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International Crimes Tribunal-2 [ICT-2]

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

Old High Court Building, Dhaka, Bangladesh

ICT-BD Case No. 01 of 2013

[Charges: crimes against Humanity and abetting & complicity to commit such crimes as specified in section 3(2)(a)(g)(h) of the Act No. XIX of 1973]

The Chief Prosecutor**Vs**

**(1) Ashrafuzzaman Khan@ Naeb Ali Khan [absconded] &
(2) Chowdhury Mueen Uddin [absconded]**

Before

Justice Obaidul Hassan, Chairman**Justice Md. Mozibur Rahman Miah, Member****Justice Md. Shahinur Islam, Member****For the Prosecution:**

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Syed Haider Ali, Prosecutor

Mr. Zead-Al-Malum, Prosecutor

Mr. Shahidur Rahman, Prosecutor

Ms. Tureen Afroz, Prosecutor

Ms. Nurjahan Mukta, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

For the Accused:

Mr. Abdus Shukur Khan, Advocate, Bangladesh Supreme Court and State Defence Counsel for accused Ashrafuzzaman Khan @ Naeb Ali Khan

Ms. Salam Haye Tunj, Advocate, Bangladesh Supreme Court and State Defence Counsel for accused Chowdhury Mueen Uddin

Date of delivery of Judgment: 03 November 2013

JUDGMENT

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

I. Opening Words

The case in which we are going to render our verdict involves planned and barbaric killing of notable intellectuals to whom the nation pays reverence and humble tribute on 14 December each year. No one disputes that numerous intellectuals were tortured and viciously killed, on forcible capture from their residences. The alleged leading perpetrators the persons accused of the crimes have been brought to justice. With this nation's aspiration has been valued indeed. The nation has not forgotten that it got its long cherished independence, the motherland and a national flag, our pride through the dauntless sacrifice of millions of people including the illustrious sons and daughters of the soil. By rendering our verdict on closure of trial we shall, as trier of facts, made effort in sighting the tragic events and in identifying the perpetrators.

The persons accused of the barbaric crimes alleged have been tried in absentia, after following necessary procedure as required by law. Their appearance could not have been secured even after exhaustion of all necessary procedure as warranted by law. Two state defence counsels engaged defended them. We must extend our appreciation to the learned prosecutors and the learned state defence counsels for the assistance they provided at all stages of proceedings.

This case concerns two accused persons: Chowdhury Mueen Uddin and Ashrafuzzaman Khan. We have made endeavor to address the legal issues together with the factual aspects involved and then discussed and evaluated evidence adduced in relation to charges independently and finally we have penned our finding on culpability of the accused.

Now, having regard to 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-2 (ICT-2) hereby renders and pronouncing the following unanimous judgment.

II. Introductory Words

1. This International Crimes Tribunal (hereinafter referred to as the ‘Tribunal’) was established under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the ‘Act’) by Bangladesh Parliament to provide for the detention, prosecution and punishment of persons responsible for genocide, crimes against humanity, war crimes, and crimes committed in the territory of Bangladesh, in violation of customary international law. It is to be noted that for ensuring expeditious trial, the government has set up this Tribunal (Tribunal-2) under section 6(1) of the Act on 22nd March .2012. The notion of fairness and due process as have been contemplated in the Act and the Rules of Procedure, 2012 (ROP) formulated by the Tribunal [ICT-2] under the powers conferred in section 22 of the principal Act is to be assessed with reference to the national wishes such as, the long denial of justice to the victims of the horrific atrocities involving large magnitude of violence committed during the war of liberation 1971 and the nation as a whole, together with the recognized norms and jurisprudence evolved.

2. The Act XIX enacted in 1973 which is meant to prosecute crimes against humanity, genocide and system crimes committed in violation of customary international law is *ex-post facto* legislation. It is fairly permitted. It is to be noted that the ICTY, ICTR and SCSL the adhoc Tribunals backed by the United Nations (UN) have been constituted under their respective retrospective Statute. Only the International Criminal Court (ICC) is founded on prospective Statute [Rome Statute]. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally to be provided to the person accused of crimes against humanity.

III. Jurisdiction of the Tribunal

3. The Act of 1973 is meant to prosecute, try and punish not only the armed forces but also the perpetrators who belonged to ‘auxiliary forces’,

or who committed the offence as an ‘individual’ or a ‘group of individuals’ or ‘organisation’[as amended with effect from 14.7.2009]. It is manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be brought to justice under the Act.

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

IV. Brief Historical Background

5. Atrocious and dreadful crimes were committed during the nine-month-long war of liberation in 1971, which resulted in the birth of Bangladesh, an independent state and the motherland of the Bengali nation. Some three million people were killed, nearly quarter million women were raped and over 10 million people were forced to take refuge in India to escape brutal persecution at home, during the nine-month battle and struggle of Bangalee nation. The perpetrators of the crimes could not be brought to book, and this left a deep scratch on the country's political awareness and the whole nation. The impunity they enjoyed held back political stability, saw the rise of militancy, and destroyed the nation's Constitution.

6. 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.

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

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

9. The ‘operation’ was designed to disarm and liquidate Bengali policemen, soldiers and military officers, to arrest and kill nationalist Bengali politicians, soldiers and military officers, to arrest and kill and round up professionals, intellectuals, civilians belonging to Hindu community and students Afterwards, actions in concert with its local collaborator militias, Razakar, Al-Badar and the key pro-Pakistan political organisation Jamat E Islami (JEI) were intended to stamp out the Bengali national liberation movement and to mash the national feelings and aspirations of the Bangalee nation.

10. The Pakistan government and the military formed Peace Committee as an ‘associate organization and number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams etc, essentially to act as a team with the Pakistani occupation army in identifying and eliminating all those who were perceived to be pro-liberation, individuals belonging to minority

religious groups especially the Hindus, political groups belonging to Awami League and Bangalee intellectuals and unarmed civilian population of Bangladesh.

11. Mr. Williams A. Boe the then Secretary General of the Norwegian Refugee Council who flew in Calcutta from Delhi, told newsman at Dum Dum airport on 10 October 1971 that *æthe influx of over nine million evacuees into India could be said to be ‘the biggest tragedy since World War II.’* [Source: **Bangladesh Documents Vol. II page 200, Ministry of External Affairs, New Delhi**]. It demonstrates the extent of reigning terror through out the country by the Pakistani occupation army with the aid of its para militia forces *Al-Badar, Razakars*, the creation of jamat E Islami. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination.

12. Old reports and narrative of authoritative books incontrovertibly suggests that Jamat E Islami [JEI] had allowed their creation Al-Badar an armed wing of Razakars to operate an assembly line of incalculable atrocities in the territory of Bangladesh in 1971..Hussain Haqqani, in his book titled ‘Pakistan between mosque and military’ citing sources narrated that

“The Jamaat-e-Islami and especially its student wing, the Islami Jamiat-e-Talaba [IJT], joined the military’s effort in May 1971 to launch two paramilitary counterinsurgency units. The IJT provided a large number of recruits.....The two special brigades of Islamists cadres were named Al-Shams[the sun, in Arabic] and Al-Badr [the moon].....A separate Razakars Directorate was established.....Two separate wings

called Al-Badr and Al-Shams were recognized. Well educated and properly motivated students from the schools and madrasas were put in Al-Badr wing, where they were trained to undertake æSpecialized Operations, where the remainder were grouped together under Al-Shams, which was responsible for the protection of bridges, vital points and other areas.....Bangladeshi scholars accused the Al-Badr and Al-Shams militias of being fanatical. They allegedly acted as the Pakistan army’s death squads and æexterminated leading left wing professors, journalists, litterateurs, and even doctors.”

[Source: Pakistan Between Mosque And Military: Hussain Haqqani: published by Carnegie Endowment For International Peace, Washington D.C, USA first published in 2005, page 79]

13. *Hussain Haqqani*, the author of the above cited book was the former adviser to Pakistani Prime Ministers Ghulam Mustafa Jatoi, Nawaz Sharif and Benazir Bhutto. He also served as Pakistan’s ambassador to Sri Lanka from 1992 to 1993. The book is an authoritative and comprehensive account of the origins of the relationship between Islamist groups and Pakistani army. However, the above cited sourced account also offers a portrayal of active affiliation and alliance of Jamat E Islami with Pakistani army and also in establishing the Al-Badar, the death squad, in execution of common policy and plan.

14. Incontrovertibly the ways to self-determination for the Bangalee nation was strenuous, swabbed with enormous blood, strive and sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination. The nation is indebted to their unprecedented and brave sacrifices

V. Brief account of the Accused Persons

Accused Chowdhury Mueen Uddin

15. Accused Chowdhury Mueen Uddin son of late Delwar Hossain Chowdhury and late Deljan Begum of ‘Chowdhury Bari’ village Chanpur under police station Daganbhuian near Fajilerghat Bazar, district Feni at present 1, Jonson Road, Tottenham, London NJ54JU, UK was a student of Dhaka University till independence of Bangladesh. He had served as staff reporter of the Daily Purbadesh. He was allegedly a central leader of Islami Chatra Sangha [ICS]. During the war of liberation in 1971 he was allegedly a significant leader of Al-Badar[AB] and had allegedly played active and key role to wipe out the intellectuals including the university teachers. He was a student of M.A class in the department of Bengali, University of Dhaka[1969-70 session] and a non-resident student of Haji Muhammad Mohsin Hall, Dhaka University[DU]. After independence of Bangladesh Chowdhury Mueen Uddin went to Pakistan and then to London and since then he has been there at 1, Jonson Road, Tottenham, London NJ54JU, UK and there he has been the Chairman of Tottenham Mosque, vice chairman of national Health Service, Director, Muslim Spiritual care Provision in the national Health Service, as alleged. The family members of Chowdhury Mueen Uddin were allegedly against the war of liberation in 1971

Accused Ashrafuzzaman Khan

16. Accused Ashrafuzzaman Khan @ Naeb Ali Khan son of late Md. Ajahar Ali Khan and late Roimunnesa of village Chotovatara, Chiler par under police station Maksudpur district Gopalganj and at present 162-15, Highland: Ave, Apt, 3C Jamaica, New York, 11432, USA was born on 28 February 1948. He passed HSC examination in 1967 from Siddeswari

Degree College and got admitted in the University of Dhaka in Islamic Studies department [session 1967-68] and was a non-resident student of Haji Muhammad Mohsin Hall of Dhaka University. He obtained BA [Hons] in 1970. He was a central committee member of Islami Chatra Sangha [ICS]. During the war of liberation in 1971 he was allegedly assigned with the responsibility of member of Al-Badar high command in Dhaka and had allegedly acted as the chief executor of intellectual killings. As a key member of Al-Badar he allegedly led the killings. He allegedly served as commander of Gaji Salahuddin Company of Al-Badar. Currently he has been serving as a member of Islamic Circle of North America [ICNA]

VI. Joint Trial for the same offence

17. On holding investigation on some events of intellectuals killing in between 10 December to 15 December 1971 that allegedly perpetrated in the city of Dhaka by picking the victims up from their residence on gun point by the armed gang of Al-Badar the Investigation Agency submitted two separate reports finding the accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan *prima facie* responsible for the atrocities before the Chief prosecutor.

18. Presumably the Chief Prosecutor considering the nature, pattern of the alleged atrocious events and culpable participation and involvement of the two accused persons therewith i.e the same offences preferred to submit a single 'Formal Charge' with a view to prosecute them jointly. The 'Formal Charge' submitted discloses that both the accused persons allegedly actively participated to the commission of the offences in the course of the same transaction and they appear to have allegedly acted in furtherance of common design and plan to the accomplishment of such offences and therefore both of them have been charged with and tried at one trial for every such offence as permitted under rule 36 of the Rules of Procedure 2012 [ROP of the ICT-2].

VII. Procedural History

19. Finally, the Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, after completion of investigation, submitted the 'Formal Charge' on 28.4.2013 under section 9(1) of the Act of 1973 before this Tribunal alleging that the accused 1) Chowdhury Mueen Uddin, and (2) Ashrafuzzaman Khan, (*Absconded Accused*) members of AB high command had committed the criminal act of murder of 18 intellectuals including university professors, doctors, journalists constituting the offence of crimes against humanity as narrated in the formal charge, during the period of War of Liberation in 1971 and thereby proceedings commenced.

20. Thereafter, the Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) (a)(b)(g)(h) of the Act of 1973 and issued warrant of arrest for causing appearance of the accused persons as required under Rule 30, by its order dated 02.5.2013.

21. Dhaka Metropolitan Police (DMP) submitted the execution report before the Tribunal stating that the accused persons could not be arrested as they have already absconded and they are learnt to have left the country since long. In this circumstance, the Tribunal, as required under Rule 31, ordered[order dated 12.5.2013] to publish a notice in two daily newspapers, one in Bangla and another in English asking the accused to appear before this Tribunal within ten (10) days from the date of publication of such notice. Accordingly notice was published in 'The daily Janakantha' (Bengali daily) on 14.5.2013 and in 'The daily Star' (English daily) on 15.5.2013. But despite publication of such notice the accused persons have not appeared before this Tribunal.

22. On 27.5.2013, the Tribunal has observed that there have been reasons to believe that the accused have absconded or have concealed themselves so that they cannot be arrested and produced before the Tribunal and there is no immediate prospect for arresting them, and as such it ordered that the trial against the accused persons shall be held in *absentia* under section 10A(1) of the International Crimes (Tribunals) Act 1973 (as

amended up-to-date) together with the Rule 32 and accordingly it appointed Mr. Abdus Shukur Khan, Advocate, Bangladesh Supreme Court, as state defence counsel to defend the absconded accused Ashrafuzzaman Khan and Ms Salma Haye, Advocate, Bangladesh Supreme Court, as state defence counsel to defend the absconded accused Chowdhury Mueen Uddin who will have remuneration to be determined by the Tribunal [Section 10A(2) of the Act] .

23. Tribunal also directed the prosecution to submit copy of formal charge and the documents which it intends to rely upon by 04.6.2013 for supplying the same to the appointed state defence counsels. On 04.6.2013, the state defence counsels informed the Tribunal that they received the copy of formal charge, statement of witnesses and documents submitted therewith from the office of the Registrar. Thereafter, the Tribunal fixed 16 June 2013 for hearing the charge matter.

24. On hearing both sides, the Tribunal by its order dated 24.6.2013 framed in all 11 charges against the accused persons. The charge so framed was read over in open court but the accused persons could not be asked on it as they remained absconded.

25. Prosecution through placing its opening statement on 15.7.2013 started adducing and examining witnesses. Prosecution after examining 25 witnesses including the IO completed the phase of examining prosecution witnesses.

26. On closure of examining prosecution witnesses on 22.9.2013, the learned state defence counsels informed the Tribunal that they could not collect any witness and detail documents despite their endeavor and contact with the relatives of the accused, through print and electronic media. Thus, they did not adduce and examine any witness in defence. They however, submitted some documents, in course of trial, which have been kept with the record for consideration.

27. Next, both the parties started placing summing up of their respective case. The presentation of summing up ended on 30.9.2013 with the rebuttal submission made by Mr. Syed Haider Ali, the learned prosecutor. With this the trial of the case ended and the Tribunal kept the matter of delivery and pronouncement of judgment under CAV by its order dated 30.9.2013.

VIII. Summing Up of Cases

Brief of summing up by the Prosecutor

28. Mr. Shahidur Rahman, the learned prosecutor presented his argument by drawing attention to the documentary evidence [reports of news papers] together with the oral testimony. He submitted that Al-Badar a wing of Razakar force was formed of workers of ICS, the student wing of JEI. The ‘killing squad’ formed of AL-Badar men had acted in liquidating the selected intellectuals, in furtherance of common plan and design. At the fag end of the war of liberation, a blueprint and plan was designed to kill the listed notable intellectuals and thus in between 10-14 December 1971, the accused persons the members of Al-Badar high command led the armed Al-Badar group had launched attack directing numerous intellectuals including journalists, professors, doctors, academicians. In a planned and designed process of the attack the accused persons led and instructed the armed gang of Al-Badar in picking them up from their residences on gun point and were taken to killing fields at outskirts of the Dhaka city and were brutally killed. Body of many, martyrs could not be traced even, although some of martyrs’ body could be found in the killing fields of Mirpur, Rayer Bazar. The accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan acted as ‘operation-in-charge’ and ‘chief executor’ of Al-Badar to the accomplishment of the barbaric crimes, in furtherance of common plan and design, with intent to paralyze the Bengali nation, the old reports published in domestic and international news papers .

29. The documents and statement of witnesses will show that the accused persons were actively concerned in committing crimes against humanity, by aiding, abetting, instructing, ordering, encouraging and providing moral support to the members of AB on whom they had *de facto*

reasonable and material ability and authority to control, as members of its high command. Prima facie it will appear that the accused persons by their physical participation and also by their act of abetment and facilitation to the commission of crimes narrated in the allegations have incurred liability both under section 4(1) and 4(2) of the Act of 1973. Prosecution has been able to submit necessary and relevant evidence together with the formal charge to prove the events and culpability of the accused persons.

Brief of summing up of case for accused Ashrafuzzaman Khan

30. Mr. Abdus Shukur Khan, the learned state defence counsel for the absconded accused Ashrafuzzaman Khan does not dispute the event of intellectuals killing. But he however attacking prosecution's claim submitted that accused Ashrafuzzaman was not involved with any of event alleged in any manner, in furtherance of their common plan and policy. Accused was not involved with any of criminal acts narrated in the charges framed. He did not belong to Al-Badar. Ashrafuzzaman could have been prosecuted and tried immediately after the independence either under the Penal law or the Collaborators Order 1972, if really he committed the alleged crimes.

31. It has been further submitted by the learned state defence counsel that in 1997 a case was lodged with police station by one Farida Banu, sister of martyr professor Gias Uddin bringing the allegation of abduction and killing of intellectuals. But the case so lodged was ended with the Final Report as mistake of law on 20.8.2002. Therefore, the present accused cannot be prosecuted and tried for the same offence and bringing prosecution against him. The reports published in newspapers as submitted by the prosecution do not show that the accused was involved with designing plan, in any manner. Besides, the reports published in news papers are not well authoritative and sourced. Prosecution failed to prove that the alleged diary was written by Ashrafuzzaman and thus he cannot be connected with it.

Brief of summing up of case for accused Chowdhury Mueen Uddin

32. Ms. Salma Haye Tunji by seeking discharge of the accused, by filing an application, has submitted that the accused was not linked with any of crimes alleged; that prosecution documents do not demonstrate his involvement with the criminal acts alleged; that he was not prosecuted and tried under the Collaborator Order 1972 which was enacted to bring the local perpetrators to book. It has further submitted that the accused Chowdhury Mueen Uddin was a journalist of The Daily Purbadesh in 1971 and also a student of the University of Dhaka at the relevant time. The event of killing of notable intellectuals in December 1971 is an undisputed history. But prosecution could not bring papers to show that the accused belonged to Al-Badar and had a position of authority on it. Thus the accused deserves acquittal.

Prosecution's Rebuttal

33. Mr. Sayed Haider Ali, the learned prosecutor, in his concluding summing up on some issues, submitted that all the events narrated in charges are the upshot of organised and common design and plan and had occurred in a similar pattern. All the events that resulted in killing of 18 intellectuals were part of identical and calculated plan of annihilation of illustrious individuals belonging to intellectual class. The accused persons were the part of such plan and design. Three events narrated in charge nos. 1,2 and 3 happened between 03:00 am and 6:30 am on 11 December by the group of armed Al-Badar men equipped in similar fashion and they used alike mud covered vehicle in picking up the victims. The four events narrated in charge nos. 8,9,10 and 11 also involve the similar pattern in carrying out the criminal acts by the similarly equipped group of Al-Badar men. As regards charge nos. 4 and 5 it would appear too that the group of armed Al-Badar men perpetrated the act of capture of two journalists in alike manner and they, in accomplishing the act of abduction of all the intellectuals, kept the family inmates of captured victims unhurt that reflects indication that only the victims captured were the targets of the 'squad' of the operation. No witness who saw the victims' picking up claims that the group of attackers comprised of any army person.

34. It has been further submitted that prosecution has been able to prove that accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan accompanied the armed group of AB who abducted the victims of the events narrated in charge no.6 and 7. It proves that the accused persons were 'concerned' also with the commission of other events of abduction narrated in other charges which took place on 11 and 15 December 1971 in execution of similar blueprint and by using the similar logistics.

IX. Addressing Legal Issues agitated by the Defence

35. Mr. Abdus Shukur Khan the learned state defence counsel for accused Ashrafuzzaman Khan submitted that long 40 years delay in bringing instant prosecution casts doubt as to the truthfulness of accused's responsibility; that the atrocious event of intellectuals killing was perpetrated by the Pakistani army for which they could have been brought to book. But they were allowed to walk free by virtue of clemency given under the '**tripartite agreement of 1974**' and as such now the instant prosecution is barred. The act of 1973 was meant to prosecute try and punish the listed war criminals belonging to the Pakistani army and not the 'individuals'. The Collaborators Order 1972 was enacted to prosecute and try the local collaborators.

36. It has been further submitted that other members of the alleged squad committing the criminal act of abduction and killing should have been identified and brought to justice and not only the accused Ashrafuzzaman Khan. There has been no proof that accused Ashrafuzzaman Khan by his conduct or act abetted the principals in committing the crimes alleged.

37. Ms. Salma Haye Tunj, the learned state defence counsel for accused Chowdhury Mueen Uddin submitted that admittedly a case was lodged few years back under the Penal Code for the charge of killing Professor Gias Uddin, one of abducted victims of the event narrated in charge no.6. But it ended in submission of Final Report and thus prosecuting the accused Chowdhury Mueen Uddin for the 'same offence' is bad in law. It has been further submitted that accused Chowdhury Mueen Uddin could

have been prosecuted and tried under the Collaborators Order 1972, if he really had involvement with the event of intellectuals killing, in any manner.

38. Mr. Syed Haider Ali, the learned Prosecutor, in reply to submission made by the defence on some legal issues has submitted that these have already been resolved by this Tribunal in its earlier judgments. Accordingly, the learned prosecutor, to avoid reiteration, submitted to adopt the argument of prosecution placed in earlier cases before this Tribunal, on these issues.

X. Determination of Legal Aspects

Does Delay frustrate prosecution case?

39. We have already settled this issue by recording our finding in earlier cases that mere delay does not create any clog in bringing criminal prosecution. But the defence argued that unexplained inordinate delay of long 40 years occurred in prosecuting the accused impairs the truthfulness of the case and it reflects political motive too.

40. It is to be noted that neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity. Criminal prosecutions are always open and not barred by time limitation. We reiterate that there can be no recognised hypothesis to insist that such a 'system crime' can only be pursued within a given number of years. Therefore, delayed prosecution does not rest as a clog in prosecuting and trying the accused and creates no mystification about the atrocities committed in 1971. Considerations of material justice for the victims should prevail when prosecuting crimes of the severe enormity is on the process.

41. We may have a look to the report published in **The New York Times** which speaks that a 92-year-old man who served as a border guard in Adolf Hitler's elite Waffen-SS troops went on trial on Monday on charges that he shot and killed a Dutch resistance fighter in the final months of

World War II. His prosecution is part of a German effort to bring aging Nazis to justice before it is too late [**New York Times September 2, 2013**]. Thus delay in bringing an individual to justice for his misdeeds causing harm to humanity and human dignity cannot be seen to be a barrier for holding trial.

42. Finally, we emphatically conclude with this observation that the mere delay occurred in bringing prosecution, taking the context prevailed since last couple of decades into account, does not lead accused's acquittal or impairs the prosecution case the effective adjudication of which fundamentally rests on evaluation of totality of evidence presented before the Tribunal.

Tripartite Agreement and immunity to 195 Pakistani war criminals

43. This Tribunal by its reasoned finding has already resolved this pertinent and much talked about issue in all the five cases disposed of by this Tribunal. Defence, in all cases, has argued that pursuant to the 'tripartite agreement' dated 09.4.1974, 195 listed war criminals belonging to Pakistani armed force have been given clemency. Thus, the matter of prosecuting and trying them under the Act of 1973 ended with this agreement. Further argument reiterated by the defence is that the government, in order to prosecute and try the local perpetrators who allegedly aided and abetted the Pakistani occupation armed force in committing atrocities including murder, rape, arson enacted the Collaborators Order 1972 and thus the local collaborators could have been prosecuted and tried only under the said Order of 1972.

44. This Tribunal [ICT-2] has already resolved this pertinent issue by giving its reasoned finding, considering the backdrop of entering into the tripartite agreement, in all its previous cases disposed of.

45. A closer look at the repatriation process of 195 Pakistani War Criminals [tripartite agreement] suggests that the political direction of the day had to put on hold the trial process at that time, but intended not to

terminate the option of any future trial. The Tripartite Agreement visibly mentioned Bangladesh's position on the 195 Pakistani War Criminals in the **Article 13** of the agreement which is as below:

“There was universal consensus that persons charged with such crimes as 195 Pakistani prisoners of war should be held to account and subjected to the due process of law”.

46. However, the **Article 15** of the tripartite agreement says:

“Having regard to the appeal of the Prime Minister of Pakistan to the people of Bangladesh to forgive and forget the mistakes of the past” Government of Bangladesh had decided not to proceed with the trials as an act of clemency.

47. Thus, the scope of clemency is evidently limited to Bangladesh's decision on not to try them here. Rather, it keeps the option open for trial of those Pakistani war criminals.

48. Additionally, such agreement was an 'executive act' and it cannot create any clog to prosecute member of 'auxiliary force' or an 'individual' or member of 'group of individuals' as the agreement showing forgiveness or immunity to the persons committing offences in breach of customary international law was disparaging to the existing law i.e the Act of 1973 enacted to prosecute those offences.

49. It is thus not good enough to say, without any ambiguity, that no 'individual' or member of 'auxiliary force' as stated in section 3(1) of the Act of 1973 can be brought to justice under the Act for the offence(s) enumerated therein for the reason that 195 Pakistani war criminals belonging to Pakistani armed force were allowed to evade justice on the

strength of ‘tripartite agreement’ of 1974 [Muhammad Kamaruzzaman, ICT-BD(ICT-2) Case No. 03 of 2012, Judgment 09 May, 2013, para 114].

50. As state party of Universal Declaration of Human Rights (UDHR) and Geneva Convention Bangladesh cannot evade obligation to ensure and provide justice to victims and sufferers of those offences and their relatives who still suffer the pains sustained by the victims and as such an ‘executive act’ (tripartite agreement) can no way derogate this internationally recognized obligation. Thus, any agreement or treaty if seems to be conflicting and derogatory to *jus cogens* (compelling laws) norms does not create any hurdle to internationally recognized state obligation.

51. We reiterate that any agreement and treaty amongst states in derogation of this principle stands void as per the provisions of international treaty law convention [Article 53 of the Vienna Convention on the Law of the Treaties, 1969]. Article 53 of the Vienna Convention:

“A treaty is void if at the time of its conclusion it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

52. Finally, in absence of any other rationale, we affirm our earlier observation that the perpetrators of crimes against humanity and genocide are the enemies of mankind and the ‘tripartite agreement’ is not at all a

barrier to prosecute even a local civilian perpetrator under the Act of 1973.

Failure to prosecute the accused persons under the Collaborators Order 1972: does it rest any clog to present prosecution?

53. Defence avers that the cumulative effect of intention of enacting the Act of 1973 was to prosecute and try the 195 war criminals belonging to Pakistani army and its auxiliary force. The individuals who collaborated with the army could have been prosecuted and tried under the Collaborators Order 1972.

54. The Tribunal notes that the phrase ‘individual’ or ‘group of individuals’ as appeared in the Act of 1973 inevitably shows that bringing prosecution against the accused under the Act of 1973 permissible. Mere non-prosecuting the accused persons under the Collaborators Order 1972 for their horrendous criminal activities does not rest any barrier to present prosecution under the Act of 1973, a different legislation meant to prosecute and try the internationally recognized offences committed in violation of customary international law.

55. We reiterate that the Collaborators Order 1972 was a piece legislation aiming to prosecute and try the persons responsible for the offences enumerated in the schedule thereof. The offences punishable under the Penal Code were scheduled in the Collaborators Order 1972. While the Act of 1973 was enacted to prosecute and try the ‘crimes against humanity’, ‘genocide’ and other ‘system crimes’ which are recognised as international crimes committed in violation of customary international law. There is no scope to characterize the offences underlying in the Collaborators Order 1972 to be the ‘same offences’ as specified in the Act of 1973.

56. The learned state defence counsel drawing attention to the fact of initiating a case few years back, in 1997 by lodging First Information Report [FIR] with Ramna Police Station, DMP by Farida Banu [P.W.16] under the Penal Law for the charge of killing Professor Gias Uddin, a

victim intellectual [charge no.6] submitted that the same ended in submission of Final Report as mistake of law on 2.8.2002 and thus now the accused cannot be prosecuted again.

57. We disagree with the above submission. The accused person [Chowdhury Mueen Uddin] has been prosecuted not for an offence punishable under the Penal Code. He has been brought to justice for the charge of committing the offences enumerated in the Act of 1973 and not for the 'same offence'. Besides, the said case was merely lodged and ended in submission of Final Report and not after trial. On this score as well the doctrine of 'double jeopardy' does not come into play at all.

XI. General conditions of evaluating evidence in a case relating to crimes against humanity

58. The case involves the events of abduction and killing of 18 intellectuals that allegedly occurred between 10 December and 15 December 1971, in Dhaka city, in furtherance of common plan and design. The accused persons have been accused of participating, abetting and having complicity to the commission of the crimes. They are alleged to have incurred liability, for their acts and position of authority over the 'killing squad', also under section 4(2) which refers to the notion of civilian superior responsibly. Prosecution alleges that immediately after the independence achieved on 16 December 1971, the accused persons went into hiding and finally had left the country and thus could not be caught to bring them to book. Since then they have been in London, UK and New York, USA.

59. In resolving the issue of culpability of the accused persons with the commission of offence alleged the relevant facts, considering the nature and pattern of crimes alleged, need to be adjudicated are (i) Which organisation or group was involved in perpetration of the crimes alleged (ii) had the accused persons affiliation with the perpetrator group or organisation? If it is so, in what capacity? (iii) Was the mission of killing executed in furtherance of 'common plan and design'? (iv) Were the accused persons part of such common plan and design? (v) Mode of

participation of the accused in accomplishing the planned crimes (vi) Was the killing of intellectuals an outcome of planned and calculated large scale killing?

60. In prosecuting internationally recognised crimes involving mass atrocities availability and collecting evidence is a key challenge indeed. Instantly after the post conflict situation evidences are usually disordered and disintegrated in many different ways. The individuals engaged in committing mass atrocities very often destroy evidence of their culpability. Naturally they, by operating secrecy, attempt to minimize the existence of evidence, documents and other traces of their incriminating acts. Despite this reality there may be potentially relevant documentary evidence such as contemporaneous domestic and international news accounts, authoritative films and photographs. This nature of old evidence is admissible under the Act of 1973 and the Tribunal shall have discretion to weigh the probative value of this documentary evidence together with material relevant facts.

61. The accused persons have been indicted for the offence of abduction or in the alternative 'extermination' as crimes against humanity by framing eleven independent charges. In respect of some events the accused have been charged for instructing the principal perpetrators belonging to Al-Badar force to the commission of the offence alleged. And in respect of some other charges including the charge nos. 6 & 7 they have been accused of leading and accompanying the armed gang of Al-Badar in committing the criminal act of forcible abduction of intellectuals from their respective residence, on gun point.

62. Proof of all forms of criminal responsibility can be given by direct or circumstantial evidence. It is now settled jurisprudence. The acts of the accused do not always need to be committed in the midst of the attack provided that if they are sufficiently connected to the attack.

