

International Crimes Tribunal-1
Old High Court Building, Dhaka, Bangladesh.
ICT-BD [ICT-1] Case No.04 of 2018

Present:

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member

The Chief Prosecutor

Vs.

Md. Abdus Samad @ Musa @ Firoz Kha

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Zead Al Malum, Prosecutor

Mr. Hrikesh Saha, Prosecutor

Mr. Mokhlesur Rahman Badal, Prosecutor

Mr. Zahid Imam, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

Ms. Rezia Sultana, Prosecutor

For the Accused:

Mr. Abdus Sattar Palwan, Advocate, Bangladesh Supreme Court

Date of delivery of Judgment: 27 August, 2019

JUDGMENT

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

I. Introductory Words

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

2. Accused Md. Abdus Samad @ Musa @ Firoz Kha has been indicted on four counts for the atrocious criminal activities constituting the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘other inhumane act’ and ‘murder’ as crimes against humanity committed in the localities under Police Station Puthia of District Rajshahi in 1971, during the war of liberation of Bangladesh. The events of attacks alleged were conducted on 19th and 20th April 1971.

3. Prosecution alleges that the accused as a loyalist activist of Pakistani occupation army enthusiastically participated in accomplishing the crimes for which he has been charged with

and also got enrolled in locally formed Razakar Bahini, an ‘auxiliary force’ to collaborate with the Pakistani occupation armed force to further its policy and plan. In addition to his participation in a JCE, prosecution alleges that the accused is also responsible for having instigated or otherwise aided and abetted in the planning, preparation, or execution of the crimes alleged.

4. Pursuant to issuance of production warrant the prison authority has produced the accused Md. Abdus Samad @ Musa @ Firoz Kha today before this Tribunal [ICT-1].

5. In course of trial, Tribunal received efficient and valued assistance from both the prosecution and the defence, to go on with the proceeding in accordance with law by ensuring recognised rights of defence. We appreciate their efforts.

II. Jurisdiction of the Tribunal

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

the offence enumerated in the Act as an ‘individual’ or a ‘group of individuals’ or ‘organisation’ under the Act of 1973, an *ex post facto* legislation is fairly permitted.

7. In the case in hand, the accused Md. Abdus Samad @ Musa @ Firoz Kha has been arraigned for committing the alleged offences, being an active part of the enterprise and , as a close affiliate of Pakistani occupation army. Prosecution also avers that the accused got enrolled in locally formed Razakar Bahini. The offences for which the accused person stood trial were ‘system crimes’ or ‘group crimes’ and not isolated crimes as those were committed in context of the war of liberation in 1971.

8. The Tribunal is governed by its guiding legislation ‘The International Crimes (Tribunals) Act of 1973[Act No. XIX of 1973]’ and by the Rules of Procedure [ROP] 2010 formulated by the Tribunal [ICT-1] under the power conferred in section 22 of the principal Statute.

9. Pursuant to the Act of 1973, the Tribunal [ICT-1] has the authority and jurisdiction to prosecute and try persons responsible for the offences enumerated in section 3(2) of the Act committed in violations of international humanitarian law in the territory of Bangladesh in 1971, during the war of liberation.

This Tribunal set up under the Act of 1973 is absolutely a domestic Tribunal but aimed to try ‘internationally recognized crimes’ or ‘system crimes’ committed in 1971 in the territory of Bangladesh.

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

III. Brief Historical Background

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

12. In 1952 the Pakistani authorities attempted to impose ‘Urdu’ as the only State language of Pakistan ignoring Bangla, the language of the majority population of Pakistan. The Bengali people of the then East Pakistan started movement to get Bangla

recognized as a state language and eventually turned to the spontaneous movement for greater autonomy and self-determination and finally independence.

13. The history goes on to portray that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation became the majority party of Pakistan. But calculatingly defying the democratic norms Pakistan Government did not care to respect this overwhelming majority. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation in his historic speech of 7th March, 1971, called on the Bangalee nation to struggle for independence.

14. It is to be noted with immense pride that the historic March 7 glowing speech of Bangabandhu Sheikh Mujibur Rahman, the Father of Nation has been recognised by the UNESCO as a world documentary heritage. The 7 March blazing speech of Bangabandhu calling on the freedom-loving Bangalees indispensably mobilized and inspired the whole nation, excepting a few pro-Pakistan people to get prepared for the war of liberation. In the early hour of 26th March, following the onslaught of “Operation Search Light” by the Pakistani Military

on 25th March, Bangabandhu Sheikh Mujibur Rahman declared Bangladesh 'independent' immediately before he was arrested by the Pakistani authorities.

15. In the War of Liberation that ensued in 1971, all people of the then East Pakistan unreservedly supported and participated in the call to make their motherland Bangladesh liberated but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League joined and/or collaborated with the Pakistan occupation army to aggressively resist the conception of independent Bangladesh and most of them committed and facilitated as well the commission of systematic and widespread appalling atrocities directing civilian population in the territory of Bangladesh, in 1971, to further their policy and plan of diminishing the long cherished dream of self determination of Bengali nation. This is now a settled history of which this Tribunal takes judicial notice as permitted by the Act of 1973 and the ROP.

16. The Pakistani occupation army's dreadful brutality directing civilian population of Bangladesh was planned, designed and in

furtherance of policy-- the policy to wipe out the pro-liberation Bengali civilians.

17. The alleged atrocities for which the accused Md. Abdus Samad @ Musa @ Firoz Kha stood trial were not isolated from the policy and plan of the Pakistani occupation army who started its untold 'mayhem' since 25 March 1971 intending to wipe out the pro-liberation Bengali civilians, to resist their legitimate aspiration of self determination.

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

19. In 1971, the Pakistani army had no friends in Bangladesh—except a few traitors who took stance against the war of liberation and they belonged to the ideology of pro-Pakistan political parties, e.g. Muslim League, the Convention Muslim League, the Jamaat-e-Islami [JEI] and the Nizam-i-Islami. It has

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

20. It is now settled history that Jamat E Islami [JEI] with intent to provide support and assistance to the Pakistani occupation army by forming peace committee, armed Razakar and Al-Badar force obtained government's recognition for those *para militia* forces. JEI started acting antagonistically since the beginning of the war of liberation and it ended in killing of intellectuals. It is found from a report published in **The Daily Sangram 17 April 1971** that a delegation team comprising of members of Central Peace Committee including Professor Ghulam Azam [also the then Amir of Jamat E Islami] in a meeting with the Governor of East Pakistan Lt. General Tikka Khan expressed solidarity and their adherence to the armed forces.

21. Prosecution avers that the accused did not keep him distanced from the strategy of JEI to further the policy and plan of the Pakistani occupation army in carrying out barbaric atrocities against the non combatant pro-liberation civilians that resulted in commission of offences enumerated in the Act of

1973. Victims of their target of criminal acts in grave breach of Geneva Convention were the civilians in occupied territory of Bangladesh. It is now a settled history.

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

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

24. It has already been observed in the case of **Ali Ahsan Muhammad Mujahid** that –

“.....merely for the reason that since the accused was not brought to justice under the Collaborators Order 1972 now he is immune from being

prosecuted under the Act of 1973.” [Ali Ahsan Muhammad Mujahid Judgment, ICT-2, para 115 and also see Muhammad Kamaruzzaman Judgment, ICT-2, para 126]

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

26. Finally, we reiterate the settled history that the untold atrocious resistance on part of thousands of local collaborators could not impede the nation’s valiant journey to freedom. Undeniably the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, struggle and immense sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination. The nation shall remain ever indebted to the supreme sacrifices in exchange of which the nation eventually achieved an indelible motherland – **Bangladesh.**

IV. Brief account of the accused

27. It is essentially needed to paint an account of the accused that he had in 1971 which is indispensably chained to the arraignments brought. The brief account of the accused as has been described in the formal charge is as below:

Md. Abdus Samad alias Musa alias Firoz Kha

Accused Md. Abdus Samad @ Musa @ Firoz Kha the son of late Abbas Ali and late Sohagi Bewa of village-Kathalbaria, Puthia Trimohini Bazar Buildings under police station-Puthia of District-Rajshahi was 19/20 years old in 1971 although the NID shows his date of birth as 15.3.1957. In 1971 he had a daughter who got married in 1984. He studied up to class IV and was affiliated with the politics of Muslim League a pro- Pakistan political party since prior to the war of liberation.

In 1971 the accused being a follower of Jamat E Islami got enrolled in locally formed Razakar Bahini. His name as a Razakar finds place in the list of no.04 Valukgasi Union of Puthia Thana Razakars. He actively collaborated with the Pakistani occupation army in accomplishing atrocious activities constituting the offences of crimes against humanity around the localities under Puthia police station of District Rajshahi, prosecution alleges.

V. Procedural History

Pre-Trial Phase: Investigation

28. The Investigation Agency of the Tribunal constituted under the Act of 1973 initiated investigation pursuant to complaint register's serial no. 74 dated 11.12.2016, in respect of commission of atrocities constituting the offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated in 1971 during the war of liberation around the localities under Police Station-Puthia of District- Rajshahi. Investigation went on against only one suspected accused Md. Abdus Samad @ Musa @ Firoz Kha.

Showing Arrest of the Accused

29. During investigation, on prayer of the IO submitted through the prosecution the Tribunal on 24.01.2017 ordered to produce the suspected accused Md. Abdus Samad @ Musa @ Firoz Kha as he was detained in connection with Puthia Police Station Case no.09 dated 05.11.2016 under the Anti Terrorism Act, 2009 [amended in 2013] together with the Explosive Substance Act 1908[amended in 2002]. Accordingly the suspected accused was produced before this Tribunal on 20.03.2017 and then considering the submission advanced on part of the prosecution he was sent to prison, showing him arrested in connection with this case by issuing custody warrant.

Submitting Investigation report

30. On 14.01.2018, the Investigation Officer [IO] submitted report together with documents and materials collected and statement of witnesses interrogated before the Chief Prosecutor, wrapping up of investigation recommending prosecution.

Submission of Formal Charge

31. The Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, after completion of investigation, submitted the 'Formal Charge' on 12.04.2018 under section 9(1) of the Act of 1973 before this Tribunal alleging that accused was engaged in committing the offences as enumerated in section 3(2) of the Act of 1973 during the period of War of Liberation in 1971 around the localities under Police Station-Puthia of District-Rajshahi.

Taking Cognizance of Offences

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

Appointing State Defence Counsel

33. The Tribunal ordered for hearing the charge framing matter by appointing Mr. Abdus Shukur Khan, Advocate as the state defence counsel, at the cost of Government, to defend the accused Md. Abdus Samad @ Musa @ Firoz Kha as he did not engage counsel of his own.

Hearing on Charge Framing Matter

34. Then hearing on charge framing matter took place on 30.07.2018 when prosecution placed submission, drawing attention to the formal charge and documents submitted therewith.

Engaging Defence Counsel and placing Discharge Application

35. At the stage of charge matter hearing, the accused engaged Mr. Abdus Sattar Palwan as his counsel and thus appointment of Mr. Abdus Shukur Khan as state defence counsel stood cancelled and the newly engaged counsel prayed time for placing submission, on perusal of the formal charge and materials. Accordingly, on 14.08.2018 the learned engaged defence counsel Mr. Abdus Sattar Palwan placed his respective submission drawing attention to the grounds stated in the application seeking discharge.

Order on Charge Framing

36. Tribunal on prima facie appraisal of the narrative made in the formal charge and other materials framed charges on four counts by its order dated 09 September, 2018 and with this trial commences.

Trial Phase

37. In course of Trial, prosecution adduced 15 witnesses including the IO of whom 14 have been examined and one has been tendered, in support of arraignments brought. Defence duly cross-examined the witnesses. On closure of prosecution witnesses defence prayed for submitting some documents, in support of defence. It was beyond provisions. However, for ends of justice Tribunal permitted to submit documents as stated in its application.

38. Summing up of the cases took place on 04.07.2019 and 08.07.2019. The learned prosecutor and the learned defence counsel duly placed their respective argument both on factual and legal aspects, drawing attention to the evidence tendered and settled legal proposition. On conclusion of summing up Tribunal by its order dated 08.07.2019 kept the case in CAV i.e. for pronouncement and delivery of judgment.

VI. Summing up [Argument]

Summing up by the Prosecution

39. Mr. Zahid Imam the learned prosecutor started placing summing up by drawing attention to the evidence presented in trial. At the outset it has been asserted that the accused was a member of locally formed Razakar The accused Md. Abdus Samad @ Musa @ Firoz Kha being imbued by the ideology of pro-Pakistan political party took stance in support of the Pakistani armed force, helped them and substantially contributed in executing its systematic murderous mission directing unarmed civilians of localities under police station Puthia of District Rajshahi and also got enrolled in locally formed Razakar Bahini.

40. The learned prosecutor also submits that the P.W.s have consistently testified that the accused Md. Abdus Samad @ Musa @ Firoz Kha belonged to Razakar Bahini and they knew him since prior to the events as he was from neighbouring locality. Defence could not refute it in any manner by cross-examining the P.W.s and there has been no reason to disbelieve the P.W.s.

41. In respect of the arraignments brought in four charges framed the learned prosecutor drawing attention to the evidence tendered submits that the accused being a notorious loyal of Pakistani

occupation army actively participated, substantially contributed and explicitly provoked to the commission of criminal acts constituting the offences of killing unarmed civilians, unlawful confinement, torture, other inhumane acts as crimes against humanity. All the events happened in day time and as such the witnesses and victims had fair opportunity of witnessing the acts and conduct of the accused who accompanied the gang of attackers, being part of the enterprise and sharing common intent and purpose.

42. The learned prosecutor also submits that the accused being part of JCE [Basic Form] actively participated in committing the crimes under adjudication and thus incurred equal liability for all the crimes occurred. The learned prosecutor concluded his argument by emphasizing justification of awarding just and highest punishment, considering the pattern and intrinsic gravity of the offences proved. The learned prosecutor's argument advanced in relation to all the four charges may conveniently be addressed together with that advanced by the defence, in adjudicating each charge independently.

Summing up on behalf of accused

43. **Mr. Abdus Sattar Palwan** the learned defence counsel submits that prosecution failed to prove accused's affiliation in locally formed Razakar Bahini by any reliable evidence; that

Razakar Bahini did not exist when the alleged events happened; that the prosecution witnesses testified falsely implicating the accused terming him a Razakar; that the alleged events were isolated in nature and not systematic as those happened out of rivalry over land dispute with the people of local Santal community.

44. The learned state defence counsel further submits that the accused could have been prosecuted immediate after the independence achieved under the Collaborators Order 1972, if really he had concern and complicity in committing alleged crimes and that now unusual delay in prosecuting him creates doubt as to truthfulness of his complicity and participation with the alleged offences.

45. The learned state defence counsel next questioning credibility of witnesses submits that they did not know the accused beforehand and they had no opportunity of seeing the accused accompanying the group in launching alleged attacks as narrated in the charges framed and that the testimony of witnesses suffers from inconsistency and improbability and they have made account implicating the accused out of rivalry. However, detailed argument advanced on each charge may be well addressed at the time of adjudicating the charges.

Rebuttal on part of prosecution

46. Mr. Zahid Imam the learned prosecutor in reply on some legal aspects submits that delay in prosecuting an individual for criminal offences cannot rest any clog in prosecuting him. It is now well settled. It has been further submitted that the Act of 1973 permits to prosecute and try even an individual or group of individuals; that the events if found to have been happened prior to formation of Razakar Bahini the accused can be brought to justice as an individual and it is to be seen whether he in such capacity participated and assisted in perpetrating the crimes arraigned. However, submission agitated in this regard on part of the prosecution may be well addressed in the relevant segment of the judgment

VII. Applicable laws

47. Proceedings before the Tribunal are guided by a special legislation [International Crimes (Tribunals) Act, 1973] enacted to prosecute, try and punish the offender[s] for the offences enumerated therein which are known as international crimes, committed in violation of international humanitarian law. Tribunal reiterates that the provisions as contemplated in the International Crimes (Tribunals) Act 1973 and the Rules of Procedure 2010 formulated by the Tribunal [ICT-1] under the

powers given in section 22 of the Act are applicable to the proceedings before the Tribunal.

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

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

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

adjudication of event constituting the offences alleged and culpability of the accused persons therewith.

VIII. General Considerations Regarding the Evaluation of Evidence in a case involving the offences of Crimes against Humanity, genocide enumerated in the Act of 1973

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

52. The Tribunal may admit any evidence which it deems to have probative value [Section 19(1) of the Act]. The Tribunal shall have discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)]. Defence shall have right to examine witnesses [Section 10(1) (f) of the Act of 1973].

53. Cross-examination is significant in confronting evidence. The defence shall have liberty to cross-examine prosecution

witness on his credibility and to take contradiction of the evidence given by him [Rule 53(ii)].

54. The Rules of Procedure [ROP-1] provides that the accused shall be presumed innocent until he is proved guilty. Thus, the prosecution bears the burden of proving the guilt of the accused beyond reasonable doubt. In resolving whether the prosecution has been able to do so with respect to each count of Indictment, the Tribunal requires to cautiously consider whether there is any reasonable interpretation of the evidence admitted other than the guilt of the accused.

55. Circumstantial evidence is considered as evidence of circumstances and relevant facts chained to an event arraigned on the basis of which a fact in issue may be reasonably inferred. The tribunal thus may rely upon circumstantial evidence in order to decide whether or not a certain conclusion could be drawn. However, such a conclusion must be established beyond reasonable doubt.

56. The Tribunal may receive in evidence statement of witness recorded by Magistrate or Investigation Officer, if any only when the witness subsequently dies or whose attendance cannot be secured without an amount of delay or expense which the

Tribunal considers unreasonable [Section 19(2) of the Act]. But in the case in hand, prosecution has not come up with any such prayer to receive statement of any witness in evidence.

57. Atrocities as arraigned in the charges framed were committed in wartime situation. Thus, the Tribunal notes that in adjudicating culpability of the person arraigned for alleged criminal acts, context and situations prevailing at the relevant time i.e. during the period of war of liberation in 1971 [March 25 to December 16 1971] is to be kept in consideration.

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

58. Prosecution alleges that in 1971 the accused Md. Abdus Samad @ Musa @ Firoz Kha got himself enrolled as a member of locally formed Razakar Bahini, an 'auxiliary force' created intending to provide static support with the Pakistani occupation armed force in carrying out its activities aiming to annihilate the pro-liberation Bengali civilians, civilians belonging to Hindu religious group in furtherance of policy and plan.

59. We have found it revealed that the accused Md. Abdus Samad @ Musa @ Firoz Kha was a resident of village nearer to

that of the witnesses. Thus, the P.W.s knew him beforehand and that is why they were quite capable of recognizing the accused accompanying the group in launching attacks as narrated in all the four charges.

60. In 1971 during the war of liberation, the individuals loyal to pro-Pakistan ideology had to maintain close nexus and affiliation with the Pakistani occupation army stationed in their locality, even prior to forming auxiliary forces like Razakar Bahini, Al Badar Bahini ,it may safely be presumed.

61. The learned defence counsel Mr. Abdus Sattar Palwan argues that all the alleged events of attacks happened on 19th and 20th April 1971 when Razakar Bahini did not exist and thus the testimony of prosecution witnesses implicating the accused as a Razakar does not carry any credence and thus prosecution failed to prove accused's affiliation in Razakar Bahini.

62. In reply, the learned prosecutor Mr. Zahid Imam submits that in 1971 individuals loyal to Pakistani occupation army later on got affiliated in Razakar Bahini to assist the Pakistani occupation army in conducting its criminal mission directing the pro-liberation Bengali civilians, Hindu civilians, intellectuals, to further policy and plan. History says that such atrocious activities

started on the night of 25th March 1971. A section of loyal Bengali people who did not believe in self-determination and independence of Bengali nation being imbued by the policy and plan enthusiastically started to assist and contribute in accomplishing atrocities, being part of the group formed of Pakistani occupation army, the learned prosecutor added.

63. The learned prosecutor further submits that the accused in capacity of an individual participated in committing the crimes arraigned, being an active part of the enterprise. Crimes for which the accused has been indicted happened on 19th and 20th April 1971, true. Razakar Bahini was formed in the mid of May 1971 and was recognized as an auxiliary force few months later. But it does not mean that subsequent to the events of attacks arraigned the accused did not get enrolled in locally formed Razakar Bahini or he did not participate in committing the crimes in question, in exercise of individual capacity.

