

# **International Crimes Tribunal-1**

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

**Old High Court Building**

**Dhaka, Bangladesh**

**ICT-BD [ICT-1] Case No.04 of 2017**

[Charges: crimes against Humanity as enumerated in section 3(2)(a)(g)(h) of  
the Act No. XIX of 1973]

**Present:**

**Justice Md. Shahinur Islam, Chairman**

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

**Justice K.M. Hafizul Alam, Member**

**The Chief Prosecutor**

**Vs**

**(1) Md. Abdul Aziz alias Habul**

**(2) Md. Abdul Mannan alias Monai and**

**(3) Md. Abdul Matin (Absconding)**

**For prosecution:**

**Mr. Golam Arief Tipoo, Chief Prosecutor**

**Mr. Syed Haider Ali, Prosecutor**

**Mr. Mokhlesur Rahman Badal, Prosecutor**

**Mr. Md. Sultan Mahmud, Prosecutor**

**Mrs. Sabina Yesmin Khan, Prosecutor**

**Mr. Tapas Kanti Baul, Prosecutor**

**For defence:**

**Mr. M. Sarwar Hossain**, Advocate, Supreme Court of Bangladesh: For accused Md. Abdul Mannan alias Monai

**Mr. Abdus Sattar Palwan**, Advocate, Supreme Court of Bangladesh: For accused Md. Abdul Aziz alias Habul and accused Md. Abdul Matin [absconding]

**Date of delivery of Judgment: 19 May, 2022**

## **JUDGMENT**

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

### **I. Introductory Words**

1. The case in which we are going to deliver the verdict today involves as many as 05 counts of charges arraigning the accused (1) Md. Abdul Aziz @ Habul, (2) Md. Abdul Matin (absconding) and (3) Md. Abdul Mannan @ Monai for abetting, facilitating, participating and substantially contributing in committing offences of crimes against humanity as enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973.

2. On closure of summing up of case by both sides, the Tribunal sent the accused Md. Abdul Aziz @ Habul and Md. Abdul Mannan @ Monai to prison with direction to produce them on the date to be fixed for pronouncement of verdict.

Pursuant to issuance of production warrant the prison authority has produced these two accused today before the Tribunal [ICT-1]. Another accused Md. Abdul Matin has been absconding.

3. To go on with the trial of the case in accordance with law, both the prosecution and the defence provided significant assistance to Tribunal. We endorse the stamp of our appreciation to their commendable performance and legal acumen.

4. The charges framed relate to the atrocious events allegedly committed systematically around the localities under police station- Barlekha of the then Moulavibazar sub-division. The atrocities were allegedly committed against the defenceless pro-liberation and Hindu civilian population in 1971, during the war of liberation. History says that intention of such horrific atrocities directed against the civilian population was to terrorize and wipe out the pro-liberation Bangalee civilians, in furtherance of policy and plan of the Pakistani occupation army. This truth has been patently unveiled too in this case.

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

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

6. The Tribunal [ICT-1] has been set up on 25 March 2010. Few days back this judicial institution formed to come out from the culture of impunity has completed its long 12 years journey.

7. The Act No. XIX is *ex-post facto* legislation. This statute enacted in 1973 by our sovereign parliament is meant to prosecute, try and punish the perpetrators of crimes against humanity, genocide and system crimes committed in violation of international humanitarian law and the laws of war. It is fairly permitted. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally to be provided to the person accused of crimes against humanity and genocide.

8. The notion of fairness and due process has been contemplated in the Act and the Rules of Procedure, 2010

(ROP) formulated by the Tribunal [ICT- 1] under the powers conferred in section 22 of the statute.

9. The Act of 1973 has been enacted by the sovereign parliament to prosecute, try and punish not only the ‘armed forces’ but also the perpetrators who belonged to ‘auxiliary forces’, or who committed the offence as an ‘individual’ or as ‘group of individuals’ or ‘organisation’. It is manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be brought to justice under the Act.

10. 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 violation of customary international law during the war of liberation in 1971 in the territory of Bangladesh. Merely for the reason that the Tribunal is preceded by the word “international” and possessed jurisdiction over crimes such as Crimes against Humanity, Crimes against Peace, Genocide and War Crimes,

it will be mistaken to assume that the Tribunal must be treated as an “International Tribunal”.

### **III. Brief Historical Background**

11. In eying on historical background Tribunal reiterates that atrocious and dreadful crimes were committed in monstrous manner during the nine-month-long war of liberation in 1971, which resulted in the birth of Bangladesh, an independent state and the motherland of the Bangalee nation.

12. In August, 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

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

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

15. In the early hour of 26th March, following the onslaught of "Operation Search Light" by the Pakistani Military on 25<sup>th</sup> March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

16. The 'operation searchlight' was designed to disarm and liquidate Bangalee policemen, soldiers and military officers, to arrest and kill nationalist Bangalee politicians, soldiers and military officers, to arrest and kill and round up professionals, intellectuals, and students. Afterwards, barbaric actions

conducted in concert with its local collaborator militias, Razakar, Al-Badar and the key pro-Pakistan political organisation Jamat E Islami (JEI) were intended to stamp out the Bangalee national liberation movement and to mash the national feelings and aspirations of the Bangalee nation.

17. In the War of Liberation that ensued in 1971, all people of East Pakistan unreservedly supported and participated in the call to free Bangladesh but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS) joined and/or collaborated with the Pakistani occupation army to aggressively resist the conception of independent Bangladesh and most of them committed and facilitated the commission of appalling atrocities in violation of customary international law in the territory of Bangladesh. It also experienced unprecedented wanton devastation of properties all over Bangladesh which was grave breach of Geneva Convention.

18. Jamat E Islami (JEI), as an organization and its student wing [ICS], not only substantially contributed in creating the



para-militia forces (auxiliary force) but also collaborated with forces and Pakistani occupation army for combating the unarmed Bangalee civilians, in the name of protecting Pakistan.

19. Razakar Bahini, an auxiliary force was thus formed to collaborate with the Pakistani occupation army in annihilating the Bangalee nation and to resist the war of liberation. 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 Bangalee people as their 'enemies' and 'miscreants'. The people carrying pro-Pakistan ideology also opted to actively collaborate with the Pakistani occupation army even without being enrolled in any auxiliary force.

20. Some three million people were killed, nearly quarter million women were raped and ravished and over 10 million people were forced to deport to India to escape brutal persecution at home, during the nine-month battle and struggle of Bangalee nation for achieving independence and independent motherland.

21. Appellate Division of our Supreme Court in its judgment dated **31st October, 2019** rendered in **Criminal Appeal No.12 of 2015**, A.T.M. Azharul Islam *versus*- The Chief Prosecutor, International Crimes Tribunal, Bangladesh [ **14 SCOB [2020] AD, para-40**]observed that –

“The perpetrators of crimes of a universally abhorrent nature are *hostis humani generis*-- enemies of all people. These crimes include war crimes, genocide, crimes against humanity, aggression, *etc.* Irrefutably, the war crimes and crimes against humanity committed during the Liberation war of Bangladesh in 1971 exceeded the brutalities and dreadfulness of war crimes committed in contemporary times. With the aim of establishing durable peace and justice, and bringing the perpetrators of atrocities committed during the Liberation war in 1971 to justice, a legislation known as the International Crimes (Tribunals) Act,1973(‘ICTA’) was enacted by our Parliament.”

22. But despite enactment of the Act of 1973 in our sovereign parliament the perpetrators of the crimes could not be brought to book for decades together, and this left a deep scratch on

the country's political awareness and the whole nation. The impunity they enjoyed held back political stability, saw the rise of militancy, and destroyed the nation's Constitution. It was indeed a colossal ignominy for the nation. However, finally the judicial mechanism has been formed on 25 March 2010 under the statute of 1973 to come out from the culture of impunity.

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

23. Before we move to adjudicate the alleged arraignments brought and accountability of the accused persons therewith we consider it necessary to have a glimpse on the brief account of the accused persons which is as below:

***(i) Md. Abdul Aziz alias Habul***

Accused Md. Abdul Aziz alias Habul, son of late Mirzan Ali and late Latifa Khatun @ Latai Bibi, of village-Pakhiala House no. 131, Ward no.07, Barlekha Pourashava, Police Station-Barlekha, District-Moulavibazar (Previously Sub-Division) was born on 30.09.1952 (as per his NID). He passed S.S.C from P.C High School, Barlekha, Moulavibazar in 1970 and H.S.C from Tejgaon College, Dhaka in 1973. Accused Md. Abdul Aziz alias Habul was an active supporter of Pakistan during the war of liberation of Bangladesh. In

1971, accused Md. Abdul Aziz alias Habul and his full brother Abdul Matin firstly went to India and both of them received training of freedom-fighters in India at the first phase of the liberation war. Thereafter, both of them fled away from the training camp of the freedom-fighters and surrendered to the Pakistani Occupation Army camp under Police Station-Barlekha of District (now)-Moulavibazar and subsequently joined in the Razakar Bahini and got involved with the commission of atrocious activities during the liberation war, prosecution avers.

***(ii) Md. Abdul Matin [absconding]***

Accused Md. Abdul Matin , son of late Mirzan Ali and late Latifa Khatun alias Latai Bibi, of village-Pakhiala, House no.131, Ward no.07, Barlekha Pourashava, Police Station-Barlekha, District-Moulavibazar, at present: village-Sonapur(Juad villa), Road-Kalenga, Police Station-Moulavibazar Sadar, District- Moulavibazar (previously Sub-Division) was born on 30.12.1953(as per his NID). Accused Md. Abdul Matin studied up to Class VIII at P.C High School, Barlekha, Moulavibazar and he was an active supporter of Pakistan during the war of liberation of Bangladesh. He was also affiliated with Jamat- e- Islami [JEI]

as its active worker. In 1971, accused Md. Abdul Matin and Abdul Aziz alias Habul [another accused], the two full brothers went to India where they received training of freedom-fighter at the first phase of the liberation war. Thereafter, both of them fled away from the training camp of the freedom fighters and surrendered to the Pakistani Occupation Army camp under Police Station-Barlekha of District Moulavibazar and subsequently joined in the Razakar Bahini and got involved with the commission of atrocious activities during the liberation war, prosecution alleges.

***(iii) Md. Abdul Mannan alias Monai***

Accused Md. Abdul Mannan alias Monai, son of late Yeasin Ali and late Nekjan Bibi of village-Muraul (Taradaram), Police Station-Barlekha, District-Moulavibazar (previously Sub-Division) was born on 01.07.1952 (as per NID). He passed *Dakhil* in 1963 from Sujaul Madrasa at Barlekha, *Alim* in 1967 from Barlekha Gungkul Senior Madrasa and *Fazil* in 1970 from Chandpur Karimabad Senior Madrasa and also appeared in *Kamil* examination in 1972 from Comilla *Alia* Madrasa. In 1971, accused Md. Abdul Mannan alias Monai was a member of Islami Chatra Sangha (ICS) the student wing of JEI and was involved in the commission of crimes

alleged as a potential member of locally formed Razakar Bahini, prosecution alleges.

## **V. Procedural History**

### **Commencement of Investigation**

24. The Investigation Agency of the Tribunal constituted under the Act of 1973 started investigation pursuant to complaint register's serial no. 39 dated 16.10.2014, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated in 1971 during the war of liberation around the localities under police station-Barlekha of District[now]-Moulavibazar .

### **Pre-trial Arrest of accused persons**

25. During investigation, on prayer of the IO initiated through the prosecution the Tribunal on 01.03.2016 ordered issuance of warrant of arrest [W/A] against the three suspected accused persons. In execution of W/A issued the law enforcement agency causing arrest on 02.03.2016 produced accused Md. Abdul Aziz alias Habul and Md. Abdul Mannan alias Monai before the Tribunal when they were sent to prison. The other accused Md. Abdul Matin could not be arrested.

**Interrogation of accused**

26. On application of the Investigation Officer moved by the prosecution Tribunal permitted to interrogate the accused Md. Abdul Aziz alias Habul and Md. Abdul Mannan alias Monai and they were interrogated accordingly on 03.04.2016 and 04.04.2016 respectively, ensuring necessary safeguard.

**Submission of Investigation report**

27. The Investigation Officer [IO] submitted report together with documents and materials collected and statement of witnesses on 28.11.2016 before the Chief Prosecutor, wrapping up of investigation.

**Submission of Formal Charge**

28. The Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, after completion of investigation, submitted the 'Formal Charge' on 05.02.2017 under section 9(1) of the Act of 1973 before this Tribunal alleging that the accused persons were engaged and concerned in committing the offences as enumerated in section 3(2) of the Act of 1973 during the period of War of Liberation in 1971 around the localities under Police Station-Barlekha of District[now]-Moulavibazar.

### **Taking Cognizance of Offences**

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

### **Compliance of Procedure for holding absentia trial against one accused**

30. The law enforcement agency could not secure arrest of one accused Md. Abdul Matin as he remained absconded and there was no immediate prospect of causing his arrest. After having the report in execution of warrant of arrest issued against him the Tribunal, for the purpose of holding proceeding in *absentia* against him, ordered publication of notice in two national daily news papers as required by law. But this accused did not turn up despite such notification published in two national daily news papers and as such treating him absconding the Tribunal ordered for hearing the charge framing matter by appointing Mr. Abdus Sattar Palwan as the state defence counsel, at the cost of Government, to defend the absconding accused Md. Abdul Matin.



### **Hearing on Charge Framing Matter**

31. On 20.03.2018 hearing on charge framing matter took place when both sides placed their respective submission, drawing attention to the formal charge and documents submitted therewith. The Tribunal also heard the applications seeking discharge.

### **Charge framing order**

32. Tribunal rendered the order on charge framing on 15.05.2018 when the same was read over in open court in presence of two accused Md. Abdul Aziz @ Habul and Md. Abdul Mannan @ Monai when they pleaded not guilty and claimed to be tried according to law. The other accused Md. Abdul Matin remained absconded and thus charges framed could not be read over and explained to him.

### **Opening statement and examination of prosecution witnesses**

33. Prosecution after placing opening statement on 12.08.2018 started examining witnesses. After examining 17 witnesses including the I.O this phase of proceeding ended on 31.10.2019.

### **Examination of defence witnesses**

34. On closure of examination of prosecution witnesses defence adduced and examined 04 witnesses. Of them D.W.1

testified defending the accused Md. Abdul Aziz @ Habul and the three other D.W.s testified defending the accused Md. Abdul Mannan @ Monai. Prosecution cross-examined all the four D.W.s

### **Summing up**

35. Both sides placed Summing up drawing attention to evidence presented and legal proposition and it ended on 12.04.2022 when the Tribunal kept the case in CAV i.e. for delivery and pronouncement of judgment and directed the prison authority to produce the accused persons detained in prison on call.

## **VI. General Considerations Regarding the Evaluation of Evidence in a case of Crimes against Humanity**

36. Tribunal considers it indispensable to reiterate the general considerations it always keeps in mind in determining the charges. Tribunal thus now focuses on the settled factors relating to evaluation of evidence presented as the case involves the offences of ‘system crimes’ which are known as ‘internationally recognised crimes’ and not the ‘isolated crimes’.

37. In the case in hand, all the three[03] accused persons have been prosecuted and tried for committing ‘group crimes’ or ‘system crimes’ in violation of international humanitarian law and the laws of war directing civilian population, in the territory of Bangladesh in 1971. They in exercise of their explicit nexus in locally formed Razakar Bahini, a para militia force culpably collaborated with the Pakistani occupation army and local Razakar Bahini in carrying out atrocious activities, to further policy and plan, prosecution alleges.

38. Arraignments brought in the present case chiefly rest upon ocular testimony of prosecution witnesses. It appears that mostly the victims and direct witnesses came on witness dock to recount the facts materially related to the commission of principal crimes. Tribunal notes that the appalling crimes were perpetrated in context of war of liberation in 1971 and those were not isolated crimes. Section 23 of the Act of 1973 expressly provides that provisions of the Criminal Procedure Code, 1898(V of 1898), and the Evidence Act, 1872(I of 1872), shall not apply in any proceedings under the Act of 1973.

39. Tribunal further notes that section 19(1) of the Act provides that the Tribunal shall not be bound by technical

rules of evidence and it shall adopt and apply to the greatest possible extent non-technical procedure and may admit any evidence which it deems to have probative value. Tribunal reiterates too that proof of criminal responsibility through participation in any manner can be given by direct or hearsay or circumstantial evidence. It is now well settled jurisprudence.

40. The context of committing such ‘system crimes’ and totality of its horrific contour prevailing in war time situation naturally left little room for the people to witness all the criminal acts forming part of attack. Besides, due to lapse of long passage of time it may not always be realistic to expect the witness to recall and recount every detail with precision. The evolved jurisprudence does not permit to keep this reality aside in adjudicating the arraignments brought under the Act of 1973.

41. The Tribunal notes that some of the witnesses who have testified in the case in hand had occasion of seeing and experiencing the commission of atrocious acts. Corroboration is not required to act upon testimony of a single witness. It

appears that in the case in hand more than one witness came on dock to recount the events arraigned.

42. However, it is now settled that the Tribunal may act even on single witness's testimony as proof of a crucial fact chained to the event of attack depending on various factors unveiled in trial of each case. The Tribunal further reiterates that "secondhand" i.e. hearsay evidence is not, in and of itself, inadmissible; rather it requires to be assessed, like all other evidence, on the basis of its credibility and its relevance.

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

44. Core of witness's testimony is to be considered and weighed. It is now internationally settled jurisprudence that-- "the presence of inconsistencies within or amongst witnesses' testimonies does not per se require a reasonable Trial Chamber to reject the evidence as being unreasonable"

**[Muhimana, ICTR Appeal Chamber, May 21, 2007, para. 58].**

45. We require separating the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon, in determining accused's accountability. Appraisal of the evidence is thus to be made based on the totality of the evidence presented in the case before us.

46. We are to see how the accused's act or conduct or prohibited act formed part of 'systematic attack' directed against the civilian population and how it resulted in perpetration of crimes arraigned as enumerated in section 3(2) of the Act of 1973.

47. Finally, it is now well settled too that even hearsay evidence is not inadmissible *per se*. However, mere admission of hearsay evidence does not render it carrying probative value. Such hearsay evidence is to be weighed and assessed in the context of its credibility, relevance, and circumstances and also together with other evidence tendered.

## VII. Summing up

### **Summing up [Argument]: By the Prosecution**

48. **Mr. Mokhlesur Rahman Badal**, the learned prosecutor being assisted by **Ms. Sabina Yesmin Khan**, the learned prosecutor started placing summing up by drawing attention to the historical context in which the atrocious activities were committed in 1971 against the non-combatant civilian population including the Hindu community as narrated in the charges framed in this case. Next, he submitted that the accused persons were culpably affiliated with the locally formed notorious Razakar Bahini and they actively collaborated with the Pakistani occupation army in carrying out atrocious activities arraigned. Despite receiving training of freedom-fighters in India the two accused Md. Abdul Aziz @ Habul and his brother Md. Abdul Matin opted to take stance against the war of liberation, after coming back inside Bangladesh and got engaged in collaborating with the Pakistani occupation army and local Razakar Bahini .

49. The learned prosecutor further submitted that the prosecution witnesses being the locals of the same locality were quite competent to be acquainted with the accused

persons beforehand. Besides, their notoriety made them commonly known to the locals, the learned prosecutor added. Defence could not shake credibility and practicability of knowing the accused persons beforehand as testified by witnesses and thus the narrative made by them including victims and relatives of victims inspires credence which proves the explicit nexus of accused persons with the local Razakar Bahini and the Pakistani occupation army stationed in Barlekha in 1971. The uncontroverted testimony of witnesses in this regard and recognizing the accused persons when they accompanied the group of attackers at the crime sites proves potential association of the accused persons with the locally formed Razakar Bahini, even despite absence of any document, the learned prosecutor added. Copy of the updated latest list of freedom-fighters prepared by the appropriate authority has been submitted as additional document by the prosecution.

50. The learned prosecutor then started placing argument on each count of charges brought, drawing attention to the evidence presented and citing settled legal proposition. We consider it appropriate to address the argument so made at the time of adjudicating the charges independently.



**Summing up [Argument]: By the Defence**

51. **Mr. Sarwar Hossain** the learned counsel defending the accused Md. Abdul Mannan @ Monai in placing summing up chiefly submitted that this accused was not a Razakar; that in 1971 he had not been in his locality and it has been proved by evidence of three D.W.s examined; that prosecution could not bring any documentary evidence to show his membership in locally formed Razakar Bahini; that he has been falsely implicated in this case and that delayed prosecution creates doubt as to truthfulness of the event arraigned. Argument advanced in respect of 02 charges of which this accused has been indicted may be well addressed while adjudicating the charges.

52. **Mr. Abdus Sattar Palwan** as engaged counsel for accused Md. Abdul Aziz @ Habul and also as state defence counsel for absconding accused Md. Abdul Matin argued that these accused received freedom-fighters training in India in 1971; that after receiving training they had acted as the secret agents or informers of freedom-fighters inside Bangladesh and it has been proved by relevant documents as have been exhibited by D.W.01 the son of accused Md. Abdul Aziz @ Habul. A number of freedom-fighters recommended in

writing that the accused Md. Abdul Aziz @ Habul is a freedom-fighter.

53. The learned defence counsel also submitted that the accused persons did not have any manner of affiliation with the locally formed Razakar Bahini and Pakistani occupation army stationed in the locality. It has been further argued that the evidence of witnesses is not credible and they have testified out of rivalry implicating these accused and that they did not know the accused persons. The learned defence counsel also placed argument in relation to alleged events arraigned in charges which we consider to address at the time of adjudication of charges.

### **VIII. Determination of Legal Aspects agitated on part of accused Md. Abdul Mannan @ Monai**

#### **Does Delay frustrate prosecution case?**

54. It has been argued by Mr. Sarwar Hossain the learned counsel for the accused Md. Abdul Mannan @ Monai that a case could be initiated immediate after the alleged event arraigned in charge no.01. But unexplained inordinate delay in bringing criminal prosecution against this accused makes

the arraignment reasonably tainted and doubtful and offers an impression of malafide intention to prosecute this accused.

**55.** Does Unexplained Delay frustrate prosecution case? Tribunal has resolved this legal issue in earlier cases stating reasons. We reiterate that time bar should not apply to the prosecution of human rights crimes. Neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity.

56. Article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968 provides protection against even any statutory limitation in prosecuting crimes against humanity, genocide etc. Thus, criminal prosecutions are always open and not barred by time limitation.

57. In resolving this issue Tribunal-2 observed in the case of **Abdul Quader Molla** that—

“It is a fact of common knowledge that in 1981, **Maurice Papon**, who has died aged 96, was the minister for the budget in the administration of Prime Minister Raymond Barre, when his role in the deportation of French Jews during the Second World War was uncovered. Papon had been charged in 1997 on the basis of his activities from 1942 to 1944. Eventually brought to trial, he was convicted in 1998 of complicity in crimes against humanity and sentenced to a 10-year prison sentence for ordering the arrest and deportation of 1,690 Jews, including 223 children, from the Bordeaux region to the Nazi death camps in Germany.”

**[Abdul Quader Molla Judgment; ICT-BD-2; ICT-BD Case No. 02 of 2012; Judgment: 05 February, 2013, para 84]**

58. On this legal aspect it has been further observed by Tribunal-2 that—

“Maurice Papon always claimed that he was the victim of a political trial that had caused him great suffering and the death of his wife, who died during the trial. Nevertheless, on April 2 1998, after the longest postwar trial, Maurice Papon was found guilty of the arrest and deportation of French Jews during the years 1942-1944.”

[<http://www.guardian.co.uk/news/2007/feb/19/guardianobituaries.france>] [**Douglas Johnson**: The Guardian, Monday 19 February 2007] [**Abdul Quader Molla** Judgment; ICT-BD-2; **ICT-BD Case No. 02 of 2012; Judgment: 05 February, 2013, para 86**]

59. In view of above we are not agreed with the submission advanced by the learned defence counsel Mr. Sarwar Hossain. Crimes against humanity and genocide, the gravest crime never get old and that the perpetrators who are treated as the enemies of mankind will face justice.

60. Only the delay itself does not preclude prosecutorial action to adjudicate the culpability of the perpetrator of core international crimes which are known as ‘system crimes’.

61. On this issue resolved by the Tribunal [ICT-2] in the case of **Abdul Quader Molla** the **Appellate Division of Supreme Court of Bangladesh**, on appeal, has observed that –

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

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

**[Judgment: 17.9.2013 in Criminal Appeal Nos. 24-25 of 2013, Page 750-751]**

62. Settled norm is that the passage of time does not diminish the guilt. Thus, we should not put out of our mind it that the millions of victims who deserve that their tormenters are held accountable. Justice delayed is no longer justice denied, particularly when the perpetrators of core international crimes are brought to the process of justice. There can be no recognised hypothesis to insist that such a ‘system crime’ can only be pursued within a given number of years. Therefore, delayed prosecution does not rest as a clog in prosecuting and trying the accused and creates no mystification about the atrocities committed in 1971.

### **Whether the accused can be prosecuted without prosecuting the principals and his accomplice**

63. Another question has been agitated by the learned defence counsel Mr. Sarwar Hossain. He submitted that according to the charges it will reveal that apart from this accused, the group of attackers was formed of many other co-perpetrators who actually allegedly conducted the alleged event of attack. But excepting this accused, none of his accomplices has been brought to justice. It leaves reasonable doubt as to involvement of the accused with the crimes arraigned.

64. We are not agreed with the above defence submission. It is not required to show that the accused himself physically perpetrated the crimes of which he has been indicted. It is to be seen whether the accused had acted being part of the criminal enterprise, sharing common intent and how and by which act he facilitated the commission of the crimes.

65. In law, either 'aiding' or 'abetting' alone is ample to render the perpetrator criminally liable. On this legal issue we may recall the principle enunciated by the ICTR Trial Chamber *Akayesu* that—

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

**[Akayesu, (Trial Chamber), September 2, 1998, para. 531 and Musema (Trial Chamber), January 27, 2000, para.174]**

66. Tribunal notes that ‘abetting’ and ‘aiding’ have been enumerated in the Act of 1973 as distinct offence and punishable there under. It is now settled from the jurisprudence evolved in the ICTR and SCSL that even only the abettor and aider to perpetration of crimes underlying in the statute of 1973 can lawfully be brought to justice.

67. In view of above we reiterate the settled view that the persons responsible for any of the unlawful acts arraigned that substantially facilitated the commission of offence enumerated in section 3(2)(a)(c) can lawfully be brought to justice, even without prosecuting the other accomplices or principal perpetrator.



## **IX. What status and affiliation of accused persons had in 1971?**

68. Prosecution avers that the accused persons got engaged in committing the crimes narrated in the charges framed in exercise of their affiliation with locally formed Razakar Bahini, an auxiliary force as defined in section 2(a) of the Act of 1973. Prosecution also alleges that the accused Md. Abdul Aziz @ Habul and his brother Md. Abdul Matin did not join the liberation war, although they received training of freedom-fighters in India. Rather, they coming back inside Bangladesh after receiving training joined in committing atrocities as active accomplices of Pakistani occupation army and Razakars. It is not required to prove that the accused persons got formally enrolled in Razakar Bahini. Nexus and culpable affiliation with Razakars and Pakistani occupation army are sufficient to prosecute and try the accused persons for the crimes of which they have been indicted, the learned prosecutor added.