63. Assessment of the evidence is to be made on the basis of the totality of the evidence presented in the case before us. The Tribunal, however, is not

obliged to address all insignificant inconsistencies, if occur in witnesses' testimony. We may recall the decision of the ICTR Appeal Chamber given in the case of **Muhimana** that ,

“The Appeals Chamber reiterates that a Trial Chamber does not need to individually address alleged inconsistencies and contradictions and does not need to set out in detail why it accepted or rejected a particular testimony.” [ICTR Appeals Chamber, Judgment May 21, 2007, para. 99]

64. What we see in the case in hand? The nature of the offence and the pattern the perpetrators opted in carrying out the act of abduction of the intellectuals from their respective residence and the logistics they used go to show that the act of forcible picking up of victims took place in front of their family inmates, on cataloged identification of victims. In respect of some events the perpetrators kept their face masked and in some cases they remained unmasked while committing the act of abduction on gun point. In both cases, the family inmates naturally had no reason to recognise the perpetrators or the person leading the armed gang. Only in respect of the events narrated in charge nos.6 and 7 the family inmates claim to have had occasion to see and recognise the accused Chowdhury Mueen Uddin leading the gang of perpetrators as they or the victim were familiar with the accused since earlier.

65. In the case in hand, most of witnesses claim to have seen the report together with portrait of accused persons published within few days of perpetration of the offence of abduction in domestic and international news media on the tragic event of large scale killing of notable and bright intellectuals and thus they could aware as to the physical participation of accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan by leading the armed gang of Al-Badar to carry out the 'operation' of picking up their near and dear ones.

66. The exact time, place and manner of causing brutal death of the abducted intellectuals could not be testified by any of witnesses as it was not at all probable. The witnesses have merely stated how their dear ones were abducted and were taken away by a microbus to unknown place. But it does not disprove the fact of their killing. Physical participation or involvement of the accused in any manner, either even by a single act or omission, forming part of attack to the commission of the act of abduction of victim intellectuals inevitably and lawfully may make them criminally liable for causing brutal killing of the abductees.

67. We are to see how the accused acted or conducted in forming part of ‘attack’ that resulted in commission of the principal criminal acts directing the non combatant civilians. Prosecution even is not required to identify the actual perpetrator. This has been now a settled proposition and it finds support from the principle enunciated in the case of *Akayesu* which is as below:

“A person may be tried for complicity in genocide æeven where the principal perpetrator of the crime has not been identified, or where, for any other reasons, guilt could not be proven.”

[ICTR Trial Chamber, September 2, 1998, para. 531: *See also Musema*,(ICTR Trial Chamber, January 27, 2000, para.174].

68. The matter of weighing hearsay evidence depends as to what extent the question of hearsay evidence is clarified by other evidence and it is proved to be reliable. In this regard, the decision in the case of *Limaj* it has been observed that æ whether any weight, and if so, what weight will attach to[hearsay opinion] will depend to what extent the question of hearsay is clarified by other evidence and it is shown to be reliable [**Archbold International criminal Courts: page 751 : 9-104: HEARSAY**].

69. It is now settled that hearsay evidence is admissible in determining the material facts related to the principal event of crimes. But mere admission of hearsay evidence does not render it carrying probative value. Such hearsay evidence is to be weighed in context of its credibility, relevance and circumstances. Keeping this legal position the Tribunal will take advantage to weigh the probative value of hearsay evidence of witnesses made before the Tribunal in relation to charges framed against the accused.

70. It is true that testimony by more than one witness on matters relevant to the same event enhances the reliability of evidence, but is not a necessary condition for a finding of reliability. It is now well-established that the Tribunal [ICT-2] may consider a material fact proven by uncorroborated testimony which it considers to be reliable. It has now been settled jurisprudence by judicial pronouncements of *ad hoc* Tribunals [*Kayishema and Ruzindana*, Judgement (AC), para. 320; *Musema*, Judgement (AC), para. 36; *Rutaganda*, Judgement (AC), paras. 28-29; *Akayesu*, Judgement (TC), para. 134; *Kayishema and Ruzindana*, Judgement (TC), para. 70; *Musema*, Judgement (TC), paras. 45-46; *Kajelijeli*, Judgement (TC), paras. 41-42].

71. In addition to above aspects, we reiterate that the case relates to trial of internationally recognised crimes committed in violation of customary international law. The offences are alleged to have been committed in context of war of liberation in 1971. Section 22 of the Act of 1973 provides that provisions of the Criminal Procedure Code, 1898(V of 1898), and the Evidence Act, 1872(I of 1872), shall not apply in any proceedings under the Act of 1973.

72. Section 19(1) of the Act provides that the Tribunal shall not be bound by technical rule of evidence and it shall adopt and apply to the greatest possible extent non technical procedure and may admit any evidence which it deems to have probative value. Thus, the crimes enumerated in section 3(2) of the Act of 1973 are the crimes committed in violation of

customary international law and these are not isolated crimes punishable under the normal Penal law of the land.

XII. Adjudication of some crucial Issues common to all the charges

73. Before we enter into the segment of adjudication of charges, we deem it expedient to resolve some issues crucially common and relevant to all the events narrated in the charges framed. In discharging this task we have to appraise the old reports, documents, authoritative books together with the facts which are reasonably undisputed and the rationale necessary for arriving at finding on these issues. For the issues to be discussed below do not deserve to be resolved on the basis of oral testimony.

(i) Intellectuals Killing: A designed and calculated ‘Operation Liquidation’

74. As regards ‘Intellectuals killing’ we have already recorded our finding in the case of *Chief prosecutor v. Ali Ahsan Muhammad Mujahid* as below:

“It is quite undisputed that our history remorse 14th December 1971 with highest tribute for the killings of numerous intellectuals, the best sons and daughters of Bangladesh. At the fag end of war of liberation, sensing the inevitable defeat the killers the local collaborators of Pakistani occupation army in furtherance of common plan and design strived to snap the psychological potency of freedom fighters and to cripple the Bengali nation as well by carrying out brutal killing of numerous intellectuals of Bangladesh.

It is now the history of common knowledge that particularly in between

10 -14 December 1971 a group of notable intellectuals belonging to diverse professions were picked up forcibly from their homes by armed men belonging to Al-Badar, an auxiliary force created of workers of ICS the student wing of JEI for collaborating with the Pakistani army. It stands proved that Mohammadpur Physical Training Institute was the AB HQ and it was known as ‘torture camp’. Most of the great sons and daughters did not return and their dead body could not be identified and traced even, although many of the distorted corpses were barely recognizable at different killing fields at outskirts of Dhaka city. The nation with highest and solemn tribute still remembers their sacrifice, their contribution for the cause of independence and liberation of our motherland.”

[Ali Ahsan Muhammad Mujahid: ICT-BD-2 case No. 04 of 2012, Judgment 17 July 2013, para 400,401]

75. Designing plan to implement and carry out criminal activities cannot be a tangible act. There may not be documentary evidence as to designing such plan. Existence of plan is to be inferred from totality of circumstances and relevant facts. So it is quite immaterial to ask for proof to establish as to where, when, who and how the plan was designed. It is fairly assumed that without a common design and plan, such organized pattern of collective annihilation of ‘intellectual class’ could not have been initiated and executed. What was the plan and who were affiliated with it and why?

76. The report titled “চক্রান্তের চাঞ্চল্যকর দলিল” published in **The Daily Purbadesh 22 December 1971**.

“বিগত ২৫ শে মার্চ নিরস্ত্র জনগণের উপর খান সেনাদের আকস্মিক হামলার পর সারা দেশে যখন মুক্তিবাহিনী ও গেরিলারা সশস্ত্র প্রতিরোধ সংগ্রামে লিপ্ত ছিলেন সেই সময় -৯ই আগস্ট ঢাকার মোহাম্মদপুরে এক বৈঠকে বাংলাদেশের অস্তিত্ব নির্মূলের এক ঘূর্ণ্য ষড়যন্ত্র চালানো হয়। তথাকথিত পাকিস্তান সংহতি ও অখন্ডতা সংরক্ষণ সংগ্রাম কমিটির উক্ত বৈঠকে যে সব প্রস্তাব গৃহিত হয় তদনুসারেই কুখ্যাত আল-বদর বাহিনী ঢাকা সহ বাংলাদেশের অন্যান্য স্থানে কয়েকশ বুদ্ধিজীবীকে হত্যা করে বলে অনুমান করা হচ্ছে।”

[Prosecution Documents Volume (Chowdhury Mueen Uddin) Volume, page 67]

77. Thus the above sensitive report titled “ চক্রান্তের চাঞ্চল্যকর দলিল” published in the Daily Purbadesh 22 December 1971 portrays a clear indication of a designed and calculated plan orchestrated on 09 August 1971 at a secret meeting held in Mohammadpur, Dhaka. The report speaks of as many as 11 decisions including the plan, decision and conspiracy organised by so called Pakistan preservation action committee with intent to liquidate the existence of Bengali nation presumably followed by which hundreds of illustrious intellectuals were killed in different places including Dhaka.

78. It is therefore evinced that the event of selected intellectuals killing was a planned and calculated ‘large scale killing’, the outcome of plan designed with intent to cripple the existence of the Bengali nation. This plan was executed in the name of preserving Pakistan. It was JEI and it’s

creation the fanatic groups like Al-Badar, Razakar , Al-Shams, peace committee who took a loud stand to save Pakistan and Islam even through the process of annihilation of pro-liberation Bengali nation. This evil stand was the objective of providing all sorts of support and encouragement to their followers and the Pakistan occupation army as well.

79. A report titled **“5000 persons in Dacca were listed for annihilation”** published in **The Hindustan Times**, December 24, 1971 tells about a panicking plan of liquidation. It says,

“The living proof of atrocities committed by the occupation forces was the recovery of the bodies of intellectuals who were killed on December 15, a day before the surrender. They included prominent doctors, intellectuals and journalists, including the BBC’s representative in Dacca. The Bangladesh authorities have recovered a list of nearly 5,000 people in Dacca City alone from the occupation forces. These persons were to be annihilated. The list included practically every single intellectual in the city. Liberation came before æoperation liquidation” came into full effect. æOnly Allah knows what would have happened, if they had gone through their full programme. æ

[Source: **The Hindustan Times**, New Delhi, December 24, 1971 (Dispatch by Chand Joshi, datelined Dacca); *see also* **Bangladesh Documents- Volume II**, Ministry of External Affairs, New Delhi, p. 573]

80. This case involves abduction and killing of 18 individuals including university professors, doctors, and journalists. We thus conclude it unerringly that their forcible capture, causing torture and killing were part of calculated, designed and planned ‘operation liquidation’.

(ii) Which Group or Organisation acted as ‘Killing Squad’ in carrying out the ‘operation liquidation?’

81. Naturally the crimes alleged were perpetrated in organized and systematic manner by a group of individuals who acted in unison or in pursuance of common plan and purpose. Who were the participants in the collective criminal enterprise? In case of a crime carried out by collective criminal enterprise the participants do not act in the same manner. The principal crimes committed by collective criminal enterprise are the outcome of different acts and roles played by the participants aiming to the accomplishment of a common purpose and plan.

82. In the case in hand, the accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan have been charged of incurring liability under section 4(1) and 4(2) of the Act for ‘participation’, ‘abetment’ and ‘complicity’ to the commission of the crimes alleged, in furtherance of common plan and design to liquidate the selected individuals belonging to intellectual class. The accused persons are alleged to have participated in such manner to the collective criminal enterprise in the capacity of leader of the ‘killing squad’ formed of Al-Badar men.

83. It is found that as one of wings of Razakar force, Al-Badar a fanatical militia force acted as the ‘death squad’ of Pakistan army aiming to exterminate the intellectuals belonging to Bengali nation. **Hamoodur Rahman Commission Report** says *æwe consider, therefore, that unless the Bangladesh authorities can produce some convincing evidence, it is not possible to record a finding that any intellectuals or professionals were indeed arrested and killed by the Pakistan Army during December 1971.* “[**Hamoodur Rahman Commission Supplementary Report, page 31, para 27**].

84. The above finding of Hamoodur Rahman Commission Supplementary Report, in absence of anything contrary, echoes further the fact of physical non involvement of the Pakistani army with the event of intellectuals killing that took place in between 10 December to 16 December 1971. But a report titled ‘**British M.P says senior Pakistani army officers organised murder of intellectuals**’ published in **The Hindustan Times, December 21, 1971** speaks something different. The report says,

“Ten senior Pakistani army officers were responsible for organising the recent murders of a large number of people, especially intellectuals, in Dacca, Mr. John Stonehouse, British Labour M.P, told PTI in an interview here this morning(New Delhi, December 20). Mr. Stonehouse declined to name the officers but said they were of the ranks of Major-General, Brigadier, Colonel and Captain. He said during his visit to Dacca yesterday(December 19), he got the names of these Pakistani army officers who organised the murders, and members of ‘Al-Badar’, an extremist Muslem group who carried out these heinous crime just before the surrender of Pakistani forces in Dacca.”

[Source: **The Hindustan Times**, New Delhi, December 21, 1971; *see also* **Bangladesh Documents- Volume II**, Ministry of External Affairs, New Delhi, p. 572]

85. Thus some Pakistani army officers including a Major-General were behind the curtain in organising the plan and the ‘killing squad’ formed of Al-Badar men for carrying out the mission of killing. The report of **Fox Butterfield** published in the **New York Times**, 3 January 1972 narrates that-

“There is growing evidence that Al-Badar was equipped and directed by a special group of Pakistani Army officers. Among papers found in the desk of Maj. Gen. Rao Forman Ali, the military adviser to the Governor of East Pakistan, were a series of cryptic references to Al-Badar.”

86. Thus, Al-Badar is found to have had acted as directed and equipped by a ‘special group’ of the Pakistani army, in furtherance of calculated and designed plan to wipe out the illustrious pro-liberation Bengali intellectuals. The report titled ‘**Plan to denude Bangladesh Intellectuals**’ published in **The Daily Observer 21 December 1971** narrates that –

“.....The armed Al-Badar as a part of their pre-planned tactics went on. They had their supreme sway over the engineering of murders of hundreds of persons during those black nights of curfew just before the surrender of the Pakistani forces in Dacca.” [Prosecution Documents Volume (Chowdhury Mueen Uddin) Volume, page 67]

87. We have further observed in the case of *Ali Ahsan Muhammad Mujahid* on appraisal of evidence before us that

“History accuses this group [Al-Badar force] of working like ‘death squad’--- killing, looting and disgracing Bengalis whom they accused of being ‘anti-Islam’. Thus the brutality of their contribution, as found, to the perpetration of systematic atrocities indeed was no lesser than that of the Pakistan occupation army [Chief prosecutor v. Ali Ahsan Muhammad

Mujahid: ICT-2-BD Case No. 04 of 2012’ Judgment 17 July 2013, para 436]

88. It is also evinced from the narration made in the book titled ‘**Pakistan between Mosque And Military**’ that the Al-Badar was formed of workers belonging to ICS the student wing of JEI. Thus it is quite evident from the authoritative narration made by *Hussain Haqqani* in his book as cited above which is as below:

“The Jamaat-e-Islami and especially its student wing, the Islami Jamiat-e-Talaba [IJT], joined the military’s effort in May 1971 to launch two paramilitary counterinsurgency units.,.....Bangladeshi scholars accused the Al-Badr and Al-Shams militias of being fanatical. They allegedly acted as the Pakistan army’s death squads and æexterminated leading left wing professors, journalists, litterateurs, and even doctors. Al-Badr reportedly killed 10 professors of Dacca University, five leading journalists including the BBC correspondent, two littérateurs and 26 doctors in Dacca alone”

[Source: **Pakistan Between Mosque And Military**: *Hussain Haqqani*: published by Carnegie Endowment For International Peace, Washington D.C, USA first published in 2005, page 79]

89. *Hussain Haqqani*, the author of the above cited book was the former adviser to Pakistani Prime Ministers Ghulam Mustafa Jatoi, Nawaz Sharif and Benazir Bhutto. He also served as Pakistan’s ambassador to Sri Lanka from 1992 to 1993. The book is thus an authoritative and comprehensive account of the origins of the relationship between the Al-Badar an

auxiliary force which had acted as action section of JEI and death squad of Pakistani occupation army in carrying out criminal activities including the ‘intellectuals killing’. Besides, the above cited sourced account also offers a portrayal of active affiliation and alliance of Jamat E Islami with Pakistani army and also in establishing the Al-Badar, the death squad, in execution of common policy and plan.

90. The report of **Fox Butterfield** finally concluded that-

“Al-Badar is believed to have been the action section of Jamat-i-Islami, carefully organized after the Pakistani crackdown last March.”

91. The above thus re-affirms the fact that JEI played a pertinent and culpable role in liquidating the notable pro-liberation intellectuals, the best sons and daughters of the soil, by providing express and active approval to the killing squad formed of Al-Badar men who in fact belonged to ICS, the student wing of JEI. Al-Badar which was known as the ‘action section’ of Jamat E Islami and ‘death squad’ of Pakistan army had intrigued in taking evil steps to exterminate the ‘intellectuals’, as apart of common design and plan.

92. Obviously the crimes alleged were perpetrated in an organized manner by a group of individuals who acted in unison or in pursuance of common plan and purpose. We have already recoded our finding in resolving connection of Ali Ahsan Muhammad Mujahid with plans and activities involving the commission of ‘intellectuals killing’ that

“The dreadful and barbaric event of intellectuals killing is not disputed. Therefore, conceivably relying upon evidence presented before us together with the sourced authoritative information we are convinced in recording our finding that it has been

proved beyond reasonable doubt that the Al-Badar men and only the Al-Badar men were the physical perpetrators who committed the diabolical collective criminal acts, in furtherance of common design and plan endorsed by its creator JEI and its student wing ICS that resulted abduction and killing of more than 200 intellectuals, the best sons and daughters of the nation. The collectivity of such criminal acts was aimed to cripple the nation when the perpetrators' organisation and their masterminds started feeling that the Bengali nation was about to achieve its hard earned victory.[Chief prosecutor v. Ali Ahsan Muhammad Mujahid: ICT-2-BD Case No. 04 of 2012' Judgment 17 July 2013, para 429]"

93. All the charges framed involve the offence of abduction of intellectuals followed by their brutal killing. The intellectuals included university professors, doctors, and journalists. On premeditated selection of nation's best and illustrious sons and daughters the 'killing squad' formed of armed Al-Badar men had carried out the 'operations' to devastate the nation's potential, to materialize the 'organised plan' of a group of Pakistani army officials. There has been no dispute that none but the armed Al-Badar men executed the actual perpetration of such deliberate criminal act of selective abduction with intent to cause appalling death of captured intellectuals.

(iii) Nature & Formation of Al-Badar as Organization and its Headquarter

94. We have already observed in the case of *Chief prosecutor v. Muhammad Kamaruzzaman* that Al-Badar which was created by JEI and

had acted as its ‘*action section*’, ‘*fascist body*’ and ‘*armed wing*’ in 1971 [ICT-BD case No.03 of 2012, Judgment 09 May 2013, para 605] . We also rendered our reasoned observation in the case of *Kamaruzzaman* based on potential sourced information that Jamat E Islami was thus indulged in indiscriminate massacre of their political opponents belonging to Bengali nation, in the name of liquidating ‘*miscreants*’, ‘*infiltrators*’ for which they were using Razakars, Al-Badar comprising with the workers of Islami Chatra Sangha [ICS], its student wing [*Muhammad Kamaruzzaman*, ICT-BD case No.03 of 2012, Judgment 09 May 2013, para 601]. In this regard we recall the report of **Fox Butterfield** published in **The New York Times, January 3, 1972** which says that *æAl Badar is believed to have been the action section of Jamat-e-Islami, carefully organised after the Pakistani crackdown last March*”. The report further narrates that the Al-Badar was composed of Bengalis and it had acted being equipped and directed by a group of Pakistani army officers.

95. Al-Badar was formed with the workers of Islami Chatra Sangha [ICS] the student wing of Jamat E Islam [JEI] and it provided support to the occupation armed forces. A report published in *The Economist* 01 July, 2010 speaks as below:

“Bangladesh, formerly East Pakistan, became independent in December 1971 after a nine-month war against West Pakistan. The West's army had the support of many of East Pakistan's Islamist parties. They included Jamaat-e-Islami, still Bangladesh's largest Islamist party, which has a student wing that manned a pro-army paramilitary body, called Al Badr.”

[Source: *The Economist*: 01 July 2010: *see also*

<http://www.economist.com/node/1648551?zid=309&ah=80dcf288b8561b012f603b9fd95770e>

96. The book titled *æEkattorer Ghatok Dalalra ke Kothai*” an authoritative research work, offers undisputed information in this regard.

The information described in the book is considered ‘undisputed’ as no effort has ever been made to challenge or refute it even during last forty years. Referring to reports describing barbaric atrocities published in the dailies of the relevant time it has been narrated in the book titled “**Ekattorer Ghatok Dalalra Ke Kothai**” that

“সেপ্টেম্বর মাসের ১৭ তারিখে রাজাকারবাহিনীর প্রধান ও শান্তি কমিটির লিয়াজো অফিসারকে নিয়ে গোলাম আজম মোহাম্মদপুরে ফিজিক্যাল ট্রেনিং সেন্টারে যে রাজাকার ও আল-বদর শিবির পরিদর্শন করেছিলেন সেটি ছিল আল-বদরদের হেডকোয়ার্টার। স্বাধীনতামনা বুদ্ধিজীবীদের বেশীরভাগকে আল-বদররা প্রথমে চোখ বেঁধে এখানেই নিয়ে আসে। নির্যাতনের পর এখান থেকেই তাদের রায়ের বাজারে ও মীরপুরের শিয়াল বড়িসহ অন্যান্য বধ্যভূমিতে নিয়ে গিয়ে হত্যা করা হয়।

[Source : একাত্তরের ঘাতক ও দালালরা কে কোথায়, প্রকাশ ১৯৮৯, পৃষ্ঠা ৫৬]

97. Thus it stands proved that the intellectuals on picking up from their residence were taken to Mohammadpur Physical Training College which was the AB headquarter where they were subjected to brutal torture and afterwards they were killed by taking them to killing fields at Mirpur locality, the outskirts of Dhaka city.

98. It would be evident from the report below that the intent of targeting intellectuals was the ending of an ‘organized plan’ designed and the killer force Al-Badar was assigned to execute the plan. A report titled “এদের ধরিয়ে দিন জন্মাদ বাহিনীর সদস্যদের আরো কয়েকটি নাম” published in **The Daily ‘Dainik Pakistan’**, 29 December 1971 narrates that

“(স্টাফ রিপোর্টার) বাংলাদেশের বুদ্ধিজীবীদের নির্মূল করার জন্যে বাংলার জঘন্যতম শত্রু

ফ্যাসিস্ট জামাতে ইসলামী যে মহাপরিকল্পনা গ্রহন করেছিল এবং যে পরিকল্পনা বাস্তবায়নে আল বদর নামে জল্লাদ বাহিনী গঠন করেছিল তাদের সম্পর্কে আরো তথ্য আমাদের হাতে এসেছে। এই জল্লাদদের ট্রেনিং কেন্দ্র হিসেবে পরিচিত লালমাটিয়ার শরীরচর্চা কেন্দ্র থেকে উদ্ধার করা এইসব তথ্যে বদর জল্লাদদের আরো কয়েকজনের নাম-পরিচয়, ঠিকানা পাওয়া গেছে.....”

[See also সংবাদপত্রে মুক্তিযুদ্ধের বিরোধিতা: সম্পাদনা: দুলাল চন্দ্র বিশ্বাস, বাংলাদেশ প্রেস ইন্সটিটিউট, ঢাকা,]

99. Where the Al-Badar ‘head quarter’ situated in Dhaka city in 1971? Who used to co-ordinate and control its activities? What activities were carried out at this ‘head quarter? The report confirms existence of an organised plan thought-out and designed by the fascist JEI for implementation of which a ‘killing squad’ comprising of Al-Badar men was formed. Intention was to wipe out the Bengali intellectuals. Where the captured intellectuals were taken? The report titled ‘**A Journalist Is Linked To Murder of Bengalis**’ by **Fox Butterfield** published on 3 January issue 1972 in **The New York Times** depicts that one Sri Chandpal who was released on 15 December 1971 from a dormitory of the Dacca College of Physical Education [Physical Training Institute, Mohammadpur] made a disclosure that

“.....there were 42 of us in the room. We were all tied with our hands behind our backs and had blindfolds.....Most of the people in the room were professors and doctors.....We could hear screams from the other room. It has been proved by other evidence that the said Physical training College situated at Mohammadpur in Dhaka city was

known as Al-Badar’ and ‘Razakers’ training center and also used as ‘torture center’.

(iv) Harrowing Scene of Brutality done by Al-Badar

100. An investigative report titled “**Intellectuals murdered in cold blood**’ published in the **Daily Observer 19 December 1971**

“The world news, T.V and radio network representatives visited the spot and came across the harrowing scene of brutality. They also located the prison camp at the Physical Training Institute where rooms are still blood-stained and instruments for torturing the victims scattered around.”

[Prosecution Documents Volume (Chowdhury Mueen Uddin) Volume, page 30]

101. Mr. John Stonehouse, British Labour M.P told to PTI in an interview in New Delhi on 20 December 1971 as to who were responsible for organising the murders of large number of intellectuals in Dacca, although he declined to name the officers responsible for the murders. **Mr. John Stonehouse** however told that

“.....during his visit to Dacca yesterday (December 19), he got the names of these Pakistani army officers who organised the murders, and members of ‘Al Badar’, an extremist Muslim group, who carried out these heinous crimes just before the surrender of Pakistani forces in Dacca.”

[Source: **The Hindustan Times**, New Delhi, 21 December, 1971: published in Bangladesh Documents, Volume II, Ministry of External Affairs, New Delhi, page 572]

102. It is thus proved that the leading intellectuals, doctors, professors and scientists, including such eminent personalities were brutally murdered. Al-Badar the fascist body of JEI committed such untold butchery. Thus, it stands proved beyond reasonable doubt that the Al-Badar men were the perpetrators of the horrific and untold pattern of intellectuals killing which took place in between 10 and 16 December 1971. The report of **Fox Butterfield** published in **The New York Times, January 3, 1972** narrates that

“.....the executioners [Al-Badar] left few clues. They rounded up their victims at night during the curfew. They never identified themselves. And they carried out their killings in a remote and heavily guarded area.

103. Delwar Hossain the lone survivor of the ‘operation liquidation’ has testified as P.W.22. Quoting Delwar Hossain, **Peter Hazelhurst** in a report published in **The Times, London, December 30, 1971** says,

“The sole survivor of this pogrom, Mr. Delwar Hussain, the Chief Accountant of the Greenland Mercantile Company of Dacca, said that on the morning of December 14, several razakars[Al-Badar] pulled him out of his house. After placing a blindfold around his eyes, they drove him by bus to a camp on the outskirts of Dacca. He was forced into a room. A little later, the cloth around his eyes slackened and he discovered that he was in a room with a score or so of other prisoners. Some of them had been tortured. Toe nails had been ripped off and toes amputed.

After an hour, they were interrogated. The prisoners identified themselves as doctors, lawyers, professors and journalists. They were forced into a bus and driven out to marshlands on the outskirts of Dacca. The razakars[Al-Badar] led their victims to a big tree where about another 130 prisoners were huddled. Several prisoners asked the razakars[Al-Badar] why they were killing fellow Bengalis. æOne of them told us to shut up and gave an order”, æfinish the bastards off”. Mr. Hussain said, æthey started to shoot prisoners with rifles, and others were simply bayoneted to death. I managed to slip the rope off my wrists and made a dash towards the river. By a miracle I escaped.”

[Source: **The Times, London**, December 30, 1971 : published in Bangladesh Documents, Volume II, Ministry of External Affairs, New Delhi, page 575]

104. The above report patently demonstrates that on capture, the intellectuals were , in most cases, first brought by the ‘squad’ formed of armed Al-Badar men to the camp known as ‘torture camp’ for causing torture and then to the outskirts of Dhaka city where they were brutally killed. From another report of **Fox Butterfield** published in The New York Times, January 3, 1972 it is found that the professors, doctors, on abduction were taken to the dormitory of ‘Dacca College of Physical Education’ [Mohammadpur Physical Training Institute]

105. The report titled ‘**Butchery By Al-Badar**’ published in **PATRIOT, New Delhi, 23 December 1971** also demonstrates an appalling depiction

of the role of Jamat E Islam [JEI] and its ‘armed wing’ Al-Badar that perpetrated the murder of leading intellectuals, the best sons of our soil. The report speaks that

“When the Pakistanis were overpowered, they left the killing to the fascist ‘Al Badar’, the armed wing of the Jamat-e-Islami. This fascist body has already butchered about 200 leading intellectuals, doctors, professors and scientists, including such eminent men like Sahidulla Kaiser and Munir Chowdhury.”

[Source: PATRIOT, New Delhi, 23 December, 1971: see also, Bangladesh Documents, Volume II, Ministry of External Affairs, New Delhi, page 573]

106. A report titled ‘**Al-Badar leader held**’ published in the **Daily Observer** 23 December 1971 says

“Abdul Khaleque, a collaborator of the notorious fascist Al-Badar bahini was caught on Wednesday in Rampura. He disclosed names of nine Al-Badar members who conducted the cold blooded murders of the intellectuals in the city prior to the shameful surrender of the occupation army.....” [Prosecution Documents (Chowdhury Mueen Uddin) Volume, page 38]

107. The report shows again that: **(i)** Al-Badar was a notorious fascist bahini **(ii)** the tragic intellectuals killing were executed by Al-Badar bahini **(iii)** the caught office bearer of City Jamat Abdul Khaleque admitted his involvement with the plan and it shows again that JEI and its creation AB

were actively connected with the calculated policy of annihilating selected intellectuals who had firm stand in favour of liberation and self-determination.

XIII. Role & Position of authority

Accused Chowdhury Mueen Uddin

108. The event of intellectuals killing was in fact a secret killing committed by a special squad formed of armed Al-Badar men. The acts of abduction of intellectuals took place during curfew and by using government vehicles [EPRTC]. In most cases, the perpetrators forming the group of attackers had kept their faces covered. Involvement of accused persons with the alleged events deserves to be resolved separately, at the segment of adjudication of charges. But now the role and position of accused Chowdhury Mueen Uddin in 1971 needs to be categorized, chiefly on the basis of investigative reports mostly published immediately after the incidents in the news media.

109. The investigative report titled “অপরেশন ইনচার্জ মুঈনুদ্দিন: এই নরঘাতককে খুঁজে বের করতেই হবে” published in The Daily Purbadesh 29 December 1971.

“বাংলাদেশের সোনার সন্তান জ্ঞান প্রদীপ সাংবাদিক শিক্ষক, চিকিৎসক, বুদ্ধিজীবীদের নৃশংস হত্যাকাণ্ডের বে-সামরিক নায়ক বাংলার কুসন্তানদের অন্যতম চৌধুরী মুঈনুদ্দিন(উপরের ফটো) আজ পলাতক। নরঘাতক হানাদার শত্রুদের এদেশী দোসর জামাতে ইসলামীর ফ্যাসিবাদী সংস্থা আল-বদর বাহিনীর অন্যান্য হত্যাকারীর মত চৌধুরী মুঈনুদ্দিন আজ আত্মগোপন করে আছে। কয়েকদিন পূর্বে জামাতে ইসলামীর ঢাকা শহর শাখার দফতর সম্পাদক আব্দুল খালেক মজুমদার ধরা পড়ে। সে যে স্বীকারোক্তি দান করে তাতে সে বুদ্ধিজীবীদের হত্যাকাণ্ডের সাথে জড়িত কয়েকজনের নাম প্রকাশ করে এবং চৌধুরী মুঈনুদ্দিন ঢাকায় এই হত্যাকাণ্ডের জন্য ‘অপরেশন-ইন-চার্জ’ ছিল বলে প্রকাশ করেছে।”

[Prosecution Documents Volume (Chowdhury Mueen Uddin), page 80]

110. The above investigative report once again has proved that the ‘Al-Badar’ was a fascist organisation of JEI and the accused Chowdhury Mueen Uddin had acted as ‘operation-in-charge’ of Al-Badar in accomplishing the designed and calculated killing of intellectuals in Dhaka and this information came into light on disclosure by a Jamaat leader of Dhaka city JEI, on his arrest instantly after 16 December.

