

**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 [ICT-2] Case No. 03 of 2014**  
[Charges: Participating, committing, aiding and contributing the  
commission of offences constituting crimes against humanity as  
specified in section 3(2)(a)(g)(h) of the Act No. XIX of 1973]

**The Chief Prosecutor**  
**Vs**  
**Md. Forkan Mallik @ Forkan**

**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. Mokhlesur Rahman Badal, Prosecutor  
Ms. Tureen Afroz, Prosecutor  
Ms. Sabina Yesmin Khan, Prosecutor

**For the Accused:**  
Mr. Abdus Salam Khan, Advocate, Bangladesh Supreme Court

**Date of delivery of Judgment: 16 July 2015**

**JUDGMENT**

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

**I. Introductory Words**

1. Accused Forkan Mallik has been arraigned of criminal acts constituting the offences of ‘murder’ ‘rape’ and ‘other inhuman acts’ as crimes against humanity committed in the locality of Subidkhali Bazaar under police station Mirjaganj of district Patuakhali in 1971, during the war of liberation of Bangladesh. Prosecution alleges that the accused Forkan Mallik was a member of local Razakar force, an ‘auxiliary force’ formed to collaborate with the Pakistani occupation armed force in carrying out its activities aiming to annihilate

the pro-liberation Bengali civilians, in furtherance of policy and plan.

2. The trial took place in presence of the accused person. He has been in detention since pre-trial stage. Pursuant to issuance of production warrant the prison authority has produced the accused Forkan Mallik today before this Tribunal [ICT-2].

3. The Tribunal is governed by the International Crimes (Tribunals) Act of 1973[Act of 1973] and by the Rules of Procedure 2012 formulated by the Tribunal [ICT-2] under the power conferred in section 22 of the principal Act. Pursuant to the Act of 1973, the Tribunal [ICT-2] has the authority to prosecute person[s] responsible for the offences enumerated in section 3(2) of the Act committed in violations of international humanitarian law in the territory of Bangladesh in 1971, during the war of liberation. This Tribunal set up under the Act of 1973 is absolutely a domestic Tribunal but meant to try ‘internationally recognized crimes’ or ‘system crimes’ committed in 1971 in the territory of Bangladesh.

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

## **II. Brief account of the Accused Persons**

5. **Md. Forkan Mollik @ Forkan [63]** son of late Sader Mollik and late Sonvan Bibi of village Sailabunia under police station Mirjaganj district Patuakhali studied up to class IV. As

per prosecution, accused is an employee in a non government organisation in Dhaka and also a farmer, by profession. In 1971 he joined the local Razakar force and used to carry out criminal acts under the local Razakar commanders. He was an active supporter of Muslim League and subsequently since 1977 he has been with the political party BNP.

### **III. Initiation of Investigation and Brief Procedural History**

6. The investigation Agency of the Tribunal started investigation pursuant to information recorded as compliant register no. 35 dated 25.6.2014, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by Forkan Mallik. The case, as it appears, is founded on information obtained from the case record and case diary of Sessions Case No., 15/2011 of Patuakhali Sessions Court received through the Registrar of the International Crimes Tribunal wherein it was found prima facie that Md. Forkan Mallik [accused] son of late Sader Mallik and late Sonavan Bibi @ Sona Baru of village Sailabunia under police station Mirjaganj district Patuakhali was involved with the offences as crimes against humanity as enumerated in the International Crime (Tribunals) Act 1973 committed in 1971 during the war of liberation.

7. Satya Ranjan Roy [P.W.14] the investigation officer started investigation into the alleged accusation on 26.6.2014. During investigation he visited the alleged crime localities under Mirjaganj police station of district Patuakhali; examined the witnesses and recorded their statement on different dates,

collected materials. On conclusion of investigation the IO[P.W.14] submitted 'investigation report' on 20.10.2014 as required under Rule 11 of the Rules of Procedure, 2012[Shortly ROP] before the Chief prosecutor as prima facie complicity of the accused Forkan Mallik was found with the offence of crimes against humanity committed in 1971 around the locality of Subidkhali bazaar under Mirjaganj police station.

**8.** During investigation, the accused Forkan Mallik already detained in connection with another case was shown arrested under the ICT Act 1973 on prayer of the IO made on 26.6.2014 through the Chief Prosecutor.

**9.** Afterwards, the Chief Prosecutor submitted its 'formal charge' on the basis of the report and documents submitted therewith by the Investigation under section 9(1) of the Act of 1973 before this Tribunal alleging that the accused Forkan Mallik, a members of local Razakar force in 1971 had participated, abetted and substantially contributed to the commission of the offences of crimes against humanity around the locality of Subidkhali Bazaar under police station Mirjaganj of district Patuakhali

**10.** Thereafter, the Tribunal, under Rule 29(1) of the Rules of Procedure[ROP], took cognizance of offences as mentioned in section 3(2) (a)(b)(g)(h) of the Act of 1973 and fixed a dated for hearing on charge framing matter.

**11.** On hearing about charge framing matter, the Tribunal framed charges on five counts against the accused Forkan

Mallik on 18.12.2014. The charges so framed were read over and explained in Bengali to the accused person present in court to which he pleaded not guilty and claimed to be tried and thus the trial commenced.

**12.** In course of trial, prosecution adduced and examined in all 14 witnesses including the Investigating Officer [IO] intending to substantiate the accusation brought in the charges framed. Defence duly cross-examined the witnesses.

**13.** On closure of prosecution evidence, defence desired to examine six witnesses as shown in the list submitted. Tribunal, considering the defence case, allowed three to be examined. However, later on, another one was also allowed to depose as D.W. In this way defence examined in all 04 witnesses

**14.** Finally, both parties have advanced their respective summing up which got ended on 14.6.2015. The Tribunal then kept the case CAV, for delivery of its judgment and sent the accused persons to prison with direction to produce them on call.

#### **IV. Applicable laws**

**15.** Provisions as contemplated in the International Crimes (Tribunals) Act 1973 and the Rules of Procedure 2012 formulated by the Tribunal [ICT-2] under the powers given in section 22 of the Act are applicable to the proceedings before the Tribunal. Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872. Tribunal is authorized to take judicial

notice of fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act].

**16.** The Tribunal may admit any evidence which it deems to have probative value [Section 19(1) of the Act]. The Tribunal shall have discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)]. The defence shall have liberty to cross-examine prosecution witness on his credibility and to take contradiction of the evidence given by him [Rule 53(ii)]. Defence shall have right to examine witnesses [Section 10(1) (f) of the Act of 1973].

**17.** Both the Act of 1973 and the Rules (ROP) have adequately ensured the universally recognised rights of the defence. Additionally, the Tribunal, in exercise of its discretion and inherent powers as contained in Rule 46A of the ROP, has adopted numerous practices for ensuring fair trial by providing all possible rights of the accused.

## **V. Summing up by the Prosecution**

**18.** Mr. Mukhlesur Rahman, the learned prosecutor started argument by drawing attention to the list of Razakars of Mirjaganj police station [Exhibit-2]. He submits that the list prepared by the Thana Muktijodhdha command is an authoritative document that proves that accused Forkan Mallik was a member of local Razakar Bahini in 1971. Besides, the prosecution witnesses examined have testified it too. It has also been revealed that the accused was an worker of local Muslim League and in 1971 the workers of such a pro-Pakistan political party took stance against the war of liberation and got enrolled in Razakar Bahini.

**19.** In respect of the events narrated in the charges framed, the learned prosecutor argued that the witnesses examined are mostly eye witnesses and they were the inhabitants of Subidkhali bazaar and Kakrabunia the crime localities. Defence could not shake and refute what they have stated in respect of commission of the crimes and accused Forkan's complicity therewith. Charge wise argument advanced by the learned prosecutor may be well addressed while adjudicating the charges independently.

## **VI. Summing up by the Defence**

**20.** On contrary, Mr. Abdus Salam the learned defence counsel emphatically argued that the prosecution failed to prove that accused Forkan was a member of local Razakar Bahini in 1971. The list [Exhibit-2] relied by the prosecution is not an authoritative and sourced document. Rather, it has been created for the purpose of the case and intending to falsely showing the accused as a Razakar. The alleged list has been prepared by Abdul Aziz Mallik one of relatives of the accused who was a witness to the case initiated by P.W.13 Abdul Hamid Mallik and there have been a series of litigations between the accused and Abdul Hamid Mallik. Said Abdul Aziz Mallik has also been cited as witness in this case too. But the prosecution for the reason best known to them did not adduce and examine him, at least to prove the authenticity of the list [Exhibit-2]. Thus the patent inimical relation between them naturally forces to believe that the list showing the accused a Razakar is a concocted and created document.

**21.** The learned defence counsel has placed categorical argument in respect of all charges and in doing so he mainly drew attention to the credibility of witnesses and improbability of what they have stated implicating the accused. The learned defence counsel however does not dispute the event of attack that resulted in commission of alleged crimes including murder and rape. But he attempted to show prosecution's failure to prove accused's complicity with any of such crimes alleged. Argument advanced by the learned defence counsel may be well addressed while adjudicating the charges

## **VII. Did the accused Forkan Mallik belong to the local Razakar Bahini, an Auxiliary Force?**

**22.** Prosecution claims that the accused Forkan Mallik was a member of local Razakar Bahini and being an active associate of local potential Razakars including the Razakar commander Shahjahan Shikder he had committed, abetted and substantially contributed to the commission of the offence of 'murder', 'rape' and 'other inhuman act' as crimes against humanity as narrated in five charges framed.

**23.** It is not claimed that in exercise of potential pro-Pakistan political prominence around the crime locality the accused as an individual got himself involved with the commission of alleged offences intending to collaborate with the Pakistani occupation army and local potential Razakars.

**24.** Conversely, defence case as extracted from the trend of cross-examination of prosecution witnesses is that--**(a)** the accused Forkan Mallik was not a member of local Razakar



force (b) accused used to work at the house of one Gani Master during the early part of 1971 (c) accused rather used to work as a source of freedom fighter during the last part of the war of liberation in the locality far from Subidkhali; and (d) the accused has been falsely implicated with the alleged offences out of family enmity over a number of litigations.

**25.** In support of above defence cases, 04 witnesses have been examined by the defence. Accused Forkan Mallik was not a member of Razakar bahini is a negative assertion which need not be proved by adducing evidence. Prosecution is obliged to prove it by positive evidence.

**26.** In the case in hand, prosecution requires proving that the offences alleged were perpetrated as part of systematic attack and in committing all these offences accused Forkan Mallik had acted as an active accomplice of the group of perpetrators in exercise of his membership in local Razakar Bahini.

**27.** The crucially material fact that the accused Forkan Mallik was a member of local Razakar Bahini is to be primarily proved by documentary evidence and next oral evidence provided by the witnesses is to be taken into account and weighed together with the probative value of documents relied upon by the prosecution. We are to determine first how far the prosecution has been able to discharge its burden to prove this pertinent fact significantly relevant to assess accused's alleged complicity.

**28.** In view of above, before we enter adjudicating the charges we consider it appropriate to resolve the issue – ‘did the accused Forkan Mallik belong to local Razakar Bahini?’

**29.** Admittedly, name of local Razakar commander Shahjahan Shikder who was allegedly accompanied by accused Forkan Mallik in accomplishing the attacks directing pro-liberation civilians as unveiled from evidence of PWs finds place in the book titled ‘**Muktijudhdhe Patuakhali**’ [Exhibit-5]. But accused’s name does not find place therein.

**30.** It is to be noted that mere oral testimony of the PWs that Forkan Mallik was a Razakar and closely affiliated with the local leading members of Razakar Bahini does not prove that truly the accused Forkan Mallik was a member of local Razakar Bahini. Prosecution to prove this pertinent fact has adduced two documents. One is a book titled ‘**Muktijudhdhe Patuakhali**’ [Exhibit-5] and another one is a list [Exhibit-2] prepared and signed by Abdul Aziz Mallik the commander of the Thana Muktijodhdha command.

**31.** Accused’s name appears in the list [Exhibit-2] prepared and signed by the commander of the Thana Muktijodhdha Command as a member of Razakar along with the name of the local Razakar commander Shahjahan Shikder as found in the book [Exhibit-5]. It is not understood as to on what basis the Thana commander has prepared the list on 07.9.2010, during investigation of the case initiated by the P.W.13 Abdul Hamid Mallik against the accused under the Penal Code, showing accused’s name as a member of Razakar Bahini.

**32.** The list [Exhibit-2] does not get support from the information revealed in the book [Exhibit-5], an authoritative source. Therefore, the list of local Razakars [Exhibit-2] as

prepared by Abdul Aziz Mallik admittedly a near relative of accused Forkan Mallik cannot be treated as an authoritative document and it carries least value. No acceptable clarification has been provided on part of the prosecution as to why accused's name does not find place in Exhibit-5 as a member of local Razakar bahini.

**33.** P.W.14 Satya Ranjan Roy the IO in cross-examination stated that Abdul Aziz Mallik the commander of local Muktijodhdha command, Abdul Hamid Mallik and Forkan Mallik belong to same kin. Admittedly, the list of Razakars has been prepared and signed by said Abdul Aziz Mallik. Forkan Mallik's name does not find place, as a Razakar, in the book titled '**Muktijudhdhe Patuakhali**'[**Exhibit-5**]. And according to the IO, Abdul Aziz Mallik was one of charge sheeted witnesses in a criminal case initiated against the accused Forkan Mallik by P.W.13 Abdul Hamid Mallik for the offence punishable under the Penal Code. The Investigation Agency initiated its investigation on the basis of information obtained from the case record of the said case. Thus the list of Razakars [**Exhibit-2**] suffers from serious doubt. The list might have been created out of animosity.

**34.** All these inevitably provide an unerring conclusion of a rivalry and conflict between the accused Forkan Mallik and said Abdul Hamid Mallik [P.W.13] and Abdul Aziz Mallik and such enmity might have prompted Abdul Aziz Mallik to create a list showing accused Forkan Mallik a Razakar, without any authoritative basis. For same reason, P.W.13 Abdul Hamid Mallik might have deposed in Tribunal

implicating the accused Forkan Mallik with the crimes alleged.

**35.** P.W.13 Abdul Hamid Mallik admits that accused Forkan Mallik happens to be his uncle and he initiated a case against Forkan Mallik on 19 July 2009 and Forkan Mallik also sued his [P.W.13] brother's sons and him.

**36.** It may be validly presumed that Abdul Aziz Mallik the thana Muktijodhdha commander and P.W.13 Abdul Hamid Mallik the near relatives of accused Forkan Mallik in a coordinated way, out of enmity crept up over litigations, have attempted to brand the accused Forkan Mallik as a member of Razakar Bahini.

**37.** It gets further force as the P.W.14 the IO in cross-examination admits that there have been some cases between Forkan Mallik and Abdul Hamid Mallik [P.W.13] and this situation offers strong smell of animosity between accused and Abdul Aziz Mallik the man who admittedly prepared the list of Razakars.

**38.** In view of above, we conclude that the prosecution has failed to establish by evidence and authoritative document that in 1971 the accused Forkan Mallik was a member of local Razakar Bahini.

**39.** Defence witness D.W.1 admits that in 1970's election Forkan Mallik, although a tender aged boy used to run and dance favouring election campaign in support of Muslim League candidate. In rural area such a scenario was most

likely and only for this reason Forkan Mallik cannot be branded as a potential anti-liberation figure in his locality. Mere association in election campaign in favour of Muslim League candidate in 1970's election does not make it proved that the accused was a member of local Razakar Bahini.

**40. Ms. Tureen Afroz** the learned prosecutor at the concluding stage of summing up argued that accused Forkan Mallik can be well prosecuted as an individual if it is not proved that he was a member of Razakar Bahini, an auxiliary force. The Statute of 1973 permits it. The core thing is to be seen whether the accused collaborated the local group of Razakars under the headship of its local commander in carrying out atrocious activities constituting the offenses as narrated in the charges framed.