69. It has been argued by Mr. Abdus Sattar Palwan, the learned defence counsel for accused Md. Abdul Aziz @ Habul and the state defence counsel for absconding accused Md. Abdul Matin that prosecution failed to prove their

membership in locally formed Razakar Bahini by any authoritative document; that in fact they were freedom-fighters and had acted as the informers of freedom-fighters.

70. It is now settled history that members of Razakar Bahini and individuals actively associated with it were actively engaged in conducting atrocities, being part of the criminal mission during the 9-month war of liberation in 1971. Thus, we are to see too as to whether the accused persons even as individuals, being part of a criminal enterprise, remained stayed with the group of attackers formed of Pakistani occupation army and Razakars, sharing intent of committing crimes.

71. The horrific crimes arraigned in this case happened at the last phase of the war of liberation. Prosecution claims that despite having training of freedom-fighters in India the accused Md. Abdul Aziz @ Habul and his brother Md. Abdul Matin opted to take stance against the war of liberation and made them culpably affiliated with the locally stationed Pakistani occupation army and Razakars. This is sufficient to initiate prosecution of the accused persons for the offences enumerated in the Act of 1973. It is true that the witnesses in

their testimony implicated the accused persons terming Razakars.

72. In adjudicating the charges framed it would be plausibly determined, based on evidence whether the accused persons were involved in committing the crimes arraigned. Presumably, notoriety of accused persons experienced by the victims and their near ones was the rational reason of terming the accused persons as Razakars. Tribunal does not consider it as exaggeration. Besides, not only a member of an auxiliary force but even prosecution and trial of an 'individual' is permitted under the Act of 1973, if he is alleged to have committed offence[s] enumerated in the Act.

73. Thus, it is reiterated that the Tribunal does have jurisdiction to prosecute, try and punish even 'any individual' or 'group of individuals' who were not enrolled as member of Razakar Bahini. Mere failure to prove formal membership in Razakar Bahini the accused persons cannot be exonerated if they are found to have had participation and complicity with the commission of offences alleged even in the capacity of an 'individual'.

74. The witnesses testified what they experienced as to participation of the accused persons in launching the attacks arraigned. At this phase of deliberation we are not going to resolve the issue of commission of the crimes alleged and liability of the accused persons therewith. However, we may have fair indication, from the evidence of witnesses, as to identity of the accused persons and their presence with the gang of attackers at the crime sites.

75. We reiterate our view that notoriety of the *para militia* force made space to the residents of the locality of knowing its members and individuals having explicit nexus with it. It was thus quite feasible of knowing the identity of accused persons and therefore testimony made in this regard inspires credence.

76. Proof of formal enrollment of accused Md. Abdul Aziz @ Habul and his brother accused Md. Abdul Matin is not necessary to show that they, in exercise of their membership in Razakar Bahini had acted in committing the crimes alleged. It is rather sufficient to show that being 'active part' of criminal enterprise formed of Pakistani occupation army and local Razakars they participated in perpetrating the horrific

atrocious activities around the localities under Barlekha police station.

77. Tribunal takes judicial notice of the fact that the Ministry of Liberation War Affairs already cancelled huge number of fake certificates and halted providing all privileges to such certificate holders and also circulated list of genuine freedom-fighters.

78. In the case in hand, son of accused Md. Abdul Aziz @ Habul deposed as D.W.01 and has made an effort to negate his father's culpable nexus with the Pakistani occupation army and Razakars, by submitting some papers related to receiving training of freedom-fighters.

79. First, mere receiving training in India is not the explicit and conclusive proof of being a freedom-fighter. Where and around which localities accused Md. Abdul Aziz @ Habul was engaged in the war of liberation? Next, why his brother another accused Md. Abdul Matin has been absconding? If really he was a freedom-fighter he should not have frightened to face the prosecution. Besides, defence claim could have been well proved by the freedom-fighters of the same locality.

But in support of defence claim no freedom-fighter of the locality seems to have been examined as witness.

80. Tareq Ahmed Raju (40) the son of accused Md. Abdul Aziz @ Habul testified as D.W.01. He chiefly submitted and exhibited some documents including the certificate issued by sub-sector commander and local freedom-fighters. D.W.01 also stated that he heard from his father and uncle that they were engaged in liberation war till Barlekha got liberated and they were not Razakars.

81. Prosecution does not question the fact that these two accused persons received training in India to join the liberation war. But there is no evidence to support their participation in the liberation war, after receiving training. Mere certificate or related papers as submitted by the son of accused Md. Abdul Aziz @ Habul does not straightway proves that this accused was actively engaged in liberation war after receiving training in India. Statement of D.W.01 favouring the accused Md. Abdul Matin does not deserve to be taken into consideration as this accused has been absconding.

82. Accused Md. Abdul Aziz @ Habul and Md. Abdul Matin have been indicted in four charges (**Charge nos. 2, 3, 4 and 5**) and the events arraigned happened in the last part of October and 13, 14 and 17 November 1971. Admittedly, Barlekha got liberated on 06 December 1971. That is to say, alleged atrocities were carried out just few days before the victory achieved. Prosecution avers that these accused persons on having training in India instead of being engaged in liberation war rather got affiliated with the Pakistani occupation army and Razakars stationed in Barlekha intending to culpably collaborate with them in conducting attacks against pro-liberation civilian population. Such act of accused persons as traitors rather totally diminished the gallant chapter of receiving training of freedom-fighter in India.

83. These two accused received training of freedom-fighters in India, after the war of liberation ensued. It is admitted. But what happened next? Facts and circumstances together with the documentary evidence impel that they instead of being engaged in fighting to liberate the motherland rather opted to take stance in favour of Pakistani occupation army and locally formed Razakar Bahini. In this way they became traitors and

had started acting to further policy and plan of resisting the freedom-fighters and pro-liberation civilians.

84. At this stage, we are not going to resolve the liability of the accused persons. But evaluation of evidence tendered in respect of presence of accused persons at the crime sites with the criminal gang justifiably impels that they had affiliation with the locally formed Razakar Bahini which imbued them to provide contribution and facilitation in accomplishing the criminal acts directed against civilian population.

85. The accused persons have been indicted for the 'system crimes' committed in war time situation in violation of international humanitarian law and those were perpetrated not as isolated crimes by an individual but by a group of which the accused persons were active part, prosecution alleges and ocular testimony also depicts it.

86. It is now settled history that Razakar Bahini was formed as an auxiliary force to collaborate with the Pakistani occupation army in resisting and annihilating the pro-liberation civilians. 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 Bangalee people as their '*enemies*' and '*miscreants*'.

87. The arraignments brought allege that the accused persons in exercise of their unholy affiliation with Razakars and Pakistani occupation army got consciously engaged in prompting and carrying out horrific atrocious activities including looting, abduction, confinement, torture murder and rape intending to spread out terror and intimidation to resist the freedom-fighters of the localities. Therefore, mere inadequacy or absence of adequate documentary evidence as averred by the defence by itself does not turn down the fact of the accused persons' culpable affiliation with the locally formed Razakar Bahini and Pakistani occupation army stationed in the locality of Barlekha police station.

88. **Mr. Sarwar Hossain** the learned counsel defending the accused Md. Abdul Mannan @ Monai submitted that the prosecution witnesses in narrating the alleged events termed this accused as a Razakar but prosecution could not bring any documentary evidence to show that this accused was a member of local Razakar Bahini.

89. Tribunal notes that in 1971 Razakar Bahini, Peace committee, Al-Badar Bahini were formed to collaborate with the Pakistani occupation army in committing atrocities directing unarmed pro-liberation Bangalee civilians. It is now historically settled that in 1971 during the war of liberation members belonging to any of those organizations used to act being part of designed criminal mission directing civilian population.

90. We are not convinced with the defence argument that in absence of any documentary evidence the accused Md. Abdul Mannan cannot be said to have had acted either as a collaborator of Pakistani occupation army stationed in Barlekha, Moulavibazar.

91. It is true that no document of 1971 could be collected to show him a member of Razakar Bahini. However, the document—**Material Exhibit-I (prosecution Documents Volume: Page no. 55)** goes to show that this accused was the member of local ‘peace committee’. This is sufficient to conclude that he had explicit and culpable nexus even with the locally formed Razakar Bahini and the Pakistani occupation army. Besides, even an individual may be

prosecuted, tried and punished if he is found to have committed, abetted, aided and contributed in committing the offences enumerated in the Act of 1973.

92. In 1971 criminal activities of an individual became an anecdote around the crime locality for the reason of his culpable engagement in the commission of horrific atrocious activities, we may unerringly deduce it. Therefore, testimony made by the witnesses, the victims and residents of the crime localities in respect of accused persons' engagement in locally formed Razakar Bahini inspires credence.

93. In 1971, during the war of liberation it was quite practicable indeed of knowing who had explicit nexus in locally formed Razakar Bahini. Pakistani occupation army used to have assistance from Razakar Bahini and individuals culpably associated therewith in conducting mayhem against the unarmed pro-liberation civilians. Accused Md. Abdul Mannan @ Monai's affiliation with the student wing of JEI and educational profile lend assurance as to his nexus with the locally formed Razakar Bahini.

94. In the case in hand, it transpires from prosecution document that accused Md. Abdul Mannan @ Monai was engaged with the local 'peace committee'. In 1971 'peace committee' had acted significantly in forming Razakar Bahini. Thus, affiliation of this accused with the Razakar Bahini cannot be turned down. Besides, even an individual may be prosecuted and tried for the offences enumerated in the Act of 1973.

**95 Mr. Abdus Sattar Palwan** the learned counsel defending the accused Md. Abdul Aziz @ Habul submits that name of this accused finds place in the list of freedom-fighters but his father's name and village's name have been wrongly written there. Thus, effort has been taken to get this error corrected. In support of this claim photo copy of some papers has been filed by accused Md. Abdul Aziz @ Habul.

96. Son of this accused as D.W.01 states that he collected these papers, presumably, intending to show that his father is a freedom-fighter. These papers, as it appears, are recommendations to get this accused's name entered in the list as freedom-fighter by correcting his father's name and

village's name as exists in the list. Some are letters certifying this accused as a freedom-fighter.

97. It appears that one letter attesting that the accused is a freedom-fighter has been allegedly written and signed by one Md. Abdul Aziz who claims him as a freedom-fighter who is the son of Mujammil Ali of village-Tajpur, post office-Bianibazar, Upazilla- Bianibazar of District-Sylhet.

98. In the above letter given under signature of one Md. Abdul Aziz it has been certified that the gazette no. 866 relates to the name of the accused Md. Abdul Aziz but erroneously his father's name, village's name have been written there wrongly instead of '**Mirjan Ali**' and village '**Pakhiala**' under post office –'**Barlekha**'.

99. It is seen that name of one freedom-fighter Md. Abdul Aziz finds place in gazette no.866 but he is from village- '**Gajpur**' which is under post office '**East Shahbajpur**' and his father's name is '**Md. Mojmil Ali**'. That is to say, the claim made in the information made in the above letter does not carry any rate of truthfulness and it seems to have been created and collected for the purpose of the case, we deduce.

100. In support of claim asserted in the above letter could have been substantiated by examining the author of this so called certificate, Md. Abdul Aziz. But no such effort has been taken.

101. Besides, it appears that Md. Abdul Aziz who provided the alleged certificate also claims him a freedom fighter but it appears from the photocopy copy of part list of freedom fighters of Sylhet Division, Upazilla–Sylhet Sadar **(Additional Defence Document: page 17-18)** that information in respect of father's name, village's name and post office's name of Md. Abdul Aziz in Gazette no.866 **(Additional Defence Document: page 18)** does not seem to relate to Md. Abdul Aziz who allegedly provided the **certificate (Additional Defence Document: page 16)**. Besides, this list involves the freedom-fighters of Upazilla Sylhet Sadar and not of Upazilla- Barlekha of District (now) - Moulavibazar.

102. The learned defence counsel also asserts that some freedom-fighters too certified that the accused Md. Abdul Aziz @ Habul is a freedom-fighter and was engaged in the

war of liberation in 1971. In this regard the learned counsel drew attention to the photocopy of alleged written recommendations made by some freedom-fighters in different times and photocopy of those have been filed **(Defence Documents: page nos. 07-11)**.

103. It will be determined in adjudicating the charge as to how the accused persons had acted in facilitating in perpetrating the crimes arraigned. Since prosecution has been able to prove that the accused persons had nexus with the Pakistani occupation army and Razakar Bahini of Barlekha the above papers do not carry any credence particularly when it appears that defence has not taken any effort to adduce and examine any of persons providing such recommendations.

104. Mr. Abdus Sattar Palwan as state defence counsel for absconding accused Md. Abdul Matin submitted that this accused, the brother of accused Md. Abdul Aziz @ Habul too is a freedom-fighter. To substantiate it photocopy of a gazette dated 28 July 2016 **(Defence Document: page 15)** has been submitted.

105. It is to be noted that mere publication of gazette is not enough to prove authenticity of information contained therein. It must have valid basis. But there is no other authoritative document before us to resolve this issue in affirmative.

106. Accused Md. Abdul Matin has been absconding which is an incriminatory fact. No other convincing document is before us to show the valid basis of this gazette. Rather, from testimony of direct witnesses this accused's association with the Pakistani army and Razakar Bahini stands proved.

107. Now let us eye on the documents relied upon by prosecution. It transpires that name of accused Abdul Aziz @ Habul and his brother Md. Abdul Matin finds place in serial 50 and 51 of the list of Razakars prepared and signed by the Commander and Deputy Commander of Barlekha Muktijodhdha Command (**Prosecution Documents Volume: page no. 58**) . In the remark column of the list it appears that these two accused were engaged in 'activities against humanity' and it also appears that in 1971 their role was as 'armed Razakar'.

108. Tribunal also notes that it is not imperative to prove accused persons' formal membership in Razakar Bahini by



providing more and more documents for determining their nexus with the commission of the offences alleged. Besides, due to lapse of long passage of time it is difficult indeed to collect document of 1971 relating to one's membership in Razakar Bahini. The matter may be well resolved based on reliable ocular testimony of witnesses of the crime vicinity. The list of Razakars relied upon by the prosecution is presumed to have been prepared on having information collected in respect of the stance the accused persons had in 1971.

109. The International Crimes (Tribunals) Act, 1973 permits to prosecute even an 'individual' or 'group of individuals' for the offences as enumerated in the Act. That is to say, mere inadequacy of document to prove the formal 'membership' of the accused persons with an auxiliary force does not readily diminish their involvement with the alleged offence and their nexus with the locally formed Razakar Bahini.

110. Therefore, testimony made by the witnesses the victims and residents of the crime localities in respect of accused persons' engagement in locally formed Razakar Bahini inspires credence. Mere insufficiency of documentary

evidence as averred by the defence by itself does not turn down the fact of accused persons' affiliation with the locally formed Razakar Bahini.

111. Whether the accused persons incurred liability for the crimes arraigned in charges shall be resolved in respective segment of the judgment. But now in view of above deliberation based on evidence, documentary and oral and settled history it stands proved firmly that the accused persons had acted as 'close associates' of locally formed Razakar Bahini and Pakistani occupation army stationed in Barlekha, to further policy and plan of Pakistani occupation army.

## **X. Applicable laws to be considered in adjudicating the charges**

112. Tribunal recalls the settled norm that until and unless the accused persons are found guilty they shall be presumed innocent. Keeping this universally recognised principle in mind we shall now go ahead with the task of evaluation of evidence provided in relation to each count of charges.

113. Assessment of the evidence presented is to be made on the basis of the totality of the evidence presented in the case before us and also considering the context prevailing in 1971

in the territory of Bangladesh. Credibility of evidence adduced is to be weighed in context of its relevance and circumstances.

114. Provisions as contemplated in the International Crimes (Tribunals) Act, 1973 and the Rules of Procedure (ROP) formulated by the Tribunal [ICT-1] under the powers conferred in section 22 of the Act are applicable to the proceedings before the Tribunal.

115. 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)].

116. The defence shall have liberty to cross-examine prosecution witness questioning credibility of what is stated in examination-in-chief and to take contradiction of the evidence given by him [Rule 53(ii)].

117. Defence shall have right to examine witnesses [Section 10(1) (f) of the Act of 1973] in support of defence. It is to be noted that both the Act of 1973 and the Rules (ROP) have

adequately ensured the universally recognised rights of the defence.

118. 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.

119. It is now well settled proposition that the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration. This view finds support also from the decision in the case of **Kordic and Cerkez**, wherein it has been observed that, ---

“The Appeals Chamber has consistently held that the corroboration of evidence is not a legal requirement, but rather concerns the weight to be attached to evidence”.

**[Kordic and Cerkez ICTY Appeal Chamber December 17, 2004, para. 274]**

120. Since the Act of 1973 is meant to prosecute and try the persons responsible for the offence of crimes against humanity, committed in violation of customary international law, the Tribunal however is not precluded from seeking guidance from international reference and relevant

jurisprudence evolved, if needed to resolve legal issues related to adjudication of charges and culpability of the accused.

## **XI. Adjudication of Charges**

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

**(01 accused indicted)**

**[Offences of ‘Abduction’; ‘Confinement’; ‘Torture’; ‘Plunder’, ‘Murder’, ‘Deportation’ and ‘other Inhumane Acts’]**

121. Charge: That on 19 May 1971, at about 12.30 P.M. a group of 25/30 armed Razakars and Pakistani Occupation Army men being accompanied by the **accused Md. Abdul Mannan alias Monai** and Razakar Commander Azizur Rahman (Now dead) by launching attack at village Gholsa under Police Station- Barlekha of District[now]-Moulavibazar besieged the houses of unarmed civilians and forcibly captured old man Gopi Mohan Das, Nagendra Kumar Das, Harendra Lal Das and his younger brother Sree Nibas Das and Mati Lal Das and caused torture to them, looted the households.

One detainee Gopi Mohan Das managed to escape from the grip of Razakars tactfully. The detained Harendra Lal Das

alias Hari Das, Mati Lal Das, Sree Nibas Das and Nagendra Kumar Das were taken away to the Razakar camp set up at Borolekha C.O office where they were subjected to inhuman torture in protracted captivity [19 May to 21 May, 1971] by the accused and his cohort Razakars.

On 22 May, 1971 at about 10.00 P.M the accused Md. Abdul Mannan alias Monai along with other armed Razakars and Pakistani occupation army men took away the four detainees to the Juri Bazar killing site under Barlekha Police Station by a vehicle from the Barlekha C.O Office Razakar camp and the accused and his accomplices conjointly injured the said detainees severely by blowing sharp cutting weapons and abandoned them into a hole, guessing dead.

Of four detainees, (1) Harendra Lal Das alias Hari Das, (2) Mati Lal Das and (3) Nagendra Kumar Das died at the said killing spot and another detainee (4) **Sree Nibas Das** luckily survived and somehow eventually returned back home and received treatment in Karimganj hospital of India and his family inmates, being frightened deported to India where they remained sheltered in the refugee camp.

Therefore, the accused **Md. Abdul Mannan alias Monai** has been charged for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offences of **‘abduction’; ‘confinement’; ‘torture’; ‘plunder’; ‘murder’, ‘deportation’ and ‘other inhumane acts’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

## **Evidence of Witnesses Examined**

122. This count of charge involves the event of attack directing unarmed civilians belonging to Hindu community which ended in brutal annihilation of three detainees. One detainee Sree Nibas Das got miraculously survived. The group of attackers allegedly formed of accused **Md. Abdul Mannan alias Monai**, his accomplice Razakars and Pakistani army men who had carried out the designed attack, the charge framed arraigns.

123. In order to substantiate this charge prosecution adduced in all 05 witnesses who have been examined as P.W.01, P.W.02, P.W.08, P.W.09 and P.W.10. Of these five witnesses

P.W.01, P.W.02, P.W.08 and P.W.10 are ocular witnesses to the facts crucially related to the outcome of the attack. Now, first let us see what account the witnesses have made before Tribunal.

**124. P.W.01 Nishi Knata Das (70)** of village-Gholsa under police station-Barlekha of Distract-Moulavibazar is the son of victim martyr Nogendra Kumar Das. In 1971 he was 22 years old.

125. In recounting the event arraigned **in charge no.1** P.W.01 stated that on 19 May 1971 at about 12:30 P.M Razakar Abdul Mannan @ Monai, Aziz(now dead) being accompanied by accomplice Razakars and Pakistani army men besieged the house of Gopi Mohan Das, adjacent to their house and got Gopi Mohan Das forcibly captured, carried out looting household. At that time he (P.W.01) had been at the place behind their house and seeing it he came back home. When the said Razakars and army men started moving toward their house he went into hiding inside a bush wherefrom he saw Razakar Md. Abdul Mannan @ Monai forcibly detaining his (P.W.01) father Nogendra Kumar Das whom he handed over to Pakistani army men and also looted their house.



126. P.W.01 also stated that next he saw the perpetrators taking his father on the road nearer to their house and their neighbors Harendra Lal Das @ Haridas, Motilal Das and Sree Nibas Das were also brought there, on capture. At a stage, Gopi Mohan Das managed to escape there from. Next, he (P.W.01) saw the gang taking away the detainees tying them up by a tractor and it was the last occasion that he had of seeing his father.

127. In respect of the fate of his father and other detainees P.W.01 stated that later on he learnt from people that the detainees along with his father were taken to Razakar camp set up at Barlekha C.O office where they were subjected to torture in captivity for three days. On 24 May 1971 in early morning one detainee Sree Nibas Das having blood stained injury on throat miraculously survived and came back home.

128. He (P.W.01) also stated that he learnt from him (Sree Nibas Das) that on 22 May 1971 at about 10:00 P.M. he and other detainees were taken to a trench at Juribazar where Razakar Abdul Mannan @ Monai and army men stabbed them by sharp cutting weapon and abandoned them in the trench. Detainee Sree Nibas Das (survived victim) somehow

came out of the ditch and wrapped up the injuries he sustained by his wearing lungi and took shelter at an abandoned shop where he stayed the whole day. Then on the following morning Sree Nibas Das (survived victim) reached back home. He was brought to Karimganj, India by Ekhlalur Rahman, Farid Ali and other for his medical treatment. Sreenibas Das died in 2012.

129. P.W.01 finally stated that few days subsequent to the above event happened he along with his mother, brothers, sisters and relatives deported to India and got sheltered at the refugee camp at Chandranathpur in India. Few days later he received freedom fighter training and then joined the war of liberation coming back to Bangladesh. He (P.W.01) participated in many operations at different places under the command of Captain Khairul Enam and sub-sector commander Dewan Mahbubur Rahman Sadi. He knew the accused beforehand as he was a resident of their neighbouring village.

130. In cross-examination done on part of accused Abdul Mannan @ Monai P.W.01 stated in reply to defence question put to him that they did not lodge case over the event of his

father's killing, after independence; that he joined the war of liberation as a freedom fighter in sector no.04 under the command of sub-sector commander Captain Khairul Enam and Mahbubur Rahman Sadi; that he gets freedom-fighter's allowance.

131. It has been affirmed in cross-examination of P.W.01 that the accused Abdul Mannan @ Monai, his accomplice Razakars and Pakistani army men forming a group took away his father on forcible capture; that there had been a Razakar camp at Barlekha bazaar and there was no Razakar camp at their village-Gholsa.; that he could recognise the accused Abdul Mannan @ Monai when his father was taken away on forcible capture and the name of Monai's father is Yasin Ali.

132. It has been affirmed too in cross-examination of P.W.01 that he learnt from Sree Nibas Das (survived victim) that the detainees were stabbed to death and not by gunshot and that he could not recognise the other accomplice Razakars as they excepting the accused Abdul Mannan @ Monai and Aziz(now dead) were not from their locality. In cross-examination, P.W.01 denied the defence suggestion that out

of enmity he testified implicating the accused Abdul Mannan @ Monai.

**133. PW.02 Chittaranjn Das (68)** of village-Gholsa under police station- Barlekha of District Moulavibazar is a direct witness to facts related to first phase of attack that resulted in taking away four Hindu civilians on forcible capture, by launching attack.

134. P.W.02 stated that in 1971 he was 20 years old and was engaged in agriculture work. On 19 May 1971 at about 12:30 P.M on his way to home he saw some 20/25 Pakistani army men and Razakars arriving by a tractor. Razakar Abdul Aziz (now dead) and Razakar Abdul Mannan @ Monai (accused) guided them to reach at the house of Gopi Das. Seeing this he (P.W.02) went into hiding behind a mango tree wherefrom he saw bringing Gopi Das on road and then perpetrators also brought Nogendra, Harendra, Sree Nibas and Motilal there on capture. Gopi Das managed to escape and then the detainees were taken away toward south by a Tractor. He then returned back home.

135. P.W.02 next stated that on 24 May injured Sree Nibas (one detainee) came back home and then they learnt from him that he and other detainees were subjected to torture in captivity and on 22 May at night they were taken near a ditch at Juribazar mass killing field where they (detainees) were subjected to stabbing by sharp cutting weapon and were dumped inside the ditch. Sree Nibas Das (one detainee) in some way managed to come out from the ditch and remained in hiding inside an abandoned shop, after covering the wound he sustained by his wearing lungi. On the following night he came back home. P.W.02 also stated that Sree Nibas was brought to India for his medical treatment.

136. Finally P.W.02 stated that four days after the event happened he moved to India and received training of freedom-fighter and then joined the war of liberation under leadership of Major CR Dutta in sector no.04. Accused Abdul Mannan @ Monai was from their locality and that is why he knew him beforehand.

137. In cross-examination in reply to defence question P.W.02 stated that amongst the Razakars of their locality Razakar accused Abdul Mannan @ Monai is still alive.

138. P.W.02 denied the defence suggestion that he did not hear the event he testified from Sree Nibas Das ; that accused had a friendly relation with victim Sree Nibas; that the accused was not a Razakar; that he was not involved in the event he testified; that he did not know the accused and that what he testified implicating the accused was untrue and tutored.

**139. P.W.08 Purnendu Kumar Das (73)** of village-Gholsa under police station-Barlekha of District Moulavibazar testified what he witnessed in course of first phase of attack conducted at their house. In 1971 he was 24/25 years old.

140. P.W.08 before narrating the event stated that Pakistani occupation army got stationed at Barlekha CO office on 07 May, 1971. Local peace committee was formed under headship of Shamsuddin Hossain(now dead) and later on Razakar Bahini was formed of which Azizur Rahman (now dead) was its commander. Abdul Mannan @ Monai, Kolai Mia (now dead), Bolai Mia (now dead) and many others joined the Razakar Bahini formed in Barlekha Thana.