111. From the above report it stands proved too that accused Chowdhury Mueen Uddin had been the publicity secretary of ICS, the student wing of JEI in 1970. It is now settled that the Al-Badar the ‘action section’ of JEI was formed of workers of ICS. Thus, there can be no ambiguity as to his [accused Chowdhury Mueen Uddin] membership in Al-Badar force.

112. The report also speaks about his [accused Chowdhury Mueen Uddin] employment in The Daily Purbadesh as its ‘staff reporter’ since August 1969. It seems to have been corroborated by the documentary film titled ‘**war crimes file**’ made by UK based channel-4. [**Material Exhibit-I**]. From the interview of Atiqur Rahman [had been working in The Daily Purbadesh in 1971] given to channel-4 it appears that he was also targeted by the Al-Badar. Atiqur stated, ‘*he [Chowdhury Mueen Uddin] had asked [in 1971] for the number of my residence*’. But Atiqur, being feared, gave him a fake address, instead of actual number of his residence. After liberation, in a hit list of journalists was found where his [Atiqur] name appeared with false address he given only to Chowdhury Mueen Uddin and as such Chowdhury Mueen Uddin was involved with the AB gang and criminal activities carried by it, Atiqur added. Quoting arrested Khalek Majumdar, Atiqur Rahman further stated that he [Khalek Majumdar] disclosed that Chowdhury Mueen Uddin was the ‘operation-in-charge’ of AB.

113. Even the overseas media carried report on Chowdhury Mueen Uddin almost immediately after Bangladesh was liberated on December 16, 1971. **The New York Times** reported that Mueen played a potential role

in the killing of intellectuals prior to the dawn of Bangladesh. A report titled ‘**A Journalist Is Linked To Murder of Bengalis**’ by **Fox Butterfield** published on 3 January issue 1972 in **The New York Times** narrates that

“**Chowdhury Mueen Uddin who was a pleasant, well-mannered and intelligent young man had been working in the Bengali-language paper named The Daily Purbadesh**”. The report went on to state that he[Chowdhury Mueen Uddin] often received telephone calls from the leader of a right-wing Moslem political party.

114. Fox Butterfield next narrates that

“ **But, investigation in the last few days show, those calls were significant. For Mr. Mueenuddin has been identified as the head of a secret, commando-like organization of fanatic Moslems that murdered several hundred prominent Bengali professors, doctors, lawyers and journalists in a Dacca brickyard.....**
If the war had not ended when it did, many Bengalis believe, Al-Badar would have succeeded. The bodies of 150 persons, many with their fingers chopped off or fingernails pulled out, were found in the brickyard. Hundreds more are

believed buried in 20 mass graves in nearby fields.”

115. From the above, it clearly reveals that despite continuing his employment in The Daily Purbadesh, accused Chowdhury Mueen Uddin had frequent conversation over telephone presumably with the JEI leaders as he was the ‘head’ of a secret, commando-like organization ‘Al-Badar’ which acted as its ‘action section’.

116. It has also been established that the accused Chowdhury Mueen Uddin as the ‘head’ of the Al-Badar and its ‘operation-in-charge’ naturally had significant knowledge about the criminal acts carried by the Al-Badar men. The above report also speaks that-

“According to one captured member now being held in the Dacca jail, the reporter, Mr. Mueenuddin, had been mastermind of the organization. A diary belonging to Mr. Mueenuddin’s roommate has been found. It listed the names of Al-Badar members and how much money they contributed to the group.”

117. Fox Butterfield in his above report has made it clear that accused Chowdhury Mueen Uddin masterminded the tragic episode of ‘intellectuals killing’ and presumably the diary so found belonged to Mueen Uddin’s fellow Ashrafuzzaman Khan [accused]. The fact of finding a diary showing name and address of targetted intellectuals has also been proved by a report published in The Daily Purbadesh, 12 January 1972 [Prosecution Documents Volume, Chowdhury Mueen Uddin, page100].

118. Local newspapers also had carried front-page stories with Mueen’s portrait just after victory in the war. The papers said the ækiller”, also the ‘operation-in-charge’ of Al-Badar, has to be found. Mueen went into hiding when Bangladesh had achieved victory after nine months’ bloody war. Bangla and English newspaper also reported that a captured Al-Badar man had disclosed Mueen’s atrocious role in 1971. National English daily **The Observer, 29 December 1971** reported with the headline: **“Absconding Al Badr Gangster”**. It said,

“Chowdhury Mainuddin [Mueen Uddin], a member of the banned fanatic Jamaat Islam Party, has been described as the ‘Operation in Charge’ of the killing of intellectuals in Dacca [Dhaka] by Abdul Khaleque, a captured ring leader of the Al-Badr and office-bearer of the Jamaat-e-Islam.æThe fascist Al-Badr force was responsible for the killing of the intellectuals backed by the Pakistan Army before their humiliating surrender. Chowdhury Mainuddin has been absconding presumably since December 16”.

[Prosecution Documents Volume, Chowdhury Mueen Uddin, page, 42]

119. In addition to above report, another investigative report titled **“অপরাধে ইনচার্জ মুঈনুদ্দিন: এই নরঘাতককে খুঁজে বের করতেই হবে”** published in **The Daily Purbadesh 29 December 1971** narrates that Chowdhury Mueen Uddin was the publicity secretary of ICS the student of JEI in 1970 and he was so involved with this student organisation since his school life [Prosecution Documents (Chowdhury Mueen Uddin) Volume, page 80].

120. Admittedly Abdul Khaleque was captured and afterwards, prosecuted, tried convicted and sentenced for atrocities under the Collaborators Order 1972. Abdul Khaleque was another ring leader of Al-Badar. Describing Chowdhury Mueen Uddin as the ‘operation in-charge’ of the killing of intellectuals, by Abdul Khaleque thus carries a potential indication as to Chowdhury Mueen Uddin’s sharp and active involvement with the appalling and planned event of intellectuals killing. Retaining position as the ‘operation-in-charge’ in carrying out the notorious calculated mission inevitably enabled accused Chowdhury Mueen Uddin to act as a person of authority and domination over the ‘gang of killers’ formed of Al-Badar men.

XIV. Role & Position of authority

Ashrafuzzaman Khan

121. Needless to say that usually an offender leaves no document as to his role and participation with a planned group crime. This accused has been charged to act as the ‘chief executor’ of the ‘killing mission’. Before determining his complicity and involvement with the perpetration of the alleged designed crimes we need to resolve the issue on his role and position, if any, which may reasonably create his nexus with the events alleged. And in resolving it, we are to depend on relevant old investigative reports.

122. The report titled “বদর বাহিনীর শিকার আরও সাতজন বুদ্ধিজীবীর লাশ উদ্ধার: নরপশুটি গোরস্তানের পাশে দাঁড় করিয়ে গুলি করে তাঁদের মেরেছে” published in The Daily Purbadesh 5 January 1972. [Prosecution Documents (Chowdhury Mueen Uddin) Volume, page 91]

123. The report narrates the story of locating decomposed body of seven intellectuals in two ditches from a place 50 yards far from Harirampur grave yard under Mirpur police station, as identified by one Mofiz Uddin the driver of the vehicle by which the captured university teachers and a doctor[victims of charge no. 6] were taken away. Of them four could be identified who were [1] Dr. Serajul Haque Khan [2] Dr. Foyzul Mahi [3] Santosh Bhattacharjee [4] Dr Mortuza Ali. The rest three could not be identified but those were guessed to be of Anwar Pasha, Rashidul Hassan

and Dr. Abul Khayer, recovered together from a separate ditch. The report further narrates that all the bodies were found blindfolded and they were picked up from their residence at the Dhaka university residential campus.

124. The investigative report titled “জন্মাদের ডায়েরী : বুদ্ধিজীবী হত্যার মূল্যবান দলিল” published in the Daily Purbadesh 12 January 1972 [Prosecution Documents Volume (Chowdhury Mueen Uddin), page 99-100] speaks of some valuable information as to the tragic episode of intellectuals killing and the notorious perpetrators belonging to Al-Badar.

“একটি ডায়েরী পাওয়া গেছে। এতে কিছু প্রামাণ্য দলিল ও কতগুলো চাঞ্চল্যকর তথ্য আছে। বাংলার সোনার সন্তান বুদ্ধিজীবীদের নৃশংসভাবে হত্যার কতগুলো খন্ড খন্ড তথ্য এই ডায়েরীতে বিধৃত রয়েছে বলে অনুমান করা হচ্ছে। সূত্র অনুযায়ী, ডায়েরীটির মালিক বুদ্ধিজীবী হত্যাকারী জন্মাদ আল-বদর বাহিনীর কমান্ডার আশরাফুজ্জামান খান। স্বহস্তে গুলি করে সাতজন বিশ্ববিদ্যালয় শিক্ষককে মীরপুর গোরস্তানে এই জন্মাদ হত্যা করেছে বলে কয়েকদিন পূর্বে প্রামাণ্য তথ্য পাওয়া গেছে। যে গাড়ীতে করে নিহত শিক্ষকের নিয়ে যাওয়া হয়েছে সেই গাড়ীর চালক মফিজুদ্দীন কয়েকদিন পূর্বে পুলিশের কাছে প্রদত্ত স্বীকারোক্তিতে এই ব্যক্তিকেই ‘এক্সিকিউটর’(জন্মাদ) বলে উল্লেখ করেছে। ঢাকা শহর মুক্ত হবার পর এই জন্মাদটি আত্মগোপন করেছে। এখনো তার কোন হদিস পাওয়া যায়নি। ডায়েরীটি দুইটি পৃষ্ঠায় ঢাকা বিশ্ববিদ্যালয়ের ১৯ জন বিশিষ্ট শিক্ষক-শিক্ষিকা ও বিশ্ববিদ্যালয়ের চিকিৎসক ডাঃ গোলাম মর্তুজার নাম এবং বিশ্ববিদ্যালয় কোয়ার্টারের কত নম্বর বাড়ীতে থাকেন সকল তথ্য লেখা রয়েছে। উল্লেখ্য এই বিশজন শিক্ষক শিক্ষিকার মধ্যে ১৪ ডিসেম্বর

আটজন নিখোঁজ হয়েছেন।
এছাড়া ডায়েরীটিতে জল্লাদ
 বাহিনীর অপারেশন-ইন-চার্জ চৌধুরী মুঈনুদ্দিন,
 অপর কমান্ডার শওকত ইমরান, সিটি বদর বাহিনী
 প্রধান সামসুল হকের নাম উল্লেখ রয়েছে।
 আরো উল্লেখ্য যে, কয়েকজন
 সাংবাদিক হত্যার সাথেও এই একই হত্যাকারী
 জড়িত রয়েছে। পূর্বদেশের শিফট ইনচার্জ ও
 সাহিত্য বিভাগের সম্পাদক জনাব আ.ন.ম গোলাম
 মোস্তফাকেও এই হত্যাকারীটি ধরে নিয়ে যায়। ”

125. The Daily Purbadesh ,13 January 1972 issue by publishing a follow up report describing profile of accused Ashrafuzzaman Khan with his photograph termed him as the ‘chief executor’ of intellectual killing in Dhaka [Prosecution Documents Volume (Chowdhury Mueen Uddin), page 102]. This is the reason why and how relatives of victims [charge no.6] could identify the armed person as Ashrafuzzaman Khan who had accompanied and led the gang in picking up the notable university teachers from Dhaka University residential campus.

126. A report titled “ডাকসু নির্বাচনে ছাত্রসংঘের পরিচিতি সভা” published in **The Daily Sangram** known as the mouthpiece of JEI, 14 May 1970 demonstrates that Ashrafuzzaman Khan contested for the post of general secretary of DUCSU election as a nominee of ICS, the student wing of JEI. [Prosecution Documents submitted under section 9(4) of the Act, page 8]. The information provided by the Haji Muhammad Mohsin Hall authority of Dhaka University goes to show that Ashrafuzzaman Khan obtained BA(Honours) degree in 1970 [examination held in 1971] in Islamic Studies from Dhaka University [Prosecution Documents Volume (Ashrafuzzaman Khan), page 307]. The investigative book titled “৭১ এর যুদ্ধাপরাধীরা কে কোথায়” , edited by Rishad Ahmed narrates that accused Ashrafuzzaman Khan currently who has been living in New York was the ‘chief executor’ of the operation of intellectuals killing [Prosecution Documents Volume(Ashrafuzzaman Khan), page 251]. All these investigative information offer unerring conclusion as to his substantial

position of authority over the murderous enterprise formed of Al-Badar men.

XV. Adjudication of Charges

127. We are in agreement, considering the description made in all the charges framed, that it will be of significantly effective if the charge nos.6 and 7 are addressed and adjudicated first. It appears that the charge no.6 relates to the event of killing of seven university teachers and one doctor, on forcible capture from the residential campus of Dhaka University and the event took place in morning on 14 December 1971 in conjunction with the attack launched by the same group of perpetrators allegedly led by accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan. The witnesses who testified before the Tribunal allege to have had occasion to see the accused persons accompanying the ‘squad’. In relation to charge no.7, it has been submitted that the victim martyred professor Mofazzal Haider Chowdhury could recognise accused Chowdhury Mueen Uddin who was his student, at the time of abducting him.

128. The Tribunal notes that in all 11 charges have been framed of which 10 charges[excluding charge no.6] involve independent ten events of ‘abduction’ of ten intellectuals from their respective residence. But we have already rendered our finding in the foregoing discussion that all the events are sequenced together and out come of organised and designed plan and were carried out by the ‘squad’ formed of Al-Badar men in similar pattern using similar logistics. The accused persons are alleged to have acted as the ‘operation-in-charge’ and the ‘chief executor’ of the killing operation carried out targeting the selected intellectuals.

129. Indisputably, what happened between 10 December and 15 December 1971 in Dhaka city has gone down in history as comprising one of the most vicious illustrations of fierce atrocity constituting planned and designed large scale killing of individuals belonging to intellectual class. For the reasons above we deem it convenient to adjudicate the charge nos. 6 and 7 first which may reasonably give us a track in determining culpability of the accused persons, if any, even in relation to the events narrated in other nine charges framed.

Adjudication of Charge No. 6

[Events of abduction followed by killing of seven Dhaka University teachers and one doctor]

130. Summary charge: The charge relates the event of forcible abduction of seven university teachers [(1) **Professor Gias Uddin Ahmed** (2) **Professor Dr. Serajul Haque Khan** (3) **Dr. Abul Khayer** (4) **Dr. Foyzul Mohiuddin** (5) **Professor Rashidul Hassan** (6) **Professor Anwar Pasha** (7) **Professor Dr. Santosh Bhattacharjee**] and one doctor [**Dr. Md. Mortuja**] from their Dhaka University residential quarters on 13 December, 1971 in between 08:00 -09:45 am by a gang of 5/6 armed Al-Badar men led and accompanied by accused (1) Chowdhury Mueen Uddin, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and (2) Ashrafuzzaman Khan, member of Al-Badar high command and ‘chief executor’. The abducted intellectuals were brought to Mirpur killing field by an EPRTC microbus and afterwards they killed them

Witnesses

131. Prosecution relies upon P.W.1 Masuda Banu Ratna, P.W.4 Dr. Enamul Haque Khan, P.W.5 Professor Dr. Syed Anwar Hossain, P.W.15 Omar Hayat, and P.W.18 Rashidul Islam, to prove this charge. Apart from them P.W.20 Professor emeritus Dr. Anisuzzaman has deposed some facts allegedly relevant to the event. Of the above five witnesses, P.W.1 is the sister’s daughter of victim Professor Gias Uddin. At the relevant time she had been at her maternal uncle’s [victim] residence in Dhaka University campus and was a first year student of Mathematics in Dhaka University. P.W.4 is the son of martyred professor Dr. Serajul Haque Khan. He narrated how the armed group abducted his father. At the relevant time P.W.4 was a final year student of History in Dhaka University. P.W.5 Professor Dr. Syed Anwar Hossain had been at the Dhaka University campus and as such he allegedly witnessed the event. P.W.15 is the wife’s brother of martyred Dr. Mortuza. P.W. 16 Rashedul Islam [47] is the son of Martyred intellectual Dr. Abul Khayer [one of abducted intellectuals as narrated in charge no.6].

132. The event of forcible capture of 7 distinguished university teachers and one doctor from Dhaka University residential campus happened in between 08:00 and 09:45 am and by the same squad of perpetrators. These witnesses have narrated chiefly the event of abduction and facts relating to recovery of dead body of abducted martyred teachers and doctor. They also testified what they knew about the ‘planned intellectual killings’ and accused persons’ involvement therewith from the reports published in domestic and international news media, immediately after the victory on 16 December 1971.

Evidence

133. P.W.1 Masuda Banu Ratna [59] in narrating the event of abduction of her maternal uncle has stated that at the relevant time she used to stay at her maternal uncle’s [martyred professor Gias Uddin] Nilkhet house. Her uncle was a teacher of history and house tutor of Haji Muhammad Mohsin Hall. P.W.1 stated that she [P.W.1] was an active activist of Chhatra Union in Dhaka University.

134. P.W.1 stated that around 7:30am on December 14, 1971, her maternal uncle Professor Giasuddin went to the dormitory’s water pump area as there was no water supply that day. Around 8:00am, an EPRTC microbus appeared and two armed persons came on the first floor and enquired about her maternal uncle [professor Giasuddin]. Afterwards, the duo had left the house when Golam Kibria, a cousin of Professor Giasuddin said that he [Professor Giasuddin] was not at home. After eight to ten minutes, they [abductors] came back and started searching the house and at one stage, when Golam Kibria informed them about Giasuddin’s whereabouts, they took him [Golam Kibria] with them towards Mohsin Hall water pump.

135. P.W.1 next stated that they [abductors] found Professor Giasuddin there and boarded him in the EPRTC microbus blindfolding his eyes, on capture. Golam Kibria told it after returning home, added P.W.1.

136. On cross-examination, P.W.1 stated that they heard from Kibria [cousin of Professor Giasuddin] that there were some other persons

blindfolded and kept inside the mud covered EPRTC bus. It rather re-affirms the fact of capturing other teachers in conjunction with the same operation and by the same group of perpetrators.

137. In cross-examination, P.W.1 further stated that she saw accused persons attending meeting on 15 August 1971 in Dhaka University campus when Matiur Rhaman Nizami and Ali Ahsan Muhammad Mujahid had delivered speech. Therefore, and since P.W.1 was a student of Dhaka University naturally she had fair reason to know the accused persons since earlier which enabled her to identify the accused persons when they came to their residence and had picked up Professor Gias Uddin from Mohsin Hall area.

138. Considering the circumstances, learning the event of abduction from Golam Kibria by P.W.1 was natural. What the P.W.1 had learnt from Golam Kibria involves second part of the event i.e actual abduction of the Professor Giasuddin. We have already found that the armed persons first came to Giasuddin's residence and finding him not available and on hearing from Golam Kibria they moved to the pump house of Mohsin Hall[DU] wherefrom Professor Giasuddin was picked up.

139. P.W.1 also stated that she could identify Chowdhury Mueen Uddin and Ashrafuzzaman Khan when the duo had gone to her maternal uncle [Professor] and took him blindfolded from Mohsin Hall area. Chowdhury Mueen Uddin and Ashrafuzzaman Khan were Dhaka University students and leaders of Islami Chhatra Sangha [the then student wing of JEI] and she saw them attending anti-liberation meeting and joining processions in Dhaka University campus and that is why she knew them since earlier, added P.W.1 Masuda.

140. As regards reason of identifying the armed duo P.W.1 Masuda stated that she was involved in student politics and that's why they [Chowdhury Mueen Uddin and Ashrafuzzaman Khan] were known to her. They [armed abductors] were resident students of Mohsin Hall and she heard one of

them had got a seat in the dorm taking recommendation from her uncle Professor Giasuddin, she added.

141. P.W.1 went on to state that Golam Kibria also told her that some other detainees were also in the microbus and later on they learnt that Dr Mortuza, Abul Khayer, Rashidul Hasan, Anwar Pasha, Santosh Chandra Bhattacharjee, Faizul Mohi and others were also picked up that day.

142. P.W.1 stated that wife of Dr Mortuza [one of victims of the event as narrated in charge no.6] and others told her[when she met them at the morgue of Dhaka medical College Hospital] that Chowdhury Mueen Uddin and Ashrafuzzaman Khan abducted their relatives at gun point and took them away on an EPRTC microbus.

143. The reasons of knowing the armed abductors [accused persons] , as stated by P.W.1 together with the fact of learning that the accused persons also had picked up Dr Mortuza and other teachers , in conjunction with the same ‘operation’, prompt us to conclude that the gang led by the accused persons committed the offence of abduction on gun point followed by their brutal killing .

144. P.W.1 finally stated that on January 5, 1972, one of her[P.W.1] uncles Abdul Momen Khan[former Food Secretary and Food Minister] went to Mirpur killing field and identified Professor Giasuddin’s decomposed body, on seeing wearing apparels. He [Martyred Professor Giasuddin] was buried in Dhaka University campus near the mosque.

145. P.W.4 Dr. Enamul Haque Khan [65], Professor of History, Jahangirnagar University testified how his father Professor Serajul Haque Khan was abducted on 14 December 1971 in morning. At the relevant time P.W.4 was a final year student of the department of History, University of Dhaka.

146. P.W.4 stated that his father had been a professor of the education administration department of Institute of Education Research of DU and

used to live in teachers' quarters on Fuller Road on DU campus. One of his paternal uncles, Shamsul Haque Khan, had also been living with them. His [P.W.4] father was a believer of Bengali nationalism and was a progressive man. Being a teacher of the education administration, he [victim professor] used to speak against the discriminatory education policy of the then Pakistan government and these were the reasons of his father becoming the target of the Pakistani army and their collaborators, P.W.4 added.

147. P.W.4 went on to narrated that around 8:30am on December 14, 1971, a minibus stopped in front of their quarters. Five to seven armed men climbed up to the third floor and knocked on their door. His uncle Shamsul opened the door and saw two armed men at the door and the others standing in the staircase. One of the two asked for his father. He [P.W.4] was observing them standing behind his uncle who being perplexed told them that Serajul [victim] was at Prof Ismail's home on the ground floor. With this, the armed men went down. From the balcony, his uncle and he saw them dragging his father out of Ismail Shaheb's home. The armed men then blindfolded Serajul [victim] and took him away in the minibus. Since there was a curfew they could not go out but later that day they learnt that Mohammad Mortuza, who was a physician of DU medical centre was also abducted from campus along with the brother-in-law of Mustafizur Rahman, a professor of the DU Arabic department. The brother-in-law of Mustafizur, who worked in The Daily Sangram had returned to the campus the following day on a military vehicle. He [P.W.4] wanted to see Mustafizur's brother-in-law, since he had been taken just like his father, but Mustafizur did not allow him [P.W.4] to see his bother-in-law.

148. Quoting the driver of a minibus used by the Al-Badar men to pick them up, P.W.4 Dr. Enamul, a history professor of Jahangirnagar University, said Ashrafuzzaman himself had shot dead the brightest sons of the nation at Mirpur in Dhaka.

149. During his cross-examination P.W.4 stated that he believed that Mustafizur's brother-in-law had helped Al-Badar men in indentifying DU teachers. Mustafizur too was arrested after the war under the Collaborator Act, 1972, he said.

150. P.W.4 further stated that in the evening of December 15, 1971, they heard that Faizul Mahi, Abul Khayer, Prof Anwar Pasha, Prof Rashidul Hasan, Santosh Chandra Bhattacharjee and Prof Giasuddin Ahmed were also abducted from campus the previous day in similar fashion. After the surrender of the Pakistani army on December 16, he [P.W.4] and his friends and his father's colleagues started searching for his father and other abducted intellectuals. He searched almost all killing grounds in Dhaka city and surrounding areas for two weeks. He [P.W.4] even, looked for his father's body among the bodies floating in the rivers. But, he didn't find him, stated P.W.4 Dr. Enamul Haque Khan choking with emotions.

151. P.W.4 next stated that in January, 1972, an NSI official Samad Talukder went to their home with one Mofizuddin, who was driving the minibus in taking away his father and other abducted victims. Driver Mofizuddin on seeing his[P.W.4] father's picture confirmed that he[victim father of P.W.4] along with other captured intellectuals were brought by the Al-Badar men by a vehicle driven by him[driver Mofizuddin].

152. Quoting Mofiz, P.W.4 stated that his father and other detainees were first taken to Lohar Pool at the city's Gabtoli. They were then taken to Mirpur (the place where the Martyred Intellectuals' Memorial has been built after the independence) and Ashrafuzzaman [accused] shot and killed them. In early January, 1972, eight bodies were exhumed from two mass graves as identified by Mofiz [driver].

153. P.W.5 Professor Syed Anwar Hossain was a teacher of history department ,Dhaka University and had been an assistant house tutor at the Mohsin Hall and he used to live in a quarter there, at the relevant time. He stated that the Pakistani occupation army and their local collaborators had

brutally killed Prof Gias and other intellectuals at the fag end of the Liberation War to leave the nation devoid of merit.

154. P.W.5 narrated that in the morning of December 14, 1971, he went to the Pump House as there was no water in his quarter. A little later, Prof Jahirul Haque also went there. Around 8:15am, Prof Giasuddin reached the pump house and switched on the pump. When the trio was returning from there, he saw a man standing with a rifle, whose face was wrapped with a handkerchief. He found the dress of the armed man similar to the ones used by the Al-Badar, Al-Shams and Razakar men. When the armed person looked for Giasuddin, Prof Gias revealed his identity. The man then asked Prof Gias to go with him. When the man pointed his rifle at Prof Gias's chest, the DU teacher looked at him [P.W.5] and said, **“Anwar, I am going. Pray for me.”** As the armed man was taking Prof Gias before the Mohsin hall, another armed person joined him. Gias was blindfolded with the towel of the hall's guard Rahim, who was a non-Bangalee.

155. Later, he [P.W.5] had learnt that Prof Gias was taken by a microbus, which was covered with mud. Rahim had revealed the whereabouts of Prof Gias to the armed persons. In the afternoon on that day, he [P.W.5] had come to know that several other DU teachers were also taken in the same microbus.

156. P.W.5 stated that **The New York Times** in its January 3, 1972 issue had published a detailed report on the role of Mueen Uddin and Ashrafuzzaman in the killing of intellectuals. Alleged Al-Badar leaders Chowdhury Mueen Uddin and Ashrafuzzaman Khan had led the abduction of several intellectuals from the Dhaka University campus on December 14, 1971. P.W.5 stated that in late December of 1971, he had learnt from newspaper reports that an organised gang, led by Chowdhury Mueen Uddin and Ashrafuzzaman Khan, was involved in the abduction of Dhaka University teachers.

157. P.W.15 Omar Hayat [71], wife's brother of victim Dr. Mortuza learned the incident of abduction of Dr. Mortuza from his sister. He

narrated that Dr. Mortuza was forcibly taken away, on capture from his residence at Dhaka University residential campus and he never returned. Defence could not dislodge this version.

158. P.W.15 went on to state that on 04 January 1972 he went to his sister's house where he found Samad [Abdus Samad Talukder] a police official and a caught individual named Mofiz driver on whose identification they and Enamul Haque Khan [P.W.4], son of another victim Dr. Serajul Haque Khan rushed to a place behind Mirpur shrine and they found dead bodies of abducted intellectuals. They found the dead body of Dr. Mortuza there. They heard there from driver Mofiz that one Mueen Uddin was involved with the incident and one Ashrafuzzaman himself gunned down the abducted intellectuals to death. He [driver Mofiz] also disclosed the name of Dr. Serajul Haque Khan, Dr. Santosh Bhattacharjee, Dr. Foyzul Mahi, Professor Anwar Pasha, and Syed Rashidul Hassan who were killed there.

159. P.W.15 also stated that later on he came to know the direct involvement of accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan with the incident of abduction and killing of Dr. Mortuza and others, on going through the reports published in news media

160. P.W.18 Rashedul Islam [47], son of martyred teacher Dr. Abul Khayer of department of history, Dhaka University stated what he heard from his mother who witnessed the tragic incident. According to him his mother is now 74 and not in position to depose before the Tribunal as she is almost bed ridden owing to various diseases. He[P.W.16] heard from his mother that his father's dead body was recovered from Mirpur killing field as identified by one driver Mofiz who disclosed too that accused Chowdhury Mueen Uddin and Ashrafuzzaman were directly involved with the killing of his father and other intellectuals[captured from Dhaka University residential campus in morning of 14 December 1971] . Defence could not dislodge this piece of hearsay version.

161. P.W.16 Farida Banu [74], the sister of martyred intellectual Professor Giasuddin had been at the residence of professor Giasuddin at Dhaka University campus. She had thus occasion to witness the incident of taking away her brother forcibly. She narrated how his brother was forcibly brought by trained armed attackers. Her statement seems to have corroborated to what has been testified by P.W.1 another first hand witness in relation to the event of abduction.

162. P.W.16 also stated, corroborating other witnesses, that on 4 January 1972 they came to know from Mofiz the driver of the EPRTC vehicle used for taking away his brother and other intellectuals, on capture that Ashrafuzzaman Khan himself killed the abducted intellectuals at Mirpur mass grave by gun shot. Defence could not dislodge this piece of pertinent evidence on material fact.

163. ‘Killing [of intellectuals] took place [in December 1971] as a part of calculated policy, Professor Anisuzzaman narrates to UK based channel-4 [Documentary film titled ‘war crimes file’: Material Exhibit-I] . Chowdhury Mueen Uddin [accused] was the operation-in-charge of AB, Dhaka city, Mr. Atiqur Rahman of The Daily Purbadesh claims to channel-4. Professor Anisuzzaman as P.W.20 testified similar version before the Tribunal.

Deliberations

164. Defence does not dispute the event of abduction of seven university teachers and one doctor from the Dhaka university residential campus in similar fashion and in conjunction with the same ‘operation’ forming part of systematic attack , in furtherance of common plan and design, on 14 December 1971 morning. It also remains undisputed that the captured victims were taken to unknown place by a mud covered EPRTC minibus.

165. The pattern of the event of abduction as revealed offers firm indication that the perpetrators, in furtherance of common purpose and design, abducted the selected teachers and intellectuals. Picking up only selected professors/teachers/doctor on gun point indicates that the

perpetrators carried out their operation targeting only those selected intellectuals.

166. Defence however, argued that not the accused and AB men but the Pakistani army committed the crime. Chowdhury Mueen Uddin had no opportunity to remain available anywhere during day time as he had been working as a reporter of the Daily Purbadesh. Accused were involved with the politics of ICS but they were not with AB and its activities.

167. Additionally, the Tribunal notes that evidence of P.W.1 and P.W.4, especially, inspires substantial credence and these witnesses do not appear to have made any exaggeration. Their testimony also proves beyond reasonable doubt that the accused persons accompanied and led the group of armed Al-Badar men in execution of the criminal act of abduction, the first phase of the designed mission.

168. The unimpeached version of P.W.1 and P.W.4 offers unerring indication that target of the ‘killing squad’ was selected intellectuals who took stand in favour of war of liberation and Bengali nationalism. Brother-in-law of Mustafizur Rahman had been working in Daily Sangram, the mouth piece of JEI, as stated by P.W.4. He would not have been spared by the perpetrators if he was not associated with JEI. Taking away the brother-in-law of Mustafizur Rahman, a professor of the DU Arabic department, in conjunction with the same ‘operation’ and his return to home on the following day by a military vehicle, as stated by P.W.4, indicates that he [brother-in-law of Mustafizur Rahman] was not the target of the ‘squad’ and either he was captured by mistake or he was taken too for the purpose of facilitating the plan of the perpetrators. The indication stemmed from this material fact forces us to conclude that the ‘operation’ was carried out in execution of a common plan and design. The pattern of the criminal act suggests that the group of armed Al-Badar men targeted only the selected illustrious intellectuals who were in favour of Bengali nationalism.

