camp there with the assistance of accused Reaz Uddin Fakir, Waz Uddin [now dead] and Amjad Ali[now dead] and they started carrying out prohibited acts around the locality.

270. P.W.10 stated that on 13 November, 1971 in early morning at about 04:00 A.M the freedom-fighters attacked the camp at Asim Bazaar and at a stage the army men and Razakars quitted it. The battle continued for two-two and half hours.

271. P.W.10 next stated that he and the people moved to the camp after the army men and Razakars retreated. The freedom-fighters then went back. Afterwards, on the same day at about 12:00/13:00 P.M he had been at house when he again heard gun firing. Their house was about quarter mile far from Asim Bazaar. He then went into hiding inside a paddy field wherefrom he saw accused Reaz

Uddin Fakir, Waz Uddin [now dead], Amjad [now dead] and their accomplices moving towards Asim Bazaar with indiscriminate gun firing. Asim Bazaar could be seen even from the place where he remained in hiding. He then saw the Razakars and their accomplices dragging on the people to a truck by which they were taken towards Fulbaria.

272. P.W.10 stated that later on he heard that the civilians detained from Asim Bazaar were slaughtered taking them near Valukjan Bridge and their dead bodies were thrown into Akhalia river. Ismail Master and Asim Uddin were two victims who were so killed. On the following day, on the way to Asim Bazaar he saw five dead bodies lying scattered. They the villagers then buried those dead bodies. A commemorative plaque has been erected near the Valukjan Bridge. P.W.10 finally stated that all the locals knew accused Reaz Uddin Fakir as he was a Razakar. The narration made by the P.W.10 in examination-in-chief on material particulars does not appear to have been refuted in cross-examination. P.W.10 denied the defence suggestion that what he testified implicating the accused was untrue and that this accused was not a member of auxiliary force and that he testified implicating the accused out of political rivalry.

273. P.W.11 Nur Mohammad [65] is a freedom fighter and a resident of village Jangalbari under Police Station-Fulbaria of District Mymensingh. He is a direct witness to the battle that took place at Asim Bazaar and hearsay witness to the attack that resulted in killing numerous civilians after on.

274. P.W.11 stated that he joined the war of liberation in August under the commander Momtaz Uddin Hira. During his engagement with the war of liberation[ as a freedom fighter] he heard that Pakistani occupation army and accused Reaz Uddin Fakir, Waz Uddin [now dead], Amjad Ali[now dead] established their camp at Asim Bazaar with the assistance of Shahabuddin and by setting up the said camp they started carrying out criminal activities directing local civilians. He[P.W.11] discussed it with his company commander and at a stage got signal Bangabeer Quader Siddique of launching attack on the said camp on 13 November,1971.

275. P.W.11 continued stating that on 13 November, 1971 in early morning at about 04:00 A.M they the freedom-fighters attacked the army-Razakar camp at Asim Bazaar. The battle continued for 2/3 hours and at a stage the army men and Razakars retreated, quitting the camp and then they did not find anybody there. They then started cheering on victory by chanting the slogan 'Joy Bangla Joy Bangabandhu'. The people started coming to Asim bazaar on

hearing the slogan and then they the freedom-fighters had left the site half an hour later.

276. P.W.11 next stated that he heard later on that on the same day at about 12/01 noon accused Razakar Reaz Uddin Fakir and his accomplices Razakars by launching attack at Asim Bazaar killed 40/50 civilians by indiscriminate gun firing and 13 civilians who sustained injuries in conjunction with the attack were taken away by a truck towards Valukjan Bridge where they were slaughtered and their dead bodies were thrown into the Akhalia river. His [P.W.11] maternal uncle Ismail was one of victims and they could not trace his dead body.

277. P.W.11 finally stated that all the locals knew that accused Reaz Uddin Fakir was a Razakar. He did not know the accused Reaz Uddin Fakir beforehand. After independence he saw the accused Reaz Uddin Fakir moving around the bazaar of the locality and the people used to say that he was Razakar Reaz Uddin Fakir.

278. In cross-examination, the battle at Asim Bazaar as testified has been affirmed as the P.W.11 stated in reply to defence question that on 13 November, 1971 they the freedom-fighters attacked the camp from three directions of Asim Bazaar and the exchange of gun firings with the army men and Razakars at their camp



continued for two/two and half hours and none of them [freedom-fighters] did not receive any injury and that the army men and Razakars managed to flee through the north side and then they the freedom-fighters came back to their camp at village Radhakanai, 10/12 miles far from Asim Bazaar.

279. Next the P.W.11 stated in cross-examination that he heard the event happened after the battle at Asim Bazaar. P.W.11 denied the defence suggestion that accused Reaz Uddin Fakir was not a Razakar and what he testified implicating the accused was untrue and the accused was not involved with the event he narrated.

### **Finding with Reasoning on Evaluation of Evidence**

280. Mr. Hrishikesh Saha the learned prosecutor submitted that a group of 30/40 armed Razakars and members of para militia force accompanied by accused Md. Reaz Uddin Fakir conducted indiscriminate killing of non-combatant civilians and it happened few hours after the Pakistani occupation army and local Razakars and Al-Badar members who remained stationed at Asimbazar got reached back from their camp as they got defeated the battle with freedom-fighters. In all five witnesses have been examined in support of this charge. Of those witnesses P.W.09 and P.W.11 are freedom-fighters who consistently proved the battle that they fought against the army and Razakars and members of Al-Badar.

Later, they heard the attack that resulted in killing numerous civilians. P.W.08 is a hearsay witness. But his evidence gets corroboration from the facts and circumstances divulged.

281. The learned prosecutor further submitted that P.W.10 is direct witness to the fact of launching attack with indiscriminate gun firing by the group being accompanied by accused Md. Reaz Uddin Fakir, few hours later the battle came to cessation. Defence could not refute it. Besides, defence does not dispute that the fight took place between freedom-fighters and the army and their local collaborators stationed in Asimbazar and the killing occurred few hours later that resulted in killing of 43 civilians. It just challenged the presence of the accused with the gang of perpetrators. But totality of evidence adduced proves that the accused was with the group, sharing common intent. Defence could not refute it in any manner, by cross-examining the witnesses.

282. Mr. Syed Mijanur Rahman, on contrary, submits that prosecution relied upon anonymous hearsay evidence which does not carry probative value. P.W.08 was a tendered aged boy and thus he is not competent witness. No one of witnesses claims to have seen the accused committing the killing and thus their evidence implicating the accused creates doubt which negates accused's complicity with the commission of the crimes.

283. This charge involves indiscriminate killing of huge number of unarmed civilians. It happened on 13.11.1971 just few hours after the perpetrators and Pakistani occupation army who remained stationed at the camp set up in Asimbazar reached back on the face of defeat in battle happened with the freedom-fighters and after cheering the victory when the freedom-fighters had left Asimbazar – it is evinced from the testimony of witnesses examined. Thus, it may be said that defeat in the battle had a nexus in conducting aggressive systematic attack few hours later directing the civilians of the locality who cheered the victory.

284. First, let us see what facts we got undisputed. Defence does not challenge the existence of army camp and Razakar camp at Asimbazar in 1971, as testified by all the five witnesses who have been examined as P.W.07, P.W.08, P.W.09, P.W.10 and P.W.11. Of them P.W.09 and P.W.11 are freedom fighters and the rest three were the residents of the crime locality. Thus, it was quite natural of knowing the fact of setting up army and Razakar camp at Asimbazar.

285. Next, it remained undisputed too that on 13 November 1971 at about 12:00/01:00 A.M a group of 30/40 armed Razakars by launching attack directing civilians at Asimbazar caused death of

numerous civilians and many civilians were gunned down to death, taking them on forcible capture towards Valukjan Bridge.