**41.** We are convinced with the above submission extended on part of the prosecution. Yes, accused Forkan Mallik can be prosecuted and tried as an 'individual' even if it is not proved that he was a member of local Razakar Bahini. The Act of 1973 permits it. But in such case, prosecution requires proving that accused, as an individual, actively collaborated the group of Razakars intending to participate, abet and contribute to the commission of crimes alleged, by his act and conduct.

**42.** The crime locality Subidkhali Bazaar is a miniature rural area. Accused was a resident of neighbouring village Choilabunia. He studied up to class IV at Subidkhali and used to work election campaign for the candidate of Muslim League in 1970. All these admitted fact naturally made him familiar to the people of the crime locality. Therefore, simply

failure to prove his membership in local Razakar Bahini cannot make him absolved from liability if he is found by credible evidence to have had association with the local Razakars in carrying out atrocious activities.

## VIII. ADJUDICATION OF CHARGES

### Adjudication of Charge No. 01

#### [Killing 04 civilians at Subidkhali Bazaar]

**43. Summary charge:** This charge involves the attack launched that resulted in killing of (1) **Hafij Khalifa**[source of freedom fighters] of village Kakrabunia, local Thana Awami League leader (2) **Abdul Kader Jomadder** (3) **Dr. Debndra Nath Sarker** and (4) **Biva Rani** the wife of Debndra Nath . The event allegedly happened on **12 August 1971** corresponding to 26 Sravan at about 1:30 pm at Subidkhali Bazaar after the group of army arrived there by a gun boat accompanied by Razakars including the accused Forkan Mallik.

The accused Forkan Mollik allegedly **abetted, facilitated and contributed** the actual commission of killing 04 unarmed civilians constituting the offence of ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

#### **Witnesses Examined**

**44.** Prosecution depends upon testimony of **06 witnesses** the inhabitants of the crime locality, to prove this charge. P.W.11 Razia Begum happens to be the wife of victim Abdul Kader Jomadder. P.W.2 Md. Chand Mia was a shop keeper at

Subidkhali Bazaar in 1971. P.W.3 Shanti Ranjan Kabiraj, P.W.6 Habibur Rahman Mridha, P.W.7 Motilal were the residents of Subidkhali bazaar in 1971 who claim to have witnessed the killing of Dr. Deben and his wife. P.W.13 testified facts related to the principal event of killing, prosecution alleges.

### **Argument pressed**

**45.** The learned prosecutor Mr. Mokhlesur Rahman Badal submitted that P.W.2, P.W.3 and P.W.6 are direct witnesses to the event of killing. Their corroborative statement proves the commission of the killing alleged and accused Forkan's complicity therewith. P.W.7 and P.W.13 are hearsay witnesses. They have testified facts relevant to the attack and accused's participation to it. The learned prosecutor further submitted that P.W.11 is the wife of victim Abdul Kader Jomadder and she has testified how the accused Forkan and his accomplice forcibly picked up her husband from the house, in conjunction with the attack. Testimony of P.W.11 eventually proves accused Forkan's participation to the attack and thus he is liable for the killing of four civilians.

**46.** On contrary, the learned defence counsel Mr. Abdus salam submitted that the P.W.2, P.W.3 and P.W.6 claim to have witnessed the event of killing Dr. Deben and his wife Biva Rani. The event of killing is not disputed. But the crime was accomplished by the group Pakistani army and local Razakars. In the face of attack the surrounding people were supposed to flee or go into hid. But seeing the act of killing remaining present at the crime site, as narrated by the P.W.s is not credible at all. The witnesses have made false testimony

merely to justify their seeing the accused Forkan accompanying the group of attackers. Besides, P.W.11 Razia testified that the accused Forkan allegedly accompanied the group of Razakars in apprehending her husband Kader Jomadder. The reason of recognizing the accused Forkan with the group of perpetrators as stated by P.W.11 is not believable. The reason she narrated did not make her familiar with the identity of accused Forkan.

### **Deliberation and Finding with Reasoning by evaluation of evidence presented**

**47.** In respect of the event of killing Dr. Deben and his wife Bibha Rani as narrated in charge no.1 **P.W.2 Chand Mia**, allegedly an eye witness stated that he saw Forkan Mallik bayoneting Biva Rani to death at Subidkhali Bazaar, Mirjaganj, Patuakhali during the Liberation War.

**48. P.W.2 Chand Mia** stated that on 26 August 1971 the Pakistani army arrived at Subidkhali Bazaar by a gun boat and Razakar Forkan [accused] and Belayet Chowkider received them at the bank of the river and brought them at Bazaar and then they entered the house of Dr. Deben and on Forkan's identification one army man had gunned down Dr. Deben to death. Deben's wife pleaded to Forkan and the other captors to spare her husband's life and ignoring her pleas, Forkan held her husband and a Pakistani soldier shot her husband[Dr Deben] dead right before her. As she started to cry holding her husband, Forkan charged bayonet on her and she died. In 1971, P.W.2 stated, Forkan was a member of Convention Muslim League and the Razakar force.



**49.** It is found from the statement of P.W.2 that Razakar commander Shahjahan was with the troops. Be that as it may, the army men were supposed to ask him [Razakar commander] for due identification of Dr. Deben. But according to P.W.2 it was accused Forkan on whose identification the army had killed Dr. Deben. It is not believable that superseding a Razakar commander the Pakistani army had opted to have assistance from a local minor actor who simply accompanied the group of attackers as a pro-Pakistan individual. The story the P.W.2 has narrated implicating accused Forkan Mallik, on rational analysis, carries no reliability.

**50.** P.W.2 was a shopkeeper and his shop was just adjacent to the house of Dr. Deben and thus he could see the event, he claims. But if had the P.W.2 been at his shop at Bazaar how he could see the accused Forkan and Belayet Chowkider receiving the group of army arrived by gun boat? It was improbable. Besides, this version does not match to the narration made in the charge framed. According to the charge framed the group of army arrived at Subidkhali Bazaar by a gun boat being accompanied by Razakars including the accused Forkan. Thus the claim of seeing the accused receiving the army, as stated by P.W.2, seems to be untrue.

**51.** In cross-examination, P.W.2 admits that when the group of army being welcomed by Forkan and other Razakars were on move the people started fleeing and he however remained stayed at his shop. Why he [P.W.2] preferred to remain at his shop even in the face of horrific attack? The Tribunal notes

that in such a terrorizing situation and when the perpetrators had attacked the house of Dr. Deben the people around it would have naturally gone into hid. But P.W.2 remained at his shop wherefrom he saw the criminal acts happened inside Deben's house, he claims. It too was improbable and suffers from falsity.

**52.** According to P.W.2 he had been at his shop till 03:00 pm and before he started moving to his house he saw the peace committee men burying the body of Deben and his wife at Kalibari. When he was on the way to his home he heard 2/3 gun firing and with this he, being frightened, moved fast toward his home.

**53.** The above piece of version speaks a lot. Simply hearing 2/3 gun shots P.W.2 became frightened and started moving fast for his home. It was natural. But it is hard to believe that the attack by a group of army and Razakars and criminal acts that resulted in killing Deben and his wife did not make him frightened at all. Such inconsistent human behaviour as depicted from testimony of P.W.2 , in other words, makes his reliability seriously questionable.

**54.** Defence does not dispute the commission of the event of killing. Victim Dr. Deben's sister's son D.W.2 stated that his uncle and aunt were killed by the army. He [D.W.2] however does not implicate the accused with the attack. P.W.2 admits in cross-examination that Deben's sister's son Madhu [D.W.2] had been staying with Deben. Thus, being a member of victim's family D.W.2 Madhu [Mridul Kanti] would have been the best witness in relation to the event of killing Deben

and his wife. But the IO despite examining him and recording his statement did not cite him as a witness.

**55.** The Tribunal notes that even the sworn testimony of an eye witness cannot readily be accepted to be credible and true. Its probative value is to be weighed. The Tribunal, as trier of fact, is in the best position to evaluate the probative value of evidence presented before it and to resolve which evidence it will rely upon in rendering its findings.

**56.** On rational analysis of evidence of P.W.2 we are constrained to conclude that seeing detail of the horrific event of attack that resulted in killing that took place inside Dr. Deben's house does not seem to be probable. Testimony of P.W.2 implicating accused inspires least credence. P.W.2 seems to have made a deliberate attempt of making such testimony pregnant of exaggeration and falsity and he did it simply intending to show the accused as an accomplice of the group of perpetrators. But accused was not a member of Razakar Bahini, as already found or he had no local potential political prominence that could have made him right and mighty person to receive the army men when they arrived at Subidkhali Bazaar by a gun boat.

**57. P.W.3 Shanti Ranjan Dey [63],** a resident of Subidkhali village under police station Mirjaganj of district Patuakhali stated that Forkan, Shahjahan Sikder, Dabir Sikder and other Razakars and the Pakistani army came to Subidkhali Bazar on August 12. They detained local Awami League leader **Kader Jomadder**, who along with another Awami League [AL] man

**Hafiz Khalifa** were later killed by the Pakistani army and their collaborators that day.

**58.** P.W.3 stated, with peripheral details, that on identification of Forkan, the group of army accompanied by Razakars detained local physician Dr. Deben Sarker and started looting his house. When they started torturing Deben right in his yard, his wife Biva Rani pleaded for his release. Shanti's[P.W.3] 90-year-old grandfather was slapped by a Pakistani army commander when he too pleaded for Deben's release. The entire incident took place before his eyes—P.W.3 claims. When he [P.W.3] was taking his grandfather away he saw a Pakistani army man shoot Deben. And Forkan bayoneted Biva Rani to death and then the attackers left with forcibly captured Kader for Patuakhali town.

**59.** By stating the above version P.W.3 claims him to be a direct witness to the event of killing Deben and his wife. It is not clear as to how and wherefrom he and his 90 years old grand-father appeared at the crime scene. Besides, knowing the insecure consequence of the attack the people around the crime site were supposed to go into hid. But despite belonging to Hindu community P.W.3 had shown unbelievable courage of remaining present at the crime scene when he saw the entire event of killing. It was simply improbable. And thus, his testimony so far as it relates to his seeing the event of killing and involvement of accused Forkan does not inspire credence, although the event of killing is undisputed.

**60.** It is now settled that eyewitness account, even when given in all honesty and sincerity, isn't necessarily credible. Merely because a person *claims* to have seen something does not mean that what they remember seeing really happened. To simply be a competent witness, a person must show that he had reasonable and probable opportunity of seeing the event happened. It is to be borne in mind too that competent is not the same as credible. His testimony must be free from bias and concoction.

**61.** Recalling the peripheral details in relation to the essence of the event is usually impracticable, particularly when more than four decades have been elapsed after the events occurred. But what we see? We see that most of witnesses have attempted to narrate the event with peripheral details. It is not natural as the retaining such peripheral details in human memory are not possible.

**62.** It is true that witness might forget or mix up details which often occurs not only as a result of lapse of long passage of time -- it happens also for the social and cultural factors and practices which can have an impact upon the way in which witnesses remember or recount their experience. Thus as the fact finder we are to eye not only to the evidence given in relation to the 'central facts' relating to the crime but also to the attempt of mixing up details, for determining witnesses' credibility.

**63.** We reiterate that the event of attack and killing remains undisputed. It has already been found that the prosecution has failed to establish that the accused was a Razakar member.

Defence challenges mainly the presence of accused Forkan Mallik with the group of attackers at the crime site.

**64.** Careful and rational assessment of evidence forces to the conclusion that the witnesses have narrated a concocted story of their seeing the event of attack and killing and they in doing it have falsely implicated the accused as an accomplice of the perpetrators.

**65.** The Tribunal notes that in narrating another event of forcible conversion to Islam religion happened on a different day as described in charge no.2 P.W.3 stated that on 15 August at about 12:00 noon he saw from hiding the Razakars Forkan , Shahjahan and others taking three Hindu people towards their camp. Truthfulness of this version shall be assessed in adjudicating the charge no.2. But now if it is taken into account for reliability test of the account he made in relation to the event of killing it may be validly questioned that when P.W.3 saw the Razakars merely taking three Hindu civilians during day time from hiding place what situation prompted him [P.W.3], instead of going into hid, remaining present at the house of Deben even in the face of an organised armed attack that resulted in killing of Deben and his wife? On rational evaluation, evidence of P.W.3 so far as it relates to seeing the act of killing Dr. Deben and his wife seems to be concocted.

**66. P.W.6 Habibur Rahman [60]** of Subidkhali Bazaar used to work as a milk supplier to Ganga Charan's sweet shop at Subidkhali Bazaar in 1971. He stated that this sweet shop was adjacent to west of Dr. Deben's chamber. On 12 August 1971 at about 2:00-02:30 pm when he[P.W.6] had been at Ganga

Charan's sweet shop he saw Razakars Akabbar Gaji, Forkan Mallik, Shahjahan Shikder , Jabed Ali Khan, Hamed Gaji and the army men forcibly taking **Kader Jomadder** tying him up with a rope. Seeing this he came to a place adjacent to one Annath Kha wherefrom he saw them [attackers] taking **Kader Jomadder** in front of Deben's chamber when Deben attempted to flee but on identification by Forkan Mallik he was caught and 90 years old neighbour Haran Kabiraj appealed to spare him when the army slapped him and he fell down. His grand son Shanti Ranjan then made him stood. He [P.W.6] further saw Biva Rani making appeal to the army not to kill her husband. But one army had gunned down Deben to death there and accused Forkan bayoneted Biva to death.

**67.** The event of killing Dr. Deben and his wife is undisputed. Deben's sister's son Mridul Kanti has deposed as D.W.2 and admitting the attack launched to their house at Subidkhali Bazaar stated that the group formed of army had killed his maternal uncle and his wife and he heard it later on as he had fled in the face of attack.

**68.** P.W.3 Shanti Ranjan belonged to Hindu community. He in narrating the event has made an improbable story of his physical presence at the crime scene together with seeing the event of killing and according to him the entire event of killing occurred within his eye sight. How far it is believable? In 1971 the Pakistani occupation army significantly targeted the Hindu community terming the members of it 'Indian agents'.

**69.** In the face of a systematic attack by the group of army accompanied by Razakars a Hindu civilian Shanti Ranjan

[P.W.3] too was supposed to make attempt to escape. But he instead of fleeing remained present at the site where in his presence another Hindu Dr. Deben and his wife were allegedly killed. This story does not inspire credence. If it is so, the narration made by P.W.6 as to seeing Shanti Ranjan [P.W.3] present at the crime site seems to be a cock and bull story.

**70.** It is to be noted that in respect of the event of killing Dr. Deben and his wife as narrated in charge no.1 P.W.2 Chand Mia an eye witness who allegedly saw the event of killing Dr. Deben and his wife Biva Rani. But he does not state that captured **Kader Jomadder** was forcibly brought in front of Deben's chamber and at the time of killing, at the site Shanti Ranjan [P.W.3] and Habibur Rahman [P.W.6] were also present and the grand-father of Shanti Ranjan appealed to the perpetrators to spare Deben's life.

**71.** P.W.2 and P.W.6—both of them claim to have witnessed the event of killing Dr. Deben and his wife. But their version on material particular seems to be quite different. It creates reasonable doubt as to their seeing the event as alleged. Therefore, their testimony so far as it relates to alleged act and presence of accused with the group cannot be relied upon.

**72. P.W.7 Motilal [60]** is hearsay witness in respect of the event of killing. His evidence however proves the act of launching the attack directing Deben's house by the group of army and Razakars. He claims to have seen the movement of the group of attackers, from hiding place, towards Bazaar. But he does not claim to have seen the accused Forkan accompanying the group.