169. We have got another crucial piece of evidence in relation to a material fact which is rather admitted. P.W.4 Dr. Enamul Haque Khan, professor of History, Jahangir Nagar University and the son of martyred Dr. Serajul Haque Khan has narrated heart rending depiction of the event of abduction of his father and finding his father's decomposed dead body 21 days after the event from a place nearer to a grave yard at Mirpur locality, as disclosed by one Mofiz Uddin, one of drivers of EPRTC minibus who had occasion to witness the event of abduction including the killing of intellectuals abducted from Dhaka university residential campus on 14 December morning.

170. The said Mofiz Uddin by lodging a first information report with Ramna police station on 18 December 1971 disclosed how the intellectuals were abducted on 14 December and were killed and who were associated with the event of abduction and said killing. According to said Mofiz Uddin's statement as published in a report of the **Daily Purbadesh 5 January 1972** it was accused Ashrafuzzaman Khan who gunned down the seven intellectuals abducted from the university residential campus on 14 December.

171. It also revealed from the report that Ashrafuzzaman was the 'chief executor' of the killer Al-Badar bahini who was accompanied by accused Chowdhury Mueen Uddin and other Al-Badar men. It was quite natural for P.W.4 to become aware about the identity of the accused persons on seeing their portrait published in the daily Purbadesh and thus it proves too that the accused persons accompanied and led the armed gang in abducting his father and other intellectuals from their residence of university residential campus, in conjunction with the same 'attack'. The fact of learning accused persons' direct involvement from driver Mofiz and locating the killing field as identified by said driver Mofiz where the abducted eight intellectuals were brought, on capture, and gunned down to death by accused Ashrafuzzaman Khan, as stated by P.W.15 remains unimpeached.

172. Driver Mofizuddin was brought to the killing field, to recover the dead bodies of abducted intellectuals by Abdus Samad Talukder, a police official and P.W.15 and P.W.4 [son of victim Dr. Serajul Haque Khan] accompanied them. Abdus Samad Talukder made statement to the Investigation officer [IO]. He could not be examined as he died at the end of 2011 and as such on application initiated by the prosecution under section 19(2) of the Act of 1973 his statement so made to the IO has been received for consideration.

173. It appears from the statement of Abdus Samad Talukder[subsequently died] made to IO that after 16 December 1971 Mr. Nurul Momen Khan the then Director General, National Security Intelligence[NSI] directed him to inquire into the matter of ‘intellectuals killing’ and in carrying out investigation it revealed to him that the gang formed of Al-Badar men had abducted the university teachers and other intellectuals from Dhaka University quarters and other places and they were brought by mud covered EPRTC minibus. In collecting information about such minibus he came aware of one Mofizuddin the driver of a minibus. He [Abdus Samad Talukder] brought him [driver] to Dhaka from his native home in Tangail and on interrogation he [driver Mofiz] disclosed that Al-Badar men compelled him to drive the vehicle and in morning on 14 December 1971 they [gang of Al-Badar] brought teachers, doctor, journalists and intellectuals to Mirpur mass grave, on capture from Dhaka University residential campus and had killed them. He [driver Mofiz] also disclosed that he heard one [perpetrator] calling another by ‘Ashrafuzzaman Khan’ who himself killed seven teachers and buried them in a ditch there. He [driver Mofiz] also heard other Al-Badar men terming Ashrafuzzaman Khan as the ‘chief executor’. The essence of his [witness Abdus Samad Talukder] statement made to the IO gets corroboration from a report published in **The Daily Purbadesh 5 January 1972** and in **The Daily Ittefaque 5 January 1972** [Prosecution Documents Volume(Chowdhury Mueen Uddin), page 92 and 161]

174. Witness Abdus Samad Talukder, accordingly submitted a report to his authority. He [witness] also narrated in his statement made to IO that

he had met the relatives of martyred teachers along with driver Mofizuddin on whose identification dead bodies of Santosh Bhattacharjee, Dr. Serajul Haque Khan, Dr Faizul Mohi, Dr. Mortuza and others could be recovered from Mirpur killing field.

175. The statement of witness Abdus Samad Talukder [now dead] made to the IO together with the testimony of relatives of four victims [P.W.1, P.W.4, P.W.15, P.W.16, and P.W.18] has established it beyond reasonable doubt that said driver Mofizuddin had opportunity to see the event, both abduction and killing phase, as he drove the EPRTC minibus in bringing the captured intellectuals from Dhaka University residential quarters to the killing field, on the date and time. Cumulative evaluation of evidence and statement of Abdus Samad Talukder [now dead] made to the IO also proves that driver Mofizuddin had occasion to see the event of killing and to know the identity of the ‘killer’ [Ashrafuzzaman Khan].

176. The criminal act of abduction of Dr. Abul Khayer [father of P.W.18] took place in conjunction with the same attack and he was captured and forcibly taken away by the same gang of armed Al-Badar. Mofiz was the driver who drove the vehicle by which the captured eight intellectuals were taken to the killing field at Mirpur, the outskirts of Dhaka city, as found from evidence of P.W.16. Besides, P.W.1 stated that wife of Dr Mortuza and others told her [when she met them at the morgue of Dhaka medical College Hospital] that Chowdhury Mueen Uddin and Ashrafuzzaman Khan abducted their relatives at gun point and took them away on an EPRTC microbus. This version also lends further corroboration to what has been stated by P.W.16.

177. Collective evaluation of evidence of P.W.4, P.W.15 together with old reports lends strength and corroboration to what has been deposed by the P.W.16. Therefore, testimony of P.W.16, though hearsay in nature, carries probative value and inspires credence and thus it stands proved that the event of abducting eight intellectuals from DU residential campus formed an ‘integral attack’ directing selected intellectuals, in furtherance of common purpose and plan. The ‘operation’ was carried out by the same

‘squad’ formed of Al-Badar which was accompanied and led by accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan.

178. The report titled published in **The Daily Purbadesh, 5 January 1972** narrates who were involved with the abduction of the victims from their Dhaka University residential area and who and where they were killed. The report says that

“ হত্যাকাণ্ডের দীর্ঘ একুশ দিন পর গতকাল ঢাকা বিশ্ববিদ্যালয়ের ছয়জন প্রফেসর ও একজন ডাক্তারের লাশ উদ্ধার করা সম্ভব হয়েছে।;.....প্রত্যেকটি লাশ চোখ বাধা অবস্থায় পাওয়া গেছে ১৪ ডিসেম্বর সকাল ৯টায় কারফিউর মধ্যে উপরোক্ত সাতজন বুদ্ধিজীবীকে নিজ নিজ কোয়ার্টার থেকে তুলে নিয়ে যাওয়া হয়। তুলে নিয়ে যাওয়ার সময় তাঁদের সকলের পরনে যে কাপড় ছিল তাও সনাক্ত করা সম্ভব হয়েছে।মফিজ উদ্দিন নামক বিআরটিসি’র একজন ড্রাইভার গত ডিসেম্বর মাসের ১৮ তারিখে সকাল সাড়ে দশটায় রমনা থানায় হাজির হয়ে এ মর্মে একটি এজাহার দেয় যে, সে এবং তার আরও তিনজন সহকর্মী ড্রাইভার কারফিউর সময় আল-বদরের নরঘাতকদের নির্দেশে ও প্রাণের ভয়ে বিশ্ববিদ্যালয়ের বিভিন্ন কোয়ার্টার থেকে প্রফেসরদের তুলে নেয়ার কাজে সাহায্য করে।”[Prosecution Documents , Chowdhury Mueen Uddin Volume , page 91-92]

179. Thus the above report corroborates the oral testimony that the victim teachers were captured from their university quarter on the date and time and they were brought by EPRTC minibus, as designed by killer Al-Badar members. The event occurred when the curfew was on in the city, and thus no people had opportunity of seeing them bringing by EPRTC microbus, excepting the relatives of the victims. Presumably the killing squad took the advantage of curfew situation which was within the knowledge of a section of army and JEI the parent organisation of Al-Badar formed of ICS workers. The captured intellectuals were brutally

killed and their dead bodies were found blind folded. The report goes on to narrate further that

“মফিজউদ্দিন আরও জানায় যে, সে ছাড়া তার বাকী তিনজন সহকর্মীকে শেষ পর্যন্ত আল-বদরের পশুরা হত্যা করেছে। সে কোন রকমে রক্ষা পেয়েছে। মফিজউদ্দিন আরও জানিয়েছে , আল-বদরের যে পশুর নির্দেশে সে কাজ করেছে সেই পশুই গত ১৪ই ডিসেম্বর সকাল ১০টায় মীরপুরের হরিরামপুর গোরস্থানের কিছু দূরে (বিহারী গোরস্থান) সাতজন লোককে এক সাথে দাঁড় করিয়ে তার সামনেই গুলি করে মরেছে।”[Prosecution Documents , Chowdhury Mueen Uddin Volime , page 92]

180. Therefore, the information narrated in the above report quoting Mofiz Uddin a driver of EPRTC minibus by which seven abducted university teachers and one doctor [the victims of the event narrated in charge no. 6] were brought to a place near Harirampur graveyard where they were gunned down by the brute Al-Badar man on instruction of whom these victims were so captured, in front of him [driver Mofiz].

181. Another thing appears to have been proved from the said report. The report depicts that the captured victims[as listed in charge no.6], on capture, were immediately brought to the killing site where they were gunned down and that is why the driver Mofiz had occasion to see the event of brutal killing. In absence of anything contrary, the narration made in the report, quoting driver Mofiz, inspires credence and thus the same carries probative value as an ‘old evidence’. Who was the said brute Al-Badar man? The things started coming into light gradually.

182. The report titled “বুদ্ধিজীবী হত্যাযজ্ঞের এই জল্লাদকে ধরিয়ে দিন” published in the **Daily Purbadesh 13 January 1972** also speaks, referring admission of one Mofiz the driver the vehicle by which the university teachers were brought, on capture to the killing field that Ashrafuzzaman[chief executor of the killing squad] went into hiding and he himself killed the captured

university teachers. Ashrafuzzaman Khan was involved with politics of Islami Chatra Sangha [ICS] the student wing of JEI, the report added. [Prosecution Documents Volume (Chowdhury Mueen Uddin), page 102]

183. Report titled ‘**A Journalist Is Linked To Murder of Bengalis**’ by **Fox Butterfield** published on 3 January issue 1972 in **The New York Times** narrates that-

“According to one captured member now being held in the Dacca jail, the reporter, Mr. Mueenuddin, had been mastermind of the organization. A diary belonging to Mr. Mueenuddin’s roommate has been found. It listed the names of Al-Badar members and how much money they contributed to the group.”

184. It patently shows that accused Chowdhury Mueen Uddin was a close cohort of accused Ashrafuzzaman Khan and thus the fact of recognizing him [Chowdhury Mueen Uddin] accompanying the armed gang of killers in carrying out the act of abduction of selected intellectuals, as stated by P.W.1, a first hand witness inspires credence. It is also clear from the report that accused Chowdhury Mueen Uddin masterminded the tragic episode of ‘intellectuals killing’.

185. Local newspapers also had carried front-page stories with Mueen’s portrait just after victory in the war. The papers said the ‘killer’, also the ‘operation-in-charge’ of Al-Badar, has to be found. Mueen went into hiding when Bangladesh had achieved victory after nine months’ bloody war. Bangla and English newspaper also reported that a captured Al-Badar man had disclosed Mueen’s atrocious role in 1971. National English daily **The Observer, 29 December 1971** reported with the headline: **‘Absconding Al Badr Gangster’**. It said,

“Chowdhury Mainuddin [Mueen Uddin], a member of the banned fanatic Jamaat

Islam Party, has been described as the ‘Operation in Charge’ of the killing of intellectuals in Dacca [Dhaka] by Abdul Khaleque, a captured ring leader of the Al-Badr and office-bearer of the Jamaat-e-Islam. The fascist Al-Badr force was responsible for the killing of the intellectuals backed by the Pakistan Army before their humiliating surrender. Chowdhury Mainuddin has been absconding presumably since December 16”. [Prosecution Documents Volume, Chowdhury Mueen Uddin, page 42]

186. The above report makes three things proved: Al-Badar was responsible for the planned killing of intellectuals; accused Chowdhury Mueen Uddin was the ‘operation-in-charge’ of the killing mission and finally accused Chowdhury Mueen Uddin had gone into hiding presumably since December 16 1971.

187. Why he [accused Chowdhury Mueen Uddin] opted to flee away and since then have been in abroad [UK]? Chowdhury Mueen Uddin in a recent interview with Al-Jajira made extremely audacious and disparaging remark in respect of our war of liberation and the freedom fighters. Usually an offender never admits his guilt. Fleeing instantly after the independence is a fair indicative of their guilty mind. Taking this relevant fact together with other evidence and circumstances into account we thus come to conclude that the old reports published in domestic and international news media narrating complicity of the accused persons with the mission of ‘**operation liquidation**’ carries significant probative value.

188. On cumulative evaluation of evidence and circumstances revealed it is proved beyond reasonable doubt that the ‘killing operation’, on capture of selected intellectuals was carried out in a short time period, with similar

pattern of abduction and killings, and by the perpetrators belonging to Al-Badar in execution of same ‘murderous scheme’ to which accused Chowdhury Mueen Uddin was the ‘operation-in-charge’ and Accused Ashrafuzzaman Khan was the ‘chief executor’.

189. The accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan have been indicted for the offence of ‘abduction’ or in the alternative ‘extermination’ as crimes against humanity. We have already found that the criminal act of abduction was followed by brutal killing of captured intellectuals. On abduction the victims were brought to killing field at Mirpur, the outskirts of Dhaka city. Eventually a large scale killing was accomplished by the ‘killing squad’ formed of Al-Badar to which the accused persons are found to have had accompanied and actively participated the crimes.

190. It is to be noted that the core elements of ‘extermination’ are essentially similar to those required for the offence willful killing or murder. The scale of the crimes is, however, distinct: extermination is to be interpreted as ‘murder’ on a ‘larger scale’-mass murder. The element of massive scale must be assessed on a case-by-case basis in light of the proven criminal acts and all relevant factors including the context. The key factors to be considered also to arrive at finding that the offence of murder was extermination are **(i)** the accused persons knew the designed scheme of collective murder and **(ii)** took part to enforce the murderous scheme. Position of authority of accused persons and their complicity with the similar pattern of criminal acts that resulted in murder of targeted intellectuals prompt to the conclusion that they were quite aware of all the events committed in execution of common plan and design and thus they may be considered to have taken part to enforce the secret and entire murderous scheme. They had acted with intent to exterminate the intellectual class of the nation.

191. The Judgment of the International Military Tribunal at Nuremberg contains many references to the concept of ‘extermination’. In essence, the phrase refers to a wide scale enterprise directed against members of

large groups of individuals – such as the Jews, the Poles, mentally retarded, the Communists – which leads or has the potential to lead to large scale killing of such individuals, regardless of the means or methods used to kill them.

192. This interpretation of “extermination” as killings committed on a mass scale is further supported by the 1948 *History of the United Nations War Crime Commission*, which stated that the phrase ‘extermination’ as it appeared in Article 6(c) of the Nuremberg Charter is apparently to be interpreted as murder on a large scale – mass murder”.

193. In the case in hand, the Tribunal notes that the attack was directed against a particular group of individuals i.e the “intellectual class’. The act of abduction and killing was perpetrated in a collective pattern that eventually resulted in mass killing constituting the offence of ‘extermination’ as crimes against humanity. The ICTR Trial Chamber in the case of *Ndindabahizi* has observed that

“Extermination requires that the perpetrator intend to commit acts directed at a group of individuals collectively, and whose effect is to bring about a mass killing.”[Ndindabahizi, ICTR Trial Chamber, July 15, 2004, para 479]

194. The offence of extermination could only be established by proving killing of individuals of a particular group on a large/massive scale. ‘Extermination’ supposes the taking of a large number of lives. It is needless in the present case to determine whether 18 deaths [including the eight victims of charge no. 6] alone satisfy this requirement of scale.

195. It has been proved that, by virtue of their commanding position, the accused persons were part of a vast collective murder in which a large number of individuals belonging to a particular class were systematically marked for extermination and were in fact exterminated. In this regard, the Tribunal recalls the following observation of the ICTY Appeal Chamber in the case of *Ndindabahizi*,

“As for extermination, the *actus reus* requires ‘killing on a large scale.’ While this does not ‘suggest a numerical minimum,’ a particularly large number of victims can be an aggravating circumstance in relation to the sentence for this crime if the extent of the killings exceeds that required for extermination.” [Ndindabahizi, (Appeals Chamber), January 16, 2007, para. 135]

196. The accused persons charged with the criminal offence did in fact exercise authority or power, by virtue of their position over the members of AB by whom the killing squad was formed and they did otherwise have the capacity to be instrumental in the killing of a large number of individuals belonging to ‘intellectual class’. ‘Extermination’ refers to killing on a vast scale and is directed towards members of a collection of individuals. Knowledge of the vast ‘murderous enterprise’ is sufficient for holding the accused persons criminally responsible for the offence committed. It is sufficient to prove their position and authority over the ‘killing squad’ and that the accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan were part of the common plan and design to single out listed individuals belonging to a particular class. Accused persons, by virtue of their culpable position on Al-Badar, in carrying out the ‘operation’, were thus consciously ‘concerned’ in committing the criminal acts of abduction followed by murder of (1) Professor Gias Uddin Ahmed (2) Professor Dr. Serajul Haque Khan (3) Dr. Abul Khayer (4) Dr. Foyzul Mohiuddin (5) Professor Rashidul Hassan (6) Professor Anwar Pasha (7) Professor Dr. Santosh Bhattacharjee and (8) Dr. Md. Mortuja] constituting the offence of ‘extermination’.

Adjudication of Charge No.7

[Event of abduction & killing of Professor Mofazzal Haider Chowdhury]

197. Summary charge : The charge relates to the event of forcible abduction of **Professor Mofazzal Haider Chowdhury**, University of Dhaka, from his residence on 14 December, 1971 in between 12:00 and

01:00 P.M by a gang of 7/8 armed Al-Badar men **led and accompanied by accused (1) Chowdhury Mueen Uddin**, leader of ICS , member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and **(2) Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar. The victim professor could recognize accused Chowdhury Mueen Uddin, student of Bengali department of the university when his brother removed the scarf from his face. The gang forcibly brought Professor Mofazzal Haider Chowdhury to unknown place by an EPRTC minibus and afterwards he was killed.

Witnesses

198. Prosecution examined Iftekhar Haider Chowdhury, nephew of Professor Mofazzal Haider Chowdhury who as P.W.11 testified the event of abduction as narrated in the charge. He allegedly witnessed the criminal act of taking away Professor Mofazzal Haider Chowdhury. Next, P.W.20 Professor emeritus Dr. Anisuzzaman [P.W.20] testified what he learned from the inmates of martyred professor, after independence. P.W.22 Delwar Hossain, a pertinent witness, narrated what he experienced during his confinement at the torture camp of Al-Badar. He is the lone survivor from the clutch of the killing squad. P.W.22 and mother of P.W.11 were also interviewed by channel-4 of UK in making a documentary film titled ‘**war crimes file**’ where they narrated what they had seen and experienced. Taslim Haider Chowdhury the eldest son of martyred Professor Mofazzal Haider Chowdhury died in December 2011 and thus prosecution prayed to receive his statement made to the Investigation Officer [IO] under section 19(2) of the Act of 1973. The Tribunal considered the prayer and received said statement as warranted by the provision of law for consideration.

Evidence

199. P.W.11 Iftekhar Haider Chowdhury, nephew of martyred Professor Mofazzal Haider Chowdhury, was eight years old in 1971. According to him Professor Mofazzal Haider himself had identified accused Chowdhury Mueen Uddin, who was his student. The witness said

he along with his parents and other family members were present when Al-Badar men forcibly took away the Professor on December 14, 1971.

200. P.W.11 stated that his mother Dolly Chowdhury had narrated the incident in an interview for a documentary titled “War Crimes File” aired by UK Television Channel-4. He verified the interview of his mother, who died in 2010, when the documentary was played at the courtroom. The documentary has been exhibited as **Material Exhibit-I.**

201. In narrating the academic career and philosophy and progressive spirit the martyred Professor used to retain all through his life, P.W.11 Iftekhar, now an industrial relations manager of a foreign company, stated that his paternal uncle had obtained gold medal from Kolkata University for his outstanding performance in master’s. Mofazzal [victim] was an active supporter of all progressive activities including the Language Movement in 1952, and was a non-communal person who used to believe in Bangalee nationalism. Mofazzal, a faculty member of Bangla department at Dhaka University, protested against the then Pakistani government’s decision of banning Rabindra research and practice and a signature campaign programme launched by several DU teachers in favour of the then Pakistan government.

202. The above version portraying profile of Professor Mofazzal Haider Chowdhury demonstrates clearly as to why he was targeted by the ‘death squad’ formed of Al-Badar in execution of common plan and purpose.

203. P.W.11 stated further that feeling insecure, his uncle Mofazzal Haider Chowdhury and his family members left the DU campus residence on December 12 and took shelter at his [P.W.11] father’s house in Shantibagh, Dhaka. Nuru, a domestic help of Mofazzal Haider Chowdhury, remained in the DU residence.

204. He [P.W.11] later heard from his aunt and his parents that a group of Al-Badar men had raided the DU residence on December 14 and forced Nuru [domestic help of the victim professor] to give Mofazzal’s

whereabouts. The Al-Badar men arrived at their [P.W.11] house being accompanied by Nuru and asked his father Professor Lutful Haider Chowdhury about Mofazzal. The 5/6 masked Al-Badar men had stormed into their house and asked his [P.W.11] father in English “where Mofazzal Haider Chowdhury is” and they told that they had to take Mofazzal Haider Chowdhury with them to meet the Captain [army].

205. P.W.11 went on to state that as Mofazzal was getting ready, Lutful [father of P.W.11] engaged in a conversation with an Al-Badar man, whose face was covered by a handkerchief. At one stage of the conversation, Lutful [father of P.W.11] removed the handkerchief. His uncle [Mofazzal] looked at that man and said “**aren’t you Mueen Uddin?**” The man replied, ‘**yes, I am Mueen Uddin, I am your student**’. He [P.W.11] himself heard this brief conversation standing beside his uncle and his father, P.W.11 added. Later Al-Badar men took away his uncle in a microbus.

206. P.W.22 Delwar Hossain the lone survivor from the clutch of AB had occasion to witness the activities carried out by the AB at the torture center set up at Mohammadpur Physical College. He in an interview made to UK based channel-4 narrates [in a documentary film titled ‘war crimes file’] how Professor Mofazzal Haider Chowdhury was subjected to inhuman torture at the torture center. He [P.W.22] narrates in his interview—“*Even in the darkness.....I was able to recognise him. He was being interrogated. He said his name was Mofazzal Haider Chowdhury. Right after that, they started beating him. They used an iron rod. They kept beating him all over his eyes, his face, his hands. He screamed as he was being tortured.*” Delwar Hossain while testifying as P.W.22 also described what he experienced and how he could recognise the detained Professor Mofazzal Haider Chowdhury at the AB torture camp, during his confinement there.

207. P.W.22 Delwar Hossain stated before the Tribunal that on 14 December at around 10 am 3 armed uniformed men and 2 civilians entered into his room. The two civilians were taking him out holding his hand and he heard them calling each other by their name

‘Ashrafuzzaman’ and ‘Mueen Uddin’. They took him to a microbus waiting at Malibag where he found 3-4 persons kept detained blindfolded inside it. He was taken by that microbus blindfolded and tying on his hands. P.W.22 found at a place where he was taken a detained youth who made his hands untied and on asking him he came to know that it was Mohammadpur Physical Training Institute, the Al-Badar Head Quarters. He then removed his blindfold.

208. P.W.22 went on to narrate that after the dusk some more persons were brought to the same hall room [Mohammadpur Physical Training Institute]. One of detainees there appealed to make his hands untied. With this he [P.W.22] made his hands untied and he could recognise that it was their Professor Muneir Chowdhury. He [P.W.22] knew him since earlier, although he [P.W.22] was a student of a different department of Dhaka University.

209. P.W.22 next narrated that on 14 December at about 08:00-08:30 pm[night] two persons entered into the hall with lantern. 10-12 persons equipped with iron rod were also with them. With the light of lantern he [P.W.22] could see that the duo went near Muneir Chowdhury and said ‘*You have taught mantra to your university students all these days; now we will teach you some mantra*’. Then they first asked Professor Muneir Chowdhury whether he had written any book on Rabindranath Tagore. He replied in the negative. They then asked the same question to Mofazzal and as he answered in the positive, the duo told their fellows, *æthey [Muneir and Mofazzal] have to be executed as they are Indian spies.*” With this they started beating Muneir Chowdhury and Mofazzal Haider Chowdhury indiscriminately by iron rod. At that time he was also beaten up and thus sustained injury on head and legs.

210. P.W.20 Professor Anisuzzaman testified what he learnt from inmates of martyred Professor Mofazzal Haider Chowdhury on his return from India, after the independence. He also stated that accused Chowdhury Mueen Uddin was his student in Dhaka University and thus he knew him. Few years later in 1979, he [P.W.20] saw accused

Chowdhury Mueen Uddin in a library in London, UK and could recognise him. On seeing him there, accused instantly left the library.

211. The source from whom P.W.20 learned the event of abduction had opportunity to witness the criminal act of abduction. Thus, the hearsay testimony of P.W.20 carries probative value. Besides, His testimony gets corroboration from the evidence of P.W.22, on material particular.

212. P.W.20 also stated that he learned from Lutful Haider Chowdhury [father of P.W.11] how the armed Al-Badar gang led by accused Chowdhury Mueen Uddin forcibly took away Professor Mofazzal Haider Chowdhury from his brother's[Lutful Haider Chowdhury] residence at Shantibagh. Later on, he [abducted victim] was brutally tortured to death. P.W.20 also stated that he became aware of the fact that accused Chowdhury Mueen Uddin was the 'operation-in-charge' and accused Ashrafuzzaman was the 'chief executor' of killing mission from the reports published in several news media.

213. Statement of Taslim Haider Chowdhury, son of martyred Professor Mofazzal Haider Chowdhury made to the IO[received under section 19(2) of the Act of 1973] describes the event of abduction and the fact of identifying accused Chowdhury Mueen Uddin who accompanied the gang who took away his father forcibly by a minibus.

Deliberations

214. We have already found that the operation carried out to annihilate selected intellectuals was in furtherance of calculated and designed plan to which the accused persons were part as they had acted as the 'operation-in-charge' and the 'chief executor' of the killing squad. Besides , it has been proved beyond reasonable doubt that accused Ashrafuzzaman Khan and his cohort accused Chowdhury Mueen Uddin took part in committing the act of forcible capture of seven teachers and one doctor from their residence at Dhaka University campus on 14 December [**as narrated in charge no.6**].

215. The event of abduction followed by the killing of Professor Mofazzal Haider Chowdhury indisputably was a part of calculated, brutal and large scale killing of intellectuals. Defence does not dispute it. Besides, in our foregoing discussion we have categorically recorded our finding that all the events of abduction and killing of 18 intellectuals are sequenced together and the out come of premeditated and common plan and design. Therefore, accused persons' complicity with the crimes as have been proved in relation to charge no.6 naturally connect them with the events narrated in other charges too including charge no.7, unless contrary is proved.

216. P.W.11 is a hearsay witness. He narrated what he learned from his parents and aunt. His parents are dead now. His hearsay testimony gets corroboration from the evidence of P.W.22, a first hand witness, on material fact of confining and torturing the captured Professor Mofazzal Haider Chowdhury at the AB's torture camp set up at the AB HQ .

217. Defence however does not dispute the event of abduction and killing of the martyred Professor. It simply suggests that not the gang formed of AB men but the Pakistani army committed the criminal act of abduction and killing.

218. Defence's above averment does not carry even least credibility as all the investigative reports published in domestic and international news media speak of involvement of 'killing squad' formed of AL-Badar men with the physical commission of crimes, in furtherance of calculated plan and policy. The report titled "শতাব্দীর জঘন্যতম হত্যাকাণ্ড সংঘটিত করেছে 'আল-বদর' বর্বর বাহিনী : বহু লাশ উদ্ধার" published in The Daily 'Dainik Pakistan 19 December 1971 narrates that

“.....ফ্যসিবাদী রাজনৈতিক দল জামাতে ইসলামীর ছাত্র সংস্থা ইসলামী ছাত্র সংঘের সশস্ত্র গ্রুপ আল-বদর এই বাংলাদেশের রাজধানী ঢাকা নগরী মুক্ত হওয়ার পূর্ব পর্যন্ত এক সপ্তাহে শহরের কয়েকশ বুদ্ধিজীবী ও যুবকদের ধরে নিয়ে যায়। বাংলাদেশের শিক্ষক, অধ্যাপক, ডাক্তার, আইনজীবী, সাংবাদিক ও সাহিত্যিকদের সম্পূর্ণ নিশ্চিহ্ন করার জন্য এই কুখ্যাত গ্রুপটি

হানাদার বহিনীর সহযোগিতায় এক মহা-পরিকল্পনা তৈরী করেছিল। গত ১১ ডিসেম্বর হতে আল-বদর শহরের বিভিন্ন এলাকায় হানা দিয়ে বুদ্ধিজীবীদের তাদের বাড়ী হতে ধরে নিয়ে যাওয়ার অভিযান শুরু করে। ধানমন্ডি, মোহাম্মদপুর ও রায়ের বাজার এলাকায় বিভিন্ন স্থানে এদের হাত বেধে চোখ উপড়িয়ে ফেলে বেয়নেট চার্জ ও গুলী করে হত্যা করেছে।”

[Prosecution Documents Volume (Chowdhury Mueen Uddin), page 45-46]

219. Hamoodur Rahman the then Chief Justice of Pakistan was appointed as the head of the commission by the President of Pakistan in December, 1971 to inquire into and find out "the circumstances in which the Commander, Eastern command, surrendered and the members of the Armed Forces of Pakistan under his command laid down their arms and a cease-fire was ordered along the borders of West Pakistan and India and along the cease-fire line in the State of Jammu and Kashmir. After having examined 213 witnesses the Commission submitted its report in July 1972.

220. As regards intellectuals killing Hamoodur Rahman Commission [HRC] report shows that the commission examined Gen. Niazi, Maj. Gen. Jamshed and Maj. Gen Rao Farman Ali and finally HRC observed in its Supplementary Report [SR] that

“...therefore, that unless the Bangladesh authorities can produce some convincing evidence, it is not possible to record a finding that any intellectuals or professionals were indeed arrested and killed by the Pakistan Army during December 1971.” [HRCSR ch.2, pt.27].

221. The above finding of Hamoodur **Rahman Commission Supplementary Report**, in absence of anything contrary, claims the fact

of non involvement of the Pakistani army with the event of intellectuals killing that took place in between 10 December and 16 December 1971. But the authoritative and investigative reports published immediately after the independence in various news media indicates that a group of officials belonging to the Pakistani occupation army provided organizational backup and endorsement in carrying out the planned killing mission that resulted in dreadful and barbaric event of intellectuals killing.

222. The ‘operation liquidation’ was thus physically perpetrated by the ‘squad’ formed of armed Al-Badar men and only hours before the official surrender of the Pakistani occupation army was signed (on 16th December, 1971), the victims were taken in groups to the outskirts of the city where they were summarily executed, in furtherance of an organised plan and purpose.

223. The witnesses examined narrated how Professor Mofazzal Haider Chowdhury was forcibly abducted by the squad of Al-Badar led by accused Chowdhury Mueen Uddin. Additionally P.W.22 stated what brutal mistreatment he witnessed caused to Professor Mofazzal Haider Chowdhury at the AB torture camp. It confirms complicity of accused persons with the actual commission of killing, although there has been no direct evidence in this regard.

224. The Tribunal notes that the complicity or participation of the Accused persons with the actual commission of killing could be inferred from the relevant facts and circumstances, since it would be unrealistic to expect that people would personally witness the abduction, detention and the subsequent killing of the detainee[s]. Therefore, material facts and circumstances may prompt us in determining culpability of the accused persons with the criminal act of murder constituting the offence of ‘extermination’.