286. What has been unveiled from evidence tendered as to context of launching such barbaric attack directing civilians? We find it proved from evidence of all the witnesses that on 13 November 1971 in early morning a battle started between freedom-fighters and Pakistani occupation army and Razakars stationed at Asimbazar camp and the battle continued for 4/5 hours.

287. How and when the battle ended? It is evinced that at a stage, Pakistani army and Razakars reached back and the freedom-fighters got their camp captured. P.W.09 and P.W.11, the freedom-fighters who joined the battle consistently testified it. Testimony of P.W.07, P.W.08 and P.W.10 the residents of the crime locality provide corroboration to them. Being locals naturally they experienced the battle and thus they too are competent witnesses, we conclude. Defence could not refute it in any manner by cross-examining them.

288. P.W.11 Nur Mohammad is a freedom-fighter. He was engaged in fighting the Razakars and army stationed in their Asimbazar camp. He is a key witness to the battle happened and its fate. P.W.11 was a potential freedom-fighter who naturally heard

accused Reaz Uddin Fakir's close affiliation in setting up camp of Pakistani occupation army in Asimbazar.

289. It transpires that he[P.W.11] discussed the criminal activities carried out by the Razakars with his Company Commander and at stage got signal from Bnagabeer Quader Siddique of launching attack on the said camp on 13 November, 1971 and accordingly they the freedom-fighters in early morning at about 04:00 A.M attacked their counterpart stationed in Asimbazar camp and eventually 2/3 hours later the army men and Razakars retreated, quitting their camp and then they started cheering on victory by chanting slogan 'Joy Bangla, Joy Bangabandhu'. The people also started coming forwards to Asimbazar on hearing the slogan and then the freedom fighters had left the site half an hour later.

290. Besides, it has been affirmed in cross-examination of P.W.11 that on 13 November, 1971 the freedom-fighters attacked the camp from three directions of Asimbazar and exchange of gun firings with the army men and Razakars staying at their camp continued for two/two and half hours and none of them[freedom-fighters] received injury and the army men and Razakars managed to flee through the north side and then the freedom-fighters returned back to their camp at village Radhakanai, 10/12 miles far.

291. The above depicts how that battle happened, how it ended. It transpires that after the counterpart retreated quitting their camp the freedom-fighters and the people together started cheering on victory and got the camp captured and then the freedom fighters returned to their own camp, as testified by P.W.11. We have found it too even from another freedom-fighter P.W.09 who too joined the battle.

292. What happened next to cessation of battle when the Pakistani occupation army and Razakars reached back? Few hours later the group of Razakars being accompanied by the accused Md. Reaz Uddin Fakir appeared in Asimbazar, the crime site with indiscriminate gun firing, presumably to let the civilians know their aggressive coming back. Testimony of P.W.10 a direct witness to the initial phase of the attack demonstrates it.

293. It transpires from the evidence of P.W.07, the son of one of victims and P.W.10 , a direct witness to the fact materially related to the attack that the perpetrators being accompanied by accused Md. Reaz Uddin Fakir first, by launching attack caused injuries to 13 civilians of Bashdi village by indiscriminate gun firing, then unlawfully detaining them tied their legs with rope and took them away to Asimbazar where they were subjected to torture and finally the detainees were taken to the killing site, at a place near Valukjan Bridge by a truck. It is evinced from the testimony of

P.W.10, a direct witness that the injured victims were dragged on to a truck by which they were taken to Valukjan Bridge.

294. Act of dragging on injured victims itself as narrated by the above witnesses is sufficient to constitute the offences of 'confinement', 'torture' and 'abduction'. Such grave wrong of 'torture' was done by unlawfully detaining the victims. Instead of sparing the injured victims the perpetrators then intending to execute their culpable mission 'abducted' or forcibly took way them to Valukjan Bridge where with the act of bayoneting them to death the attack eventually ended.

295. Thus, it stands proved that before the killing took place and in conjunction with the attack, injured detainees were subjected to brutal torture being unlawfully and in this way before they were bayoneted to death inhumanly tortured because they were allegedly supporting the freedom-fighters.

296. Seeing the accused Md. Reaz Uddin Fakir moving with the armed group with indiscriminate gun firing at Asimbazar, few hours after the battle came to cessation, as testified by P.W.10 is sufficient to conclude that he was an active part of the murderous enterprise, sharing common intent. It is to be noted that even a

single act or conduct of an individual forms part of the attack if it does have patent nexus with the intent of the group of attackers.

297. It is evinced from testimony of P.W.10 that the accused was with the gang of attackers when it launched the attack directing civilians of Asimbazar, with indiscriminate gun firing. P.W.10 observed it remaining in hiding. He also saw the members of the group dragging on the people to a truck by which they were taken towards Valukjan Bridge.

298. Defence could not bring anything by cross-examining the P.W.10 that he had no reason of recognizing the accused or he had no opportunity of seeing the group moving being accompanied by the accused Md. Reaz Uddin Fakir. Besides, P.W.10 stated that all the locals knew the accused Md. Reaz Uddin Fakir. It could not be refuted by the defence.

299. Already in passing on judicially the charge no.03 involving the offence of genocide we have found it proven that the accused was a notorious member of locally formed para militia force and he has been found to have had participation in accomplishing said mass atrocities carried out directing the Hindu civilians of Rishi Para. This event as narrated in charge no.03 happened just eight days prior to the event of attack carried out in Asimbazar. It together with the fact that the accused Md. Reaz Uddin Fakir used to



maintain close and capable affiliation with the Pakistani occupation army and Razakars and members of militia force indisputably made him known to the locals.

300. Therefore, accused's notoriety became anecdote to the locals, we may safely presume. Thus, seeing and recognizing the accused Md. Reaz Uddin Fakir with the group when it was on move with indiscriminate gun firing intending to launch the attack, as testified by the P.W.10 was natural and carries rational credence.

301. What was the upshot of the attack conducted by the group of armed Razakars and did the accused accompany the group of attackers?

302. P.W.10 who experienced the initial phase of the attack directing civilians saw five dead bodies lying scattered when on the following day he was on the way to Asimbazar and their bodies were buried by the villagers. It remained unimpeached. This crucial fact materially relevant to the event of attack impels the conclusion that the attack launched eventually resulted in killing numerous civilians.

303. The pattern and life-threatening magnitude of the attack creating horrific situation naturally did not leave space to individual

or individuals of witnessing the actual commission of killings, the upshot of the attack. Launching deliberate and aggressive attack and taking away civilians on forcible capture towards Valukjan Bridge by a truck were chained to the killings. And accused was an active part of group of perpetrators. Tracing bodies of numerous civilians lying scattered in Asimbazar, on the following day also proves that the perpetrators in addition to taking away civilians towards the killing site had carried out killing even in Asimbazar.

304. The charge framed alleges causing death at least 43 civilians including the 23 civilians as named in the charge framed. We have found it proved that 13 civilians including the father of P.W.07, the father of P.W.08, brother and two uncles of P.W.09 were forcibly captured from village Bashdi after they received bullet hit injuries inflicted by the perpetrators. These 13 detained civilians were killed taking them at a place near Valukjan Bridge and their bodies were thrown into the river.

305. But it transpires from evidence of P.W.10 Dr. Abdul Awal a resident of village Bashdi that on the following day, on the way to Asimbazar he saw five dead bodies lying scattered. It has been divulged too that a commemorative plaque has been created near the Valukjan Bridge which reflects name of 25 martyrs including the father of P.W.08. Defence does not dispute it and the fact of

seeing numerous dead bodies lying scattered at places to the way to Asimbazar also remained unimpeached.