141. P.W.08 in respect of the event narrated that on 19 May, 1971 at about 12:30 P.M. he had been at their home when he saw a vehicle of Pakistani army coming from the end of CO office carrying 25//30 armed Razakars and army men. The vehicle arrived in front of their house and then Razakars and army men got down. He (P.W.08) could recognise Abdul Mannan @ Monai Razakar and Razakar commander Azizur Rahman. He then went into hiding inside a bush nearer to their house wherefrom he saw the army men and Razakars forcibly capturing his father Gopi Mohon Das, causing him torture tying him up and plundering household.

142. P.W.08 also stated that Razakar Abdul Mannan @ Monai brought his elder brother Nogendra Kumar Das to his father, tying him up. The two other Razakars brought his uncle Harendra Lal Das @ Hari Das, Sree Nibas Das and Moti Lal Das on forcible capture to the place where his father was kept detained.

143. P.W.08 also recounted that then the Razakars and army men taking the detainees and looted goods with them moved to their vehicle parked near their house when his father strategically managed to flee. The gang then moved back

toward the Razakar camp set up at Barlekha CO office. Later on, he heard from people that the detainees were subjected to torture in captivity.

144. What happened next? In respect of the fate of detainees P.W.08 is a hearsay witness. P.W.08 stated that five days later i.e. on 24 May (1971) his uncle Sree Nibas Das came back home when they saw bleeding injuries on his body and he was then sent to India to undergo medical treatment. In the same night they the inmates of their family too deported to India.

145. P.W.08 also stated that going to India he learnt from Sree Nibas Das that after three days' captivity they the detainees were taken to Juribazar mass grave by accused Abdul Mannan @ Monai, Razakar Azizur Rahman and army men where Razakar Abdul Mannan @ Monai stabbed him by sharp cutting weapon which resulted in injuries and he was dumped inside a ditch. Three detainees were stabbed to death there. Guessing all detainees dead the perpetrators had left the site and then he (Sree Nibas Das ) somehow came out of the ditch and took shelter at an abandoned shop beside rail line



where he stayed day long and in the night he started moving back home.

146. P.W.08 also stated that he received freedom fighter training in India leaving family inmates at refugee camp. Razakar Abdul Mannan @ Monai was from their neighbouring village and thus he knew him beforehand.

147. In cross-examination of P.W.08 it has been affirmed that P.W.08 knew the accused and he could recognise him accompanying the gang of attackers. P.W.08 in reply to defence question stated that he knew the accused Abdul Mannan @ Monai , Bolai, Kolai, Habib, Ibrahim, Cholon and of them all died excepting accused Abdul Mannan @ Monai.

148. In cross-examination P.W.08 also stated in reply to defence question put to him that Sree Nibas(survived injured victim) narrated the event implicating the accused Abdul Mannan @ Monai and Razakar commander Azizur Rahman (now dead) who perpetrated the offences along with Pakistani army and other Razakars .

149. P.W.08 denied the defence suggestions that what he testified implicating the accused was untrue and tutored; that the accused was not a Razakar and that he testified out of enmity.

**150. P.W.09 Hiralal Das (51)** is the son of one victim martyr Harendra Lal Das @ Hari Das. In 1971 he was 03 years old. He heard the event arraigned in this charge from his mother Sreemoti Radha Rani Das when he grown up.

151. P.W.09 stated that he heard from his mother and uncle Sree Nibas Das (survived victim) and other relatives that on 19 May, 1971 Razakar Abdul Mannan @ Monai being accompanied by 25/30 Razakars and Pakistani army men by attacking their house forcibly captured his father Harendra Lal Das @ Hari Das, uncle Sree Nibas Das, Motilal Das, Nogendra Kumar Das @ Mohon Das and Gopi Mohon Das, caused torture to them and took them away to camp set up at Barlekha CO office.

152. P.W.09 stated too that he (P.W.09) also heard the detainees were subjected to brutal torture in captivity and three days later they were stabbed to death by sharp cutting

weapon taking them to Juribazar mass grave. But his uncle Sree Nibas Das could survive despite receiving severe injuries and he disclosed the event to all.

153. In cross-examination in reply to defence question P.W.09 made it affirmed that he heard the event from freedom fighter Purnendu Kumar Das (P.W.08), freedom fighter Nishikanta Das (P.W.01), Gopi Mohon Das and the elderly residents of their village.

154. P.W.09 also affirms in reply to defence question put to him that Razakar Abdul Mannan @ Monai, his accomplice Razakars and army men by launching attack at their house forcibly apprehended his father and uncle who were taken away to Razakar camp and three days later the detainees including his father were taken to Juribazar mass grave by accused Razakar Abdul Mannan @ Monai, his accomplice Razakars and army men where they were stabbed to death and were dumped inside a ditch.

155. P.W.09 next stated in reply to defence question that his mother heard the event of his father's killing from his uncle

Sree Nibas (survived victim) and his mother herself witnessed the event of attack conducted at their house.

156. P.W.09 denied the defence suggestions that he testified implicating the accused being tutored; that the accused was not a Razakar and that the accused was not involved with the alleged event.

**157. P.W.10 Sitendu Das (58)** is the son of another victim martyr Nogendra Kumar Das. In 1971 he was 12 years old, In narrating the event of attack he recalled what he experienced in course of the event of attack conducted at their house.

158. P.W.10 stated that on 19 May, 1971 at about 12:30 P.M. he had been at home when he saw the group formed of Razakar Abdul Mannan @ Monai, his accomplice Razakars and Pakistani army men coming toward their house. Seeing it he along with his mother, brother Nishi Kanta (P.W.01) and inmates went into hiding inside a bush beside the house wherefrom he saw Razakar Abdul Mannan @ Monai and his accomplices torturing his father Nogendra Kumar Das, uncles Harendra Lal Das @ Hari Das, Sree Nibas Das, Gopi Mohon Das, Motilal Das by tying them up and plundering the

household. Gopi Mohon Das tactically managed to flee when the detainees were taken near the army vehicle. The detainees were then taken away toward the camp set up at Barlekha CO office.

159. P.W.10 next stated that five days later Sree Nibas returned back home having severe bleeding injuries. They heard from him that three days later Razakar Abdul Mannan @ Monai, his accomplice Razakars and Pakistani army men stabbed them by sharp cutting weapon taking them at Juribazar mass grave and guessing them dead dumped inside a ditch. Then (after hearing this event) they all deported to India.

160. In respect of reason of knowing the accused Abdul Mannan @ Monai P.W.10 stated that he used to visit the shop nearer to accused's home where he often could see the accused and that is why he knew him beforehand.

161. In cross-examination P.W.10 stated in reply to defence question that he could not recognise any other Razakars excepting the accused Abdul Mannan @ Monai and Azizur Rahman (now dead). P.W.10 denied defence suggestion that

the accused was not a Razakar; that he intentionally suppressed the name of other Razakars; that the accused was not a Razakar and was not involved in the event he testified.

### **Finding on Evaluation of Evidence presented**

**162. Mr. Mukhlesur Rahman Badal**, the learned prosecutor being assisted by **Ms. Sabina Yesmin Khan**, the learned prosecutor drawing attention to evidence adduced, oral and documentary relied upon submitted that the fact of launching systematic attack leading to detaining five Hindu civilians and taking four of them away forcibly to Razakar camp has been proved. Defence could not refute it. The group of attackers was formed of Pakistani occupation army, accused Md. Abdul Mannan and his armed cohorts. Some facts crucially related to the first phase of attack have been affirmed even in cross-examination of witnesses.

163. It has been further argued that most of witnesses relied upon in support of this charge are relatives of victims and they had occasion of seeing the atrocious systematic attack which resulted in forcible capture of Hindu civilians, looting household. Consistently corroborative evidence of witnesses

rationality inspires credence in proving the event of attack leading to looting household, confinement, torture and killing three civilians belonging to Hindu community. That attack was intended to devastate Hindu religious group, by spreading horror and intimidation.

164. The learned prosecutor next argued that it was not likely of seeing the activities carried out at the camp where the victims were kept confined. It has been proved that one detainee Sree Nibas Das could survive despite receiving brutal injuries on his throat and coming back home he disclosed what brutal treatment was done to them in captivity and who were engaged in accomplishing those prohibited acts including the brutal act of killing the other detainees. Defence could not impeach it. Rather, the fact of returning back of one injured survived victim Sree Nibas Das stands affirmed in cross-examination.

165. **Mr. M. Sarwar Hossain** the learned counsel defending the accused Md. Abdul Mannan alias Monai chiefly argued that the accused did not belong to Razakar Bahini and he had no complicity or involvement with the event alleged and that in 1971 he had not been in his own village locality under

Barlekha police station and that absence of this accused around his own locality in 1971 has been proved from testimony of three D.W.s.

166. It has been asserted too by the learned defence counsel that the prosecution witnesses who are not independent testified the alleged event implicating this accused falsely out of rivalry; that the testimony of witnesses does not carry credibility and that the alleged act of killing could not be proved by any direct evidence and hearsay evidence in this regard does not have any probative value.

167. The event arraigned in charge no.01 in briefs that the group of attackers accompanied by the accused Md. Abdul Mannan @ Monai by conducting a systematic attack at the house of Gopi Mohon Das got five including Gopi Mohon Das forcibly captured. Just before moving back taking away the detainees, Gopi Mohon Das strategically managed to flee. Finally, the gang took away four detainees to Razakar camp set up at Barlekha CO office.

168. The charge framed also arraigns that the four detainees were kept in captivity at the Razakar camp set up in Barlekha



C.O office for three days when they were subjected to untold torment and torture.

169. The ending phase of the attack resulted in killing three detainees and survival of one detainee Sree Nibas Das who despite receiving bleeding injuries managed to return back home. Survived victim Sree Nibas Das disclosed how the three detainees were annihilated, the charge framed arraigns.

170. It transpires that relatives of victims testified how the first phase of attack was carried out. They later on, heard the ending phase of the event from Sree Nibas Das, one survived victim who was also taken to the killing site where after stabbing him the perpetrators left him abandoned at the killing site guessing dead.

171. Prosecution relies upon testimony of five (05) witnesses to substantiate the arraignment brought in this count of charge no.01.Of them three i.e. P.W.01, P.W.09 and P.W.10 are the sons of victims and P.W.02 and P.W.08 are direct witnesses to the acts carried out in course of first phase of attack.

172. P.W.01 Nishi Knata Das and P.W.10 Sitendu Das are the sons of victim martyr Nogendra Kumar Das. P.W.09 Hiralal

Das is the son of another victim martyr Harendra Lal Das @ Hari Das. P.W.02 Chittaranjn Das, P.W.08 Purnendu Kumar Das are direct witness.

173. It is not disputed that in 1971 P.W.01 was 22 years old. After the event had happened P.W.01 along with family inmates deported to India, due to coercive situation spread out of the attack launched. This fact remained undisputed too. In India P.W.01 received training to join the war of liberation and then participated in operations under the command of Captain Khairul Enam and sub-sector commander Dewan Mahbubur Rahman Sadi.

174. P.W.01 is a key witness to the event of attack arraigned. He saw how the gang accompanied by the accused Md. Abdul Mannan @ Monai forcibly captured his father Nogendra Kumar Das and four other Hindu civilians. It is evinced from testimony of P.W.01 that the accused Md. Abdul Mannan @ Monai actively accompanied the gang of attackers in besieging the house of their neighbour Gopi Mohon Das and in apprehending him and looting their house. He (P.W.01) witnessed it as he had been staying behind their house at the relevant time. This version remained uncontroverted. It thus

reveals that the accused aggressively and consciously participated in conducting the attack, being part of the criminal enterprise.

175. Testimony of P.W.01 depicts that on seeing the attack conducted at the house of Gopi Mohon Das he came back home. But he went into hiding inside a nearer bush when he sensed the gang moving toward their house.

176. It also transpires that P.W.01, remaining in hiding place, saw the accused handing over his father Nogendra Kumar Das to Pakistani army men, on forcible capture. The gang looted their household as well. P.W.01 next saw the gang taking away his father to the road nearer to their house where Harendra Lal Das @ Haridas, Motilal Das and Sree Nibas Das were also made assembled on unlawful capture.

177. Getting Nogendra Kumar Das the father of P.W.01 captured the invaders took him away along with three other detained Hindu civilians and it was materialized on substantial contribution and active participation of accused Md. Abdul Mannan @ Monai. It stands proved from unimpeached ocular testimony of P.W.01.

178. P.W.01 had rationale reason of recognizing the accused who remained present with the gang at the site attacked. Defence could not diminish it. Mere denial in this regard on part of defence does not negate the truthfulness of narrative made in this regard by P.W.01.

179. Defence does not seem to have made effort to refute the first phase of attack which resulted in unlawful capture of five Hindu civilians and looting households, as narrated by P.W.01, a natural witness who experienced the attack with terror. Rather, it appears that in cross-examination, the attack carried out by the group accompanied by accused Md. Abdul Mannan @ Monai has been affirmed and the P.W.01 had rationale reason of recognizing the accused present with the gang at the site attacked.

180. P.W.01 is a great son of his martyr father Nogendra Kumar Das. We assume that honoring the untold sacrifice of his father victim Nogendra Kumar Das P.W.01 got engaged in the war of liberation as a freedom-fighter, after receiving training in India. That is to say, he and his family inmates deported to India simply not to save their own lives. Rather, on receiving training in India P.W.01 got engaged in many

operations in Bangladesh as a freedom-fighter under command of no.04 sub-sector commander Captain Khairul Enam and Mahbubur Rahman Sadi. All these have been explicitly affirmed in cross-examination of P.W.01. Participation of P.W.01 in the war of liberation as a freedom-fighter indisputably consoles the departed soul of his martyr father Nogendra Kumar Das.

181. Next phase of the event of attack was to cause torture keeping the detainees in captivity at Razakar camp set up at C.O Office Barlekha. Naturally, none had opportunity of seeing the criminal acts carried out at the Razakar camp. It is not disputed that one detainee Sree Nibas Das got miraculously survived even after receiving grave injuries on his throat. Naturally, the P.W.01 and the relatives of victims had occasion of knowing from survived detainee Sree Nibas Das as to what happened to the detainees in captivity and how they were slaughtered to death.

182. It transpires from uncontroverted and undisputed version of P.W.01 that he learnt from survived victim Sree Nibas Das as to how the three detainees were slaughtered to death and how he (Sree Nibas Das) got survived despite sustaining

grave injuries. Defence does not seem to have made any endeavor to dispute it by cross-examining the P.W.01. It remains totally uncontroverted. Besides, there is nothing to term this crucial version unbelievable.

183. Testimony of P.W.01 so far as it relates to the first phase of attack seems to have been consistently corroborated by P.W.10, the brother of P.W.01. In 1971 P.W.10 was 12 years old. It transpires that P.W.02 also had occasion of seeing the criminal acts conducted in course of first phase of attack, remaining in hiding inside a bush adjacent to their house, along with inmates.

184. Therefore, conducting systematic attack at the house of Gopi Das on the date and time, detaining Gopi Das , Nogendra, Harendra, Sree Nibas and Motilal and taking them excepting Gopi Das away toward Razakar camp set up at Barlekha C.O office stands proved from corroborative testimony of P.W.01 and P.W.10, the two sons of victim martyr Nogendra Kumar Das. Besides, it gets corroboration from the narrative made in the book titled “**Ekattorer Koshtokotha**” authored by Sattar Azad, Published in

2010(**Relevant page 17 of the book** ). Its authoritativeness however could not be challenged showing any valid reason.

185. The fact of returning back home of one severely injured detainee Sree Nibas Das also stands undisputed. Defence could not impeach it in any manner. This fact of returning back of one injured detainee is consistently manifested in testimony of P.W.01 and P.W.10. They knew the accused beforehand as he was a resident of their locality and used to visit shop nearer to their house. Besides, presumably, in 1971 his affiliation in local Razakar Bahini with notoriety made him known to the locals.

186. P.W.01 and P.W.10, in corroborative manner, narrated that five days later survived victim Sree Nibas Das returned back home having bleeding injuries and he told that three days after keeping them in captivity at the Razakar camp they were taken to Juribazar where they were stabbed by sharp cutting weapons and they were left abandoned inside a ditch, guessing all detainees dead.

187. Killing of detainees belonging to Hindu community was the ending phase of the attack. Naturally, it could not be

witnessed by anybody. But one detained victim Sree Nibas Das miraculously got survived even the perpetrators brutally stabbed him by sharp cutting weapon to cause his death. After coming back home from the killing site he (Sree Nibas Das) disclosed that the accused and his accomplices participated in perpetrating the killing of three detainees and he eventually got survived. Hearsay testimony of P.W.01 and P.W.10 in this regard carries sufficient probative value which proves accused person's participation even in committing killing of three Hindu civilians.

188. Testimony of P.W.01 also impels that coming out of the ditch Sree Nibas Das wrapped up his injured throat with his wearing lungi and took shelter at an abandoned shop and on the following day arrived at his home. Ekhlalur Rahman, Farid Ali and another one took him to Karimganj, India for his medical treatment.

189. We restate that situation existed in 1971 none had fair occasion of seeing all the phases of brutal attack which ended in horrific annihilation. P.W.01 and P.W.10 heard the event of killing phase. Their hearsay evidence is admissible as it gets assurance from facts and circumstances unveiled.



190. The act of taking away the detainees to Razakar camp on forcible capture and accused's active participation therewith stands proved. Since such act together with the act of detaining them confined at Razakar camp were overtly chained to the killing, the upshot of the attack it may be undeniably deduced that the accused Md. Abdul Mannan @ Monai was consciously concerned even with the act of brutal slaughter of detainees. Hearsay testimony of P.W.01 and P.W.10 in this regard carries value and adds assurance in respect of accused person's participation in accomplishing the killing of detainees, the upshot of the criminal design.

191. P.W.02 stated in cross-examination that amongst the Razakars of their locality Razakar accused Abdul Mannan @ Monai is still alive. It rather indisputably affirms that the accused Abdul Mannan @ Monai was a notorious Razakar of localities under police station Barlekha of District(now) Moulavibazar.

192. First phase of attack launched is also found to have been narrated by P.W.08, the son of one victim Gopi Mohon Das. He witnessed this phase of the event, remaining in hiding inside a bush, sensing the attack. He saw the gang being

accompanied by the accused Md. Abdul Mannan @ Monai arriving near their house by a vehicle, on 19 May 1971 at about 12:30 P.M. He saw the accused causing torture to his father Gopi Mohon Das by beating.

193. Hearing the ending phase of the event which resulted in killing three detainees from one survived victim Sree Nibas Das as testified by P.W.08 also carries probative value. It gets consistent corroboration from facts and circumstances unveiled. Besides, it could not be denied even in cross-examination. Rather, it seems to have been affirmed in cross-examination.

194. Rational reason of knowing the accused beforehand as testified by P.W.08 also seems to have been affirmed in his cross-examination. Defence does not seem to have made any effort to refute it and thus narrative made by P.W.08 in respect of presence of the accused with the gang at the crime site and his acts when first phase of attack was carried out inspires credence.

195. It stands proved that Razakar camp was set up at Barlekha C.O office with which the accused had explicit

affiliation. Defence does not seem to have any dispute on it. Besides, it is found to have been affirmed in cross-examination of prosecution witnesses, the residents of locality under Barlekha police station. It is also not disputed that the four detainees were kept in protracted captivity at that Razakar camp.

196. In 1971 P.W.09 was just 03 years old child. He lost his father and has been grown-up without father's love and affection. Naturally, he heard the event of his father's killing from his mother who witnessed the event of attack. It could not be refuted in any manner that the father of P.W.09 and three others were taken away on forcible capture and of them three were annihilated three days later.

197. It has been affirmed in cross-examination of P.W.09 that he also heard the event of his father's killing. It could not be impeached in any manner that one victim Sree Nibas Das miraculously got survived despite receiving severe injuries inflicted to him. We are convinced to conclude that the hearsay version of P.W.09 carries probative value as it gets corroboration from and circumstances crucially chained to the upshot of the 'systematic attack' conducted.

198. It appears that P.W.10 son of another victim martyr Nogendra Kumar Das had natural opportunity of seeing the attack that resulted in unlawfully detaining five including his father and uncles. It also reveals that one detainee Gopi Mohon Das managed to flee and thus four detainees were taken away.

199. Hearsay testimony of P.W.10 in respect of ending phase of the event carries probative value as it is not anonymous. This phase of event was disclosed by one survived victim Sree Nibas Das after he returned back despite receiving grave bleeding injuries he sustained when he and other three detainees were taken to Juribazar mass grave, the killing site to activate their killing by stabbing. Defence does not appear to have denied even this part of the event as testified by the P.W.10. Besides, it gets consistent corroboration from testimony of other witnesses, the relatives of victim.

200. Specific defence case of accused Md. Abdul Mannan @ Monai is that he had no nexus with local Razakar Bahini; that he had not been around his village under Barlekha police station in 1971; and that thus he was not involved with any of

events arraigned. That is to say, plea of alibi has been taken by the accused Md. Abdul Mannan @ Monai.

201. In order to show accused Mannan's absence in the crime locality in 1971 three witnesses have been examined as D.W.02, D.W.03 and D.W.04 to negate accused Mannan's involvement with the events arraigned and his alleged affiliation with locally formed Razakar Bahini.

202. D.W.02 stated that he knew accused Abdul Mannan since boyhood; that he (accused) studied in Satfur Alia Madrasa located in Chatak of District Sylhet since 1970 to 1973 and during this period he did not see Mannan at his home which was 400 yards far from his home.

203. In cross-examination, D.W.02 stated that in 1971 most of educational institutions remained closed, however some of Madrasa remained opened.

204. The rest two D.W.s just parrot like echoed that the accused never came to his village home not only in 1971 during the war of liberation but also till 1973. It is unbelievable. Abstaining from coming to own native home

during the period of long four years just for the reason of studying in a Madrasa is not believable, in context of our social pattern.

205. D.W.03 Md. Ayub Ali (57) was 7 years old in 1971. He too echoed the same version. He stated that the accused Abdul Mannan did not come to his village home in 1971 during the war of liberation and he was not a Razakar.

206. D.W.04 claims to be a neighbour of accused Abdul Mannan. He too stated that the accused Abdul Mannan never visited his village home in between 1970 and 1973 as during that time he was a student of Satfur Madrasa under Sylhet District.

207. If it is accepted to be true that the accused Md. Abdul Mannan @ Monai was a student of Satfur Alia Madrasa located in Chatak it cannot be said that he for long four years i.e. since 1970 to 1973 remained totally far from his own home locality under Barlekha police station and he had no association with locally formed Razakar Bahini.

208. Besides, D.W.02 could not say as to under which police station Satfur Alia Madrasa located. No documentary evidence has been presented on part of defence in support of the defence plea to show that during said long four years' time the accused had been staying outside his native locality for the cause of his study in the said Madrasa.

209. Already it stands proved beyond reasonable doubt that the accused Md. Abdul Mannan @ Monai being an active part of the gang of attackers participated in committing crimes occurred at all phases of attack launched against the unarmed Hindu civilians. Thus, we are forced to deduce that defence has made a futile attempt, by taking plea of alibi intending to negate accused Md. Abdul Mannan's presence in the locality under police station Barlekha in 1971 and his affiliation in local Razakar Bahini by examining defence witnesses who do not seem to be credible at all.

210. Naturally, none had occasion of seeing the ending phase of the event arraigned in charge no.01. One detained victim Sree Nibas Das got miraculously survived and returned back home, it stands proved. Thus, the witnesses had opportunity of hearing how the slaughtering three victims in dreadful

manner happened and how Sree Nibas Das got survived. We do not find any reason to keep hearsay testimony on this crucial fact aside from consideration.

211. The version of P.W.01 proves it irresistibly that the horrific attack conducted by the gang formed of army men, accused and his armed cohorts forced the civilians belonging to Hindu community to depart, quitting own home and households. Act of looting in course of first phase of attack conducted by the gang does not seem to have been denied even by the defence. Such devastating acts were detrimental to normal livelihood and human rights.

212. It reveals that the horrifying event of attack eventually forced the P.W.01 and his family inmates to depart to India. It remains totally undisputed in cross-examination. Be that as it may, we are convinced to leave the view that the horrifying intimidating situation indisputably caused grave mental harm to the relatives of victim which eventually forced them to depart. Such prohibited acts detrimental to human rights constituted the offence of '**other inhumane act**' as crime against humanity.



213. The primary and core issue pertains to the involvement of the accused who had acted as one perpetrator, forming the group of attackers in committing crimes arraigned. Factual matrix proved by the prosecution unerringly point towards the accused person as one active perpetrator. Besides, act of accompanying the criminal gang in launching attack and presence at the crime site sufficiently indicate the conscious participation of accused Md. Abdul Mannan @ Monai in accomplishing the devastating activities, abduction, torture, confinement and finally, the principal offence of murder of three detained Hindu civilians, by sharing common intent.

214. The only reasonable inference may be deduced from the evidence adduced that there had been understanding or agreement between the accused indicted and others of being members in the joint criminal enterprise, in accomplishing the crimes in violation of international humanitarian law which were gravely detrimental attack to the population belonging the Hindu community. The notion of 'attack' embodies the notion of acting purposefully to the detriment of the interest or well being of a civilian population and the 'population' need not be the entire population of a state, city, or town or

village. Thus, based on this settled proposition we deduce that the attack was directed against the civilian population

215. There has been no evidence that dead body of victims later on were recovered from the killing site. Presumably, relatives of victims did not make any such attempt due to horror and coercive situation. But mere non recovery of dead bodies of victims does not negate the appalling episode of the killing. It may be reasonably proved even from facts and circumstances divulged and already it stands proved. In this regard we may eye on the observation made in the case of **Krnojelac by the ICTY Trial Chamber** which is as below:

“Proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. The fact of a victim’s death can be inferred circumstantially from all of the evidence presented .....

**[Krnojelac, ICTY Trial Chamber, March 15, 2002, para 326]**

216. It has been argued on part of defence that no witness claims to have witnessed the accused committing the criminal acts constituting the offence of alleged killing of three

detainees. Without proving participation of accused in the commission of the alleged killing phase as arraigned he cannot be held guilty.

217. We are not with the above defence contention. Tribunal notes that the case relates to trial of internationally recognized 'system crimes' committed in violation of international humanitarian law. The offences arraigned occurred in context of war of liberation in 1971. It is to be kept in mind that the task of determination of culpability of a person accused of offences enumerated in section 3 of the Act of 1973 involves a quite different jurisprudence. Proof of all forms of criminal responsibility, through 'participation' in any manner can be given by direct or circumstantial evidence. It is now settled jurisprudence. Circumstantial evidence relates to circumstances surrounding an event or offence from which a fact at issue may also be logically inferred. In the case in hand, circumstances unveiled sufficiently suggest to conclude that the accused Md. Abdul Mannan @ Monai substantially contributed and facilitated even the perpetration of brutal killing of three detainees.

218. ‘Participation’ of accused in conducting first phase of attack stands proved. Next, Sree Nibas Das, one survived victim had occasion of seeing the act of stabbing three detainees along with whom he was also taken to the killing site and was brutally stabbed by sharp cutting weapon. On returning back home survived victim Sree Nibs Das disclosed the ending phase of the event and accused’s participation in effecting killing the three detainees. All these together indubitably proves active and culpable participation of accused Md. Abdul Mannan @ Monai in all phases of the event. He had acted as active part of ‘collective criminality’, we conclude.