225. According to P.W.11 his mother Dolly Chowdhury [died in 2010] had narrated the incident in an interview for a documentary film titled “**War Crimes File**” aired by UK television Channel-4. The documentary has been played at the courtroom and the same has been exhibited as

Material Exhibit-I. Dolly Chowdhury [mother of P.W.11] in her interview narrated that

“I saw three or four men with scarves over their faces, armed with guns. My husband tried to whip off his scarf but the man pulled it up again. I identified one-Mueen Uddin.”

226. As regards reason of identifying accused Chowdhury Mueen Uddin she [Dolly Chowdhury] continued to state¹

“When he [Chowdhury Mueen Uddin] was a student, he used to visit my brother-in-law’s house. My husband, my sister-in-law, my brother-in-law and myself..... we all recognised him.”

227. The above is admissible in evidence and carries adequate probative value. Thus, the version made by P.W.11 seems to have been duly corroborated by the above narration made by his mother Dolly Chowdhury. We do not find any earthly reason to discard the cumulative value of said narration and testimony of P.W.11 and P.W.20.

228. P.W.22 Delwar Hossain the lone survivor from the clutch of Al-Badar men testified what he experienced during his confinement at Al-Badar torture camp set up at AL-Badar Head Quarter at Mohammadpur Physical Training Institute. P.W.22 Delwar Hossain also gave an interview to Channel-4 for a documentary titled ‘**war crimes file**’ [Material Exhibit-I] where he narrated¹

“.....I was able to recognise him. He was being interrogated [at AB HQ]. He said his name was Mofazzal Haider Chowdhury. Right after that they started beating him. Therefore,

it stands proved that on forcible capture professor Mofazzal Haider Chowdhury was first brought to AB HQ where he was subjected to inhuman torture.”

It indicates unerringly that he [Professor Mofazzal Haider Chowdhury] was so abducted by the group of armed Al-Badar men and brought to Al-Badar torture camp where he was subjected to brutal torture.

229. The material facts revealed from the evidence of P.W.22 are that the gang which captured him [P.W.22] was accompanied by accused Ashrafuzzaman Khan and Chowdhury Mueen Uddin. Bringing him [P.W.22] to the AB HQ proves accused persons' active association and authority on the HQ and activities carried out there. Abducted intellectuals professor Muneir Chowdhury and Professor Mofazzal Haider Chowdhury were also brought to the same torture camp set up at AB HQ where they were subjected to brutal torture. They were afterwards killed. It is undisputed. Thus all these material facts testified by P.W.22 together with other evidence before us incontrovertibly impels the conclusion that the accused Ashrafuzzaman Khan and Chowdhury Mueen Uddin were actively concerned with the event of abduction, causing inhuman torture and killing of Professor Mofazzal Haider Chowdhury

230. The accused persons were in position of high command of Al-Badar and actively 'concerned' with the 'killing mission' targeting selected or listed intellectuals, by virtue of their position of 'operation-in-charge' and the 'chief executor'. Therefore, they cannot be absolved of the responsibility of killing the martyred Professor Mofazzal Haider Chowdhury by causing ruthless torture, as stated by P.W.22.

231. 'Killing took place as a part of calculated policy'- P.W.20 Professor Dr. Anisuzzaman narrates in an interview given to channel-4 adding that Chowdhury Mueen Uddin [accused] was the 'operation-in-charge' of AB. He [P.W.20] testified before the Tribunal that after independence, on returning home in first part of January 1972 from India met the imamate

of martyred Professor Mofazzal Haider Chowdhury and learned that one of members of the killing squad that forcibly abducted Professor Mofazzal Haider Chowdhury was the accused Chowdhury Mueen Uddin.

232. The above hearsay evidence carries much probative value as it is found to have been corroborated by other evidence. P.W.20 is an eminent distinguished and responsible citizen of the country who is a professor emeritus. He learned the fact of participation of accused Chowdhury Mueen Uddin with the event within couple of days from the near ones who had witnessed the victim professor taking away by the gang of armed AB men accompanied by accused Chowdhury Mueen Uddin. Besides, the victim Professor himself could identify the accused Chowdhury Mueen Uddin when he and his fellow Al-Badar men had come to his brother's residence to abduct him, as stated by P.W.11. Victim's brother's wife Dolly Chowdhury also corroborates it in an interview given to UK based Channel-4.

233. We have already found that the operation carried out to annihilate selected intellectuals was in furtherance of calculated and designed plan to which the accused persons were part as they had acted as the 'operation-in-charge' and the 'chief executor' of the killing squad. Besides, it has been proved beyond reasonable doubt that accused Ashrafuzzaman and his cohort accused Chowdhury Mueen Uddin took part in committing the act of forcible capture of seven teachers and one doctor from their residence at Dhaka University campus on 14 December.

234. We conclude that the act of abduction followed by killing of Professor Mofazzal Haider Chowdhury indisputably a part of calculated, brutal and large scale killing of intellectuals. The instant case concerns killing of 18 intellectuals picked up in similar fashion by the same 'squad' formed of armed Al-Badar men. It has already been proved and we have recorded our finding on it in the foregoing discussion in this judgment.

235. Why the intellectuals were so listed as targets? They were the firm believers in Bengali nationalism and they retained stand in favour of the

war of liberation. This was the reason of making them target. Intention to materialize the planned ‘killing mission’ was to cripple the Bengali nation, indeed. A report titled **‘It was a plan to denude Bangladesh intellectually’** published in **The Daily Observer 21 December 1971** states that –

“The fascist armed gangsters, Al-Badar who had close political affiliation with the ultra-rightists Jamaat-e-Islami a boot-licking political force of the Pakistani army despatched cyclostyled letters to a large number of men before they brutally killed the top intellectuals of the country. It is presumed that if the Allied Forces and the Mukti Bahini would have been late in liberating Dacca the capital city of Bangladesh these armed criminals would have made a clean sweep of all the top brains and intelligentsia to gratify their bestial sense of pleasure in denuding Bangladesh intellectually.”
[Prosecution Documents Volume (Chowdhury Mueen Uddin), page 34]

236. The above report being relevant and carrying probative value goes to show that there had been an organised plan and design of annihilating listed intellectuals with which infamous Al-Badar was actively involved. It would not be irrelevant to note here that JEI also cannot absolve of the responsibility of designing and executing such common plan and purpose as the Al-Badar was formed of workers of ICS the student wing of JEI.

237. On cumulative evaluation of evidence, oral and documentary, adduced by the prosecution the material facts which have been proved beyond reasonable doubt may be categorized as below:

- (a) We have already recorded our specific finding that all the events of abducting intellectuals from their residence were perpetrated by the armed 'squad' formed of Al-Badar.
- (b) The accused Chowdhury Mueen Uddin was a student of Professor Mofazzal Haider Chowdhury and thus naturally he could recognise him accompanying the gang. The accused had thus acted as a physical perpetrator of the criminal act of abduction and forcible taking away of Professor Mofazzal Haider Chowdhury from the residence of his brother Lutful Haider Chowdhury where he took shelter and thus the accused accompanied and led the 'squad' formed of armed Al-Badar men.
- (c) Since the accused Chowdhury Mueen Uddin had actively participated to the phase of picking up the Professor who was subjected to brutal torture at the AB torture camp at AB HQ at Mohammadpur Physical Training Institute, as proved by P.W.22 the accused cannot be absolved of the responsibility of the consequence of the criminal act of forcible abduction of Professor Mofazzal Haider Chowdhury. The accused need not be shown to have participated physically to the actual commission of the killing.
- (d) Accused Chowdhury Mueen Uddin was affiliated with Al-Badar force and had easy access to its HQ at Mohammadpur, as found from evidence of P.W.8 Golam Rahman Dulu and he had acted as the 'operation-in-charge' of the 'death squad' formed of armed AB men.
- (e) By virtue of his position in the 'death squad' as well as in the AB, accused Chowdhury Mueen Uddin was aware of the common plan and purpose in furtherance of which he is already found to have participated to the event of abduction and killing of seven teachers and one doctor of Dhaka University [event narrated in charge no.6] and since the planned killing of all intellectuals were sequenced together and the accused was part thereof, he incurs liability also under section 4(2) of the Act.
- (f) A diary written and maintained by accused Ashrafuzzaman Khan is a crucial piece of evidence [Prosecution Documents Volume (Chowdhury Mueen Uddin), page 99-100]. Name and residential address of 19 intellectuals appearing in the diary shows that the 'liquidation mission' was secretly planned and organised. We have already found that accused Ashrafuzzaman Khan admitted the existence of such diary maintained by and belonged to him, as narrated in the book titled 'Al-Badar' by **Salim Mansur Khalid** published in 1985 from Lahore, Pakistan by *Idarah-I Matbu'at -I Talabah*, quoting him [Ashrafuzzaman Khan]. The original book written in Urdu has been translated in Bangla by a professor of Dhaka University, on requisition of the investigation agency.
- (g) It has already been proved that accused Ashrafuzzaman known as the 'chief executor' of the 'death squad' formed of armed AB men was a notorious cohort of accused Chowdhury Mueen Uddin and they collectively acted in carrying out the 'operation' in picking up the teachers and doctor from Dhaka University and since accused Ashrafuzzaman Khan himself had killed the captured victims, as proved [charge no.6], he was also part of the calculated policy and plan, by virtue of his

position of authority and thus he incurs liability also under section 4(2) of the Act for the offence under charge no.7.

- (h) The act and conduct of accused persons forming part of attack for which they are found to have ‘participated’ to the commission of the offence of ‘large scale killing’ of eight intellectuals [charge no.6] constituted the offence of ‘extermination’ as crimes against humanity. This proved fact too is now sufficiently relevant and material to find them guilty also for the event of abduction followed by killing of Professor Mofazzal Haider Chowdhury who was captured in similar pattern and by the same ‘squad’ formed of armed AB men as both the events [narrated in charge no. 6 and charge no.7] were the upshot of identical and common plan and design to which the accused persons were part, as already discussed.
- (i) From totality of evaluation of relevant facts and circumstance it is lawfully inferred that the plan involved action which was part of ‘murderous enterprise’ in which a large number of individuals were systematically marked for large scale killing and eventually killed.

238. The Tribunal notes that ‘concerned in the commission’ refers to an indirect degree of ‘participation’ and a person can be held concerned in the commission of an act of criminal offence by an organisation or group of individuals even he is not found to be present at the crime site but took such a part in the preparation of such crime by his act or conduct providing abetment with intent to further its [plan of attack] object. In view of above reasons we conclude that the accused persons were ‘concerned’ and ‘consenting part’ to the accomplishment of the mass killing event.

239. Killing of Professor Mofazzal Haider Chowdhury was a part of calculated policy and secret plan. Commission of killing targeting specific class of individuals perceivably was the outcome of common plan and purpose of the perpetrators. Inherent nature and extent of killing and the class the victims belonged to suggest the conclusion that the crimes were perpetrated by a collective enterprise or ‘squad’ formed of Al-Badar.

240. We have observed in the case of *Ali Ahsan Muhammad Mujahid* that æthe numb revenge and abhorrence which led to these killings [intellectuals killing] in an organized pattern causing death of large number of selected intellectuals, in the final stages of the war of liberation was a dismal epilogue to the record of systematic brutality carried out by Al-Badar in between 10 and 16 December 1971, in Bangladesh”

[Judgment, 17 July 2013, para 491]. Naturally the perpetrators or individuals involved with the planning and its execution would not have left any clue or document. Despite this reality, the evidence before the Tribunal has sufficiently unearthed the secret criminal activities carried out in accomplishing the large scale killing and involvement of the accused persons therewith.

241. Not necessarily that the accused is to be shown to have participated in all aspects of the criminal acts. A single act or conduct may form part of attack facilitating and abetting the actual commission of a crime. Considering the context and pattern of the large scale killing directing a particular class of individuals we are forced to pen our observation that an act or conduct of an accused forming part of attack, in committing offence pursuant to identical common purpose and plan even before or after commission of another but similar offence, may provide substantial approval or endorsement in committing another event of criminal acts constituting similar offence, if the accused is found to be part of the identical common plan and purpose.

242. In the case in hand, we conclude that ‘conduct’ and ‘act’ of accused persons which have made them liable for the offence narrated in charge no.6 clearly abetted the commission of another similar offence under charge no.7. The accused persons thus had ‘complicity’ even with the event of murder constituting the offence of ‘extermination’ under charge no.7. On this score, it is convincingly found that accused Ashrafuzzaman Khan was also concerned with the event of killing of captured Professor Mofazzal Haider Chowdhury. Accused persons for their position over the ‘death squad’ incurred liability also under section 4(2) of the Act.

243. The liability mode contained in section 4(1) of the Act of 1973 refers to ‘common plan of collective criminality’ which in fact corresponds to Joint Criminal Enterprise [JCE]. Accused persons, by virtue of their position, were part of common plan and the criminal organisation. According to section 4(1) if an accused is found to have participated to the commission of offence enumerated in the statute of 1973 he incurs

liability under section 4(1). At the same time he incurs liability under section 4(2) of the Act if he is found to have connection with any plans and activities involving the commission of such crimes specified in section 3(2), by virtue of position.

244. The Tribunal [ICT-2], therefore, is not precluded from considering both forms of responsibility in order to get a full reflection of culpability of the accused, in light of the facts revealed from evidence and materials. But however, we consider that ‘cumulative convictions’ under section 4(1) and 4(2) of the Act of 1973 is impermissible for the same conduct or act forming part of attack that resulted in actual commission of the crimes alleged. Liability incurred under section 4(2) of the Act may be taken into account as an aggravating factor in awarding sentence.

245. In view of evaluation of evidence adduced and reasons above we are convinced in recording our finding that it has been proved beyond reasonable doubt that the accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan participated to the commission of the abduction followed by murder of Professor Mofazzal Haider Chowdhury and therefore the accused persons who were part of collective criminality incurs liability under section 4(1) of the Act of 1973 and as a ‘person of position of authority’ of Al-Badar, are held responsible also under section 4(2) of the Act of 1973 for the offence of ‘extermination’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

XVI. Adjudication of Rest Nine Charges

[Charge nos. 1,2,3,4,5,8,9,10 and 11]

246. Accused persons have been indicted for ‘abetting’ and ‘complicity’ by act of ‘instruction’ provided to the gang of perpetrators to the commission of offences alleged in charge nos. 1,3,4,8 and 11. In respect of charge nos. 2,5,9 and 10 they have been charged for ‘abetting’ and ‘complicity’ by accompanying and leading the gang of perpetrators to the commission of offences .

247. The learned prosecutor, in advancing argument on the remaining nine charges made common submission that the accused persons were part of common plan and design; that the events took place in similar way and pattern as adopted in carrying out the abductions narrated in charge nos. 6 and 7; that the accused persons belonged to AB high command and as such they were quite aware of the crimes carried out by the group formed of armed AB men; that they were concerned with the commission of crimes alleged; that accused Ashrafuzzaman was a close associate of accused Chowdhury Mueen Uddin who had acted as the Chief Executor of the operation to annihilate the listed intellectuals; that the target of the perpetrators was a particular class; that the captured intellectuals were first brought to AB HQ known as the torture center. The relatives of captured victims could identify the accused as they had opportunity to see their uncovered face at the time of forcible picking up the victims, on seeing their portrait published in the news media, immediately after the incidents.

248. In view of submission made by the prosecution, we consider it appropriate to portray a glance in respect of the remaining nine charges involving abduction and killing of nine intellectuals, for the purpose of adjudication of the same in an effective and convenient manner.

[Three Events that took place on 11 December 1971: Charge Nos. 2,3 & 4]

249. It appears that the events of abduction of three journalists as narrated in charge nos. 1,2 & 3 took place on 11 December in between 03:00 am and 06:00 am. The victims were so captured from their respective residence at Chamelibag, Purana Paltan and Gopibag in Dhaka city. A gang of armed Al-Badar men allegedly committed the criminal act of abduction and all of them were taken to unknown place by an EPRTC minibus. The accused persons have been charged for abetting and complicity to the criminal act that resulted in killing of abducted journalists belonging to intellectual class.

[Two Events that took place on 12 & 13 December 1971: Chareg Nos. 4 & 5]

250. Next, the events of abduction of journalist Nizam Uddin Ahmed and Selina Parveen took place on 12 December and 13 December 1971 respectively. They were forcibly picked up by the gang of armed Al-Badar from their residence in Dhaka city and were taken to unknown place by a minibus. The perpetrators carried out these two events too in similar fashion and by using similar logistics, on being sure about the identity of their targets. The accused persons are alleged to have had complicity with the commission of the criminal act that eventually resulted in their killing.

[Four Events that took place on 14 & 15 December 1971: Charge Nos. 8,9,10 & 11]

251. From the charges framed it will appear that four events of abducting intellectuals, as narrated in charge nos. 8, & 9 and charge nos. 10 & 11 were perpetrated by the gang of armed Al-Badar on 14 December and 15 December 1971 respectively in similar way and the victims were taken away to unknown place by a minibus on gun point. Presumably all these four events of abduction perpetrated by the group in execution of common plan and design to which the accused persons were part, as already observed in resolving charge nos. 6 and 7.

252. The accused persons have been indicted for the charge of ‘instructing’ and ‘leading’ the ‘killing squad’, by virtue of their culpable position of authority over the ‘squad’ formed of Al-Badar men also in respect of charge nos. 8,9,10 and 11.

Reasons of taking the above nine charges together for adjudication

253. It appears from the description made in the charges that in accomplishing the criminal act of abduction, in respect of some events, the perpetrators were unmasked. But since the perpetrators were quite unknown to the victims or their inmates they naturally could not recognise them. Therefore, complicity of accused persons with the crimes even at the phase of abduction is an issue to be resolved depending on old reports published in news media and other relevant factors and circumstances revealed before us.

254. We have already recorded our reasoned finding that all the events narrated in all the charges framed are sequenced together and carried out in furtherance of common plan and design to execute the ‘operation liquidation of intellectuals’ and a group of armed Al-Badar committed the crimes. Accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan had acted as the ‘operation-in-charge’ and the ‘chief executor’ respectively of the killing squad’[as already observed in resolving charge nos. 6 and 7] and as such they had position of authority over the perpetrators of all the criminal acts at all phases of the ‘operation’.

255. As regards the above nine events as narrated in charge nos. 1,2,3,4,5,8,9,10 & 11 most of the witnesses who came on dock narrated what they learned from the elder members of their family who witnessed the events of abduction. They also claim that they became aware of the events and complicity of the accused persons therewith from the reports published in the news media immediately after the events and independence.

256. None of the victims’ relatives had occasion to see where the captured intellectuals were taken and who physically participated to the actual commission of their killing or whether the accused persons were concerned with the calculated plan in committing the crimes. All these crucial matters common to all these nine charges, considering the pattern of the events and common plan and design, are to be resolved and inferred from old reports published in the news media. Only on adjudication of all these factors it may be fairly inferred as to whether the accused persons participated the ‘operation’ or were concerned with the alleged abduction followed by killing of intellectuals.

257. All these matters seem to be common to all these nine charges. Therefore, in order to avoid recurrence of discussion and finding on same aspects, all the above nine charges are taken up simultaneously for adjudication. But in doing so, we deem it necessary to see what the witnesses have stated in respect of each of nine charges for making

deliberations on it, before penning the part of deliberations and rendering our finding, as regards culpability of accused persons, if any, in respect of these nine charges.

Adjudication of Charge No.1

[Event of Abduction & Killing of journalist Seraj Uddin Hossain]

258. Summary charge: This charge involves the event of abduction of Journalist Seraj Uddin Ahmed from his residence at 5, Chamelibag, police station-Paltan, Dhaka, on 11 December, 1971 at about 03:00-03:30 am [night following of 10 December, 1971] by a group of 7-8 armed AB men on instruction of accused **(1) Chowdhury Mueen Uddin**, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and **(2) Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar. On capture the victim was taken to unknown place by an EPRTC minibus and afterwards they killed him.

Witnesses

259. P.W.6 Tawheed Reza Noor, son of martyred journalist Seraj Uddin Hossain has been examined as P.W.6 by the prosecution in support of this charge. At the relevant time he was only 3 years old. In fact he narrated what he learned from his mother about the event of abducting his father. He also testified what and how he became aware of the event and involvement of the accused persons therewith from various sources, reports and his own research.

Evidence

260. P.W.6 Tawheed Reza Noor[45] testified that he learned from his mother that 6/7 Al-Badar men had abducted his father from their Chamelibag house on the night of December 10. The armed men having their face covered by cloth wanted to know his father’s identity and then being sure of his father’s identity they forcibly and on gun point took away his father blind folded.

261. P.W.6 stated that he heard from his mother that Al-Badar men abducted his father. Besides he was involved in making a documentary film titled ‘ **war crimes file**’ under the auspices of ‘twenty twenty television’ of UK in 1995 when he came to know the complicity of the accused Chowdhury Mueen Uddin, the operation-in-charge’ of Al-Badar. Some of eye witnesses e.g late Dolly Chowdhury[brother’s wife of another victim Professor Mofazzal Haider Chowdhury], A.N.M Golam Rahman @ Dulu [brother of martyred journalist A.N.M Golam Mostafa], Delwar Hossain [P.W.22] the lone survivor from the Rayer Bazar mass killing field, Atiqur Rahman[now dead] described the complicity of accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan with the event of ‘intellectuals killing’ by giving interview which have been documented in the said documentary film .

262. P.W.6 stated that as he was growing up, he [P.W.6] tried to know why and how his father was abducted on the eve of the victory. The philosophical root of Bangladesh rests on Bengali nationalism and his father and other intellectuals were actively conscious in disseminating this spirit and this was the reason of targeting his father, P.W.6 added. Several newspapers including Daily Purbadesh had published reports with photographs of Mueen and Ashrafuzzaman after December 16, 1971 mentioning them as ‘killers’. The New York Times in January 1972 published a report with Mueen’s photograph, he added.

263. Defence does not deny the fact that Journalist Seraj Uddin Hossain was abducted on the date and in the manner alleged. However involvement of accused persons has been denied, in cross-examination.

264. On cross-examination, P.W.6 admitted that after independence, one Khalil, an Al-Badar member was prosecuted, tried and punished for complicity with the abduction and killing of his father. P.W.6 further admits that accused Chowdhury Mueen Uddin had been working in the Daily Purbadesh as its reporter. During nineties, he had opportunity of going through the reports, news relating to killing of intellectuals including his father, for the purpose of his research.

Deliberations

265. The event of abduction and killing of journalist Seraj Uddin Hossain on the date and time is not disputed at all. Defence contends that either of the accused persons did not have involvement with the alleged criminal act, in any manner and they did not belong to Al-Badar.

266. Predictably the criminal event of abduction was carried out as a part of execution of common design and plan of killing the intellectuals with intent to cripple the Bengali nation. Already Ali Ahsan Muhamad Mujahid has been found criminally responsible for the act of abduction and killing of journalist Seraj Uddin Hossain in the case being number ICT-BD [ICT-2] Case no. 04 of 2012, Judgment July 17 2013 as he was found ‘concerned’ with the common plan and design and to have had position of authority over the Al-Badar men who formed the ‘killing squad’. We have recorded our reasoned finding in the said case as below:

“.....it is quite evident that the group of perpetrators who allegedly abducted Seraj Uddin Hossain belonged to Al-Badar which was the ‘*action section*’ of Jamat E Islami and ‘*death squad*’ of the army. Besides, prosecuting, trying and convicting one Khalil, an Al-Badar man under the Collaborators Order 1972 lends further assurance to it. At the same time it is lawfully presumed that for publishing write ups reflecting his pro-liberation ideology journalist Seraj Uddin Hossain became one of targets of the Al-Badar, the ‘**killer group**’ and as such it is immaterial whether any counter article was really written by the accused terming the victim an ‘Indian agent’ and ‘agent of Brahmanism’, as described in the charge no.1.”[Judgment para 259]

267. The Tribunal notes that finding a person [*Ali Ahsan Muhammad Mujahid*] guilty for the same event constituting the offence of crimes against humanity in an earlier case does not rest any clog in prosecuting the present accused persons for the same event. The offence of crimes against humanity is a system crime and committed by collectivity of criminal acts of group of perpetrators and persons concerned with the commission of crimes.

268. The present accused persons have been arraigned for abetting and complicity to the commission of the offence alleged and they are alleged to have incurred liability also under the theory of civilian superior responsibility as they had acted as the ‘operation-in-charge’ and ‘chief executor’ of the designed mission by virtue of their position in high command of Al-Badar, the ‘action section’ of JEI and the event of abducting journalist Seraj Uddin Hossain occurred on their instruction, as alleged.

269. Instruction, direction, provocation or providing substantial instigation by a person who is reasonably placed in position of authority forms the act of ‘leading’ a group or gang in carrying out the designed criminal acts. We echo our earlier finding in the above mentioned case [*Ali Ahsan Muhammad Mujahid*] that –

“.....Might be there had been some more persons having position of authority over the AB force. But it cannot make the accused absolved of his liability as a ‘superior’, particularly when he is found to have acted as a leading person exercising his own authority of position on AB force.”

270. The accused persons being the person in position of authority of Al-Badar high command had sufficient reason to know the common purpose and designed plan and also the commission of crime alleged. They were thus part of the common plan and design in execution of which series of

events of intellectual killing was accomplished, as already observed on the basis of authoritative sources, reports and information and as such they cannot be absolved of criminal responsibility.

271. Therefore it has been proved beyond reasonable doubt that the accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan by virtue of their position in the AB high command had a substantial position of authority over the ‘killing squad’ formed of Al-Badar men and thus they can lawfully be said to have approved, endorsed and encouraged and provided moral support to the actual commission of criminal acts including the abduction of Seraj Uddin Hossain who was admittedly killed afterwards. Accordingly, the accused persons incur liability as ‘superior’ of Al-Badar men the principal perpetrators of the criminal act of abduction followed by killing of journalist Seraj Uddin Hossain, as part of systematic plan and design, with intent to accomplish common purpose. The killing of journalist Seraj Uddin Hossain was inevitably part of large scale killing which constituted the offence of ‘extremation’.

Adjudication of Charge No.2

[Abduction & Killing of Journalist Syed Nazmul Haque]

272. Summary charge: This charge involves the event of forcible abduction of **Syed Nazmul Haque**, the chief reporter of PPI and staff reporter of Columbia Broadcasting Services on gun point by forcibly entering into his rented house at 90, Purana Paltan, Dhaka on 11 December, 1971 at about 04:00-04:30 am by a gang of 8-10 armed Al-Badar men led and accompanied by the accused **(1) Chowdhury Mueen Uddin**, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and **(2) Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar. The captured victim was brought him to unknown place by an EPRTC minibus and afterwards they killed him, although his dead body could not be found.

Witness

273. P.W.7 Syed Mortuja Nazmul, the son of martyred journalist Syed Nazmul Haque has been examined by the prosecution in support of this charge. He is a hearsay witness. He learnt the event of abducting his father from his uncles and the elder members of the family.

Evidence

274. P.W.7 Syed Mortuja Nazmul,[47] stated that the masked Al-Badar men forcibly abducted his father Syed Nazmul Haque from their home at 90 Purana Paltan on 11 December at 04:00 am. On being confirmed about the identity of his father the attackers took him away on gun point by a vehicle. The narration provided by the P.W.7 portraying the profile of his father goes to show that the martyred Journalist was a potential activist of Bengali nationalism and took stand in favour of the war of liberation. According to P.W.7 he afterwards learnt that many other intellectuals including journalists, university teachers and academics were also abducted and killed in similar pattern.

Deliberations

275. Defence does not dispute this event of abduction and killing of journalist Syed Nazmul Haque. The pattern of committing the criminal acts in abducting and killing journalist Syed Nazmul Haque is thus unerringly linked with the identical calculated and secret plan and policy in execution of which the other events of intellectual killing too took place by the ‘squad’ formed of Al-Badar. Source of knowledge of P.W.7 as regards the event of forcible capture of his father is natural and thus his hearsay testimony carries probative value. In addition to his testimony, let us have glimpse to the investigative reports on the event published in the news media immediately after picking up the journalist Syed Nazmul Haque.

276. A report titled ‘**Latest victim of Al-Badar**’ published in **The Daily Observer 23 December 1971** also corroborates the event as it narrates as below:

“Syed Nazmul Huq a renowned journalist and the Chief Reporter of the former PPI and correspondent of the Columbia Broadcasting Service was picked up by a group of the fascist and fanatically religious Al-Badar Bahini militant organisation of the Jamaat-e-Islami on December 10 at 4 a.m from his residence at 90 Purana Paltan Line, Dacca. These miscreants.....were wearing uniforms and masks and carrying stenguns and rifles and fired two shots to create terror in Mr. Nazmul’s house. Afterwards they grabbed him by his neck in his bed room and they took him to open yard of his house and ordered him to sit down. Immediately afterwards at 4-15 a.m he was forcibly taken by them to a jeep which was escorted by another military jeep.”[Prosecution Documents Volume (Chowdhury Mueen Uddin), page 37]

277. Another report, on the event, titled ‘**Nazmul Huq: Victim of Badar Bahini**’ published in **The Daily Morning News 22 December 1971** describes that

“The jeep whisked away in the wild darkness carrying Syed Nazmul Huq grabbed by four members of Al-Badar Bahini, one of them reported to be a Bengalee. He was presumed to have been taken to the Physical Training Institute at Mohammadpur [AB HQ] blindfolded.....along with other intellectuals of the city before they were brutally murdered in cold blood at Rayerbazar marshy area after inhuman torture.....”[Prosecution Documents Volume (Chowdhury Mueen Uddin), page 43]

278. The Daily Purbadesh in its report titled “আল বদরের নর পিশাচরা ওদের হৃৎপিণ্ড টেনে বের করেছে” published on 23 December 1971 narrates similar horrifying depiction, as below:

“..... কুখ্যাত বদর বাহিনী বাংলার শত শত বুদ্ধিজীবীকে একই উপায়ে অপহরণ করে এবং তাদের উপর অমানুষিক নির্যাতনের পর হত্যা করে। বাংলার এই সব সুসন্তানদের খুনীরা প্রথমে মোহাম্মদপুরস্থ ফিজিক্যাল ট্রেনিং স্কুলে নিয়ে যায় এবং রায়ের বাজারের ইটখোলার কাছে বধ্যভূমিতে নির্ভুরভাবে হত্যা করে। সৈয়দ নজমুল হকের ভাগ্যেও এইই ঘটেছে।..... শতাধিক বিদেশী সাংবাদিক দেখতে গিয়েছিলেন এই নারকীয় হত্যাকাণ্ড। পিশাচদের এই রক্তপিপাসা দেখে তারা স্তম্ভিত হয়ে বাকরুদ্ধ হয়ে গেছেন। তারা বলেন, বিশ্বের ইতিহাসে এরূপ নির্ভুর হত্যায়ত্ত এই প্রথম। একজন বিদেশী সাংবাদিক এরূপও বলেছেন, “আমরা যে মানুষ তা এ দেখে বিশ্বাস করার কোন উপায় নেই” নিজেদের মানুষ বলে পরিচয় দিতেও আমাদের লজ্জিত হওয়া উচিত।”

[Prosecution Documents Volume (Chowdhury Mueen Uddin), page 63-64]

279. Thus Al-Badar men were the killers who carried out the killing mission in an extreme atrocious and cold blooded manner. The attack was not only against Syed Nazmul Haque and other intellectuals. It was in fact directed against human civilization and humanity. Syed Nazmul Haque’s dead body could not be identified even. Pattern, nature and collectivity of murder prompt us to conclude that the murder of abducted journalist Syed Nazmul Haque was part of large scale killing of selected intellectuals and thus the acts committed in materializing his murder constitute the offence of ‘extermination’, as already observed in adjudicating charge nos. 6 and 7.

Adjudication of Charge No. 3

[Event of abduction & killing of journalist A.N.M Golam Mostafa]

280. The charge involves the incident of forcible capture of **A.N.M Golam Mostafa**, the then chief reporter of The Daily Purbadesh by

entering into his rented house at 89/C, Gopibag, Dhaka on 11 December, 1971 at about 06:00-06:30 am by a gang of 5/6 armed Al-Badar men on instruction of accused **(1) Chowdhury Mueen Uddin**, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and **(2) Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar. The abducted **A.N.M Golam Mostafa was** afterwards killed, although his dead body could not be found.