306. Bodies of 13 civilians who were bayoneted to death near Valukjan Bridge could not be traced even as those were thrown into the river. Thus, and since on the following day several bodies were found lying scattered at places near Asimbazar as testified by P.W.10, a direct witness to some crucial facts related to the attack impels the unmistakable conclusion that in conjunction with the attack the perpetrators indiscriminately killed several other civilians, in addition to 13 civilians who got injured due to gun firing and were taken to Valukjan bridge.

307. The attack was thus conducted intending to accomplish large scale killing of civilians who took stance with the freedom-fighters, the counterpart of the group of perpetrators. The way the attack was carried out was blatant denial of international humanitarian law which ensures civilians' protection in war time situation. The victims were not direct party to hostility. But the group of perpetrators treating them as their counterpart had carried out large scale killing which constituted the offence of 'extermination' as crime against humanity.

308. It is now settled that in respect of 'perpetration' of internationally recognized crimes refers to commission of offence individually (by one person alone and directly), jointly with another person or persons, or through another person. While 'participation' refers to act of soliciting, inducing, aiding, abetting, or otherwise assisting or approving, by culpable conduct forming part of the attack the commission of a crime or the facilitation thereof.

309. The evidence presented in the case in hand impels to the conclusion that the accused Md. Reaz Uddin Fakir 'participated' in committing crimes in question, by act of encouragement, assistance and accompanying the group of perpetrators to the crime sites. Accused's act and conduct as found proved particularly from evidence of P.W.10 made the perpetrators possible to materialize the calculated criminal mission of indiscriminate and 'large scale killing' of unarmed civilians. He knowingly accompanied and enthused his armed accomplices forming a gang in carrying out all the criminal activities that resulted in large scale killing constituting the offence of 'extermination' as crimes against humanity.

310. P.W.07 Belayet Hossain is the son of victim Asim Uddin Molla, freedom-fighter; P.W.08 Md. Nazrul Islam is the son of martyr Nowsher Ali. They are hearsay witnesses. P.W.07 heard the

event of attack from the locals when P.W.08 heard the event of attack that caused death of his father from his grand-father. In context of horrific situation naturally, it might not have been practicable of witnessing the any of phases of attack.

311. Thus, hearing the event from natural source was quite natural. Besides, their hearsay testimony gets corroboration from the fact divulged from testimony of P.W.10, one direct witness to some materially related facts.

312. What the above two heresy witnesses narrated on dock? P.W.07 was a student of class VIII in 1971. He heard from the locals that a group of armed Razakars being accompanied by Amjad Ali [now dead], Waz Uddin and Al-Badar Md. Reaz Uddin Fakir suddenly attacked civilians and freedom fighters at the place of village Bashdi nearer to Asimbazar with indiscriminate gun firing and 13 including his [P.W.07] father sustained bullet hit injuries when they were on move back towards their home. Nowsher Ali the father of P.W.08 was one of those injured victims, as testified by P.W.08.

313. What the fate the 13 injured victims had to face? It transpires from consistently corroborative testimony of P.W.07 and P.W.08 that after causing injuries to 13 civilians by gun firing the

perpetrators dragged them on to Asimbazar tying their legs and then took them away to Valukjan Bridge by a truck where they were bayoneted to death and their bodies were thrown into the river Akhalia.

314. Defence does not appear to have made effort to refute the above crucial fact materially related to the killings. Tribunal observed that P.W.07 started shedding tears when he narrated how his father and others got injured and were finally slaughtered to death. We do not find any rational reason of disbelieving him. Rather, his testimony together with the narrative made by P.W.10 impels the magnitude of attack that ended in brutal killing of numerous civilians.

315. P.W.09 Md. Abdus Salam, a freedom-fighter who joined the battle against the Razakars stationed in their camp in Asimbazar. After the battle ended they returned to their camp in Enayetpur as the Razakars moved back quitting their camp. P.W.09 heard what happened few hours after the cheering on victory they got in the battle. Thirteen civilians including his brother Abdur Rashid, his two maternal uncles Karim and Kadir were forcibly captured from village Bashdi and were taken to Valukjan Bridge where they were slaughtered to death.

316. The above lends corroboration to P.W.07 and P.W.08 who too consistently testified how 13 civilians were taken away to the killing site. Of course, P.W.09 has not described anything untrue. Besides, defence does not dispute the attack and the killing of numerous civilians, forcibly captured from the village Bashdi nearer to Asimbazar.

317. Relatives of some of victims who came on dock to narrate what they experienced, carrying long-term mental trauma up until today. The extreme magnitude and scale of the killing committed could only have been accomplished by an organized para militia structure working in unison. Accused's affiliation with the army and Razakar camp proves that he was an active part to the planned attack directing civilians.

318. We cannot concede with the submission made by the learned defence counsel that the witnesses are not competent; that their anonymous hearsay evidence does not carry probative value and thus their testimony creates doubt as to involvement and complicity of accused with the attack that resulted in killings.

319. First, even anonymous hearsay evidence is admissible. However, we require assessing its probative value and credence on totality of evidence. Next, mere tender age does not diminish one's

testimony if it inspires credence. We cannot admit fanciful possibilities to bounce the course of justice. Thus, the argument placed does not tend to conclude that ‘reasonable doubt’ has been created as to accused’s participation and complicity in committing the criminal acts. The ICTY has noted that “proof beyond reasonable doubt” should be understood as follows:

“It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence, of course it is possible, but not in the least possible, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

**[ Per Lord Denning in Millar v. Minister of Pensions [1947] 1 All ER 372, 373-4 as cited in Prosecutor v. Delalic and Others(Judgment) IT-96-21-T, 16 November 1998, para 601]**

320. On totality of evidence adduced we arrive at finding that not only are the actual perpetrators guilty but also the accused Md.



Reaz Uddin Fakir as an accessory, who took a consenting part through deliberate presence at the crime site with the armed squad in committing crimes was culpably connected with the enterprise and thus incurred liability under the theory of JCE [Basic Form] which refers to the notion contemplated in section 4(1) of the Act of 1973. It is now well settled that criminal responsibility may be imputed to all participants within the common enterprise where the risk of death occurring was a predictable consequence of the execution of the common design.

321. The facts and circumstances as unveiled suggest to the unerring conclusion that (i) the accused Md. Reaz Uddin Fakir knew the designed scheme of collective murder and (ii) took conscious part to enforce the murderous scheme. The act of indiscriminate killing as found proved 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]**

322. It is now jurisprudentially settled that ‘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 person criminally responsible for the offence committed.

323. In the case in hand it stands proved that the accused Md. Reaz Uddin Fakir was part of the common plan and design to wipe out of pro-liberation civilians of a particular geographical territory as he had conscious concern with the ‘killing squad’, in exercise of his membership in a para militia force.

324. It has been unequivocally proved that as a part of ‘attack’ the accused Md. Reaz Uddin Fakir being aware of the effect of his act of accompanying the armed gang participated in and abetted, encouraged, assisted, approved and substantially facilitated the commission of ‘**torture**’, ‘**confinement**’, ‘**abduction**’ and ‘**extermination**’ of unarmed civilians constituting the offences of 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

said Act for which the accused person has incurred liability under section 4(1) of the said Act.