219. The event arraigned in this charge also appears to have been depicted in the narrative made in the book titled **“Ekattorer Koshtokotha” authored by Sattar Azad (Book’s Page Nos. 16-17 and Prosecution Documents Volume page nos. 74-75)**. The relevant narrative states as below:

Ó.....ivRvKvi AwRRij ingvb I fBqvi Wv†K †Nvj mv  
 MÖg Av†m cwK-†vb Awg©j | Zv†`i m†½ wQj Zviv`is  
 MÖgi ivRvKvi gbvB(Avmvgx) | Zviv G†mB n†i>†vj `vm  
 I i†d nwi `vm, kÖbevm `vm, gwZjvj `vm, b†M>`a`vm†K

মুক্তি Z Zj wbtq hvq eotj Lv wml (†W†fj ctgU)  
 Awd†m| tmlU wQj Zvt` i wbhvZb wkwie |

220. The fact of taking away the victims the four Hindu civilians by a vehicle , on forcible capture and the accused Md. Abdul Mannan @ Monai was with the gang of attackers at the relevant time , as narrated above in the book titled **“Ekattorer Koshtokotha”** published in 2010( **relevant page of the book: page 17**)seems to have been corroborated from unimpeached testimony of P.W.08 who also stated that at the relevant time he saw a vehicle of Pakistani army arriving in front of their house and then Razakars and army men accompanied by accused Md. Abdul Mannan @ Monai Razakar and Razakar commander Azizur Rahman(now dead) who took away the victims on getting them apprehended.

221. The book also narrates how the detained victims were brutally treated in captivity and when they were taken to the killing site and how the three detainees were slaughtered to death and how miraculously the victim Sree Nibas Das got survived despite having severe injuries on throat. The narrative relating to this phase of attack is found to have been corroborated by witnesses who heard the event of killing

phase from survived victim Sree Nibas Das. Hearsay evidence on this ending phase of attack carries probative value and credibility.

222. Already we have found it proved from testimony of witness who had opportunity of seeing the survived victim after he came back home. The evidence of witnesses depicts that on the day survived victim returned back home having severe bleeding injuries on throat he was sent to Karimganj, India by Farid Ali , Ekhlas Mia for his medical treatment and he had been in India for prolonged time to undergo medical treatment. The narrative made in the book titled **“Ekattorer Koshtokotha” (Book’ page no.-18)** also states that--

Ókñðevm emotZ Avmtj IB w`b mKvtjB Zvi`is  
 MÖgi dwi` Avj x, GLjvm wgv, cvQvBvgqv I Zzve  
 ZvtK wbtq hvb fviZi KwigMÄ nvmcvZvtj | `xNv©b  
 wPwKrmv wbtq f`k w`axb ntj wZvb wdti Avtmb emmo | Ó

223. It appears that the above narrative made on this event is based on version of survived victim Sree Nibas Das. The book “Ekattorer Koshtokotha’ has been published in 2010 from New York. That is to say, publication of this book took place long before initiation of investigation of this case. The

above crucial fact was chained to the act of killing, the ending phase of the attack arraigned. Defence could bring anything to taint this fact as testified by the witnesses and unfolded in the above book. Thus, we do not find any reason to keep the above narrative made in this book aside from consideration.

224. From the narratives made in this book that accused Md. Abdul Mannan @ Monai was a Razakar. But prosecution document (**Prosecution documents volume page no.55**) demonstrates that this accused was a collaborator having affiliation with the peace committee and he was an associate of killer Aziz. Defence could not refute credibility of such entry in the list of members of peace committee of the locality.

225. In 1971 during the war of liberation Razakar Bahini, Al-Badar Bahini and peace committee took similar stance of collaborating with the Pakistani occupation troops. True that there is no document before us to establish that the accused Md. Abdul Mannan @ Monai belonged to local Razakar Bahini. But it does not negate culpable involvement of the accused with the perpetration of the crimes arraigned. It is experienced that in 1971 the people of the vicinity attacked

considered all the members of the group of attackers as 'Razakars'. A common phenomenon was established in the mind of civilians of the locality affected that the perpetrators collaborating with the Pakistani occupation army were 'Razakars'. Thus, it cannot be said that in absence of documentary proof of showing that this accused was a Razakar he shall be absolved of liability. We reiterate that even an individual may be found guilty if he is found to have had participated the atrocious crimes enumerated in the Act of 1973.

226. Presence of accused at the site attacked for effecting forcible capture of unarmed civilians constituted sufficient participation as it stands proved that such presence of accused had a significant effect on the commission of the crimes perpetrated in conjunction with the first phase of attack.

227. Survived victim Sree Nibas Das disclosed to relatives of other victims as to how they the victims were mistreated and tortured in protracted confinement at Razakar camp. Taking away the victims on forcible capture was chained to act of causing torture in confinement. Since the accused Md. Abdul Mannan @ Monai was actively engaged in accomplishing the



criminal acts in effecting forcible capture of victims, committing looting household it may be well presumed that the accused was culpably and consciously concerned even with the act of causing torture to detainees at Razakar camp and finally in liquidating the detainees taking them to Juribazar mass grave.

228. The evidence tendered shows a consistent, coherent and criminal strategy of cleansing the Hindu pro-liberation civilians. Many of their homes were looted and destroyed. The ending purpose of such prohibited activities detrimental to human rights, was the forced removal of the Hindu religious group and the destruction of their homes, in addition to killing, it may be safely deduced.

229. The atrocious event proved demonstrates that the accused was extremely antagonistic to Hindu religious group. It was blatant violation of fundamental rights of protected civilians. The horrific acts prompted and forced the relatives of victims to '**deport**' to India. It constituted the offence of crime against humanity. Act of looting rather constituted

aggravated devastating act which was in grave breach of Geneva Convention and it naturally caused severe mental harm to the owners of the houses looted and the nearby people. It constituted the offence of ‘**other inhumane act**’.

230. The corroborative and unshaken evidence as discussed above proves presence of accused Abdul Mannan @ Monai at the crime site with the group of attackers formed of Razakars and Pakistani occupation army. It is evinced that the attack was planned and designed criminal mission directing the Hindu civilian population to which the accused Md. Abdul, Mannan @ Monai was ‘part’ and he actively facilitated the group in perpetrating the criminal acts knowing the upshot of his act and conduct and thus he is equally liable even for the act of actual killing of detained Hindu civilians. The doctrine of JCE, basic form, permits for holding him responsible as above.

231. The crimes committed during the period of war of liberation in 1971 in the territory of Bangladesh were the end result of part of a ‘systematic’ attack directed against the unarmed protected civilians population. This ‘context’ itself

prompts even a person of common prudence that the offences of ‘crimes against humanity’ as mentioned in section 3(2)(a) of the Act of 1973 were inevitably the consequence of part of ‘widespread’ or ‘systematic’ attack. The crimes for which the accused indicted in this charge has been found guilty were not isolated crimes. Those were part of ‘*systematic*’ and ‘*designed*’ ‘*attack*’ intended to the accomplishment of offences of crimes against humanity as enumerated in section 3(2) of the Act, in furtherance of policy and plan of Pakistani occupation army.

232. On cumulative evaluation of evidence presented and based on facts and circumstances unveiled Tribunal arrives at decision that prosecution has been able to prove beyond reasonable doubt that the accused Md. Abdul Mannan @ Monai participated , aided and culpably facilitated and contributed in committing crimes including the killing of Hindu civilians , by his notorious conscious acts and conducts the outcome of systematic attack constituting the offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’, ‘**plunder**’, ‘**murder**’, ‘**other inhumane 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) of the Act and

thus the accused persons incurred liability under section 4(1) of the Act for the above offences.

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

**[02 accused indicted]**

**[Offences of ‘Abduction’; ‘Confinement’; ‘Torture’; ‘Rape’ and ‘other Inhumane Acts’]**

233. Charge: That on any day in the last part of October, 1971, at about 2.00 P.M a group formed of 25/30 armed Razakars and Pakistani Occupation Army men being accompanied by the accused (1) **Md. Abdul Aziz alias Habul**, (2) **Md. Abdul Matin** (absconded), their accomplices Razakar Monir Ali (now dead) by launching **attack at the house of the freedom-fighter Wahid Miah** at the village B.O.C Kechharigool under Police Station-Barlekha of District- Moulavibazar could not find there any freedom-fighter and then the accused and their accomplices attacked the house of another freedom-fighter Abul Quasem and forcibly captured his brother-in-law Siddique Ali (now dead) and tortured him and dragged Safia Khatun, sister of freedom-fighter Abul Quasem, out of her house, injured her son Kajol Miah and daughter Rina by charging bayonet.

The accused Md. Abdul Aziz alias Habul, Md. Abdul Matin (absconded) and their accomplices took away Safia Khatun and Abdul Khaleque forcibly to Keramat Nagar Tea Garden army camp where they were kept in confinement in the same room. At a phase of their captivity Major Azam and other Pakistani occupation army men committed rape upon Safia Khatun detained in the said camp and the accused persons also ravished Safia Khatun in presence of detainee Abdul Khaleque. As a result of recurrent sexual ravishment victim Safia Khatun became ill and she was then shifted sent to Barlekha C.O Office army camp for treatment. Afterwards the detained victim Abdul Khaleque got release, on intervention of his relatives.

On 6 December, 1971 Pakistani occupation army fled away keeping Safia Khatun abandoned in the bunker near the C.O office camp under Barlekha Police Station and the Freedom Fighter Commander Moin and some freedom-fighters rescued Safia Khatun in an uncovered condition from the bunker.

Therefore, the accused **(1) Md. Abdul Aziz alias Habul , (2) Md. Abdul Matin (absconded) have been** charged for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offences of

**‘abduction’; ‘confinement’; ‘torture’; ‘rape’ and ‘other Inhumane Acts’** as crimes against humanity as enumerated in section 3(2) of the Act of 1973.

## **Evidence of Witnesses Examined**

233. This charge rests upon testimony of four witnesses i.e. P.W.03, P.W.04, P.W.12 and P.W.16. Of them P.W.03 is the victim of sexual violence arraigned. P.W.04 is a direct witness to crucial facts related to abduction, confinement and sexual invasion committed as he too was kept detained at the same camp. In addition to these two star witnesses P.W.16 also recounted the facts chained to the attack. The rest one is a hearsay witnesses. Now, let us eye on what has been recounted by the witnesses examined.

**234. P.W.03 Safia Khatun @ Kamola Bibi (77/78)** of village-B.O.C Kechharigool under police station-Barlekha of District (now)-Moulavibazar is the victim of sexual violence. She with extreme trauma recounted the barbaric attack that was gravely detrimental to her self-worth.

235. P.W.03 stated that in the mid of Bangla month Kartik (end of October) in 1971 she had been at home when Razakar

Abdul Aziz @ Habul, Razakar Matin being accompanied by Pakistani army men came to their house and started searching of her freedom-fighter brother Abul Kashem. She used to cook meal for the freedom-fighters when they used to come at the house of her husband's brother Ohid Mia. Finding her brother freedom-fighter Abul Kashem not available the Razakars and army men dragged her (P.W.03) out and started beating. Then they detaining her took away to Keramat Nagar Tea garden where she was kept confined. Abdul Khalek too was kept detained there in the same room. Keeping her confined at that camp for one night when the Razakars Habul, Matin and army men committed 'dishonour' and 'evil deed' upon her.

236. P.W.03 next stated that later on she was shifted to Shahbajpur camp where she was kept confined for days together when she was subjected to 'torture' and 'evil deed' Few days later, she was shifted to Razakar camp set up at Barlekha CO office and was kept confined there. After independence achieved freedom-fighter commander Moin (now dead), her(P.W.03) brother freedom-fighter Abul Kashem (now dead) found her there in undressed condition and she got herself covered with the apparel given by Moin

commander and then they rescued her and took her back home. But her husband refused to accept her, after the event happened. She had two kids at that time.

237. P.W.03 further stated that Abdul, Aziz @ Habul and Abdul Matin received training of freedom-fighters along with her brother Abul Kashem. They used to take meal by visiting their house and thus she knew them beforehand. Abdul Aziz @ Habul and Abdul Matin later on joined in Razakar Bahini even after receiving training of freedom-fighter. She initiated a case against the Razakars she named over the event she testified in 1972.

238. In cross-examination P.W.03 stated in reply to defence question that she did not depose in the case she initiated in 1972 and she would get justice if she testified; that her name has been enlisted as war heroine.

239. P.W.03 denied the defence suggestions that these accused did not receive freedom-fighters training along with her brother Abul Kashem and they received training in India; that the accused persons did not join in Razakar Bahini; that they coming inside Bangladesh used to work as secret source



of freedom-fighters; that the accused persons were not involved with the event she testified; that the event she narrated did not happen and what she testified implicating these accused was untrue and tutored.

**240. P.W04 Md. Abdul Khalek (80)** of village-B.O.C Kechharigool under police station- Barlekha of District (now)- Moulavibazar is a direct witness to the acts crucially related to the event of taking away him along with the victim (P.W.03) on forcible capture from her house.

241. P.W.04 stated that in the mid of Bangla month Kartik in 1971 in afternoon he had been at the place near the house of Safia Khatun(victim) of their village when Razakars Habul, Matin and Pakistani army men came there and started searching of freedom-fighters at the house of Ohid Mia. Freedom-fighters used to come and take their meal at that house. But finding no freedom-fighter there the Razakars and army men then moved to the house of Safia Khatun (victim)and started searching of her brother freedom-fighter Abul Kashem and other freedom-fighters.

242. P.W.04 also recounted that finding no freedom fighter available they (perpetrators) then dragged out Safia Khatun and they also detained him (P.W.04) from road and they two were then taken to the Razakar head quarter set up at Keramat Nagar tea garden where they were kept confined in a room. Razakars Habul, Matin and Panjabees (Pakistani army men) committed '**evil deed**' upon Safia Khatun (P.W.03), in his presence inside the same room.

243. P.W.04 stated too that next they were taken to Shahbajpur camp where they were kept confined in the same room. Here the Razakars Habul, Matin and army men committed 'evil deed' upon Safia Khatun. Next, Safia Khatun was shifted to camp at Barlekha CO office. He (P.W.04) was rescued from Shahbajpur camp by his relatives.

244. P.W.04 also stated that later on he heard from Moin commander, freedom-fighter Abul Kashem and other people that Safia Khatun became sick at Barlekha camp due to recurrent 'evil deed' committed upon her. He also heard that after independence freedom-fighter commander Moin and Abul Kashem, freedom-fighter brother of victim Safia Khatun discovered Safia Khatun in undressed condition left

abandoned at that camp and then jacketing her by the shirt of Moin commander they rescued Safia Khatun and brought her back home.

245. P.W.04 finally stated that accused Habul and Matin received freedom-fighter training along with Abul Kashem (brother of victim) and later on they joined in Razakar Bahini. They often used to visit their (P.W.04) neighbour Safia Khatun's house and thus he knew them beforehand.

246. In cross-examination P.W.04 stated in reply to defence question that accused Habul and Matin received freedom-fighters training in India, true. But P.W.04 denied defence suggestions that the accused persons used to work as secret source of freedom-fighters and thus they used to come inside Bangladesh; that they were not Razakars and were not associated with the event he testified; that the alleged event he testified did not happen; that he did not see and hear the alleged event and that what he testified implicating the accused persons was untrue and tutored.

**247. P.W.12 Md. Shamsul Islam (62/63)** of village- Pakhiala under police station Barlekha of District-Moulavibazar in addition to the event of attack arraigned in charge no. 03 testified what he heard about the event arraigned in charge no.2.

248. P.W.12 in respect of the event arraigned in **charge no. 02** stated that the detainees of the event arraigned in charge no.03 disclosed that Safia Khatun was subjected to ‘inhumane torture’ in captivity at the camp. He (P.W.12) knew the accused persons beforehand as they were from their neighbouring locality.

**249. P.W.16 Md. Soef Uddin (72)** of village-Kechharigool (south) under police station- Barlekha of District (now)- Moulavibazar is a direct witness to the acts carried out in conjunction with the first phase of attack which resulted in forcible capture of Safia Khatun, sister of freedom-fighter Abul Kashem and one neighbour Abdul Khalek.

250. P.W.16 stated that in the mid of Bangla month Kartik in 1971 at about 02:00 P.M. he had been staying at the place

south to his home when he saw the group formed of Razakar Abdul Aziz @ Habul, Razakar Matin, their accomplice Razakars and Pakistani army men attacking the house of Ohid Mia which was a temporary camp of freedom-fighters. But finding no freedom-fighter there the gang then attacked the house of Abul Kashem and finding him unavailable there they detained Safia Khatun [P.W.03], the wife of Siddique Ali and the sister of Abul Kashem. He (P.W.16] saw the invaders taking away Safia Khatun with torture and on the way back the gang also forcibly captured Safia Khatun's neighbour Abdul Khalek and they both were then taken away toward the Keramat Nagar army camp.

251. In cross-examination P.W.16 stated in reply to defence question that his parental home was in village-Jamakandi under police station- Kulaura which is about 05 miles far from village-Kechharigool and that they have been residing at village- Kechharigool since 1973.

252. P.W.16 denied defence suggestions put to him that he did not see or hear the event he testified; that the accused persons were not involved with the event alleged and that the

accused persons continued fighting as freedom-fighters till independence achieved.

## **Finding on Evaluation of Evidence**

**253. Mr. Mokhesur Rahman Badal**, the learned prosecutor argued that the evidence presented by the prosecution depicts patently that in conducting attacks the accused persons being part of collective criminality consciously and knowingly accompanied the group of perpetrators formed of Pakistani occupation army and Razakars; that they had carried out devastating activities, forcibly captured Safia Khatun, the victim and took her away along with other civilians detained to camps where the victim was subjected to recurrent grave sexual violence; that accused persons physically participated in committing the ravishment in robbing the supreme honour of victim P.W.03 Safia Khatun. Defence could not impeach the testimony of victim P.W.03 and P.W.04 who too was kept detained at the same camps.

254. On contrary **Mr. Abdus Sattar Palwan** the learned defence counsel argued that prosecution failed to prove the accusation beyond reasonable doubt by adducing reliable

evidence; that the accused Md. Abdul Aziz @ Habul and his brother Md. Abdul Matin were freedom-fighters and they had no nexus with the Pakistani army and Razakar Bahini formed in Barlekha; that the testimony of victim and other witnesses carries no credibility as they made such narrative out of rivalry. It has also been submitted that taking away one Khalek along with the victim as alleged is not at all credible.

255. Tribunal notes that in a criminal trial involving the offences of crimes against humanity two issues are substantially involved. First, the crimes arraigned have been perpetrated. Second, the person accused of such crimes is responsible for commission of those crimes. These issues need to be determined based on evidence.

256. Thus, now let us evaluate the evidence tendered on part of prosecution. At the same time we must keep in mind that the burden of proving all the facts and circumstances which are materially linked to the commission of the crimes arraigned and the criminal responsibility of the accused persons indicted. This burden remains upon the Prosecution throughout the entire trial and it never changes.

257. Let us first weigh the narrative recounted by the witnesses. P.W.03 Safia Khatun @ Kamola Bibi's brother Abul Kashem was a freedom-fighter. It is not disputed. She was engaged cooking meal for the freedom-fighters when that attack was launched. Perpetrators did not find her brother freedom-fighter Abul Kashem and then the Razakars and army men became aggressive and dragged her out and started beating and took her away to Keramat Nagar Tea garden where she was kept detained. Abdul Khalek (P.W.04) was also kept detained there in the same room. Criminal acts committed till this phase of attack are found to have been proved by ocular narrative of victim. There is no reason to disbelieve the narrative made by victim P.W.03. The evidence presented by the victim obviously paints an apparent depiction of unfathomable depravity and sadism.

258. Testimony of victim P.W.03 depicts that the bunch of attackers first by launching attack started searching of freedom-fighters at the house of Ohid Mia. But finding no freedom-fighter there the Razakars and army men then moved to house of Safia Khatun (P.W.03) and started searching of her brother freedom-fighter Abul Kashem and other freedom-fighters. But they did not get any of their targeted civilians



there. Testimony of victim P.W.03 in this regard remained undisputed and could not be tainted with any degree of doubt.

259. We got it proved too from narrative made by P.W.04 that the gang of perpetrators on the way of their moving back taking Safia Khatun with them also detained him from road. In this way he and victim P.W.03 were taken away to the Razakar head quarter set up at Keramat Ngar tea garden where they were kept confined in a room.

260. Testimony of P.W.04 also demonstrates that keeping the victim Safia Khatun detained at this camp Razakars Habul. Matin and army men committed 'evil deed' (sexual invasion) upon her and next Safia Khatun was shifted to camp at Barlekha CO office. He (P.W.04) was rescued from Shahbajpur camp by his relatives. Grave sexual assault committed recurrently upon victim was experienced by Khalek as well. It added immense harm to detainee Khalek (P.W.04) too.

261. P.W.04 Khalek was thus a forced observer of violent attack on supreme honour of the victim Safia Khatun. Perpetrators had carried out the monstrous acts in extremely

bestly manner. In the case of **Kvocka, ICTY Trial Chamber observed that--**

“.....The Furundzija Trial Chamber found that being forced to watch serious sexual attack inflicted on a female acquaintance was torture for the forced observer. The presence of onlookers, particularly family members, also inflicts severe mental harm amounting to torture on the person being raped.”

**[Kvocka, ICTY Trial Chamber judgment 02 November 2001, para 149]**

262. It stands proved that victim P.W.03 and detainee P.W.04 Khalek were then shifted to Shahbajpur camp where they were kept confined in the same room. We got it proved too that the Razakars she named (accused persons) and the army men ‘dishonored’ her and committed ‘evil deed’ upon her. Accused Razakar Md. Abdul Aziz @ Habul, Md. Abdul Matin and army men committed rampant ‘evil deed’ upon her (P.W.03). Such horrific act extremely detrimental to woman’s supreme worth was rather deliberate aggression against pro-liberation civilians, freedom-fighters.

263. Victim P.W.03 also stated that Abdul, Aziz @ Habul and Abdul Matin received training of freedom-fighters along with her brother Abul Kashem. They used to take meal by visiting their house and thus she knew them beforehand. We cannot accept the defence submission that P.W.03 had no reason of knowing and recognizing the accused persons.

264. How and when the victim P.W.03 was rescued from the hellish camp? We got it proved from the narrative recounted by the victim P.W.03 that just after independence achieved freedom-fighter commander Moin (now dead), her brother freedom-fighter Abul Kashem (now dead) found there in undressed condition and she got herself covered with the shirt given by Moin commander and then they rescued her and took her back home. This version chained to the event does not seem to have been shaken by defence in any manner.

265. It has been further depicted that victims' husband refused to accept her, after the event happened. It was another attack to the victim indeed. She had two kids at that time. The victim (P.W.03) became the prey of blatant social ostracism.

266. P.W.16 **Md. Soef Uddin (72)** of village- Kechharigool (south) under police station- Barlekha of District (now)- Moulavibazar claims to be a direct witness to the acts carried out in conjunction with the first phase of attack happened at the house of P.W.03 at village- Kechharigool (south) under police station- Barlekha. He claims that at the relevant time he had been staying at the place south to their home.

267. But it appears that in cross-examination P.W.16 stated in reply to defence question that his parental home was in village-Jamakandi under police station- Kulaura which is about 05 miles far from village- Kechharigool and that they have been residing at village- Kechharigool (crime village) since 1973. That is to say, P.W.16 had not been at village- Kechharigool in 1971, at the time the event happened. Thus, his claim of seeing the event lacks of credibility. Be that as it may, we are not ready to act upon his testimony claiming that he saw the accused persons accompanying the group of invaders in accomplishing the attack and taking away the victims on forcible capture. P.W.16 is not a credible witness.

268. Well, for the above reason if we keep the testimony of P.W.16 aside from consideration what will be the

consequence? Mere discarding the evidence of P.W.16 does not taint the testimony of victim (P.W.03) and another direct witness (P.W.04). Tribunal notes that the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration. The established jurisprudence is clear that corroboration is not a legal requirement for a finding to be made. In this regard we recall the observation made by ICTR Trial Chamber in the case of **Nchamihigo that--**

“Corroboration of evidence is not necessarily required and a Chamber may rely on a single witness’ testimony as proof of a material fact. As such, a sole witness’ testimony could suffice to justify a conviction if the Chamber is convinced beyond all reasonable doubt.”

[**Nchamihigo**, (ICTR Trial Chamber), November 12, 2008, para. 14].

269. However, the arraignment brought in charge no.02 does not rest only upon testimony of P.W.16. Considering the nature of the event P.W.03 the rape victim and P.W.04 Khalek who too was kept detained at the camps are the key witnesses. The event and participation of the accused persons therewith have been proved by their unshaken and corroborative ocular testimony.

270. Testimony of P.W.03 and P.W.04 patently depicts that primary object of attack was to apprehend freedom-fighters. Such attack could not be effectively launched without active assistance of local collaborators. The accused persons were well acquainted with the freedom-fighters they targeted and they being imbued by the policy of Pakistani occupation army got engaged in lurching attack, being part of the criminal enterprise.

271. Pattern and magnitude of proved facts and circumstances lead to the irresistible conclusion that the attack was launched in systematic way, directing civilian population. Primary object of the attack was to get freedom fighters captured. But when the gang failed to have trace of their targeted freedom-fighters it started attacking the inmates and apprehended Safia Khatun (P.W.03) and one civilian Abdul Khalek (P.W.04). The detainees were instantly taken away first to Keramat Nagar tea garden camp, on forcible capture.

272. Narrative made by victim P.W.03 demonstrates that she was recurrently subjected to sexual ravishment. P.W.04 the survived detainee had opportunity of experiencing the

horrendous prohibited acts denying the rights and supreme honour of victim P.W.03 Safia Khatun.

273. It has been agitated by the learned defence counsel that uncorroborated testimony of victim P.W.03 does not inspire credence and as such it cannot be relied upon to prove the arraignment.

274. We are not agreed with this submission. Tribunal notes that in a case involving sexual violence no corroboration of the victim's testimony shall be required. Besides, crucial facts chained to grave and recurrent harm caused to victim P.W.03 are found to have been corroborated by P.W.04 who too was kept detained along with her at the same camp.

275. It stands proved that unlawful protracted detention of victim was continuance of the event of attack happened which was primarily intended to get her freedom-fighter brother Abdul Kashem captured. The core of the arraignment brought in this charge thus has been found well proved by the victim, the star witness.

276. Victim P.W.03 narrated her untold pain and trauma she sustained and what grave and recurrent violent attack directing her supreme honour happened in protracted captivity. Victim who is rather a brave mother coming on witness box recounted the horrific episode which naturally retains alive for ever in her memory.

277. The uncontroverted account of the facts made by victim P.W.03 goes on proving indisputably the active participation of the accused persons in accomplishing the horrendous sexual invasion. Participation in getting the victim captured was chained to the hellish wrongs done to victim keeping her in protracted confinement at the camps when the accused persons too actively participated in committing sexual invasion upon the victim.