Witnesses

281. Prosecution examined Golam Rahman Dulu the brother of victim journalist as P.W.8 and Professor Anirban Mostafa the son of martyred journalist as P.W.12. P.W.8 is the first hand eye witness of the event of abduction and he narrated some material facts too. P.W.12 is a hearsay witness and he learnt the event from P.W.8 and his [P.W.12] mother.

Evidence

282. P.W.8 Golam Rahman Dulu [65] made an account of the event of abduction of his brother journalist A.N.M Golam Mostafa. P.W.8 witnessed the act of taking away his brother from their home on 11 December 1971. He stated that his elder brother Mostafa was a senior journalist and literary editor of Purbadesh. He also worked for Sangbad and Azad and was involved in left-wing politics. His brother [A.N.M Golam Mostafa] used to write for the liberation movement, and for this he had an ideological rivalry with Chowdhury Mueen Uddin, who was a staff reporter of Purbadesh.

283. P.W.8 further stated that around 6:00am on December 11, 1971, a group of Al-Badar men and militia men went to their Gopibagh home. Mostafa had opened the door, said P.W.8 adding that two to three of them were masked. Making sure that he was indeed Mostafa, they took his brother away saying that he would be taken to the Purbadesh office.

284. He [P.W.8] then went to the Purbadesh office around 8:30am, as his brother had not returned. He informed Atiqur Rahman, a senior staff reporter, of the matter, who then made it appraised to Ehtesham Haider

Chowdhury, the news editor. He [P.W.8] learnt there that the Al-Badar had also abducted journalists Seraj Uddin Hossain and Syed Nazmul Haque in similar fashion. News editor Ehtesham then called editor of the paper Mahbubul Haque over the phone in his [P.W.8] presence and he heard Ehtesham telling the editor over phone that Chowdhury Mueen Uddin had done all these. It was the first time he [P.W.8] had heard of Chowdhury Mueen Uddin. Ehtesham then asked Atiqur to call in Mueen and when Mueen Uddin showed up within half an hour, he [Mueen] was asked to take him [P.W.8] with him and look for Mostafa.

285. P.W.8 went on to state that he and Mueen [accused] went to a building at Purana Paltan by a rickshaw. Keeping him outside, Mueen went inside the building, which was the office of Islami Chhatra Sangha [ICS], the then student wing of Jamaat-e-Islami. But coming out of that office Mueen told that he had not found Mostafa [abducted victim] there. Then on his [P.W.8] request Mueen, despite hesitation, agreed to go to Mohammadpur Physical Training Centre.

286. P.W.8 stated that he [P.W.8] was again kept waiting outside as Mueen entered the training centre, known as the headquarters of Al-Badar and the guards stood in attention for Mueen as he went in. Before going in, Mueen talked to a guard there and from their conversation he [P.W.8] first heard of Ashrafuzzaman. Mueen went in and returned 15-20 minutes later. Mueen claimed to have not found Mostafa. The guards again stood in attention as he exited through the gate. Afterward they returned to the Purbadesh office, where he narrated everything to Atiqur Rahman.

287. P.W.8 further stated that from Atiqur, he learnt that a week ago there had been an altercation between Mostafa [abducted victim] and Mueen over the Liberation War and Jamaat's role. Mueen had threatened Mostafa of dire consequences during the heated exchange of words. After victory in the war, he [P.W.8] and his family searched for Mostafa's body in Rayerbazar and other killing fields in Dhaka but could not find it, said Dulu. Dulu said Mueen went into hiding after victory and Purbadesh

published Mueen's and Ashrafuzzaman Khan's photos mentioning them as the masterminds of the intellectual killings.

288. P.W.12 Anirban Mostafa [42] is the son of martyred journalist A.N.M Golam Mostafa. He is a professor of architecture at Khulna University. Emotion-choked Professor Anirban uttered on dock--- "*I did not get a chance to call out my father as 'baba' [father]. But I have always cherished the name of Bangladesh in my heart,*" He however narrated what he learnt about the event of abduction of his father from his mother and uncle Golam Rahman Dulu [P.W.8].

289. The event of abduction of journalist A.N.M Golam Mostafa on the date and time from his residence is not at all disputed and he appears to have corroborated the testimony of P.W.8 from whom he learnt the event. Thus the hearsay testimony of P.W.12 carries probative value.

290. P.W.12 has corroborated the fact that journalist Mostafa [victim father] used to criticize the then Pakistani government and its army at office [Purbadesh] and one day he locked in an altercation with Mueen Uddin [accused], who threatened him with dire consequences.

291. P.W.12 further stated that on December 29, 1971 and in January 1972, the Daily Purbadesh published several reports with photographs of Chowdhury Mueen Uddin and Ashrafuzzaman Khan depicting the information that they [Chowdhury Mueen Uddin and Ashrafuzzaman Khan] were the key persons behind the abduction of his father and other intellectuals.

Deliberations

292. Defence does not dispute the event of forcible capture of journalist A.N.M Golam Mostafa. His dead body could not be traced even. Naturally it could not be known where he was taken, on capture and who caused his death. But it was also a part of planned and calculated killing of intellectuals.

293. P.W.8 an eye witness testified the event of forcible capture of his brother journalist A.N.M Golam Mostafa from his residence. According to him the group of armed Al-Badar men who were masked forcibly took away the victim journalist in the fashion they committed the acts of abduction of other intellectuals. P.W.8, apart from the event of abduction, testified some facts relevant to the ‘operation’ carried out by perpetrators. P.W.12 is hearsay witness. He learnt the event from his mother and P.W.8.

294. Admittedly martyred journalist A.N.M Golam Mostafa used to work in The Daily Purbadesh and accused Chowdhury Mueen Uddin was his colleague there. We have found that few days before the incident, there had been an altercation between Mostafa [abducted victim] and accused Mueen Uddin over the Liberation War and Jamaat’s role and Mueen had threatened Mostafa of dire consequences during the heated exchange of words. It is indisputably a culpable conduct of accused Chowdhury Mueen Uddin, before the occurrence and lends assurance accused’s involvement with the criminal act perpetrated by the gang of armed Al-Badar of which he was the ‘operation-in-charge’.

295. According to P.W.8, immediately after the abduction he rushed to Purbadesh office where on his disclosure of the event Ehtesham and Atiqur insisted Chowdhury Mueen Uddin to help him [P.W.8] in getting trace of the abducted victim. Despite hesitation, Chowdhury Mueen Uddin being accompanied by P.W.8 first moved to ICS office and then to the Physical Training Institute which was known as the AB HQ and torture center.

296. Why Chowdhury Mueen Uddin agreed to rush those two places? Was it his pious intention? Had he speculated that the captured victim might have been taken to either of these places? The conduct of Chowdhury Mueen Uddin as found from testimony of P.W.8 shows that he [Chowdhury Mueen Uddin] was quite aware as to where a person captured in such manner might have been taken. Testimony of P.W.8 also demonstrates that the accused Chowdhury Mueen Uddin had easy access, authority and affiliation to the AB HQ at Mohammadpur Physical

Training Institute. The honour shown to the accused Chowdhury Mueen Uddin by the AB guards when he entered the AB HQ, as observed by P.W.8, irrefutably impels such unerring conclusion.

297. However, it appears to have been proved beyond reasonable doubt that the accused Chowdhury Mueen Uddin merely had shown camouflaged compassion, as asked by his two senior colleagues, in the name of making attempt to have trace of abducted journalist A.N.M Golam Mostafa simply to hide his complicity with the event of abduction carried out by the armed squad formed of Al-Badar over whom he had position of authority. Accused Ashrafuzzaman was his fellow Al-Badar who had acted as the ‘chief executor’ in carrying out the entire mission of intellectuals killing. Both the accused persons were part of common plan and design and as such they did ‘consenting part’ to all the events including the one constituting the offence of ‘extermination’ under charge no. 3 as well.

Adjudication of Charge No. 4

[Abduction & Killing of Journalist Nizam Uddin Ahmed]

298. Summary charge: This charge involves the act of abduction of **Nizam Uddin Ahmed**, the then General Manager of PPI and reporter of BBC by forcibly entering into his rented house at 12/C, Rokonpur, Kalta Bazar, Dhaka, on 12 December, 1971 at noon by gang of armed Al-Badar **men on instruction of accused (1) Chowdhury Mueen Uddin**, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and **(2) Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar. The captured victim was brought to unknown place by a minibus and afterwards the gang killed him, although his dead body could not be found.

Witness

299. P.W.23 Safquat Nizam [46] is the son of martyred journalist Nizamuddin Ahmed. He is a hearsay witness. He narrated before the

Tribunal what he learnt about the incident of his father's abduction from his mother and elder members of family.

Evidence

300. P.W.7 stated that although his father was a government employee, he used to project the Pakistani army's atrocities before the world community, and his reports on the successes of the freedom fighters were telecast on the BBC during the war. For these reasons, his father became a target of the Pakistani junta and the Al-Badar force. P.W.23 stated that his parents, together with his grand-parents, maternal uncles and aunts, had been leaving in the capital's Rokanpur residence in 1971. Around 1:00pm on December 12 in 1971, two armed persons entered their house. As they came looking for his father, he identified himself and they [perpetrators] put him in a minibus covered with mud and took away.

Deliberations

301. Defence could not dislodge the version on the event of abduction, in any manner, by cross-examining P.W.23. We have found adequate indication as to why the distinguished journalist Nizamuddin Ahmed became the target of the 'death squad'. It matched the reason for which the other intellectuals were so targeted for annihilation, at the fag end of war of liberation. A report published in **The Daily Purbadesh, 30 December 1971**[Prosecution Documents Volume (Chowdhury Mueen Uddin), page 85] also demonstrates that journalist Nizam Uddin Ahmed was forcibly picked up on 12 December, 1971 at noon by a gang of infamous armed Al-Badar men and he never returned.

302. As regards abduction and killing of martyred journalist Nizam Uddin Ahmed it is found from the report titled "স্বাধীনতার সূর্যোদয় তিনি দেখে যেতে পারেননি" published in the daily Purbadesh 30 December 1971 that-

“খুনে রাংগা সোনার বাংলায় স্বাধীনতার সূর্য
দেখার সৌভাগ্য যাদের হয়নি সাংবাদিক জনাব
নিজামউদ্দীন আহমেদ তাদের অন্যতম। সাবেক
পাকিস্তান প্রেস ইন্টারন্যাশনালের ঢাকাস্থ ব্যুরোর
এসিস্ট্যান্ট জেনারেল ম্যানেজার জনাব আহমেদকে

১২ই ডিসেম্বর বিকেল দু'টায় কুখ্যাত আলবদর বাহিনী ধরে নিয়ে যায়। এর পর থেকে তিনি নিখোঁজ রয়েছেন। গেস্টাপো আল-বদর আল-শামস বাহিনীর কলংকিত বধ্যভূমি ও সম্ভাব্য স্থানে খোঁজ করেও তাঁর কোন পাত্তা পাওয়া যায়নি।”

[Prosecution Documents Volume (Chowdhury Mueen Uddin) , page 84]

303. The above report, in absence of anything contrary, carries evidential and probative value so far as it relates to the event of his abduction and missing and also the perpetrators of the criminal act. From this document it stands proved that the offence of abducting journalist Nizam Uddin Ahmed was also committed by armed men belonging to Al-Badar, an ‘action section’ of JEI. It stands proved that the abducted victim was picked up on 12 December 1971 at noon from his residence when he was about to take his lunch. The narration made in the report corroborates the event described in the charge.

304. The event of abduction, as found from evidence, occurred in similar fashion and by the group formed of armed Al-Badar men by using similar logistics. It literally indicates that it was a part of identical common plan and design intended to execute the selected intellectuals. The murder of captured journalist Nizam Uddin Ahmed, in furtherance of common purpose and plan, was thus part of ‘large scale killing’ directing a particular class of individuals constituting the offence of ‘extermination’.

Adjudication of Chare No. 5

[Event of abduction & killing of journalist Selina Parveen]

305. Summary charge: The charge involves the tragic event of abduction of **Selina Parveen**, Editor of The Daily Shilalipi, by forcibly entering into her rented house at 15, New Circular Road, Dhaka on gun point on 13 December, 1971 at noon by a gang of armed Al-Badar men led and accompanied by you **(1)** Chowdhury Mueen Uddin, leader of ICS , member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and **(2)** Ashrafuzzaman Khan, member of Al-Badar high command

and ‘chief executor’ of Al-Badar. She was brought to unknown place by a minibus and afterwards they killed her. On 17 December 1971 her dead body was recovered from the mass grave at ‘Rayer Bazar’, outskirts of Dhaka city.

Witness

306. Prosecution examined P.W.3 Md. Sumon Jahid, the son of martyred journalist Selina Parveen. He witnessed the event of forcible capture of his mother. As regards complicity of the accused persons with the crimes committed he learnt from P.W.22 Delwar Hossain and other sources. P.W.22 Delwar Hossain the lone survivor from the AB torture camp described what he experienced about confinement and causing torture to captured Selina Parveen. P.W.22 was also caught and taken to the AB torture camp and he however eventually survived.

Evidence

307. P.W.3 Md. Sumon Jahid[50] narrated that on 13 December at around 01:30 noon he and his maternal uncle ‘Ujir mama’ saw a mud covered microbus appeared in front of their house at 115, New Circular Road[at present 29, Shaeed Sangbadik Selina Parveen Road] and there was a military vehicle behind it. He heard knocking their door and with this his mother opened the door and then one armed man asked for her identity and then the men asked her to go with them. The men were armed and masked. They then tying his mother’s hands with a muffler with them brought her by the mud covered vehicle and she never returned.

308. P.W.3 further stated that his mother used to spend the money she received by promoting the magazine ‘Shilalipi’ edited by her for treatment of wounded freedom fighters. Chowdhury Mueen Uddin was affiliated with politics of ICS and he was from Feni and he [accused] provided the address of their home to the ‘squad’. His Ujir Mama afterwards told him, on seeing the photograph of accused Chowdhury Mueen Uddin published in the news media, that he [accused] also accompanied the gang of perpetrators in abducting his mother.

309. P.W.3 added that he had met Delwar Hossain [P.W.22], the lone survivor from Rayerbazar killing field, in 1996. Delwar told him that his mother along with around 20-25 people were kept confined at Mohammadpur Physical Training Centre and how his mother was killed. After talking with Delwar Hossain he learned that Mueen Uddin the 'operation in charge' and Ashrafuzzaman Khan an Al-Badar man were involved in the killings of intellectuals

310. P.W.22 Delwar Hossain the lone survivor from the clutch of Al-Badar was first kept confined at the hall of the camp set up at Mohammadpur Physical Training Institute. He stated that during his confinement there he heard screaming of a woman either from the adjacent room or from the floor of the room where he kept detained. He stated that afterwards he and other detained persons were taken to a place 'Katasur' where he found many other captives. The detained persons were bayoneted to death and thrown to the marshy water. He [P.W.22] could see all these as he tactically slackened his blindfold. When a group of 20 detained individuals were about to be taken for liquidation, he [P.W.22] heard screaming of woman who was telling to spare her by saying that she had a kid and there was none to take care of him if she was not spared. With this the killers asked her name and she replied, 'Selina Parveen'. But the killers did not spare her [Selina Parveen]. Rather they killed her by charging bayonet.

311. From Evidence of P.W.22 it reveals that accused Ashrafuzzaman Khan and Chowdhury Mueen Uddin were also present at the killing field where one of detained victims appealed them to save and release him. Defence could not refute the version made by P.W.22, on material particular. He [P.W.22] is a first hand witness and there has been no reason to attack his credibility.

Deliberations

312. The version made by P.W.3, so far as it relates to the event of abduction, remained unshaken. It thus stands proved that the reason of targeting Selina Parveen was that she took patriotic stand in favour of war of liberation. The report titled published in **The Daily Purbadesh, 21 December 1971** narrates that

“বেগম সেলিনা পারভীনের লাশ মোহাম্মদপুর রায়ের বাজারের বিলের বধ্যভূমিতে তাঁহার ক্ষতবিক্ষত লাশ গত শনিবার পাওয়া গিয়াছে। গত ১৪ই ডিসেম্বর বেলা ২ টায় বেগম সেলিনা পারভীনকে জামাতে ইসলামীর গুল্ম বাহিনী আল বদরের জল্লাদেরা তাঁহার সিদ্ধেশ্বরীর বাসভবন হইতে ধরিয়া নিয়া যায়। বেগম সেলিনা পারভীনের ডান চোয়ালে দুইটি গুলির আঘাত ও পেটে বেয়নেটের আঘাত রহিয়াছে। [Prosecution Documents Volume (Chowdhury Mueen Uddin), page, 149]

313. The hearsay testimony of P.W.3 as to the fact of keeping his abducted mother confined at Mohammadpur Physical Training Centre [AB HQ] has been corroborated by P.W.22, the source of his [P.W.3] knowledge. P.W.22 also narrated how Selina Parveen was killed in the field. From evidence of P.W.22, eye witness of causing death of Selina Parveen by charging bayonet at the killing field where the accused persons were present it has been proved beyond reasonable doubt that the accused persons were actively concerned with the entire episode of intellectuals killing.

314. P.W.22 stated that he saw the killing as his blindfold was loose. At one point, he [P.W.22] heard screams of a woman, who was requesting to release her by saying **“don’t kill me. You have mothers and sisters. What would you do if I were your mother or sister? I have a little kid; he will die, if you kill me.”** Asked by the killers, the woman identified her as journalist Selina Parveen.

315. The above version of P.W.22 gets corroboration from a report titled **“The Events in East Pakistan, 1971: A Legal Study”** by the Secretariat of the International Commission of Jurists Geneva, 1972 which narrates that,

“The AI Badr raids were carried out at night, the victims being led away

blindfolded at gun point, never to return. Many were taken to the Dacca College of Physical Education building. A janitor, at the College stated 'They brought in hundred, of people, all nicely dressed and tied up. We could hear the screaming all the time from the rooms.'

The victims were later taken in trucks to a deserted brickyard near Mohammedpur. The only [lone] survivor, who managed to loosen the rope with which he was tied and escaped, has described how these prisoners were tortured before being taken out to be shot. The victims included women, one of whom was an editor who was found with two bayonet wounds, one through the eye and one in the stomach, and two bullet wounds. It is alleged that a heart specialist, Dr. Fazle Rabbe, had been cut open and his heart ripped out. [Source: <http://nsm1.nsm.iup.edu/sanwar/Bangladesh%20Genocide.htm>]

316. Selina Parveen begged her life, appealed to spare her as she had a kid and there was none to take care of him [P.W.3] excepting her. But the brutal killers did not spare her. She was instantly killed by charging bayonet, as narrated by P.W.22. What an impious butchery! What a Sacrilegious butchery! What a shame for human civilization! Selina Parveen was a mother. The appalling attack was done not only to Selina Parveen but to the mother's line. The killing was rather a 'matricide'. This indescribable brutality shocks the human conscience indeed.

317. It is thus proved that in similar fashion and by using similar logistics the gang of perpetrators forcibly took Selina Parveen away to unknown place. From evidence of P.W.22 it appears that first she was taken to AB HQ's torture camp where she was subjected to torture and afterwards she was killed brutally. It was thus part of 'intellectuals killing', in furtherance of common plan and design executed by specially created 'death squad' formed of AB men. This tragic episode is also linked to the 'large scale killing' constituting the offence of 'extermination'.

Adjudication of Charge No. 8

[Event of abduction & killing of Professor A.M Muneir Chowdhury]

318. Summary charge: This charge involves the tragic episode of forcible abduction of **Professor A.M Muneir Chowdhury**, Bengali department, University of Dhaka, by forcibly entering into his paternal residence at 20 Central Road, Hatirpul, Dhaka, on gun point, on 14 December, 1971 at about 01:00-01:30 noon by a gang of 3-4 armed Al-Badar men on instruction of the accused (1) Chowdhury Mueen Uddin, leader of ICS, member of Al-Badar high command and 'operation-in-charge' of Al-Badar and (2) Ashrafuzzaman Khan, member of Al-Badar high command and 'chief executor' of Al-Badar. The abducted Professor was brought to unknown place by an EPRTC minibus and afterwards the accused and their gang killed him. After independence Professor A.M Muneir Chowdhury was found listed in a diary recovered from the house [350, Nakhlapara, Dhaka] of accused Ashrafuzzaman Khan as one of targets of 'intellectuals killing'. Dead body of the martyred Professor could not be traced even.

Witnesses

319. Prosecution produced and examined Asif Muneir [P.W.2], the youngest son of martyred Professor A.M Muneir Chowdhury, to prove the fact of abduction. P.W.22 Delwar Hossain the lone survivor from the killing field describes how Professor A.M Muneir Chowdhury was subjected to inhuman torture at Mohammadpur Physical Training Institute [AB HQ] by the Al-Badar men.

Evidence

320. P.W.2 Asif Muneir [46] was 4 years old in 1971. Currently he has been working in International Organisation for Migration [IMO], an organisation of United Nations [UN]. His mother Lily Chowdhury [84] is still alive. But she has been suffering from old age complications and since the tragic event she is not in position to appear in public due to severe mental trauma she sustained. His father Muneir Chowdhury was a Professor of the Bengali department, University of Dhaka and they used to reside at university quarter, P.W.2 added. But subsequent to 25 March 1971 they took shelter at his grand-father's home at 20, Central road, Hatirpul, Dhaka wherefrom his father was abducted.

321. P.W.2 is a hearsay witness. He learned the event of abduction from his mother, uncle [Rusho] and his elder brother Mishuk Muneir [recently died in a road accident]. P.W.2 narrated that on 14 December at about 01:00 noon the members of their family heard someone shaking the gate of the building. With this his mother, from first floor, had a look towards outside and saw a minibus covered with mud and three-four youths getting down from it. His uncle Rusho moved to the gate and then one of youths asked whether he was Muneir Chowdhury. Rusho replied that Muneir was his elder brother. Then the youths asked to call Muneir Chowdhury. At a stage Muneir Chowdhury came down with Rusho and his mother followed them. His uncle Rusho unlocked the gate and then the youths asked his father Muneir Chowdhury to go with them. Afterwards one of the youths pointed gun behind his father and then his father was dragged to the vehicle and he never returned.

322. P.W.2 further stated that his uncle Rusho, mother and brother became aware of the active involvement of accused Ashrafuzzaman Khan, 'operation-in-charge' of AB and Chowdhury Mueen Uddin, 'chief executor' of AB with the large scale killing of intellectuals on going through the reports published during that time in The Daily Purbadesh. His uncle Rusho could recognise two of the three youths who abducted his father, on seeing their portrait published together with the report, P.W.2 added.

323. Ashfaque Muneir @ Mishuk Muneir was the second son of martyred Professor Muneir Chowdhury. In 1971 he was 12 years old. He witnessed the event of forcible taking away his father by the gang of armed Al-Badar. Recently he died in a tragic road accident. On this ground prosecution has prayed to receive his statement made to the Investigation Officer [IO] as required under section 19(2) of the Act of 1973. The Tribunal allowed the prayer.

324. Ashfaque Muneir @ Mishuk Muneir in his statement made to IO narrated the description of the event of abduction of his father. It corroborates to what has been testified by his younger brother P.W.2 Asif Muneir. He also stated, quoting Delwar Hossain [P.W.22], that his father Muneir Chowdhury was brought to AB HQ where he was subjected to brutal torture by iron rod. He reiterated that his father and other intellectuals were murdered in furtherance of organised and calculated plan which was executed by the Al-Badar men. Ashrafuzzaman Khan, chief executor of Al-Badar and Chowdhury Mueen Uddin, operation-in-charge of Al-Badar were assigned with the task of carrying out the operation of abducting Dhaka university teachers and journalists. After independence, a diary owned by Ashrafuzzaman Khan was recovered from his house which was published in various news media. His father's [Muneir Chowdhury] name appeared there as one of targeted intellectuals.

325. P.W.22 Delwar Hossain's testimony also relates to the material fact of confinement and causing torture to abducted Professor Muneir Chowdhury. He [P.W.22] was also brought to Mohammadpur Physical Training Institute [AB HQ] known as 'torture camp', on capture and he was kept confined there along with other detainees.

326. P.W.22 stated that on 14 December at about 08:00-08:30 pm [night] two persons entered into the hall [of Mohammadpur Physical Training Institute] with lantern. 10-12 persons equipped with iron rod were also with them. With the light of lantern he [P.W.22] could see that they first asked Professor Muneir Chowdhury **“how many books have you**

authored on Rabindranath Tagore?” He [Professor Muneir Chowdhury] replied in negative. Then on their asking, Professor Mofazzal Haider Chowdhury who was beside Muneir Chowdhury replied, *æI have authored books on Rabindranath Tagore”*. With this they started beating Muneir Chowdhury and Mofazzal Haider Chowdhury indiscriminately by iron rod. At that time he was also beaten up and thus sustained injury on head and legs.

Deliberations

327. Testimony of P.W.2 seems to have been corroborated by his elder brother’s statement made to IO [received under section 9(2) of the Act]. Defence does not dispute the incident of abduction. The armed youths who abducted Professor Muneir Chowdhury were not familiar either to him or his family inmates, although they could see their faces as they were unmasked. In similar pattern the gang took the Professor by a mud covered minibus to unknown place, on gun point.

328. Recognizing [by uncle Rusho of P.W.2] two of the youths who forcibly abducted Professor Muneir Chowdhury, on seeing their portrait published in the news media immediately after the incident, as stated by P.W.2 seems to be probable and natural.

329. At the time of forcible capture the armed youths were unmasked, as found, and as such the uncle [Rusho] of P.W.2 had occasion to see their face and naturally few days after the tragic event he could recognise accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan as the members of the group of perpetrators, on seeing their portrait published in news media.

330. We have found from evidence of P.W.22 Delwar Hossain, an eye witness who was kept confined at the AB HQ’s torture camp on 14 December 1971 that the notorious Al-Badar men started beating Muneir Chowdhury and Mofazzal Haider Chowdhury indiscriminately by iron rod when Professor Mofazzal Haider Chowdhury on asking replied that he authored books on Rabindranath Tagore.

331. Rabindranath Tagore and our national anthem are indivisible. The abducted Professor Muneir Chowdhury and Professor Mofazzal Haider Chowdhury were ruthlessly beaten by brute Al-Badar men by iron rod, as narrated by P.W.22, an eye witness. In fact it was gravest attack to the Bengali nation, to the Bengali nationalism. The nation still bleeds for the grave lesion it sustained.

332. Thus from evidence of P.W.22 Delwar Hossain, the lone survivor from the clutch of Al-Badar men it stands proved that on abduction, professor Muneir Chowdhury was first brought to AB HQ's 'torture camp' where he was subjected to brutal and untold torture. He [P.W.22] knew Professor Muneir Chowdhury and Professor Mofazzal Haider Chowdhury since earlier, although he [P.W.22] was a student of a different department of Dhaka University.

333. The Tribunal is convinced with what has been narrated by P.W.22. In 1970-71 it was really probable for a Dhaka University student to be acquainted with notable and distinguished professor[s] having outstanding profile. Professor Muneir Chowdhury was rather a luminary in the arena of Bengali culture and activities involving Bengali nationalism.

334. An investigative report titled “**জন্মাদের ডায়েরী: বুদ্ধিজীবী হত্যার মূল্যবান দলিল**” published in **The Daily Purbadesh, 12 January 1972**[Prosecution Documents Volume(Chowdhury Mueen Uddin), page 99-100] demonstrates that martyred Professor Muneir Chowdhury was listed along with many other Dhaka University teachers and doctor. It indicates that in execution of 'murderous scheme' the 'death squad' formed of Al-Badar they were targeted for annihilation and accused Ashrafuzzaman Khan was knowingly and aggressively concerned with the total 'mission'.

335. The page of the alleged diary published in the **Daily Purbadesh, 12 January 1972** also demonstrates name of eight teachers and doctor who were also abducted in similar pattern and afterwards murdered. The accused persons have been found liable for the offence of committing

their brutal murder, in execution of common plan, as they were consciously concerned and participated to it [events narrated in charge nos. 6 and 7].

336. On total evaluation of evidence of P.W.2, P.W.22 and statement of Mishuk Muneir [recently died] made to IO we come to conclude that it has been proved beyond reasonable doubt that Professor Muneir Chowdhury was abducted, tortured and murdered by the squad formed of armed Al-Badar in furtherance of common plan and design to which accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan were part. They also appear to have participated to the criminal act of abduction. Since they were in position of authority on Al-Badar and its HQ they cannot be absolved of responsibility of causing them torture at AB torture camp and murder of illustrious professor Muneir Chowdhury. Indisputably the murder of Professor Muneir Chowdhury was a part of ‘large scale killing’ of selected intellectuals constituting the offence of ‘extermination’.

Adjudication of Chare No. 9

[Event of abduction and killing of Shahidullah Kaiser]

337. Summary charge: The charge involves the tragic episode of forcible capture of notable journalist Shahidullah Kaiser by a gang of 5/6 armed Al-Badar men led and accompanied by the accused (1) Chowdhury Mueen Uddin, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and (2) Ashrafuzzaman Khan, member of Al-Badar high command and ‘chief executor’ of Al-Badar from his paternal residence at 29, B.K Ganguli Lane, Koyettuli, Dhaka, on gun point, on 14 December, 1971 at about 06:00 pm. On capture he was brought to unknown place by a minibus and afterwards he was killed, although his dead body could not be traced.

Witnesses

338. Panna Kaiser, the wife of martyred journalist Shaidulla Kaiser came on dock and deposed as P.W.13, in support of the tragic incident. In addition to the event of abduction she narrated what one Khalek

Majumdar, arrested after the independence, disclosed on committing the criminal act of abduction.

Evidence

339. P.W.13 Panna Kaiser [63], the wife of martyred journalist stated that around 5:30pm on December 14, 1971, four to five people, whose faces were masked, entered their home and asked for Shahidullah. On being sure about identity, the strangers dragged Shahidullah Kaiser, despite their protest. At one point, Shahana, sister of Shahidullah Kaiser could see the face of one of the group by uncovering his face and they later identified him as Khalek Majumdar.

340. P.W.13 further stated that the abductors took away Shahidullah in a microbus smeared with mud and when she contacted Kotwali Police Station over the phone, a non-Bangalee Major informed her that Shahidullah was with them and that he would be returned home the next day. But Shahidullah never returned.

341. P.W.13 further stated that in December 1971, after independence, a person was brought to them by Zahir Raihan [brother of Shahidullah Kaiser] and his committee members and on seeing him she recognised him as one of the abductors, who had come to their house [on December 14] and whose face was uncovered. She [P.W.13] learned that the man caught and brought to them was Khalek Majumdar who on being beaten confessed that he did not kill Shahidullah Kaiser. He simply handed him [Shahidullah] over to Al-Badar Operation-in-Charge Chowdhury Mueen Uddin, she heard him [Khalek] saying, added P.W.13. She [P.W.13] also heard another name and he was his [Khalek's] leader who was involved with this incident. He was Ashrafuzzaman Khan [accused].

342. According to P.W.13 her husband Shahidullah was involved in left-wing politics since he was a student; that he was forced to remain in hiding between 1950 and 1953 but he took part in the Language Movement in 1952 secretly. In 1958, the then Pakistan government sent Shahidullah to jail, where he wrote his renowned novels æSangsaptak” and æSareng Bou. During the war of liberation, Shahidullah used to

collect medicine from martyred physician Fazle Rabbi and others and money for the freedom fighters.

Deliberations

343. Defence does not dispute the fact of apprehending Khalek Majumdar and the disclosure made by him as to his and accused persons' involvement with the act of abduction. Besides, it is found proved from evidence of P.W.13 that after independence, in the month of December 1971 Zahir Raihan [brother of Shahidullah Kaiser] and his committee [formed for locating Al-Badar and Razakars] members brought in apprehended Khalek Majumdar to them and then they could recognise him as one of abductors.

344. It also stands proved that the armed gang of Al-Badar committed the criminal act of killing Shahidullah Kaiser, on abduction from the residence at 29, B.K Ganguli Lane, Koyettuli, Dhaka, on gun point. Khalek Majumdar assisted the gang in taking away forcibly.