## **Adjudication of Charge No. 05**

### **[Murder, abduction, and torture committed at Valukjan village and Valukjan Bridge under Fulbaria Police Station]**

325. Charge: That on 21.11.1971 at about 09.00 P.M. the accused Al-Badar commander Md. Reaz Uddin Fakir along with other 15/16-armed Razakars having attacked Valukjan village under Fulbaria Police Station of District Mymensingh abducted Altaf Ali Mondol, Taleb Ali Mondol, Sekander Ali Mondol and Lal Mahmud Mondol, all sons of late Man Ullah Sarkar from their house and tortured them. Thereafter, the accused and his cohort armed Razakars having taken with the four abducted brothers proceeded towards Valukjan Bridge, and on the way the accused persons set Lal Mahmud Mondol free and killed other 3 (three) brothers near Valukjan Bridge and threw their dead bodies on the bank of the Akhalia river.

Thereby, the accused Md. Reaz Uddin Fakir has been charged for participating, abetting, facilitating, contributing and complicity in the commission of offences of murder, abduction and torture as crimes against humanity as part of systematic attack directed against unarmed civilians as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the

said Act for which the accused person has incurred liability under section 4 (1) of the said Act.

## **Evidence of Witnesses examined**

326. Two witnesses have been adduced who have been examined as P.W.05 and P.W.06 in order to substantiate this charge. Of these two witnesses P.W.05, the wife of one victim is a direct witness to the crucial phase of the attack that allegedly happened when she had been at her conjugal home. P.W.06 is a hearsay witness and the son of another victim. Before we weigh the credence what they testified first let us see what they have narrated before the Tribunal.

327. P.W.05 Julekha Khatun [62] is a resident of village-Valukjan of Police Station- Fulbaria of District-Mymensingh. In 1971 she was married and 18 years old. She is the wife of Shekendar Ali Mondol, a victim. P.W.05 is a direct witness to the phase of the attack that resulted in unlawful detention of her husband.

328. P.W.05 stated that on 21 November, 1971 at about 09:00 P.M her husband and brother of her husband started taking meal, after the freedom fighters had left their house and then a group of 15/16 Razakars accompanied by accused Reazuddin Fakir, Amjad Ali [now dead], Wajuddin [now dead] besieged their house and unlawfully detained her husband and three elder brothers of her

husband Taleb Ali, Altab Ali and Lal Mahmud and took them away towards Valukjan Bridge. With this they started crying and few minutes later heard gun firing and afterwards Lal Mahmud one of detainees being escaped came back home and disclosed that her [P.W.05] husband and two other detainees were killed.

329. P.W.05 next stated that on the following day they found dead bodies of her husband and two brothers of her husband near Valukjan Bridge.

330. In respect of reason of knowing the accused P.W.05 stated that accused Reaz Uddin Fakir was the uncle of her [P.W.05] husband's brother's wife and thus she knew him beforehand.

331. In cross-examination, P.W.05 stated in reply to defence question that the event she testified happened in the month of 'Agrahayan' that police came to the site, Valukjan Bridge but did not take the dead bodies of victims therefrom.

332. Defence suggested P.W.05 that there had been a case and counter case over the killing of Rajab Ali @ Rojja and that her[P.W.05] husband and husband's brothers were made accused in the case lodged over the killing of Rajab Ali @ Rojja and that

accused Reaz Uddin Fakir was not a Razakar. P.W.05 blatantly denied these suggestions.

333. Defence however did not make attempt to refute the fact that group of Razakars accompanied by the accused Md. Reaz Uddin fakir forcibly took away the victims to Valukjan Bridge, the killing site.

334. P.W.06 Md. Khorshed Alam [50] is the son of martyr Taleb Ali Mondol. In 1971 he was 4/5 years old. He is a hearsay witness.

335. P.W.06 testified that he heard from his grand-father [now dead] that Razakar accused Reaz Uddin Fakir, Wajuddin [now dead], Amjad Ali [now dead] and their accomplice Razakars besieging their house forcibly captured his [P.W.06] father and three uncles and took them away to the west of Valukjan Bridge where his father and two uncles were shot to death and his uncle Lal Mahmud [now paralyzed] was set at liberty.

336. In cross-examination P.W.06 stated in reply to defence question that no case was initiated over the event previously. But he initiated a case 4/5 year back over the event; that he heard that one Rojja the father of Ena member was murdered over land dispute, prior to the war of liberation.

337. P.W.06 denied the defence suggestions that his [P.W.06] father and uncles were accused in Rojja murder case and that his father and uncles were murdered, prior to the war of liberation by the relatives of Rojja, out of revenge.

338. P.W.06 also stated in reply to defence question that a commemorative plaque has been built at the south of Valukjan Bridge in memory of martyrs including his father and uncles.

339. P.W.06 denied the defence suggestions put to him that the accused was not a Razakar and that what he testified implicating the accused was untrue and tortured, out of political rivalry.

### **Finding with Reasoning on Evaluation of Evidence**

340. This charge involves systematic killing of three unarmed civilians of village-Valukjan under police station-Fulbaria of District Mymensingh. Prosecution relied upon two witnesses—P.W.05 and P.W.06 to prove the arraignment brought in this charge. Of two witnesses P.W.05 is a direct witness who happened to be the wife of one victim Shekendar Ali Mondol. P.W.06 is a

hearsay witness. He heard the event of killing his father Taleb Ali from his [P.W.06 [grand-father.

341. Mr. Rishikesh Saha the learned prosecutor submitted that P.W.05 is the key and crucial witness to prove the event of attack and facts related to the killing, the upshot of the attack. Defence could not refute what she testified as an ocular witness. Testimony of P.W.06 though he is a hearsay witness cannot be kept outside from consideration.

342. The learned prosecutor further submitted that the settled jurisprudence suggests that even hearsay testimony can be acted upon if it carries probative value and the arraignment can be well determined even based on testimony of single witness. Since the event of attack that ended in horrific killings remained undisputed the testimony of P.W.05, a direct witness to the facts materially related to the principal crime is sufficient to prove the charge. Mere denial of narratives made in examination-in-chief does not taint its truthfulness. Defence could not negate the fact that the accused Md. Reaz Uddin Fakir was allied with para militia force in the locality under Fulbaria police station.

343. On contrary, Mr. Syed Mijanur Rahman the learned defence counsel submitted that the arraignment brought in this charge lacks



credible evidence. P.W.05 had no reason of knowing the accused beforehand and thus her testimony in relation to seeing the accused with the group of perpetrators does not carry any amount of credence. Another witness i.e. P.W.06 is a hearsay witness and his version made on dock does not carry any value. Both the witnesses have testified implicating this accused falsely out of rivalry over a criminal case relating to killing of one Rajab Ali @ Rojja.

344. We are to pass on judicially whether any such event of systematic attack was carried out and whether the accused Md. Reaz Uddin Fakir knowingly participated in carrying out deliberate criminal acts with intent to accomplish the common design and purpose that eventually resulted in brutal killing of three civilians by detaining them unlawfully.

345. Now let us weigh and evaluate the evidence tendered in support of this charge, keeping it in mind that burden to prove the accusation squarely lies upon the prosecution. Failure to prove defence case, if taken does not provide any benefit to the prosecution. However, defence shall be at liberty to show credibility of any such defence case just to shake the prosecution case by tainting reasonable doubt.

346. The event happened in phases. First, the attack was launched on 21 November 1971 at about 09:00 P.M at the house of victim Shekendar Ali Mondol, the husband of P.W.05; it has been divulged from evidence of P.W.05. Defence does not dispute it. Even no effort appears to have been made on part of defence to impeach the version in relation to launching the attack on the date and at the relevant time.