64. At the outset, Tribunal prefers to note that even an individual who got consciously engaged in committing prohibited acts directed against civilian population constituting the offences in violation of customary international law may be prosecuted and tried. Thus, even failure to prove that the accused got engaged in committing the alleged crimes, in exercise of his membership in

Razakar Bahini formed locally does not absolve him of being prosecuted for the alleged crimes if he is found proved to have had participation in committing the same as a 'loyal associate' of the Pakistani occupation army.

65. It is to be noted next that position or status of an accused is not the sole determining factor of his complicity and participation with the commission of crimes alleged. It is to be seen whether he participated in the commission of crimes, sharing intent of the group and knowing consequence of his conduct and act forming part of attack. And therefore, even an 'individual' can be well prosecuted even if it is not proved that he, at the relevant time, was a member of Razakar Bahini, an auxiliary force or member of peace committee an organisation formed to collaborate the Pakistani occupation army. The Statute of 1973 permits it.

66. It is now a fact of common knowledge that the people belonging to pro-Pakistan ideology took stance against the independence of Bengali nation since it started its struggle on call of the Father of the Nation. A section of Bengali people of such antagonistic attitude started facilitating the Pakistani occupation army since it started carrying out the mayhem directing the civilians on the night of 25th March 1971. Razakar

Bahini was formed of people of such hostile mindset in the mid of May 1971 and it got recognition as an auxiliary i.e. para militia force few months later in 1971. Both sides conceded it.

67. It is now settled history that Pro-Pakistan political parties including Jamat E Islami, Muslim League etc. had played key role in forming this auxiliary force and they symbolized the pro-liberation Bengali people as their '*enemies*' and '*miscreants*'.

68. During the nine-months war of liberation of Bangladesh in 1971 horrific annihilation of rights and property of civilians and brutal killing of civilian population systematically occurred as the regular facet of attack of the Pakistani occupation army and their local collaborators belonging to pro-Pakistan political parties [JEI, Muslim League, Nejam-e-Islami, Convention Muslim League, ICS the student wing of JEI] who took stance in favour of Pakistani's solidarity and they did it culpably in the name of preserving Islam.

69. Ghulam Azam the then Amir of Jamat E Islami and member of Central Peace Committee almost since the beginning of war of liberation started appealing the Pakistan government for '**arming the people who believed in solidarity of Pakistan and to combat the '*miscreants*'** [Source: The Daily Sangram, 21 June

1971, **Press conference of Ghulam Azam**; *see also The daily Sangram* 20 June 1971 ; *see also Mahidur Case ICT-2, para 49*].

70. Razakar force was formed in mid of May 1971 with the aim of resisting the '*miscreants*' and to wipe out the '*anti state elements*' with the aid of army [**Source: 'The Daily Dainik Pakistan', 16 May 1971; The Daily Azad, 17 May, 1971** *see also Mahidur Case ICT-2, para 49*]]. And Razakar Bahini was recognized by the then East Pakistan Government as an auxiliary force by issuing an Ordinance in August 1971 [**The Daily Purbodesh, 22.08.1971**]

71. In view of above, forming Razakar Bahini in the mid of May 1971 and recognizing it as an auxiliary force in August 1971 does not mean that no atrocity happened prior to mid of May 1971 in the territory of Bangladesh. We are forced to reasonably conclude too that the accused being a notorious follower of Pro-Pakistan political party enthusiastically got engaged in accomplishing the alleged atrocities.

72. Thus, enrolment in Razakar Bahini subsequent to the events of attacks arraigned in the case in hand does not negate the testimony of witnesses who naturally knew the identity of the accused as a Razakar. Enrolment in Razakar Bahini subsequent

to the events arraigned naturally made the accused known as Razakar. For the reason of notoriety the accused who committed atrocities as a loyal collaborator of the Pakistani occupation army, prior to formation of Razakar Bahini became synonymous of 'Razakar'. This is the reason why the prosecution witnesses termed the accused as a Razakar, in narrating the events alleged. The document, a list of Razakars [**Material Exhibit-I**] together with the testimony of witnesses leads to the conclusion that subsequent to the atrocities arraigned the accused got enrolled in locally formed Razakar Bahini.

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

74. It has been depicted from testimony of P.W.05 Md. Belal Hossain that Md. Abdus Samad @ Musa, his brother Osman[now dead], his cousin brother Del Mohammad[now dead], Didar, Soleman[now dead] the residents of their neighbouring village used to act as associates of Pakistani occupation army. Defence does not seem to have denied it in cross-examination. Thus, presumably, the accused being imbued

by the ideology of Pro-Pakistan political party got affiliated as an associate of Pakistani occupation army in conducting the attacks arraigned.

75. It transpires from testimony of P.W. 04 Md. Zillur Rahman that accused's family migrated to the then East Pakistan in 1964 by exchanging property with Sokat Maddi and Ravi Tudu of local Santal community and afterwards, they after independence achieved in 1971 went back India by sending those two Santals back to Bangladesh. It remained uncontroverted in cross-examination.

76. The above unshaken version of P.W.04 gets corroboration from the photocopy of the exchange deed and the deed canceling the exchange deed [**prosecution documents volume page nos. 45-55 and 56-68**] go to show that the exchange deed by virtue of which accused's father and their family migrated to the then East Pakistan stood cancelled in 1972 which is indisputable indication that after Bangladesh got liberated on 16 December 1971 the accused and his family went back to India quitted the locality where they used to reside.

77. It also transpires that after brutal assassination of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman on 15

August 1975 accused Md. Abdus Samad @ Musa along with his family again returned back to Pachani Bazar under police station Puthia of District Rajshahi and started residing there by renting home.

78. Why the accused opted to quit the locality, instantly after Bangladesh got liberated and came back again after 15 August 1975? The above unshaken fact leads to the inference that intending to escape from liability of prohibited activities he carried out as a infamous associate of Pakistani occupation army the accused along with family migrated to India.

79. In the case in hand, it is found well established from the list of Razakars dated 11.10.2010 furnished under signature of Commander of Bangladesh Muktiyodhdha Sangsad, Upazila Command, Puthia, Rajshahi Command [**Material Exhibit-I: Prosecution Documents Volume page nos. 34-38**] that the accused was a Razakar. His name finds place in serial no.16 in the part of no.4 Bhalukgachi Union [**page 36 of the prosecution documents volume**]. Defence could not bring anything to diminish creditability of the list. No effort is found to have been made on part of defence in cross-examination of the IO [P.W.15] questioning authenticity of the list.

80. Additionally, all the prosecution witnesses consistently testified that they knew the accused beforehand and the accused was a member of locally formed Razakar Bahini. Being the locals naturally it was practicable of being aware about accused's affiliation in locally formed Razakars Bahini. Defence simply denied it. But it could not however controvert it in any manner.

81. Thus, we are convinced to arrive at unerring finding that the accused Md. Abdus Samad @ Musa @ Firoz Kha subsequent to the events of attacks arraigned got affiliated in locally formed Razakar Bahini. And before being so enrolled the accused was a loyal associate of the Pakistani occupation army and in exercise of such capacity he allegedly facilitated and participated in perpetrating the crimes arraigned.

X. The way of adjudicating the charges and the settled jurisprudence

82. Tribunal reiterates that in a case involving the offences as crimes against humanity as enumerated in the Act of 1973 need to be adjudicated based on chiefly testimonial evidence. In the case in hand, some of prosecution witnesses allegedly directly experienced facts intimately related to the horrible events as arraigned in the charges. In search for the truth Tribunal is to duly weigh value, relevance and credibility of such testimonies

and of course in a most dispassionate manner, keeping in mind that the accused is presumed innocent till he is found guilty.

83. The offences tried in Tribunal allegedly happened in context of the war of liberation. Context of war and horrific situation existing at that time naturally left little room for the people or civilians to witness the all aspects or entire event of attack. Tribunal also keeps it in mind that due to the nature of international crimes, their chaotic circumstances, and post-conflict instability, these crimes usually could not be well documented by post-conflict authorities. However, in the case in hand, prosecution depends mainly on testimony made by the witnesses before the Tribunal.

84. It is to be noted too that in particular when the Tribunal acts upon hearsay evidence, it is not bound to apply the technical rules of evidence. Rather, the Tribunal is to determine the probative value of all relevant evidence admitted. Hearsay evidence, in a trial under the Act of 1973, is not inadmissible *per se*, but it should be considered with caution and if it carries reasonable probative value.

85. Next, the established jurisprudence makes it quite clear that corroboration is not a legal requirement for a finding to be made

on factual issue. Tribunal may rely even on a single witness' testimony as proof of a material fact. It is now well settled.

86. However, Onus squarely lies upon the prosecution to prove accused's participation and complicity forming part of attack which resulted in commission of the offences under adjudication.

87. Finally, we unanimously and emphatically prefer to pen our view that it would be appropriate and jurisprudentially logical if, in the process of appraisal of evidence, we separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon.

88. We also reiterate that the Tribunal shall not be precluded from borrowing guidance from the jurisprudence evolved for the purpose of arriving at decision as the accused has been indicted for the crimes committed in violation of international humanitarian law.

89. Keeping the above inevitable settled perspectives and propositions in mind now let us move to the task of adjudication of charges framed, on appraisal of evidence presented by the prosecution.

Adjudication of Charge No.01

[Narrated as event no. 01: page 17-22 of the Formal Charge]

[Offences of looting, arson, abduction, confinement, torture and murder as crimes against humanity at villages Damdoma, Shukdebpur, Bashbari and Gotia of no.04 Valukgasi union under police station Puthia of District Rajshahi]

90. Charge: That on 19 April 1971 at about 05:00 A.M a group formed of 50/60 Pakistani occupation army being accompanied by the accused Md. Abdus Samad @ Musa @ Firoz Kha by launching attack at villages- Damdoma, Shukdebpur, Bashbari and Gotia of no.04 Valukgasi union under police station Puthia of District Rajshahi forcibly captured 21 civilians including Adam Ali Bepari, Md. Zafor Ali Sikder, Md. Sirajul Islam, Md. Mofiz Uddin and took them at the house of Md. Nurul Islam[now dead], the Chairman of the Peace Committee of no.04 Valukgasi Union at about 09:00 A.M where the detainees were made assembled in a line and were subjected to grave torture. The accused then identified the detainees Adam Ali Bepari, Md. Jafor Ali Sikder, Md. Sirajul Islam and Md. Mofiz Uddin as pro-liberation civilians and thus the rest of detainees were set free excepting these four detained civilians.

In conjunction with the attack the above four detainees identified by the accused as pro-liberation civilians were then taken in an open place in front of Khalek's house 300 yards far from the

house of the Chairman, Peace Committee where detained Adam Ali Bepari, Md. Zafor Ali Sarder were shot to death and then intimidated the locals to dump their bodies in a hole.

On the same day, at about 10:30 A.M the Pakistani occupation army then gunned down two other detainees Md. Sirajul Islam and Md. Mofiz Uddin to death taking them to an open place about 100 yards far from the previous killing site. The accused Md. Abdus Samad @ Musa @ Firoz Kha, his accomplices and Pakistani occupation army also carried out looting households and destroyed houses by setting those on fire while the victim Zafor Ali Sarder was captured.

Therefore, the accused Md. Abdus Samad @ Musa @ Firoz Kha participated, facilitated, abetted and substantially contributed, by his culpable act and conduct forming part of systematic attack to the commission of offences of abduction, confinement, torture, arson, other inhumane act and murder as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes(Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses Examined

91. The arraignment brought in this charge rests on testimony of three witnesses who have been examined as P.W.12, P.W.13 and P.W.14. Of them P.W.12 is the son of one victim and P.W.14 is the brother of victim Mofiz Uddin and P.W.13 is a survived victim. P.W.12 and P.W.13 are alleged to have had occasion of experiencing facts crucially related to the event of attack that resulted in killing a number of pro-liberation civilians, as arraigned. Now let us look what the P.Ws have testified before the Tribunal.

92. P.W. 12 Md. Munsur Rahman [71] is a resident of village-Gotia under police station- Puthia of District Rajshahi. In 1971 he was 24 years old. At that time he was a cycle mechanic by profession and was engaged with agricultural work too. He is the son of Jafar Sarder, one of victims. He allegedly witnessed the event of attack that resulted in forcible capture of his father.

93. P.W.12 stated that on 19 April 1971 at about 08:00 A.M a group formed of 50/60 Pakistani occupation army being accompanied by accused Razakar Abdus Samad @ Musa @ Firoz Kha cordoned their house. At that time they all had been at their house. Razakar Abdus Samad @ Musa looted their house, indicated his father by saying 'he is a freedom fighter' and then

his father was dragged out and burnt down few rooms of the house.

94. P.W.12 further stated that when his father was taken away he and his younger brother started following them and saw the gang taking away his father at the house of Peace Committee Chairman Nurul Islam. He [P.W.12] found **19/20 civilians** detained there. Remaining in hiding nearer that house they noticed that the detainees including his father were subjected to severe torture.

95. P.W.12 also stated that at a stage, Razakar Abdus Samad @ Musa identified the detainees namely Adam Ali Bepari, Jafor Ali Sarder [father of P.W.12], Sirajul Islam and Mofiz Uddin as pro-liberation civilians uttering '***Esob Lok Mukti Hai***' [**all these people are freedom-fighters**] and with this those four detainees were made segregated and the rest were allowed to walk free.

96. P.W.12 continued stating that at about 10:00 A.M four detainees including his father were taken in an open place in front of Khalek's house, 300 yards far from the house of the chairman, peace committee. He [P.W.12] and his younger brother then went into hiding inside a ditch behind Khalek's house wherefrom they saw the Pakistani occupation army

gunning them to death on signal of Razakar Abdus Samad @ Musa. **[At this point the witness burst into tears].**

97. P.W. 12 next stated that the Razakars and Pakistani occupation army headed towards north taking two detainees with them. Few minutes later he [P.W.12] heard gun firing and then the Razakars and army men had left the site. They then came out of the hiding place and moved to the spot where they found the dead bodies of his [P.W.12] father and Adam Ali dumped in a trench and also found the dead bodies of Mofiz and Siraj lying on the road.

98. Finally, P.W.12 stated that accused Abdus Samad @ Musa @ Firoz Kha was from their neighboring village and that's why he knew him beforehand.

99. In cross-examination, P.W.12 stated in reply to defence question put to him that he could not say the year of his birth; that one Atu was the Razakar commander of Puthia Thana. P.W.12 denied the defence suggestions that accused was not a Razakar; that his father was killed by his counterpart over land dispute; that he testified implicating the accused intending to grab his[accused] property and that the accused was not involved with the event he testified.

100. P.W. 13 Abdul Khaleq Molla (61) is a resident of village-Gotia under police station- Puthia of District Rajshahi. In 1971 he was 13 years old. He is a direct witness to facts materially related to the attack that resulted in commission of the principal crime.

101. P.W.13 stated that on 19th April, 1971 at around 08:00 A.M a group formed of Pakistani occupation army , accused Razakar Abdus Samad @ Musa and his accomplice Razakars by launching attack at their house forcibly captured him, his maternal uncle Aber and took them away to the house of Nurul chairman where they were subjected to torture by Razakar Musa and army men. Then they the 17 detainees were set at liberty excluding detainees Adam Ali, Jafar, Seraj and Mofiz. They then remained in hiding inside their home and saw the army men gunning down Adam Ali and Jafar to death. Half an hour later they heard sound of gun firing.

102. P.W.13 also stated that he came after the gang had left the site and found dead bodies of Adam Ali, Jafor Ali dumped in a hole and dead body of detainees Siraj and Mofiz lying on the street.

103. Finally, P.W.13 stated that accused Abdus Samad @ Musa @ Firoz Kha was from their neighboring village and that's why he knew him beforehand.

104. In cross-examination, P.W.13 in reply to defence question stated that in 1971 Atu [now dead] was the Razakar commander of Puthia Thana; that Sobhan Mondol [now dead] was the freedom-fighter commander of Puthia Thana and that there was no freedom fighter in their village.

105. P.W.13 blatantly denied the defence suggestions that the event he testified did not happen; that the accused was not a Razakar ; that the accused was not involved in committing the alleged event; that out of rivalry over land dispute he testified falsely implicating the accused and that he did not see the event and he was not allegedly detained.

106. P.W. 14 Md. Yasin Ali [66] is a resident of village-Mohammadpur under police station- Durgapur of District Rajshahi. In 1971 he was 16/17 years old and was a student of H.S.C [Higher Secondary Certificate]. He is the brother of one victim Mofiz Uddin. He is a hearsay witness.

107. P.W.14 stated that on 19/04/1971 at dawn his elder brother Mofizuddin, who was an organizer of the freedom fighters, went to his son-in-laws house in Domdoma. On that day at around 12:30 P.M. he got the information that Razakar Abdus Samad alias Musa @ Firoz Kha with the help of Pakistani occupation army detained his brother from the road and gunned him down to death near Noahpara culvert. Having heard the news he and his family moved to the spot and found the dead body of Siraj and Mofiz. From the people present at that time he heard that accused Razakar Abdus Samad @ Musa @ Firoz Kha detained 21 innocent civilians; that among them the accused Razakar identified four people as freedom fighters. Then Pakistani occupation army shot those four detainees down to death. Then they brought his brother's dead body to home and buried him.

108. Finally, P.W.14 stated that accused Abdus Samad alias Musa alias Firoz Kha was from the neighboring village and that's how he knew him beforehand.

109. In cross-examination done by the counsel of the accused P.W.14 replied that there was no Razakar in their village. P.W.14 denied the defence suggestions that he did not hear the event of killing he testified; that he did not know the accused; that the accused did not belong to Razakar Bahini and that what he

testified was untrue and tutored. P.W.14 denied all these suggestions blatantly.

Finding on Evaluation of Evidence Presented

110. Mr. Zahid Imam, the learned prosecutor drawing attention to the evidence tendered submits that the event arraigned in this charge involves abduction of 21 civilians of whom 04 were brutally killed on identification and provocation of the accused, perceiving them pro-liberation civilians. All the three witnesses relied upon are direct witnesses and they observed the facts related to the commission of the principal offence.

111. The learned prosecutor further submits that all the three witnesses consistently testified the event and involvement and complicity of the accused therewith. Defence could not controvert the crucial facts testified, by cross-examining them. The attack was systematic and carried out in context of the war of liberation; that the witnesses' evidence shall seem to be corroborative and thus the arraignment as has been brought has been proved beyond reasonable doubt, the learned prosecutor added.

112. On contrary, **Mr. Abdus Sattar Palwan** the learned defence counsel argued that the event as arraigned in this charge

happened in 1971, but the alleged offences were isolated crimes as those were committed in context of rivalry over land dispute between two groups, not in context of the war of liberation and thus the accused has been falsely implicated with this event.

113. The learned defence counsel further submits that the victims were first allegedly taken to the local peace committee chairman. But the said chairman has not been prosecuted and there is no explanation in this regard, on part of prosecution. The learned defence counsel drawing attention to the testimony of P.W.13 and P.W.14 submits that admittedly there was no Razakar and freedom-fighters in their villages and thus there was no reason of targeting the residents of those villages. Prosecution failed to prove the charge brought against the accused by credible evidence, the learned defence counsel added.

114. Before we begin appraisal of evidence to resolve the aspects related to the alleged event of attack that ended in killing four detained civilians we opt to address submission agitated on part of the defence, on some matters. The learned defence counsel attempted to question the justification of prosecuting the accused and nature of the alleged crimes happened.

115. According to the indictment the 21 civilians detained forcibly were first taken at the house of Md. Nurul Islam [now dead], the Chairman of the Peace Committee of no.04 Valukgasi Union where they were subjected to grave torture. The learned defence counsel argued that non prosecution of the said peace committee chairman imprints doubt as to truthfulness of the alleged act of taking the 21 detainees to the house of the said chairman.

116. Such defence submission is devoid of any merit and substance. Tribunal notes that there has been nothing before us that the said peace committee chairman is still alive. Rather, the indictment itself states that he is now dead. There is no scope of prosecuting the said peace committee chairman and thus, we are not agreed with the irrational defence claim agitated in this regard.

117. Next, another argument on part of the defence that there was no freedom-fighter in the villages under attack, according to testimony of P.W.13 and P.W.14 and as such there was no reason of targeting the residents of those villages. Such version of prosecution witnesses creates reasonable doubt as to launching alleged attack at their villages, the learned defence counsel argued. But we emphatically disagreed with the above defence

submission. This defence argument does not carry any degree of logic and justification.