345. Admittedly, said Khalek Majumdar was prosecuted, tried and convicted under section 364 of the Penal Code, although acquitted afterwards on appeal chiefly on ground of benefit of doubt. It is to be noted that the Evidence Act shall not be applicable in a case under the Act of 1973. The investigative report titled “ জামাতের খালেক ধরা পড়েছে” published in the **Daily Purbadesh, 23 December 1971** demonstrates crucial facts which are admissible and relevant to the event under charge no.9. It says,

“গতকাল সকালে রাজধানী ঢাকা নগরীর অদূরে রামপুরা টেলিভিশন ট্রান্সমিশন কেন্দ্রের কাছাকাছি একটি বাড়ীতে ঢাকা শহর জামাতে ইসলামীর দফতর সম্পাদক আব্দুল খালেক ধরা পড়েছে। কয়েতটুলী মসজিদের ইমাম সাহেব প্রথম খালেকের নাম প্রকাশ করেন। ইমাম সাহেব জানান যে, খালেক তাঁকে সংবাদের যুগ্ম-সম্পাদক জনাব শহীদুল্লা কায়সার রাত্রে কোথায় থাকেন এ কথা জিজ্ঞেস করেছিল। খালেককে আটক করার পর ইমাম সাহেবের কাছে

নিয়ে আসলে তিনি তাকে সনাক্ত করেছিল।.....আটক খালেককে শহীদুল্লা কায়সার সাহেবের বাসার আত্মীয়স্বজন সনাক্ত করতে সক্ষম হয়েছেন। শহীদুল্লা সাহেবেকে তুলে নেয়ার সময় সাথে খালেক ছিল এবং তার মুখ সাদা কাপড় দিয়ে বাধা ছিল বলে তার আত্মীয় স্বজন জানান। আব্দুল খালেককে জিজ্ঞাসাবাদ করা হলে সে জানায় যে, সে শহীদুল্লা সাহেবের বাসা দেখিয়ে দিয়েছে কিন্তু তুলে নেয়ার সময় ছিলনা। [Prosecution Documents Volume(Chowdhury Mueen Uddin) page, 72-73]

346. The report further discloses that

“খালেক তার লিখিত জবানবন্দিতে ৮ জন লোকের নাম প্রকাশ করেছে এবং বলেছে এই ৮ ব্যক্তিকে আটক করতে পারলে হত্যাযজ্ঞের সব ঘটনা জানা যাবে। ধৃত খালেক যে ৮ জনের নাম প্রকাশ বলেছে তন্মধ্যে একজনকে সে ‘অপারেশন ইনচার্জ’ বলে উল্লেখ করেছে। কথিত ‘অপারেশন ইনচার্জের’ সাথে খালেকের শেষ কখন দেখা হয়েছে জিজ্ঞেস করা হলে সে ১৪ই ডিসেম্বর সকাল বেলা বলে উল্লেখ করে।..... সে আরও জানায় যে, ঐদিন সকালে ‘অপারেশন ইনচার্জ’ ও জামতের একজন নেতা জামাত অফিসে আসে এবং অফিসে রক্ষিত সব টাকা পয়সা নিয়ে যায়।”

347. Who was the ‘operation-in-charge’ of Al-Badar in executing the killing operation? It was accused Chowdhury Mueen Uddin, as already found in our foregoing discussion in the judgment. The narration made in the above report thus corroborates to what has been deposed by P.W.13, so far as it relates to abduction of Shahidullah Kaiser. Khalek Majumdar was a city leader of JEI, the report shows, and as such he had reason to know the position of accused Chowdhury Mueen Uddin and activities carried out by him.

348. The testimony of P.W.13 Panna Kaiser on the event of abduction remained unshaken. P.W.13 witnessed the event of taking away her husband. She is a natural witness who came on dock carrying immense trauma she sustained in 1971 and made vivid description of the incident of abduction including the profile of her martyred husband.

349. The profile of martyred Journalist Shahidullah Kaiser, as narrated by P.W.13 depicts that he was an illustrious son of the soil who continued his struggle for Bengali nationalism by his deeds and writings. Even during the war of liberation in 1971 he took nationalistic stand favouring the battle for self determination of Bengali nation. Indisputably, this was the reason why Shahidullah Kaiser was targeted for liquidation, as part of large scale killing of intellectuals, by the notorious Al-Badar formed of workers of ICS the student wing of JEI, a boot-licking political force of the Pakistani occupation army, in execution of secret and calculated design and common purpose. The killing of Shahidullah Kaiser being part of large scale killing directing the intellectual class constitutes the offence of ‘extermination’ as crimes against humanity.

350. Kazi Mohammad Samuel in a report titled published in **The Daily Sangbad January 10 1972** [Prosecution Documents Volume (Chowdhury Mueen Uddin, page 123)] says

“ সেই শহীদ ভাইকে ঢাকা শহরের প্রতিটি বন্দীশিবির
আর সম্ভাব্য সকল জায়গায় খুঁজে এখনো আমরা তাঁর
কোন সন্ধান পাইনি। এ দুঃখ রাখবার কোন জায়গা
নেই।”

351. Yes, the dead body of martyred Shahidullah Kaiser could not be traced even. Predictably it increased the shock sustained by the dear ones of Martyred journalist. The nation too still carries the pain of losing him, a valiant son of the land. The human civilization shall be continuing to reprimand the violent killing and the killers.

352. Direct evidence may not be available for valid reason to connect the accused persons with the offence of murder. But their complicity and

involvement with the criminal act of carrying out the operation of abducting selected intellectuals under charge nos. 6 and 7 offer valid indication as to their complicity and involvement with commission of killing Shahidullah Kaiser as well. For all the events of killing under adjudication in the case in hand are sequenced together. Besides, testimony of P.W.13, quoting Khalek Majumdar, and the report discussed above together prove it beyond reasonable doubt that the accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan were concerned even with the event of murder of notable Journalist Shahidullah Kaiser.

353. On totality of evidence before us it appears that the event of abduction under charge 9 also took place in similar fashion and by the same ‘killing squad’ formed of Al-Badar and naturally it was on endorsement of JEI. The killing under charge no.9 also refers to part of ‘large scale killing’ of selected intellectuals and it was the outcome of the identical plan and design in execution of which the accused persons were actively concerned.

Adjudication of Charge No. 10

[Event of abduction and killing of Dr. Fazle Rabbi]

354. Summary charge: The event under this charge involves the act of forcible abduction of **Dr. Md. Fazle Rabbi**, Professor, Clinical Medicine & Cardiology on 15 December, 1971 at about 02:00-03:00 pm by a gang of 2/3 armed Al-Badar men led and accompanied by accused **(1) Chowdhury Mueen Uddin**, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and **(2) Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar. The abducted doctor was taken to Al-Badar headquarter camp at Mohammad Physical Training College by a minibus and afterwards he was killed. After independence, on 18 December dead body of martyred doctor could be identified and recovered from the mass grave at ‘Rayer Bazar’, outskirts of Dhaka city.

Witnesses

355. P.W.10 Dr. Nusrat Rabbi [50] testified the fact of forcible abduction of her father. This witness has been staying in USA. Her testimony

remained incomplete as she had to go back to USA, her work place. For this reason, defence could not cross-examine her. However, let us see what she has stated.

Evidence

356. P.W.10 Dr. Nusrat Rabbi [50], the daughter of martyred Dr. Fazle Rabbi testified that she had been living with her parents at Jalpaiguri House in the city's Siddheswari during the war of liberation. Around 3:00pm on December 15 Al-Badar men besieged their house and took away her father. They learned on December 18 from a journalist that he [Dr. Fazle rabbi] was killed at Rayerbazar killing ground.

357. P.W.10 also stated that the Al-Badar men had come to their house on December 13 to collect information and she and her mother saw those strangers with trimmed beards, but they could not identify them. Later, when photographs of Chowdhury Mueen Uddin and Ashrafuzzaman were published in newspapers, they realised that Chowdhury Mueen Uddin and Ashrafuzzaman Khan had come to their house on December 13 and they were the men who abducted her father on December 15, P.W.10 added.

Deliberations

358. The event of abduction and killing Dr. Fazle Rabbi an eminent doctor is not disputed by anyone. Defence could have opportunity to dislodge the version of P.W.10 Dr. Nusrat Rabbi incriminating the accused persons with the offence by cross-examining her, true. Prosecution could not complete examination-in-chief of P.W.10 as instantly after recording her statement, in part, the Tribunal could not sit and it had to wait for its reconstitution. Meanwhile the witness had gone back to USA. However, defence could not cross-examine P.W.10 and later on, the prosecution, too informed the Tribunal that the witness had gone back to her work place in USA even before completion of her examination-in-chief and there would be no immediate prospect of her coming to home.

359. P.W.10 has incriminated the accused persons with the event of her father's abduction chiefly on the basis of portrait of accused persons

published together with reports in the news media, after the incidents. In fact the witness and their family inmates had no reason to identify the strangers who had come to take away her father. We have already relied upon such old reports as the same carry probative value. In determining culpability of accused persons we are to chiefly depend upon old reports published in the news media. Thus, missing the opportunity to cross-examine P.W.10 however does not cause any substantial prejudice to the defence.

360. A report published in **The Daily Dainik Pakistan 19 December 1971** [Prosecution Documents Volume (Ashrafuzzaman Khan), page 46-47] narrates that

“.....গতকাল রায়ের বাজার ও ধানমন্ডি এলাকার বিভিন্ন গর্ত হতে প্রচুর সংখ্যক লাশ উদ্ধার করা হয়। এদের মধ্যে অধ্যাপক, ডাক্তার, সাংবাদিক ও সাহিত্যিকদের লাশও রয়েছে। এদের মধ্যে গতকাল শনিবার ডাঃ রাবিব, ডাঃ আলিম চৌধুরী, অধ্যাপক মুনীর চৌধুরী, ডাঃ খায়ের, জনাব নাজমুল হক ও জনাব ইয়াকুবের লাশ, সনাক্ত করা হয়েছে।”

361. In the foregoing discussion made on adjudicating other charges it has been found that the illustrious individuals belonging to intellectual group were abducted in similar pattern by using similar logistics and by the squad formed of Al-Badar, in furtherance of common purpose and plan. The above report depicts that the abducted Dr. Rabbi was also brutally killed at a place known Rayer Bazar killing field. Dead bodies of many other abducted intellectuals were also found at the same killing field. It thus legitimately impels the conclusion that the killing of Dr. Rabbi, an eminent doctor was part of ‘large scale killing’ and in furtherance of common and calculated plan to which the accused persons were ‘consenting part’, by virtue of their position of authority.

362. It depicts from an article authored by Rafiqul Hassan published in **The Daily Dainik Pakistan 25 December 1971**[Prosecution Documents Volume(Ashrafuzzaman Khan), page 53] that martyred Dr. Fazle Rabbi

was the family doctor of Bangabandhu, the father of nation and many other national leaders. He was an eminent doctor of the country and a firm believer in Bengali nationalism. The brave son of the soil never dies. He is still around the nation, by his noble deeds and ideology. The author, in expressing tribute to the martyred doctor, rightly penned that

“বহুমুখী জ্ঞানধারার সম্মিলনে প্রতিভাধরের জন্ম হয়েছিল যার চিত্ত ছিল জনদরদী---তঁার মৃত্যু নেই। স্বাধীনতা-উত্তর বাংলাদেশের গণ মানুষ তাই তঁার রক্তদানকে স্মরণ করবে চিরকাল। এই মৃত্যুর শোক শুধু বেগম রাব্বী, তঁার ছেলেমেয়ে এবং আত্মীয় স্বজনের নয়, সমগ্র দেশের।”

363. Attack targeting Dr. Rabbi and many other illustrious intellectuals was the attack to the Bengali nation. JEI a boot-licking political force of the Pakistani occupation army was behind this vast murderous scheme. Al-Badar is now believed to have acted as the ‘death squad’ on signal and endorsement of JEI. The intellectuals including Dr. Rabbi were non-combatant civilians. But yet they were targeted for annihilation in execution of calculated and organised plan. Al-Badar formed of workers of ICS the student wing of fanatic JEI had carried out the killing mission with intent to liquidate them by committing ‘large scale killing’ which constituted the offence of ‘extermination’.

Adjudication of Charge No. 11

[Event of abduction & killing of Dr. Alim Chowdhury]

364. Summary charge: This charge involves the event of forcible abduction of **Dr. Alim Chowdhury**, on gun point on 15 December, 1971 at about 03:30-04:00 pm by a gang of armed Al-Badar men on instruction of accused (1) Chowdhury Mueen Uddin, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and (2) Ashrafuzzaman Khan, member of Al-Badar high command and ‘chief executor’ of Al-Badar from his residence at 29/1 Purana Paltan [1st floor], Dhaka. Moulana Mannan, an organiser of the Al-Badar force used to reside on the ground floor of the building and he did not respond despite seeking help from him and then 03 armed Al-Badar forcibly took

away Dr. **Alim Chowdhury** to unknown place by a minibus and afterwards he was killed.

Witness

365. Dr. Farzana Chowdhury Nipa, the daughter of martyred Dr. Alim Chowdhury came on dock to narrate the event of her father's abduction. She is an eye specialist and has been in California, USA. She has been examined as P.W.9. She was only three in 1971. She learned the incident from her mother, grand-mother, two of her father's colleagues who had witnessed the forcible capture of her father. Thus P.W.9 is a hearsay witness. However, her testimony is to be evaluated together with other evidence before us.

Evidence

366. P.W.9 Dr. Farzana Chowdhury Nipa[45] stated that her father Dr. Alim Chowdhury was an eye specialist and was involved in all progressive movements, including the Language Movement in 1952. Her father Dr. Alim Chowdhury along with other doctors, including martyred physician Dr. Fazle Rabbi, used to run a secret hospital to treat wounded freedom fighters and provide medical and monetary assistance to them.

367. As regards the incident of abduction, P.W.9 stated that she and her two-year old younger sister Nuzhat Choudhury Shampa had been living with her parents in their rented house in Dhaka's Purana Paltan in 1971. Around 4:00pm on December 15, a microbus stopped in front of their house and two armed persons entered the ground floor where one Mannan, a 'so called' Moulana, an organiser of Al-Badar used to reside. After 20-30 minutes, the duo knocked on their door. With this her father had gone to Mannan through another stairway, but the latter didn't open the door. Then her father returned and the armed persons took him away on gun point by a microbus.

368. According to P.W.9 she had later got involved with Projonmo'71, a platform of the children of the martyred intellectuals and she became its general secretary and got more opportunity to learn about the killings of the intellectuals. She stated that in December 1971 and January 1972,

daily Purbadesh and other newspapers published several reports on involvement of Mueen Uddin and Ashrafuzzaman Khan with the intellectuals' killing.

Deliberations

369. Defence does not dispute the event of abduction of Dr. Alim Chowdhury. It stands proved too that the perpetrators were the armed Al-Badar and the event occurred in similar fashion. Dr. Alim's dead body was found at the Rayerbazar killing ground on December 18. The version made by P.W.9 proves that the gang of armed Al-Badar committed the act of abduction in collusion with Moulana Mannan. Entering the ground floor first indicates that the perpetrators had consultation with Moulana Mannan who asked her mother not to be panicked as the abductors were his Al-Badar students who also took away Dr. Fazle Rabbi.

370. The above gets corroboration from a report titled "সেই তিন শয়তান কোথায়" published in **The Daily Purbadesh, 7 January, 1972** [Prosecution Documents Volume (Ashrafuzzaman), page 96-97] which narrates that

“একই বাড়ীর নীচ তলার বাসিন্দা জনৈক মুসলিম লীগ নেতা, প্রতিবেশী অপর একজন মুসলিম লীগের হোমরা চোমরা ব্যক্তি এবং বেতারের ইংরেজী কথিকা পাঠক বারবার তাঁকে অন্যত্র সরে যাবার ব্যাপারে বাধা দেয়। শুধু তাই নয় নীচতলার বাসিন্দাটি [মওলানা মান্নান] এমনও আশ্বাস দেয় যে, ব্রিগেডিয়ার বাসার, ক্যাপ্টেন কাইয়ুম তার বন্ধু। আল-বদরের ছেলেরা তার ছাত্র।”

371. Thus the behaviour and conduct of Moulana Mannan, at the time of carrying out the criminal act of abduction, as stated by P.W.9 impel the conclusion that Moulana Mannan had full knowledge about the common purpose and plan in execution of which the Al-Badar men abducted Dr. Alim Chowdhury.

372. The above report also depicts that

“আরো জানা গেছে যে, ১৭ই ডিসেম্বর পাড়ার সকলে মিলে নীচ তলার বসিন্দাটিকে [মওলানা মান্নান] এই জঘন্য কাজে জড়িত থাকার সন্দেহে রমনা থানায় সোপর্দ করে। কিন্তু অজ্ঞাত কারণে উক্ত ব্যক্তিকে পুলিশ ছেড়ে দেয় এবং সে এখন পলাতক রয়েছে।.....অনেকের ধারণা এদের খুঁজে বের করে গ্রেফতার করা হলে হত্যার বহু রহস্য বের হয়ে পড়বে।”

373. Why Moulana Mannan was set free by the police? Moulana Mannan could have been arrested and kept in custody immediately after the independence to unearth the truth by identifying the perpetrators and individuals involved with planned annihilation. But he was allowed to walk free even after handing him over to Police. Further, astonishingly this Moulana Mannan later became a member of military dictator H.M Ershad's cabinet. What a shame for the nation!

374. P.W.9 while testifying before the Tribunal rightly appealed that “*I call for the trial and sentencing of all war criminals and their main organisation Jamat-e-Islami [JEI] for depriving so many martyrs' children of their fathers' affection.*” Yes, this deprivation caused to the children of the martyred intellectuals can never be compensated. The trauma they sustained can never be healed. However, the courage, ideology of martyred intellectuals and sacrifice they laid for the cause of nation still are being carried by their children indeed.

375. We have found that Dr. Alim Chowdhury along with other doctors, including martyred physician Dr. Fazle Rabbi, used to run a secret hospital to treat wounded freedom fighters and provide medical and monetary assistance to them, as stated by P.W.9. Indisputably this was the reason of targeting Dr. Alim. It has already been proved that accused Chowdhury Mueen Uddin had acted as the ‘operation-in-charge’ of the squad formed of Al-Badar while his fellow accused Ashrafuzzaman was the ‘chief executor’ of the killing mission.

376. On total evaluation of evidence together with old reports carrying probative value it has been proved beyond reasonable doubt that in execution of organised plan and design the squad formed of Al-Badar the creation of JEI forcibly abducted Dr. Alim Chowdhury with intent to kill him. It was part of large scale killing directing selected individuals of a particular group i.e intellectual class and as such the murder of Dr. Alim being inseparable to other events of murder constituted the offence of ‘extermination’.

XVI. Deliberations on Culpability of accused persons [In relation to nine charges: charge nos. 1, 2, 3,4,5,8,9,10 and 11]

377. The offence of crimes against humanity is a system crime and committed by collectivity of criminal acts of group of perpetrators and persons concerned with the commission of crimes. On adjudication of the events under charge nos. 6 and 7 we have already found the accused persons guilty for the offence of ‘extermination’ as crimes against humanity as they were concerned with the common plan and design and also participated to the commission of the offences.

378. The Tribunal notes that to incur criminal liability, in a case of crimes against humanity, the accused himself need not have participated in all aspects of the alleged criminal conduct. [**Stakic**, ICTY Trial Chamber, July 31, 2003, para. 439]. The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated [**Blaskic**, ICTY Appeals Chamber, July 29, 2004, para. 48]. Participation may occur before, during or after the act is committed.

379. Next, the offences are alleged to have been committed in context of war of liberation in 1971. Section 22 of the Act of 1973 provides that provisions of the Criminal Procedure Code, 1898(V of 1898), and the Evidence Act, 1872(I of 1872), shall not apply in any proceedings under the Act of 1973. Thus, in the case in hand, if we keep the provision of section 22 together with section 19 of the Act of 1973 in mind it would be clear that the task of determination of culpability of a person accused of offences enumerated in section 3 of the Act of 1973 involves a quite different jurisprudence. Proof of all forms of criminal responsibility,

through participation in any manner can be given by direct or circumstantial evidence. It is now settled jurisprudence.

380. In our foregoing discussion, we have recorded our finding that all the events involving abduction and killing of intellectuals that took place in between 10 December and 15 December 1971 were sequenced together and part of ‘large scale killing’ directing a particular group of individuals. The Tribunal notes that the ‘complicity’ or ‘participation’ of the accused persons could be inferred from the relevant facts and circumstances, since it would be unrealistic to expect that people would personally witness the subsequent event of killing of the abducted intellectuals. .

381. Substantial participation of accused persons with the crimes narrated in charge nos. 6 and 7, as already proved, together with the indisputable fact that the killing of intellectuals was the outcome of planned and notorious design carried out by secretly created squad formed of Al-Badar suggests that the accused persons were concerned with the criminal acts also in committing the offence of abducting and killing other intellectuals **[as listed in remaining nine charges]** .

382. Among the 9 charges under simultaneous adjudication the accused persons are alleged to have participated to the operation of forcible picking up of intellectuals from their residences in respect of charge nos. 2, 5, 9 and 10. As regards offences under charge nos. 1,3,4,8 and 11 they have been arraigned for abetment and complicity as they allegedly ‘instructed’ the gang in committing the criminal act of abduction of intellectuals. In respect of some charges, the family members of victims came on dock and testified that they could identify the accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan accompanying the gang when they subsequently saw their portrait published in December 1971 together with reports in the news media.

383. Accused Ashrafuzzaman Khan’s involvement with the event of abducting 07 university teachers and 01 doctor from the Dhaka University residential area and also with the event relating to abduction and killing

of Professor Mofazzal Haider Chowdhuey [as listed in charge nos. 6 and 7] is found to have been proved by the evidence of some P.W.s who have testified[in relation to the event narrated in charge no.7] that on 4 January 1972 one Mofiz a driver of the` EPRTC microbus on capture was brought before them by a Police official Abdus Samad Talukder [a prosecution witness and his statement made to IO has been received under section 19(2) of the Act as he is now dead] when Mofiz admitted that he was the driver of the microbus by which the intellectuals were brought to Mirpur on picking them up from Dhaka University and it was Ashrafuzzaman[accused] who himself gunned down the abductees to death there. The dead bodies of the murdered intellectuals were recovered from there in decomposed condition.

384. The total mission of killing 18 intellectuals indeed was a ‘large scale killing’ which was perpetrated by the killing squad formed of infamous armed AB men. Intent of the iniquitous design was to liquidate the illustrious professors, academics, doctors, and journalists. Thus, it is concluded unerringly that the acts and involvement of the accused persons with the crimes as narrated in charge nos. 6 and 7 convincingly give rise to the criminal culpability of actual perpetrators also in respect of the charge nos. 1,2,3,4,5,8,9,10 and 11, particularly when it stands proved beyond reasonable doubt that all the incidents constituting the crimes narrated in all these nine charges were carried out in execution of a common criminal plan and design and it was the outcome of an identical and organised murderous scheme.

385. We have already found that the accused persons were part of vast murderous enterprise and therefore, they are equally liable for the events of abduction followed by killing as the same were part of alike plan and design in furtherance of which the accused persons have been found criminally responsible for accompanying and leading the gang of Al-Badar men in abducting the seven teachers and one doctor from DU residential campus [as listed in charge no.6]. Accused Chowdhury Mueen Uddin has been proved to have actively participated to the act of abduction of Professor Mofazzal Haider Chowdhury and accused

Ashrafuzzaman Khan, his fellow who was the ‘chief executor’ of the Al-Badar killing squad and was also concerned with the offence under charge no. 7.

386. The accused persons were thus the ‘knowing participants’ in a common plan or design and as such be held liable for all the acts carried out in execution of identical ‘mission’ that stemmed from the organised and calculated plan and policy, irrespective of whether they were personally concerned in accomplishing the criminal act, under the remaining nine charges.

387. In view of blueprint of planned crimes intended to annihilate the targeted intellectuals, we conclude that the position of authority of accused persons over the killing squad constitutes a relevant factor in determining whether their act and conduct in committing criminal acts **[listed in charge nos. 6 and 7]**, as proved, lent encouragement or support which may reasonably be implicit as signaling approval even in committing the act of abduction followed by murder of nine other intellectuals **[as narrated in the remaining nine charges]** perpetrated by the armed squad formed of Al-Badar. If the answer is ‘yes’, prosecution is not required to show accused persons’ presence or physical participation at the crime scene with the group of perpetrators in committing the crimes.

388. ‘Leading’ a gang does not always necessarily needs to show physical presence of the ‘leader’ at the crime site. A group of individuals or perpetrators can be even led by many other means. Instruction, direction, provocation or providing substantial instigation by a person who is reasonably placed in position of authority may form the act of ‘leading’ a group or gang. Instruction, direction, provocation or providing substantial instigation by a person who is reasonably placed in position of authority forms the act of ‘leading’ a group or gang in carrying out the designed criminal acts. Criminal responsibility for ‘extermination’ attaches to those individuals responsible for a large number of deaths, even if their part therein was remote or indirect.

389. ‘Instruction’ denotes the process or act of imparting knowledge and also providing approval to the accomplishment of some certain act or acts. ‘Instruction’ makes a link to connect one part of a certain scheme or an element to another similar program to be materialized.

390. Considering the totality of evidence and circumstances together with material facts we conclude that the accused persons by virtue of their position in the killing squad formed of AB men were quite aware of the substantial likelihood that criminal act of abducting more selected intellectuals would occur as a consequence of common purpose and calculated plan in furtherance of which they had acted to the accomplishment of criminal acts constituting the offence narrated in charge no. 6 and 7.

391. Therefore it has been proved beyond reasonable doubt that the accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan by virtue of their position in the AB high command had a substantial position of authority over the ‘killing squad’ formed of Al-Badar men and thus they can lawfully be said to have approved, endorsed and encouraged and provided moral support to the actual commission of criminal acts leading to murder of 18 intellectuals.

392. Position of accused persons as the ‘operation-in-charge’ and the ‘chief executor’ of AB presumably was the position squirting the notion of extreme notoriety and are thus qualified to be the constituent of ‘*participation*’ too, in furtherance of common purpose.

393. Conduct and act of accused persons in carrying out the event of abduction followed by killing [**as listed in charge nos. 6 & 7**] lend assurance that they participated in a joint criminal enterprise by passive, rather than active, conduct pursuant to an understanding or common agreement, express or implied that a planned crime of killing selected intellectuals would be committed. The accused persons were thus part of collective criminality and as such they incur liability under section 4(1) of the Act also for the offences narrated in charge nos. 1,2,3,4,5,8,9,10 and

11 even if they could not be shown to have had physically participated the crime.

394. Additionally, acts and conduct of accused persons in committing criminal act [narrated in charge 6 and 7], in execution of identical calculated plan and policy, provided their approval and endorsement even in committing other events [narrated in the remaining nine charges], even if they are not found to have participated physically to the commission of those events. Circumstances, pattern of the killing mission impels the conclusion that they were consciously ‘concerned’ also with those crimes by virtue of their position, as narrated in remaining nine charges, by virtue of their position and since they were part of the alike plan and design they are held accountable and criminally liable also under section 4(2) of the Act of 1973.

395. Considering the totality of evidence and circumstances together with material facts depicted from old reports published in the national and international news media we conclude that the accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan, by virtue of their position in the killing squad formed of AB men, were quite aware of the substantial likelihood that criminal act of abducting more selected intellectuals would occur as a consequence of common purpose and calculated plan in furtherance of which they had acted to the accomplishment of criminal acts constituting the offence narrated in charge no. 6 and 7. Therefore, the accused persons had ‘complicity’ and ‘participation’ also to the commission of abduction and killing of nine other intellectuals as narrated in nine other charges[charge nos. 1,2,3,4,5,8,9,10 and 11].

396. The accused persons are thus found criminally liable for the killing of nine intellectuals i.e (1) Journalist Seraj Uddin Hossain (2) Journalist Syed Nazmul Haque (3) Journalist A.N.M Golam Mostafa (4) Journalist Nizam Uddin Ahmed (5) Journalist Selina Parveen (6) Professor A.M Muneir Chowdhury (7) Journalist Shahidullah Kaiser (8) Dr. Fazle Rabbi and (9) Dr. Alim Chowdhury under charge nos. 1,2,3,4,5,8,9,10 and 11, part of ‘large scale killing’ directing attack to particular group of individuals constituting the offence of ‘extermination’ as crimes against

humanity as specified in section 3(2)(a)(h) of the Act of 1973 and thus they incur criminal liability under sections 4(1) and 4(2) of the Act of 1973.

XVII. Investigation Procedure

397. No substantial argument has been advanced on part of the defence attacking legality of investigation procedure. Defence however, merely avers that the Investigation Officers failed to collect and organize reliable documentary evidence to establish the link of accused persons with the criminal acts alleged. The investigation done has failed to identify the actual perpetrators of the offences alleged.

398. The Tribunal notes that the IO is a mere formal witness. In the instant case two Investigation Officers on concluding investigation submitted two separate ‘reports’ to the Chief Prosecutor and the prosecution eventually submitted a single ‘formal charge’ accusing the two accused persons of the offences alleged. It is to be noted that any procedural flaw even if found in the task of investigation does not necessarily impair the entire investigation and in no way affects the merit of the case. Besides, it is to be remembered that the investigation under the Act of 1973 is a quite unique and challenging job for the officers assigned with it. The ‘report’ submitted by the Investigator arraigning the accused does not relate to the offence under the normal Penal Law. In fact the Investigation Officers had to deal with the alleged offence of crimes against humanity committed in violation of customary international law and *prima facie* involvement of the accused therewith.

399. Rule 2(6) of the ROP defines; ‘complaint’ on the basis of which investigation is to be done. Under Rule 2(6) a ‘complaint’ is defined as *any information oral or in writing obtained by the Investigation Agency including its own knowledge relating to the commission of a crime under section 3(2) of the Act*”. Information refers to said two complaint register however merely allows the investigation agency to initiate the investigation process. But that does not mean that those complaint petitions were the sole foundation of investigation into the alleged

criminal acts of the accused allegedly committed during the war of liberation in 1971.

400. The Investigation Officers started the task of investigation in relation to two complaint register being no. 8 dated 25.9.2011 and 10 dated 25.9.2011. During investigation the investigation officers for the purpose of effective and proper investigation visited the native home of accused persons in Bangladesh and verified their whereabouts, academic qualifications including their current address; examined the witnesses and recorded their statement; seized documents and materials from different organizations including the archive of Bangla Academy. On conclusion of investigation Investigation Officers [P.W.24 and P.W.25] submitted report in the office of the Chief Prosecutor.

401. On total appraisal, we do not find anything flawed in the investigation task. Fundamentally, investigation under the Act of 1973 on information obtained relates to the process of procuring documentary evidence, recording statement of witnesses if found available and identifying the event[s], crime site[s] and casualty caused by the alleged criminal acts and also to identify whether the criminal acts alleged fall within the definition as enumerated in section 3(2) of the Act of 1973. The Tribunal notes that the Investigation Officers [P.W.24 and P.W.25] , in compliance with the norms and provisions contemplated in the Act of 1973 and the ROP, carried out its investigation on completion of which he duly submitted 'report' before the Chief Prosecutor.

XVIII. Context prevailing in 1971

402. It is quite coherent from the facts of common knowledge involving the backdrop of our war of liberation for the cause of 'self determination' that the Pakistani occupation armed force, in execution of government's plan and policy in collaboration with the local anti liberation section belonging to JEI the boot-licking political force of the Pakistani occupation army[as old report shows] and ICS the student wing of JEI and other religion based pro-Pakistan political parties , had to deploy public and private resources and target of such policy and plan was the

unarmed civilian Bangalee population, pro-liberation people, Hindu community, intellectuals and pursuant to such plan and policy atrocities were committed to them as a ‘part of a regular pattern basis’ throughout the long nine months of war of liberation in 1971 [Muhammad Kamaruzzaman, Judgment 09 May 2013, para 515].