**73.** According to P.W.7 later on he found the dead body of Deben and his wife lying in front of Deben's chamber. It proves that the event of killing occurred on the date time and place as alleged. P.W.7 also stated that he heard from Shanti Ranjan [P.W.3] that army man had gunned down Deben to death as identified by accused Forkan and Forkan bayoneted Deben's wife to death. Shanti Ranjan further informed him that Kader Jomadder was first brought there on forcible capture and then was taken to gun boat.

**74.** We have already observed that P.W.3 Shanti Ranjan is not a credible witness as he narrated improbable story of his seeing the event of killing remaining present at the crime scene. Testimony of P.W.3 so far as it relates to the criminal acts of the group of attackers implicating the accused Forkan as one of potential accomplices of the army suffers from concoction and falsity. Therefore, what the P.W.7 heard from P.W.3 does not carry probative value. Testimony of P.W.6 does not connect the accused with the commission of the event of killing in any manner, we validly presume and thus his testimony deserves to be excluded. .

**75.** Evidence of **P.W.11 Rezia Begum** the wife of **Abdul Kader Jomadder**, a victim leads us to conclude that in conjunction with the attack, her husband was forcibly picked up from house by the accomplices of the army men. P.W.11 in testifying this fact stated that Rashid and Forkan had forcibly taken away her husband. She knew them as they had studied in a school of their locality.

**76.** Defence does not dispute the event of abduction of Hafez Khalifa and his killing. But it however denies accused Forkan's involvement and concern with any phase of the event of the attack that was launched by the group of army and local Razakars. Defence also denies that Forkan belonged to Razakar Bahini.

**77.** We disagree with the submission advanced by the prosecution that since the version of P.W.11 implicating accused with the act of forcible capture of her husband Abdul Kader Jomadder from their house remained unshaken in cross-examination the same can be relied upon to link the accused even with the act of abduction of Hafej Khalifa that eventually facilitated his murder.

**78.** The Tribunal notes that whatever narration is made in Tribunal on oath is subject to rational assessment, in light of probability. Thus, we require evaluating its probative value and credibility aiming to arrive at a correct finding. Mere failure of defence to refute or shake what is stated in examination-in-chief does not *ipso facto* provide credit of reliability.

**79.** In 1971 P.W.11 was 36 years old woman and accused Forkan studied up to class IV which ended in 1965, according to his year of birth. It remained undisputed. Accused Forkan and his accomplice Rashid used to study in a school of their locality and as such she knew them since earlier. It cannot be an appropriate reason of knowing the accused. What rational reason existed that made the P.W.11 able of being acquainted to the accused Forkan Mallik while he was a school going boy

[in between 1962 and 1965]? After ending Forkan's school education had the P.W.11 any further occasion to see or meet Forkan? Absence of clarity on these questions inevitably makes the claim of recognizing Forkan as an accomplice is gravely doubtful.

**80.** P.W.11 does not claim that she had occasion to see the accused Forkan even at a time immediate prior to the alleged event. It is to be noted that mere knowing that some one studied in a school may not necessarily make someone particularly an elderly woman able to recognise him. Therefore, testimony of P.W.11 so far as it relates to recognizing accused Forkan as one of perpetrators does not inspire credence. Thus, this part of her testimony implicating accused Forkan patently suffers from exaggeration and mixing up falsity.

**81. P.W.13 Abdul Hamid Mallik** of village Choilabunia happens to be the brother's son of accused Forkan Mallik, admittedly. He came on dock to depose the events including the event narrated in charge no.1 implicating the accused. He did not witness the alleged killing of 04 civilians. He simply narrated when and how he saw the accused accompanying the group of army and later on how he heard the event from other people.

**82.** P.W.13 stated that on 12 August 1971 he came to his maternal uncle's house at Subidkhali. At about 01:30 when he was on the way to his own village Choilabunia he saw the army men and Forkan Mallik and thus he went into hid and at the same time he saw Hafez Khalifa [a victim] going into hid

inside a Kaji office at the road side when Forkan Mallik accompanied by the army men caught him [Hafez Khalifa] and took him to the gun boat. Next, Razakars and the army men also apprehended Kader Jomadder from his house at Subidkhali Bazaar.

**83.** How the P.W.13 saw, from his hiding place, that on capture Hafez Khalifa was taken to gun boat? Was it possible of seeing the act of forcible capture of Kader Jomadder from hiding place, as stated by P.W.13? The army men were accompanied by the members of Razakars. But P.W.13 did not mention the presence of any other Razakar with the army excepting the accused Forkan. Presumably intending to intensify accused's complicity P.W.13 has testified only the accused's alleged presence with the army. It was not believable.

**84.** P.W.13 further stated that at about 02:00 pm he heard gun firing from the end of Bazaar and few minutes later, he came there when the army and Razakars had left the site and found dead body of Dr. Deben and his wife Biva. He saw Shanti Ranjan [P.W.P.W.3], Habibur Rahman [P.W.6] and others conversing that Pakistani army had killed Deben on identification of Forkan Mallik and he [Forkan Mallik] himself bayoneted Biva Rani to death

**85.** But we have already found that P.W.3 Shanti Ranjan is an unreliable witness and he made an improbable description of his seeing the event of killing and he did it simply to show himself as a direct witness even about the alleged presence and role of accused Forkan Mallik in accomplishing the crime

alleged. Therefore, hearsay testimony of P.W.13 based on conversation amongst P.W.3 Shanti Ranjan and others does not carry any probative value.

**86.** In respect of the fate of captured Kader Jomadder and Hafez Khalifa, P.W.13 stated that at about 04:00 pm he started going back to his home and on the way he heard from the passerby that Hafez Khalifa and Kader Jomadder were killed. Defence does not dispute the killing of Hafez Khalifa and Kader Jomadder. However, it denies accused Forkan's presence at the crime site.

**87.** We have already found, on meticulous evaluation of evidence adduced by witnesses that a group of army accompanied by local Razakars had attacked the Hindu civilians and pro-liberation people of the locality of Subidkhali Bazaar. We are not convinced to rely what has been stated by the P.W.s in respect of seeing the accused Forkan accompanying and acting criminally in committing the murder of Dr. Deben and his wife.

**88.** The act of abduction of Abdul Kader Jomadder happened in conjunction with the same attack and by the same group of attackers is found proved chiefly by the evidence of P.W.11. Hafez Khalifa another pro-liberation civilian was taken together with Abdul Kader Jomadder to the gun boat by which the army arrived at Subidkhali bazaar. It remains undisputed that two days after the incident dead body of Abdul Kader Jomadder was traced in the strip of sandy land rising out of river bed, as testified by P.W.11 the wife of the victim.

**89.** P.W.14 the IO in cross-examination admits that during investigation, he examined and reduced his statement made to him in writing but he did notice him as witness. The IO further stated that at the time of the event [narrated in charge no.1] Mridul Chandra had been in India and as such did not witness the killing of his maternal uncle Deben. But it does not appear to be true as Mridul Chandra while deposing in Tribunal as D.W.2 stated that at the relevant time he had been with his uncle at his house at Subidkhali Bazaar and the army had killed his uncle.

**90.** We presume that mere allegation against the accused as obtained from the criminal case initiated by P.W.13 Abdul Hamid Mallik against the accused influenced the IO in rejecting Mridul Kanti's statement. It was not fair and appropriate.

**91.** It appears that D.W2 is a near relative of victim Dr Debendra with who he used to live at Subidkhali Bazaar. Why the IO did not feel it necessary to examine him over the event of Debendra and his wife's killing. Non examination and non-citing him as a witness for prosecution questions the IO's diligence on the task of investigation. We presume that the intention of the IO was not to unearth the truth. Rather he, for reasons best known to him, remained confined in reducing the statement of those persons whom he found ready to name the accused as an accomplice of the group of perpetrators. This should not be the true intent of investigation of any criminal act. The IO thus got his report founded not on reliable and natural witnesses.

**92.** ‘Abetting’ involves no more than encouraging of a particular act by conduct and act. Abettor assists the principal perpetrator or perpetrators in committing the crime. But how the accused Forkan encouraged the principal perpetrators in committing the crime alleged? Did he accompany the group of attackers or had he substantially guided them in accomplishing the principal crime as a member of Razakar Bahini? Has the prosecution been able to establish beyond reasonable doubt that the accused had facilitated and participated to the commission of the killing, as an accomplice of the group of attackers?

**93.** The crimes alleged were committed in context of war of liberation in 1971 and the same were ‘group or system crimes’ which happened not by an individual alone. The ‘group crimes’ were committed in the territory of Bangladesh in 1971 by the group formed of army men, their local collaborators and Razakars.

**94.** In the case in hand, all the prosecution witnesses examined testified that the offences narrated in the charges framed were perpetrated not by a single individual – group of Razakars and army men committed the same and in narrating it they testified accused Forkan’s role as an active accomplice of the group of perpetrators.

**95.** For holding the accused criminally responsible, the prosecution is to establish that the accused by his acts or conducts facilitated the commission of those crimes or the accused had complicity to the commission thereof.

**96.** It is true too that the position of accused Forkan is not required for participation in a ‘system crime’, nor is it a precondition for incurring liability for the offence of crimes against humanity. Even an ‘individual’ can be held responsible for the offence of crimes against humanity if he is found to have had complicity or culpable involvement therewith.

**97.** But in the case in hand, prosecution categorically alleges that the accused Forkan Mallik was involved with the commission of the alleged atrocious activities in the capacity of a member of local Razakar Bahini.

**98.** If we assume that accused Forkan used to remain with the campaigners for Muslim League candidate in 1970’ election it would be inappropriate to use such conduct to establish his liability as it did not form part of attack directing civilian population. However, it may be well extracted from the evidence adduced that the events alleged occurred resulted in killing civilians, rape upon Hindu women and other inhuman act, true. But the prosecution has failed to prove that the accused Forkan Mallik was responsible for having participated, facilitated and abetted the commission of crime by way of murder of the four civilians.

**99.** Integrated evaluation of evidence presented depicts first, that the prosecution failed to prove accused Forkan Mallik’s association with the group of perpetrators, as a member of local Razakar Bahini. Second, the effort the prosecution witnesses have made intending to show accused’s complicity with the commission of the alleged crimes suffers from reasonable doubt and falsity.



**100.** It is now settled that even eyewitness account, when given in all honesty and sincerity, isn't necessarily credible. Merely because a person *claims* to have seen something does not mean that what they remember seeing really happened. To simply be a competent witness, a person must show that he had reasonable and probable opportunity of seeing the event happened. It is to be borne in mind too that competent is not the same as credible. His testimony must be free from bias and concoction.

**101.** It stands proved that accused Forkan Mallik was a close worker of Muslim League. This argument on part of the prosecution does not stand on legs. This fact alone cannot force to conclude that he had association with the group of Razakars who accompanied the army in carrying out attacks. Prosecution is burdened to prove beyond reasonable doubt that the accused Forkan Mallik was an active accomplice and had accompanied the group of army also by providing substantial contribution in accomplishing the crime alleged.

**102.** The PWs stated that local leading Razakars and Forkan Mallik accompanied the group of army. Their narration may be partially true so far as it relates to the attack that resulted in killing of Dr. Deben and his wife by the army and they might have had assistance of local leading Razakars, in carrying out the attack. But their testimony in respect of accused's alleged involvement seems to be deliberate blend, in view of totality of evidence presented before us by both sides.

**103.** D.W.2 a near relative of Dr. Debendra Nath stated that his maternal uncle and his wife were killed by the army. He

admits the suggestion put to him by the defence that Subidkhali Bazaar was mostly Hindu populated. Thus, it was not necessary for the army to get their victims identified by the accused Forkan Mallik who was not a Razakar.

**104.** It is to be noted that failure to prove accused's complicity with the commission of crimes alleged does not make the atrocious acts constituting the offences of murder alleged untrue. Besides, defence does not dispute the killing happened. But as we have found that the prosecution has not been able to prove by adducing credible evidence accused Forkan's complicity with the event alleged.

**105.** We reiterate that the event of attack and killing remains undisputed. It has already been found that the prosecution has failed to establish that the accused was a Razakar member. Defence challenges mainly the presence of accused Forkan Mallik with the group of attackers. Careful and rational assessment of evidence forces to the conclusion that the witnesses have narrated a concocted story of their seeing the event of attack and killing and they in doing it they have falsely implicated the accused as an accomplice of the perpetrators terming him a member of local Razakar Bahini.

**106.** For the reasons stated herein above, we conclude that the prosecution has not been able to prove accused Forkan Mallik's complicity with any phase of the event of attack that resulted in killing four civilians; that the evidence adduced in support of this charge suffers from glaring improbability that taints the truthfulness of their version and as such accused Forkan Mallik cannot be held responsible for the criminal acts

constituting the offence of 'murder' as crimes against humanity as described in this charge no1.

## **Adjudication of Charge 2**

### **[Forcible conversion to Muslim Religion and deportation]**

**107. Summary charge:** This event relates to the criminal act of forcible conversion to Islam religion of three brothers **(1) Ramani Kundu, (2) Dr. Shyam Sundar Kundu and (3) Sunil Kundu** by forcibly bringing them from their houses at Subidkhali bazaar. The event allegedly happened on **15 August 1971** corresponding to 29 Sravan at about 12:00 pm . Afterwards, the act of such forcible conversion to Muslim religion compelled the victims to deport, in fear of life.

Accused Forkan Mollik allegedly substantially abetted, facilitated and contributed the actual commission of the act of forcible conversion to Muslim religion constituting the offence of '**other inhuman act**' and '**deportation**' 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.

### **Witnesses examined**

**108.** This charge involves the criminal act of forcible conversion to religion. Three Hindu civilians of Subidkhali Bazaar were allegedly forced to conversion to Islam religion. Accused Forkan Mallik and his accomplices Razakars allegedly forced the victims to embrace such conversion. Prosecution intending to prove this charge examined 05

residents of the crime locality as P.W.2, P.W.3, P.W.6, P.W.7 Motilal and P.W.13

### **Argument placed**

**109.** The learned prosecutor submitted that the evidence of witnesses examined in support of this charge proves that the three brothers were taken towards Razakar camp by a group of Razakars accompanied by accused Forkan. The event of forcible conversion to Islam religion did not happen in public and as such none had occasion to see it. But the fact of taking the victims by the Razakars to their den fairly indicates that the victims were forced to convert by coercion and the Razakars who took them forcibly were concerned with this act demeaning and infringing religious belief of Hindu civilians constituting the offence of other inhuman act that eventually compelled the victims to deport to India.

**110.** Conversely, the learned defence counsel submitted that the P.W.2, P.W.3, P.W.6, P.W.7 and P.W.13 have testified that they saw the Razakars accompanied by accused Forkan taking Sunil Kundu and two others towards Razakar camp and later on they knew from them that they were forced to convert to Islam religion. Admittedly Sunil Kundu and two others were converted to Islam religion. But D.W.3 a son of one of victims Ramani Kundu stated that they were voluntarily converted to religion of Islam, like the other Hindu people of the locality in fear of army and Razakars and were not forced to such conversion.

## **Deliberation and Finding with Reasoning by evaluation of evidence presented**

**111. P.W.2 Md. Chand Mia stated that** on Shaban 29 at about 12:00 hr. during the war of liberation while he had been at his shop at Subidkhali bazaar, he saw Forkan and his Razakar cohorts forcibly taking Ramani Kundu, Shyam Sundar Kundu and Sunil Kundu , the three siblings to the local Razakar camp set up at old hospital . The three brothers were in dhotis but on their way back, after they were set free, they were wearing caps and had changed to lungi. P.W.2 stated that the three brothers later told him that Razakars forced them to convert.