118. Tribunal notes that the crimes arraigned in this charge happened in context of the war of liberation. It is now historically settled that in 1971 03[three] millions of Bengali civilians were liquidated and hundreds of thousands of women sacrificed their supreme honor for the cause of independence. Such unprecedented horrendous atrocities were carried out directing Bengali civilians including freedom-fighters, pro-liberation civilians, Hindu civilians, intellectuals who were perceived to be in favour of the war of liberation.

119. The settled history thus does not at all suggests to conclude that in 1971 the Pakistani occupation army and their local collaborators belonging to auxiliary force had carried out their criminal mission directing only the freedom-fighters and the localities of which the freedom-fighters were the residents.

120. Besides, it depicts from uncontroverted testimony of P.W.04 that his [P.W.04] father, a local Awami League leader and an organizer of the war of liberation started to organize many people from their area including the victims Adam Ali, Jafor, Siraz, Mofiz who took training, after the historic 7th

March Speech of Bangabandhu Sheikh Mujibur Rahman. It remained unshaken. Be that as it may, the victims were potentially pro-liberation civilians and this was the reason of designing the systematic attack targeting them and the civilians of their villages.

121. Next, we are not also agreed with the speculative defence submission that the alleged crimes were isolated and occurred out of personal rivalry. Rather, by asserting such unfounded defence submission the event arraigned in this charge has been admitted.

122. Tribunal notes that it is quite unbelievable that 21 non-combatant civilians of villages under attack were forcibly captured, tortured and kept detained, as arraigned, out of personal rivalry over land dispute. Rather, the pattern and extent of the event of attack indisputably forces to conclude that the attack was systematic directing civilian population and it was conducted to further policy and plan of the Pakistani occupation army in collaboration with the infamous Razakars and loyalists. Atrocities arraigned in this charge were carried out in serious violation of international humanitarian law and the laws of war.

Crimes, the upshot of systematic and widespread attack as arraigned were thus not isolated in nature.

123. In light of phase of the event of attack as arraigned in the charge prosecution requires proving that—

(i) 21 non-combatant civilians were forcibly captured by launching systematic attack at villages Damdoma, Shukdebpur, Bashbari and Gotia of no.04 Valukgasi union under police station Puthia of District Rajshahi ;

(ii) A group formed of Pakistani occupation army to which the accused was an active part had carried out the attack;

(iii) The 21 detainees were first taken to the house of the local peace committee chairman where they were subjected to brutal torture;

(iv) Four detainees were then segregated on indication of the accused and the rest detainees were allowed to walk free;

(v) Segregated four detainees were killed on explicit provocation of accused; and

(vi) Accused accompanied the criminal gang being an active part and knowing consequence of his acts

124. Of three witnesses relied upon to substantiate the arraignment brought in this charge P.W.12 is the son of one

victim, P.W.14 is the brother of victim Mofiz Uddin and P.W.13 is a survived victim. All of them consistently testified facts intimately linked to the upshot of the attack.

125. The charge framed arraigns that attack was launched at villages- Damdoma, Shukdebpur, Bashbari and Gotia of no.04 Valukgasi union under police station- Puthia of District Rajshahi. Naturally, a single individual had no opportunity of observing the act of forcible capture of all the civilians as all the 21 victims were not from particular vicinity.

126. But it stands proved from uncontroverted testimony of P.W.13, a survived detainee that first phase of attack resulted in forcible capture of 21 civilians including him and the father of P.W.12. It gets corroboration from unimpeached testimony of P.W.12, the son of a victim.

127. It is evinced that P.W.12 the son of one victim saw the gang being accompanied by the accused taking away his father on forcible capture and in conjunction with the attack their house was burnt down and valuables were looted. Defence simply denied it but could not controvert it in any manner by cross-examining the P.W.12.

128. P.W.12, the son of one victim and P.W.13, a survived victim had natural occasion of seeing the acts carried out by the gang, in conjunction with the criminal mission. Defence could not bring anything, by cross-examining them, to diminish the narrative they made in Tribunal. Thus, we arrive at unerring conclusion that the accused Md. Abdus Samad @ Musa, being active part of the criminal mission and in agreement of the common design participated in accomplishing the purpose of the attack. P.W.12 allegedly witnessed the event of attack that resulted in forcible capture of his father. We do not find any earthly reason to disbelieve the ocular narrative he made in this regard.

129. Consistently corroborative testimony of P.W.12 the son of a victim and P.W.13 , a survived victim together proves it indisputably that the gang accompanied by the accused Md. Abdus Samad @v Musa @ Firoz Kha carried out systematic attack which resulted in forcible capture of 21 non-combatant civilians including the father of P.W.12 and P.W.13.

130. What happened next to accomplishment of unlawful capture of unarmed civilians? Testimony of P.W.13, a survived detainee demonstrates that all the 21 detained civilians were first taken to the house of Nurul Islam, the chairman of local peace committee

where the detainees were subjected to torture and finally four of 21 detainees were made segregated terming them freedom-fighters, on explicit identification of accused Md. Abdus Samad @ Musa @ Firoz Kha.

131. It also stand proved too from unshaken testimony of P.W.12 that the detainees were taken first at the house of Nurul Islam, peace committee chairman where 19/20 civilians were kept detained and all of them were subjected to torture. He [P.W.12] found 19/20 civilians detained there. Remaining in hiding nearer to that house he noticed that the detainees including his father were subjected to severe torture.

132. It has been unveiled too from testimony of P.W.12 that at a stage, he remaining in hiding saw the accused uttering, indicating some detainees-- ***‘Esob Lok Mukti Hai’*** [all these people are freedom-fighters] and with this those four detainees were made segregated and the rest were allowed to walk free.

133. It transpires that few minutes later, P.W.12 also heard gun firing, after taking away two other detainees towards north. After the gang of attackers had left the site P.W.12 discovered dead bodies lying at the killing site.

134. He [P.W.12] and his younger brother then went into hiding inside a ditch behind Khalek's house wherefrom they saw the Pakistani occupation army gunning down his father to death on signal of Razakar Md. Abdus Samad @ Musa. [At this point the witness burst into tears].

135. P.W.12 and his younger brother then came out of the hiding place and moved to the spot where they found the dead bodies of his [P.W.12] father and Adam Ali dumped in a trench and also found the dead bodies of Mofiz and Siraj lying on the road.

136. P.W.13 is a survived victim. He and other detainees were taken to the house of peace committee chairman wherefrom 17 detainees including him, excepting four were set at liberty. It stands well proved from testimony of P.W.13. Defence could not refute it by cross-examining him. Thus, what the P.W.13 described on oath inspires credence.

137. It has been divulged from uncontroverted testimony of P.W.13 that the gang which forcibly captured him and his maternal uncle Aber was accompanied by the accused Md. Abdus Samad @ Musa @ Firoz Kha . It may be irresistibly presumed that the accused accompanied the gang of perpetrators not as a mere spectator. Indisputably, he being imbued by the

policy and purpose of the Pakistani occupation army, had culpably acted as part of the gang, intending to execute the common purpose and mission.

138. What was the common purpose of the gang? Accused Musa's inducing utterance substantially facilitated and prompted to make some detainees segregated and the rest were allowed to walk free. What happened next on such provocative utterance? Four detainees including the father of P.W.12 and elder brother of P.W.14 were then gunned down to death taking them at a place, 300 far from Khalek's house; it stands proved from evidence of P.W.13, a survived detainee. Thus, in context of the war of liberation, we are forced to conclude it validly that the gang's intention was to liquidate the pro-liberation civilians and to spread grave coercion and terror around the localities and the accused was an active part of such common design.

139. P.W.13 denied the defence suggestion that out of rivalry over land dispute he testified falsely implicating the accused and that he did not see the event and he was not allegedly detained. Defence could not bring anything before us to make such defence believable. Thus, putting mere defence suggestions does not negate the version as has been made by the P.W.13. We find no reason to keep the evidence of P.W.13 aside, terming

unreliable. Since P.W.13 is a survived victim he had natural opportunity of watching the activities of the gang and the accused, carried out in conjunction with the attack and till just before the accomplishment of the phase of killing.

140. P.W.14 is the younger brother of Mofizuddin, one of four victims. His narrative depicts that victim Mofizuddin was an organizer of the freedom-fighters. Already it has been proved that victim Mofizuddin too was taken away to the killing site on forcible capture, along with other detainees. P.W.14 on hearing it he and his family moved to the site where they found dead body of Siraj and Mofizuddin. Finding dead body of victims at the killing site gets corroboration from evidence of P.W.12 and P.W.13 and this fact adds further assurance that the selected detainees were annihilated.

141. P.W.14 heard from the people present at that time that four detainees were identified as freedom-fighters by accused Md. Abdus Samad @ Musa @ Firoz Kha which led to gunning down the detainees to death by the Pakistani occupation army. This piece of hearsay testimony gets corroboration particularly from ocular testimony of P.W.13, a survived victim. Thus, hearsay testimony of P.W.14 on this crucial fact is quite admissible and carries probative value. Defence could not bring anything

contrary to keep such hearsay testimony aside from consideration.

142. Why the four detainees were so selected for annihilation? It transpires from testimony of P.W.04 in unfolding the stance the victims had opted in 1971 stated that his father was a local Awami League leader and an organizer of the war of liberation. After the historic 7th March Speech of Bangabandhu Sheikh Mujibur Rahman, his father started to organize many people from their area namely Adam Ali, Jafor, Siraj, Mofiz who took training under the leadership of his [P.W.04] father. Defence could not impeach it.

143. Thus, we got it answered from unimpeached testimony of P.W.04 that why the four victims Adam Ali, Jafor, Siraz and Mofiz were targeted for annihilation. It is fact of common knowledge that the Pakistani occupation army naturally had no acquaintance of the localities to be attacked and such pro-liberation civilians to be targeted for liquidation. Accused Md. Abdus Samad @ Musa @ Firoz Kha being an infamous associate of Pakistani occupation army had acquaintance of this fact which imbued him to instigate and induce the annihilation of those pro-liberation civilians.

144. Inflammatory and inducing utterance of the accused was an act of grave provocation. It was rather an explicit ‘instigation’ which substantially contributed in gunning down the four detainees to death. Obviously, the accused Md. Abdus Samad @ Musa @ Firoz Kha was quite aware of consequence of such prohibited acts that instantly resulted in selected killing of four detainees taking them to the place in front of the house of one Khalek. That is to say, eventually the gang accomplished selected liquidation of four defenceless civilians.

145. It is not required to show that the accused was the actual perpetrator. In the case in hand, we have got it proved that the accused participated in committing a ‘group crime’, being part of the criminal enterprise.

146. Facts and circumstances unveiled lead us to reasonably assume that accused was conscious about the consequence of his inflammatory utterance that substantially instigated the commission of the killing, the upshot of the attack. In respect of instigation it has been observed by the **ICTY Trial Chamber** in the case of *Brdjanin* that—

For instigation, “[i]t has . . . to be demonstrated that the accused intended to provoke or induce the commission of the crime, or was aware of the

substantial likelihood that the commission of a crime would be a probable consequence of his acts.”

[Brdjanin, ICTY Trial Chamber, September 1, 2004, para. 269]

147. Accused Md. Abdus Samad @ Musa @ Firoz Kha not only consciously accompanied the gang but he remained with it till the criminal mission ended and induced and provoked the killing of four detainees, sharing common intent. Thus, the inflammatory utterance which substantially incited, induced and provoked the perpetration of the killing made the accused equally liable, as a ‘participant’ to the commission of the crime. Such instigation was a clear contributing factor to the conduct of other person(s) of the gang and the actual perpetrators.

148. Accomplishment of killing four detainees on accused’s instigation and inducement appears to have been proved too from corroborative testimony of P.W.12 who remaining in hiding inside a ditch behind Khalek’s house saw the Pakistani occupation army gunning them down to death on ‘signal’ of accused Md. Abdus Samad @ Musa @ Firoz Kha. [At this point of deposition P.W.12 burst into tears]. Such demeanor of P.W.12 adds assurance to the truthfulness of the version he made.

149. Finding dead bodies of two detainees Adam Ali, Jafor Ali dumped in a hole and that of two other detainees Siraj and Mofiz lying on the street as testified by the survived victim P.W.13 remained unimpeached and it impeccably proves that the victims were gunned down to death, taking them at the place nearer to one Khalek's house.

150. Testimony of P.W.13, a survived victim and a direct witness to crucial facts intimately tied with the vicious act of killing four detainees could not be controverted in cross-examination. Defence simply denied what has been testified by the P.W.13. Mere denial is not at all sufficient to cast doubt on witness's testimony.

151. P.W.13 is a competent and natural witness. He had occasion of seeing the act of keeping a number of civilians detained at the house of local peace committee chairman. He on getting release and being sacred remained in hiding wherefrom he saw the act of accomplishing the killing. Later on, after the gang had left the site he discovered dead bodies at the killing site.

152. It has been proved that 17 detainees eventually were set at liberty. But they were subjected to torture after taking them at the house of the local peace committee chairman and finally they

had experienced the killing of four other detainees. It stands proved. Totality of criminal acts carried out in course of the event obviously traumatized them and caused severe pain which constituted the act of 'torture'. Causing willfully such deliberate serious mental and physical suffering to unlawfully detained civilians constituted a serious attack on human dignity as well.

153. Defence does not seem to have made any degree of effort to impeach the narrative made by the P.W.13. It was practicable of experiencing the horrific acts carried out by the gang accompanied by accused and his cohorts. Not only that, his testimony gets consistent corroboration from what has been testified by P.W.12, on material particulars. We do not find any reason of keeping their account aside terming untruthful. P.W.12 and P.W.13 coming on witness box recalled the episodic memory which retains alive in human memory for ever.

154. Pattern and nature of the crimes committed force to conclude that crimes proved did not result from the criminal propensity of single individual but constitute manifestations of collective criminality, in pursuance of a common criminal design, committed in violation of international humanitarian law constituting the offence of crimes against humanity and the accused was an active part of such criminal design.

155. In respect of liability of the accused prosecution requires proving that the accused took action in furtherance of the criminal plan, being part of the criminal enterprise. It has been found proved beyond reasonable doubt that the accused substantially contributed, by his act and conduct to the commission of the killing four civilians who were forcibly captured along with 17 other civilians by launching attack at their villages.

156. It appears that the accused did not keep him distanced even from contributing to the commission of the killing. Thus, it may be validly concluded that in agreement of the common purpose he consciously participated in all phases of attack. It is immaterial to show that the accused physically participated in committing the killing. Therefore, the accused, as a co-perpetrator incurred liability for the horrendous killing. In this regard we recall the observation made by the ICTY Trial Chamber in the case of *Vasiljevic* that--

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

of the part played by each in its commission.”

[Vasiljevic, (Trial Chamber), November 29, 2002, para. 67]

157. The acts of the accused forming part of agreed enterprise were a natural and foreseeable consequence of the agreed joint criminal enterprise, and thus, the accused participated in that enterprise being aware of the consequence of his acts, sharing the state of mind of the criminal gang.

158. It depicts from testimony of P.W.12 and P.W.13 that the four detainees were so annihilated instantly after making them segregated, on explicit endorsement and signal of the accused. P.W.12 and P.W.13 found bullet hit dead bodies of those four victims, after the gang had left the site. Defence could not dispel it in any manner.

159. It is not necessary to show that the accused himself physically participated in committing the killing, the upshot of the event. It is found proved that the accused remained stayed with the gang till it concluded its criminal mission by liquidating four detained civilians. Presence of accused at the crime site till the mission ended and his culpable act demonstrate patently that sharing common intent the accused deliberately participated in

the entire event. And he did it in exercise of his notorious association with Pakistani occupation army. His subsequent affiliation in locally formed Razakar Bahini adds assurance to such notoriety of the accused.

160. We reiterate that the Pakistani occupation army could never have committed such ruthless crimes directing civilian population of rural vicinities, had they not been abetted and assisted by the local butchers and the collaborators belonging to Jamat-e-Islami, Muslim League and Nezam-e-Islam, pro-Pakistan political parties.

161. The jurisprudence makes it clear that 'committing' is not limited to direct and physical perpetration and that other acts even can constitute direct participation in the *actus reus* of the crime. The question whether an accused acted with his own hands, in committing killing, is not the only relevant criterion.

162. Tribunal notes that an accused may participate in the commission of a crime even through direct commission of an unlawful act. In the case in hand, the attack resulted from the explicit instigation stirred up by the accused. Segregating four detainees out of 21 took place on accused's culpable urge and thus the act of accomplishing killing indisputably took place

under his direct control, we may conclude safely and reasonably, considering the facts unveiled.

163. The proximity between the provocation and assistance provided by the accused and the commission of the killing forces us to an unerring inference that such act on part of the accused had a substantial causal effect which contributed to the commission of the killing. The role the accused had played in accomplishing the principal crime, the killing is sufficient to constitute encouraging, aiding and abetting and participating in the enforcement of the designed criminal system.

164. On totality of evidence tendered it has been found proved that eventually four detainees out of 21 who were taken to the place in front of the house of one Khalek , nearer to the house of local peace committee chairman and then were gunned down to death on substantial instigation of the accused. Accused Md. Abdus Samad @ Musa @ Firoz Kha was thus a co-perpetrator to the criminal acts carried out in conjunction with the attack. It stands proved.

165. The offence of killing in question was a 'group crime' and upshot of systematic attack that was conducted directing pro-liberation unarmed civilians. Facts and circumstances unfolded

patently depict that presence of the accused Md. Abdus Samad @ Musa @ Firoz Kha at the killing site and act of providing substantial contribution in taking the detainees first at the house of local peace committee chairman and inducing to make four detainees segregated terming them freedom-fighters are sufficient to conclude unerringly that the accused substantially guided, assisted and participated in committing the brutal killing of 04 unarmed pro-liberation civilians.

166. The Tribunal has not a shadow of doubt in its mind that the only reasonable conclusion that may be drawn based on facts unveiled is that the accused being aware of the consequence of his culpable act substantially instigated the perpetration of the act of annihilation of four detainees perceiving them, freedom fighters. The killing happened in agreement of common purpose and intent to which the accused was an active part. Thus, he incurred equal liability under the doctrine of JCE [Basic form].

167. It is now well settled that an accused may participate in a joint criminal enterprise in various ways -- by personally committing the agreed crime as a principal offender or by assisting the principal offender in the commission of the agreed crime as a co-perpetrator,

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

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

169. Thus, in the case in hand, we have got it proved that the accused Md. Abdus Samad @ Musa @ Firoz Kha being part of the criminal enterprise was physically engaged in perpetrating the crime -- chain of facts, evidence presented and settled legal proposition lead to conclude it.

170. The proved factual matrix unerringly points towards the accused person as an active accomplice of the perpetrators forming the group of attackers. The accused Md. Abdus Samad @ Musa @ Firoz Kha being a member of the joint endeavor is thus held equally responsible as co-perpetrator.

171. On integrated evaluation of evidence tendered it appears that the prosecution has been able to prove it beyond reasonable doubt that the accused Md. Abdus Samad @ Musa @ Firoz Kha who later on got enrolled in locally formed Razakar Bahini , by his act and conduct forming part of systematic attack consciously participated, aided, abetted, substantially contributed to the commission of the offences of **‘abduction’, ‘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 is found criminally liable under section 4(1) of the Act.

Adjudication of Charge No.02

[Narrated as event no. 02: page 22-26 of the Formal Charge]

[Offences of abduction, confinement, torture and murder of 06 civilians as crimes against humanity committed at villages Gondogohali, Chakpolashi, Bairagibazar and Bashbari under police station Puthia of District Rajshahi]

172. Charge: That on 19 April 1971 at about 12:00 noon 40/50 freedom loving civilians of villages Gondogohali, Chakpolashi,

Bairagibazar and Bashbari moved to the house of the accused Md. Abdus Samad alias Musa alias Firoz Kha and asked him why he collaborated with the Pakistani occupation army in committing atrocious activities and with this the accused being angry attacked them by a sharp sword that resulted in injury to 04 civilians--Md. Ismail Sarker, Badiuzzaman, Omar Ali alias Md. Kala Boba and afterwards the accused rushed to the Pakistani occupation army camp at Mohonpur. Md. Ismail Sarker, Badiuzzaman, Omar Ali alias Md. Kala Boba succumbed to injuries later on.