403. It is fact of common knowledge that the basis for planning of the ‘operation search light’ master plan, which was carried out with brute force by Pakistan army to annihilate the Bengalis reads as below:

‘OPERATION SEARCH LIGHT’

BASIS FOR PLANNING

1. A.L [Awami League] action and reactions to be treated as rebellion and those who support or defy M.L[Martial Law] action be dealt with as hostile elements.
2. As A.L has widespread support even amongst the E.P [East Pakistan] elements in the Army the operation has to be launched with great cunningness, surprise, deception and speed combined with shock action.

[Source: **A Stranger In my Own Country: East Pakistan, 1969-1971**, Major General (Retd) Kahdim Hussain Raja, Oxford University Press, 2012, page 114. See also ‘**Songram Theke Swadhinata**’(সংগ্রাম থেকে স্বাধীনতা) : Published in December 2010, By ; Ministry of Liberation War Affairs, Bangladesh; Page 182]

404. The case in hand concerns the killing of intellectuals, a large scale killing targeting selected individuals of a particular group, just at the fag end of war of liberation. It has already been proved that the ‘annihilation operation’ was in furtherance of organised and calculated plan and design aiming to liquidate the illustrious sons and daughters of the soil with intent to cripple the Bengali nation. All the events of murdering selected intellectuals were part of such notorious plan and accomplished in systematic manner.

405. Therefore, the crimes for which the accused persons have been found guilty were not isolated crimes. Those were part of ‘*systematic*’ and ‘*planned*’ ‘*attack*’ intended to the accomplishment of offence of ‘large scale killing’ constituting the offence of ‘extermination’ as crimes against humanity enumerated in section 3(2) of the Act, in furtherance of designed policy and plan. The criminal acts forming part of attack were directed against civilian population belonging to a particular class, within a context. The context element is the ‘international element’ in crimes against humanity which renders certain criminal conduct a matter of international concern. Thus, the rationale of the ‘context’ element can be summarized as the protection of human rights against the most serious and most dangerous violations.

406. The notion of ‘attack’ thus embodies the notion of acting purposefully to the detriment of the interest or well being of a civilian population and the ‘population’ need not be the entire population of a state, city, or town or village. Thus, a single act of an accused forming part of attack committed against even a single unarmed civilian causing criminal act constituting the offence enumerated in the Act of 1973 is sufficient for holding him criminally responsible.

407. The phrase ‘**acts committed against any civilian population**’ as occurred in section 3(2)(a) clearly signifies that the acts forming attack must be directed against the target population to the accomplishment of the crimes against humanity and the accused need only know his acts are part thereof. In the case in our hand, the facts and circumstances unveiled before us unmistakably have proved the ‘contextual requirement’ to qualify the criminal acts done by the accused persons as the crimes against humanity.

XIX. Conclusion

408. Naturally it was not possible to identify all the members of the group or the killing squad who had captured the victims from their residence, although the inmates had occasion to see the event of abduction of their near ones. The relatives of the victims testified that the group of attackers

came to pick the victims up having their faces masked, in most cases. Even the relatives of abducted victims could not know what happened to their dear and near ones, on their capture. They came aware of the fate of the abducted victims only after 16 December 1971 when the domestic and international news media started publishing reports on the tragic events of ‘killing of intellectuals’, on abduction between 10 December and 15 December 1971. Only hours before the official surrender was signed (on 16th), the victims were taken in groups to the outskirts of the city.....where they were summarily executed.[**The Times, December 23, 1971**] . By going through these reports and photo of the accused persons published therewith the relatives of some of victims could recognise the offenders who committed the criminal act of abduction by keeping their faces uncovered.

409. According to the commentary of the documentary film titled ‘**war crimes file**’ made by UK based electronic media channel-4 Chwodhury Mueen Uddin was a leading commander of AB and one of those responsible for organized and systematic slaughter of Dhaka’s intelligentsias. Mr. Enaet Ullah Khan a notable journalist on being interviewed also told that *æChowdhury Mueen Uddin is not a symbol of killing, he is in fact the mastermind of the killings.*”

410. However, even the overseas media carried report on him almost immediately after Bangladesh was liberated on December 16, 1971. **The New York Times** reported that Mueen played a potential role in the killing of intellectuals prior to the dawn of Bangladesh. Its report published on January 3, 1972, reads:

“To his fellow reporters on the Bengali language paper where he worked, Chowdhury Mueenuddin [Mueen Uddin] was a pleasant, well-mannered and intelligent young man. He had an open handsome face, with a neatly trimmed beard, and there was nothing exceptional about him

except perhaps that he often received telephone calls from the leader of a right-wing Moslem political party.

“But, investigations in the last few days show, those calls were significant. For Mr Mueen Uddin has been identified as the head of a secret, commando-like organisation of fanatic Moslems that murdered several hundred prominent Bengali professors, doctors, lawyers and journalists in Dacca [Dhaka] brickyard.”

411. The report **The New York Times** on January 3, 1972 also speaks that-

“According to one captured member now being held in the Dacca jail, the reporter, Mr. Mueenuddin, had been mastermind of the organization. A diary belonging to Mr. Mueenuddin’s roommate has been found. It listed the names of Al-Badar members and how much money they contributed to the group.”

412. **Fox Butterfield** in his above report has made it clear that accused Chowdhury Mueen Uddin masterminded the tragic episode of ‘intellectuals killing’ and presumably the diary so found belonged to Chowdhury Mueen Uddin’s fellow Ashrafuzzaman Khan.

413. From the book titled ‘**sunset at midday**’ by Mohiuddin Chowdhury [the then JEI leader of Noakhali and subsequently a teacher of Karachi University, Pakistan] it is evinced that Ashrafuzzaman Khan opted to flee leaving country and at a stage he arrived at Nepal where the author of the book met him at the Pakistan Embassy in Nepal. Why Ashrafuzzaman Khan ran away immediately after the final victory achieved on 16 December 1971? If really he was not involved with the horrendous and calculated operation and its execution why he preferred to flee? The Bengali translated text of the book titled ‘**Al-Badar**’ by Selim Mansur Khaled published in Pakistan describes how accused Ashrafuzzaman Khan himself narrated about his activities, particularly a diary which despite his intention his fellow brother failed to get it destroyed or hidden. Such narration of Ashrafuzzaman Khan inexorably incriminates him with the calculated killing mission, no doubt.

414. The news media started unearthing the tragic event of intellectuals killing and individuals involved therewith almost immediately after the victory on 16 December 1971, by publishing authoritative reports. But unfortunately the individuals who orchestrated the barbaric episode of killing and were actively concerned with it as part of common plan and design, as exposed, could not be trapped, despite optimism expressed on part of the government of new born Bangladesh, in this regard. Admittedly, the accused persons almost instantly after the victory on 16 December 1971 left the country and since then they had been in London UK and New York, USA. Neither of them could be apprehended, despite existence of information as to their blameworthiness, during the last four decades.

415. The Bengali translated text of the book titled ‘**Al-Badar**’ [Translated by Dr. K M Saiful Islam Khan, Professor, Department of Persian Language & Literature, University of Dhaka] narrates the self-statement of accused Ashrafuzzaman Khan [**Prosecution Documents Volume, Ashrafuzzaman, page 295-299**] which shows that accused Ashrafuzzaman Khan had been in Bangladesh till 26 March 1972 and afterwards he, leaving country first fled to Kolkata, India. Failure in

apprehending the accused persons, despite disclosure of substantial information and stout evidences by publishing series of reports in news media rather allowed the accused persons to escape. It was indeed demeaning to the souls of martyred intellectuals to whom the nation will remain ever indebted.

416. It is also proved from testimony of P.W.14 Shariatullah Bangali [64], a resident of neighbouring village of accused Chowdhury Mueen Uddin under police station Dagan Bhuyan district Feni that accused Chowdhury Mueen Uddin had come to his native village twice under police protection, in the regime of Ziaur Rahman and H.M Ershad. He[P.W.14] saw him[accused Chowdhury Mueen Uddin] in his native village during one Eid festival when the local freedom fighters resisted him[accused] saying his Eid prayer at the 'Idgah' field adjacent to Faziler Ghat Bazaar, as he was involved with intellectual killing.

417. A report of Special Branch of Police, district Feni [Prosecution Documents Volume (Chowdhury Mueen Uddin), page 290] also goes to show that accused Chowdhury Mueen Uddin had come to his native village, during the regime of Ziaur Rahman and H.M Ershad, by a vehicle of Pakistan embassy in Bangladesh.

418. It is indeed a great shame for the nation that the government [Ziaur Rahman regime and H.M Ershad regime] allowed Chowdhury Mueen Uddin who went into hiding and later on fled to abroad, to visit his native village under police protection and protocol. Instead of being condemned Chowdhury Mueen Uddin was rather honoured by state machineries. What a shame! What a shame! This fact indubitably shakes and debases the nation. It increases the trauma sustained by the victims' family which caused a further attack to civilization.

419. However, now even long four decades after the esteemed intellectuals departed by laying highest sacrifice for the cause of nation the persons responsible for the fierce event that resulted in their tragic demise have been brought to justice and we are convinced that through

this process the nation has got occasion to stamp its humble recognition and homage to their immense and dauntless sacrifices.

420. It cannot be expected that the killing squad, by keeping or maintaining documents, had carried out their mission to liquidate their targets, the selected intellectuals. But some authoritative clues could have been found immediately after independence that fairly demonstrates that the killing was in furtherance of a common plan and design in accomplishing with which the accused persons were actively and consciously involved.

421. Testimony of prosecution witnesses depicts that the victim intellectuals were men of high level spirit of self-determination of Bengali nation even since long before the war of liberation ensued. They, the bravest and best sons of the soil, dauntlessly continued carrying this spirit during 1971 as well, by their acts, writings, and secret assistance to the freedom fighters.

422. Exposure of the stance the martyred intellectuals took favouring the Bengali nationalism and war of liberation sturdily made them target of the planned and designed killing mission executed by a gang of Al-Badar men at the instance of a group of Pakistani army. Without the back up of a group of army officials the killing squad formed of Al-Badar men could not have got the vehicles of government organisation[EPRTC] in carrying out the 'operation' and under situation of curfew. The slip written by Major General Rao Forman Ali which was allegedly recovered from his office room discloses sensational information and it includes that one Captain Tahir was assigned to provide the Al-Badar with vehicles [Source: **The Daily Dainik Bangla, 30 December 1971 : Prosecution Documents Volume, Ashrafuzzaman, page 56**]. It indicates that the killing squad formed of Al-Badar got logistic support from a group of army officials and within the knowledge of Major General Rao Forman Ali.

423. The reports, as discussed above, show that the events were chained together and were perpetrated by a group of AB men forming a killing squad to which Chowdhury Mueen Uddin was the ‘operation-in-charge’ and Ashrafuzzaman Khan was the ‘chief executor’. Profile, activities and ideology of all the victim intellectuals, as revealed from the testimony of witnesses, show that they were the distinguished sons and daughters of the land bearing untainted pro-liberation ideology. They could have immensely contributed in building the nation if they would not have been eliminated.

424. Lawrence Lifschultz in his book titled ‘Bangladesh: The Unfinished Revolution’ narrates that

“The Al-Badhr organization, a fanatical religious group which operated as a paramilitary arm to the Pakistan Army in 1971, was responsible for some of the worst killings during the war, particularly of nationalist intellectuals.” [Source: Bangladesh: **The Unfinished Revolution**, Published in 1979, London, page 126]

425. Thus and depending on authoritative sourced information we have unerringly concluded that the AB being backed by its creator JEI and Pakistan occupation army designed a premeditated and secret plan to exterminate the best and notable intellectuals belonging to different professions. Intention was to make the nation paralyzed. It was simply an ‘elitocide’ accomplished in furtherance of calculated policy and plan.

426. A report titled “আল-বদর সংক্রান্ত নথিপত্র অবিলম্বে সংগ্রহ করা প্রয়োজন” published in The Daily ‘**Dainik Pakistan**’, **29 December 1971** demonstrates culpable role of JEI as well in designing and executing the plan of liquidating intellectuals. The report narrates that

”(স্টাফ রিপোর্টার)- বদর জল্লাদদের নৃশংসতম হত্যাযজ্ঞ সম্পর্কে প্রয়োজনীয় নথিপত্র অবিলম্বে সংগ্রহ করা প্রয়োজন। এ সম্পর্কিত কাগজপত্র বিনষ্ট হয়ে যাচ্ছে। ইতিহাসের এই জঘন্যতম হত্যাযজ্ঞ সম্পর্কে বিক্ষিপ্তভাবে যেসব কাগজপত্র এখানে ওখানে পাওয়া গেছে তাতে সন্দেহাতীতভাবে এই সত্যই প্রমানিত হয়েছে যে, স্বাধীন বাংলাদেশকে পংগু করে ফেলার জন্যে এবং এদেশের শিল্প-সাহিত্য-সংস্কৃতির ওপর একটি মরণাঘাত হানার জন্যে এ দেশের মানুষের জঘন্যতম শত্রু জামাতে ইসলামী সামরিক চক্রের সহযোগিতায় একটি সুনির্দিষ্ট পরিকল্পনা গ্রহন করেছিল আর সে পরিকল্পনা বাস্তবায়নে তারা নিয়োগ করেছিল তাদের জল্লাদ বাহিনী আল-বদরকে।”

[Source: সংবাদপত্রে মুক্তিযুদ্ধের বিরোধিতা: একাত্তরের ঘাতকদের জবান জুলুম ষড়যন্ত্র চিত্র: সম্পাদনা: দুলাল চন্দ্র বিশ্বাস, বাংলাদেশ প্রেস ইন্সটিটিউট, পৃষ্ঠ- ৩৫৭]

427. Thus it is proved that Al-Badar was deployed in furtherance of ‘organised master plan’ designed by the fascist Jamat E Islami to wipe out the ‘socio-cultural intellectual’ group of Bangladesh with intent to paralyze the Bangalee nation. Al-Badar had acted as ‘killing squad’ of Jamat E Islami in accomplishing the plan. Al-Badar, para militia force was formed by the leaders of ICS the student wing of JEI. It was formed purely of workers of ICS. [Sunset at Midday: Mohiuddin Chowdhury, page 97] Activities of Al-Badar were carried out under the control and co-ordination of Jamat E Islam.

428. Before we part, we bear in mind a report published in **The daily Ittefaque, 16 December 1972** [Prosecution Documents Volume (Chowdhury Mueen Uddin, page 180)], just one year after the victory achieved, which narrates that-

“আজ এই সূর্যসন্তানরা আমাদের মধ্যে নাই। কিন্তু রহিয়াছে তাঁদের চিন্তার ফসল। মহান আত্মত্যাগের মাধ্যমে তাঁহারা মৃত্যুকে করিয়া গিয়াছেন মহিমান্বিত, জীবনকে

করিয়া গিয়াছেন অবিনশ্বর। হিংসার আর ধর্মান্তার
অত্যাচার আর শোষণের বেদীমূলে আত্ম বিসর্জন দিয়া
তঁাহারা সুনিশ্চিত করিয়াছেন অশুভশক্তির অনিবার্য পরাজয়।
সেই বিরাট প্রাণের বিরাট মৃত্যুর প্রতি ক্ষতচিহ্ন লাঞ্চিত
কোটি প্রানের সশ্রদ্ধ প্রণতিই হউক আজ এই বীর শহীদদের
প্রতি আমাদের একমাত্র শ্রদ্ধার্ঘ্য।”

429. We believe that the nation shall be continuing paying its humble tribute and reverence to the martyred intellectuals by reiterating the homage reflected in the above words also with a pledge to struggle the recurrence of impious clout in the days to come.

430. The enormous pains as depicted from testimony of P.W.12 and P.W.9 surely shock the human conscience. When emotion-choked Professor Anirban [P.W.12] uttered on dock---“**I did not get a chance to call out my father as ‘baba’ [father]. But I have always cherished the name of Bangladesh in my heart,**” the humanity is stunned. Similarly when P.W.9 Dr. Farzana Chowdhury Nipa, daughter of martyred Dr. Alim Chowdhury expressed intense heartache for being deprived of father’s love and care with an appeal that “**I call for the trial and sentencing of all war criminals and their main organisation Jamat-e-Islami [JEI] for depriving so many martyrs’ children of their fathers’ affection**”, civilization cannot remain mum to the huge and unspeakable pains being carried for decades together by them and the relatives of martyred intellectuals and the nation too.

431. It would not be out of place to pen the observation that the bereaved family of martyred intellectuals started a new battle for survival, even the war of liberation ended. Facing immeasurable hurdles the traumatized wives of martyred remained on noble track in nourishing and bringing up their kids who lost their fathers, despite untold pains and loss sustained.

Four decades after the horrific tragedy, tangibly the children of martyred are now doctors, professors, journalists, and highly educated experts working in international and multi-national organizations. This achievement surely might have laid enormous peace to the departed souls of their martyred fathers. It reduces the pains of their worthy mothers too who had to fight numerous constraints and realities untiringly, for keeping up the journey. They are ‘great mothers’ indeed and they deserve due state acknowledgement, we stress.

XX. VERDICT ON CONVICTION

432. For the reasons set out in this Judgement and having considered all evidence and arguments, the Tribunal unanimously finds the accused **(1) Ashrafuzzaman Khan @ Naeb Ali Khan and (2) Chowdhury Mueen Uddin**

Charge No.1: GUILTY for ‘abetting’ and ‘complicity to the commission of the offence of ‘**extermination**’ as ‘**crime against humanity**’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.2: GUILTY for ‘abetting’ and ‘complicity to the commission of the offence of ‘**extermination**’ as ‘**crime against humanity**’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.3: GUILTY for ‘abetting’ and ‘complicity to the commission of the offence of ‘**extermination**’ as ‘**crime against humanity**’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.4: GUILTY for ‘abetting’ and ‘complicity to the commission of the offence of ‘**extermination**’ as ‘**crime against humanity**’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.5: GUILTY for ‘abetting’ and ‘complicity to the commission of the offence of ‘**extermination**’ as ‘**crime against humanity**’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.6: GUILTY for participation by ‘abetting’ and for ‘complicity to the commission of the offence of ‘**extermination**’ as ‘**crime against humanity**’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.7: GUILTY for participation by ‘abetting’ and for ‘complicity to the commission of the offence of ‘**extermination**’ as ‘**crime against humanity**’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.8: GUILTY for ‘abetting’ and ‘complicity’ to the commission of the offence of ‘**extermination**’ as ‘**crime against humanity**’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.9: GUILTY for participation by ‘abetting’ and for ‘complicity’ to the commission of the offence of ‘**extermination**’ as ‘**crime against humanity**’ as specified

in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.10: GUILTY for participation by ‘abetting’ and for ‘complicity’ to the commission of the offence of ‘**extermination**’ as ‘**crime against humanity**’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Charge No.11: GUILTY for ‘abetting’ and ‘complicity’ to the commission of the offence of ‘**extermination**’ as ‘**crime against humanity**’ as specified in section 3(2)(a)(g)(h) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

XXI. VERDICT ON SENTENCING

433. Mr. Haider Ali, the learned Prosecutor by placing his closing summing up submitted that the accused persons were the key perpetrators having position of authority who were notoriously participated the ‘killing mission’ that resulted in murder of 18 eminent university teachers, doctors, journalists. It was extremely deliberate mission intending to liquidate the intellectual class. The accused persons immediately after the independence left the country and since then they have been in UK and USA. This indicates their incriminating conduct which lends further assurance to their culpability. They were part of calculated plan and design. All the killings targeting the intellectuals formed ‘large scale killing’ for which the accused persons deserve capital punishment and only capital punishment, for healing the untold wound caused to the nation.

434. Conversely, the defence sought for acquittal of accused persons as the prosecution failed to prove their culpability with any of the events of killing. However, defence does not dispute the commission of ‘large scale killing’ directing the intellectuals.

435. On paying close attention to the oral testimony it depicts that almost all the prosecution witnesses while deposing before the Tribunal narrated the level of deep feeling of the victim intelligentsia for the war of liberation and Bengali nationalism. Even remaining inside the country in 1971 they had contributed secretly for the people combating the Pakistani occupation army and its local collaborators in achieving the birth of Bangladesh. Their lustrous nationalism and pro-liberation ideology made them target of the ‘killing squad’. Possible torment even could not dissuade them from being answerless to the call for the ongoing war of liberation. They contributed by their righteous activities and brave words.

436. The nation pays homage and tribute to the martyred intellectuals on 14 December each year. In building a new born nation the intellectuals, the best sons and daughters of the soil could have contributed substantially. But the nation sustained incalculable loss, just few hours before the final victory achieved.

437. The victim intellectuals and millions of people laid their lives for the cause of our independence. At the fag end of the war of Liberation the killing squad formed of infamous AB men contrived to annihilate them to further their common design and plan on getting back up from some officials of Pakistan occupation army.

438. In the case in hand, considering the charges proved and facts relevant thereto we take some factors into account as the key requirement of aggravating circumstances for the purpose of sentence to be imposed and these are **(i)** the position or leadership of the accused persons on Al-Badar **(ii)** the accused persons’ role and mode of participation **(iii)** culpable affiliation with the AB HQ and activities carried out there **(iii)** the extreme violent, and humiliating nature of the acts done in accomplishing the murders.

439. At the same time it should not be forgotten that the State has an obligation to remedy serious human rights violations. Bangladesh recognizes Article 8 of the Universal Declaration of Human Rights

[UDHR] and Article 2(3) of the International Covenant of Civil and Political Rights [ICCPR] which ensure the right to an effective remedy for the violation of human rights. The victims of systematic and organised diabolical atrocities committed in 1971 within the territory of Bangladesh in violation of customary international law need justice to heal. Bangladesh considers that the right to remedy should also belong to victims of crimes against humanity. It is also to be kept in mind together with the rights of accused, for rendering justice effectively.

440. After 16 December 1971, the final victory, the nation started perceptive of the tragic and horrific killing of intellectuals and hundreds of civilians through the reports published in domestic and international news media and thus the relatives could recover dead bodies of their dear ones from brick fields and mass grave at the city's outskirts. A report titled published in **the Daily Ittefaque 19 December 1971** narrates horrific picture that

“ঢাকার শহরতলী রায়ের বাজারের অদূরবর্তী খানাখন্দ ইন্টার গাদা ও গর্তে ইতিহাসের এই জঘন্যতম নৃশংস হত্যাকাণ্ডের শিকার বাংলার বুদ্ধিজীবীদের মৃতদেহের সবগুলিই পেছনে হাত বাঁধা এবং বুক ও মাথায় গুলি ও বেয়োনেটের আঘাতের চিহ্ন। অনেকগুলির চোখ উপড়ানো। অনেকগুলি মৃতদেহে শকুন, শূগাল, কাক ও কুকুরের আহাৰ্য্যে পরিণত হইয়াছে। অনেকগুলির শুধু কংকাল ছড়াইয়া পড়িয়া রহিয়াছে। একটি গর্তে অধ্যাপক আবুল কালাম আজাদ, ডঃ ফজলে রাব্বী এবং ডঃ এ, খায়েরের মৃতদেহ গত শুক্রবার বিকালে সনাক্ত করা হয়। বিশ্ব-সংবাদপত্র, টেলিভিশন ও রেডিও নেটওয়ার্কের প্রতিনিধিগণ ঘটনাস্থলে গিয়া বুদ্ধিজীবীদের নৃশংস হত্যাকাণ্ডের নজির প্রত্যক্ষ করেন। তাঁহারা বন্দী শিবির তথা ফিজিক্যাল ট্রেনিং ইন্সটিটিউট এর বহু কক্ষ এখনও রক্ত রঞ্জিত অবস্থায় দেখিতে পান এবং এই নৃশংস হত্যাকাণ্ডের হাতিয়ার সমূহও ইতস্ততঃ বিক্ষিপ্ত দেখিতে পান। ”

[Prosecution Documents Volume(Chowdhury Mueen Uddin), page 146]

441. In the case in hand, all the events of murder constituted the offence of ‘extermination’ [the mass/large scale killing event] and have been proved beyond reasonable doubt by relying on the same documentary evidence. The offence of extermination could only be established by proving killing of individuals of a particular group on a large/massive scale.

442. It would not be out of place to reiterate the observation we have made in the case of *Ali Ahsan Muhammad Mujahid* that the Al-Badar men were trained to carry out ‘Specialized Operations’ and it acted as a ‘death squad’ and exterminated leading left wing professors, journalists, litterateurs, and even doctors. The book titled *Ækattorer Ghatok Dalalra Ke Kothai*”[একাত্তরের ঘাতক দাললরা কে কোথায়] narrates that

“সেপ্টেম্বর মাসের ১৭ তারিখে রাজাকারবাহিনীর প্রধান ও শান্তি কমিটির লিয়াজো আফিসারকে নিয়ে গোলাম আজম মোহাম্মদপুরে ফিজিক্যাল ট্রেনিং সেন্টারে যে রাজাকার ও আল-বদর শিবির পরিদর্শন করেছিলেন সেটি ছিল আল-বদরদের হেডকোয়ার্টার। স্বাধীনতামনা বুদ্ধিজীবীদের বেশীরভাগকে আল-বদররা প্রথমে চোখ বেঁধে এখানেই নিয়ে আসে। নির্যাতনের পর এখান থেকেই তাদের রায়ের বাজারে ও মীরপুরের শিয়ালবাড়িসহ অন্যান্য বধ্যভূমিতে নিয়ে গিয়ে হত্যা করা হয়।

[Source : একাত্তরের ঘাতক ও দালালরা কে কোথায়, প্রকাশ ১৯৮৯ ,পৃষ্ঠা ৫৬]

443. It is thus quite evinced that on abducting the intellectuals, the perpetrators first brought them blindfolded to the ‘Al-Badar Head Quarters’ set up at the Mohammadpur Physical Training College and afterwards they were butchered at the nearby mass graves. It is also revealed that JEI was actively involved with the affairs carried out by the ‘headquarter’ of Al-Badar.

444. Since accused Ashrafuzzaman Khan and Chowdhury Mueen Uddin are proved beyond reasonable doubt that they had acted as ‘chief

executor' and 'operation-in-charge' of Al-Badar respectively and they had led the gang of Al-Badar men in picking up selected intellectuals on gun point[events narrated in charge nos. 6 and 7] they have been lawfully found to have participated the commission of abduction followed by killing of intellectuals, by leading and instructing the killing squad and also by virtue of their culpable position, as described in all the charges framed and they had conscious knowledge about the plan and design in carrying out all the 'operations'. Therefore, they incur liability also under section 4(2) of the Act of 1973 which refers to the theory of civilian superior responsibility.

445. It is to be noted that the Tribunal [ICT-2] is not precluded from considering both forms of responsibility in order to get a full reflection of culpability of the accused, in light of the facts revealed from evidence and materials. But however, we consider that 'cumulative convictions' under section 4(1) and 4(2) of the Act of 1973 is impermissible for the same conduct or act forming part of attack that resulted in actual commission of the crimes alleged.

446. We believe, the nation still bleeds for the untold trauma it sustained for the extreme criminal activities carried out directing the illustrious intellectuals, the pride of the nation, by the organised murderous enterprise formed of infamous Al-Badar, the brain child of JEI. We believe too that the nation feels ashamed as it could not bring the notorious perpetrators to book during last four decades for healing the relentless wound it sustained caused by the beastly act of systematic liquidation of eminent sons and daughters of the soil. The event of calculated killing of intellectuals in 1971 will ever torment the Bengali nation.

447. Killing of Bengali intellectuals refers to the systematic execution of Bengali pro-liberation intellectuals during the Bangladesh liberation war of 1971. The crimes proved were massive human rights violations committed during the war of liberation 1971. the charge brought under the Act of 1973 itself portrays magnitude, gravity and diabolical nature of the crime and in the event of success of prosecution in proving the charge the

accused must and must deserve just and highest punishment. Active abuse of a position of authority, which would presumably include participation in the crimes of subordinates, aggravates liability arising from superior authority. The conduct of the accused persons in the exercise of their culpable position of authority could be seen as an aggravating circumstance.

448. All the charges involve brutal killing of 18 intellectuals, the illustrious and eminent sons and daughter of the soil, in execution of common plan and design to which the accused persons were ‘*concerned*’ and ‘*consenting part*’.

449. The fierceness of the event of the ‘**intellectuals killing**’ was extremely detrimental to basic humanness. It deserves to be evaluated as ‘crimes of serious gravity’ intending to demean the human civilization. Designed plan, pattern of such selective but large scale killing of intellectuals inescapably aggravate the magnitude of the criminal acts and liability of the accused persons as well. The humankind experienced enormous atrocious attack directing civilian population in many parts of the world, history says. But it has never crossed through experiencing the heartrending event of massive killing targeting a ‘group’ belonging to intellectual community known as the ‘conscience’ of a nation. The case in hand concerns such type of unheard of extermination committed in execution of designed murderous scheme. It not only increases the magnitude of the crimes but it has imprinted untold trauma to the nation. Letters of law cannot remain non reactive to the enormous colossal and unspeakable pains being carried for decades together by the relatives of martyred intellectuals and the nation too.

450. Justice is to make it sure that the perpetrators have to pay for what they have done. Considering the extreme gravity of offences committed it is indeed indispensable to deliver justice to the relatives of brutally murdered intellectuals and no punishment other than death will be equal to the horrendous crimes for which the accused persons have been found guilty and accountable, beyond reasonable doubt. Only and only the ‘**capital punishment**’ can reinforce the expectations of the nation and the

relatives of murdered intellectuals who sustained untold suffering and trauma for the systematic and organised ‘extermination’ of illustrious intellectuals.

451. In view of above discussion, we are of the unanimous view that there would be failure of justice in case ‘capital punishment’ is not awarded for all the murders forming ‘large scale killing’, as listed in all the charges as the same indubitably trembles the collective conscience of mankind.

452. Keeping the factors as conversed above in mind we are of agreed view that justice would be met if for the crimes as listed in **all the 11 charges** the accused **(1) Ashrafuzzaman Khan @ Naeb Ali Khan** and **(2) Chowdhury Mueen Uddin** who have been found guilty beyond reasonable doubt are condemned to a ‘**single sentence of death**’ under section 20(2) of the Act of 1973.

453. Accordingly, we do hereby render the following **ORDER** on **SENTENCE**.

Hence, it is

ORDERED

That the accused **(1) Ashrafuzzaman Khan @ Naeb Ali Khan[absconded]** son of late Md. Ajahar Ali Khan and late Roimunnesa of village Chotovatara, Chiler par under Police Station Maksudpur, district Gopalganj and at present 162-15, Highland: Ave, Apt, 3C Jamaica, New York, 11432, USA and **(2) Chowdhury Mueen Uddin[absconded]** son of late Delwar Hossain Chowdhury and late Deljan Begum of ‘Chowdhury Bari’ village Chanpur under police station Daganbhuian near Fajilerghat Bazar, district Feni at present 1,Jonson Road, Tottenham, London NJ54JU, UK are found **guilty** of the offences of ‘**extermination**’ as ‘**crimes against humanity**’ enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 as **listed in all the 11 charges**.

Accordingly, the accused **(1) Ashrafuzzaman Khan @ Naeb Ali Khan** and **(2) Chowdhury Mueen Uddin** be convicted and condemned to the

single sentence of death’ for the crimes listed in all the charges and they be hanged by the neck till they are dead under section 20(2) of the International Crimes (Tribunals) Act, 1973.

Since the convicted accused persons have been absconding the **‘sentence of death’** as awarded above shall be executed after causing their arrest or when they surrender before the Tribunal, whichever is earlier. The **‘sentence of death’** awarded as above under section 20(2) of the International Crimes (Tribunals) Act , 1973 [The Act No.XIX of 1973] shall be carried out and executed in accordance with the order of the government as required under section 20(3) of the said Act.

Let conviction warrant be issued accordingly. Let a copy of the Judgment be transmitted together with the conviction warrant to (1) the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka and (2) the District Magistrate, Dhaka for information and necessary action and compliance.

Let certified copy of the judgment also be furnished to the prosecution at once.

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Justice Md. Shahinur Islam, Member