**112. P.W.3 Shanti Ranjan** an inhabitant of Subidkhali bazaar stated that on 15 August 1971 at about 12:00 hrs he, from hiding place, saw Forkan Mallik Razakar commander Shahjahan Shikder and their armed cohorts taking Ramani Kundu, Shyam Sundar Kundu and Sunil Kundu , the three brothers to the local Razakar camp.

**113.** On the same day at about 16:00 hrs he saw them coming back wearing Panjabi, lungi and cap. On asking the three brothers told that they were forced by Razakars to convert to Islam religion under coercion.. Subsequently, Shyam Kundu and his brothers deported to India for the shame and insult they sustained, P.W.3 stated.

**114. P.W.6 Habibur Rahman Mridha** stated that on 15 August 1971 at about 12:00 noon while he was sitting at his grand father's shop he saw Forkan Mallik, Shahjahan Shikder

[Razakar commander], Jobed Ali, Hamid Ali, Ali Akabbar Gaji and others came to Ramani Kundu's shop and started beating Ramani Kundu, Shyam Sundar Kundu and Sunil Kundu and then they dragged them towards the Razakar camp.

**115.** P.W.6 further stated that on the same day at about 04:00 pm he learnt that the three had returned to home as the Razakars made them released. On hearing it he [P.W.6] went to their home and found the three wearing lungi, Panjabi and cap. On asking, they told that they were forced to convert to Islam religion by reciting *Kalema*. P.W.6 further stated that 10-12 days later they deported to India and never returned.

**116. P.W.7 Motilal Roy** also stated that he on the 15<sup>th</sup> day of August 1971 at about 12:00hr while he was in his school field saw Forkan, Shahjahan Shikder and their cohorts taking Ramani Kundu, Shyam Sundar Kundu and Sunil Kundu , the three brothers to the local Razakar camp. On the same day in evening he went to Ramani Kundu's house and knew that he and his two brothers were forced by Razakars to convert to Islam religion by reciting the holy *Kalema* and changing their names. 10-12 days after this event the three brothers deported to India with their family and never returned for the reason of insult they sustained.

**117.** P.W.13 Abdul Hamid Mallik is a hearsay witness to the alleged fact of conversion to Islam religion of three brothers belonging to Hindu community. According to P.W.13 he heard the event from Ramani Kundu on the following day.

**118.** Admittedly Shyam Sundar Kundu was an MBBS doctor. P.W.6 claims that the Razakars came to Ramani Kundu's shop and started beating him and his two brothers Shyam Sundar Kundu and Sunil Kundu and then they dragged them forcibly towards the Razakar camp.

**119.** It is not understood how the Razakars found the three brothers together available at the shop of Ramani Kundu. Defence could have cross-examined on this point. However, prosecution appears to have failed to show the reason of presence of the three brothers together at the shop of Ramani Kundu.

**120.** The fact of deporting to India, as stated by P.W.3, P.W.6 and P.W.7 seems to be untrue as Gobinda Kundu the son of Ramani Kundu, a victim has deposed as D.W.3 and according to him his uncles have been residing in Datta pukur, India since 4/5 years after the independence[on 1971] and his[D.W.3] father Ramani Kundu had gone to India in 1998/1999.

**121.** Prosecution could not dislodge this version by cross-examining D.W.3. Besides, staying of D.W.3 Gobinda Kundu in Bangladesh itself makes it believable that his father Ramani Kundu and uncles did not deport to India in 1971, as claimed by P.W.3, P.W.6 and P.W.7.

**122.** This charge involves the act of forcible conversion to Islam religion of three Hindu people of Subidkhali Bazaar. Prosecution alleges that the victims were taken to Razakar camp by a group of Razakars accompanied by accused

Forkan, on capture, and forced them to convert to Islam religion.

**123.** The witnesses examined[ P.W.2, P.W.3, P.W.6, P.W.7] by the prosecution have deposed that they saw the Razakars and Forkan taking the victims to Razakar camp and on their return there from they knew, on asking, the alleged forcible conversion to Islam religion.

**124.** We are to assess the credibility of testimony made by the P.W.s in light of circumstances and other factors unveiled in trial. Defence first denies accused's involvement with the alleged criminal act. Second, it denies that Forkan was a member of local Razakar Bahini. Third, by examining one of relatives of victims, defence claims that the victims, being frightened in war time situation, got them converted to Islam religion of their own and not forcibly.

**125.** P.W.2, P.W.3, P.W.6 and P.W.7 claim that they saw accused and his accomplices taking the victims to Razakar camp. It happened in day time, according to them. It is not understood why only and only these four persons had occasion to see the event of criminal acts constituting the offences narrated in charge nos. 1 and 2 ? Why the other people had no occasion to see the accused and others taking the three brothers towards Razakar camp, particularly when it happened in day time? It provides an impression that these four witnesses have made a designed testimony intending to implicate the accused with the alleged event.



**126.** Besides, none of the four witnesses claim to have seen the act of forcible conversion to Islam religion. According to them later on they heard the event from Ramani Kundu. Hearsay evidence is not inadmissible per se. But it must have some corroboration from other evidence.

**127.** Gobinda Kundu son of Ramani Kundu has deposed as D.W.3. We find no reason to disbelieve him. There has been nothing on record that D.W.3 has made a deliberate attempt to save the accused by making partial untrue version. His testimony if taken into account, testimony of P.W.2, P.W.3, P.W.6 and P.W.7 so far as it relates to the fact of alleged conversion to Islam religion deserves to be excluded and we refrain from acting on it in determining complicity of accused with the commission of alleged offence of forcible conversion to Islam religion.

**128.** D.W.3 a relative of one of victims unambiguously stated that his father and uncles got them converted to Islam religion of their own as they became frightened due to the situation prevailing at that time. D.W.3 also stated that apart from the three victims many other Hindus willfully got them converted to Islam religion for same reason and none forced them to do so.

**129.** Gobinda Kundu [D.W.3] is the son of Ramani Kundu one of victims of alleged event of crime as narrated in charge no.2 and thus he could have been the best witness in relation to this alleged event. But for reasons best known to him the IO carefully avoided to examine him. It mirrors his unfair intention to endorse the accusation brought in the case under

Penal Code by P.W.13 Abdul Hamid Mallik against the accused. It is to be noted that the said case under the Penal Code wherein after holding investigation a charge sheet was submitted is the foundation of the instant case. It is admitted.

**130.** Prosecution admits that Subidkhali was Hindu dominated locality. It is historically settled that in 1971, during the war of liberation of Bangladesh, the occupation Pakistani army and their local collaborators significantly targeted the Hindu community treating them the '*agents of India*' and in furtherance of policy and plan they had carried out systematic attack directing Hindu population. Therefore, naturally the victims belonging to Hindu community inevitably had to continue their staying in Bangladesh with terror and panic and thus it was not unlikely for them to get converted to Islam religion temporarily intending to escape the probable attack on them.

**131.** In absence of any credible evidence as to taking the victims to Razakar camp and forcing them to convert to Islam religion it rather becomes believable from evidence of DW.3 that the victims got themselves converted to Islam religion of their own and not on being forced in any manner and they did it to keep them secured considering the war time horrifying situation existed in 1971.

**132.** In view of above deliberation with reasoning we come to the conclusion that the prosecution has failed to prove that the accused Forkan and his accomplices facilitated and contributed the commission of the act of forcible conversion to Islam religion constituting the offence of '**other inhuman act**'

and '**deportation**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and as such the accused Forkan Mallik cannot be held liable for the offence described in this charge.

### **Adjudication of Charge-3**

#### **[Rape upon Golapi Rani Daughter of Ramakrishna of Subidkhali Bazaar]**

**133. Summary charge:** This charge involves the event of forcible capture of Golapi Rani the unmarried daughter of Ram Krishna Saha of Subidkhali bazaar and she was gang raped by taking her at a place known as **Jugibari**. The event happened on 17 **August 1971** corresponding to 31 Sraavan at about 08:00 pm. The victim became unconscious and then she was left abandoned at a place near her house and eventually she died in the midnight of 18 August 1971 and she was buried at the crematorium.

Accused Forkan Mollik allegedly participated, substantially abetted, facilitated and contributed the actual commission of the act of mass rape that resulted in her death constituting the offence of **rape** and **murder** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

#### **Witnesses examined**

**134.** This charge rested upon testimony of **P.W.2** Md. Chand Mia, **P.W.3** Shanti Ranjan Kabiraj, **P.W.7** Motilal and **P.W.13** Abdul Hamid Mallik. Of these four witnesses P.W.2

and P.W.3 claim to have seen the accused Forkan Mallik and his accomplice Razakars forming a group taking Golapi Rani towards Jugibari. P.W.7 Motilal claims to have seen committing rape upon the victim Golapi. And P.W.13 is a hearsay witness.

### **Argument placed**

**135.** The learned prosecutor submitted that the witnesses examined in support of this charge have stated that they witnessed the Razakars and accused Forkan taking the victim Golapi Rani and later on she was left abandoned near her house and she eventually died due to shock, torture and trauma she sustained. Defence does not dispute the commission of the event and that Golapi Rani was mass raped. Defence could not dislodge what has been stated by the witnesses implicating accused Forkan who by his act and conduct facilitated and contributed to the commission of the principal crimes.

**136.** The learned defence counsel argued that prosecution is burdened to prove accused Forkan's complicity with the commission of the offence alleged. The alleged incident happened in night. None had seen actually who committed sexual violence upon the victim. Seeing the Razakars and Forkan taking victim Golapi at a place known as Jugibari, as claimed by the PWs is not at all probable and believable as their statement shall seem to be contradictory on material particular. Besides, since accused was not a member of Razakar Bahini he had no reason of being associated with the local Razakars and to provide assistance to them in carrying out any criminal act forming part of the attack.

## **Deliberation and Finding with Reasoning by evaluation of evidence presented**

**137. P.W.2 Md. Chand Mia [70]** testified in respect of events narrated in four charges framed including this charge no.3 which relates to committing rape upon Golapi Rani a Hindu girl by taking her forcibly to a solitary place by a group of Razakars allegedly accompanied by the accused Forkan.

**138.** In respect of charge no.3, P.W.2 stated that on 31 *Sravan* [in 1971] at about 08:00 pm he saw accused Forkan Mallik, Razakar commander Shahjahan , Belayet Chowkider taking **Golapi Rani** , daughter of **Ram Chandra Saha** towards the betel nut garden at Jugibari.

**139.** Defence could not impeach the above version that materially relates to the event of principal offence and accused's complicity therewith. We find no reason to exclude it. The Razakars and accused Forkan Mallik were the locals of Subidkhali bazaar and as such they could have been seen and recognised even in a shadowy surrounding in night and also with the light of torch spread around the place the group had walked through.

**140.** P.W.2 further stated that on the following day he knew from Shanti Ranjan [P.W.3] that the victim Golapi was subjected to rape by them [Razakars] who brought her forcibly and they left her abandoned in bleeding condition in front of her house at the dead of night where she eventually died.

**141.** Failure of defence to refute this crucial version by cross-examining the P.W.2 forces us to conclude that it became known to the locals including P.W.3 Shanti Ranjan that Golapi died as she was left abandoned by the Razakars after committing untold sexual invasion upon her. Besides, defence does not deny or dispute the event of committing rape upon Golapi Rani by forcibly taking her to the betel-nut garden at Jugibari and that she succumbed to her injuries eventually. It however denies simply accused's complicity to the commission of the crime.

**142. P.W.3 Shanti Ranjan Kabiraj** stated of his seeing Forkan and his accomplices Razakars take a 16-17 year-old girl Golapi Rani to a nearby locality of Jugibari on August 17 at about 08:00 pm. He could recognise Golapi and Razakars Forkan, Shahjahan and Belayet with the light of torch in their [Razakars] hands.

**143.** P.W.3 further stated that in the mid of night victim Golapi was left abandoned in bleeding condition in front of her house and on hearing screaming he rushed to Ram Krishna's house and saw the victim injured and sick and he also heard from Motilal, Ananta, Khitish, who were present there, that Golapi was raped inside the betel-nut garden by Forkan and his accomplice Razakars. Golapi during late night succumbed to her injuries and she was buried at the crematorium. This event forced Golapi's family to deport to India.

**144.** P.W.3, as it appears, was a neighbour of the victim and as such he is a competent and reliable witness. Defence does not

specifically deny the fact of his [P.W.3] seeing the Razakars accompanied by accused Forkan taking Golapi, as stated by P.W.3. Offence of rape or sexual invasion happens in sly. The tragic event of vicious rape upon Golapi a local Hindu girl occurred in war time situation. Naturally, none had fair chance to see the commission of actual crime. But the witnesses deposing before us mainly narrated some material facts relevant to the event and accused's concern and complicity therewith which lawfully prompt us to infer about the commission of the actual crime. .

**145.** We did not rely upon testimony made by P.W.3 in relation to charge no.1, true. But it does not mean that his testimony in its entirety deserves to be excluded. It appears that the defence, true to say, remained refrained cross-examining the P.W.3 intending to refute what he states in his examination-in-chief. Therefore, we do not find any reason whatsoever to disbelieve P.W.3.

**146.** Committing rape upon Golapi and she eventually died due to trauma and torture she sustained are not disputed. But for holding the accused liable for the crime it is to be proved beyond reasonable doubt that the accused was also with the group of perpetrators Razakars who forcibly picked up Golapi Rani.

**147. P.W.7 Motilal Roy** an inhabitant of Subidkhali Bazaar also claims to have seen the accused Forkan Mallik with the group of perpetrators who forcibly picked up and committed rape upon Golapi Rani. He is a potential witness to prove

some material facts relevant to the event and accused's concern and participation therewith.

**148. P.W.7** stated that on 17 August at about 09:00 pm he, Ananta and Khitish had been at Ananta's house nearer to the betel nut garden at Jugibari. And then suddenly they saw light of torch in their hands and sensed movement of people at the betel nut garden. With this they from a hiding place could recognise Golapi Rani, accused Forkan and other Razakars with the light of torch in their [group of perpetrators] hand. P.W.7 went on to state that they then saw, from hiding place, the Razakars committing recurrent rape upon Golapi Rani. They also saw that afterwards Golapi was brought to the road side and they started following them. At a stage they saw them leaving Golapi abandoned in front of her house. It was about 11:00 pm. Golapi eventually died and in the early morning her body was buried at a crematorium.

**149.** It is now settled that cross-examination is the optimal tool in the assessment of credibility of what is testified by a witness. Only the party adverse in interest can be counted on to present the other side of the story, not only through his or her own witnesses, but most importantly through cross-examination.

**150.** But it transpires that the defence neither denied nor controverted the above version that sufficiently connects the accused with all phases of the event. There has been no reason before us that could prompt to disbelieve the testimony of P.W.7. It is to be noted that defence did not care to cross-examine P.W.7 on what he has stated in relation of the event



of rape and murder of Golapi Rani. Rather the above version appears to be natural and there has been no earthly reason to term his testimony untrue.

**151.** The criminal act of sexual invasion was committed upon the victim in the backdrop of war of liberation presumably by the local collaborators at the behest of local potential Razakar commander Shahjahan Shikder. It has been proved beyond reasonable doubt from the evidence of PWs that accused Forkan, although was not a member of Razakar bahini, accompanied the local Razakars presumably by using his sturdy pro-Pakistan mindset and prior affiliation with Muslim League, was also with the group and thereby he facilitated, contributed and participated to the commission of brutal act of sexual invasion that eventually resulted in Golapi Rani's death. Accused Forkan was thus part of a systematic and organised attack directing Hindu community.