In conjunction with the attack a group formed of 30/35 Pakistani occupation army being accompanied by the accused Md. Abdus Samad alias Musa alias Firoz Kha coming to village Bashbari by 3-4 vehicles at about 03:00 P.M, on the same day forcibly detained Anes Khalifa, Abdus Satter and Rahmat Shah as identified by the accused from their house and picked them up on the vehicle and at about 05:00 P.M at the place of crossing three roads at Bashbari Paschimbhag getting down from vehicle the three detainees were made stood in a line and were shot to death. The bodies were then buried by the villagers in a bamboo garden as asked and intimidated by the Pakistani army men.

On the same day at about 06:00 P.M the gang being accompanied by the accused and his accomplices coming to village Paschimbhag took away the dead body of Ismail Sarker and seriously injured Badiuzzaman with them by vehicle and since then their bodies could not be traced even.

Therefore, the accused Md. Abdus Samad alias Musa alias Firoz Kha participated, facilitated, abetted and substantially contributed, by his culpable act and conduct forming part of systematic attack to the commission of offences of 'abduction', '**confinement**', '**torture**' and '**murder**' as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes(Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses Examined

173. This charge involves barbaric killing of six [06] civilians by launching systematic attack, happened in day time. Prosecution relies upon ocular testimony of 03 witnesses i.e. P.W.01, P.W.02 and P.W.03. The witnesses so relied upon allegedly observed prohibited acts carried out in conjunction with the attack. Before we evaluate their testimony let us see what they have narrated before the Tribunal, on oath.

174. P.W. 01 Md. Yasin Ali Sarker [61] is a resident of village-Paschimbhag under police station- Puthia of District Rajshahi. P.W. 01 is an eye witness in relation to some facts related to the event arraigned in charge no.02. In 1971 he 15/16 years old and was a student of class X. He testified some facts crucially linked to the event alleged.

175. P.W. 01 stated that on 19.04.1971 at around 10 A.M. while he was at home, he heard that Razakar Abdus Samad @ Musa @ Firoz Kha being accompanied by his accomplice Razakars and Pakistani occupation army by launching attack at villages-Shukdebpur, Damdoma, Bashbari and Gotia looted households, destructed houses by setting those on fire and shot down 04 innocent civilians to death.

176. The above version relates to the arraignment as has been brought in charge no.01. On hearing this event of attack P.W.01 and others moved to the house of accused Md. Abdus Samad @ Musa for demonstrating protest against the prohibited activities carried out[as arraigned in charge no.01]. P.W.01 stated what happened when they expressed such protest, going to the house of the accused.

177. P.W.01 stated that on hearing the above event he at about 12:00 noon along with 40/50 villagers moved to the house of Razakar Abdus Samad @ Musa @ Firoz Kha to protest the event when he found Razakar Abdus Samad @Musa @ Firoz Kha sitting there with his cohort Razakars. Some elderly men accompanying him[P.W.01 and others] objected the horrific event carried out when the accused bringing a sword from inside his room started inflicting harm indiscriminately directing them that resulted in injury to his[P.W.01] grand-father Ismail Sarker, Badiuzzaman, Omar Ali @ Kala Boba and then they started fleeing therefrom. His grand-father [Ismail Sarker] succumbed to injuries within 10/15 minutes, after coming back home.

178. P.W.01 next stated that on the same day during the Asar prayer his uncle Anes Khalifa went to buy shroud for his grandfather's funeral. After a long time, when his uncle did not come, he [P.W.01] went out in search of him and found him detained in an army jeep along with the accused and his cohorts He [P.W.01] also saw his uncle Anes Khalifa, Rahmat Shah and Abdus Sattar detained on an army vehicle.

179. P.W.01 went on to state that about 25/30 yards far from the army vehicle they witnessed the accused Abdus Samad @ Musa @ Firoz Kha beckoning the Pakistani army to shove the three

detainees from the vehicle and then the detainees were made stood in a line there and then they were shot to death. The accused threatened the P.W.01 and others to bury the dead bodies within 10/15 minutes or else they would burn down the village. With this they buried the three bodies in a bamboo plot, west to the place of occurrence.

180. P.W.01 further stated that then they came back home and did not find his grandfather's dead body. His grand-mother and aunt told that the accused and Pakistani army took away the dead body under coercion. He also heard that injured Badiuzzaman too was taken away by vehicle. On the same day, at evening he heard that another injured Omar @ Kala Boba also breathed his last. They could not have any trace of dead body of his grandfather and Badiuzzaman. Finally, P.W. 01 stated that the accused was his neighbor and 4/5 years senior to him and he was married and father of a daughter, in 1971.

181. In cross-examination, P.W.01 in reply to defence question stated that he did not have any land in Bashbari village. P.W.01 denied the defence suggestions that he testified implicating the accused out of previous enmity over land dispute; that he did not hear the event he testified; that the event he narrated did not happen; that he did not know the accused person; and that the

accused persons did not belong to Razakar Bahini and that what he testified was untrue and tutored.

182. P.W. 02 Mst. Rafia Bewa [67] is a resident of village-Paschimbhag under police station- Puthia of District Rajshahi. She is the wife of one victim Abdus Sattar who was shot to death along with two other detainees, the charge framed arraigns.

183. During the war of liberation she was about 20/21 years old. At that time she used to stay in her conjugal home with her three months old son. Still she stays in her in-laws home. She testified what she experienced and watched, in conjunction with the alleged attack

184. P.W. 02 stated that on 19/04/1971 at around 10 A.M. she heard that Razakar Abdus Samad @ Musa @ Firoz Kha being accompanied by his accomplices and Pakistani occupation army by launching attack in villages- Shukdebpur, Damdoma, Bashbari and Gotia looted households, set the houses on fire and gunned down 04 innocent civilians to death. Moreover, she heard that the Razakar had stabbed Ismail Sarker, Badiuzzaman, Omar Ali alias Kala Boba with a sword.

185. P.W.02 then stated that her husband had received the training of EPR [*then the force was named as East Pakistan Regiment. It was the infantry regiment of Pakistani Army*] and as such during the war of liberation he continued remaining in hiding at village- Chakpalashi. She sent her younger brother-in-law to know the whereabouts of her husband. When her younger brother-in-law came near Chakpalashi intersection at around 4.00 PM, taking her husband with him a vehicle of Pakistani occupation army stopped them. Then Razakar Musa, who was in the army vehicle, indicating her [P.W.02] husband [Abdus Satter], told the occupation army that he [the husband of P.W.02] was a freedom fighter. Then her husband was captured and detained by the Pakistani Army.

186. P.W.02 next testified that on being informed about the event from her [P.W.02] younger brother-in-law she, her father-in-law along with others went into hiding inside a jungle near the intersection wherefrom they saw her captured husband and Razakar Musa and his accomplices boarded in another vehicle. She also could see detained Anes Khalifa, *tomtom* rider Rahmat Shah of their village along with her husband Abdus Satter. She witnessed that the Pakistani army being beckoned by the accused Abdus Samad @ Musa @ Firoz Kha pushing the detainees from the vehicle, making them stood in a line and then gunned them

down to death. At that point she [P.W.02] lost her consciousness. During the Magrib prayer her [P.W.02] grand-mother-in-law told her that her husband was buried with two others. Then she came back to home [at this stage the P.W.02 became emotional and burst into tears]. Finally, P.W. 02 stated that the accused was from their village and that's why she knew him beforehand.

187. In cross-examination, P.W.02 denied the defence suggestion that conciliation took place between the accused and her in-laws family relating to a land dispute. However, P.W.02 stated that she knew no other Razakar than the accused who was from their village.

188. P.W.02 also denied the defence suggestions that she did not hear the event she testified; that the event she narrated did not happen; that she did not know the accused person; that the accused person did not belong to Razakar Bahini and that what she testified was untrue and tutored.

189. P.W. 03 Md. Rupchand Mondol [64] is a resident of village- Paschimbhag under police station- Puthia of District Rajshahi. During the Liberation War he was around 18/19 years old and used to live on agricultural work. P.W. 03 testified facts which

he witnessed, in conjunction with the alleged attack, as an eye witness.

190. P.W. 03 stated that on 19/04/1971 at around 10:30/11:00 A.M. he heard from local people that Razakar Abdus Samad @ Musa being accompanied by Pakistani occupation army and his accomplice Razakars by launching attack at several villages namely Damdoma, Shukdebpur, Bashbari and Gotia looted household, burnt down houses and shot 04 innocent civilians to death [as arraigned in charge no.01.

191. It is evinced that P.W.03 was with his father Ibrahim Mondol, father-in-law Badiuzzaman and other villagers when they intending to demonstrate protest, moving to the house of the accused Abdus Samad @ Musa @ Firoz Kha. It could not be refuted. Thus P.W.03 had fair occasion of seeing what happened next to demonstrating the protest.

192. P.W.03 corroborating the P.W.01 narrated that on the face of such protest the accused became aggressive and attacked them and indiscriminately stabbed Ismail Sarker, his [P.W.03] father-in-law Badiuzzaman and Kala Boba. Then the accused ran away towards the south brandishing the sword. Next, with the help of

others, they took his father-in-law to home and arranged his treatment.

193. P.W.03 next in narrating the event arraigned in charge no.02 stated that on the same [19 April 1971] day at about 12:00 P.M he along with his father Ibrahim Mondol, father-in-law Badiuzzaman and 40/50 villagers moved to the house of Razakar Abdus Samad @ Musa to demonstrate protest when they found Razakar Abdus Samad @ Musa and his cohort Razakars sitting in the yard. When few elderly people raised question why he committed looting, set houses on fire and killed the civilians, the accused Abdus Samad @ Musa bringing a sharp sword from his room attacked them and indiscriminately stabbed Ismail Sarker, his [P.W.03] father-in-law Badiuzzaman and Kala Boba. Then the accused ran away towards the south brandishing the sword. Next, with the help of others, they took his father-in-law to home and arranged his treatment.

194. P.W.03 next stated that on the same day during Asar prayer he heard that the vehicles of Pakistani occupation army were approaching towards their house. With this, he came out from his in-laws house and found 04 army vehicles in the intersection of village-Paschimbhag. He went into hiding outside a sugarcane field wherefrom he saw the accused Musa and his cohorts

standing on one of the vehicles. He also saw Anes Khalifa, tomtom rider Rahmat Shah and Abdus Sattar detained on another vehicle. Then on the signal of accused Musa the detainees were dragged down from the vehicle and were made stood in a line and on signal of accused Musa Pakistani occupation army gunned down the detainees to death. Razakar Musa then told people to dump the dead bodies otherwise they would burn down the whole village. Being scared, he [P.W.03] and the villagers dumped those dead bodies. Razakars and army then had left the site and they came back home.

195. P.W.03 also witnessed the second phase of attack that happened at the time of Asar prayer on the same day when he on seeing 04 army vehicles parked in the intersection of village-Paschimbhag went into hiding outside a sugarcane field wherefrom he saw the accused Musa and his cohorts standing on one of the vehicles.

196. The above unimpeached version once again proves that the accused was a close and loyal associate of Pakistani occupation army. Killing of three detained civilians happened at this phase. P.W.01 and P.W.02 witnessed this phase and the act and role the accused had played in accomplishing the killing.

197. P.W.03, a direct witness too consistently narrated the role the accused had played in perpetration of the killing. Testimony of P.W.03 depicts too consistently that on the signal of accused Musa the detainees were dragged down from the vehicle and were made stood in a line and on signal of accused Musa Pakistani occupation army gunned down the detainees to death.

198. P.W.03 also stated that he saw Anes Khalifa, tomtom rider Rahmat Shah and Abdus Sattar detained on another vehicle. Then on the signal of accused Musa the detainees were dragged down from the vehicle and were made stood in a line and on signal of accused Musa Pakistani occupation army gunned down the detainees to death. Razakar Musa then told people to dump the dead bodies otherwise they would burn down the whole village. Being scared, he [P.W.03] and the villagers dumped those dead bodies. Razakars and army then had left the site and they came back home.

199. P.W.03 also testified that after coming back home he heard that his injured father-in-law and Ismail Sarker who succumbed to injury were taken away by Razakars and Pakistani army by a vehicle. His father-in-law Badiuzzaman never came back afterwards. Furthermore, he heard that Kala Boba [injured victim] expired in the same evening. Finally P.W. 03 stated that

the accused Abdus Samad @ Musa was from neighboring village and thus he knew him beforehand.

200. In cross-examination, P.W.03 in reply to defence question stated that Atu, Felu, Fani, Khizir and Dalil were Razakars of their locality and Atu was Razakar commander. P.W.03 denied the defence suggestions that accused was not a Razakar; that in collusion with some locals he testified falsely implicating the accused intending to grab accused's property; that he did not see and hear the event he testified and that the accused was not at all involved with the event he narrated.

Finding on Evaluation of Evidence Presented

201. Mr. Zahid Imam, the learned prosecutor, in course of summing up, in respect of the arraignment brought in this charge involving the act of killing of 06[six] unarmed civilians submits that consistently corroborative evidence of 03 witnesses proves it beyond reasonable doubt that the accused, being active and culpable part of the enterprise participated in committing the principal crime, the upshot of the systematic attack.

202. The learned prosecutor further submits that of three witnesses P.W.01 is a survived victim and had fair occasion of seeing the first phase of the event and the killing that happened

in next phase, after Asar prayer, on the same day. P.W.02 is the wife of one victim Abdus Sattar. The narrative they made could not be impeached in any manner; that P.W.03 is also a direct witness to facts linked to the event. Defence simply denied what has been testified by those witnesses. But it was not sufficient. Defence could not refute their version which is crucially chained to the accomplishment of the principal crimes and accused's participation therewith, the learned prosecutor added.

203. Mr. Abdus Sattar Palwan the learned defence counsel, on the other hand, submits that the event arraigned in this charge is not believable; that the alleged event was the outcome of conflict between two families and two groups of local people and not in context of the war of liberation and that the witnesses relied upon in support of this charge made inconsistent version which creates reasonable doubt as to accused's complicity with the alleged event.

204. The attack directing civilians as arraigned in this charge involves phases of criminal acts. First phase occurred when some non-violent civilians moved to the house of the accused Md. Abdus Samad @ Musa @ Firoz Kha to raise protest against the atrocities carried out in early morning on 19 April 1971 at some villages under Puthia police station[as arraigned in charge

no.01]. At this phase, the accused with extreme aggression allegedly started inflicting sword blow to the civilians who started demonstrating protest. The charge framed also arraigns that infliction of sword blow caused severe injuries to three [03] civilians who then returned back home. One victim Ismail Sarker succumbed to injuries almost instantly after he came back home.

205. Second phase of attack arraigned in this charge involves killing three [03] detained civilians which happened at the time of Asar prayer, on the same day.

206. The ending phase involves the prohibited act of taking away dead body of one victim and two other who sustained injuries caused to them during the first phase of attack.

207. Accused Md. Abdus Samad @ Musa @ Firoz Kha is alleged to have had participation and substantial contribution in committing the horrific atrocious activities which eventually resulted in killing a number of civilians. He allegedly remained stayed with the gang till the ending phase of the event, being an active part of the criminal enterprise.

208. Naturally, it was not practicable of seeing all the criminal acts carried out in course of all phases of the event. But the witnesses relied upon by the prosecution, as it appears, made account what they witnessed and the facts they testified were chained to the commission of crimes in question and accused's participation therewith, prosecution argued.

209. In order to prove the charge prosecution adduced and examined three witnesses. Of them P.W.01 is the grand-son of one victim Ismail Sarker, P.W. 02 Mst. Rafia Bewa is the wife of one victim Abdus Sattar and P.W. 03 Md. Rupchand Mondol is the son-in-law of victim Badiuzzaman. They testified facts justifiably linked to the alleged entire event.

210. The attack arraigned in this charge was first conducted directing a number of non-violent civilians when they came to accused's house intending to demonstrate protest against the criminal activities which resulted in wanton destruction and killing 04 civilians [as arraigned in charge no.01].

211. It is evinced that P.W.01 along with others moved to accused to demonstrate protest against the attack which he and his cohorts had carried out at villages- Shukdebpur, Damdoma,

Bashbari and Gotia looted households that resulted in destruction and killing 04 innocent civilians.

212. Why they intended to demonstrate such protest or were it practicable? Since the accused Md. Abdus Samad @ Musa @ Firoz Kha participated in committing prohibited acts by launching attack at neighbouring villages and since the accused was known around the locality naturally, the people moved to him for demonstrating protest against such activities presumably to keep their locality safe and protected.

213. What happened when such protest was demonstrated? It transpires from testimony of P.W.01 that on the face of such non-violent protest the accused Abdus Samad @ Musa @ Firoz Kha attacked them by a sharp sword that resulted in grave injuries to his[P.W.01] grand-father Ismail Sarker, Badiuzzaman, Omar Ali @ Kala Boba. Antagonistic attitude of accused to innocent unarmed civilians was chained to his culpable act and conduct which formed part of attack [as arraigned in charge no.01] that happened earlier.

214. What fate the three injured victims had to embrace eventually? It transpires that they succumbed to injuries. Testimony of P.W.01 depicts it. Defence could not controvert it

in any manner, by cross-examining the P.W.01. Being injured caused by indiscriminate sword blows the victims started fleeing from the house of the accused and victim Ismail Sarker succumbed to injuries within 10/15 minutes, after coming back home.

215. It also transpires that on the same day, after Asar prayer P.W.01 found his uncle Anes Khalifa, Rahmat Shah and Abdus Sattar detained in an army jeep by the accused and his cohorts when he [P.W.01] remaining stayed about 25/30 yards far from the army vehicle witnessed the accused Md. Abdus Samad @ Musa @ Firoz Kha beckoning the Pakistani army to shove the three detainees from the vehicle and then the detainees were made stood in a line there and then they were shot to death.

216. The above version of witnessing the killing three civilians could not be controverted. The event happened in day time. The accused, 4/5 years senior to him was his [P.W.01] neighbour, as testified and thus naturally it was practicable of recognizing the accused accompanying the gang at the crime scene. We do not find any earthly reason of disbelieving the account made by P.W.01.

217. Thus, it stands well proved from ocular testimony of P.W.01 that the accused Md. Abdus Samad @ Musa @ Firoz Kha being active part of the criminal enterprise explicitly encouraged and facilitated perpetration of killing three unarmed civilians.

218. The atrocities did not end here. After accomplishing the killing three civilians, the accused threatened the P.W.01 and others to bury the dead bodies within 10/15 minutes or else they would burn down the village. With this they being scared buried the three bodies in a bamboo plot, west to the crime scene. Such act full of intimidation and coercion indisputably caused grave inhumane act to the relatives of victims. Such prohibited act mirrored overt aggressive antagonistic attitude to unarmed civilian population.

219. Coercing the relatives of victims to dump dead bodies instantly after they were annihilated by gunshot was rather a serious attack on human dignity, committed against a protected person. It was a willful act of causing great trauma to the witnesses who were forced to experience the fate of their detained relatives. Causing deliberate mental harm detrimental to human dignity and rights of a civilian may be characterized as inhuman treatment constituting the offence of 'torture'.

220. We have got it proved that Ismail Sarker the grand-father of P.W.01 succumbed to injuries he sustained in course of first phase of the event happened at the house of accused Md. Abdus Samad @ Musa @ Firoz Kha, within 10/15 minutes, after coming back home. What about two other injured victims Badiuzzaman, Omar Ali @ Kala Boba who too sustained injuries caused by sword blow when they attempted to demonstrate protest against the criminal activities conducted earlier at some vicinity [as arraigned in charge no.01]?

221. It already stands proved that Ismail Sarker, the grand-father of P.W.01 succumbed to injuries he sustained and Badiuzzaman sustained sword-blow injuries inflicted by the accused when they and others attempted to raise protest against the atrocities carried out in early morning at villages- Damdoma, Shukdebpur, Bashbari and Gotia.

222. Testimony of P.W.01 depicts that coming back home after experiencing the horrific killing of three civilians Anes Khalifa, Rahmat Shah and Abdus Sattar he[P.W.01] knew from his grand-mother and aunt that the accused and Pakistani army took away the dead body of his grand-father Ismail Sarker and injured Badiuzzaman under coercion by vehicles. Defence could not impeach the above version in any manner.

223. In respect of the fate of three victims who sustained sword blow injuries, in course of first phase of the attack P.W.03 also testified, corroborating the P.W.01 that after coming back home he heard that his injured father-in-law Badiuzzaman and Ismail Sarker who succumbed to injury were taken away by Razakars, Pakistani army by a vehicle and Kala Boba [injured victim] expired in the same evening.