347. It transpires too from testimony of P.W.05 that at the relevant time her [P.W.05] husband [one victim] started taking his meal, after the freedom-fighters had left their house and the attack was launched by a group formed of 15/16 Razakars accompanied by Md. Reaz Uddin Fakir, Amjad Ali [now dead] and Waz Uddin [now dead]. The attackers besieged their house and unlawfully detained her [P.W.05] husband and three brothers of her husband and took them away towards Valukjan Bridge.

348. The above version involves the first phase of attack. Being the wife of one victim Shekendar Ali Mondol P.W.05 had natural occasion of seeing the act of taking away her husband and three others on forcible capture. P.W.05 does not claim to have witnessed the act of killing. But what she testified is materially related to the upshot of the attack.

349. We have found it from evidence of P.W.05 that the gang formed of 15/16 Razakars and accused Md. Reaz Uddin Fakir and his two other accomplices Md. Waz Uddin and Amjad Ali accompanied the gang. These two members of the group died at pre-trial stage and as such only accused Reaz Uddin Fakir faced the trial. Defence could not controvert it that the accused was with the gang.

350. Defence questioned the reason of knowing the accused Md. Reaz Uddin Fakir beforehand, as testified by the P.W.05. But it appears that in cross-examination P.W.05 in reply to defence question stated that accused Md. Reaz Uddin Fakir was the uncle of her [P.W.05] husband's brother's wife and thus she knew him beforehand. With this it stood affirmed that the P.W.05 had rational reason of knowing the accused Md. Reaz Uddin Fakir since prior to the event. Besides, defence could not bring any reason whatsoever, by cross-examining the P.W.05 that she falsely implicated this accused with the event of attack she narrated.

351. What the P.W.06 sated in respect of presence of the accused with the gang at the relevant time? In 1971 he was 4/5 years old. It emerges from his evidence that he heard from his grand-father [now dead] that accused Md. Reaz Uddin Fakir, Md. Waz Uddin [now dead], Amjad Ali [now dead] and their accomplices Razakars

forming gang had attacked their house and took away his father and three uncles on forcible capture.

352. It is to be noted that hearsay evidence is not inadmissible per se and it can be considered together with other evidence. Hearing the horrific event from grand-father seems to be natural. His hearsay testimony cannot be readily turned down. Settled jurisprudence permits to act upon hearsay evidence if it carries probative value and gets corroboration from facts and circumstances.

353. In the case in hand, it transpires that what the P.W.06 heard gets corroboration from P.W.05, a direct witness to the first phase of the attack. Therefore, the evidence tendered by P.W.05 and P.W.06 collectively proves it indubitably that the accused Md. Reaz Uddin Fakir was with the gang of attackers at the site it attacked.

354. We have gotten it proved too that the members of the gang of attackers belonged to para militia force and Razakar Bahini an auxiliary force. Now let us resolve it why the gang opted to launch such attack at the house of Shekendar Ali Mondol.

355. Evidence of P.W.05 the wife of one victim Shekendar Ali Mondol tends to show that just after the freedom-fighters had left their house the attack was launched. This piece of fact remained

uncontroverted. The event of attack occurred just few days prior to achieving independence on 16 December 1971. History says that the freedom-fighters especially during the last phase of the war of liberation got engaged in battle entering the territory of Bangladesh.

356. In 1971 the freedom-fighters and pro-liberation Bengali people were treated as ‘miscreants’ by the Pakistani occupation army and their local collaborators. Even reward was announced for the success of causing their arrest or to provide information about their activities. Objective of such inciting announcement was to wipe out the pro-liberation Bengali civilians to resist and defy the war of liberation which was the core policy of the Pakistani occupation armed force. Such policy imbued the para militia forces to act and collaborate with the Pakistani occupation army in wiping out the unarmed pro-liberation civilians, freedom-fighters, and protected group.

357. Thus, we may safely infer that staying of freedom-fighters at the house of Shekendar Ali Mondol during the last part of November 1971 got leaked which prompted the accused and his accomplice Razakars and members of Al-Badar to attack the house and the civilians who facilitated their staying at that house. Presumably, finding no freedom-fighter the perpetrators became

aggressive to the male inmates of the house as they eased the staying and movement of freedom-fighters.

358. What was the objective of forming Razakar Bahini and Al-Badar Bahini in 1971? It is now well settled that those para militia forces were created to further policy and plan of the Pakistani occupation army. What was the policy and plan of Pakistani occupation army? Annihilation of the pro-liberation Bengali civilians, Hindu religious group, freedom-fighters was the policy and plan of Pakistani occupation army and with intent to further such policy and plan those para militia forces actively and culpably collaborated with the Pakistani occupation armed force, in different manner. Objective of creating such para militia force was not guard lives and properties of civilians.

359. It is true that no Pakistani army men was with the squad that had launched the attack at the house of Shekendar Ali Mondol, one of victims where the freedom-fighters remained stayed till just before the attack was conducted. But the pattern of attack together with the facts unveiled leads to the conclusion that the squad formed of members of auxiliary and militia forces had acted to further policy and plan of the Pakistani occupation army.

360. Thus, it stands proved that Shekendar Ali Mondol and his three brothers were forcibly captured from their house by launching systematic attack and the detainees were taken away towards Valukjan Bridge.

361. What happened next? The act of taking away the detainees happened in night and the female inmates, under coercive situation had no manner of opportunity of seeing the final phase of the attack. First, it transpires from evidence of P.W.05 that few minutes after her husband and three others were taken away towards Valukjan Bridge she heard gun firing and afterwards Lal Mohammad one of detainees came back home and disclosed what happened to three other detainees.

362. Defence, as it appears, could not impeach that forcibly taking away the detainees towards Valukjan Bridge was followed by gun firing. Tracing bodies of three detainees including the husband of P.W.05, as testified remained undisputed and thus, it indisputably suggests concluding that the three detainees were shot to death at a place near Valukjan Bridge, by taking them there on forcible capture.

363. However, it transpires that P.W.05 heard about the fate of her husband and two other detainees from Lal Mohammad, one of

brothers of her [P.W.05] husband who somehow got escaped and on returning back home disclosed that her [P.W.05] husband and two other detainees were killed and on the following day they got the bodies of victims lying near Valukjan Bridge.

364. It appears that defence refrained from cross-examining the P.W.05 as to how Lal Mohammad got escaped and thus his survival as testified by P.W.05 cannot be disbelieved. Besides, we have found it that four including Lal Mohammad were taken away on forcible capture towards Valukjan Bridge where three were shot to death and thus absence of any detail as to how Lal Mohammad got escaped cannot cast any doubt as to the phase of killing of three detainees as heard from Lal Mohammad.

365. Defence case as has been put to P.W.06 is that his father, one of victims and his uncles were accused in Rojja murder case and that his father and uncles were murdered prior to the war of liberation by the relatives of Rojja, out of revenge. P.W.06 blatantly denied this defence case as suggested to him. Although, P.W.06 admits that one Rojja the father of Ena Member was murdered over land dispute, prior to the war of liberation. But defence could not negate the event of attack that eventually resulted in killing of three pro-liberation civilians taking them forcibly near the Valukjan Bridge.



366. The Appellate Division of Bangladesh Supreme Court in the Criminal Review Petition Nos. 17-18 of 2013 preferred by Abdul Quader Molla observed that –

“It is to be noted that the object of cross-examination is to bring out desirable facts of the case modifying the examination-in-chief. The other object of cross-examination is to bring out facts which go to diminish or impeach the trustworthiness of the witness”.

**[Abdul Quader Molla, Criminal review Petition Nos. 17-18 of 2013, Judgment page 35]**

367. But in the case in hand, defence could not bring anything before us to show credibility of such defence case. Even it could not bring anything, by cross-examining the P.W.05 and P.W.06 which may weaken their testimony. Mere putting such suggestion does not negate the event testified by the witnesses. Besides, creating a commemorative plaque at the south of Valukjan Bridge in memory of martyrs including the father and uncles of P.W.06, as stated in reply to defence question not only negates the defence case but lends assurance to the event of killing of three pro-civilians happened there.