**152.** Why the group of Razakars and accused Forkan belonging to same mindset, although did not belong Razakar bahini, committed such horrific attack that resulted in mass rape and murder of a defenceless Hindu girl. We have observed in the case of *Syed Md. Qaiser* that –

It is now settled that in war time, the soldiers assume the use of rape as an effective weapon of launching attack not simply against an individual, but against social and gender stigmas aiming for the advancement of societal break-down. Rape as a weapon of war demoralizes and destabilizes the community and the ties between the victims and the society. When rape is used as a weapon instead of a bullet, the weapon continues to exert its effect beyond the primary victim.[**Para 471 of Qaiser Judgment**]

**153.** Thus, the accused and his accomplices Razakars, in a concerted manner, outraged the civility and they used the act of rape as a weapon instead of bullet. The attack upon Golapi Rani was more than an armed attack.

**154.** On integrated evaluation we find that the P.W.s examined in support of this charge narrate that they saw the victim Golapi taking away from her home towards Jugibari by a group of Razakars and Forkan Mallik. Later on victim Golapi was left abandoned at a place near her home where she died due to torture, shock and trauma she sustained. Indisputably she was sexually ravished and extent of the attack on her eventually caused her death. Defence does not deny it.

**155.** Who committed such brutal criminal acts that resulted in Golapi's death? It was a group of Razakars who took away the victim forcibly to a solitary place where she was subjected to rape. It stands proved. The offence of rape does not happen in public. The proven fact that accused Forkan Mallik was with the group of Razakars inevitably lends conclusion that he too was consciously facilitated and substantially contributed to the commission of the principal crime, by act of accompanying and collaborating the group of attackers..

**156.** It has already been observed that the prosecution has not been able to prove that accused Forkan Mallik belonged to local Razakar Bahini. The list of Razakars **[Exhibit-2]** does not appear to be authoritative and as such disbelieving it we have given our reasoned finding that accused Forkan did not belong to Razakar Bahini. Perhaps the list **[Exhibit-2]** showing the accused Forkan a member of local Razakar

Bahini was prepared by taking advantage of the fact of his being closely and culpably associated with the group of local Razakars, in carrying out criminal activities. At the same time we observed that even an individual is liable to be prosecuted if he is found to have committed criminal acts constituting the offences of crimes against humanity if his act or conduct forms part of attack.

**157.** Therefore, we are not with the defence argument that since accused Forkan Mallik was not a member of Local Razakar Bahini he cannot be held to have had accompanied the group of Razakars. It is immaterial to prove accused's membership in Razakar Bahini for holding him responsible as already it has been proved that in the capacity of an individual accused made him culpably associated with the group of attackers and its criminal activities. It is now jurisprudentially settled that the 'assistance' and 'encouragement' may consist even mere presence with the group of perpetrators. An individual may abet by providing practical assistance, encouragement or moral support to the principals, in accomplishing the crime. It may thus be validly inferred that accused Forkan had acted as a conscious part of collective criminality that makes him equally responsible for the crimes committed.

**158.** Accused's conscious and culpable act of accompanying the group thus formed part of attack directed not only on the body of the victim Golapi Rani but it aimed to cripple the integrity of a family, a community and the society. Mass rape on Golapi Rani that resulted in her disastrous death was not an isolated incident of mere rape. It was the consequence of a

systematic attack against women, in order to send a message of intimidation to the pro-liberation Bengali civilians. The circumstance divulged from evidence leads us to conclude that the perpetrators had carried out the act of sexual violence as an instrument of threat to the civilians of the locality who took stance in favour of war of liberation

**159.** It is immaterial to ask for proof which member or members of the group had acted in which manner. It stands proved from the evidence of competent and natural witnesses that accused Forkan was with the group of local potential Razakars while taking the victim Golapi Rani to the betel nut garden. Presumably accused Forkan sharing common intent and knowing the consequence of his conduct accompanied the group that had actually acted as a criminal venture. His act and conduct were ‘specifically directed’ to the actual commission of the criminal acts constituting the offence of gang rape and murder of helpless girl.

**160.** It remains undisputed that ill-fated victim Golapi Rani died in the same night after she was left abandoned in front of her house in bleeding condition. Isn’t it sufficient to prove that Golapi was subjected to recurrent and brutal rape? Golapi lost her extreme wealth before she died. It was more than causing her death by inflicting such barbaric invasion. In this way a rural innocent girl laid her extreme wealth and life for the cause of our independence. The nation will ever remain indebted to her.

**161.** The criminal act of sexual invasion committed upon the victim in the backdrop of war of liberation presumably by the

local collaborators at the behest of local potential Razakar commander Shahjahan Shikder [now dead]. It has been proved that accused Forkan was with the group of perpetrators and the PWs had fair occasion to recognise him accompanying the group while taking the victim towards the solitary site where the victim was subjected to brutal and recurrent sexual invasion that eventually resulted in her death. The accused Forkan Mallik's culpable act of accompanying the perpetrators towards the crime site Jugibari proves his conscious participation too with the commission of the offence and he did it by sharing common intent. Therefore, accused Forkan Mallik is held liable for participating, facilitating and substantially contributing to the actual commission of the act of gang rape that resulted in her death constituting the offence of 'rape' and 'murder' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and as such he incurs liability under section 4(1) of the Act .

## **Adjudication of Charge no.4**

### **[Rape upon Shova Rani and Sushama Rani]**

**162. Summary charge:** This charge involves the event of committing **rape** upon **Shova Rani and Sushama Rani** by forcibly taking them 20 August 1971 at about 10:00 am from the house of Lalit Karmakar at village Subidkhali bazaar under Mirjaganj police station district Patuakhali to the Razakar camp set up at old hospital building. After committing recurrent rape upon them, they were left abandoned in front of their house. Afterwards they along with their family deported to India, being feared.

Forkan Mollik allegedly participated, abetted, and substantially contributed the actual commission of the act of **'rape'** and **'deportation'** 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.

### **Witnesses examined**

**163.** This charge involves abduction of Shova Rani and Sushama Rani the daughter and daughter-in-law respectively of Lalit Karmakar of Subidkhali. In all four witnesses have been examined to prove this charge. Of four witnesses **P.W.10** Pushpo Rani is the sister of victim Shova Rani; **P.W.3** Shanti Ranjan and **P.W.7** Motilal Roy are from the crime locality and **P.W.2** Md. Chand Mia is from accused's village *Choilabunia*. P.W.10 testified how the victims were forcibly picked up from their house. P.W.7 Motilal is a hearsay witness and P.W.2 and P.W.3 testified the material fact of seeing the Razakars accompanied by accused Forkan taking away the captured victims.

### **Argument placed.**

**164.** The learned prosecutor submitted that the evidence of P.W.10 sister of victim Shova Rani relates to forcible capture of victims by the group formed of Razakars and accused Forkan. Her evidence remained unimpeached. She is a reliable and competent witness who has been corroborated by P.W.2 and P.W.3 as they also saw the attackers taking away the victims at the relevant time. Defence could not dislodge their version even. The facts proved from evidence of PWs offers indisputable conclusion that accused Forkan was with the

group in forcible picking up the victims. Post event relevant facts as testified by the PWs patently depict that the victims were so abducted intending to commit sexual invasion upon them, keeping detained at the Razakar camp set up at old hospital building at Subidkhali. It remained unshaken too that some days after the event the victims and their family deported to India.

**165.** On contrary, the learned defence counsel argued that since prosecution could not prove accused Forkan's membership in local Razakar Bahini he was not with the group of attackers formed of local Razakars. Testimony of PWs is improbable and P.W.10 had no reason to recognise the accused Forkan Mallik.

### **Deliberation and Finding with Reasoning by evaluation of evidence presented**

**166.** At the outset, before we evaluate the evidence adduced, the Tribunal notes that already we have found in our preceding deliberation that the prosecution has failed to prove that accused belonged to local Razakar bahini. But such failure by itself shall not disprove accused's liability if he is found to have had substantially contributed facilitated and assisted the group of perpetrators [Razakars] in accomplishing the principal crime, even in the capacity of an individual.

**167.** We reiterate that prosecuting individuals responsible for committing international crimes, irrespective of their membership of an auxiliary force or political position, will be held accountable for their actions that violate customary international law.

**168.** Therefore, we are to assess whether accused Forkan might have felt encouraged to be associated with the local Razakars in carrying out atrocious activities even in the capacity of an individual of strong pro-Pakistan mindset. Keeping it in mind, now let us evaluate how the event happened and whether the accused was part of the criminal enterprise formed of local Razakars, by culpably accompanying them sharing common intent.

**169. P.W.2 Md. Chand Mia** a shop keeper of Subidkhali in 1971 stated that on 03 Bhadra [1971] at about 08:00 pm he saw Razakars **Forkan Mallik, Razakar commander Shahjahan and Belayet Chowkider** taking Shova Rani, daughter of Lalit Karmakar and his daughter-in-law towards Razakar camp at old hospital.

**170.** It is noticed that defence did not attempt to cross-examine P.W.2 on what he stated about his seeing the accused and other Razakars taking the victims towards the Razakar camp. Besides, the above version related to material particular remained totally unimpeached and defence did not deny it even. Defence thus does not dispute the act of causing torture upon the victims by taking them forcibly.

**171.** P.W.2 further stated that on the following day he knew that the victims were subjected to torture by Razakars and later on they were left abandoned in front of their house. Shanti Kabiraj [P.W.3] arranged their treatment by calling doctor and few days later they along with their family inmates deported to India.



**172.** It transpires from evidence of P.W.2 that he was an inhabitant of the same locality and therefore had natural occasion to know what fate happened to the captured victims at the Razakar camp where they were taken forcibly. Victims and their family, few days after the incident, deported to India as has been stated by P.W.2. It remained unshaken. Why they had to deport? Presumably the inhuman act of sexual invasion caused to victims, taking them to Razakar camp, forced to deport. It also provides corroboration, as material fact, to the principal event of committing rape on abduction.

**173 P.W.3 Shanti Ranjan Kabiraj** of Subidkhali stated that on 20 August 1971 at about 10:00 pm while he had been at the house of one Naran Karmakar, on hearing screaming from the house of Lalit Karmakar he came out and saw **Forkan Mallik, Shahjahan Shikder, Javed Ali, Hamed Ali** and some others taking away Shova Rani daughter of Lalit Karmakar and Sushama Karmakar the daughter-in-law of Lalit Karmakar forcibly.

**174.** Defence could not shake this version that relates to act of abduction of victims by Razakars and accused Forkan. Even the above version remained undenied in cross-examination. Thus, and in absence of anything contrary, we are not inspired to term his testimony untruthful.

**175.** P.W.3 further stated that on the following day, in the mid of night, the victims were left abandoned in front of their house and then he arranged their treatment by Nikunja doctor and few days later they[victims] along with family members

deported to India as they sustained shame, trauma and grave insult and never returned.

**176.** The above part of testimony as made by P.W.3 appears to be natural. P.W.3 as a neighbouring inhabitant of the same locality naturally had opportunity to know what happened to the victims after they were left abandoned in tortured condition. It proves that the victims were forcibly taken away with the devilish intent of subjecting physical invasion upon them. In absence of any earthly reason we are unable to exclude the testimony of P.W.3 so far as it relates to his seeing the group formed of Razakar and accused Forkan taking the victims to Razakar camp and learning the untold torture caused to them at the camp and as a result accused Forkan is equally responsible for the ultimate consequence of the criminal acts of the entire group of perpetrators.

**177. P.W.7 Motilal Roy** [60] was an inhabitant of the crime locality Subidkhali. He heard the event on the following day when he came to bazaar from Naran Karmakar who told that that on the preceding night at about 09:00 pm his brother Lalit Karmakar's daughter Shova Rani and daughter-in-law Sushama Rani were forcibly picked up by Forkan Mallik, Razakars Shahjahan Shikder, Javed Ali Kha, Ali Akbar Gaji. Defence does not deny it and this version remained totally unimpeached too.

**178.** We have found from unshaken evidence of P.W.3 that he heard screaming from the house of Lalit Karmakar while he had been at the house of Naran Karmakar and then he coming out there from saw the accused and his accomplice's Razakars

taking the victims forcibly. Therefore, hearing the event of abduction of victims from Naran Karmakar, as stated by P.W.7 carries probative value

**179. P.W.W.10 Pushpo Rani Karmakar [77]** the sister of Shova Rani one of victims is a star witness to substantiate this charge. She stated how her sister and brother's wife Sushama Rani were forcibly captured. In narrating the event of abduction and post abduction facts, P.W.10 became emotion choked by shedding tears.

**180.** P.W.10 stated that on 3<sup>rd</sup> day of Bangla month *Vadra* at about 9/10 pm Forkan Mallik, Shahjahan , Mannan, Bellal and others attacking her father's house forcibly took away her sister Shova and brother's wife Sushama to the Razakar camp at old hospital building. She saw this attack, hiding in the room.

**181.** Thus, forcible capture of Shova Rani and Sushama Rani from the house of Lalit Karmakar on 3<sup>rd</sup> day of Bangla month *Vadra* at about 9/10 pm by a group of Razakars and their active cohort accused Forkan, as narrated by P.W.10 gets corroboration from the evidence of P.W.2 and P.W.3 as according to these two witnesses they saw the accused and other Razakars taking the victims towards the Razakar camp set up at old hospital building at Subidkhali.

**182.** The version of P.W.10 does not appear to have been dislodged and denied even, in cross-examination of P.W.10. Defence, as it appears, simply suggested P.W.10 that on the date of event accused Forkan had been working as a domestic

aid in the house of one Gani Master and she never had seen accused Forkan till she came on dock to depose. P.W.10 denied it.

**183.** P.W.10 in narrating post abduction facts stated that in the mid night of 04<sup>th</sup> day of *Vadra* Shova and Sushama were left abandoned in front of their house and in early morning her mother on opening the door found them lying there and started crying and with this her relatives, Shanti Ranjan [P.W.3], Motilal [P.W.7] and women neighbours started coming and then they took the victims inside the house and provided care and nursing to them.

**184.** In absence of anything contrary, the fact of leaving the victims abandoned in mid night of the following day in front of their house prompts to infer that none but the group of attackers who forcibly picked up them had left them abandoned there and thus the victims were under the captivity of the group of Razakars and accused Forkan. Sex crime happens in sly. Eye witness is not required to prove this criminal act. Only victim could be the best witness to prove the barbaric wrong done to her. But from the evidence of P.W.10 it appears that on the following day, for safety reason, she [P.W.10] returned back to her in-laws house in Patuakhali and 4-5 days after the event Shova, Sushama, their family and parents deported to India. Defence does not deny it. However, proven fact of taking the victims to local Razakar camp on forcible capture and leaving them abandoned in sick condition, two nights later provide patent indication that the victims were subjected to sexual invasion in captivity—it may be lawfully inferred on totality of evidence presented.

**185.** The above pertinent version remained totally unimpeached and defence did not deny it even. Deportation of victims along with their family as stated by P.W.10 gets corroboration even from P.W.2, P.W.3 and P.W.7.

**186.** In cross-examination, P.W.10 stated in reply to question elicited to her that her in-laws house was in Patuakhali and on 3<sup>rd</sup> *Vadra* [the day of the event] she had been at her paternal home. It thus lends strength to her credibility and competence as witness.

**187.** As regards the reason of knowing the accused Forkan, P.W.10 stated that she knew Razakar Mannan, Bellal who were milk-sellers and Forkan Mallik used to make election campaign around their locality and as such she knew them since prior to the event.

**188.** Defence does not appear to have denied the above version and it did not prefer to cross-examine P.W.10 on this material particular. Thus, we are forced to believe that P.W.10 knew the accused even since prior to the incident happened. Be that as it may, accused Forkan's presence with the group of Razakars in perpetrating the criminal acts stands well proved.