224. Be that as it may, brutality of the accused and his cohorts did not cease in causing mere injury by sword blow but the accused, his cohorts and the Pakistani occupation army men presumably intending to spread terror and coercion opted to take away the dead body of Ismail Sarker and injured Badiuzzaman and since then they could not be traced.

225. Prohibited act of taking away dead body of one victim along with another injured victim under coercion exceeded brutality and was grave breach of human rights. Such menacing treatment to the near relatives of victims does not conform to the fundamental principle of humanity. Not only that, on the same day in evening another injured Omar @ Kala Boba also breathed his last, unshaken testimony of P.W.01 proves it.

226. P.W. 02 Mst. Rafia Bewa is the wife of Abdus Sattar, a victim of second phase of attack which involves killing three detained civilians including Abdus Sattar. Seeing the act of killing three detained civilians including Abdus Sattar as testified by P.W.01 gets corroboration from P.W.02 the wife of victim Abdus Sattar.

227. P.W.02 heard from her younger brother-in-law how her husband was forcibly captured from the place near Chakpalashi intersection. Her brother-in-law witnessed the gang detaining the husband of P.W.02.

228. It reveals from testimony of P.W.02 that at around 4.00 PM, after causing forcible capture of Abdus Sattar the accused Abdus Samad @ Musa who was with the Pakistani occupation army men in their vehicles indicating her [P.W.02] husband [Abdus Sattar], told the army men that he [the husband of P.W.02] was a freedom-fighter and with this he was captured and detained by the Pakistani Army.

229. The above version could not be impeached in any manner. Act and conduct of the accused as has been mirrored in above version unerringly suggests to conclude that the target of the gang of attackers were the pro-liberation civilians and the

accused as a notorious loyal accessory of the army men substantially facilitated in causing forcible capture of victim Abdus Sattar.

230. It transpires from testimony of P.W.02 that on hearing the fact of detaining her husband from the place near Chakpalashi intersection at around 4.00 PM by the Pakistani occupation army accompanied by the accused she moved towards the scene along with her father-in-law and others and staying in hiding inside a jungle near the crime scene wherefrom she saw her captured husband and Anes Khalifa, tomtom rider Rahmat Shah of their village boarded in a vehicle. She [P.W.02] also witnessed the Pakistani army being beckoned by the accused Abdus Samad @ Musa @ Firoz Kha pushing the detainees from the vehicle, making them stood in a line and then they were gunned down to death there.

231. The accused was from their [P.W.02] village and that's why she knew him beforehand. It remained unshaken and thus it was practicable of recognizing the accused as an accessory of the gang, as testified by P.W.02. Accused's presence at the crime scene and his provoking act that facilitated the killing have also been proved from uncontroverted testimony of P.W.01, a direct witness.

232. It is also evinced that seeing the killing her husband she [P.W.02] lost her consciousness. P.W.02 in narrating what she witnessed, before the Tribunal became emotional and burst into tears. Indisputably P.W.02 still has been carrying colossal trauma she sustained. Such demeanor of P.W.02, as we observed is quite natural which makes the account she made fairly credible. Defence could not refute the account the P.W.02 made.

233. Defence suggested P.W.02 that the event she narrated did not happen. P.W.02 denied it. Tribunal emphatically notes that such unfounded defence assertion does not negate the accomplishment of designed attack that resulted in annihilation of six civilians.

234. P.W. 03 Rupchand Mondol testified facts which he witnessed, in conjunction with the alleged attack, as an eye witness. He is the son-in-law of one victim Badiuzzaman who succumbed to injuries he sustained due to infliction of sword blow when he and others met the accused to show protest against his prohibited acts. P.W.03 also saw the next phase of violent act leading to killing three detained civilians.

235. It is evinced that P.W.03 was with his father Ibrahim Mondol, father-in-law Badiuzzaman and other villagers when

they intending to demonstrate protest, moving to the house of the accused Md. Abdus Samad @ Musa @ Firoz Kha. It could not be refuted. Thus, P.W.03 had fair occasion of seeing what happened next to demonstrating the protest.

236. P.W.03 corroborating the P.W.01 narrated that on the face of such protest the accused became aggressive and attacked them and indiscriminately stabbed Ismail Sarker, his [P.W.03] father-in-law Badiuzzaman and Kala Boba. Then the accused ran away towards the south brandishing the sword. Next, with the help of others, they took his father-in-law back to home and arranged his treatment.

237. It thus stands proved that the accused consciously participated in conducting violent criminal acts which gave rise to his explicit liability. The deliberate violence inflicted on the peaceful non-violent unarmed civilians was indeed an infringement of international human rights which also constituted a grave violation of the principles of international humanitarian law arising from the Geneva Conventions.

238. P.W.03 also witnessed the second phase of attack that happened at the time of Asar prayer on the same day when he, on seeing 04 army vehicles parked in the intersection of village-

Paschimbhag went into hiding outside a sugarcane field wherefrom he saw the accused Musa and his cohorts standing on one of the vehicles.

239. The above unimpeached version once again proves that the accused was a close and loyal associate of Pakistani occupation army. Killing of three detained civilians happened at this phase. P.W.01 and P.W.02 witnessed this phase and the act and role the accused had played in accomplishing the killing.

240. P.W.03, a direct witness too consistently narrated the role the accused had played in perpetration of the killing. Testimony of P.W.03 depicts too consistently that on signal of accused Musa the detainees were dragged down from the vehicle and were made stood in a line and on signal of accused Musa Pakistani occupation army gunned down the detainees to death.

241. On rational appraisal of evidence of P.W.01, P.W.02 and P.W.03 we safely arrive at decision that the prosecution has been able to prove that second phase of attack that resulted in killing three civilians detained unlawfully on substantial provocation, contribution and participation of the accused Md. Abdus Samad @ Musa @ Firoz Kha.

242. The gang accompanied by the accused and other loyalists of the Pakistani occupation army concluded its criminal mission by taking away the dead body of one victim and one injured victim who were attacked by the accused himself, during first phase of the event.

243. The event arraigned was carried out just few days after the Pakistani occupation army started its mayhem throughout the territory of Bangladesh in 1971. Naturally, Pakistani occupation army men were not familiar with the rural vicinity and the pro-liberation civilians to be targeted. A section of traitors and loyalists got associated with army men intending to facilitate their criminal mission, to further policy and plan.

244. In the case in hand, accused Md. Abdus Samad @ Musa @ Firoz Kha was one of those traitors who knowingly and culpably assisted and collaborated with the army men in accomplishing the crimes directing civilians, we are convinced to conclude it.

245. It stands proved that the accused Md. Abdus Samad @ Musa @ Firoz Kha himself perpetrated the criminal acts that eventually resulted in death of three victims who sustained severe sword blow injuries inflicted by him.

246. Afterwards, at the time of Asar prayer, on the same day the accused accompanied the Pakistani army men and was found present with them on army vehicles keeping three civilians detained with them. Defence does not seem to have made any effort to refute this pertinent fact, by cross-examining the witnesses.

247. Factual matrix leads to the conclusion that the accused was with the gang not as a mere spectator. Rather, he remained with the gang as a loyal and notorious accessory of the Pakistani occupation army, sharing intent of wiping out pro-liberation civilians. It is evinced that on his explicit provocation the three detainees were made stood in a line and on his signal they were gunned down to death there. Therefore, the accused incurs equal criminal responsibility for committing all the killings.

248. Provocative act of the accused was rather a substantial instigation which instantly facilitated the killing three detained civilians. It is to be noted that the *actus reus* of “instigating” means to prompt another person to commit an offence. We have found it proved that the accused’s instigation instantly prompted the army men to gun down the detainees to death.

249. On the basis of the evidence set out above a reasonable Trier of fact must conclude that the accused was a notorious accessory of the Pakistani occupation army and knowing consequence and sharing common purpose he consciously facilitated the commission of crimes in question. The accused knew that it was quite probable that his culpable act would facilitate to cause death of three detainees by gun shot. Aggressive and provoking act of the accused manifest it unerringly.

250. Prosecution is not required to show that the accused personally or physically participated in causing death of three detained civilians by gun shots. It has been observed by the **ICTY Appeal Chamber** in the case of **Ntakirutimana and Ntakirutimana**, that

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

251. Accused’s presence combined with his culpable acts, in exercise of his close affiliation with the gang formed of Pakistani

occupation army in the vicinity of the crime scenes, indisputably contributed the commission of the crimes in question.

252. It is now settled jurisprudence that a person participates in a joint criminal enterprise by personally committing the agreed crime, or by assisting the principal offender in committing the agreed crime as a co-perpetrator, by facilitating the commission of the crime by the actual offender. Thus, if the agreed crime is committed by one or other of the participants in a joint criminal enterprise, all the members in that enterprise are equally guilty of the crime committed regardless of the part played by each in its commission, or accomplishment.

253. In the case in hand, facts and circumstances unveiled in trial lead to an irresistible inference that the accused agreeing with the common plan and purpose of the gang had acted as a co-perpetrator in accomplishing the crimes in question. This view finds support from the observation made by the **ICTY** which is as below:

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

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

254. The evidence presented by the prosecution so far as it relates to the culpable act, conduct, behaviour of accused and his active affiliation with the army men convincingly impels to the conclusion that the accused Md. Abdus Samad @ Musa @ Firoz Kha was consciously concerned with the plan of designing the commission of the principal offence, the killing.

255. It is now well settled that ‘participation’ in the common design (read ‘JCE’) ‘may take the form of assistance in, or contribution to, the execution of the common plan or purpose. This settled jurisprudence leads to conclude that the accused had acted knowingly, being part of the criminal enterprise which makes him liable under the doctrine of JCE [Basic Form].

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

257. In the case in hand, accused's mode of contribution in the criminal acts conducted in conjunction with the attack indisputably formed a linkage in the chain of causation. Accused Md. Abdus Samad @ Musa @ Firoz Kha obviously agreed to participate in the first category of joint criminal enterprise [Basic Form], as a co-perpetrator, we conclude.

258. Committing may be done "individually or jointly with others. The settled jurisprudence makes it clear that 'committing' is not only limited to direct and physical perpetration of the crime and even other culpable acts of a member of the group of attackers constitute direct his participation in the *actus reus* of the crime.

259. It is to be seen whether an accused acted substantially by his act or conduct. Killing civilians with own hands is not the sole and relevant criterion in determining liability of the accused. Tribunal notes that 'participation' by 'instigation' implies urging or encouraging another person to commit a crime. The accused by his act thus incurred liability of committing the killing. In respect of aiding and assisting by instigation the **ICTR Trial Chamber** observed in the case of **Rutaganda** that--

“The Accused may..... be held criminally [responsible] for criminal acts committed by others if, for example, he planned such acts, instigated another to commit them, ordered that they be committed or aided and abetted another in the commission of such acts.”

[Rutaganda, ICTR Trial Chamber, December 6, 1999, para. 35: See also *Musema*, ICTR Trial Chamber, January 27, 2000, para. 117

260. In the case in hand, the accused explicitly urged the Pakistani occupation army men, by inciting and provoking utterance to kill the pro-liberation civilians as identified by him. In absence of anything contrary, it may be safely concluded that accused Md. Abdus Samad @ Musa @ Firoz Kha remaining present with the murderous 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. Abdus Samad @ Musa @ Firoz Kha incurred liability under the doctrine of JCE [Basic Form] which corresponds to section 4(1) of the Act of 1973.

261. The killing of civilians as already found proved was ‘system crime’ or ‘group crime’ and thus it is not essential to show that accused Md. Abdus Samad @ Musa @ Firoz Kha physically

participated in perpetrating the killing that happened in course of the second phase of the event. It is to be seen whether his act and conduct substantially contributed the actual perpetrator in accomplishing the killing. This view finds support from the observation made by the **ICTY Trial Chamber** in the case of **Brdjanin** which is as below:

“The *actus reus* consists in the action or omission of the accused resulting in the death of the victim. The Prosecution need only prove beyond reasonable doubt that the accused’s conduct contributed substantially to the death of the victim.”

[Brdjanin, ICTY Trial Chamber, September 1, 2004, para. 382]

262. In the case in hand, it is found well proved that the accused Md. Abdus Samad @ Musa @ Firoz Kha knowingly being part of the criminal enterprise remained stayed with the gang in executing its mission at all phases and substantially and explicitly contributed to the commission of the killing, by his participation and provoking act. It may be thus safely concluded on the basis of rational appraisal of evidence that accused Md. Abdus Samad @ Musa @ Firoz Kha incurred liability under the doctrine of JCE [Basic Form] which fairly corresponds to section 4(1) of the Act of 1973.

263. The evidence tendered indisputably demonstrates that the accused Md. Abdus Samad @ Musa @ Firoz Kha a notorious loyalist of Pakistani occupation army being part of collective criminality consciously ‘participated’, ‘aided’ and substantially ‘contributed’ by criminal acts and conduct forming part of systematic attack to the commission of the offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’, and ‘**murder**’ as crime against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused incurred criminal liability under section 4(1) of the Act of 1973.

Adjudication of Charge No.03

[Narrated as event no. 02: page 26-30 of the Formal Charge]

[Offences of ‘looting’, ‘arson’, ‘torture’ and ‘murder’ as crimes against humanity or in the alternative the offence of genocide at Santal Para of village Paschimbhag under no.04 Valukgasi Union under police station Puthia of District Rajshahi]

264. Charge: That on 19 April at about 07:30 P.M a group formed of 30-35 Pakistani occupation army being accompanied by the accused Md. Abdus Samad alias Musa alias Firoz Kha and his cohorts attacked the Santal Para of village Paschimbhag under no.04 Valukgasi Union under police station Puthia of District Rajshahi and on his identification the army men gunned down the Head man of Santal **Lade Hemrom** to death and then destroyed the house setting it on fire.

In conjunction with the attack, the accused killed **Kanu Hasda, Tunu Maddi and Jotu Soren** by inflicting sword blows and looted valuable of 8/9 houses and then burnt down 40/50 houses belonging to Santals as named in the formal charge.

Killing four civilians and destructive acts carried out by the gang accompanied by the accused were intended to destroy the Santal group, in whole or in part on account of their membership in Hindu religion.

Therefore, the accused Md. Abdus Samad alias Musa alias Firoz Kha participated, facilitated, abetted and substantially contributed, by his culpable act and conduct forming part of systematic attack to the commission of offences of 'looting', 'arson', 'torture' and 'murder' as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act, 1973 or in the alternative the offence of 'genocide' as specified in section 3(2)(c)(g)(h) of the Act read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses Examined

265. This charge involves the event of attack launched at the Santal Para of village-Paschimbhag under no.04 Valukgasi Union of police station- Puthia of District Rajshahi that resulted

in wanton destruction and killing a number of people belonging to Santal community.

266. Prosecution relies upon 05 witnesses' testimony to substantiate the arraignment brought in this charge no.03. Of 05 witnesses P.W.07 is a hearsay witness and the rest 03 i.e. P.W.08, P.W.09 and P.W.10 are alleged to be the direct witnesses to the facts intimately linked to the alleged event of attack. Now, first let us eye on what has been testified by the eye witnesses, in relation to this charge.

267. P.W. 08 Brajen Hemrom [62] is a resident of village-Paschimbhag Santal Para under police station-Puthia of District Rajshahi. In 1971 he was around 15/16 years old. He belongs to Santal indigenous community. He is alleged to be a direct witness to some material facts related to the alleged event of attack that resulted in brutal annihilation of 04 unarmed Santal civilians.

268. P.W. 08 stated that on 19.04.1971 at around 07:00/07:30 P.M. he had been at home when a group formed of 25-30 Pakistani occupation army being accompanied by the accused Razakar Abdus Samad @ Musa @ Firoz Kha and his cohorts arriving by vehicles cordoned the Paschimbhag Santal Para. They placed their vehicles in front of their house. His grand-

father **Lade Hemrom** the Headman of the Santal community and a follower of the war of liberation came out of the room as called by Razakar Abdus Samad @ Musa @ Firoz Kha and then the accused indicating his grand-father uttered **ÒG tj vK eo Av`gx n`iq, gyj vDb n`iq, gy`h`i mg_R n`iq**[this man is a big shot, he is a **Malaun(Hindu), supporter of the war of liberation]** and with such utterance the accused provoked the Pakistani army to shot him to death and then the Pakistani army gunned him down to death there. He [P.W.08] and his father witnessed the event staying at the courtyard and then they went into hiding instantly behind a tree adjacent to their house.

269. P.W.08 next stated that remaining in hiding they saw the Razakar Abdus Samad @ Musa @ Firoz Kha stabbing his Fufa [husband of father's sister] Kanu Hasda to death. Razakar Abdus Samad @ Musa also stabbed his [P.W.08] another *dada* Tunu Maddi by inflicting sword blows causing injuries when he was coming forward to their house, on hearing gun firing. Then they the perpetrators looted household, set the house on fire and threw injured Tunu Maddi into fire that resulted in his death. In conjunction with the attack accused Abdus Samad also indiscriminately chopped his *dada* Jotu Soren with his sword that resulted in his death.

270. P.W.08 next stated that the army men and Razakars he named looted 8/9 houses of Santal para, burnt down 40/50 houses and then had left the crime site. After that event, they the residents of Santali Para deported to India, being scared and returned back home after the independence achieved. Finally, P.W. 08 stated that accused Razakar was from their neighboring village and thus he knew him beforehand.

271. In cross-examination of P.W.08 it has been affirmed that the accused was a resident of village- Bashbari, a neighbouring village of P.W.08 and the village- Bashbari and their village were under the same union. P.W.08 however denied the defence suggestions that the accused's father got settled at village- Bashbari before the war of liberation, coming from India by exchanging land property of Santals of village-Bashbari.. Defence however simply denied what the P.W.08 testified in relation to the event of attack and participation of the accused therewith. Nothing could be brought by cross-examining the P.W.08 to refute what has been testified, it transpires.

272. P.W. 09 Sri Gubin Soren [59] is a resident of village- Paschim Santal Para under police station- Puthia of District Rajshahi. In 1971 he was 12 years old and had been studying in class V. He is a member of Santal indigenous community who is

now a farmer by profession. He testified what he watched, in conjunction with the event of attack.

273. In narrating the facts materially related to the attack directing the Santal community P.W. 09 testified that on 19th April 1971 at around 07:00-07:30 P.M a group formed of 30-35 Pakistani occupation army being accompanied by the accused Razakar Abdus Samad @ Musa @ Firoz Kha and his cohorts entered their village through the southern part of the village and parked their vehicles in front of the house of Lade Hemrom, the Headman of the Santal community and a follower of the war of liberation. Then he [P.W.09] saw Razakar Abdus Samad @ Musa @ Firoz Kha calling Lade Hemrom to come out from his home. After spotting him, the accused provoked the occupation army that – *ÔG tj vK gvj vDb n`vq, gvĤ:thv×vi mn:thvMx n`vq, DmKz, vj Ki:Z nte0* [this man is Malaun (Hindu), associate of freedom fighters, he needs to be shoot out]. Then the army men instantly gunned him [Lade Hemrom] down to death. He [P.W.09] witnessed the event staying besides the site.

274. P.W.09 next stated that the Razakar Abdus Samad @ Musa @ Firoz Kha chopped Kanu Hasda, the elder son-in-law of Lade Hemrom to death, when he came out of the house. Having heard the sound of gun-firing, Tunu Maddi, their neighbour came out

when the accused chopped him with his sword. Then the accused and his accomplices carried out looting at Tunu Maddi's home and the house on fire. Later, they burnt down injured Tunu Maddi to death, throwing him into fire. P.W.09 also stated that the accused and his cohort Razakars chopped his uncle Jotu Soren to death, finding him in front of his house.

275. P.W.09 also stated that the accused, his accomplices had carried out looting at 8/9 houses and set 40/50 houses on fire and then had left their site. After that event, being scared and panicked, they the sandal residents of their locality deported to Maldah District, India. However, they came back after Bangladesh got liberated. Finally, P.W.09 stated that accused's was from village-Bashbari, nearer to their house and thus he knew him beforehand.