368. The facts as unveiled suggest the unerring conclusion that the attack was systematic, and it was conducted to further policy and plan, in context of war of liberation of the Bengali nation. The group of perpetrators formed of Razakars and accused Md. Reaz Uddin Fakir was an active and conscious part of the enterprise, sharing common intent. The common purpose of the attack was to wipe out the pro-liberation civilians who facilitated the freedom-fighters' staying and movement around the locality.

369. From the above deliberation based of evaluation of evidence tendered it has been proved that the attack resulted in forcible capture of four civilians and it ended in killing of three that happened at a place near the Valukjan Bridge. It stands proved too that accused Md. Reaz Uddin Fakir was with the gang' knowing consequence at the crime site when it got the victims forcibly captured. Presumably, accused did not make him distanced even from the act of accomplishing the killing of detained victims near Valukjan Bridge.

370. There can be no room to deduce that mere presence of accused Md. Reaz Uddin Fakir with the gang at the crime site does not make him responsible for crimes committed. Here, in the case in hand we found that the accused was with the group of attackers, sharing common intent and in exercise of his membership in Al-Badar Bahini, a para militia force and these collectively lead to the

conclusion that the accused too was one of ‘participants’. The **ICTY Trial Chamber** has observed in the case of Aleksovski that-

“Mere presence constituted 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]**

371. Carrying out the act of unlawfully detaining the four civilians was chained to the act of killing, the ending phase of the attack. Thus, since it has been proved that accused Md. Reaz Uddin Fakir was an active member of the group of attackers when it carried out attack in accomplishing unlawful detention of those civilians it may legitimately be inferred too that the accused Md. Reaz Uddin Fakir culpably participated even in accomplishing the final goal of the group, the killing of detained civilians.

372. It is to be noted that the offence of murder as crimes against humanity need not be carried out against a multiplicity of victims. The atrocious acts as prosecuted happened in context of war of liberation in 1971 directing non-combatant civilian population. The

phrase ‘civilian population’ does not encompass the entire population. It is now well settled that the word ‘population’ does not mean that the entire population of the geographical entity in which the attack was launched. Thus, even targeting several members of the population satisfies the requirement to constitute an offence of crimes against humanity if it occurred in war time situation, to further policy and plan of attackers. The **Appeal Chamber** of **ICTR** has observed in the case of *Nahimana Barayagwiza and Negeze* that –

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

**[The Appeal Chamber of ICTR, Nahimana Barayagwiza and Negeze, November 28, 2007, para 924]**

373. It is not needed to show that the accused was an actual perpetrator or he himself gunned down the detainees to death. He may be said to have incurred liability if it is proved that he was

with the group intention to assist aid and contribute in perpetrating the principal crimes.

374. It is now jurisprudentially settled that the basic form of JCE concerns cases where all participants to the criminal enterprise possess the same criminal intention to commit a crime. It is thus immaterial to see which member of the gang or group perpetrated the crime, with intent. Here we see that the accused consciously accompanied the group in all phases of the attack and it tends to the inference that he was equally liable for accomplishing the crimes.

375. Accused Md. Reaz Uddin Fakir was not with the group of perpetrators as a mere spectator-- we may deduce it indisputably from the facts and circumstances divulged. Additionally, in absence of anything contrary it may be safely concluded that accused Md. Reaz Uddin Fakir remaining present with the squad till the designed criminal mission ended actively and culpably assisted, substantially contributed, and facilitated the ending phase of the attack, the killing. Therefore, the accused Md. Reaz Uddin Fakir incurred liability under the doctrine of JCE [Basic Form] which corresponds to section 4(1) of the Act of 1973.

376. Accused's conscious presence at the crime site with the gang indisputably had impact and causal link in accomplishing the

horrific killing of three civilians. Culpable presence of the accused at the crime site, by accompanying the gang in exercise of his prominent affiliation with a para militia force rather aided and substantially assisted to execute the common purpose of the murderous enterprise. In this regard we recall the observation made by the **ICT-BD-1** in the case of Shamsuddin Ahmed and 04 others which is 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 perpetuating 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: 03 May 2016]**

377. We reiterate that act of aiding and abetting need not be tangible, but it may be well inferred from the acts of the accused forming part of the attack. Accused Md. Reaz Uddin Fakir did not withdraw him from the criminal enterprise till it concluded its ultimate goal, the killing. His conduct together with prominence in Al-Badar Bahini indisputably endorsed, encouraged and facilitated the commission of the crimes, we conclude.

378. The settled jurisprudence says that aiding and abetting includes all acts of assistance by acts that lend encouragement or support, so long as the requisite intent is present. Already we have found it proved that the accused Md. Reaz Uddin Fakir knowingly and consciously was with the group till the attack ended in killing the civilians which was an obvious indicium of sharing common intent of the squad. In this way, he participated in committing the crimes.

379. On careful appraisal of evidence presented we finally arrive at decision that the prosecution has been able to prove the guilt of the accused Md. Reaz Uddin Fakir as a conscious and key participant, sharing common intent in accomplishing the killing of unarmed civilians by detaining them unlawfully , by launching systematic and designed attack. Accused Md. Reaz Uddin Fakir being aware of the effect of his act of and conduct forming part of attack

participated in and abetted, encouraged, assisted, approved and substantially facilitated the commission of **‘abduction’, and ‘murder’** of unarmed civilians constituting the offences of 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 said Act for which the accused person has incurred liability under section 4(1) of the said Act.

## **XI. Conclusion**

380. Long more than four decades after the horrendous atrocities happened the witnesses who had fair occasion of experiencing and seeing the event of attacks and facts related to it testified how the accused Md. Reaz Uddin Fakir who along with his cohorts and in some cases being accompanied by the Pakistani occupation army stationed in Asimbazar participated in accomplishing the crimes proved.

381. Witnesses’ testimony tendered in respect of charge nos. 01,03,04 and 05 demonstrates patently that accused Md. Reaz Uddin Fakir consciously assisted, abated, aided, approved, and encouraged the commission of crimes by launching systematic attack. Culpability of the accused as found proved in respect of all the charges for which he has been indicted does not appear to have been suffered from any material infirmity.



382. We have already resolved in our foregoing deliberations that 'Al-Badar' was an 'auxiliary force' and the accused Md. Reaz Uddin Fakir was its member having prominence in the locality under Fulbaria police station. Section 3(1) provides authority of trying and punishing even any 'individual' or 'group of individuals' including any 'member of auxiliary force' who commits or has committed, in the territory of Bangladesh any of crimes mentioned in section 3(2) of the Act, apart from member of armed or defence forces.

383. We are convinced that the evidence presented by the prosecution indisputably points guilt of the accused and is well consistent with his 'complicity' and 'participation' in the commission of the barbaric crimes proved. As a result, we conclude that the accused Md. Reaz Uddin Fakir, being equally responsible, incurred liability under section 4(1) of the Act of 1973 for the commission of the offences in relation to charge nos. 1, 3, 4 and 5 for which he has been indicted.