278. The victim P.W.03 stood firm even under cross-examination, and the facts she recounted in examination-in-chief was convincing. Tribunal considers it remarkable to note that human episodic memory is a long-term memory which allows one to consciously recall personal experiences and specific events that happened in the past. In the case in hand, the victim and another survived detainee P.W.04



Khalek recounted their traumatic experience by recalling the horrific event. Tribunal does not find any reason whatsoever to keep the version the P.W.03 and P.W.04 recounted aside.

279. The attack happened in rural vicinity and thus it would not have been possible to accomplish the crimes without culpable and active contribution and assistance of the accused persons having potential affiliation with local Razakar Bahini an auxiliary force of the Pakistani occupation army. In the case in hand, the accused persons are found to have had acted culpably being part of the criminal enterprise, sharing common intent. Thus, they were accountable under the doctrine of JCE [Basic Form].

280. 'Rape' refers to act of gruesome 'physical invasion' of a sexual nature, committed upon a defenceless woman under coercion and intimidation. It violates the moral and physical integrity of victim. Raping women of a community rather constitutes raping the community which undermines the total fabric of that community.

281. Article 27 of the Fourth Geneva Convention, directed at protecting civilians during time of war, states that---- "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault".

282. But what we see in the case in hand? A ghastly depiction of systematic and mass rape committed in systematic manner in war time situation has been portrayed by the victim P.W.03 herself. We reinforce that a victim of sexual invasion shall never opt to create a fabricated story of extremely harming her supreme honour.

283. The accused persons indicted and the Pakistani army men forming the group of attackers had conducted the attack upon the supreme honour of the victim. In light of the facts depicted at trial, Tribunal finds that the victim suffered severe physical and mental pain which amounted to grave outrages upon her personal dignity and sexual integrity.

284. In conjunction with the horrendous event, shameful and shocking act of rampant sexual violence upon the victim was

committed keeping her detained at camp, till Barlekha got liberated. Victim was rescued from a trench by freedom-fighters. Perpetrators and persons concerned with such shocking and horrendous crimes against humanity are obviously the enemies of the mankind.

285. Accused persons by their conscious acts participated in carrying out the criminal mission, at its preparatory stage and also its actual commission stage, defying the Article 27 of fourth Geneva Convention which provides war time protection to women. But the Pakistani occupation army and their local collaborators the accused persons had committed indiscriminate sexual violence upon the helpless victim.

286. The accused perpetrators assumed the use of rape as an effective tool of launching attack not simply against an individual, the victim but against social stigmas intending for the advancement of societal break-down. The attack was directed not only on the body of the victim but it aimed to cripple the integrity of a family, a community and the society. After the victim got rescued her husband abandoned her. It enduringly crippled the life of the victim.

287. The perpetrators had carried out the act of sexual violence as an instrument of threat to the civilians who took stance in favour of war of liberation. Committing grave sexual violence upon the woman in protracted captivity rather caused the 'living death' of victim. War time rape or mass rape is not a mere offshoot of war but a deliberate weapon used as a strategy of war. The evidence presented by the victim paints a perceptible depiction of unfathomable depravity and sadism.

288. The event proved happened just one and half month prior to fleeing away of Pakistani occupation army from Barlekha on 6 December, 1971. Admittedly, the accused Md. Abul Aziz @ Habul is brother of accused Md. Abdul Matin and they received training of freedom-fighters in India along with Abul Kashem the brother of victim P.W.03.

289. Prosecution avers that returning back inside Bangladesh, at the ending phase of the war of liberation, on receiving training in India the accused persons got affiliated with locally stationed Pakistani occupation army and Razakar Bahini. In absence of anything contrary it stands proved from facts chained to the event occurred.

290. Defence however claims that the accused persons on returning back inside Bangladesh started working as secret agents of freedom-fighters and thus they remained stayed with the freedom-fighters till Barlekha got liberated and they never opted of being associated with Pakistani occupation army and Razakars. But there is no evidence to prove this defence claim. Reasonable doubt as to credibility of accused persons' alleged involvement with the event arraigned has been created, the learned defence counsel submitted.

291. It is admitted that the victim P.W.03 initiated a case over the event she testified as arraigned in this charge no.02 in 1972 against the accused persons. But there is nothing before us that any such case, if really initiated, was ended in trial. In cross-examination P.W.03 stated in reply to defence question put to her that she did not get justice in the said case.

292. It has been affirmed that the accused persons were prosecuted by the victim P.W.03 in 1972 on initiation of a case over the event arraigned in the case in hand. Presumably, the said case was not decided by holding trial. Defence could not bring any proof before us to show that the said prior case initiated in 1972 eventually concluded after

trial and the accused persons got acquittal or convicted. In absence of any such specific information in relation to the said prior case initiated in 1972 doctrine of double jeopardy does not come into play as a bar to prosecute the accused persons under the Act of 1973.

293. Thus, mere initiation of a case in 1972 over the event arraigned in this charge does not create any clog in bringing present prosecution against the accused persons as there is nothing to show that said case ended in trial. Rather, initiation of said earlier case in 1972 over the event arraigned negates the defence case that the victim had land related dispute with the accused and being instigated by freedom-fighter Moin commander she testified falsely implicating the accused persons who were freedom-fighters. Defence does not claim that initiation of the earlier case in 1972 too was the upshot of conflict between the victim and the accused persons over land dispute. Thus, the claim asserted by defence that victim P.W.03 testified implicating the accused persons out of grudge over land dispute simply goes on air, particularly in absence of any proof in this regard.

294. It has been argued on part of defence that the accused persons have been falsely implicated in this case out of rivalry with freedom-fighter Moin commander on whose instigation the victim testified a fabricated story of alleged sexual invasion.

295. It appears that defence accordingly suggests P.W03 that she made untrue testimony being instigated by Moin commander. P.W.03 denied it and stated that her cousin brother freedom-fighter commander Moin died about 5/6 years back. If it is so, it is quite impracticable of making untrue testimony by P.W.03 on having instigation of Moin commander, as alleged by defence. Besides, a woman shall never opt to stigmatize her supreme self-worth by portraying false story, on anybody's instigation.

296. The accused persons received training in India to join war of liberation. It is admitted. But did these accused join in war of liberation? It depicts from evidence presented that they eventually instead of joining the war of liberation got engaged in collaborating with the Pakistani occupation army stationed at Barlekha and Razakars, almost at the end of the war . Thus, mere fact that they received training in India to join war

of liberation itself does not extend any exoneration to them when it stands proved that they participated, being part of the criminal enterprise in accomplishing the crimes in violation of international humanitarian law.

297. Rape committed upon P.W.03, the victim Safia was strategically an attempt to destroy a community's cohesion and stability. Since ravishment committed upon the supreme honour obviously the victim has been suffering from extreme depression and post-traumatic stress. Victim P.W.03 states that her husband did not accept her after she was rescued. It was rather another attack to her and destroyed the social fabric of society. Since then the victim started her journey alone carrying untold trauma and social stigma. The society and the nation must come forward to honour the victim, one war heroine, a great mother.

298. The act of rape committed upon the victim in protracted captivity as a weapon was more powerful than a bullet. Rape or violent sexual invasion is thus a living death. The blatant shock caused to the humanity by such beastly crimes is never erased. **Kellt D. Askin** in his article on wartime rape published in 2003 in an international journal stated that –



“Rape is a potent weapon for a number of reasons. The destructive stereo-types and harmful culture and religious attitudes associated with female chastity or notions of so-called “purity” make sex crimes useful tools for destroying lives. .... Rape crimes survivors (and who do not survive) are not the only victims of sexual violence. The impact and the harm often extend to families, local communities, and society at large.”

**[Kellt D. Askin: ‘Prosecuting Wartime Rape and Other Fender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles’: Berkeley Journal of International Law, Vol. 21:288]**

299. Investigation Agency of the Tribunal constituted under the Act of 1973 started investigation pursuant to complaint register’s serial no. 39 dated 16.10.2014. In course of investigation the book titled “Ekattorer Koshtokotha (GKvĒġi i KóK\_v) has been collected and the same has been submitted by prosecution. The book appears to have been published in 2010 from New York (relevant pages of the book: prosecution documents volume page nos.72-76) describes the atrocities carried out in 1971 around the localities under police station Barlekha as arraigned in charge no.02 and the book also depicts the name of accused persons as perpetrators

of the atrocities including the event of sexual violence arraigned in charge no.02.

300. In absence of anything contrary it cannot be deduced that the narrative made in this book is fabricated and imaginative and thus the information contemplated in the book published long four years prior to initiation of investigation cannot be tainted with doubt.

301. The documents relied upon by the prosecution ( **prosecution documents volume page nos.38-40**) depict that a case was lodged against the accused Md. Abdul, Aziz, Md. Abdul Matin and Mirjan Ali by Safia Khatun, the victim of the event of sexual ravishment arraigned in charge no.02. Police submitted charge sheet under section 376 and some other sections of the Penal Code and section 11(a)(c) of the Bangladesh Collaborators (Special Tribunals) Order,1972 on conclusion of investigation against the accused persons on 11.06.1972 (**prosecution documents volume page nos. 39-40**).

302. Victim Safia Khatun in testifying before Tribunal too stated that she initiated a case over the event of sexual

violence committed upon her. Defence could not impeach it. We have already observed that neither side claims that the said case was ended in trial and thus mere initiation of the said case does not act as a bar under the doctrine of double jeopardy.

303. Rather, testimony of victim Safia Khatun gets assurance also from the fact of lodgment of case by her over the event in 1972 i.e. just after the independence achieved. It is not believable that a rural woman Safia Khatun had been in such a mighty position that had imbued her in initiating a false case implicating the accused persons on allegation of committing sexual violence upon her.

304. Besides, narrative made in the book titled ‘Ekattorer Koshtokotha’ (একাত্তরের কষ্টকোথা) written by Journalist Sattar Azad also depicts the horrific event of sexual violence committed upon Safia Khatun in 1971. Numerous atrocious events have been described in this book based of statement of victims and sufferers.

305. The above book seems to have been published in 2010. At page 15 of the book (**Prosecution Documents Volume :**

page nos. 73-74 ) the traumatic experience of Safia Khatun, wife of Siddiqur Rahman, the victim of the horrific event arraigned in charge no.02 has been focused. It reads as below:

“.....-vaxbZv htyxi mgq Zviu (mwndqv) eqm uQj 25 eQi | wZvb uQj b t`Ltz myix | ZvtK t`tL tjvf hvq eotj Lv cmlqvj v MÖgi ivRvKvi Avāy AwRR nvej, Avāy gwZb I gubi Avjxi | .....mwndqv fvb Ask wbtqvQj gw³hty | cwk`vnb Awg©KvtQ G Lei tcStQ t`q ivRvKvi iv | gw³thv×v Avej Kvtktgi tLvtR btfαt gvtfmi tktli w`tk eotj Lvi wWgvB MÖgi `zWUj v j swj cvi Avtm cwk`vnb Awg©j | tmw`b mwndqv LvZb uQj b `zWUj v j swj cvti wCvjtq | Zviv Kwktgi tLvB bv tctq mwndqvK tei Kti e`Kti evU w`tq tcvvq | Dfvvfb tdtj I KtqKwU j w\_ gvti ZvtK | G mgq ivRvKvi nvej, Avāy gwZb I gubi Avjx uQj cvKtmbvi m½ | wdti hvevi ct\_ Zvt`i Bkviq nqvbiiv ati wbtq hvq mwndqvK | cÖg ZvtK wbtq hvIqv nq KivgZ bMi Pv evMvfb cwk`vnb Awg©wbhvZb wkweti | 0

306. The above narrative as found in the book published couple of years prior to initiation of investigation into the instant case under the Act of 1973 appears to be materially consistent with the sworn testimony of victim Safia Khatun.

307. The book also depicts that the victim Safia Khatun was kept detained first at Keramat Ngar Tea garden army camp, next she was shifted to Barlekha CO office camp and finally she was kept confined at Shahbajpur army camp and the army men and the Razakars Habul, Abdul Matin and Monir indiscriminately and rampantly violated her supreme honour keeping her in protracted captivity. The book describes the statement of the victim Safia Khatun as below:

Ó.....w`tbivtZ w`bhvZtb Awig AÁvb ntq thZvg |  
cwk`vb kqZvb` i m½ ivRvKvi nvej, Avãj gwZb,  
gubi Avj xl AvgvtK w`bhvZb Kti | .....kvineRcij  
K`v`ú w`tb ivtZ AKí bxq Któ \_vKtZ ntZv | th hLb  
Lvk w`bhvZb KiZ | .....Wtm` gvtmi cÖgta©  
eotj Lv nvbv` vi gy³ ntj gqbj Bmj vg gCb (eo tj Lv  
DctRjvi mvteK gy³ thv×v KgvÜvi) mn KtqKRb  
gy³ thv×v wml Awdm t`K D×vi Ktib mwidqvK |  
.....t`k `vaxb ntj mwidqv teMg thtZ Pvb `vxi  
AvkÖ | wKš' mwidqvK MÖb Ktibwb Zvü `vxi | Gici  
t`K gvbj i Öti Öti Nti wfÿv Kti Rxeb aviY  
KittZ jvMtj b mwidqv | ..... Aetktl wZvb tjvKvj q  
toto AvkÖ tbb R½tj | mwidqv teMg etj b, Övxi  
AvgvtK MÖb Ktib tKb eStZ cvijvg bv |  
.....e× eqtm kxtZ Mitg Kó cvB | Zte GtZI  
Avgvi Avb` tKbbv bvixi B¾Z Avi knxt` i it³  
`vaxb ntqtQ Gt` k | Ó

308. The narrative made in the **book (Exhibit-11 Series)** published twelve years back i.e. in 2010 is authoritative. Defence does not seem to have questioned its authoritativeness. This part of the book is chiefly based on account of the victim Safia. Victim Safia Khatun coming on dock of the Tribunal about one decade later once again recounted the traumatic experience of rampant sexual violence committed upon her by the Pakistani occupation army and the accused Md. Abdul Aziz and Md. Abdul Matin.

309. We do not find any reason of disbelieving the victim Safia Khatun. Be that as it may, merely based on some papers relied upon by the accused persons cannot be said that they after receiving training in India actively participated in the war of liberation as freedom-fighters. Rather, they are found to have had engagement in committing atrocities directing civilian population, taking stance in favour of Pakistani occupation army and the auxiliary force Razakar Bahini, instead of joining the war of liberation in true sense.

310. Defence contends that after receiving training in India the accused persons coming inside Bangladesh used to work as ‘informer’ of freedom-fighters. We cannot accept this

assertion as there is no indication whatsoever in support of it. Co-freedom-fighter or any of freedom-fighters of the locality could have been examined in support of this defence claim. But no such effort has been made. Thus, mere putting this contention as defence case to the prosecution witnesses does not make it believable at all.

311. In determining the charges of which the accused Md. Abdul Aziz @ Habul and Md. Abdul Matin have been indicted it is found proved that despite receiving training in India they coming back inside Bangladesh preferred to take stance against the war of liberation and got engaged in collaborating with the Pakistani army and Razakars in conducting atrocities, instead of joining the war of liberation.

312. It appears that only the son of accused Md. Abdul Aziz as D.W.01 Tarek Ahmed Raju (40) who simply submitted some papers in support of the claim that his father and uncle Md. Abdul Matin were freedom-fighters. Joining in the war of liberation as a freedom-fighter is a 'factual issue' which could be well proved by adducing and examining co-freedom-fighters.

313. But it appears that no such effort of examining any freedom-fighter has been made on part of defence. Simply some papers collected recently as testified by D.W.01 have been filed on part of defence. But none of the persons issuing those papers has been examined as witness. Those papers rather seem to have been managed and collected for the purpose of showing that the accused persons were freedom-fighters.

314. It transpires that in relation to accused Md. Abdul Matin and Md. Abdul Aziz @ Habul prosecution submitted on 28.01.2020 an additional document, a report dated 30.01.2018 under the signature of Upazila Nirbahi Officer, Barlekha, Moulavibazar together with the report/decision dated 02.02.2017 of the Upazila scrutiny committee in respect of non-consideration of prayer for being enlisted as freedom-fighter. The report/decision shows that one Tarek Ahmed Razu(D.W.01), son of accused Md. Abdul Matins' brother initiated an application to get this accused's name entered in the freedom-fighters' list.

315. Now, let us eye on the remark column of the report/decision dated 02.02.2017 (**Prosecution's, additional**



**document page no.6)** which states that the accused Md. Abdul Matin is not a freedom-fighter. He received freedom-fighters training in India but later on he took stance against the war of liberation by joining in Razakar Bahini (fvi†Z gy³ ewnbxi cÖÿY w†jI cieZ†Z wZwb ivRvKvi ewnb†Z thvM w†q gy³ h†xi wect†ÿ Ae†vb tbb g†g†Rv†v hvq)

316. The report dated 30.01.2018 of Upazila Nirbahi Officer, Barlekha depicts too that the name of accused Md. Abdul Matin did not find place in the Upazila freedom-fighters list, freedom-fighters’ remuneration list and in the latest list in respect of scrutiny of freedom-fighters.

317. About the another accused Md. Abdul, Aziz @ Habulthe Upazila Nirbahi Officer in its above report dated 30.01.2018 also viewed that----

Ó..... Dc†Rjv gw³ thv×v Zwj Kv, gy³ thv×v mb†vbx†vZv cÖ†bi Zwj Kv Ges me††I gy³ thv×v hv†v†B-ev†v†B msp†v†† Zwj Kvq Zv†u bvg tbB .....D†j b†, RvZxq cwi†Pqc††i Z\_“ Ab†v†q† fvi†Zxq Zwj Kv Ges evsj†† k††††† Zvi w†Zvi bvg I w†Kv†v w†g†j tbB|Ó

318. Thus, the above report tends to conclude it unerringly that taking unfair advantage of existence of name of one Abdul Aziz son of Mozammel Ali of village-Tajpur, Post Office-Shahbajpur a futile attempt was made to voice that the said Abdul Aziz was the present accused Md. Abdul Aziz @ Habul who is the son of Mirjan Ali. This report seems to have been justifiably made based on valid sources.

319. In course of summing up stage prosecution submitted the latest list of freedom-fighters (গণতন্ত্রবাহিনী মগবাহিনী জওয়াক) circulated in 2022 by the Ministry of Liberation War Affairs to take into consideration along with other evidence. It appears that name of accused Md. Abdul Aziz and his brother Md. Abdul Matin do not find place in this updated list.

320. The above list is available in the Ministry's website. This is the latest and updated document in respect of freedom-fighters of Upazila level. The learned defence counsel Mr. Abdus Sattar Palwan does not disagree that the names of these two accused are not found entered in this list as freedom-fighter.

321. Taking all these into account together with the evidence of ocular witnesses and the report dated 30.01.2018 under the signature of Upazila Nirbahi Officer, Barlekha, Moulavibazar we are convinced to deduce that it stands proved that these two accused Md. Abdul Aziz@ Habul and his brother Md. Abdul Matin in fact were not freedom-fighters though they received freedom-fighters' training in India and that they eventually joined in Razakar Bahini despite receiving freedom-fighters' training.

322. As we know that the concerned and appropriate authority the Ministry of Liberation War Affairs can only issue such certificate or list of freedom-fighters recognizing that one is freedom-fighter. But there is nothing before us that the name of these two accused find place in any such list as freedom-fighter.

323. The act and conduct of the accused persons, as found proved from evidence, amid first phase of the attack launched in accomplishing forcible capture of the victim leading to keeping the victim in captivity make them responsible even

for the principal offence i.e. violent sexual invasion which occurred rampantly, as potential accessories.

324. The argument placed on part of defence does not tend to conclude that ‘reasonable doubt’ has been created as to accused’s participation and complicity in committing the criminal acts. The ICTY has noted that “proof beyond reasonable doubt” should be understood as follows:

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

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

325. No indication whatsoever could be demonstrated by cross-examining the prosecution witnesses that the version they made suffers from any degree of doubt.

326. It stands proved that the accused **(1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin** (absconding) had explicit nexus with the Razakar camp where the victim was kept in protracted confinement when she was subjected to rampant sexual invasion. That it is to say, the accused persons indicted in this charge had dominance and culpable role in conducting such activities of the camp which is sufficient to constitute encouraging, aiding and abetting or participating in committing 'rape in captivity' as the camp's criminal scheme.

327. Victim's unimpeached testimony leads to conclude that the accused persons too committed sexual invasion upon victim P.W.03 keeping her in prolonged confinement. The event of violent sexual ravishment was the end result of victim's unlawful abduction in accomplishing which the accused persons were consciously and physically engaged and thus such acts of accused persons were inevitably chained

to the commission of the sexual crimes committed at camps. From this point of view the accused **(1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin** (absconding) incurred liability also for the sexual violence committed upon the victim keeping her detained at camps.

328. On appraisal of evidence presented we arrive at decision that prosecution has been able to prove beyond reasonable doubt that the accused **(1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin** (absconded) by their act and conduct forming part of attack directed against non-combatant civilians were the participants in the JCE (Basic Form) for the offences for which they have been charged with. Therefore, they are found criminally liable under section 4(1) of the Act of 1973 for substantially abetting, participating, contributing, facilitating and for complicity in the commission of offences of **'abduction', 'confinement', 'torture', 'rape'** and **'other inhumane acts'** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act

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

**[02 accused indicted]**

**[Offences of ‘Abduction’; ‘Confinement’; ‘Torture’; ‘Plunder’ and ‘other Inhumane Acts’]**

329. Charge: That on 13 November 1971, at about 9.00 P.M a group formed of 20/25 armed Razakars and Pakistani Occupation Army being accompanied by the accused **(1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin(absconded)**, their accomplices Razakar Monir Ali (now dead) by launching attack at the house of the freedom-fighter Moin Commander at the village- Pakhiala under Police Station- Barlekha of District-Moulavibazar forcibly captured his father old man Basir Uddin (now dead), Uncle Nesar Ali (now dead) and nephew Haris Ali (now dead), as Moin Commander could not be found . The accused persons and their accomplices then caused bloody injury by beating them with rifle and plundered the house and then took the detainees away to the C.O office Razakar camp where they were subjected to inhuman torture in captivity in the name of extracting information about freedom-fighter Moin Commander. On 6 December 1971, Barlekha got freed from Pakistani occupation army and the victims got released.

Therefore, the accused **(1) Md. Abdul Aziz alias Habul and (2) Md. Abdul Matin (absconded)** have been charged for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offences of **‘abduction’; ‘confinement’; ‘torture’; ‘plunder’ and ‘other inhumane acts’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

## **Evidence of Witnesses Examined**

330. Prosecution relies upon testimony of two witnesses i.e. P.W.12 and P.W.13 of whom P.W.12 is a direct witness to facts related to first phase of attack which resulted in taking away unarmed civilians on forcible capture by the gang accompanied by the accused persons. Before we arrive at decision in respect of this count of charge let us first see what has been testified by the witnesses.

**331. P.W.12 Md. Shamsul Islam (62/63)** of village- Pakhiala under police station Barlekha of District-Moulavibazar is a direct witness to acts allegedly carried out in course of first phase of attack which resulted in torture to his father, uncles



and cousin brother on forcible capture. In 1971 P.W.12 was 15 years old. He chiefly recalled the event arraigned in charge no.03. In addition to it he also testified what he heard about the event arraigned in charge no.2.

332. P.W.12 stated that he (P.W.12) knew the accused persons beforehand as they were from their neighbouring locality. In respect of the event arraigned P.W12 stated that on 13 November 1971 at about 09:00 P.M he had been at home when Razakars Abdul Matin, Razakar Monir Ali(now dead), Razakar Abdul Aziz @ Habul, their accomplice Razakars and Pakistani army men besieged their house intending to get his freedom-fighter cousin brother Moin commander captured. But they did not find him available and then they apprehended his father, Uncle Basir Uddin, cousin brother Ayub Ali and his brother's son Haris Ali and started torturing them. They then took them away to CO office army and Razakar camp. He (P.W.12) saw the event remaining in hiding beside the room.

333. P.W.12 next stated that on 06 December 1971 when Barlekha got free his father, uncle, cousin brother and brother's son came back home and disclosed that they were

subjected to appalling torture in captivity to extract information about freedom-fighter Moin commander.

334. In cross-examination P.W.12 stated in reply to defence question that he knew the accused Abdul Aziz @ Habul and Abdul Matin who received freedom-fighters' training in India and he heard that their father Mirjan Ali joined the war of liberation.

335. P.W.12 denied defence suggestions that the accused were not Razakars; that they fought as freedom-fighter till independence achieved; that they used to work as source of freedom-fighters; that what he testified implicating the accused persons was untrue and tutored.

**336. P.W.13 Nazma Islam (54)** of village-Pakhiala under police station-Barlekha of District Moulavibazar is hearsay witness. She got married to freedom-fighter commander Moin from whom she heard the event arraigned in this **charge no.03.**

337. P.W.13 stated that she got married to freedom-fighter Moin commander of village Pakhiala in 1987 and she heard

from her husband and others that on 13 November 1971 a group formed of Razakar Abdul Aziz @ Habul, Razakar Abdul Matin, Razakar Monir Ali (now dead), their accomplice Razakars and Pakistani army men had attacked the house of Moin commander (her husband). But the perpetrators did not find him there and thus they apprehended her father-in-law, uncle-in-law, her(P.W.13) husband's brother Ayub Ali and Haris Ali, tortured the detainees and then took them away to the army and Razakar camp at Barlekha CO office. She (P.W.13) also heard that on 06 December 1971 Barlekha got free and then the detainees came back home and they described the torture caused to them (in captivity at camp).

338. In cross-examination P.W.13 stated in reply to defence question that her husband freedom fighter commander Moin did not have any conflict with the accused persons over some matters of Muktiyodhdha Sangsad. P.W.13 denied defence suggestion that Muktiyodhdha Sangsad of Barlekha Thana commander initiated an application to Muktiyodhdha Sangsad Central Command for cancelling her husband's freedom-fighter certificate; that the accused persons played a role in initiating the said application; that thus she testified out of

grudge implicating the accused persons; that the accused persons were not Razakars and they were freedom-fighters and that she did not hear the event alleged.

### **Finding with Reasoning on evaluation of evidence**

339. **Mr. Mokhesur Rahman Badal**, the learned prosecutor argued that the accused persons indicted in this charge became so antagonistic to pro-liberation civilians and freedom fighters of the localities under Barlekha police station. They almost during the ending phase of the war of liberation got engaged in committing atrocities including attacking the homes of freedom-fighters, forcibly capturing civilians, conducting devastating activities which impacted upon the normal livelihood of civilian population of the locality.

340. It has been argued too that P.W.12 saw the criminal activities carried out in course of first phase of attack. Defence could not diminish credibility of his testimony. It has been proved from his ocular testimony that the gang accompanied by the accused persons apprehended his father, Uncle Basir Uddin, cousin brother Ayub Ali and his brother's

son Haris Ali on failure to get his (P.W.12) cousin brother freedom-fighter Moin commander and took them away.