**189.** It has already been proved [charge nos. 3] that the event of abduction of victim and committing brutal sexual invasion upon her at a solitary place was systematically committed by the criminal enterprise formed of local Razakars to which accused Forkan was also a part in the capacity of an 'individual'. The crimes were not isolated. The perpetrators Razakars and accused as the collaborators of Pakistani armed

force had carried out such atrocities, to further policy and plan of the occupation army-- it may be legitimately inferred.

**190.** In adjudicating this charge we find that the event of abduction and committing mass sexual violation upon the victims [**charge no.4**] occurred in similar pattern and by the same group formed of Razakars and their cohort accused Forkan. However, this time the victims were taken to local Razakar camp and not to any solitary garden.

**191.** The criminal act of sexual invasion was committed upon the victims in the backdrop of war of liberation by the group of local group Razakars to which accused was an active associate. Aid and assistance of accused Forkan could reasonably be established even by the relevant facts as heard and seen by the surrounding people, we are of firm view.

**192.** The undisputed criminal act of committing rape upon the victims at the local Razakar camp proves that the camp was used as a 'rape camp' and the Razakars and their associates including accused Forkan, forming a criminal enterprise, considered it safe to carry out such horrific and devilish atrocity which was more than murder by keeping the victims especially belonging to local Hindu community in captivity there on forcible capture, we emphatically infer.

**193.** Obviously, the parties to the dispute have an interest and can be expected to colour, although not falsify, their account of the relevant facts. But other witnesses that are called by the parties to the dispute may often have an air of credibility that can only be assessed if vigorous cross-examination is allowed.

But in the case in hand we see that the defence even did not care to cross-examine the narration made by the witnesses on material particular related to the principal event.

**194.** Failure to cross-examine a witness on a vital part of his/her evidence may be treated as acceptance of that part or even the whole of his/her evidence. If a witness who has given important evidence in the case is not cross-examined intending to refute what he/she stated, it may be assumed that in all probability, his evidence will be accepted, if there is not valid reason to exclude his/her testimony.

**195.** On total evaluation of evidence presented before us, we come to the conclusion that –

- a. Shova Rani and her brother's wife Sushama Rani were forcibly captured from the house of Lalit Karmakar on 3<sup>rd</sup> Vадra[1971] at about 09:00 pm;
- b. The perpetrators formed of local potential Razakars and their associate accused Forkan Mallik;
- c. The victims were kept in captivity at the local Razakar camp;
- d. The victims were left abandoned in sick condition two nights after their forcible capture;
- e. 4-5 days after the event the victims and their family deported to India;
- f. Corroborative evidence of P.W.10 the sister of victim Shova Rani and neighbours P.W.3 and P.W.7 proves the above phases of the event of systematic attack;
- g. The attack was not only directed to two women, it was against the society, community and civilization.

**196.** Defence case as has been extracted from the trend of cross-examination of prosecution witnesses is that the accused

has been falsely implicated by P.W.13 Abdul Hamid Mallik as there has been animosity between them over number of litigations. Admittedly, a case under the Penal Code was lodged on 21.7.2009. Police on culmination of investigation submitted charge sheet in the court of sessions, Patuakhali and then the record was transmitted to the Investigation Agency of the Tribunal set up under the Act of 1973 as the allegations refer to the crimes enumerated in the Act of 1973. And thus information contained in the said case forms the initial foundation of the instant case. And therefore, the defence case is that the accused has been falsely implicated in this case, out of animosity with Abdul Hamid Mallik [P.W.13].

**197.** Ms. Tureen Afroz the learned prosecutor submitted, in course of summing up, that enmity between accused Forkan and P.W.13 Abdul Hamid Mallik, if assumed to be true, does not readily affect the credibility of testimony of other witnesses some of whom are victim, relatives of victims and close neighbours of victims. In absence of any cogent reason their testimony does not go on air.

**198.** We find substance in what has been argued by the learned prosecutor Ms. Tureen Afroz. But we however are not convinced with the defence submission advanced on this aspect. Might be there has been hostile relation between accused and P.W.13 Abdul Hamid Mallik. But the instant prosecution is not based on his evidence alone. Many of direct witnesses to material facts, victim and relatives of victims came on dock to describe the trauma and pain they sustained. Their evidence cannot be flouted on the mere ground of



inimical relation between accused and P.W.13 Abdul Hamid Mallik.

**199.** On integrated evaluation of evidence adduced it has been proved beyond reasonable doubt that the accused Forkan Mallik knowing the consequence of his act of accompanying the group of local Razakars deliberately assisted and contributed them in accomplishing the criminal acts . The group of attackers had carried out its illegal activities violating customary international law as a locally formed 'criminal enterprise'.

**200.** Prosecution is not needed to show that the accused had actual or physical participation at all phases of the event of attack. Even accused's single but active act of accompanying the group of attackers forming part of attack, in furtherance of common purpose, renders his 'participation' to the act of abducting the victims . And it is reasonably enough to conclude that the accused Forkan consciously consented and encouraged the co-perpetrators belonging to Razakar Bahini in carrying out criminal acts constituting the offence of rape upon the victims. In this way, accused Forkan Mallik made him part of 'collective criminality' and thus, he incurred liability equal to that incurred by all other members of the group of Razakars.

**201.** The victims Shova and Sushama deported to India within few days of the event of sexual invasion committed upon them on forcible capture. Defence does not dispute it. Said deportation was not voluntary—it was forced deportation, facts and circumstance lead us to conclude it. Presumably, the

barbaric wrongs done to the victims compelled them and their family to deport. The accused Forkan Mallik and his cohorts Razakars thus cannot absolve of the liability of causing such forced deportation even that constituted the offence of crime against humanity as it was the consequence of the offence of rape committed upon the victims who were forcibly captured from their house by the group of local Razakars. And it stands proved too that accused Forkan Mallik physically present with the group of attackers in accomplishing the act of such forcible capture of victims.

**202.** In view of above deliberation based on reasoning on evaluation of evidence adduced we finally come to conclude that accused Forkan Mallik as an active associate of the group of local Razakars which used to act as a 'locally formed criminal enterprise' is found guilty for participating, abetting and substantially contributing the actual commission of the act of '**rape**' and '**deportation**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and as such he incurs liability under section 4(1) of the Act .

## **Adjudication of Charge no.5**

**[Killing 03 civilians and Rape upon Aleya Begum]**

**203. Summary charge:** This charge relates to Killing 03 civilians (1) **Sanad Kumar Haldar**(2) **Hatem Ali and Elemuddin** of village Kakrabunia and **Rape upon Aleya Begum** the daughter of Hatem Ali that happened pursuant to attack launched in between 22 August 1971 at about 01:00 pm and 22 August early morning. Aleya begum was forcibly

brought to Patuakhali circuit house where keeping her confined mass rape was committed upon her.

Accused Forkan Mollik allegedly participated, substantially abetted, facilitated and contributed the actual commission of the act of **murder** of 03 civilians and mass **'rape'** **constituting the offences of** 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.

### **Witnesses examined**

**204.** Prosecution, to prove this charge, examined as many as 05 witnesses including rape survivor Aleya Begum [P.W.4]. All of them are from the crime village Kakrabunia. P.W.5 Selim Haowlader is cousin brother of victim. The PWs have testified how Hatem Ali father of victim Aleya, civilians Sanad Kumar and Elemuddin were killed in conjunction with the attack launched by the group formed army, local Razakars, accused Forkan Mallik.

### **Argument placed**

**205.** The learned prosecutor Mr. Mokhlesur Rahman Badal and Ms. Sabina Yesmin citing testimony of victim and her relative and neighbours submitted that the event of attack that resulted in killing of victim's father and two other civilians and abduction of victim Aleya and committing mass rape upon her in captivity has been well proved.

**206.** The learned prosecutors further submitted that it has been proved beyond reasonable doubt that as a notorious collaborator of local Razakars accused Forkan made him able to be associated even with the army came at Kakrabunia to carry the operation. The crime village was almost surrounded by river and canals. Naturally the army who planned to launch attack directing the pro-liberation civilians of the village they inevitably needed effective assistance and aid in accomplishing the criminal acts.

**207.** Defence argued that since it has not been proved that Forkan Mallik was a member of local Razakar bahini he cannot be said to have had accompanied the group of attackers in dragging out Aleya Begum the newly married daughter of Hatem Ali with a rifle in his hand. This serious notion makes it reasonably doubted that Forkan Mollik gunned down Hatem Ali to death with the rifle in his hand

### **Deliberation and Finding with Reasoning by evaluation of evidence presented**

**208. P.W.4 Aleya Begum** [60] the victim of mass rape is the star witness to prove this charge. Let us eye first on her testimony. Now she is 60 years old. In 1971 she was married. She had been at her paternal home when the event of attack occurred in 1971. Her testimony depicts horrific narration of killing her father and her forcible capture followed by untold and barbaric physical invasion caused to her for three days in captivity.

**209.** P.W.4 stated that on the 5<sup>th</sup> day of Bangla month Vadra [in 1971] she had been at her paternal home along with her

husband. At about 13:30 hrs she could see, from courtyard of their house, the Pakistani army and Razakars arriving near the bazaar by a gunboat. After crossing the wooden bridge they started indiscriminate gun firing and looting. At about 15:00 hrs Razakars and army came to their house and on seeing them she and her father went into hid under a cot in room. Razakar Akabbar Gaji asked Forkan saying-- '**Hey Forkan, catch hold this girl**'. She remained under the cot by holding its legs firmly. Akabbar Gaji again told Forkan to drag her [Aleya] out. With this, P.W.4 added, Forkan dragged her out and then her father told that he would complain to their Major for their wrongs. Forkan then instantly gunned down her father Hatem Ali to death at their courtyard. She jumped on the body of her bullet hit father-- but Forkan kicked her and he and his accomplice Akabbar Gaji dragged her to gun boat where she was kept confined. After the dusk she was brought to a building in Patuakhali by gun boat.

**210.** The above is thus version involving the act of dragging Aleya Begum out and killing her father. It transpires that only two members of the group of attackers --Razakar Akabbar Gaji and Forkan entered into Aleya's room and thus naturally it was possible for her to know who was Forkan as Razakar Akabbar Gaji asked Forkan saying-- '**Hey Forkan, catch hold this girl**'. This version remained unshaken and even it could not be denied even.

**211.** P.W.4 in narrating what happened to her next stated that after the dusk she was taken to a building where she found some youth women in a room in tortured condition as they were subjected to untold torture by Razakars and army, she

understood. One of them, on her asking, told that the place was circuit house. Akabbar Gaji and Forkan brought her to another room where during night some army men sexually violated her and some times later she was taken back to the earlier room by Akabbar and Forkan where they too committed rape upon them.

**212.** The above unshaken version patently provides scenario how the victim was subjected to physical invasion in captivity in Patuakhali circuit house and accused Forkan and Razakar Akabbar Gaji aided and assisted the army men in satisfying their beastly lust.

**213.** It appears too from evidence of P.W.4 that Razakar Akabbar Gaji was known to her since prior to the event as he was their neighbour and she could identify Forkan as Akabbar called him by his [Forkan] name. This was the reason how the victim could know that the man accompanying Akabbar Gaji was Forkan Mallik. It was quite natural.

**214.** In respect of the concluding phase of the event P.W.4 , by shedding tears, stated that she became pale in captivity at circuit house and thus two days after Forkan and Akabbar brought her back there from by a boat and she was left abandoned nearer to their house. Afterwards, her uncle Adam Ali and cousin brother Selim [P.W.5] finding her lying there took her inside the house and arranged medical treatment by Mukundo doctor.

**215.** P.W.4 finally stated that her husband is still alive but does not take care of her. He accepted her, after this event, as

an amount of money was given to him by selling her paternal property and now her husband has been staying with his second wife.

**216.** Thus, the evidence of victim P.W.4 Aleya Begum demonstrates how she was forcibly taken to Patuakhali circuit house and how she was presented before the army by Razakar Akabbar Gaji and Forkan ; how she was recurrently ravished even by Akabbar Gaji and his accomplice Forkan. For the dishonor she sustained her husband eventually felt reluctant to accept her and finally her husband abandoned her.

**217.** Testimony of P.W.4 also demonstrates that at the said army camp at Patuakhali circuit house she found many other youth women detained who were subjected to sexual ravishment. It suggests that the camp was used as a ‘rape encampment’ with which the accused Razakars and their notorious associate Forkan had active affiliation.

**218.** The curse of rape as a weapon, affects not only the life of an individual, but the entire family and community in which she lives. The severely affected life of victim Aleya Begum is a conspicuous example of the post rape effect. After the crime committed upon her, she lost her normal life, husband’s affection, conjugal bondage with her husband.

**219. P.W.5 Selim Haowlader [59]** is a cousin brother of victim Aleya Begum [P.W.4] His testimony demonstrates that at the initiation of the attack launched on 05 Vadra [1971] at about 01:00 pm the group of army and Razakars started indiscriminate gun firing causing death of one Sanad Kumar

and an unknown civilian. He saw the attack remained in hiding on the bank of canal.

**220.** No specific denial finds place in cross-examination of P.W.5. Thus, the above unshaken version lends corroboration to the act of launching attack at Kakrabunia.

**221.** It is to be noted that the purpose of cross-examination is to challenge the evidence of the witness. If a witness is not cross-examined then what the witness has said can be taken as unchallenged and true. Failure to cross examine a witness on a vital part of his evidence may be treated as acceptance of that part or even the whole of his evidence. In the case in hand, defence, as it appears, remained refrained from cross-examining P.W.5 on vital points.

**222.** Next, P.W.5 in narrating the event of attack at their house stated that at about 03:00 he saw 10-12 Razakars, army accompanied by Akabbar Gaji and Forkan Mallik coming towards their house. He instantly coming to house asked his uncle Hatem Ali and his mother to go into hid. But his uncle Hatem Ali and his daughter Aleya on failing to go elsewhere went into hid under a cot inside room. Razakars and the army looted their houses. At a stage he saw Akabbar Gaji and Forkan entering into his uncle's room wherefrom they dragged out Aleya Begum when Hatem Ali attempted to resist. But Forkan gunned down his uncle Hatem Ali to death. Seeing it Aleya jumped on the bullet hit body of her father. Forkan then kicked her and handed her over to another Razakar who brought her to gun boat anchored nearby.



**223.** Testimony of P.W.5, another direct witness to the event of attack that resulted in killing of Hatem Ali and forcible taking away his daughter Aleya begum corroborates to what has been stated by victim Aleya Begum [P.W.4]

**224. P.W.8 Sundar Gaji [65]** a fish seller by profession at Kakrabunia Bazaar stated that around 2:00pm on the 5th day of Bangla month Bhadra, he saw the Pakistani army and local Razakars arrive at the market and opened gunfire indiscriminately. Forkan Mallik and Akabbar Gaji were among them [attackers], he said, adding that they also looted the shops there. He had witnessed the lootings from behind a mosque. Forkan shot one Sanad Kumar from behind when he was fleeing and he died on the spot.

**225.** P.W.8 Sundar stated that Forkan, who was acquainted to him, also caught him and forced him to load looted goods onto their gunboat before releasing him. This version remained undisputed and thus this witness and his testimony may safely be relied upon

**226.** In respect of the next phase of the attack directing victim's house, P.W.8 is a hearsay witness. According to him he went to victim's house later on and heard the event of killing Hatem Ali and forcible capture of Aleya Begum. He heard that Forkan and another Razakar Akabbar took the victim to Patuakhali Circuit House, which was an army camp, wherein she was mass raped in captivity and two days later, she was sent back home in a critical condition. P.W.8 also stated that he heard from the victim that Forkan Mallik and

Akabbar Gaji took her to Patuakhali Circuit House and they along with the Pakistani army men raped her.