384. **C.L. Sulzberger** wrote in the **New York Times, June 16, 1971** describing the horrific nature and untold extent of atrocities committed in the territory of Bangladesh. It shakes the conscious of

humankind. It imprints colossal pains to the Bangalee nation. **C.L. Sulzberger** wrote that-

“Hiroshima and Nagasaki are vividly remembered by the mind’s eye primarily because of the novel means that brought holocaust to those cities. Statistically comparable disasters in Hamburg and Dresden are more easily forgotten; they were produced by what we already then conceived of as “conventional” methods. Against this background one must view the appalling catastrophe of East Pakistan whose scale is so immense that it exceeds the dolorimeter capacity by which human sympathy is measured. No one can hope to count the dead, wounded, missing, homeless or stricken whose number grows each day. “

**[Source: Bangladesh Documents: Volume, page 442: Ministry of External Affairs, New Delhi]**

385. The above narrative depicts an impression as to the tragic scale and dreadful nature of mass atrocities committed during nine-month war of liberation in 1971, in violation of customary international law and the laws of war. The events of attack which

have been found proved, in the case in hand are fragmented portrayal of brutality committed directing Bengali civilian population who fought for self-determination and independence.

386. In the case in hand, it has been proved that designed and brutal attacks resulted in killing of a significant number of unarmed civilians. The accused Md. Reaz Uddin Fakir and his accomplices, despite being Bengali were extremely antagonistic to the pro-liberation civilians, freedom-fighters and the civilians belonging to Hindu community.

387. The ‘system crimes’ which are offences as crimes against humanity and genocide for which the accused Md. Reaz Uddin Fakir has been found responsible are the part of such atrocities committed in collaboration with the Pakistani occupation army and locally formed Razakar Bahini with objective to resist achieving independence of Bengali nation by annihilating the pro-liberation civilians. This settled history should never be forgotten.

## **XII. Verdict on Conviction**

388. The settled notion of presumption of innocence placed on the prosecution the burden of establishing the guilt of the accused. In the case in hand, each count of charges brought against the accused, the standard has been found to be met as the accused Md. Reaz

Uddin Fakir is found to have incurred liability for the crimes which has been proved beyond reasonable doubt.

389. Having considered all the evidence tendered and arguments placed by both parties and based upon the factual and legal findings set out in passing on judicially all the charges, the Tribunal unanimously finds the accused **Md. Reaz Uddin Fakir:**

**Charge No.01: GUILTY** of substantially abetting, participating, contributing, facilitating and for complicity in the commission of offences of **‘abduction’, ‘confinement’, ‘torture’ and ‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused person incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.03: GUILTY** of substantially abetting, participating, contributing, facilitating and for complicity in the commission of offences of **‘genocide’** as enumerated in section 3(2)(c)(i)(ii)(g)(h) of the Act of 1973 and thus the accused person incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.04: GUILTY** of participating, abetting, encouraging, assisting, approving and substantially facilitating the commission of **‘torture’, ‘confinement’, ‘abduction’ and ‘extermination’** of unarmed civilians constituting the offences of crimes against humanity as enumerated in section 3(2)(a)((g)(h) of the Act of 1973 and thus the accused person incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.05: GUILTY** of participating in and abetting, encouraging, assisting, approving and substantially facilitating the commission of **‘abduction’, and ‘murder’** of unarmed civilians constituting the offences of crimes against humanity as enumerated in section 3(2)(a)((g)(h) of the Act of 1973 and thus the accused person incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

### **XIII. Verdict on Sentencing**

390. Mr. Hrishikesh Saha, the learned prosecutor submitted that the crimes committed in the locality under police station-Fulbaria of District-Mymensingh in 1971 during the war of liberation were of the gravest nature both in terms of their numbers and in the extent of harm and suffering the victims sustained. The nature and extent of the crimes of which the accused Md. Reaz Uddin Fakir has been found guilty, and the scale and nature of these crimes are essentially included in the overall gravity of those crimes which deserve to be taken into consideration, in awarding highest sentence.

391. Mr. Syed Mijanur Rahman the learned defence counsel concluded his argument by urging to take accused's old age into consideration, as a mitigating factor.

392. First the Tribunal notes that mitigating circumstances, we think, chiefly include the admission of guilt or a guilty plea; the expression of sincere remorse; sympathy, compassion, or sorrow for the victims of the crimes. But mere old age cannot be taken into consideration as a mitigating factor. But in the case in hand, no such factor appeared before us. Besides, submission advanced on part of defence urging to take old age of the accused in awarding sentence rather strengthens guilt of accused as already proved.

393. It is to be borne in mind that distressed victims may legitimately insist appropriate and highest sentence while the defence may demand acquittal, in a criminal trial. But the settled principle says that punishment 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 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 1971.

394. We reiterate that in awarding sentence, the Tribunal, must eye on the nature and degree of the offences committed, their scale, the role the convicted accused had played and mode of his participation to the perpetration of the crimes proved. At the same time the untold trauma and harm sustained by the victims and their families also significantly act in weighing the gravity of offences.

395. It has been proved that convicted accused Md. Reaz Uddin Fakir participated in multi-perpetrator offences, true. The two-other suspected died during pre-trial stage. But it can in no way be considered a mitigating factor.

396. We have taken due notice of the intrinsic magnitude of the offence of murders as ‘crimes against humanity’ being offences which are predominantly shocking to the conscience of humankind. We have also carefully considered the mode of participation of the

accused to the commission of crimes proved and the proportionate to the gravity of offences.

397. Convicted accused Md. Reaz Uddin Fakir was a potential member of Al-Badar Bahini, a para militia force. He was closely affiliated with the camp of Pakistani occupation army and Razakars set up in Asimbazar under Fulbaria-police station of District-Mymensingh. All these have been well proved. It has been found proved beyond reasonable doubt that the accused Md. Reaz Uddin Fakir consciously present with the group of perpetrators in gunning down five civilians to death taking them on the bank of the river Bana, after keeping them in protracted captivity at Razakar camp, on forcible capture **[as narrated in charge no.01]**.

398. It stands proved that the convicted accused Md. Reaz Uddin Fakir substantially encouraged and endorsed the accomplishment of detainees' killing as they were freedom-fighters. The accused and his accomplices forced some locals to remain present on the bank of the river Bana where just before the blind folded detainees were shot to death. The uttering on part of the gang before gunning down the detainees to death that—'look what castigation a freedom-fighter deserves' obviously reflected the extreme violent mindset of the group of perpetrators to which the accused was a culpable part **[as narrated in charge no.01]**



399. Not only five non-combatant freedom-fighters were killed but several defenseless and terrified civilians were made severely mentally traumatized as they were forced to witness the ending phase of the event of attack, the killings [**as narrated in charge no.01**]. Grave psychological suffering was inflicted upon them. The pattern of attack that ended in multiple murders of several non-combatant civilians is an element which serves to prove accused's criminal conduct forming part of systematic attack, although the accused was not the actual perpetrator.

400. **Charge no.03** involves the offence of genocide and in conjunction with the attack directing the Hindu dominated locality Rishipara several women were sexually ravished on substantial contribution rendered by the accused Md. Reaz Uddin Fakir who knowingly and actively participated in all phases of the attack by accompanying the troops formed of Pakistani occupation army and Razakars. The attack eventually ended in killing of Hindu civilians on discriminatory ground.

401. The mass atrocities constituting the offence of genocide and genocidal rape [**as narrated in charge no.03**] which indisputably aggravate accused's accountability. Accused Md. Reaz Uddin Fakir got consciously engaged in carrying out such designed atrocious

acts intending to further policy and plan of Pakistani occupation army.

402. Tribunal notes that the factors to be considered in awarding sentence are the number of victims, the physical and mental trauma suffered by the survivors, and the social consequences of the act done especially directing the women belonging to Hindu religious group.