276. In cross-examination, P.W.09 in reply to defence question stated that the accused migrated to Bangladesh, before independence by exchanging land property with that of the Santals of Bashbari Santal para; that accused's father exchanged land property with that of **Matla Hemrom** and **Sokat Maddi** and accused had conflict with those two over land dispute and there had been no conflict between them and the accused over land dispute. P.W.09 denied the defence suggestion that his date

of birth is 12 May, 1969. P.W.09 volunteered that he was born in 1959. P.W.09 also denied the defence suggestion that he testified falsely implicating the accused intending to grab his property; that the accused was not a Razakar and that he did not see what he testified and that the accused was not involved with the alleged event.

277. P.W. 10 Sree Sama Hasda [81] is a resident of village- Paschim Bhag Santal Para. In 1971 he was 35 years old. He is the son of one victim Kanu Hasda. He is allegedly witnessed facts linked to the event of attack of which the accused has been arraigned.

278. P.W.10 stated that on 19th April, 1971 at around 07:00/07:30 A.M a group formed of 30-35 Pakistani occupation army being accompanied by the accused Razakar Abdus Samad @ Musa @ Firoz Kha and his cohorts entered their village by 5/6 vehicles. They got parked in front of the house of Lade Hemrom, the Headman of the Santal community and a follower of the war of liberation. With this he went into hiding behind the cowshed wherefrom he saw Razakar Abdus Samad @ Musa@ Firoz Kha calling Lade Hemrom to come out and provoked the army men to kill him, terming him an associate of freedom-fighters. On hearing gun-firing his [P.W.10] father Kanu Hasda attempted to

come out from house when Razakar Abdus Samad @ Musa @ Firoz Kha chopped him to death with sword. **[At this stage of deposition P.W.10 broke down into tears].**

279. P.W.10 continued narrating that their neighbour Tunu Maddi came out from home having heard the sound of gun firing. Then Razakar Abdus Samad @ Musa @ Firoz Kha chopped him too with his sword and he [victim] got injured, looted Tunu Maddi's house, set it on fire and finally injured Tunu Maddi was burnt down to death, throwing him in fire. Accused and his cohorts also chopped his uncle Jotu Soren to death, finding him in front of his house.

280. P.W.10 next stated that the occupation army, accused and his accomplices carried out looting in 8/9 houses and burnt down 40/50 houses and had left the site. After the event happened, being scared and panicked they the Santal residents of the locality deported to Maldah, India. They came back when Bangladesh got liberated.

281. In respect of reason of knowing the accused P.W.10 finally stated that accused Abdus Samad @ Musa @ Firoz Kha was a resident village-Bashbari, Santal para and they had land of their own nearer his house and thus he knew him beforehand.

282. In cross-examination, P.W.10 in reply to defence question admitted that the family of accused Abdus Samad @ Musa by exchanging their property with that of members of Santal community of Bashbari got migrated to Bangladesh, before the independence. P.W.10 volunteered that accused's father exchanged property with that of Matla Hemrom and Sokat Maddi.

283. P.W.10 denied the defence suggestions that he did not know the accused person; that he and other locals grabbed the properties of the accused after he was arrested; that the accused was not a Razakar; that the accused was not involved in the event alleged and that no event he testified happened.

284. P.W. 07 Silbester Soren @ Gedu Soren [83] is a resident of village- Mohipara under police station- Durgapur of District Rajshahi. In 1971 he was around 36 years old. He is a hearsay witness.

285. In narrating the event P.W.07 stated that on 19th April Razakar Abdus Samad @ Musa his accomplice Razakars and Pakistani occupation army by launching attack at Santal para and village-Bashbari burnt down houses, looted house hold,

chopped Lade Hemrom, Kanu Hasda, Jotu Soren to death and one Tunu Maddi was burnt down to death. On hearing the event his father, on the following morning moved for seeing the dead bodies of people of their community.

286. In cross-examination, P.W.07 denied the defence suggestions that the Santals he named died normally; that he and other witnesses testified falsely implicating the accused intending to grab accused's property; and that the accused was 13/14 years old in 1971.

Finding with Reasoning on Evaluation of Evidence

287. Mr. Zahid Imam, the learned prosecutor, drawing attention to testimony of witnesses relied upon to substantiate this charge submits that a systematic attack was launched at Santal para of Paschimbhag under police station-Puthia of District Rajshahi; that the group of attackers formed of Pakistani occupation army, their notorious loyal associate accused Md. Abdus Samad @ Musa @ Firoz Kha and his accomplices. P.W.08, P.W.09 and P.W.10, the direct witnesses and relatives of victims consistently testified how the killing of four pro-liberation Santal people was accomplished and what culpable and active role the accused had played in perpetrating the brutal crimes.

288. The learned prosecutor also submits that the accused is found to have had actual and physical participation in committing the barbaric and deliberate killing and that his instigating utterance and mode of participation in committing the killing made him a physical perpetrator. Defence could not dislodge the core essence of witnesses' testimony and the same indisputably proves the commission of crimes, the learned prosecutor added.

289. The learned prosecutor further submits that wanton destruction was carried out, in conjunction with the attack intending to terrorize and intimidate the survived residents of the crime locality and such terrorizing acts made the residents of the locality scared and they opted to deport to India. Such deliberate prohibited act caused immense mental torment to the survived residents which were rather attack against human right and normal human livelihood constituting the offence of crimes against humanity.

290. Mr. Abdus Sattar Palwan the learned defence counsel, on contrary submits that the witnesses relied upon by the prosecution testified untrue story implicating the accused, out of rivalry over land dispute; that the event alleged did not happen and the alleged victims died normally. The witnesses have

testified in a concerted way implicating the accused intending to grab his land property.

291. The charge framed arraigns that being an active part of the group formed of Pakistani occupation army and cohorts the accused Md. Abdus Samad @ Musa @ Firoz Kha participated in carrying out systematic attack at Santal para of village Paschimbhag under no.04 Valukgasi Union under police station-Puthia of District-Rajshahi, sharing common intent. The attack resulted in brutal killing of four civilians of Santal community and wanton destruction.

292. Out of four witnesses relied upon to prove the charge three are relatives of victims and they allegedly witnessed the killing and criminal acts carried out, in conjunction with the attack. Prosecution requires proving the commission of killing, wanton destruction carried out and accused's participation and concern therewith and the atrocities were carried out in context of war of liberation, violating the principles of international humanitarian law and laws of war.

293. We reiterate that the prosecution's burden in every case under the Act of 1973 includes the need to prove that the offences arraigned have been committed and also that

commission thereof was participated, facilitated, contributed and abetted by the accused, by his act or conduct forming part of attack or physical participation. Now, let us see how far the prosecution has been able to discharge the burden.

294. P.W. 08 Brajen Hemrom is the grand-son of one victim Lade Hemrom and three other victims were his relatives. P.W.08 witnessed the horrific act of deliberate killings. Testimony of P.W.08 demonstrates that on 19th April at About 07:00/07:30 P.M. a group formed of Pakistani occupation army being accompanied by the accused Md. Abdus Samad @ Musa @ Firoz Kha and his cohorts arriving by vehicles cordoned the Paschimbhag Santal Para and then started conducting the horrendous atrocities.

295. Defence could not controvert that the P.W.08 knew the accused beforehand as he was from their neighboring village. Besides, even in cross-examination of P.W.08 it has been affirmed that the accused was a resident of their neighbouring village under the same Union. Thus, it was quite natural of recognizing the accused and accordingly it stands proved that the accused Md. Abdus Samad @ Musa @ Firoz Kha actively accompanied the gang of attackers at the crime scene.

296. What happened next to launching attack at the Santal para?

It is evinced from testimony of P.W.08 that **Lade Hemrom [grand-father of P.W.08]**, the Headman of the Santal community and a follower of the war of liberation came out of the room as called by accused Md. Abdus Samad @ Musa @ Firoz Kha and then the accused indicating him uttered **ଓଘ ତ୍ଵିକ୍ଵି ଶେ ଆଁ ଗଞ୍ଜ ନିଂଵା, ଗଞ୍ଜି ଉଡ଼ି ନିଂଵା, ଗଞ୍ଜି ହିଁକ୍ଵି ମଘ_ଠ ନିଂଵା** [this man is a big shot, he is a Malaun(Hindu), supporter of the war of liberation]. With such instigating and inflammatory utterance the accused provoked the Pakistani army to shot him to death and then the Pakistani army gunned him down to death there.

297. Provocative act of the accused as transpired above was substantially intended to annihilate Lade Hemrom, a pro-liberation civilian. Inflammatory utterance the accused made was explicitly linked to cause death of Lade Hemrom by gun shot. What was the reason of targeting Lade Hemrom? It stands proved that he was a follower of the war of liberation and the Headman of Santal community.

298. Naturally, Pakistani occupation army was not at all acquainted with the pro-liberation civilians of rural vicinity. It may be safely inferred that the accused Md. Abdus Samad @ Musa @ Firoz Kha consciously and being imbued by the policy

and plan actively accompanied the gang in locating the civilians to be targeted and participated and contributed to the commission of the killing.

299. Testimony of P.W.08 depicts that he and his father after witnessing the killing, staying at the courtyard went into hiding instantly behind a tree adjacent to their house wherefrom they watched subsequent activities carried out by the gang. Going into hiding and practicability of seeing the activities therefrom, as testified could not be dislodged in any manner by the defenec. It stands proved too that the criminal gang materialized its mission by wiping out three more civilians of Santal community who happened to be the relatives of P.W.08 and ended its mission by wanton looting and burning down numerous houses. P.W.08, a direct witness narrated this phase of mission.

300. Unimpeached testimony of P.W.08 demonstrates that at this juncture of attack accused Md. Abdus Samad @ Musa @ Firoz Kha by inflicting indiscriminate sword blow chopped Kanu Hasda [husband of P.W.08's father's sister] and his [P.W.08] *dada* Jotu Soren to death. It is also evinced that the accused attacked Tunu Maddi [another *dada* of P.W.08] when he was heading towards their [P.W.09] house hearing gun firing and inflicted him sword blow that resulted in severe injuries. That is

to say, the accused was the actual perpetrator of killing these civilians belonging to Santal community and he committed it by inflicting sword blow, sharing common intent.

301. Facts unveiled indisputably lead to the unerring inference that the accused was a notorious loyalist of the Pakistani occupation army and with intent to provide them culpable support in carrying out atrocities he used to carry sword with him. It has already been proved that on the same day [19th April, 1071] at 12:00 noon, prior to the event of attack as arraigned in this charge the accused by inflicting indiscriminate sword blow caused death of three civilians [as arraigned in charge no.02]

302. Brutality did not end here. Looting was carried out and the house was set on fire and then injured Tunu Maddi was thrown into fire that resulted in his death. What a brutality! It is hard to believe that the accused was a human being.

303. The above tragic narrative remained uncontroverted. Defence simply suggested the P.W.08 that no such event happened; that the accused had no concern with the event alleged and they the witnesses grabbed land property of the accused after his arrest in connection with this case. P.W.08 denied all these unfounded defence claims. Defence could not negate the

credence of narrative made by P.W.08. We find no earthly reason to deduce that the P.W.08 has made an untrue account of the event. He is a natural and direct witness to the killing and accused's participation therewith. He is a near relative of victims and sustained extreme trauma as the brutality was carried out within his eye sight.

304. We got it proved too from unshaken testimony of P.W.08 that the gang, before it had left the site had carried out looting and burning down 40/50 houses of Santal para. What happened to the survived residents of Santal para, after the event?

305. It is found from unimpeached testimony of P.W.08 that after that event, they the residents of Santali Para deported to India, being gravely scared and returned back home after the independence achieved. That is to say, the barbaric event of attack that resulted in indiscriminate killing and wanton destruction not only made the survived residents traumatized but forced and coerced to deport to India which was sternly detrimental to normal livelihood.

306. P.W. 09 Sri Gubin Soren is another direct witness who too experienced the horrific attack. Narrative made by him gets consistent corroboration from the unshaken version the P.W.08

made on oath in Tribunal. We find no inconsistency and contradiction in their sworn testimony. Core essence of their testimony corroborates each other, in respect of the attack launched, commission of killing and participation of accused therewith.

307. It appears too from ocular testimony of P.W.09 that after launching attack victim Lade Hemrom came out from his home when spotting him, the accused provoked the occupation army by uttering that-- **ଠିକ୍ ତୁ ଏକ ଗ୍ୟାଙ୍ଗ୍ସ୍ଟର୍ ନାହିଁ, ଗ୍ୟାଙ୍ଗ୍ସ୍ଟର୍ସ୍ ମନୁଷ୍ୟ ନାହିଁ, ଡମ୍ବକ୍ସ୍ ଲାଜ୍ କିଞ୍ଚି ନୁହେଁ** [this man is Malaun(Hindu), associate of freedom fighters, he needs to be shoot out]. The army men instantly gunned him [Lade Hemrom] down to death there. P.W.09 witnessed the event staying besides the site. Defence could not dislodge it in any manner.

308. P.W.09 also saw the accused killing Kanu Hasda, the elder son-in-law of Lade Hemrom, Jotu Soren by inflicting sword blow. P.W.09 also had heartbreaking experience of seeing the accused chopping another victim Tunu Maddi by sword blow and causing his death by throwing him in fire. All the killings happened in the premises of Lade Hemrom's house.

309. The account made by P.W.09 in respect of killing three other civilians by inflicting sword blow demonstrates that it was none by the accused himself physically participated in perpetrating the killing. The version on it inspires credence as it gets full corroboration from the testimony of P.W.08, a direct witness. The witnesses, the relatives of victims on the face of attack went into hiding wherefrom they experienced the tragic brutal event. There has been nothing before us to show improbability of witnessing the criminal acts carried out, as testified by P.W.09.

310. P.W.09 admits , in reply to defence question that accused's father exchanged land property with that of **Matla Hemrom** and **Sokat Maddi** of the locality and accused had conflict with those two over land dispute and there had been no conflict between them[P.W.s] and the accused over land dispute. Be that as it may, we find no reason whatsoever to narrate untrue version by the P.W.08, P.W.09 and P.W.10, the witnesses relied upon to substantiate the arraignment brought in this charge.

311. Next, it appears that the event of attack arraigned in this charge [charge no.03] relates to killing of people of indigenous Santal community. But two other charges [charge nos. 01 and 02] relate to killing numerous pro-liberation Bengali civilians

who did not belong to any indigenous community. Thus mere putting such defence case in no way negates the prosecution case.

312. Tribunal notes that defence case, if any, needs to be substantiated and the burden lies upon the defence to make it believable. Prosecution is under no obligation to go forward with a showing that such defence case is untrue. Thus, the defence case that rivalry over land dispute between the accused and the prosecution witnesses, as agitated simply goes on air.

313. P.W. 10 Sree Sama Hasda is the son of one victim Kanu Hasda. In 1971 he was 35 years old. He too is a direct witness to the tragic event of killing his father and other relatives. It is found also from his uncontroverted testimony that the Pakistani occupation army being provoked by inflammatory utterance of the accused first gunned down Lade Hemrom, a potential follower of the war of liberation to death. P.W.10 remaining in hiding behind the cowshed observed this brutal act.

314. It stands proved also from testimony of P.W.10 that, in conjunction with the event, the accused Md. Abdus Samad @ Musa @ Firoz Kha chopped his father Kanu Hasda to death when he attempted to come out from house. Tribunal notes that

at this stage of deposition P.W.10 broke down into tears. Presumably, recollection of the horrific event made him pained and traumatized. Such demeanor of P.W.10 filled with pain as observed by the Tribunal adds credence to what he has testified. Defence does not seem to have made any effort to dislodge this crucial version which relates to active participation and concern of the accused in accomplishing the horrendous killings.

315. Uncontroverted ocular testimony of P.W.10 proves it too that in conjunction with the attack accused Md. Abdus Samad @ Musa @ Firoz Kha violently chopped his [P.W.10] uncle Jotu Soren to death, finding him in front of his house and the house of Tunu Maddi was set on fire, Tunu Maddi who sustained sword blow injuries inflicted by the accused was thrown into fire that resulted in his death.

316. The occupation army, accused and his accomplices, before they had quitted the site carried out looting in 8/9 houses and burnt down 40/50 houses, it also stands proved by uncontroverted testimony of P.W.10. This piece of corroborative version relates to wanton destruction directing normal livelihood of the civilian population. It mirrors extreme aggression of the gang towards the Santal people who were in favour of the war of

liberation. Such prohibited acts indisputably caused grave mental suffering to the survived people of the vicinity attacked.

317. Deportation of the survived residents of the locality to Maldah, India as testified by the P.W.10 added further attack on human dignity and normal livelihood. P.W.08 and P.W.09 also consistently testified it. Defence could not refute it in any manner.

318. P.W. 07 Silbester Soren @ Gedu Soren is a hearsay witness. He testified the killing four Santal civilians and accused's participation therewith. It is not clear as to from whom and when he heard the event. However, the settled jurisprudence permits to act even upon anonymous hearsay evidence if it gets corroboration from other evidence. The arraignment brought in this charge rests upon three direct witnesses. Hearsay evidence of P.W.07 gets corroboration from those three ocular witnesses.

319. P.W.07 denied the defence suggestion put to him that the Santals he named died normally. Suggesting such speculative and unbelievable story does not diminish the arraignment in any manner. Putting such unfounded defence suggestion seems to be a futile effort to negate the prosecution case. Besides, such defence claim does not create any degree of doubt as to

commission of the killing and participation of the accused therewith.

320. The attack against the civilians belonging to Santal community was carried out not only on a discriminatory basis, that is, on ethnic ground. The inflammatory instigating utterance of the accused before gunning down the victim Lade Hemrom to death rather suggests that the gang formed of Pakistani occupation army being accompanied by the accused intended to annihilate the pro-liberation civilians, irrespective of race , ethnicity and religion, to further policy and plan.

321. Intrinsic pattern of attack, wanton destructive activities carried in juncture of attack obviously created horror, coercion and intimidation to the survived people of the indigenous community which caused immense mental pain and suffering. Such prohibited activities were perpetrated as part of a systematic attack.

322. Deliberate infliction of such trauma, mental pain and sufferings constituted the offence of 'torture', we conclude. In this regard we recall the observation made by the **ICTR Trial Chamber** in the case of **Ntagerura, Bagambiki, and Imanishimwe** which is as below:

“Torture as a crime against humanity is the intentional infliction of severe physical or mental pain or suffering for prohibited purposes including: obtaining information or a confession; punishing, intimidating, or coercing the victim or a third person; or discriminating against the victim or a third person.”

[Ntagerura, Bagambiki and Imanishimwe, ICTR Trial Chamber, February 25, 2004, para. 703]

323. Additionally, the witnesses, the near relatives of victims watched the tragic fate of their dear ones. Naturally they sustained serious mental harm by witnessing the barbaric acts that resulted in killing of their dear ones. This view finds support from the observation made by the **ICTR Trial Chamber** in the case of **Kayishema and Ruzindana which is as below:**

“The Chamber is in no doubt that a third party could suffer serious mental harm by witnessing acts committed against others, particularly against family or friends.”

**[Kayishema and Ruzindana,
ICTR Trial Chamber, May 21,
1999, para. 153]**

324. In the case in hand, facts and pattern of attack lead to the conclusion that pursuant to designed plan the accused voluntarily participated in all aspects of the designed attack, as an active and loyal activist of the Pakistani occupation army. Intention was to further the object of the criminal mission. It is now jurisprudentially agreed that when criminal purpose is carried out by a group pursuant to common design there exists no distinction between the 'finger man' and the 'trigger man'.

325. Accused Md. Abdus Samad @ Musa @ Firoz Kha was not the actual perpetrator of one victim Lade Hemron. But it is now jurisprudentially settled that the offence of murder as a crime against humanity does not require the prosecution to prove that the accused personally committed the killing. Personal commission is only one of the modes of responsibility. However, it stands well proved that his substantial contribution and inflammatory instigation instantly prompted the commission of the killing of Lade Hemrom.

326. Provocative act of the accused was indeed directed to assist and encourage and to lend support to the perpetration of annihilation of the victim Lade Hemrom. Such instigating act

had a substantial effect upon the accomplishment of the killing. Obviously it was forceable to the accused that his reckless instigating act might well result in the killing of Lade Hemrom.

327. We find evidential basis to conclude that the accused Md. Abdus Samad @ Musa @ Firoz Kha, his cohorts and Pakistani occupation army men forming a group had acted together to further a common criminal purpose and thus the killing of Lade Hemrom perpetrated by army man entails the criminal liability of all the members of the group to which the accused too was an active part. Therefore, the accused is equally guilty, as a co-perpetrator under the propounded doctrine of 'common enterprise'.