341. The learned prosecutor further submitted that on 06 December 1971 when Barlekha got free and then the detainees came back home from captivity and disclosed the horrific episode they experienced in unlawful confinement which was loaded with grave and inhuman torture caused to them in the name of extracting information about freedom-fighter Moin commander. Hearsay evidence of P.W.12 on this phase of the event could not be impeached in any manner and thus it carries value in proving the arraignment, the learned prosecutor argued.

342.**Mr. Abdus Sattar Palwan**, the learned counsel defending the accused Md. Abdul Aziz @ Habul and also as state defence counsel for absconding accused Md. Abdul Matin argued that out of rivalry the accused persons have been indicted in this charge; that they were not involved with the event arraigned; that uncorroborated testimony of P.W.12 does not inspire credence ; that the P.W.12 was a boy of tender age in 1971 and thus his narrative does not carry

probative value; that the P.W.12 had no reason of knowing the accused persons; that the accused persons had no nexus with Pakistani army and Razakars; that there is no evidence to show that the victims were allegedly kept detained in the camp and the accused persons inflicted torture to them.

343. In view of arraignment brought and argument advanced in respect of this charge the matters to be determined are that-

- (i) the group of attackers being accompanied by the accused persons by launching attack at the house of freedom-fighter commander Moin got apprehended a number of defenceless civilians;
- (ii) The gang took away the detainees to army-Razakar camp where they were subjected to inhuman torture for prolonged period;
- (iii) The accused persons participated in committing prohibited acts which caused torture and severe harm to detained victims;
- (iv) That the accused persons knowing consequence of their act and conduct had acted as part of collective criminality.

344. Evidence of P.W.12, the sole direct witness to the facts related to the event depicts that object of the attack was to get freedom-fighter Moin Commander apprehended. The gang of invaders was accompanied by the accused persons indicted, it stands proved. The attack was carried out just 17 days prior to Barlekha got liberated. Pattern and object of the attack itself thus demonstrates unambiguously that the accused persons were extremely aggressive not only to the freedom-fighters but to their relatives as well.

345. Evidence of witnesses depicts that the perpetrators did not find their target freedom-fighter Moin commander available at his home when the attack was conducted and then the perpetrators forcibly captured Moin commander's father an old man Basir Uddin (now dead), Uncle Nesar Ali (now dead), Ayub Ali(now dead) and nephew Haris Ali (now dead), and started torturing them. They then took them away to CO office army and Razakar camp. P.W.12 saw these criminal acts done in conjunction with this phase of the event remaining in hiding beside the room.

346. P.W.12 testified that the accused persons were from their neighbouring locality. Defence could not refute it. Besides, it

appears from cross-examination of P.W.12 that he was aware of the fact that the accused persons received training of freedom-fighter in India. Thus, it may be justifiably inferred that the P.W.12 knew the accused persons beforehand. Be that as it may, ocular account made by P.W.12, a direct witness proves accused persons' presence at the crime site with the gang and their participation in accomplishing the criminal acts during first phase of attack which resulted in unlawful protracted confinement of victims and brutal torture inflicted to them in captivity.

347. It has been argued on part of defence that in 1971 P.W.12 was a boy of tender age and thus the narrative he made does not carry probative value in proving the accusation against the accused persons indicted in this charge.

348. We are not agreed with the above defence submission. Mere tender age cannot be a ground to discard one's testimony if the same appears to be natural and gets corroboration from other evidence. Tribunal notes that in the case of *Ali Ahsan Muhammad Mujahid* the **Appellate Division of Supreme Court of Bangladesh**, on this aspect, observed that –



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

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

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

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

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

350. Admittedly, on 06 December 1971 Barlekha got free. It transpires from testimony of P.W.12 that after Barlekha got liberated the detainees came back home and disclosed how they were subjected to inhuman torture in captivity to extract information about freedom-fighter Moin commander.

351. Thus, it stands proved that keeping the victims detained at the C.O office Razakar camp the accused persons and their accomplices caused ruthless torture to them in the name of extracting information about freedom-fighter Moin Commander. Such gravely prohibited acts constituted the offence of ‘**torture**’ as crime against humanity.

352. Next, we do not find any reason of disbelieving P.W.13. She is the wife of freedom-fighter Moin commander and she heard the event from her husband. It was natural and her hearsay testimony gets corroboration from ocular testimony of P.W.12. Defence could not impeach this piece of hearsay evidence of P.W.13.

353. Specific defence suggestion put to P.W.13 is that Muktijodhdha Sangsad of Barlekha Thana commander initiated an application to Muktijodhdha Sangsad Central command for cancelling her husband’s freedom-fighter certificate and that is the reason why the P.W.13 testified implicating the accused persons out of grudge. But there is no evidence or indication that the accused persons had played role in initiating any such application seeking cancellation of Moin commander’s freedom-fighter’s certificate. This

unfounded defence case seems to be devoid of merit and a futile attempt to evade liability.

354. A close reading of evidence presented substantiates the arraignment of forcible capture of victims, causing grave torture to them keeping confined at Razakar camp. The attack was primarily intended to get freedom-fighter Moin Commander apprehended. But he was not found at his house despite launching the attack. Then the gang being accompanied by the accused persons apprehended his father and other relatives and took them away to the C.O office Razakar camp where they were subjected to cruel torture in captivity in the name of extracting information about freedom-fighter Moin Commander.

355. The accused Md. Abdul Aziz @ Habul and Md. Abdul Matin were consciously concerned even in accomplishing the prohibited acts by keeping the victim detained at camp. The accused persons actively participated in taking away the victims to the Razakar camp and thus it may be justifiably inferred that the accused persons had explicit nexus and conscious concern even to the act of causing torture to the detained victims in captivity.

356. The perpetrators including the accused persons are thus found to have had intentionally inflicted mental and physical pain to the victims who were civilians keeping them under coercion and intimidation. Grave mistreatment caused to victims by keeping them confined at Razakar camp indisputably left them with stubborn physical and psychological scars.

357. Keeping defenceless civilians in captivity itself causes mental and physical harm constituting the offence of ‘**torture**’ and ‘**inhumane acts**’ as crime against humanity. The grave wrongs were committed violating the norms of human rights and laws of war.

358. It stands patently proved that in the name of extracting information about freedom-fighters the accused persons and their accomplices committed such prohibited acts systematically which resulted in physical and mental torture to the detainees. Prohibition against torture is well established under customary international law as *jus cogens*. The Convention against torture defines the offence of ‘torture’ as-- “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for

such purposes as obtaining from him or a third person information or confession....”

359. In the case in hand, prohibited cruel acts inflicted to victims in captivity indisputably caused physical and mental suffering. Confining a number of unarmed civilians in protracted captivity obviously was not for any pious purpose. Thus, even in absence of any direct evidence we are convinced to deduce based on facts and circumstances that the victims were subjected to enduring torture in captivity for ‘unlawful purpose’ which was severely detrimental to human rights of protected civilians .

360. **ICTY Appeals Chamber** observed in its judgment rendered in the case of **Kunarac, Kovac, and Vokovic** that--

“The definition [of torture] is based on the following constitutive elements: “(i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental. (ii) The act or omission must be intentional. (iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at

discriminating, on any ground, against the victim or a third person.”

**[ICTY Appeals Chamber, June 12,2002, para. 142]**

361. Tribunal notes that in 1948, following the horrendous and grave abuses of World War II, the General Assembly of the United Nations introduced the prohibition against torture in the Universal Declaration of Human Rights (UDHR), Article 5 of which states that-- “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

362. But in the case in hand we see that the accused persons indicted in this charge deliberately and in cruel manner inflicted severe pain to victims keeping them unlawfully detained at camp for prolonged period , in the name of extracting information. It was grave violation of UDHR and other treaties relating to prohibition of any kind of torture, physical or mental.

363. Explicit and culpable act of accused **(1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconded)**, in procuring coercive capture of four civilians and confining

them at Razakar camp set up in Barlekha C.O Office together with their subsequent act of participating in causing torture to detainees, as found proved formed part of ‘systematic attack’.

364. In adjudicating charge no.02 we have already rendered our reasoned view based on evidence, documentary and oral that these two accused despite receiving freedom-fighters’ training in India eventually joined in Razakar Bahini taking stance in favour of Pakistani occupation army. The accused persons sided with the Pakistani occupation army and participated in committing crimes. Thus, we refrain from reiterating discussion on this aspect.

365. ‘Participation’ includes both direct participation and indirect participation. An accused’s involvement in the criminal act must form a link in the chain of causation. [**Tadic Case ICTY Appeal Judgement, para. 199**]. Participants in a JCE may contribute to the common plan in a variety of roles. Indeed, the term participation is defined broadly and may take the form of assistance in or contribution to the execution of the common plan. [**Tadic Case ICTY Appeal Judgement, para. 227**]

366. Section 4(1) of the ICT Act of 1973 tends to cover the necessary elements of JCE (Basic Form). We restate that JCE(Basic Form) is a form of co-perpetration that establishes personal criminal liability. In fact section 4(1) of the Act of 1973 refers to JCE liability.

367. The individual criminal liability of an accused under JCE emanates from his 'knowing and voluntary participation' in group acting with a common purpose or plan. Facts and circumstances revealed lead to the conclusion that the accused persons indicted in this charge knowingly and sharing common intent participated in conducting attack.

368. Thus, and in view of above proposition evolved in ICTY it has been found proved that the accused persons were knowingly 'concerned' even with the phase of the event involving causing inhuman torture and harm to detainees. They had acted being part of joint criminal enterprise (JCE), we conclude.

369. The manner of conducting the attack was blatant denial of international humanitarian law which ensures civilians' protection in war time situation as well. The victims were not



direct party to hostility. But the group of perpetrators accompanied by the accused persons treating and perceiving them as their 'counterpart' and 'miscreants' had deliberately carried out criminal acts against civilian population which constituted the offences as crime against humanity.

370. In the case in hand, intentional infliction of severe pain and untold suffering was done to unarmed civilians keeping them in unlawful confinement. Accused persons were actively engaged in accomplishing such prohibited acts. Purpose was not virtuous. Language fails to describe how traitor and vicious the accused persons were against the pro-liberation civilians, despite receiving freedom-fighters' training in India. Stance they eventually took against the war of liberation made them linchpins of evil deeds, to further policy and plan of Pakistani occupation army.

371. We arrive at decision that integrated evaluation of evidence, as discussed above, leads to the conclusion that the prosecution has been able to prove it beyond reasonable doubt that the accused **(1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin(absconding)**, in exercise of their significant nexus in locally formed Razakar Bahini substantially

participated, facilitated and contributed the group of attackers in forcibly abducting the civilians by launching systematic attack and causing inhuman torture to them in captivity and also had acted in JCE, sharing common purpose and thus they incurred liability for the criminal acts done at all phases of the event of attack arraigned.

372. Therefore, the accused **(1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin(absconded)** are found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, substantially contributing, facilitating and for complicity in the commission of offences of **abduction**, **confinement**, **torture**, **plunder** and **other inhumane acts** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

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

**[03 accused indicted]**

**[Offences of 'Abduction'; 'Confinement'; 'Arson'; 'Torture'; 'Plunder' and 'other Inhumane Acts']**

373. Charge: That on 14 November 1971, at about 12.00 noon a group formed of 35/40 armed Razakars and Pakistani Occupation Army being accompanied by the accused **(1) Md.**

**Abdul Aziz alias Habul, (2) Md. Abdul Matin(absconded)**  
**(3) Md. Abdul Mannan alias Monai** and Razakar Monir Ali (now dead) by launching attack at the house of freedom-fighter Mostakin Commander at the village-Hinainagar under Police Station- Barlekha of District- Moulavibazar plundered valuables conflagrated to houses as Mostakin Commander could not be found there. Thereafter, the accused persons and their accomplices forcibly captured Motsin Ali by attacking his house, looted valuables and set the house on fire.

The accused persons and their accomplices then took the detainee Motsin Ali to the Barlekha C.O Office Razakar camp and kept him in captivity where he was subjected to torture for securing his brother freedom-fighter Commander Mostakin Ali's surrender before the Razakar camp . During captivity at the camp, the accused persons and their accomplices made the detainee Motsin Ali hanged with a tree of the camp and tortured him brutally for seven days that resulted in fracturing his legs. The victim however eventually got release in exchange of money.

Therefore, the accused (1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconded) and (3) Md. Abdul Mannan

alias Monai have been charged for actively participating, abetting, facilitating, contributing and also for complicity in the commission of offences of **‘abduction’; ‘confinement’; ‘arson’; ‘torture’; ‘plunder’ and ‘other inhumane acts’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

## **Evidence of Witnesses Examined**

374. Prosecution relies upon three witnesses who allegedly experienced facts substantially linked to the attack conducted by the group accompanied by the accused (1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconded) and (3) Md. Abdul Mannan alias Monai. The witnesses have been examined as P.W.05 P.W.06 and P.W.07. They are relatives of victims and allegedly saw the gang being accompanied by the accused persons in conducting the attack that resulted in abduction and torturing the victim confining at Razakar camp. Now, let us see what they have recounted in Tribunal.

**375. P.W.05 Boratunnesa (85)** of village-Hinai Nagar under police station- Barlekha of District (now)- Moulavibazar is the wife of freedom-fighter Mostakin Ali. Victim Motsin Ali is her husband's elder brother. She described what she witnessed in course of attack launched at their house.

376. P.W.05 stated that in 1971 she had been staying at her conjugal home. After the war of liberation ensued her husband went to India along with Abdul Aziz @ Habul (accused), Abdul Matin (accused), Habib commander, Moin commander for receiving training to join the war of liberation. On receiving training Abdul Aziz @ Habul and Abdul Matin got affiliated with Razakar camp at Barlekha CO office as Razakars. Her (P.W.05) husband, Habib commander and Moin commander got engaged in the war of liberation on completion of training.

377. P.W.05 next stated that in the last part of Bangla month Kartik in 1971 at about 11:00/11:30 A.M a group formed of Razakar Abdul Aziz @ Habul, Abdul Matin, Razakar Abdul Mannan @ Monai, their accomplice Razakars and Pakistani army men besieging their house started hunting her freedom-fighter husband and interrogated her husband's elder brother

Motsin Ali to have trace of her (P.W.05) husband. But as he did not disclose anything they (perpetrators) inflicted him grave torture tying him up. The gang looted household and set the house on fire and then they moved back to Barlekha Razakar camp taking detained Motsin Ali with them. She went into hiding at a stage of causing torture to her husband's brother (Motsin Ali).

378. About the next phase of the event the P.W.05 stated that later on she heard that her husband's brother was being subjected to torture by hanging him with a tree. Then she sent her son Iman Uddin and Husband's brother's son Moin Uddin to the camp for getting information about Motsin Ali. But they coming back there from informed that her husband's brother was being brutally beaten. Then they moved to local peace committee chairman Habibur Rahman and begged release of her husband's brother. 6/7 days later, in exchange of ransom money they brought back Motsin Ali when his hands and legs were found broken.

379. P.W.05 also stated that during the war of liberation her husband's brother Motsin Ali used to provide information and assistance to freedom fighters.

380. In respect of reason of knowing the accused she named P.W.05 stated that the accused persons were from their locality and used to move along with her freedom-fighter husband and thus she knew them beforehand.

381. In cross-examination P.W.05 stated that Nuruddin member was the brother of her husband by relation; that she could not say whether Nuruddin member was killed by anybody, but he did not return back after going to India.

382. P.W.05 denied defence suggestions that supporters of Nuruddin had conducted attack at their house on suspicion that her husband had killed Nuruddin; that Pakistani army and Razakars did not carry any act of looting and arson in any locality under Barlekha police station.

383. P.W.05 also denied defence suggestions that the accused persons fought as freedom-fighters till independence achieved; that they were not Razakars; that no event she testified happened; that accused Abdul Mannan @ Monai was not with the gang when it conducted attack at their house; that she did not see or hear any phase of event she testified and

that what she testified implicating the accused persons was untrue and tutored.

**384. P.W.06 Md. Iman Uddin(59)** of village-Hinai Nagar under police station- Barlekha of District(now)- Moulavibazar is a direct witness to facts chained to the attack leading to the act of taking away his uncle Motsin Ali on forcible capture and devastating activities carried out.P.W.06 is the son of P.W.05 and late freedom-fighter Mostakin Ali.

385. Before narrating the event P.W.06 stated that his father was a soldier of Pakistani army, before the war of liberation ensued. In 1971 after the war of liberation ensued his father went to India and received training to join the war of liberation. Abdul Aziz @ Habul (accused), Abdul Matin (accused), Moin uddin commander, Habib commander also received training in India along with his (P.W.06) father. P.W.06 stated too that on completion of training Abdul Aziz @ Habul and Abdul Matin returning back surrendered by getting in touch with Pakistani army stationed at Barlekha CO office camp and got affiliated in Razakar Bahini.

386. P.W.06 next stated that on receiving training in India his father, Moin Uddin commander and Habib commander



returned back and remained engaged with the war of liberation till independence achieved.

387. In narrating the event arraigned P.W.06 stated that on 27 Kartik in 1971 at about 12:00 noon Razakar Abdul Aziz @ Habul, Abdul Matin, Razakar Abdul Mannan @ Monai, their accomplice Razakars ad Pakistani army men forming a group had attacked their house and apprehended his uncle Motsin Ali and started torturing him to provide trace of his (P.W.06) father freedom-fighter Mostakin Ali. He, his brothers, sisters and mother then went into hiding inside a bush near the house where from he saw the attackers causing torture to his uncle, looting household and setting the house on fire. Then the attackers moved back to Barlekha CO office camp taking his detained uncle with them.

388. P.W.06 stated that on the following day they learnt that his uncle was subjected to torture by hanging him up with a tree of the camp. Then he and Moin Uddin (P.W.07) the son of victim Motsin Ali moved to the camp and staying in hiding near the camp they saw the Razakars he named (accused) beating his uncle by hanging him up with a tree. Then they came back home and disclosed it to his grand-mother who

then contacted the local peace committee chairman Habibur Rahman. Then in exchange of ransom money seven days later his uncle got release from captivity. They then found his uncle's hands and legs broken and his uncle died in 2013 in paralyzed condition.

389. In respect of reason of knowing the accused persons P.W.06 stated that they were from their neighbouring locality and thus he knew them before hand.

390. In cross-examination P.W.06 stated in reply to defence question put to him that Nuruddin member was their neighbour and he was killed by somebody during the war of liberation.

391. In cross-examination done on behalf of accused Abdul Mannan @ Monai P.W.06 stated that the bush where they remained stayed and saw the event was about 40/50 hands far from the courtyard of their house.

392. P.W.06 denied defence suggestion that his father had killed Nuruddin member and that is why his(Nuruddin) family inmates had attacked their house; that in 1971 Pakistani army and Razakars had not conducted any act of

looting and arson around the localities under Barlekha police station; that the accused persons were engaged in the war of liberation till independence achieved; that there has been a land dispute with accused Abdul Mannan @ Monai and that he testified implicating him falsely; that he did not see the accused Abdul Mannan @ Monai at their house when the alleged attack occurred.

**393. P.W.07 Md. Moin Uddin (64)** of village Hinai Nagar under police station Barlekha of District Moulavibazar is the son of victim Motsin Ali. He is a direct witness to the first phase of the event of attack event arraigned **in this chargeno.04.**

394. P.W.07 before narrating the events arraigned stated that his uncle Mostakin Ali was a freedom-fighter and his father (Motsin Ali) was an organizer of war of liberation. His uncle Mostakin Ali, Moin Uddin commander, Abdul Matin (accused) , Abdul Aziz @ Habul (accused) received freedom-fighters training in India. On completion of training his uncle joined the war of liberation on returning back Bangladesh. But Abdul Aziz @ Habul and Abdul Matin on receiving

training got in touch with Pakistani occupation army and got enrolled in Barlekha Razakar Bahini.

395. P.W.07 stated that on the day following the event of attack conducted at the house of freedom fighter commander Moin Uddin accused Abdul Aziz Habul, Abdul Matin, Abdul Mannan @ Monai, their accomplice Razakars accompanied the Pakistani army men forming a group had attacked their house and finding his uncle freedom-fighter Mostakin not available apprehended his (P.W.07) father Motsin Ali and started torturing him. At that time he (P.W.07) and other family inmates remained stayed in hiding inside a bush nearer to house wherefrom they saw the perpetrators setting their house on fire and taking away his father toward Razakar camp. On the following day they heard that his father was being subjected to torture in captivity at the camp, tying him up with a tree and disclosed it to his grand-mother and then they contacted the local peace committee chairman Habibur Rahman. Then in exchange of ransom money seven days later his father got release from captivity in paralyzed condition.

396. In respect of reason of knowing the accused persons P.W.07 stated that the accused persons were from their

locality and they used to visit their home and thus he knew them beforehand

397. In cross-examination P.W.07 stated in reply to defence question that freedom-fighter commander Moin died after initiation of the instant case. P.W.07 denied defence suggestions that his uncle Mostakin had killed Nur Uddin member; that the family inmates of Nur Uddin had attacked their house; that during the war of liberation Mostakin's wife and his children had been staying at her paternal home'; that no event he testified happened; that the accused Abdul Aziz @ Habul and Abdul Matin were engaged in working as secret source of freedom-fighters and thus often used to come inside Bangladesh (during the war of liberation).

398. In cross-examination done on behalf of accused Abdul Mannan @ Monai P.W.07 stated that the bush where from they saw the event was about 40/50 hands far from the courtyard of their house.

399. P.W.07 denied defence suggestions that he testified implicating this accused out of enmity over land dispute; that this accused was not present with the gang when it had

attacked their house' that he did not see his father being tortured; and that what he testified was untrue and tutored.

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

400. **Mr. Mokhlesur Rahman Badal**, the learned prosecutor in agitating argument on this count of charge submitted that the P.W.s examined in support of this charge knew the accused persons beforehand for valid reason and their unshaken ocular narrative has proved the commission of crimes arraigned and participation of accused persons therewith, being active part of criminal mission. Defence could not bring anything to show credibility of defence case, as has been contended. The accused persons indicted had deliberately acted and participated in spreading coercion and threat to the pro-liberation civilian population which resulted in devastating activities, abduction, confinement and inhuman torture.

401. **Mr. M. Sarwar Hossain** the learned counsel defending the accused Md. Abdul Mannan @ Monai argued that this accused had not been in the locality in 1971 and he had been staying outside his native locality since 1970 to 1973 and thus

testimony implicating him with the offence alleged carries no credibility.

**402. Mr. Abdus Sattar Palwan** the learned counsel defending the accused Md. Abdul Aziz @ Habul and also as state defence counsel for absconding accused Md. Abdul Matin argued that these two accused were freedom-fighters as they received training in India to join the war of liberation. They have been falsely implicated in this charge out of local rivalry

**403.** It is not disputed that P.W.05 Boratunnesa (85) is the wife of freedom-fighter Mostakin Ali. Event of attack was allegedly conducted at their house. She is the key witness to the event arraigned. It depicts from her (P.W.05) ocular testimony that the attack resulted in unlawful capture of Motsin Ali and causing torture to him. Victim Motsin Ali was her husband's elder brother. Defence could not taint the version of P.W.05 by cross-examining her which proves the commission of criminal acts and active participation of accused persons therewith.

404. It is evinced from testimony of P.W.05 that primary target was the husband of P.W.05 freedom-fighter Mostakin

Ali. And when her husband's elder brother Motsin Ali did not respond to the gang in providing trace of her husband they (perpetrators) started inflicting him grave torture tying him up.

405. It is evinced too that the gang looted household and set the house on fire and then they moved back to Barlekha Razakar camp taking detained Motsin Ali with them. P.W.05 went into hiding at a stage of causing torture to her husband's brother (Motsin Ali). From the hiding place P.W.05 saw the gang accompanied by the accused persons taking away the victim Motsin Ali.

406. We got it proved too from uncontroverted narrative of P.W.05 that her son Iman Uddin (P.W.06) and her Husband's brother's son Moin Uddin (P.W.07) later on moved to the camp for getting information about detained victim Motsin Ali. Thy coming back there from informed that the victim, her(P.W.05) husband's bother was being brutally beaten in captivity.

407. Naturally, relatives of victim being aware of such brutality became worried and thus moved to the local peace



committee chairman Habibur Rahman with request for release of victim. Finally, the victim got release in exchange of ransom money when his hands and legs was found broken.

408. The above fact related to unlawful confinement of the victim and inflicting brutal torture to him as unveiled in testimony of P.W.05 gets consistent corroboration from P.W.06 and P.W.07 who too witnessed the act of causing such torture to detained victim.

409. It is not necessary to proof that the accused persons physically participated in inflicting torture to victim in captivity at the camp. It is to be seen whether they had 'concern' to all phases of the designed event. Since it stands proved that the accused persons actively and physically participated in accomplishing the act of forcible capture of victim by launching systematic attack and the victim was taken away to the camp where he was kept unlawfully confined it may safely and unerringly be concluded that the accused persons were concerned also in accomplishing criminal acts leading to inhuman torture to victim detained at the camp.

410. The accused persons thus being active part of ‘collective criminality’ also participated in committing prohibited acts in keeping the victim unlawfully confined. They thus being part of joint criminal enterprise (JCE-Basic Form) incurred liability as co-perpetrators for all the criminal acts accomplished in all phases of the event. Besides, it transpires that P.W.06 and Moin Uddin (P.W.07) the son of victim Motsin Ali moved to the camp and staying in hiding near the camp they saw the Razakars they named (accused) beating the victim by hanging him up with a tree. Obviously such barbaric acts happened within the sight of victim’s son caused grave mental harm to him indeed.

411. It has been affirmed in cross-examination of P.W.06 that at the time the event of attack was launched P.W.06 and other inmates remained in hiding inside a bush, 40/50 hands far from the courtyard of their house. Be that as it may. P.W.06 and his family inmates had natural opportunity of seeing the criminal acts carried out in course of the first phase of attack. Ocular narrative made by P.W.07 in respect of the attack leading to forcible capture and causing torture to Motsin Ali also inspires credence.

412. P.W.07 also stated that seven days later they got his detained father released from captivity when he was in paralyzed condition, in exchange of ransom money, on intervention of peace committee chairman Habibur Rahman. It may be inferred that the accused persons having culpable concern and nexus with the army facilitated in obtaining illegal financial gains in trickery and deceiving way from the relatives of victim, we conclude. Such deceiving act also left mental harm to relatives of victims.

413. The above piece of crucial fact chained to the event remained unimpeached. It has neither been shaken nor denied in cross-examination of P.W.07. Thus, this uncontroverted fact adds assurance as to facts of keeping Motsin Ali detained at the camp by taking him there on forcible capture. Inflicting brutal torture to him in captivity in the name of extracting information stands proved.

414. P.W.06 is the son of freedom-fighter Mostakin Ali. P.W.05 is the mother of P.W.06 and P.W.07 is the son of victim i.e. son of P.W.05's husband's brother. Their house faced systematic attack. Accused persons accompanied the gang of attackers. All these have been proved. The witnesses

remaining stayed in hiding place saw the gang committing criminal acts and taking away Motsin Ali to Razakar camp.