**227. P.W.9 Rakhil Chandra Bhakto [60]**, from village Kakrabunia under Mirjaganj police station, testified the attack corroborating P.W.8 and P.W.5. He stated that Razakars including Forkan Mallik and Akbar Gazi led the Pakistani troops to their village on 05 Bhadra (Bengali month) in 1971. They looted 13/14 Hindu houses and set fire to those. After their departure, they came out from their hidings and went to Kakrabunia Bazaar. On their way, they saw bodies of their neighbors Elem Uddin, Sanad Kumar and Hatem Ali and came to know that Forkan Mallik shot them dead.

**228.** The above piece of version corroborate P.W.5 and P.W.8 in proving the fact of killing Sanad Kumar and Elemuddin at Kakrabunia bazaar, in conjunction with the attack by the group of army and Razakars whom the accused Forkan Mallik actively accompanied . Defence does not dispute it in any manner. Their testimony on this aspect remained unshaken. Defence did not cross-examine them on this point. The purpose of cross-examination is to challenge the evidence of the witness. If a witness is not cross-examined then what the witness has said can be taken as unchallenged and true.

**229.** P.W.9 heard from Selim [P.W.5] a cousin brother of victim Aleya the event of killing Hatem Ali and forcibly picking up Aleya by Forkan and Akabbar Gaji who took her to gun boat. Aleya was set free three days later in dreadful condition and after she had come to sense, they learned that Forkan Mallik, his accomplice Akabbar Gaji and Pakistani troops violated her at Patuakhali Circuit House.

**230.** P.W.8 and P.W.9 are hearsay witnesses to the phase of attack involving killing Hatem Ali and forcible capture of his daughter Aleya Begum [P.W.4]. But their hearsay testimony carries probative value as they heard it from Selim [P.W.5] cousin brother of victim and later on also from victim [P.W.4]

**231. P.W.1 Habibur Rahman Badsha [59]** before he started testifying the core facts stated some relevant facts. These are he knew the accused Forkan and Razakars Shahjahan Shikder , Hamid Khan, Akabbar Gaji, Ajahar Khan as they collectively participated the election campaign in support of Muslim League candidate, in 1970's election. And this was the reason of knowing them including accused Forkan. Defence could not dislodge it in any manner. Besides, in cross-examination it has been re-affirmed as P.W.1 in reply to question put to him stated that during 1970 accused Forkan used to come to their locality for carrying out election campaign and thus he knew it.

**232.** Next, according to P.W.1 village Kakrabunia was a strong part for Awami League. **P.W.1 Habibur Rahman Badsha [59]** stated that at about 01:30 pm on 22 August 1971 on hearing frequent gun firing he came out to Kakrabunia Bazaar and saw Sanad Kumar and unknown one dead by gun shot and also saw accused Forkan Mallik and the army looting the Bazaar.

**233.** Thus the attack was initiated by carrying out looting and destructive activities at Kakrabunia bazaar and in conjunction with the attack the attackers had gunned down two civilians-- Sanad Kumar and one unknown civilian when accused Forkan

Was with the group of attackers. Defence could not shake it in any manner and it does not appear to have denied it specifically even, in cross-examination of P.W.1.1

**234.** P.W.1 further stated that next Forkan Mallik and his accomplices Razakars attacked the house of Hatem Ali a supporter of Awami League. He[P.W.1] later on heard from Selim[P.W.5] the son of Hatem's brother and others that Forkan and Akabbar Gaji[now dead] dragged out Aleya the daughter of Hatem Ali of house and took her away to the gun boat[ anchored on the bank of river]. Aleya's father was gunned down to death by accused Forkan as he resisted the taking his daughter forcibly.

**235.** Hearing the event of attack at Hatem Ali's house and dragging his daughter Aleya [P.W.4] out of the house when her father Hatem was killed by accused Forkan as he attempted to resist the perpetrators from Selim[P.W.5] was quite natural as he was brother's son of Hatem Ali.

**236.** Thus, the hearsay version as has been made by P.W.1 about forcible capture of Aleya Begum [P.W.4] and killing her father Hatem Ali carries probative value. Besides, defence does not dispute the act of abduction of Aleya Begum and killing her father, in conjunction with the attack. It appears too that P.W.1 has not been cross-examined on this material particular.

**237.** P.W.1 further stated that afterwards, at about 15:00 hrs the group of Razakars accompanied by accused Forkan attacked the Hindu dominated area of the village and on their

way Pakistani army had killed one Elemuddin and they had carried out looting and destructive activities directing civilians' property especially to Hindu community.

**238.** The above version too remained totally unshaken. Defence did not question the event divulged from the above version, to shake its credibility. Thus and in absence of any valid reason we are unable to exclude his testimony.

**239.** Later on, P.W.1 also heard from Aleya that she was taken to Patuakhali circuit house by gun boat and she was subjected to mass rape by army men, Razakars and Forkan Mallik keeping her in captivity there for three days. Three days after her forcible capture she was left abandoned nearer to her father's house in serious condition.

**240.** As a local man P.W.1 was naturally supposed to know what actually happened to Aleya after she was forcibly taken to Patuakhali circuit house. Additionally, defence totally refrained from cross-examining the P.W.1 on this particular. Be that as it may, hearsay evidence of P.W.1 inspires credence and carries probative value.

**241.** On cumulative evaluation, it transpires that P.W.4 Aleya Begum's testimony is enough to prove the extreme misdeeds done to her in captivity at Patuakhali circuit house. It stands proved that accused Forkan was with Razakar Akabbar Gaji when Aleya Begum[P.W.4] was caught after gunning down her father to death by Forkan. It happened in day time. P.W.5 a cousin brother of P.W.4 too had occasion to see the event. Testimony of P.W.4 Aleya Begum depicts how she was

ravished at Patuakhali circuit house by the army, Razakar Akabbar Gaji and Forkan. Defence could not shake this material fact as stated by the victim herself.

**242.** Certainly, evidence adduced if not challenged in cross-examination by the defence must generally be accepted by the court to be true unless it is considered to be incredible or contradicted by other evidence. The manifold purposes of cross-examination are well recognized. The main among them are:

- (a) To discredit or impeach the testimony of a witness;
- (b) To support some assertions favorable to the defence; or
- (c) To bring out some independent evidence favorable to the defence

**243.** But in the case in hand, we found that the defence either failed or remained refrained from cross-examining the witnesses challenging the credibility of their statement made in examination-in chief.

**244.** Defence did not cross examine on the issue of recognizing the accused Forkan Mallik and dragging the victim Aleya out of their house forcibly by him and his accomplice Rashid. Be that as it may, and since there has been no reason to exclude the above version it stands proved that accused Forkan actively participated to the accomplishment of Aleya's abduction.

**245.** We have found that the group of attackers formed of army and Razakars had launched the attack directing the village Kakrabunia and in conjunction with the attack they

with assistance of their local aide Akabbar Gaji and accused Forkan Mallik. The army men arrived at Kakrabunia bazaar by gun boat. The locality was surrounded by river and canals. It is evinced that instantly after arriving at Kakrabunia bazaar the army men and their accomplices Razakars intending to spread terror started indiscriminate gun firing that causes death of two civilians --Sanad Kumar and Elemuddin. Accused Forkan and Razakar Akabbar Gaji were also with the army men.

**246.** The proven fact of accompanying the group towards the house of Hatem Ali the father of rape survivor provides rational indication that the accused Forkan Mallik sharing common intent of the group accompanied and guided the group in furtherance of an evil design. The army men the principal offenders were not at all familiar with the rural locality surrounded by river and canals and it were the accused Forkan and some of his accomplices Razakars who as infamous collaborators of the Pakistani occupation army not only guided them consciously towards the crime site but they also provided active and culpable facilitation in launching attack to the house of the victim Aleya Begum and other Hindu civilians intending to accomplishing the common purpose of the attack directing the civilians.

**247.** The act of the accused Forkan forming part of the ‘attack’ eventually resulted in committing the offence of ‘mass rape’ upon the victim Aleya Begum in captivity for three days. It was indeed more than a murder commission of which was substantially facilitated and assisted by the accused Forkan Mallik a close and notorious associate of Razakars and army .

**248.** The offence of sexual violation happens in sly. The victim herself is the best and sole witness to the act of physical invasion committed upon her in captivity. In the case in hand, victim herself has testified, with immense trauma, as P.W.4. It is believed that a woman must not come with a false accusation of harming chastity of her own, the extreme wealth of a woman. No women would prefer to bring a false accusation that stamps stigma on her life, and makes her social and family life shattered. We find no reason to disbelieve her [P.W.5] testimony. The relevant fact, as has been stated by P.W.4 which stands undisputed that her husband, on being aware of the matter of her having been ravished by the army and Razakars at Patuakhali circuit house, refused to accept her and however, afterwards in exchange of an amount of money provided to him by selling paternal property, at a stage, he agreed to accept her. But now she is alone, her husband has abandoned her. All these post event material facts provide further indication as to the truthfulness of her version.

**249.** Core aspect of the criminal acts causing traumatic event is retained in human memory as it relates to 'episodic memory'. P.W.4 the victim thus they has testified the core phase that is still retained in her memory. Thus, episodic memory provides, in other words, an autobiographical framework that permits recollection of personally-experienced activities and the time and context in which they occurred. Relying on such reality we may safely depend upon the testimony of victim Aleya Begum [P.W.4]

**250.** Defence argued that since it has not been proved that Forkan Mallik was a member of local Razakar bahini he



cannot be said to have had accompanied the group of attackers in dragging out Aleya Begum the newly married daughter of Hatem Ali with a rifle in his hand. This serious notion makes it reasonably doubted that Forkan Mollik gunned down Hatem Ali to death with the rifle in his hand

**251.** The victim was forcibly taken to the army camp set up at Patuakhali circuit house where she was recurrently ravished by the army, Razakars and during her captivity she heard Razakar Akabbar Gaji calling Forkan Mallik by his name and this was the reason of knowing the accused Forkan.

**252.** In order to prove an individual's liability in committing the offence of rape as crime against humanity, it is sufficient to show that he was knowingly part of the design of the group of offenders and consciously assisted and abetted them in committing the actual offence.

**253.** The act of the accused Forkan as divulged from evidence was part of the attack against the civilian population that resulted in killing three civilians including Hatem Ali the father of victim Aleya begum, looting and destructing properties of civilians and committing mass rape upon Aleya begum in protracted captivity at the army camp at Patuakhali circuit house.

**254.** It is also inferred from the circumstances divulged from evidence that the accused was also a part of such systematic attack as it has been proved that he too by virtue of his pro-Pakistan political prominence in the locality became enthused to provide assistance and aid to the army men and Razakars in

carrying out the attack directing the local pro-liberation civilians.

**255.** Defence does not dispute the event and it could not refute it too. It has been proved too from the evidence of victim that she was mass raped by Razakars and army men at the camp at circuit house as she was taken there forcibly. The victim apart from accused Forkan also described the name of the potential Razakar members including its commander who had committed the act of her forcible capture.

**256.** It has been proved beyond reasonable doubt that Aleya's [P.W.4] father Hatem Ali was shot to death, in conjunction with the attack. It stands proved from evidence of P.W.4 and P.W.5 the direct witnesses to the event of killing Hatem Ali. It is found proved too from the evidence of P.W.4 and P.W.5 that before forcible capture of Aleya the accused Forkan who was with the attackers had gunned down Hatem Ali to death. Killing of Hatem Ali by gun shot is not disputed. From the evidence of victim P.W.4 Aleya Begum it has been proved beyond reasonable doubt that she was kept in captivity at the army camp at Patuakhali circuit house where she was recurrently sexually ravished by army, Razakar Akabbar Gaji and accused Forkan. Thus, Forkan as a direct perpetrator actively accompanied and facilitated the group to all phases of commission of the crimes including the act of keeping the victim confined at Patuakhali circuit house and committing mass rape upon her. He knowing the consequence of his act and to further common purpose had acted in facilitating victims' confinement and the act of rape upon her and thereby accused Forkan Mallik, we come to conclude, participated,

abetted, facilitated and contributed the actual commission of the act of '**murder**' of 03 civilians and mass '**rape**' **constituting the offences of** 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 and thus he incurs liability under section 4(1) of the Act.

### **IX. Plea of Alibi and Defence witnesses examined**

**257.** Defence chiefly claims that accused was not a Razakar and he in the month of September 1971 had gone to the freedom fighters' camp at Bokabunia under Mathbaria police station where he used to work as a source and thus his involvement with the crimes alleged stands untrue. Defence has thus taken a plea of alibi. But has it been suggested to any of prosecution witnesses in cross-examination?

**258.** At the outset, the Tribunal notes that the 'defence case' always is to be attributed from the suggestion put to the prosecution witnesses by the defence. In the name of asserting defence case the prosecution cannot be put under surprise by claiming quite new averment by examining defence witnesses. In evaluating defence evidence we are to examine whether the version they made before the Tribunal is consistent to what has been suggested to prosecution witnesses by the defence.

**259.** However, in support of this *plea of alibi* accused examined one of his relatives, a freedom fighter, as D.W.1. He chiefly deposed that since September 1971 accused Forkan was at their camp and had been working as their source and at that time he was a boy of 10-12 years. But it remains

uncorroborated by any other evidence. D.W.4 another relative of accused Forkan does not state anything on it.

**260.** D.W.4 Mozammel Haque another relative of accused Forkan simply deposed the existing conflict between Forkan and Hamid Mallik [P.W.13] over litigations. But he does not say that accused Forkan went to the freedom fighters camp with D.W.1 Ishak Ali Khan. Being a relative of accused, D.W.4 was naturally supposed to know this fact. But he remained mum on this pertinent aspect while deposing in Tribunal.

**261.** We reiterate that the Defence was required to enter the defence of alibi by putting suggestion to the prosecution witnesses, in cross-examination with specificity as to the place or places at which the accused claims to have been present at the time of the alleged crimes. It is to be noted too that prosecution's burden never lessens for the reason of success or failure to prove the plea of alibi. It has been observed by the ICTR Appeal Chamber that

“The only purpose of an alibi is to cast reasonable doubt on the Prosecutor's allegations, which must be proven beyond reasonable doubt. In alleging an alibi, the accused merely obliges the Prosecution to demonstrate that there is no reasonable likelihood that the alibi is true.”

**[Nahimana, Barayagwiza and Ngeze, (Appeals Chamber), November 28, 2007, para. 417]**

**262.** Further, according to D.W.4, accused Forkan Mallik came to Dhaka instantly after independence in 1971 and started living here. Why? In absence of any clarity, it may be validly presumed that accused in fact attempted to keep him

concealed for the reason of his untold misdeeds he committed around the crime localities as a notorious associate of criminal enterprise formed of local Razakars.

**263.** Besides, it transpires that the version made by D.W.1 does not seem to have been suggested to any of Prosecution witnesses and thus now prosecution cannot be put under surprise by claiming such plea of alibi. Thus, the claim of accused's staying away from his native locality since the month of September 1971, as claimed by D.W.1 does not inspire credence.

**264.** Testimony of D.W.1 does not stimulate to conclude it reasonably that at the relevant time of commission of crimes proved the accused Forkan Mallik was away from the crime sites or his native locality.

**265.** In view of above , and since it has been proved beyond reasonable doubt that accused Forkan Mallik was an active complicit to the crimes committed on different dates during the last part of the month of August 1971[as narrated in charge no.s 3,4 and 5] the *plea of alibi* taken does not inspire credence at all.

**266.** The defence, as it appears, has failed to prove the *plea of alibi* with certainty to exclude the possibility of presence of accused Forkan Mallik at the crime localities at the relevant time in 1971. Therefore, claim of remaining elsewhere, at the relevant time, does not come into play, in any manner, to negate the prosecution case.