328. More so, on totality of evidence tendered it is found proved that the attack was designed and planned to which the accused was a conscious part. The accused is found to have had actual participation in effecting the killing of three other victims in extremely brutal manner, in conjunction with the attack. Viciousness the accused had shown in committing killing of three other Santals, in conjunction with the attack exceeded all limits. Deliberate beastly and antagonistic attitude of the accused towards unarmed civilians, as found proved leaves no room to say that he was a human being. Rather, he had acted as a

‘butcher’. Such brutality is indeed a fragmented portrayal of horrific atrocities carried out in 1971 during the war of liberation directing civilian population.

329. The group of attackers not only calculated to accomplish the killing four civilians of Santal community. It also carried out devastating activities by looting and burning down numerous houses by setting those on fire, knowing consequence of the proscribed effect upon the survived residents of the locality. **The ICTY Trial Chamber** observed in the case of **Brdjanin** that--

“The destruction or devastation must have been either perpetrated intentionally, with the knowledge and will of the proscribed result, or in reckless disregard of the likelihood of the destruction or devastation.”

[Brdjanin, ICTY Trial Chamber, September 1, 2004, para. 593]

330. In the case in hand, prohibited acts of devastating activities forming part of systematic attack were deliberately directed against non-combatant civilians belonging to an indigenous community, in addition to causing deaths of civilians. The perpetrators accompanied by the accused also carried out extensive and unlawful appropriation of civilians’ objects, by

carrying out intentional and indiscriminate looting and arson. In respect of effect of such devastating activities Tribunal-2[ICT-2] in the case of **Md. Mahidur Rahman & Md. Afsar Hossain @ Chutu** observed that--

“Causing harm by plundering and burning down the properties of civilians indeed involved serious despondency to the victims of the attack. Physical injury or harm might not have caused to any individual by such extensive destruction. But weight is to be given to the malicious intent behind such destructive activities. Destruction of numerous houses and belongings of innocent civilians by launching such organised attack was indeed express great contempt for the people and their normal livelihood.”

[Md. Mahidur Rahman & Md. Afsar Hossain @ Chutu, ICT-2, Judgment 20 May, 2015, para 222]

331. Therefore, we are convinced to conclude that the upshot of devastating activities by looting and arson causing grave detriment to the normal livelihood of survived residents and

relatives of victims constituted the offence of ‘other inhumane act’ as crime against humanity. In this regard **ICT-1** in the case of **Shamsul Hossain Tarafdar @ Ashraf and four others** has observed its view that--

“Destruction of civilians’ property by launching attack indubitably had detrimental effect on individuals’ fundamental right to maintain normal and smooth livelihood and thus it caused enormous mental harm to the victims. The civilians were non combatants. The object of such destructive activities was to terrorize the innocent civilians, which eventually constituted the offence of ‘other inhuman act.’”

[Shamsul Hossain Tarafdar @ Ashraf and four others, 10 January 2018, ICT-1, para213]

332. Tribunal next notes that causing ‘deportation’ under coercion and by creating frightening situation constitutes an offence as crime against humanity. It is now well settled jurisprudential proposition.

333. The destruction of homes of civilians, the brutality of the killings of perceived followers of war of liberation, amounted to

coercion, which eventually forced the residents of the attacked locality to leave their homes and seek shelter in India, crossing border of territory of Bangladesh, finding no other alternative. ‘Force’ need not be limited to physical force. It may be caused even by spreading coercion, panic and terror. In this regard we recall the observation made by the ICTY in the case of **Milorad Krnojelac** which is as below:

“Deportation is illegal only where it is forced. “Forced” is not to be interpreted in a restrictive manner, such as being limited to physical force. It may include the “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment. The essential element is that the displacement be involuntary in nature, where the relevant persons had no real choice.”

[Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, ICTY Trial Chamber, Judgment 15 March 2002, para. 475]

334. In light of factual matrix we thus opt to deduce that all those prohibited devastating acts were calculated to spread

intimidation and horror which collectively made the survived residents frightened and coerced that resulted in their deportation to India, leaving their own homes.

335. In view of reasoned deliberation as made above we are convinced to deduce that the proved crimes committed during that period of war of liberation in 1971 in the territory of Bangladesh were the consequence of part of a 'systematic' attack directed against the unarmed civilian population. This 'context' itself prompts to conclude that the offences as 'crimes against humanity', enumerated in section 3(2) of the Act of 1973 were inevitably the effect of part of widespread or systematic attack.

336. On cautious and rational appraisal of evidence presented we arrive at unanimous decision that the prosecution has been able to prove that the accused Md. Abdus Samad @ Musa @ Firoz Kha , a notorious loyalist of Pakistani occupation army, being an active member of the group of attackers , by his act and conduct forming part of systematic attack consciously participated, aided, abetted, instigated, substantially contributed to the commission of the offences of '**other inhumane act**' , '**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 is found criminally liable under section 4(1) of the Act.

Adjudication of Charge No.04

[Narrated as event no. 02: page 30-32 of the Formal Charge]

[Offence of murder of 01 civilian of village Dhokrakul of no.04 Valukgasi Union under police station Puthia of District Rajshahi]

337. Charge: That on 20 April 1971 in early morning 07:30 A.M the accused Md. Abdus Samad alias Musa alias Firoz Kha and his accomplices killed Chandu Soren of village- Mohipara under police station-Puthia of District Rajshahi by inflicting sword blow on chasing him at a place west to Puthia-Taherpur road of village Dhokrakul when he was on the way to meet his relative at Santal Para of village-Paschimbhag.

On hearing the event of killing Chandu Soren the son of the victim and victim's family inmates got sheltered at Godagari, Rajshahi, quitting their house being feared. 10/12 days later they returned back home and found the victim's body lying at the place where he was killed. The scrappy body was then buried near their house.

Therefore, the accused Md. Abdus Samad alias Musa alias Firoz Kha participated, facilitated, abetted and substantially contributed, by his culpable act and conduct forming part of systematic attack to the commission of offences of 'torture' and

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

Evidence of Witnesses Examined

338. The arraignment involving brutal killing of an unarmed member of Santal community rests upon testimony of four witnesses namely P.W.04, P.W.05, P.W.,06 and P.W.07. Of them, P.W.07 is the son of victim and the rest three witnesses allegedly had occasion of seeing the event of attack. Before we evaluate what they have testified on dock let us see the narrative made by them.

339. P.W. 04 Md. Zillur Rahman [58] is a resident of village-Dhokrakul under police station-Puthia of District Rajshahi. In 1971, he was around 12 years old. He is a direct witness to the facts materially related to the event of attack.

340. Before narrating the facts relating to the event in question P.W.04 stated that on 18th April, 1971 Razakar Abdus Samad @ Musa and his cohorts and Pakistani occupation army started patrolling around their locality, coming by 8/10 army vehicles which created panic around their locality.

341. P.W.04 next testified that on 20th April, 1971 at around 07.00-07.30 A.M. he went to the field at Dhokrakul Chatnitola taking breakfast with him for the laborer working there namely Makhon and Fulbash. After some time he saw Razakar Abdus Samad @ Musa and his 3/4 accomplices chasing Chandu Soren, from south to north, brandishing swords. Being chased, Chandu Soren fell on the land of one Abdul Aziz which was next to their [P.W.04] land. Then Razakar Abdus Samad @ Musa with the sword in his hand chopped Chandu Soren to death and then quitted the scene.

342. P.W.04 is a direct witness to the attack arraigned. At the relevant time he had been the field at Dhokrakul Chatnitola . The event happened in day time. His testimony depicts that he saw the accused Abdus Samad @ Musa and his 3/4 accomplices chasing Chandu Soren, from south to north, brandishing swords. At a stage, being chased, Chandu Soren fell on the land of one Abdul Aziz when accused Abdus Samad @ Musa with the sword in his hand chopped Chandu Soren to death there. Defence could not controvert the attack that resulted in brutal killing of Chandu Soren, as testified by P.W.04.

343. P.W.07 is the son of victim. It transpires from the narrative made by him that instantly after the event they being scared had

opted to get displaced quitting their home and 10/12 days later they came back. Presumably, the coercive situation arising out of the event of attack they had no choice excepting to get displaced. The totality of the event indisputably caused grave fear, threat and coercion which compelled them to get displaced and it was detriment to normal livelihood of civilians.

344. Tribunal notes that non-physical aggressions such as the infliction of strong fear or strong terror, intimidation or threat are also serious mental harm. The son and relatives of victim were rather subjected to mental harm by such horrific and intimidating situation which constituted the offence of 'other inhumane act' as crime against humanity.

345. P.W.04 next stated that he, two laborers working at their field, Belal, his father Badesh Mondol and Abdur Rahim who were working in the adjacent field moved forward and found Chandu Soren's dead body with injury marks. Then they coming back home informed Chandu Soren's son Gedu Soren about the killing of his father. Later, he came to know that Chandu Soren's son Gedu Soren along with his relatives went to the crime site, 10/12 days later when they collected the remains of his father's dead body which were by then already eaten by foxes, dogs etc. and buried those at their home.

346. P.W. 04 next stated that he knew the Razakar Abdus Samad @ Musa son of Haji Abbas Ali as his house was next to their land. In 1971, Abdus Samad @ Musa was 18/20 years old and he had a daughter. In 1971 Razakar Abdus Samad @ Musa and his cohort Razakars and relatives had carried out indiscriminate killing civilians, looting and arson around their localities.

347. Finally, P.W.04 stated that father of Razakar Abdus Samad @ Musa exchanged his property in Murshidabad with that of member of indigenous Santal community Sokat Maddi, Robi Tudu in 1964 and started living here permanently. After the independence achieved on 16th December, 1971 Razakar Abdus Samad @ Musa returned back to Murshidabad with all his family inmates and sent those Santal people back in Bangladesh. After the brutal killing of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman and his family members on 15th August, 1975 taking the advantage of changed political scenario, Razakar Abdus Samad @ Musa came back and started living in a rented house at Pachani bazaar of Puthia Thana of Rajshahi District.

348. In cross-examination, P.W.04 in reply to defence suggestion admitted that accused Abdus Samad @ Musa had exchanged land with that of the Santals he named and there might be dispute over exchange of land between them.

349. P.W.04 denied the defence suggestions that Chandu Soren was not killed as testified by him; that Chandu Soren died after independence of Bangladesh, over land dispute; that the accused was not a Razakar; that he was not engaged in committing the event he testified; he testified implicating the accused falsely intending to garb property of accused Musa and that they already grabbed his property, after his arrest.

350. P.W. 05 Md. Belal Hossain [62] is a resident of village-Dhokrakul under police station- Puthia of District Rajshahi. In 1971 he was 14 years old. He claims to have witnessed the event of attack.

351. P.W.05 stated that during the glorious Liberation War he used to work as an associate of freedom fighters of their locality. At that time Razakar Abdus Samad @ Musa, his brother Razakar Osman [now dead], his cousin brother Razakar Del Mohammad [now dead], Razakar Didar [now dead], and Razakar Solaiman [now dead] used to act as collaborators of Pakistani occupation army.

352. In respect of the attack in question P.W.05 stated that on 20th April, 1971 at dawn his father took him to plough land at Chatnitola under Dhokrakul mouja. At around 07:00/07:30 A.M.

while they had been working in the land, they saw Razakar Abdus Samad @ Musa, accompanied by 3/4 associates chasing Chandu Soren, brandishing a sword from south to north. Then Razakar Abdus Samad @ Musa with the sword in his hand chopped Chandu Soren to death, in the land of Abdul Aziz, about 100/150 yards far from their [P.W.05] land. After the departure of Razakars, he [P.W.05], his father, Makhon [now dead], Fulbash [now dead] and Zillur Rahman moved to the crime scene and found the wounded dead body of Chandu Soren. Then being gravely scared they went back home.

353. P.W.05 also stated that on the following day when they went to work in the field, they found the dead body of Chandu Soren was being eaten by carnivorous animals. Finally, P.W.05 stated that the accused Razakar Abdus Samad @ Musa's home was next to their land and that's why he knew him beforehand.

354. In cross-examination P.W.05, in reply to defence question, could not confirm whether the Razakar Abdus Samad @ Musa exchanged his property in Murshidabad with that of members of indigenous Santal community. P.W.05 also could not say whether the Razakar Abdus Samad @ Musa has any sort of land dispute with Santal community.

355. P.W.05 denied the defence suggestions that accused's father was killed by his counterpart over land dispute in 1971; that he and other witnesses testified implicating the accused intending to grab his property; that what he testified was untrue; that the accused was not a Razakar and was not affiliated in committing the offences alleged and that he did not see the event he testified.

356. P.W. 06 Md. Anisur Rahman Jamal [73] is a resident of village-Tentulia under police station- Puthia of District Rajshahi. In 1971 he was 26 years old and was engaged in running a grocery shop. He allegedly saw the act of killing in question.

357. P.W.06 stated that on 20th April, 1971 at around 07:00/07:30 A.M. he was on his way to Puthia, by riding bicycle. When he arrived at Chatnitola he witnessed Razakar Abdus Samad @ Musa and his 3/4 cohort Razakars chasing Chandu Soren from south to north, holding swords. At a stage, Razakar Abdus Samad @Musa with the sword in his hand chopped Chandu Soren to death and then they quitted the site.

358. Finally, P.W.06 stated that the accused Razakar Abdus Samad @ Musa's was from their neighboring village and that's why he knew him beforehand. In 1971, the accused was 18/20 years old.

359. In cross-examination P.W.06 in reply to defence question stated that the mentioned Chandu Soren belonged to Santal community; that he heard that the Razakar Abdus Samad @ Musa exchanged his property in Murshidabad with that of member of indigenous Santal community. However, he could not say whether there was any hostility between accused's family and Santals over the exchanged land dispute.

360. In cross-examination P.W.06 denied the defence suggestion that accused's father was killed by his counterpart over land dispute in 1971; that Chandu Soren was killed, after independence by his counterpart over land dispute; that he and other witnesses testified implicating the accused intending to grab his property; that what he testified was untrue; that the accused was not a Razakar and was not affiliated in committing the offences alleged and that he did not see the event he testified.

361. P.W. 07 Silbester Soren @ Gedu Soren [83] is a resident of village- Mohipara under police station- Durgapur of District Rajshahi. In 1971 he was 36 years old. He is the son of the victim Chandu Soren. He is a hearsay witness. At the relevant time he had been at their home.

362. Finally, the witness stated that Razakar Abdus Samad @ Musa exchanged his property in Murshidabad with that of member of indigenous Santal community and since then he knew the accused.

363. In cross-examination, P.W.07 stated that he did not know how many acres of land the accused got through exchange. He could not say whether the father of the accused got killed in 1971 due to the dispute over land and that he did not know the father of the accused.

364. P.W.07 denied the defence suggestions that the accused was 13/14 years old in 1971; that he got married 10 years after independence; that the accused was not a Razakar and was not involved in committing the event alleged; that Chandu Soren died after independence by his counterpart over land dispute and that he testified implicating the accused intending to grab his property.

Finding with Reasoning on Evaluation of Evidence

365. Mr. Zahid Imam, the learned prosecutor drawing attention to the testimony of P.W.04, P.W.05, P.W.,06 and P.W.07 argued that the killing was committed by a group formed of

accused Md. Abdus Samad @ Musa @ Firoz Kha and his cohorts. The attack was directed against an unarmed civilian and was conducted in day time. The event arraigned was recurrence of event of attack conducted on 20th April 1971 directing the Santal community [as arraigned in charge no. 03].

366. The learned prosecutor submits that out of four witnesses relied upon in support of this charge three are direct witnesses and they knew the accused beforehand and thus it was possible of recognizing the accused when he physically participated in committing the killing Chandu Soren by inflicting sword blow. Defence could not impeach what the P.W.s testified in relation to the perpetration of the killing by aggressively chasing the victim.

367. The learned prosecutor further submits that some imaginative defence cases have been agitated by putting those in the form of suggestions to the P.W.s. Mere denial of facts testified and putting such unfounded defence cases do not negate the prosecution case. Defence could not bring any proof or credible indication to make any of those believable, the learned prosecutor added.

368. On contrary, **Mr. Abdus Sattar Palwan**, the learned defence counsel argued that the accused has been falsely

implicated with the alleged event out of rivalry over land dispute and thus and unexplained delay in bringing prosecution against the accused has created reasonable doubt as to truthfulness of accusation brought; and that no event alleged took place and the victim was not killed by launching alleged attack.

369. The arraignment brought in this charge chiefly rests upon three direct witnesses who have been examined as P.W.04, P.W.05 and P.W.06. P.W.07 is the son of victim. He is a hearsay witness and testified facts related to the event. The alleged event of attack happened on 20th April 1971 in day time and the group of attackers was formed of the accused and some of his cohorts. The victim Chandu Soren belonged to local Santal community.

370. P.W.04 is a direct witness to the attack arraigned. At the relevant time he had been in the field at Dhokrakul Chatnitola. The event happened in day time. His testimony depicts that he saw the accused Md. Abdus Samad @ Musa and his 3/4 accomplices chasing Chandu Soren, from south to north, brandishing swords. At a stage, being chased, Chandu Soren fell on the land of one Abdul Aziz when accused Md. Abdus Samad @ Musa with the sword in his hand chopped Chandu Soren to death there. Defence could not controvert the attack that resulted in brutal killing of Chandu Soren, as testified by P.W.04.

371. Had there been any practicable reason of recognizing the accused in conducting the attack? It appears that P.W. 04 knew the accused Md. Abdus Samad @ Musa son of Haji Abbas Ali as his house was next to their [P.W.04] land. It could not be shaken in cross-examination.

372. Thus, and since the event happened in day time it was quite practicable of recognizing the accused and his cohort attackers. In absence of anything contrary ocular testimony of P.W.04 so far as it relates to the commission of the crime and involvement of the accused therewith inspires credence.

373. It also transpires that coming back home P.W.04 informed Chandu Soren's son Gedu Soren[P.W.07] about the killing of his father; that 10/12 days later Gedu Soren collected the remains of his father's dead body from the crime scene which were by then already eaten by foxes, dogs etc. and buried those at their home.

374. The above piece of unshaken version goes to show that the victim was annihilated at the crime scene testified which adds assurance to the fact of attack upon the victim. Presumably, the son and family inmates could not collect the dead body of victim for the reason of horror arising out of the event of attack.

375. It is evinced from unshaken testimony of P.W.04 that on 18th April, 1971 accused Razakar Md. Abdus Samad @ Musa and his cohort Razakars and Pakistani occupation army started patrolling around their locality, coming by 8/10 army vehicles which created panic around their locality.

376. The above unshaken version of P.W.04 depicts a pertinent fact which is unerring indicia that the accused got engaged with the Pakistani occupation army as its loyal associate even prior to the events of attacks carried out on 19th and 20th April 1971 and later on he and his cohorts got enrolled in Razakar Bahini.

377. P.W.07 is the son of victim. It has been divulged from the narrative he made that instantly after the event they being scared had opted to get displaced quitting their home and 10/12 days later they came back. Presumably, the coercive situation arising out of the event of attack they had no choice excepting to get displaced. The totality of the event indisputably caused grave fear, threat and coercion which compelled them to get displaced and it was detriment to recognized normal livelihood of civilians.

378. Tribunal notes that non-physical aggression such as the infliction of strong fear or strong terror, intimidation or threat is also serious mental harm. The son and relatives of victim were

thus rather subjected to mental harm by such horrific and intimidating situation which constituted the offence of 'other inhumane act' as crime against humanity.

379. P.W. 05 Md. Belal Hossain, another direct witness along with his father was engaged in ploughing land at Chatnitola, at the relevant time when he saw the event of attack chasing victim Chandu Soren. His testimony demonstrates that in the land of one Abdul Aziz, about 100/150 yards far from their[P.W.05] land accused Md. Abdus Samad @ Musa with the sword in his hand chopped Chandu Soren to death.

380. Defence could not dispute the above ocular narrative of P.W.05. Besides, this crucial version gets corroboration from the testimony of P.W.04, a direct witness. Accused Md. Abdus Samad @ Musa's home was next to their land and that's why he knew him beforehand. It was thus fairly possible of recognizing the accused in conducting the attack and committing the killing.

381. P.W. 06 Md. Anisur Rahman Jamal had occasion of watching the event of attack. His testimony portrays that on 20th April, 1971 at around 07:00/07:30 A.M. he was on his way to Puthia, by riding bicycle and when he arrived at Chatnitola [the crime site] he saw accused Md. Abdus Samad @ Musa and his

3/4 cohort Razakars chasing Chandu Soren from south to north, holding swords and at a stage, accused Md. Abdus Samad @ Musa with the sword in his hand chopped Chandu Soren to death there and then they quitted the site.