415. There is no requirement that accountability of an accused must be determined on evidence of two or more witnesses. The Tribunal can act upon even a single witness if it is found credible and the same may be accepted even if not corroborated.

416. However, in adjudicating this count of charge it appears that three witnesses examined in support of this charge are direct witnesses to the crucial facts chained to the event of attack leading to abduction, confinement and torture of the victim, the near one of these witnesses. Their ocular version could not be tainted in any manner by the defence.

417. Victim of the event arraigned in this charge Motsin Ali was the uncle of P.W.06 Iman Uddin who admits in cross-examination that Nur Uddin member was their neighbour and he was killed by somebody during the war of liberation. But P.W.06 denied the defence suggestion that his father had killed Nur Uddin member and that is why his (Nur Uddin) family inmates had attacked their house.

418. Besides, mere putting such suggestion does not negate the event testified in examination-in-chief. It appears that no effort has been made to substantiate such above defence case by adducing evidence. Thus, mere putting suggestion to witnesses which have been denied does not provide any indication as to truthfulness of such defence claim.

419. The ‘attack’ was directed against civilians which resulted in beating, looting and setting houses on fire causing grave detriment to normal and peaceful occupation and livelihood of defenceless civilians which constituted the offences violating international humanitarian law. It is to be noted that causing torture is not confined only in inflicting bodily injury. It may be caused even by inflicting severe mental harm, by committing prohibited acts. In this regard the **ICTY Trial Chamber** observed that –

“.....The mental suffering caused to an individual who is forced to watch severe mistreatment inflicted on a relative would rise to the level of gravity required under the crime of torture. ....”

[Kvocka et al., (Trial Chamber), November 2, 2001, para. 149]

420. It is evinced that the armed gang accompanied by the accused persons by conducting their designed joint criminal mission and committing prohibited acts including the aggravated destruction of civilians' property blatantly violated the international humanitarian law which were gravely detrimental to human rights and constituted the offence of '**other inhumane act**'.

421. It also depicts from the narrative recounted by the witnesses that the calculated 'coercive criminal acts' including aggravated destruction forming part of 'systematic attack' were carried out within their sight which inevitably caused grave mental harm also to them, the relatives of victims. It constituted the offences of '**torture**'.

422. Grave breach of rights to normal human life, causing mental and physical harm, unlawful detention and inflicting rampant torture to detained civilian in captivity cumulatively and unerringly impel that the attack the gang conducted was 'systematic' and 'directed against civilian population'.

423. It transpires that such attack was carried out just at the fag-end of the war of liberation when the Bengali nation was

about to achieve its long cherished independence. The attack was 'systematic'. Given the context and pattern, all the criminal acts as proved were thus not isolated and the same constituted the offence of crimes against humanity.

424. 'Committing' may be done individually or jointly with others. Accused persons had incurred liability under the theory of **JCE [Basic Form]**. It is now settled proposition that 'participation' in a joint criminal enterprise is more akin to direct perpetration or accomplice liability. In the case in hand, it stands proved that being part of the enterprise the accused persons indicted played a key 'coordinating role', in exercise of their affiliation with the *para militia* force in perpetrating the crimes proved.

425. The liability mode contemplated in section 4(1) of the Act of 1973 refers to 'common plan of collective criminality' which corresponds to JCE. Therefore, the accused persons had acted as 'participants' in 'committing' the crimes arraigned.

426. Totality of evidence presented by prosecution makes the fact strengthen that the accused persons by consciously

accompanying the troop of attackers intended to enable them to identify the target of atrocities to be committed and thus the act of accompanying the troops by the accused persons is considered to have had substantial contribution and assistance to the actual commission of the crimes, in course of first phase of the attack directed against the civilian population.

427. The unimpeached evidence presented on part of prosecution patently demonstrates that the accused **(1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin(absconded) (3) Md. Abdul Mannan alias Monai** accompanied the group of perpetrators at the crime site knowing the substantial likelihood of the consequence of their act of assistance and aid they provided in accomplishing forcible capture of unarmed civilian, causing torture to him and indiscriminate destructive doings, in conjunction with the 'attack'.

428. The perpetrators forming the criminal enterprise intended to terrorize the innocent civilians by conducting such destructive and terrorizing acts. It added severe mental harm to the inmates of the house attacked and neighbouring people indeed, we may infer it.



**429.**On having due appreciation of the intrinsic value of evidence presented before us, in respect of facts substantially linked to the event, we arrive at a finding that the prosecution has been able to prove beyond reasonable doubt that the accused **(1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin(absconded) (3) Md. Abdul Mannan alias Monai** by their conscious and culpable act and conduct forming part of attack directed against non-combatant civilians had acted as the participants in the JCE for the offences for which they have been charged with. Therefore, they are found criminally liable under section 4(1) of the Act of 1973 for substantially abetting, participating, contributing, facilitating the commission of offences of ‘arson’ , ‘**plunder**’ ‘**abduction**’, ‘**confinement**’, ‘**torture**’ *and* ‘**other inhumane acts**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act for which the accused persons have incurred liability under section 4(1) of the said Act.

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

**[02 accused indicted]**

**[Offences of ‘Abduction’; ‘Confinement’; ‘Torture’; ‘Rape’, ‘Plunder’ and ‘other Inhumane Acts’]**

430. Charge: That on 17 November 1971, at about 4.00 P.M a group formed of 20/25 armed Razakars and Pakistani Occupation Army being accompanied by the accused (1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin(absconded), their accomplice Razakars Monir Ali (now dead), Razakar Akbar Ali alias Bokai (now dead) by launching attack at Dimai Bazar under Police Station Barlekha of District Moulavibazar forcibly captured freedom fighter Monir Ali and thereafter looted the house of Habib Commander and wherefrom took away Monir Ali's wife Afia Begum to Keramat Nagar Tea Garden army camp, on forcible capture where she was subjected to sexual ravishment. On intervention of relatives and local peace committee leader Habib Chairman she got release.

The detained victim Monir Ali was also subjected to torture by hanging him with a tree at the Razakar camp by the accused persons and their accomplices. Two days later the victim got release on intervention of one Habib Chairman.

Therefore, the accused (1) Md. Abdul Aziz alias Habul and (2) Md. Abdul Matin (absconded) have been charged for actively participating, abetting, facilitating, contributing and

also for complicity in the commission of offences of **‘abduction’; ‘confinement’; ‘torture’; ‘rape’; ‘plunder’** and **‘other Inhumane Acts’** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

### **Evidence of Witness Examined**

431. Prosecution relies on testimony of five witnesses i.e. P.W.05, P.W.06, P.W.07, P.W.11 and P.W.14 to substantiate the arraignment brought in this count of charge. Of these five witnesses P.W.11 is the victim of sexual violence and P.W.14 is a direct witness to facts chained to the attack. The three other witnesses are hearsay witnesses. First, let us eye on what account has been made by the P.W.11, the victim and P.W.14.

432. **P.W.11 Afia Begum (66)** of village- Kechharigool Paschimpara under police station-Barlekha of District (now)- Moulavibazar is the victim of the event of sexual violence arraigned in this count of charge. She is the wife of freedom-fighter Monir Ali. She recounted how the attack was launched

at her conjugal home and what happened in conjunction with the attack.

433. P.W.11 stated that in 1971 she had been at her conjugal home at village- Kechharigool. She had a son who was one and half year old and at that time she was pregnant of five months. Her husband's elder brother Habib (now dead) was freedom-fighter commander. Her husband too was a freedom-fighter. Habul (accused), Matin (accused) and others along with her husband and husband's brother received freedom-fighters' training in India. But Habul and Matin on completion of training joined Razakars Bahini making contact with Pakistani camp, coming back inside Bangladesh.

434. P.W.11 in narrating the event arraigned stated that at the last part of Bangla month Kartik in 1971 in afternoon Razakar Habul, Razakar Matin, their accomplices and Pakistani army men came to their house taking her freedom-fighter husband Monir Ali with them detaining him from village-Dimai. They (perpetrators) carried out looting and apprehended her. They then took away her and her husband to Keramat Nagar tea garden army camp where they together were kept confined. Her husband was being beaten by Razakars Habul and Matin

and they dragging him out tied him up with a tree and tortured him by setting fire. She saw it staying detained in room (of the camp).

435. P.W.11 also stated that Razakars Habul, Matin and Pakistani army men committed 'violence' and degraded her 'honour' in captivity in presence of her husband. She got release on initiative of her relatives and on intervention of Habib chairman, in exchange of ransom money.

436. P.W.11 next stated that her detained husband was shifted to Shahbajpur camp where he was subjected to inhuman torture in captivity. Later on, in exchange of ransom money her husband got release. But her husband became paralyzed due to torture caused to him and still he is not in position to move by his own. Due to torture caused to her in captivity the baby at her womb could not survive.

437. In respect of reason of knowing the accused persons P.W.11 stated that Razakars Habul and Matin intending to join the war of liberation together with her (P.W.11) husband and husband's elder brother used to visit their home for taking meal and since then she knew them.

438. In cross-examination, in reply to defence question put to her P.W.11 stated that she did not disclose the event to other and did not initiate any case over the event after independence; that the accused Abdul Aziz @ Habul is brother of accused Md. Abdul Matin.

439. P.W.11 denied defence suggestions that the accused persons joined the war of liberation and they were not Razakars and that the accused persons were engaged in the war of liberation till 06 December 1971.

440. **P.W.14 Md. Jamal Uddin (63)** of village- Kechharigool under police station-Barlekha of District (now)-Moulavibazar is a direct witness to facts related to the attack arraigned in charge no.05 leading to abduction, confinement torture and rape. In 1971 P.W.14 was 15 years old. Detainee Monir Ali is his maternal uncle.

441. P.W.14 stated that on 30<sup>th</sup> day of Bangla month Kartik in 1971 at about 04:00 P.M he had been at home when he saw the group formed of Razakar Abdul Aziz @ Habul, Razakar Abdul Matin, their accomplice Razakars and army men coming at home of Monir Ali, his maternal uncle taking him

with them on capture. Their home was adjacent to that of his maternal uncle Monir Ali. With this he (P.W.14) went into hiding beside home wherefrom he saw them (perpetrators) looting household and getting forcibly captured his maternal Uncle Monir Ali's wife when they did not find there the freedom-fighter commander Habib. They then took away Afia (P.W.11) toward army camp at Keramotnagar tea garden.

442. P.W.14 next stated that 2/3 days later his maternal aunt Afia got release on intervention of local Habib chairman in exchange of ransom money. She(victim) came back home and from her they knew that Razakar Abdul Aziz @ Habul, Razakar Abdul Matin and other Razakars and army men committed rape upon her in captivity. At that time Afia was five months' pregnant. But the embryo at her womb was damaged due to violence caused to her.

443. P.W.14 further stated that his maternal uncle Monir Ali was subjected to inhuman torture in captivity at Keramotnagar tea garden camp and later on he was shifted to Shahbajpur high school Razakar camp where he had to face grave torment. Their relatives on intervention of local chairman Habib made his maternal Uncle Monir Ali's release

in exchange of ransom money. His maternal uncle had to undergo medical treatment as he sustained multiple injuries on his body.

444. In respect of reason of knowing the accused P.W.14 stated that the accused persons used to visit his maternal uncle Habib commander's house to have discussion to join the war of liberation and that is why he knew them beforehand.

445. In cross-examination P.W.14 stated that the home of freedom-fighter commander Habib Ali and Monir Ali, his maternal uncle were about 300 yards far from their (P.W.14) house. P.W.14 denied defence suggestions that the accused persons were engaged in the war of liberation till the independence achieved; that they were not Razakars and were not involved in the event arraigned; that the event he narrated did not happen; that he did not see the event alleged; that he did not know the accused persons and that what he testified implicating the accused persons was untrue and tutored.

446. Now let us see what the P.W.05, P.W.06 and P.W.07, the hearsay witnesses have testified in respect of the event arraigned in this charge no.05.



447. P.W.05 Baratunnesa (85) of village-Hinai Nagar under police station- Barlekha of District- Moulavibazar is a hearsay witness. In respect of the event arraigned in charge no.05 P.W.05 stated that 2/3 days after the event occurred at her conjugal home [**as listed in charge no.04**] she heard that Razakars Abdul Aziz @ Habul, Abdul Matin, their accomplice Razakars and Pakistani army men had attacked the house of freedom-fighter commander Habib and finding him not available they apprehended his younger brother unarmed freedom-fighter Monir Ali and his pregnant wife Afia Begum. Detained Afia Begum was taken away to Keramotnagar tea garden camp where she was subjected to 'evil deed'. Detained Monir Ali was taken to Shahbajpur camp. 2/3 days later relatives of Afia Begum got her back to home from camp.

448. **P.W.06 Md. Iman Uddin (59)** of village-Hinai Nagar under police station-Barlekha of District Moulavibazar is a hearsay witness in relation to arraignment brought in this charge no.05. He chiefly testified the event arraigned in charge no.04.

449. P.W.06 stated that he heard that three days after the event of attack conducted at their house [**as listed in charge no.04**] Razakar Abdul Aziz @ Habul, Razakar Abdul Matin, their accomplices and Pakistani army men had attacked the house of freedom-fighter commander Habib. But finding him not available the attackers apprehended his brother Monir Ali and his wife Afia Begum and they were then taken away to Keramotnagar tea garden camp.

450. P.W.06 stated that Afia Begum was pregnant at that time. She was subjected to recurrent rape in captivity at the camp. P.W.06 also stated that he heard that two days later Monir Ali got release in exchange of ransom money. He (P.W.06) learnt the event also when Monir Ali and his wife Afia Begum narrated it to his father .

451. **P.W.07 Md. Moin Uddin (64)** of village-Hinai Nagar under police station-Barlekha of District-Moulavibazar testified what he heard in relation to event arraigned in charge no.05.He is the son of victim of the event arraigned in **charge no.04.**

452. In respect of the arraignment as listed in charge no.05 P.W.07 stated that he heard that three days after the event of

attack conducted at the house of freedom-fighter commander Moin Uddin as arraigned in charge no.04, Abdul Aziz @ Habul, Razakar Abdul Matin, and their accomplices and Pakistani army men had attacked the house of freedom-fighter commander Habib. But finding him not available the attackers apprehended his brother Monir Ali and his wife Afia Begum and they were then taken away to Keramat Nagar tea garden camp. Afia Begum was pregnant at that time. She was subjected to recurrent sexual ravishment in captivity at the camp. He heard too that later on Habib commander's brother and his wife got release in exchange of ransom money

453. In cross-examination, P.W05, P.W.06 and P.W07 denied defence suggestions that no event they testified happened; that the accused Abdul Aziz @ Habul and Abdul Matin were engaged in working as secret source of freedom-fighters and thus often used to come inside Bangladesh (during the war of liberation).

**454. Rohim Uddin (62)** of village- Kechharigool under police station-Barlekha of District-Moulavibazar produced before Tribunal as P.W.15 in relation to the event arraigned in

charge no.05 and tendered with P.W.14. Defence adopted the cross-examination of P.W.14.

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

455. In determining the event arraigned in this count of charge and involvement of the accused persons therewith prosecution chiefly depends upon the testimony of P.W.11, the victim. Thus, we predominantly require weighing the narrative the victim recounted before Tribunal.

456. The learned prosecutor **Mr. Mokhlesur Rahman** submitted that committing grave sexual invasion upon a defenceless woman detaining her at army camp and also keeping one civilian in confinement have been proved. P.W.11 the victim's unimpeached testimony proves that accused persons actively participated in all phase of the event leading to confinement, torture and rape committed in the localities under police station-Barlekha of District (now) Moulavibazar.

457. It has been further argued on part of prosecution that defence could not impeach victim's testimony and the same gets corroboration also from P.W.14. The three hearsay witnesses who are from the same locality also heard the

event. It was natural. The accused persons and their accomplices had used the act of rape as strategic instrument of war which was intended to spread horror and intimidation amongst the pro-liberation Bengali civilian population.

458. On contrary, the learned defence counsel **Mr. Abdus Sattar Palwan** argued that that the P.W.11 did not have reason of knowing the accused persons and that what she testified implicating them was untrue and tutored. No such alleged event happened as no case was initiated over the alleged event after independence.

459. Defence claims that since no case was initiated over the alleged event after independence now the arraignment brought carries no credibility. We are not agreed with this averment. Tribunal notes that merely for the reason of non initiation of case and non-disclosure of the event after independence it cannot be deduced that the victim P.W.11 now testified an untrue event.

460. Tribunal also restates that there is no bar to disclose it and to prosecute the accused indicted with this arraignment even long more than about five decades after the event

happened. Delay is no bar in prosecuting the ‘system crimes’ which are known as offences of ‘crimes against humanity’.

461. It appears that it could not be impeached in cross-examination of P.W.11 that the accused persons initially received freedom-fighters’ training in India along with her husband and her husband’s elder brother. Thus, it is quite believable that the accused persons, after the war of liberation ensued used to visit their (P.W.11) home to meet her husband and husband’s elder brother. Be that as it may, it was quite natural to recognise the accused persons as perpetrators of collective criminality at the time of conducting the attack, as testified by P.W.11.

462. P.W.11 Afia Begum is the victim of sexual violence committed upon her, as arraigned in this charge. It is not disputed that she is the wife of freedom-fighter Monir Ali and in 1971 P.W.11 was pregnant of five months.

463. Accused Abdul Aziz @ Habul , Abdul Matin and others along with her(P.W.11) husband and husband’s brother received freedom-fighters’ training in India. This piece of pertinent fact remained unimpeached. It is found too from

testimony of P.W.11 that accused Habul and Matin on completion of training in India joined Razakar Bahini making contact with Pakistani army camp, on coming back Bangladesh.

464. Testimony of P.W.11, the star witness to the event arraigned in this charge demonstrates that the gang of attackers accompanied by accused Abdul Aziz @ Habul, accused Abdul Matin came to their house taking her freedom-fighter husband Monir Ali with them detaining him from village-Dimai.

465. What happened next? It stands proved from uncontroverted narrative of P.W.11 that the perpetrators then committed looting and then the gang moved back taking her and her husband away on forcible capture with them to Keramat Nagar tea garden army camp where they together were kept confined. P.W.11 could see, staying detained in the room of the camp, the accused Habul and Matin beating her detained husband tying him up with a tree and tortured him by setting fire.

466. Indisputably such brutal torture inflicted to detained husband also caused immense mental harm even to his detained wife P.W.11. It appears that the P.W.11 coming on dock described the beastly ‘violence’ committed upon her in captivity by the accused persons and army men which degraded her supreme worth. Even after the end of the war of liberation such grave sexual violence perpetrated against defenceless woman (P.W.11) leaves permanent scar, both physically and psychologically.

467. Article 27 of the Fourth Geneva Convention of 1949 states that –“women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault.” In the case in hand, it stands proved that the perpetrators violating the safeguard ensured in the Geneva Convention opted to beastly invade the supreme honour of the victim P.W.11, a protected woman.

468. Committing rape as a tool of war creates physical and psychological damage to the individual victim and the whole community as well. The traumatic narrative recounted by the victim P.W.11 portrays that sexual violence committed upon



her during the war of liberation in 1971 by the accused persons and Pakistani occupation army was not the isolated event and rather it was over all scenario of the relevant time existed in the territory of Bangladesh .

469. It is evinced that the victim got release on initiative of her relatives and on intervention of Habib chairman in exchange of ransom money. Testimony of victim demonstrates that her husband too eventually got release from captivity in exchange of ransom money. But her husband became paralyzed due to torture caused to him and still he is not in position to move by his own.

470. The above piece of crucial part of testimony of the victim P.W.11 could not be diminished in any manner in cross-examination. Besides, there is no reason to keep it aside terming unreliable. Be that as it may, it adds assurance that the husband of victim was subjected to immense physical torture in captivity which resulted in his paralyzed condition.

471. It has been unveiled from sworn testimony of victim Afia that due to torture in the form of 'sexual invasion' committed upon her in captivity the baby at her womb could

not survive. It could not be refuted in cross-examination. This uncontroverted narrative of victim adds magnitude of the invasion committed. The perpetrators were indeed synonym of beast as they not only robbed victim's supreme worth but they also annihilated the dream of a mother, by causing deliberate harm to the embryo at her womb. It mirrors the extent of barbaric sexual invasion committed upon the victim.

472. In resolving this count of charge it is relevant to note that the attacks arraigned in charge nos.02, 03 and 04 too were conducted at the house of freedom-fighters who could not be apprehended. It has already been proved. The gang of attackers on failure in finding their target, the freedom-fighters had carried out devastating criminal activities including sexual ravishment upon the defenceless woman.

473. Already it has been proved that in launching all attacks as arraigned in charge nos.02, 03 and 04 the accused persons actively guided, assisted and contributed the Pakistani occupation army and accomplice Razakars. Presumably, the accused persons were acquainted about the dwelling location of the freedom-fighters they targeted. Besides, they knew the

freedom-fighters as they too received freedom-fighters' training along with them in India.

474. Detainee Monir Ali is the maternal uncle of P.W.14 Md. Jamal Uddin. P.W.14 is a direct witness to facts related to first phase of attack leading to forcibly taking away Monir Ali and his wife Afia (P.W.11) to camp and looting household. It transpires too that P.W.14 saw the group formed of Razakar Abdul Aziz @ Habul, Razakar Abdul Matin, their accomplice Razakars and army men coming at home of Monir Ali, his maternal uncle taking him with them on capture. P.W.14 remaining in hiding beside home wherefrom he saw them (perpetrators) looting household.

475. The above prohibited acts conducted by deliberately launching systematic attack as testified by P.W.14 remained uncontroverted and it gets corroboration from the P.W.11, the victim of sexual invasion. Totality of facts and circumstances revealed lead to deduce irresistibly that the perpetrators intended to apprehend the freedom-fighter commander Habib. But they did not find him available and then they conducted attack leading to abduction of victim P.W.11 Afia and her husband Monir Ali toward army camp at Keramotnagar tea

garden. We got it corroborated also from the narrative made by P.W.14 that at the time the victim Afia faced the attack she was five months' pregnant. But the embryo at her womb got damaged due to violence caused to her.

476. P.W.05, P.W.06 and P.W.07 are direct witnesses to the event arraigned in charge no.04 occurred on 14 November 1971, three days prior to the event of attack arraigned in this charge no.05. In addition to narrating what they experienced in respect of the event arraigned in charge no.04 they also testified what they heard in relation to the event of attack leading to abduction, confinement of P.W.11 and her husband and causing torture and sexual invasion upon her in captivity.

477. Hearsay testimony is not inadmissible *per se*. Besides, this charge does not rest solely upon hearsay testimony of these witnesses. Tribunal notes that once the hearsay evidence is admitted it can stand on its own to prove the material or relevant fact, if it carries probative value. Section 19(1) of the Act permits admission of hearsay evidence. However, probative value of such hearsay evidence needs to be assessed together with other evidence. In the case in hand, it appears that hearsay narrative made by these three witnesses (P.W.05,

P.W.06 and P.W.07) gets corroboration from P.W.11 the victim of sexual violence and P.W.14.

478. The event arraigned in this count of charge occurred just less than one month prior to the day (06 December, 1971) when Barlekha got enemy-free. Presumably, freedom-fighters who were from the localities under Barlekha police station kept their presence continuing inside Bangladesh to fight the Razakars and Pakistani army men stationed in localities under Barlekha police station. At this phase of the war of liberation the Razakars and army men also became brutal and extremely frantic to get freedom-fighters captured or annihilated, by conducting attacks at their homes. The event of attack arraigned in this count of charge portrays it.

479. It stands proved from facts and circumstances that collective criminality to which the accused persons were culpably active part did not spare even a pregnant woman. It appears that accused persons despite receiving freedom-fighters' training in India got enthusiastically affiliated to the Pakistani troops and Razakars and opted to attack unarmed pro-liberation civilians and women, particularly when they failed to encounter the freedom-fighters they targeted.

480. Such beastly attitude is rather a patent manifestation of their extreme notoriety. Mere admitted fact that the accused persons received training of freedom-fighter in India does not exonerate them from liability of crimes when it is proved that in perpetrating which they were active part, sharing common intent and purpose of the joint criminal enterprise. Besides, defence could not bring anything to show that the accused persons joined the war of liberation, after receiving training in India.

481. Traumatic narrative of victim of sexual violence does not need any corroboration. Such appalling atrocity was not supposed to be committed in presence of any outsider. Perpetrators committed such violence keeping the victim detained at the camp. Besides, it is quite unlikely that a woman prefers to portray an untrue story of robbing her supreme worth. Besides, defence does not seem to have brought any doubt as to truthfulness of testimony of P.W.11 by cross-examining her.

482. In the case in hand, we do not find any effective effort in achieving object of cross-examination of witness. In this regard we recall the observation made by the **Appellate**

**Division of Supreme Court of Bangladesh in the Appeal of Delwar Hossain Sayedee** which is as below:

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

**[Sayedee’s Appeal Judgment, (AD) , page 138-139]**

483. But it transpires that defence chiefly denied in cross-examination that the accused persons were not with the gang of attackers and were not involved with the event arraigned. Such mere denial is not sufficient as the object of cross-examination to taint and diminish the reliability of witnesses’ sworn testimony.

484. Based on evidence and circumstances unveiled we are forced to deduce that being part of the criminal enterprise the accused persons indicted had played a key ‘co-ordinating role’, in exercise of their explicit nexus with the *para militia* force in perpetrating the criminal acts constituting the offences of ‘abduction’, ‘confinement’, ‘torture’ and ‘rape’.

485. The accused **Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconding)** as co-perpetrators deliberately used the act of rape as a tool of war together with the devastating act of looting and torture. Testimony of victim to crucial facts involves her episodic memory through which she recounted what trauma she sustained.

486. Defence could not bring anything by cross-examining victim which may diminish its value. And therefore, her testimony carries much value and credence. The trauma and torment the victims sustained caused serious mental and physical harm to them which they have been still carrying. It is not at all realistic that in our social pattern a woman shall prefer initiating a sham accusation of yellowing her supreme honour as it stamps stigma on her life, and makes her social and family life devastated. Thus, we find no rationale to doubt the testimony of victim Afia.

487. Taking the context existing in 1971 during the war of liberation into account we deduce that the accused persons and their accomplices had carried out the act of sexual violence as an instrument of threat and intimidation to



dehumanize and defeat the morals of the civilians who took stance in favour of the war of liberation.

488. Cumulative evaluation of facts depicts that the accused **Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconding)** participated, substantially assisted and facilitated in perpetrating the crimes against unarmed civilians and women, being part of collective criminality with extreme aggression.

489. It may also be justifiably inferred that by keeping aside the training of freedom-fighters the accused **Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconding)** received in India they in exercise of their explicit and culpable nexus in auxiliary force thought the act of accompanying the criminal enterprise as a task of pride which made them imbued and culpably enthused to provide assistance and substantial contribution in carrying out barbaric atrocities. It is hard to believe that these accused persons really received training of freedom-fighters in India.