**267. D.W.2 Mridul Chandra Sen** deposed that the group of army had killed his maternal uncle Dr. Deben and his wife Biva. This DW simply deposed to exclude accused's complicity to the commission of the crime [as narrated in charge no.1]. But already on evaluation of prosecution evidence we have found that prosecution could not prove that the accused was accountable for this event of attack.

**268.** Next, **D.W.3 Gobinda Kundu** deposed that his father and two uncles had to convert to Islam religion voluntarily in fear of existing situation and none forced them to convert to Islam and they did not deport to India in 1971. This witness came on dock chiefly to refute the arraignment brought against accused as an accomplice of perpetrators Razakars in committing the offence of forced conversion to Islam. But already on analysis of prosecution evidence accused has been exonerated from this charge as the accusation brought against him could not be proved beyond reasonable doubt.

**269.** Thus, we see, that evidence of D.W.2 and D.W.3 does not come into play in disproving or refuting the arraignment brought against the accused in the charge nos. 3,4 and 5, in any manner, for which he has been found accountable.

## **X. The context prevailing in 1971 in the territory of Bangladesh that made the 'Attack' systematic**

**270.** It is now settled history that in the War of Liberation that ensued in 1971, all people of East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalee, Biharis, other pro- Pakistanis, as

well as members of a number of different religion-based political parties joined and/or collaborated with the Pakistan military to actively oppose the creation of independent Bangladesh and most of them committed and facilitated the commission of atrocities in the territory of Bangladesh.

**271.** Razakars, an auxiliary force was formed to collaborate with the Pakistani occupation army in annihilating the Bengali nation. Pro-Pakistan political parties including Jamat E Islami, Muslim League etc. had played key role in forming this auxiliary force and they symbolized the pro-liberation Bengali people as their '*enemies*' and '*miscreants*'. Even without joining any auxiliary force many of pro-Pakistan mindset sided with the occupation army and assisted and contributed to the commission of atrocious activities.

**272.** The events of attacks narrated in the charges, in the case in hand, were systematic and to further policy and plan directing the pro-liberation civilians and the members of Hindu community. The Pakistani occupation army had carried out such atrocious activities through out the territory of Bangladesh in 1971, during the war of liberation with the active and culpable aid of Razakars and their close associates.

**273.** The army men and Razakars were the principal perpetrators and their local collaborators even in the capacity of individuals substantially aided and abetted them in accomplishing the crimes and all the criminal activities happened in context of war of liberation of Bangladesh. Therefore, the crimes alleged were the offences of murder and rape as crimes against humanity.

**274.** In the case of *Abdul Quader Molla*, the Appellate Division focusing the notion of ‘systematic attack’ has observed that –

“We would nevertheless add that given the fact that the whole world knows what went on in Bangladesh in 1971 and given that it has been proved by evidence that the Appellant committed the offence with a view to obliterate the war of Liberation and the cherished aspiration of the Bengali people to attain Liberation, in conjunction with Paki army which was bent to crush that aspiration in a planned, pre-meditated and systematic manner through countrywide operation, it is axiomatic, that the offences formed part of systematic and widespread operation and hence the same stand proved any way on Judicial notice of fact of common knowledge.”

[Justice A.H.M Shamsuddin Chowdhury, Judgment’s relevant Page 752]

**275.** The above reflects the ‘context’ and it by itself suggests that the offences of crimes against humanity as specified in section 3(2)(a) of the Act of 1973 committed in 1971 during the war of liberation for which the accused has been arraigned and found responsible were the predictable effect of part of ‘systematic’ and ‘planned’ attack’ ‘committed against civilian population’ .

**276.** Allegations brought against the accused Forkan Mollik @ Forkan center around the atrocious events of killing civilians, rape, wanton destruction of civilians property, deportation constituting the offences of crimes against humanity. All the events allegedly took place systematically, in furtherance of policy and plan, during the war of liberation in 1971 around the locality under police station Mirjaganj of district Patuakhali.



## XI. VERDICT ON CONVICTION

**277. For** the reasons recorded in our Judgement and having considered all evidence and arguments advanced by both sides, we find the accused **Md. Forkan Mollik @ Forkan --**

**[Charge No.1]: NOT GUILTY** of the offence of abetting, facilitating and contributing the actual commission of killing 04 unarmed civilians constituting the offence of '**murder**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus he be **acquitted** thereof.

**[Charge No.2]: NOT GUILTY** of the offence of substantially abetting, facilitating and contributing the actual commission of the act of forcible conversion to Islam religion constituting the offence of '**other inhuman act**' and '**deportation**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus he be **acquitted** thereof.

**[Charge No.3]: GUILTY** of the offence of participating, abetting, facilitating and contributing the actual commission of the act of mass rape that resulted in her death constituting the offence of '**rape**' and '**murder**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus he be **convicted** and sentenced under section 20(2) of the said Act.

**[Charge No.4]: GUILTY** of the offence of participating, abetting and substantially contributing the actual commission of the act of '**rape**' and '**deportation**' as crimes against humanity as enumerated in section

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

**[Charge No.5]: GUILTY** of the offence of

participating, abetting, facilitated and contributing the actual commission of the act of **murder** of **03** civilians and '**mass rape**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus he be **convicted** and sentenced under section 20(2) of the said Act.

## **XII. VERDICT ON SENTENCE**

**278. Mr. Mokhlesur Rahman Badal and Ms. Tureen Afroz** the learned prosecutors finally submitted that accused Forkan Mallik should face the highest sentence, being a sentence of death, as he is proved to have had abetted, substantially facilitated and participated to the commission of horrific criminal acts constituting the offences of causing devilish physical invasion upon four women of the locality under Mirjaganj police station of district Patuakhali of whom three belonged to Hindu community one of who eventually dies due to trauma and injuries sustained resulting from brutal sexual violence.

**279.** Accused Forkan Mallik, as it appears did not keep him distanced from the culpable association of the group of local Razakars headed by Shahjahan Shikder [now dead] and thus his conduct and act were to further common purpose of the local Razakars. In carrying out the attack as narrated in charge no.1 and charge no.5 accused Forkan actively and sharing common intent accompanied the group of attackers formed of

army and Razakars. Accused's active participation and contribution to the event of killing of Hatem Ali and rape upon her daughter Aleya Begum [P.W.4] on forcible capture, as narrated in charge no.5 aggravates his liability

**280.** In respect of the events of attack as narrated in charge nos. 2,3 and 4 were launched by the group of local Razakars under the headship of Shahjahan Shikder and accused Forkan was their conscious and active accomplice. Of these two charges charge no.3 relates to rape and murder of a Hindu girl, on forcible capture from her house. Pattern and extent of gravity of the offence inevitably aggravates accused's liability.

**281.** It has been further submitted that the accused deserves no compassionate view even if it is not believed that he belonged to local Razakar Bahini. There has been no bar in prosecution, trying and punishing an individual for the crimes enumerated in section 3(2) of the Act of 1973. It has been proved that accused Forkan deliberately and being enthused by his strong pro-Pakistan mindset made him associated with the local Razakars and the criminal activities carried out by them and in this way he is found to have had acted with extreme notoriety in committing the crimes.

**282.** The learned prosecutors argued that taking all these aggravating factors into account only the highest sentence would be just and appropriate to be awarded and only in this way he can be punished for the crimes causing incalculable torment to the victims and their family.

**283.** On contrary, Mr. Abdus Salam the learned defence counsel, in respect of punishment, simply submitted that the accused Forkan Mallik was not a Razakar Member and as such he had no reason to accompany the local Razakars and the army who by forming group had launched attacks directing civilians of Subidkhali and Kakrabunia. He was not with any such criminal activities in any manner for which he has been indicted and he had no nexus with the army or Razakars and did not have concern with any of crimes in question. Prosecution failed to prove the arraignment brought against him and thus Forkan Mallik deserves acquittal.

**284.** Tribunal notes that out of five charges three [**charge no.s 3, 4 and 5**] have been proved beyond reasonable doubt. The proved three charges relate to **rape** and **murder**. Prosecution, as has already been found, has failed to prove accused Forkan's liability for the offences as narrated in charge nos. 1 and 2.

**285.** In awarding sentence to the convicted accused the factors to be taken into account are gravity and pattern of the offence and mode of participation of accused in accomplishing the crimes. This is now settled principle. The crimes proved are not isolated crimes. These were system and group crimes committed in war time situation. It is immaterial to ask for proof of accused's physical participation to the actual commission of the crime. Even a single act and conduct of accused might have substantially facilitated the actual commission of the crimes and in such case he shall be held equally liable.

**286.** At the same time, it is to be noted that mere failure to prove that accused was a member of Razakar does not diminish accused's liability in any manner. We have found that the accused had acted as notorious associate of the local Razakars which had acted as a criminal enterprise. We reiterate that an individual may participate to the actual commission of the principal crime by his act or conduct, before or midst or after the crime committed. It has been proved that accused Forkan Mallik was with the group of Razakars in abducting the victims of rape [charge nos. 3 and 4] and he actively participated to the accomplishment of abduction of rape survivor Aleya Begum [P.W.4] by gunning down her father Hatem Ali to death. It stands proved by direct evidence of Aleya Begum [P.W.4]

**287. Charge no.3** involves the act of committing rape upon a Hindu girl taking her to a solitary betel nut garden on forcible capture and within few hours she was left abandoned in front of her house where almost instantly died due to brutal recurrent torture caused to her. It stands proved that accused Forkan Mallik actively and sharing the common intent accompanied the group of Razakars and accused was a conscious part of this collective criminality. Accused has been found equally responsible for the tragic fate of the victim. The circumstances and context indicate indisputably that the attack was organised and systematic and accused's act of accompanying the group of Razakars formed part of such attack. Act of taking the victim to a solitary place on abduction was followed by mass rape leading to her death. Therefore, in awarding punishment, any extent of compassion

shall cause further pain and trauma to the departed soul of victim Golapi Rani, her relatives and the society as well.

**288. Charge no. 4** involves abduction of two Hindu women from their house leading to physical invasion committed upon them in captivity at local Razakar camp. Even after leaving them abandoned in front of their house, two nights later, they deported to India along with their family. That is to say the horrific assault caused to them and their family eventually forced to deport. P.W.10, sister of victim Shova Rani deposed how her sister and brother's wife were forcibly picked up by the group of Razakars and accused Forkan. Her heart wrenching emotion choked testimony must make the humanity and civilization covered with immense gloom.

**289. Charge no.5** relates to barbaric attack that resulted in killing Hatem Ali and then forcibly taking away his daughter Aleya Begum. In conjunction with the attack the group of attackers had killed two other civilians. Aleya Begum was taken to the army camp at Patuakhali circuit house wherein the victim was subjected to recurrent rape in captivity. Some days later she was brought back and left abandoned near her house. Victim Aleya Begum has testified as P.W.4. Since more than four decades she has been pulling on the trauma and pain she sustained. Not only has she lost her extreme wealth. She saw the killing of her father, in conjunction with the attack. She has lost her family life even. Accused Forkan actively participated in launching the attack. Victim's father Hatem Ali was gunned down to death by accused himself and presumably it was done to make the picking up the victim smooth and without any resistance. Her husband already abandoned her

and she has been living alone carrying immense pain. Nothing is enough to compensate the barbaric wrong done to her.

**290.** Untold beastliness of the group of attackers which was in fact a locally formed criminal enterprise to which accused Forkan Mallik was an active associate was gravest violation of humanitarian law. The devilish attack was directed not to the victim Aleya Begum. It was against the humanity, society and such kind of horrific attack still makes the nation pained. Therefore, no compassionate view the accused deserves. Now the beastly wrong done to the victim needs to be righted so that we can uphold the letters of law.

**291.** Accused Forkan Mallik was a willing participant in all the brutal attacks that resulted in mass rape and murder of civilians as narrated in the charges proved [charge nos. 3,4 and 5].

**292.** We reiterate that rape or sexual violence, either in war time or in peace time, is a revolting act of robbery that takes the thing that cannot be given back. Mass rape is graver than murder. What was the goal of committing such mass rape especially on defenceless Hindu women? Its goal was not to ravish extreme wealth of a woman and to kill her. The goal was to cripple the socio-political order and cultural integrity.

**Nordstrom, C observed that-**

“Rape, as with all terror war fare, is not exclusively an attack on the body- it is an attack on the ‘body-politic’. Its goal is not to maim or kill one person but to control an entire socio-political process by crippling it. It is an attack directed equally against personal identity and cultural integrity”. [Nordstrom, C, 1991, “*Women*”]

*and war: observations from afield*”, Minerva: Quarterly Report on Women and the Military, 9]

**293.** Prosecution, by presenting authoritative document, could not prove that accused Forkan was a member of local Razakar Bahini, true. But such failure *ipso facto* does not make him a low-level offender. In this regard we find substance in the argument advanced by the learned prosecutor Ms, Tureen Afroz. It is now settled that the gravity of the crimes committed by the convicted person stems from the degree of his participation in the crimes, irrespective of his position and status. It stands proved that accused was a close and notorious associate of local Razakars and in carrying out attacks as narrated in charge nos. 3,4 and 5 he knowing consequence of his act culpably accompanied the group Razakars which was in fact a ‘**pack of beasts**’.

**294.** 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. We reiterate our reasoned observation recorded in the case of *Muhammad Kamaruzzaman* [ICT-BD Case No.03 pf 2012, Judgement 09 May 2013, para 66, 67] with reference to **Article 2(3) ICCPR** that

“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”.



**295.** Therefore, for rendering effective justice by punishing the offender, victims' right to remedy for the violation of recognised human rights also deserves to be honoured and kept in mind, in awarding sentence for the act of committing recurrent sexual invasion in captivity by the perpetrators and their infamous aide accused Forkan Mallik.

**296.** Golapi Rani died as she was recurrently mass raped. Shova Rani and her brother's sister Sushama Rani were brutally raped in captivity at Razakar camp. And afterwards the victims had to deport to India and never returned. Aleya Begum's father Hatem Ali was gunned down in front of her eyes and then she was forcibly taken to army camp in Patuakhali circuit house where she was recurrently ravished. The nation today pays humble reverence to those women who laid highest sacrifice for the cause of our independence. **Golapi Rani, Shova Rani, Sushama Rani and Aleya Begum** [P.W.4] shall ever remain alive in the nation's history as **'bravest women'**.

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

### **SENTENCE**

That the accused **Md. Forkan Mollik @ Forkan [63]** son of late Sader Mollik and late Sonvan Bibi of village Sailabunia under police station Mirjaganj district Patuakhali is found

**guilty** of the offences of **rape, ‘murder’ and ‘deportation’** as **‘crimes against humanity’** enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge nos. 3,4, and 5 [03 charges]**. Accordingly, he be convicted and condemned to the **sentence as below** for **three charges**, under section 20(2) of the Act of 1973:

Sentence of **‘imprisonment for life till death’** for the crimes as listed in **charge no.4;**

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

**‘Sentence of death’** for the crimes as listed in **charge no.5** and he be hanged by the neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

However, as the convict **Md. Forkan Mollik @ Forkan** has been condemned to **‘sentences of death’**, as above, the **‘sentences of imprisonment for life till death’** awarded in respect of **charge nos. 4** will get merged into the **‘sentences of death’**. This sentence shall be carried out under section 20(3) of the Act of 1973.

Accused **Md. Forkan Mollik @ Forkan** is found **not guilty** of offences in respect of charge **nos. 1 and 2** and thus he be acquitted thereof.

The sentence awarded shall commence from the date of this judgment as required under Rule 46(2) of the Rules of Procedure, 2012(ROP) of the Tribunal-2[ICT-2] and the

convict be sent to the prison with a conviction warrant accordingly.

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

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

**Justice Obaidul Hassan, Chairman**

**Justice Md. Mozibur Rahman Miah, Member**

**Justice Md. Shahinur Islam, Member**