382. Defence does not seem to have attempted any effective effort to refute the above version, by cross-examining the P.W.06. It appears that the accused Razakar Md. Abdus Samad @ Musa was from their [P.W.06] neighboring village. Thus, naturally P.W.06 could recognize the accused in committing the brutal killing.

383. P.W.07 next , in respect of the event of his father's killing stated that on hearing the event of killings carried out on 19th April[as arraigned in charge no.03], his father Chandu Soren on the following day i.e. 20th April, 1971 at about 07:00 A.M started moving to see the dead bodies of victims. This fact is relevant to the event. Defence does not appear to have been able to impeach it.

384. It appears that next, P.W.07 heard that when his father arrived at Puthia-Taherpur road Razakar Abdus Samad @ Musa and his accomplice Razakars started chasing him brandishing a sword and at a stage, at the land of one Abdul Aziz of Dhokrakul

mouza Razakar Md. Abdus Samad @ Musa chopped his father to death [at this point the P.W.07 broke down into tears].

385. How the P.W.07 and family inmates of the victim reacted on hearing the tragic event of killing Chandu Soren? It transpires from testimony of P.W.07 the son of victim that having heard the event they became scared and thus they fled to Godagari and 10/12 days later coming back home collected the remains of the dead body of his father Chandu Soren which was mostly eaten by the carnivorous animals and they dumped those.

386. Three witnesses P.W.04, P.W.05 and P.W.06 are direct witnesses to the act of attack that resulted in dreadful killing one civilian Chandu Soren. The event happened in day time. Consistently corroborative evidence of these three P.W.s indubitably proves that a group formed of accused and his 3/4 cohorts carried out the attack and on chasing the victim accused himself caused his death by inflicting sword blow.

387. The victim admittedly belonged to local Santal community. It has already been proved that on the preceding day the accused accompanied the Pakistani occupation army in carrying out attack at Santal para when on his tangible provocation one Lade Hemrom was shot to death and he himself by inflicting swords

blows killed three others, the relatives of Lade Hemrom perceiving them followers of war of liberation. Thus, we may safely infer that attacking Chandu Soren on the following morning was chained to the event of systematic attack happened on the preceding day at Santal para and to further the same purpose.

388. Role of accused that he had played in conducting the recurrent attack demonstrates that he was a notorious loyalist of Pakistani occupation army and thus he got devotedly engaged in conducting such prohibited and designed systematic attack directing defenceless civilians, irrespective of race and religion.

389. Defence could not impeach the event of attack that resulted in horrendous killing of Chandu Soren, as testified by the P.W.s. It also transpires from the testimony of P.W.07, the son of victim that being gravely scared they instantly got displaced leaving own home and 10/12 days later coming back home they recovered the remains of his father's dead body from the crime scene. It remained undisputed. P.W.07 is a heresy witness about the killing of his father.

390. Testimony of P.W.04 depicts that just after he watched the event rushed to the son of victim and disclosed how and by

whom his father was chopped to death by sword blow. Presumably, such tragic information readily made the relatives of victim seriously pained and panicked which forced them to opt to get displaced. Family inmates of the victim thus became the victims of persecutory act. In fact, coercive climate arising out of the attack compelled them to flee, leaving own homes. Such internal displacement under coercion and intimidation constituted the offence of 'other inhumane act' as crime against humanity.

391. The learned defence counsel argued that the accused has been falsely implicated with the alleged event out of rivalry over land dispute and thus and unexplained delay in bringing prosecution against the accused has created reasonable doubt as to truthfulness of accusation brought.

392. It has been proved that the accused's father migrated to the then East Pakistan by exchanging land property with that of two Santal civilians of the locality under Puthia police station of Rajshahi and later on such exchange was cancelled in 1972 as accused's family returned back to India. Already we have resolved it in the relevant segment of the judgment.

393. Now, it could not be shown by the defence that any of prosecution witnesses is relative of those two Santal civilians. Thus, the prosecution witnesses examined cannot be said to have testified implicating the accused falsely. We are not at all agreed with the defence submission.

394. Next, defence could not bring any proof in support of the defence suggestion put to witnesses that victim Chandu Soren died after independence of Bangladesh.

395. Finally, we are not agreed with the defence submission that delayed prosecution creates doubt as to truthfulness of the arraignment. We reiterate that mere delayed prosecution does not diminish the truthfulness of the arraignment. On the issue of delayed prosecution resolved by the Tribunal [ICT-2] in the case of *Abdul Quader Molla* the Appellate Division of Bangladesh Supreme Court, on appeal, has observed that ---

“Allegation of long delay can also hold no water as it is an universally recognised principle of law that a criminal case is not hurdled by any limitation as to time. No law requires the prosecution to offer any explanation for delay and in any case, delay in respect to the present prosecution is self explanatory given

the circumstances and the events that proceeded following the assassination of the Father of the Nation who led the country to the Liberation War and the resultant victory.....It is not correct to say that a criminal trial shall fall apart simply because of delayed indictment. While unexplained delay may shed doubt, a case cannot ipso facto fail for that reason alone if evidence are overwhelming as in this cases.

[Justice A.H.M Shamsuddin Chowdhury: Judgment: 17.9.2013 in Criminal Appeal Nos. 24-25 of 2013, Page 750-751].

396. In light of consistently corroborative evidence as discussed above , It has been proved beyond, reasonable doubt that the accused Md. Abdus Samad @ Musa @ Firoz Kha had physically participated in committing the killing of victim Chandu Soren, in extremely beastly manner. Accused is found to have had direct and actual participation in accomplishing the killing a defenceless civilian, forming part of systematic attack. By such beastly deliberate act the accused proved himself to be a monstrous one. It stands well proved.

397. In the case in hand the defence could not impeach the fact of launching attack on victim Chandu Soren, a defenceless civilian and causing his death by inflicting violent sword blow by the accused. Defence merely denied it in cross-examination. But such mere denial is not at all sufficient to taint the truthfulness of witnesses' sworn testimony. We concede with the submission advanced in this regard by the learned prosecutor. In this regard we recall the observation made by 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]

398. Additionally, it appears that three specific defence cases have been agitated by putting suggestion to the P.W.s intending to negate the happening of the event and accused's participation therewith. These are-- (i) the accused was 13/14 years old in

1971 (ii) that he got married 10 years after independence and (iii) that Chandu Soren died after independence by his counterpart over land dispute.

399. But defence does not seem to have made any degree of effort to make any of those defence claims probable or substantiated, either by cross-examining the P.W.s or by adducing any kind of proof. Thus, mere putting such unfounded defence case does not negate the truthfulness of the arraignment, in any manner.

400. The event of attack under adjudication involves brutal killing of a single individual. But it was the upshot of systematic attack and directed against civilian population. It is now settled that the 'Context' existing in 1971 allowed the Pakistani occupation army and their local collaborators, the perpetrators to conduct the horrendous criminal acts directing civilian population.

401. The phrase 'civilian population' does not encompass the entire population. It is now well settled that the word 'population' does not mean the entire population of the geographical entity in which the attack was launched.

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

403. Thus, even targeting a single individual 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]

404. On integrated evaluation of evidence adduced leads us to the conclusion that the prosecution has been able to prove it beyond reasonable doubt that the accused Md. Abdus salad @ Musa @ Firoz Kha, a notorious collaborator and loyalist of Pakistani occupation army being accompanied by a group of his cohorts had carried out the systematic attack deliberately that eventually resulted in brutal killing of one Santal civilian and temporary displacement of relatives of victim, under coercion. Therefore, the accused Md. Abdus Samad @ Musa @ Firoz Kha is found criminally liable for committing offences of **‘murder’** and **‘other inhumane act’** 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.

X. Conclusion

405. The accused Md. Abdus Samad @ Musa @ Firoz Kha is found criminally liable for his culpable acts and conduct, forming part of systematic attack. We have got it well proved that the accused knowingly and consciously participated in the commission of offences, arraigned in all the four charges, violating international humanitarian law. Mode of participation of accused in criminal enterprise directly and substantially

contributed the accomplishment of the purpose of the events of attacks.

406. It has been proved too that being enthused by the policy and plan of the Pakistani occupation army the accused, being part of the calculated criminal mission and sharing common purpose culpably participated to the commission of crimes, the upshot of systematic attacks.

407. In the case in hand, it stands proved that the events of attacks as narrated in all the charges eventually ended in deliberate and barbaric killing of numerous civilians perceiving them to be the followers of the war of liberation. Pattern and extent of the proved crimes arraigned in all the four charges leave no room to conclude that those were isolated crimes. Rather, those crimes were committed in context of war of liberation, in systematic manner.

408. It has been proved that the victims were selected to wipe out with extreme aggression and accused was an active and monstrous associate of the criminal gang in executing the outrageous designed mission.

409. The prohibited acts constituting the diabolical offences proved were not divisible from the horrendous atrocities committed in the territory of Bangladesh in 1971 during the war of liberation. It has now become an undeniable history.

410. The Tribunal already rendered its reasoned decision, based on evidence that the accused is criminally liable for the commission of crimes proved as listed in all the four charges involving the offences as crimes as against humanity and therefore, he be convicted accordingly and the Tribunal, in exercise of its judicial discretion keeping the provision contained in section 20(2) of the Act of 1973 requires to award sentence for the offences proved.

XI. VERDICT ON CONVICTION

411. For the reasoned findings set out in our unanimous Judgment, by adjudicating all the four charges and having considered all evidence and arguments tendered, we unanimously find the accused **Md. Abdus Samad @ Musa @ Firoz Kha** guilty and criminally liable beyond reasonable doubt as below:

Charge No.1: GUILTY of the offence of participating, aiding, abetting and substantially

contributing to the commission of the offences of **‘abduction’, ‘torture’ and ‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus he incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

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

Charge No.3: GUILTY of the offence of participating, aiding, abetting, instigating and substantially contributing to the commission of the offences of **‘other inhumane act’ , ‘torture’ and ‘murder’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus he incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.4: GUILTY of participating and committing to the commission of the offences of **‘murder’** and **‘other inhumane act’** 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 and thus he incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

XII. Verdict on sentencing

412. **Mr. Zahid Imam** the learned prosecutor concluded the summing up by advancing justification on awarding highest punishment to the convicted accused as he is found guilty for the enormously barbaric acts he had deliberately carried out directing civilian population which constituted the offences as crimes against humanity. The barbarity the accused Md. Abdus Samad @ Musa @ Firoz Kha had shown by physical participation to the commission of all the crimes proved deserves to be considered as aggravating factor in awarding highest sentence, although it is not sufficient to reduce the untold pain and trauma of victims and relatives of victims, the learned prosecutor added.

413. The learned prosecutor further agitated that all the four charges involve killing numerous pro-liberation civilians including the civilians of local Santal community. All the events of deliberate attacks were carried out in day time. Accused Md.

Abdus Samad @ Musa @ Firoz Kha had played active role as a notorious associate of the Pakistani occupation army.

414. On contrary, **Mr. Abdus Sattar Palwan** the learned defence counsel submitted that since the prosecution failed to prove the alleged arraignments by presenting credible evidence and since the accused has been prosecuted simply out of rivalry he deserves acquittal.

415. In the case in hand, accused Md. Abdus Samad @ Musa @ Firoz Kha has been tried and found guilty beyond reasonable doubt for the dreadful crimes committed directing civilian population in 1971 during the war of liberation.

416. Tribunal notes that in assessing the aggravating factors we must need to eye on the pattern and extent of the offences committed, their scale, the role the accused had played in participating and facilitating the accomplishment of crimes, and the trauma and harm sustained by the victims and their families.

417. It is to be noted that commission of offences as specified in the Act of 1973 itself portrays enormity, gravity and diabolical nature of the crimes. As regards sentence, section 20(2) of the Act of 1973 provides the 'sentence of death' or such other

punishment proportionate to the gravity of the crime. In this regard **the Appellate Division** of Bangladesh Supreme Court in the **Criminal Appeal nos. 24-25 OF 2013, Abdul Quader Molla** has observed that --

“A plain reading of sub-section (2) shows that if the tribunal finds any person guilty of any of the offences described in subsection (2) of section 3, awarding a death sentence is the rule and any other sentence of imprisonment proportionate to the gravity of the offence is an exception..... In awarding the appropriate sentence, the tribunal must respond to the society’s cry for justice against perpetrators of Crimes against Humanity.”

[Criminal Appeal Nos. 24-25 of 2013, Abdul Quader Molla Judgment, page 247]

418. In the case in hand, the recurrent systematic attacks are found to have been carried out on active participation of the accused as a loyal activist of Pakistani occupation army. According to section 4(1) of the Act of 1973 the accused Md. Abdus Samad @ Musa @ Firoz Kha, being equally responsible, has incurred individual criminal liability for the commission of crimes proved. The offences proved as listed in all the four charges indubitably falls within the kind of such gravest crimes which shivers the collective conscience of mankind.

419. What has been found proved on adjudication of all the four charges? **Charge no.01** relates to forcible capture of 21 defenceless civilians who were subjected to torture taking them at the house of Nurul Islam, the chairman of local peace committee. Accused is found to have had active participation, being part of the enterprise. On explicit instigation and signal of accused Md. Abdus Samad @ Musa @ Firoz Kha four detainees were made segregated and then they were gunned down to death by Pakistani occupation army. The accused as a notorious loyalist of Pakistani occupation army and being part of the enterprise substantially contributed to the commission of the barbaric killing, by his antagonistic act. It stands well proved.

420. The event arraigned in **charge no.02** was carried out for couple of hours, in three phases. Accused physically participated in the first phase of attack. At this phase he attacked civilians with sword blow that resulted in death of three civilians. In conjunction with the attack, next, on accused's tangible provocation and instigation three civilians detained unlawfully were shot to death. The criminal activities were perceptibly carried out on tangible assistance and provocation of the accused. Besides, he consciously and substantially facilitated, by his aggressive act, the commission of the killing.

421. The criminal mission did not end here. On the same day at about 06:00 P.M accused and his cohorts being accompanied the Pakistani occupation army took away the dead body of one victim and one injured victim, under coercion. It was indeed a serious attack on the corpse and on an injured civilian. All these proved facts demonstrate how the accused deliberately and knowing consequence intentionally assisted the Pakistani occupation army in perpetrating the heinous crimes, sharing common intent.

422. It has also been proved that being an active part of the gang formed of Pakistani occupation army and cohorts the accused Md. Abdus Samad @ Musa @ Firoz Kha substantially contributed by inflammatory provocation to the accomplishment of killing one Santal civilian Lade Hemrom, by launching attack at Santal para[**as arraigned in charge no.03**] .

423. Additionally, it stands proved too that in conjunction with the attack [**as arraigned in charge no.03**] the accused himself effected killing of three other Santal civilians perceiving them as followers of war of liberation, by inflicting indiscriminate sword blow. Devastating activities were carried out too. Horrific killing of a number of civilians of Santal community together with

prohibited devastating activities eventually forced the panicked residents of the locality attacked to deport to India.

424. The massiveness and intrinsic gravity and brutality of the crimes committed assumes an extensive degree of the designed attack which serve as an indicia of the existence of a ‘murderous scheme’ to which the accused Md. Abdus Samad @ Musa @ Firoz Kha was an active and conscious part, we conclude.

425. The event of attack that resulted in killing one civilian [**as arraigned in charge no.04**] happened on 20th April i.e. day after the event as arraigned **in charge no.3** happened. It has been proved that the accused being accompanied by his cohorts caused death of one Chandu Soren of village- Mohipara under police station-Puthia of District Rajshahi by inflicting sword blow. The event occurred in day time and thus the witnesses could watch the attack. Spreading horror and coercion by killing a defenceless civilian Chandu Soren was rather chained to the event of systematic attack as arraigned charge no.03 which relates to brutal annihilation of four civilians of Santal community.

426. Determination of degree of relative gravity of offences proved is crucial for awarding penalties. The level of seriousness of the offences proved is considered higher as it depicts that

those were committed by launching designed systematic attack by the gang to which the accused was an active part. All the attacks arraigned in the charges were the upshot of systematic and massive plan of horrendous violence directing the civilian population.

427. The offences as crimes against humanity shock the human conscience, precisely on account of their extreme and intrinsic gravity. Thus, the offences as crimes against humanity which have been found proved in the case in hand must be punished by awarding appropriate sentence.

428. Accused Md. Abdus Samad @ Musa @ Firoz Kha is found to have had active and culpable participation in perpetrating deliberate killing, torture, deportation and murder of non-combatant civilians, as arraigned in all the four charges. He got engaged in committing atrocious acts directing civilians as a notorious loyal activist of Pakistani occupation army and later on got enrolled in locally formed Razakar Bahini.

429. Mode of participation of the accused in perpetrating prohibited acts including murder, torture and serious mental harm, as arraigned in the charges framed is found packed of explicit aggression and brutality. It aggravates his liability.

430. 'Humanity' denotes the value that the crimes violate. In the case in hand, the accused with extreme brutality had violated such value, by deliberate criminal acts and aggression to the unarmed civilian population. 'Crimes against humanity' are the offences which detriment not only the victims and their own communities, but all human beings. Such crimes indisputably cut deep, violating the core humanity. The offences committed by the accused therefore gravely aggrieved all human beings, we conclude.

431. In the case in hand, the offences as Crimes against humanity as found proved were rather offenses against humankind and injuries to humanness. It stands proved that the accused Md. Abdus Samad @ Musa @ Firoz Kha consciously and actively participated, facilitated, instigated, prompted, abetted and substantially contributed to the commission of such serious crimes which obviously tremble the humankind. Those universally odious offences thus have made the accused an enemy of all humankind.

432. Theoretically, gravity of the offences proved can be determined based on an analysis of the elements of the crime and on the culpability of the offender who is found guilty. It has been proved that the extent of the damage and harm caused, and the

culpable nature of the behaviour of the accused and the violent way he opted to employ to execute the crimes indisputably increase the gravity of the crimes.

433. Now, in exercise of judicial discretion, keeping the reasoned deliberation on aggravating factors found tangible we require arriving at decision in awarding sentence which must be just and commensurate to the diabolical pattern of crimes proved. In doing so Tribunal recalls the observation, in this regard, rendered by the **Appellate Division of Bangladesh Supreme Court** in the Appeal of **Motiur Rahman Nizami** which is as below:

“It is the solemn duty of the courts to award proper sentence commensurate with the gravity of the crimes. Inappropriate lesser sentence causes injustice not only to the victims of crimes but sometimes to the whole society.[**Criminal Appeal No.143 of 2014, Motiur Rahman Nizami, Judgment page 152]**”

434. The Tribunal as the Trier of fact is quite aware of its solemn duty in awarding just and just sentence commensurate with the gravity of the crimes proved. We reiterate that the punishment to be awarded must mirror both the calls for justice from 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. Therefore, in the case in hand, the sentence to be awarded must be proportionate to the seriousness of the offences proved and mode of participation of the convicted accused therewith.

435. In view of reasoned deliberation as made above and considering the pattern and magnitude of offences proved and proportion to the gravity of the offences proved and also keeping the factors as focused above into account we arrive at **UNANIMOUS** view that justice would be met if the convicted accused **Md. Abdus Samad @ Musa @ Firoz Kha** 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. Abdus Samad @ Musa @ Firoz Kha** the son of late Abbas Ali and late Sohagi Bewa of village-Kathalbaria, Puthia Trimohini Bazar Buildings under police station-Puthia of District-Rajshahi is found **UNANIMOUSLY** guilty of the offences as ‘**crimes against humanity**’ enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973, arraigned in **charge nos. 01, 02, 03 and 04.**

Accordingly, he be convicted and condemned **UNANIMOUSLY to the sentence as below:**

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

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

‘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 all the four charges **will** get merged.

The convicted accused Md. Abdus Samad @ Musa @ Firoz Kha [present on dock as brought from prison] be sent to the prison with conviction warrant accordingly.

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

The convict 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.

Let certified copy of this judgment be provided to the prosecution and the convict accused **Md. Abdus Samad @ Musa @ Firoz Kha** , free of cost, at once.

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

Let a copy of this judgment together with the conviction warrant of the convict accused **Md. Abdus Samad @ Musa @ Firoz Kha** be sent to the IG [Prison] for information and necessary action.

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member