403. The role and mode of participation the convicted accused Md. Reaz Uddin Fakir had in perpetrating the crimes display utter inhumanity. The offence of genocide and genocidal rape [**as narrated in charge no.03**] happened in Rishipara Hindu locality with enormous magnitude and scale, and the gravity of these crimes is indisputable.

404. The event of attack [**as narrated in charge no.03**] once again proves that in 1971 the Pakistani occupation army and their local collaborators left no stone unturned in annihilating freedom-fighters, pro-liberation civilians and Hindu population and in accomplishing such crimes they even used the act of rape or sexual ravishment as a tool not only to terrorize the defenseless civilian population but to cripple the life of the victims and the society they belonged. Sexual violence was rather deployed as a deadly weapon,

in conjunction with the attack that also resulted in mass murder of the male population of Hindu community of Rishipara.

405. In the case in hand, it has been found that two of victims of sexual violation P.W.14 Geeta Rani Rishi and Basanti Rishi have already been recognized as ‘freedom-fighters’ by the government. It is rather a nation’s salute to those women who sacrificed their supreme honour for the cause of independence.

406. It is to be noted that the women who break the silence on the crimes and grave wrongs done to them in 1971 during the war of liberation are brave beyond belief indeed. P.W.14 Geeta Rani Rishi is one such brave woman. The nation must honour the courage of P.W.14 Geeta Rani Rishi and the hundreds of thousands of women affected by the grave wrongs inflicted upon their supreme honour and at the same time the society and the nation must stand in solidarity with them to speak out all forms of hatred to the perpetrators for their beastly acts they carried out.

407. It has been found proved too that the accused Md. Reaz Uddin Fakir knowingly and aggressively participated in accomplishing large scale killing [**as listed in charge no.04**] that happened just few hours after the perpetrators retreated quitting their camp in Asimbazar, on the face of attack by the freedom-fighters.

408. Accused's stature in locally formed para militia force and the use he made of his potential influence and notoriety provided substantial encouragement, approval, and culpable assistance to the group of attackers in carrying out atrocious attack that ended in killing of numerous civilians forcibly captured from Bashdi village nearer to Asimbazar [**as narrated in charge no. 04**]. Being consciously engaged, by abusing prominence in a militia force in committing recurrent mass atrocities around the localities under police station-Fulbaria of District-Mymensingh as narrated in all the charges indisputably aggravates accused's accountability.

409. In respect of arraignment brought in **charge no.05** it has been proved that the accused Md. Reaz Uddin Fakir and his cohorts by launching attack unlawfully detained four civilians, took them away to Valukjan Bridge where three of detainees were killed. It has been proved that the accused was a conscious part to the enterprise in conducting the entire phase of the attack which was premeditated and sharing common intent. Additionally, accused's prominence in Al Badar Bahini substantially approved in carrying out such systematic and atrocious attack, intending to further policy and plan.

410. In determining an appropriate and just sentence to reflect the full extent of accused's culpability, we require to take into consideration the fact that the crimes for which the accused has been found guilty were extremely horrific in nature and pattern. Consideration must be given to gravity of each offence in awarding sentence. We must keep in mind that the overarching goal in awarding sentence must ensure that the sentence to be awarded reflects the totality of the criminal conduct and overall culpability of the offender.

411. All the four events of attacks resulted in deliberate killing of pro-liberation civilians, unarmed freedom-fighters and even in conjunction with the attack the accused substantially contributed and facilitated the act of grave violation upon women belonging to Hindu community and convicted accused Md. Reaz Uddin Fakir was a willing participant in all these brutal attacks, it stands proved.

412. The crimes for which the accused Md. Reaz Uddin Fakir has been found guilty not only inflicted wounds or death, but were inexorably aggravated by the voluntary, calculated, and vicious violation of the rights and dignity of civilians killed and suffered.

413. The preamble of the Act of 1973 unequivocally demonstrates that this piece of legislation was enacted for the detention,

prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law. Thus the accused has been arraigned not for committing any isolated offence as codified in normal penal law and as such the charge brought under the Act of 1973 itself portrays magnitude, gravity and diabolical nature of the crime and in the event of success of prosecution in proving the charge the accused must and must deserve just and of course just punishment.

414. As regards sentence, section 20(2) of the Act of 1973 provides that –

“Upon conviction of an accused person, the Tribunal shall award sentence of death or such other punishment proportionate to the gravity of the crime as appears to the Tribunal to be just and proper.”

415. It is thus quite clear that the Tribunal-1 [ICT-BD] does have jurisdiction to award, excepting the sentence of death, any other punishment if it thinks just and proper considering the proportionate to the gravity of the crime.

416. However, it is the solemn duty of the Tribunal to award proper and just sentence commensurate with the gravity of the crimes. At the same time it is to be kept in mind that inappropriate lesser

sentence causes injustice not only to the victims of crimes but sometimes to the whole society.

417. The Tribunal does have obligation to award penalty which is deemed appropriate and just to the gravity of the crimes proved, with due regard to the entirety of the extent of crimes and accused's involvement and participation therewith, as the Trier of fact.

418. In view of discussion as made above and considering the nature and proportion to the gravity of offences and also keeping the factors as focused above into account we are of the unanimous view that justice would be met if the convicted accused person who has been found guilty beyond reasonable doubt for the crimes proved is condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

Hence it is

## **ORDERED**

That the accused Md. Reaz Uddin Fakir, son of late Nayeb Ali Fakir and late Bibijan of Village- Bhalukjan [Purbo Para, Ward No. 6], Police Station-Fulbaria, District-Mymensingh is found guilty of the offences of **'abduction', 'confinement', 'torture' and**

**‘murder’** as crimes against humanity [**in respect of charge no.01**] **AND** also of the offences of **‘abduction’, and ‘murder’** [**in respect of charge no.05**] as ‘crimes against humanity’ as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973. Accordingly, he be convicted and condemned to the sentence as below, under section 20(2) of the Act of 1973:

**‘Sentence of imprisonment for life till biological death’** for the crimes, **as listed in charge no.01; AND**

**‘Sentence of imprisonment for life till biological death’** for the crimes, **as listed in charge no.05.**

Accused Md. Reaz Uddin Fakir is also found guilty of the offences of **‘genocide’** [**in respect of charge no.03**] as enumerated in section 3(2)(c)(i)(ii)(g)(h) of the Act of 1973 and **‘torture’, ‘confinement’, ‘abduction’ and ‘extermination’** [**in respect of charge no.04**] as **crimes against humanity** as enumerated in section 3(2)(a)(g)(h) of the Act of 1973. Accordingly, he be convicted and condemned to the sentence as below: ‘

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

**AND**



**Sentence of death**’ for the crimes **as listed in charge no.04** and he be hanged by the neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

The **‘sentences of death**’ as awarded above, in respect of **charge nos. 03 and 04** will get merged.

However, as the convict Md. Reaz Uddin Fakir has been condemned to **‘sentences of death**’, as above, the **‘sentences of imprisonment**’ awarded in respect of charge nos.01 and 05 will get merged into the **‘sentences of death** ’. This sentence shall be carried out under section 20(3) of the Act of 1973.

The sentence awarded shall commence from the date of this judgment as required under Rule 46(2) of the Rules of Procedure, 2012(ROP) of the Tribunal and the convict be sent to the prison with a conviction warrant accordingly.

The convict accused is at liberty to prefer appeal before the Appellate Division of the Supreme Court of Bangladesh against his 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 Md. Reaz Uddin Fakir.

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

Let copy of the judgment be sent also to the District Magistrate, Dhaka for information and causing necessary action.

**Justice Md. Shahinur Islam, Chairman**

**Justice Amir Hossain, Member**

**Judge Md. Abu Ahmed Jamadar, Member**