490. On totality of facts and circumstances unveiled it is found that the accused **Md. Abdul Aziz alias Habul, (2) Md.**

**Abdul Matin (absconding)** not only substantially contributed and facilitated the Pakistani army men and Razakars in committing the offences of confinement, torture and rape upon the victims but they also physically participated in committing extreme sexual ravishment upon the victims as arraigned in charge no.05.

491. Mr. Abdus Sattar Palwan the learned counsel engaged for accused Md. Abdul Aziz @ Habul and as state defence counsel for absconding accused Md. Abdul Matin reiterated his submission that these two accused joined the war of liberation after receiving freedom-fighters' training in India and thus they were not at all involved with the crimes arraigned. This claim has already been refuted by the prosecution. Based on documentary and oral evidence we have already turned into reasoned finding on this issue, in determining charge no.02 and thus now we do not consider reopening discussion on it.

492. Taking the facts and circumstances unveiled into account it may be justifiably inferred that obviously the accused

persons, being part of the criminal enterprise knew the consequence of the unlawful act of taking away the victim and keeping her in captivity. Horrific misdeed was caused to the defenceless woman in captivity. Thus, it may be safely concluded that the accused **Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconding)** knowingly contributed and substantially facilitated the commission of barbaric sexual abuse. We fail to measure the extent of trauma the victim sustained due to horrific transgression caused to her in protracted captivity.

493. The accused **Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconding)** are equally liable for the prohibited criminal acts although the gang was formed of Pakistani occupation army and accomplice Razakars as well. It is now settled jurisprudence that ‘system crime’ or ‘group crime’ is accomplished not by a particular individual. It was carried out by a ‘group of perpetrators’ and thus all the members forming the gang are equally liable for the criminal acts. In this regard we may recall the observation of **ICTR** made in the case of **Rutaganda** that—

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

**[Rutaganda, ICTR Trial Chamber, December 6, 1999, para. 35]**

494. It has been thus unequivocally proved that as a part of ‘systematic attack’ the accused **Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconding)** are found to have had participation in committing the crimes arraigned in this count of charge and thus they are criminally liable under section 4(1) of the Act of 1973 for participating, abetting, facilitating, contributing in the commission of offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’, ‘**rape**’, ‘**plunder**’ and ‘**other inhumane acts**’ as offences of crimes against humanity as enumerated in section 3(2)(a)((g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act.

## **XII. Plea of Alibi and defence case**

495. It appears that ‘plea of alibi’ has been taken on part of accused Md. Abdul Mannan @ Monai. We consider it

expedient to address and resolve the issue of ‘plea of alibi’ as it has been emphatically agitated by the learned defence counsel Mr. Sarwar Hossain defending this accused.

496. Burden to prove the arraignment squarely lies upon the prosecution. Accused indicted does not require proving his innocence. But in the case in hand, ‘specific defence case’ and ‘plea of alibi’ have been taken on part of accused persons. Burden to prove the ‘plea of alibi’ lies upon the defence.

497. Three witnesses have been examined as D.W.02, D.W.03 and D.W.04 by the accused Md. Abdul Mannan @ Monai to substantiate the plea of alibi contending that in 1971 this accused had not been in his locality and that since 1970 to 1973 he had been studying in Madrasa in Sylhet. That is to say, ‘plea of alibi’ has been taken to negate the prosecution case arraigning presence of this accused in the crime sites at the relevant time.

498. It appears that in raising the plea of alibi, the accused Md. Abdul Mannan @ Monai not only denies that he committed the offences alleged or was involved with the commission of crimes for which he has been indicted but

also asserts that he had been 'elsewhere' than at the site of the crimes alleged when they were committed. To prove this *plea of alibi* 03 witnesses have been examined by this accused.

499. But testimony of D.W.s does not stimulate to arrive at reasonable conclusion that at the relevant time of commission of crimes arraigned the accused Md. Abdul Mannan @ Monai was away from the crime sites under police station Barlekha.

500. It is not credible that the accused during his study in Madrasa for three years, as claimed never visited his native locality under police station Barlekha. Mere fact that since 1970 to 1973 he had been studying in Madrasa in Sylhet does not negate his involvement and complicity as found proved from consistent evidence of prosecution witnesses.

501. No specific and consistent defence case emerges to have been suggested to the prosecution witnesses, in support of the *plea of alibi* taken. Absence of accused Md. Abdul Mannan @ Monai in the sites under Barlekha police station in 1971 suffers from glaring non-specificity and truthfulness.

502. Tribunal notes that it is settled proposition that the *plea of alibi* taken by the accused needs to be considered only when the burden on the prosecution has been discharged satisfactorily. It is settled that a person accused of a criminal charge is presumed to be innocent until he is proven guilty. Therefore, the defence is not obligated to plead any case of his own to prove his innocence and the burden entirely lies upon the prosecution to prove the accused guilty of the offences with which he is charged.

503. Defence case i.e. *plea of alibi* is meant to confront the prosecution case for removing or shaking the truthfulness of complicity of accused Md. Abdul Mannan @ Monai with the commission of offence with which he is charged. The word *alibi* is a Latin expression which means and implies in common acceptation elsewhere. It is a defence based on the physical impossibility of participation in a crime by an accused in placing the latter in a location other than the scene of crime at the relevant time.

504. It appears that already prosecution has been able to prove the arraignment brought in two counts of charges of which the accused Md. Abdul Mannan @ Monai has been

indicted. Settled proposition states that once the prosecution succeeds in discharging its burden then it is incumbent on the accused taking the *plea of alibi* to prove it with certainty so as to exclude the possibility of his presence at the site and his participation in committing the crimes arraigned. But in the case in hand mere parrot like version of D.W.s does not tend to exclude the possibility of this accused's presence at the crime sites and his participation in perpetrating the crimes arraigned being part of the criminal enterprise. In resolving the issue we recall the decision in this regard propounded in the case of **Aftabuddin vs. State reported in BCR 1986(AD) 239**. Their Lordships have observed on the point of *alibi* in the following language:-

“(b) Whether the defence plea of alibi supported by evidence or the prosecution evidence to the contrary is to be accepted as true and reliable is entirely for the court to decide. In this case, there is direct evidence from, a number of witnesses including the victim P.W.2 that the accused was present on the spot and participated in the assault. If their statements are accepted as true, the plea of alibi will stand rejected.”

505. The decision as cited above is squarely applicable in the case in hand where a number of witnesses including sufferers



recognized the accused Md. Abdul Mannan @ Monai in accompanying the gang in conducting the attacks. The evidence of direct witnesses in relation to charges of which this accused indicted has been accepted to be true and credible. Thus, we hold that the plea of alibi taken in the instant case stands rejected.

506. It has been made clear too in the case of **State of Maharashtra v Narsingrao Gangaram Pimple [AIR 1984 SC 63]** that the plea of alibi must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence.

507. In the case in hand, it appears that the native village of the accused Md. Abdul Mannan @ Monai was not far from the alleged Madrasa. Why the accused Abdul Mannan @ Monai attempted to show his prolonged absence around the locality in 1971 during war of liberation? It is considerably implausible too that the accused, throughout the period of war of liberation, had been staying outside his native village and that he had never visited Barlekha in 1971, as claimed.

508. The defence of alibi taken by accused Md. Abdul Mannan @ Monai could not succeed due to lack of sufficient

evidence when deirect evidence presented on part of prosecution rather proves beyond reasonable doubt that the accused Md. Abdul Mannan @ Monai was actually present in the locality under police station- Barlekha during the relevant time in 1971 when the atrocities events proved happened.

509. Thus, the *plea of alibi* and statement of D.W.s in this regard does not inspire any amount of credence and it rather appears to be a futile effort to evade from the charges brought against him. The accused Md. Abdul Mannan @ Monai herein has miserably failed to bring on record any credible facts or circumstances which could make the plea of his continuing absence in the crime vicinity in 1971 and at the relevant time even probable.

510. Defence case taken on part of accused Md. Abdul Aziz @ Habul is that he and his brother absconding accused Md. Abdul Matin are freedom-fighters as they received training in India to join the war of liberation. The son of this accused has been examined as D.W.01 who submitted some papers he collected in support of this defence.

511. But the above defence case seems to be unable to find credibility when it is seen that one accused Md. Abdul Matin, the brother of accused Md. Abdul Aziz @ Habul has been absconding. If really they the two brothers had joined the war of liberation, as claimed as defence case after receiving training in India the accused Md. Abdul Matin would not opt to remain in absconsion.

512. 'Absconsion' itself is an incriminating circumstance to be considered together with evidence for determining culpability of the accused. Tribunal reiterates that evading trial for the offences of which he is charged with signifies his culpability as well. Accused Md. Abdul Matin, the brother of accused Md. Abdul Aziz @ Habul deliberately waived his right to be present at trial. Such conduct adds further to his culpability.

513. Besides, mere receiving training of freedom-fighters in India does not make these accused absolved of liability if they are found to have had culpably and deliberately collaborated with the Pakistani occupation army and Razakars, instead of joining the war of liberation. Defence could not bring any proof to negate their culpable nexus with the locally formed

Razakar Bahini in conducting attacks directing unarmed civilians, at the ending phase of the war of liberation around the localities under police station-Barlekha of the then sub-division Moulavibazar.

514. Investigation Agency of the Tribunal constituted under the Act of 1973 started investigation pursuant to complaint register's serial no. 39 dated 16.10.2014. The book titled "Ekattorer Koshtokotha" submitted by prosecution appears to have been published in 2010 from New York (**Copy of the relevant pages of the book: prosecution documents volume page nos.74-76**) describes the atrocities carried out in 1971 around the localities under police station Barlekha and the book also depicts the name of these two accused persons as perpetrators of the atrocities including the event of sexual violence arraigned in charge no.05.

515. In absence of anything contrary it cannot be deduced that the narrative made in the book titled "Ekattorer Koshtokotha" is fabricated and imaginative and thus the information contemplated in the book published long four years prior to initiation of investigation cannot be tainted with any rate of doubt.

516. Freedom-fighters are the best sons of the soil, true. But mere receiving training of freedom-fighter in India and obtaining paper in support of it is not proof of being a freedom-fighter. Freedom-fighter is he who truly and bravely fought for achieving independence of Bengali nation. Engaging in fighting is a factual matter. Mere certificate or papers cannot resolve it, particularly when their participation in the war of liberation as freedom-fighter is heavily questioned by the prosecution.

517. In determining the charges of which the accused Md. Abdul Aziz @ Habul and Md. Abdul Matin indicted it has already been proved that despite receiving training in India they coming back inside Bangladesh preferred to take stance against the war of liberation and got engaged in collaborating with the Pakistani army and Razakars in conducting atrocities.

518. It appears that only the son of accused Md. Abdul Aziz as D.W.01 who simply submitted some papers in support of the claim that his father was a freedom-fighter. Joining in the war of liberation as a freedom-fighter is a factual issue which

could be well proved by adducing and examining co-freedom-fighters.

519. But it appears that no such effort of examining any freedom-fighter has been made on part of defence. Simply some papers collected recently have been filed on part of defence. But none of the persons issuing those papers has been examined as witness. Those papers rather seem to have been managed for the purpose of showing that these two accused persons were freedom-fighters.

520. As we know that the concerned and appropriate authority the Ministry of Liberation war Affairs can only issue authoritative certificate or list of freedom-fighters recognizing that one is freedom-fighter. But there is nothing before us that the name of these two accused finds place in any such list as freedom-fighters. Thus, the defence case agitated on part of these two accused seems to be devoid of merit.

521. We have already rendered reasoned finding based on evidence presented that the accused Md. Abdul Matin @ Monai had acted as active part of criminal enterprise formed of Pakistani occupation army and local Razakars . Thus, we

express the view that the plea of alibi taken by this accused could not be proved.

522. In view of above we do not find any degree of credence in respect of the plea of alibi and defence case taken by the defence, particularly when the indictment against them has been found proved beyond reasonable doubt. Defence appears to have simply made a futile attempt to stain and negate the prosecution case by taking unfounded plea of alibi and defence case. But based on evidence as discussed above we have already arrived decision that the arraignments brought in all counts of charges have been proved.

### **XIII. Conclusion**

523. It is now settled fact of history that the local collaborators belonging to auxiliary force and the individuals having explicit affiliation with the para militia forces used to keep them culpably engaged by assisting and facilitating the Pakistani occupation army in conducting appalling mass atrocities constituting the offences of crimes against humanity and genocide in the territory of Bangladesh in 1971, during the war of liberation.

524. Monstrous mass atrocities in Bangladesh began on the mid-night of 25 March, 1971 with the launch of ‘Operation Searchlight’ and it continued till the nation achieved its independence on 16 December 1971. The blood-bathed history of the birth of our long cherished motherland—**Bangladesh** portrays untold extent of sacrifices.

525. In the case in hand, it stands proved that the two convicted accused Md. Abdul Aziz @ Habul and Md. Abdul Matin (absconding) despite receiving training of freedom-fighters in India eventually got closely and culpably connected with the locally formed Razakar Bahini and Pakistani army stationed at Barlekha police station. It mirrors that they were rather traitors and had acted to actuate the object and policy of the Pakistani occupation army and Razakars, by maintaining ‘static relation’ for ‘operational’ purpose.

526. Extreme antagonistic approach to the war of liberation and the pro-liberation civilians made these two convicted accused culpably stimulated in showing allegiance to Pakistani occupation army, despite receiving training of freedom-fighters.



527. The crimes of which the accused persons have been found criminally liable were ‘group crimes’ as the same are found to have been committed in ‘systematic’ manner and in context of the war of liberation.

528. The accused persons did not merely accompany the gang of attackers but they being active part of the criminal enterprise culpably participated, by act of assistance, substantial contribution and facilitation in committing devastating activities, killing, torture and they did not even spare defenceless women in robbing their supreme worth by committing ruthless sexual abuse.

529. The day of 25th March has been declared ‘**Genocide Day**’. Since 2017 the day is being observed by the nation with deep respect to the sacrifices of the martyrs for the cause of our independence. Recently ‘**Lemkin Institute for Genocide Prevention**’, an US based institution and ‘**Genocide Watch**’, a Washington DC based NGO by releasing their formal statement recognized ‘Bangladesh genocide’ happened in 1971 and also urged the United Nations and international communities to come forward to recognize the genocide and

mayhem committed directed against defenceless civilians in Bangladesh in 1971.

530. Such international recognition together with the truth unveiled in trial held in our Tribunal obviously will make the nation and especially the new generation enthused to go with the spirit of the war of liberation and it shall also make the room to the global community of knowing in exchange of what extent of sacrifice the Bengali nation achieved its long cherished independence and also to raise voice by saying—  
**‘Never Again’.**

#### **XIV. VERDICT ON CONVICTION**

531. In the case in hand, in proving each count of charges brought against the accused persons, the standard has been found to be legitimately met . All the three accused are found to have incurred liability for the crimes which have been proved beyond reasonable doubt.

532. Having coherent appraisal of all the evidences presented before us and argument advanced by both sides and based upon the factual and legal findings together with settled legal proposition, the Tribunal [ICT-1] **UNANIMOUSLY** finds---

**One accused Md. Abdul Mannan @ Monai**

**Charge No.01: GUILTY** of participating and culpably facilitating to the actual perpetration of crimes including the killing of Hindu civilians , by his notorious acts and conducts **by launching** systematic attack constituting the offence of **‘abduction’, ‘confinement’, ‘torture, ‘plunder’, ‘murder’, ‘other inhumane act’ and ‘deportation’** as crimes against as enumerated in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 for which he incurred liability under section 4(1) of the Act of 1973, punishable under Section 20(2) of the Act.

**Two accused (1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconded)**

**Charge No.02: GUILTY** of substantially abetting, participating, contributing, facilitating in the commission of offences of **‘abduction’, ‘confinement’, ‘torture’ , ‘rape’ and ‘other inhumane acts’** as crimes against humanity as part of systematic attack as enumerated in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 for which they incurred liability under section 4(1) of the Act of 1973, punishable under Section 20(2) of the Act.

**Two accused (1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconded)**

**Charge No.03: GUILTY** of participating, abetting, substantially contributing, facilitating in the commission of offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’, ‘**plunder**’ and ‘**other inhumane acts**’ as crimes against humanity as part of systematic attack as enumerated in section 3(2)(a)(g)(h) of the of the International Crimes Tribunal Act of 1973 for which they incurred liability under section 4(1) of the Act of 1973, punishable under Section 20(2) of the Act.

**Three accused Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconded) (3) Md. Abdul Mannan alias Monai**

**Charge No.04: GUILTY** for substantially abetting, participating, contributing, facilitating the commission of offences of ‘**arson**’, ‘**plunder**’, ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**other inhumane acts**’ as crimes against humanity as part of systematic attack as enumerated in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 for which they incurred liability under section 4(1) of the Act of 1973, punishable under Section 20(2) of the Act.

**Two accused (1) Md. Abdul Aziz alias Habul, (2) Md. Abdul Matin (absconded)**

**Charge No.05: GUILTY** for participating, abetting, facilitating, contributing and complicity in the commission of offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’, ‘**rape**’, ‘**plunder**’ and

**‘other inhumane acts’** as offences of crimes against humanity as part of systematic attack as enumerated in section 3(2)(a)((g)(h) of the International Crimes Tribunal Act of 1973 for which they incurred liability under section 4(1) of the Act of 1973, punishable under Section 20(2) of the Act.

## **XV. Verdict on Sentencing**

533. The learned prosecutor Mr. Mokhlesur Rahman Badal submitted that the crimes proved for which the accused persons incurred liability were extremely grave in nature. The convicted accused persons actively and sharing intent collaborated with the criminal enterprise formed of local Razakars and Pakistani occupation army in committing diabolical atrocities including murder, rape, torture and aggravated destruction of civilians’ property.

534. It has been further submitted by the learned prosecutor that pattern of the attacks proved were extremely aggressive and the convicted accused persons substantially contributed and facilitated in perpetrating crimes, in violation of laws of war and international humanitarian law. Thus, considering the magnitude and inherent gravity of offences proved they deserve highest sentence which will be appropriate.

Prosecution asserts the view that there is no mitigating factor in this case that may justify imposing less than the highest sentence.

535. On contrary, no mitigating factor seems to have been agitated on part of defence. It has been simply agitated that prosecution could not prove the accusation beyond reasonable doubt and thus the accused persons deserve acquittal.

536. Tribunal notes that the gravity of the offence proved is considered as ‘the litmus test’ in awarding an appropriate sentence. In the case of **Jelusic**, it has been observed by the **ICTY Appeal Chamber** that--

“Consideration of the gravity of the conduct of the accused is normally the starting point for consideration of an appropriate sentence.”

**[ICTY Appeals Chamber in the case of Jelusic, July 5, 2001, para. 94]**

537. At the same time it should not be forgotten that the sentence to be awarded should reflect the totality of criminal conduct of the convicted accused persons. It is now settled proposition that the determination of the gravity of the crime requires a consideration of the form and degree of the

participation of the accused in the crimes. The term ‘gravity’ chiefly entails the particular circumstances of the case, magnitude of the crime committed, the form and degree of participation of the accused in committing the crimes.

538. In the case in hand, it has been proved that on substantial assistance and participation of the accused persons the criminal enterprise committed violent attacks which resulted in offences of abduction, confinement, torture, rape, other inhumane acts and murder of unarmed civilians. The nature of the violence and aggression [**as arraigned in charge no.01**] indisputably makes the issue of awarding just punishment extremely imperative. The accused Md. Abdul Mannan @ Monai convicted for the offences arraigned in this count of charge actively participated in accomplishing the horrific attack which ended in barbaric killing of three Hindu civilians.

539. The event of attack[**as narrated in charge no.01**] was deliberately and aggressively directed against the defenceless Hindu civilians and the accused **Md. Abdul Mannan alias Monai** was consciously engaged in causing wanton devastating destruction of livelihood of Hindu civilians,

bodily and mental harm and brutal annihilation of three Hindu civilians.

540. Shameful act of sexual violence upon the defenceless woman (**as listed in charge no.02**) was committed by keeping her in protracted confinement and it obviously diagnosed the event more shocking and graver. It has been found proved that convicted accused Md. Abdul Aziz alias Habul and Md. Abdul Matin (absconded) physically participated in committing sexual ravishment upon the detained victim after getting her forcibly captured by conducting systematic attack.

541. The offence of rape which was used as an instrument of war was rather more than murder. Invading woman's supreme honour is considered as the gravest crime against the entire humankind. This view increases the magnitude of the crimes committed (**as listed in charge no.02**) and also the culpability of the convicted accused Md. Abdul Aziz alias Habul and Md. Abdul Matin (absconded).

542. Convicted accused Md. Abdul Aziz alias Habul and Md. Abdul Matin are found to have had active participation also in committing abduction'; 'confinement'; 'torture'; 'plunder'



and ‘other inhumane acts in aggressive manner(**as listed in charge nos. 03**).

543. It has also been proved that all the three convicted accused by their substantial and conscious criminal acts participated in perpetrating devastating activities, abduction, confinement, torture , plunder, arson and other inhumane acts directing the civilian population (**as listed in charge no.04**).

It has been found that the convicted accused persons had carried out such prohibited acts (**as listed in charge nos.03 and 04**) in extremely aggressive manner intending to spread out threat, horror and coercion amongst the civilians who took stance with the war of liberation.

544. Brutality in committing attack and barbaric sexual invasion upon a woman (**as listed in charge no.05**) was rather an attack against humanity, community the victim belonged. The scar and trauma the victim sustained by such brutal invasion shall never erase. The convicted accused Md. Abdul Aziz alias Habul and Md. Abdul Matin(absconded) are found to have had acted deliberately in carrying out criminal activities at all phases of the **attack (as listed in charge no.05)**

545. Tribunal reiterates that stigma of such grave sexual invasion not only destroyed the victim's life and her family but dehumanized the society as well. The perpetrators used the act of rape as a weapon which was more potent than a bullet. Committing rape (**as listed in charge no.05**) is thus a 'living death'. Victims of such brutal and beastly act deserve due honour and recognition as war heroines and salute.

546. All the criminal acts, as found proved were carried out to further policy and plan of resisting the war of liberation and crippling the pro-liberation Bengali civilians.

547. The Tribunal as the Trier of fact is quite aware of its solemn duty in awarding proper and just sentence commensurate with the gravity of the crimes proved. Ignoring the gravity and magnitude of the offences proved awarding inapt lesser sentence indubitably shall cause injustice not only to the victims and sufferers of crimes but sometimes to the entire society and the nation. The **Appellate Division of the Supreme Court of Bangladesh** in the case of **Matiur Rahman Nijami** observed that –

“It is the solemn duty of the courts to award proper sentence commensurate with the gravity of the crimes. Inappropriate lesser

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

**[Criminal Appeal No. 143 of 2014,  
Judgment: 06 January 2016, page-152]**

548. Thus, the sentence to be awarded must and must be appropriate and just considering the relative seriousness of the offences so that it can convey the degree of wrongdoing and not simply the commission of wrongdoings.

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

Hence it is  
**ORDERED**

That the accused **(1) Md. Abdul Mannan alias Monai**, son of late Yeasin Ali and late Nekjan Bibi of village-Muraul (Taradaram), Police Station Barlekha, District-Moulavibazar (previously Sub-Division) is found guilty of the offences of

‘crimes against humanity’ (as listed in charge no.01 and 04), as enumerated in section 3(2) (a)(g)(h) of the International Crimes (Tribunals) Act, 1973; **AND**

**Accused (2) Md. Abdul Aziz alias Habul**, son of late Mirzan Ali and late Latifa Khatun @ Latai Bibi, of village-Pakhiala House no. 131, Ward no.07, Barlekha Pourashava, Police Station Barlekha, District-Moulavibazar (Previously Sub-Division) **AND accused (3) Md. Abdul Matin**, son of late Mirzan Ali and late Latifa Khatun alias Latai Bibi, of village-Pakhiala, House no.131, Ward no.07, Barlekha Pourashava, Police Station-Barlekha, District-Moulavibazar, at present: village-Sonapur(Juad villa), Road-Kalenga, Police Station-Moulavibazar Sadar, District- Moulavibazar (previously Sub-Division)are found guilty of the offences of ‘crimes against humanity’ (as listed in charge no.02,03, 04 and 05 ), as enumerated in section 3(2) (a)(g)(h) of the International Crimes (Tribunals) Act, 1973.

Accordingly, accused (1) **Md. Abdul Mannan alias Monai** be convicted and condemned to the sentence as below for two charges, under section 20(2) of the Act of 1973:

**‘Sentence of death’** for the crimes as listed in **charge no.01** and he be hanged by the

neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

**AND**

**‘Sentence of imprisonment for 15 (fifteen) years’** for the crimes as listed in **charge no.04**, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

**Accused (2) Md. Abdul Aziz alias Habul and (3) Md. Abdul Matin** be convicted and condemned to the sentence as below for four charges, under section 20(2) of the Act of 1973:

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

**‘Sentence of death’** for the crimes as listed in **charge no.05** and they be hanged by the neck till they are dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

**‘Sentence of imprisonment for 15 (fifteen) years’** for the crimes as listed in

**charge no.03**, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

**AND**

**‘Sentence of imprisonment for 15 (fifteen) years’** for the crimes as listed in **charge no.04**, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

The **‘sentences of death’** as awarded above to convict **Md. Abdul Aziz alias Habul and Accused Md. Abdul Matin** in respect of **charge nos. 02 and 05** shall get merged.

Since the convicted accused **Md. Abdul Matin** has been absconding the **‘sentence of death’** as awarded above to him shall be executed after causing his arrest or when he surrenders before the Tribunal, whichever is earlier.

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

The sentence of imprisonment as awarded against the absconding accused **Md. Abdul Matin** shall commence from the date of his arrest or surrender as required under Rule

46(2) of the Rules of Procedure, 2010(ROP) of the Tribunal-  
1.

Convicted accused **Md. Abdul Aziz alias Habul and Md. Abdul Mannan @ Monai** [present on dock as brought from prison] be sent to prison with conviction warrant.

Let conviction warrant be issued accordingly. Let a copy of the Judgment be transmitted together with the conviction warrant to (1) the Secretary, Ministry of Home Affairs, (2) the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka and (3) the District Magistrate, Dhaka and (4) The Senior Jail Super Dhaka Central Jail, Keraniganj, Dhaka for information and necessary action and compliance.

The secretary, Ministry of Home Affairs and the Inspector General of Police[IGP], Bangladesh Police are hereby directed to initiate effective and appropriate measure for ensuring arrest of the **convict absconding accused Md. Abdul Matin.**

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

The convict accused **Md. Abdul Aziz alias Habul and Md. Abdul Mannan @ Monai** shall have right to prefer appeal before the Appellate Division of Supreme Court of Bangladesh within the time stipulated in law. Thus, let certified copy of the judgment be furnished to the convicts at once, free of cost.

If the convict accused **Md. Abdul Matin (absconded)** is arrested or surrenders within 30(thirty) days of the date of the order of conviction and sentence he will be provided with certified copy of this judgment free of cost.

**Justice Md. Shahinur Islam, Chairman**

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

**Justice K.M. Hafizul Alam, Member**