

**International Crimes Tribunal-1 (ICT-1)
Old High Court Building, Dhaka,
Bangladesh**

ICT-BD [ICT-1] Case No.02 OF 2015

[Charges:- Participating, aiding, abetting, facilitating, conspiracy and complicity in the commission of offences constituting crimes against humanity as specified in section 3(2)(a)(g)(h) of the Act No. XIX of 1973]

The Chief Prosecutor

Versus

- 1. Advocate Md. Shamsul Haque**
- 2. S.M. Yusuf Ali**
- 3. Md. Ashraf Hossain [absconded]**
- 4. Professor Sharif Ahamed alias Sharif Hossain [absconded]**
- 5. Md. Abdul Mannan [absconded]**
- 6. Md. Abdul Bari [absconded]**
- 7. Harun [absconded], and**
- 8. Md. Abul Hashem [absconded]**

Present:

**Mr. Justice Anwarul Haque, Chairman
Mr. Justice Md. Shahinur Islam, Member
Mr. Justice Md. Shohrowardi, Member**

Prosecutors:

Mr. Golam Arif Tipu, Chief Prosecutor with
Mr. Syed Haider Ali
Mr. Rana Das Gupta
Mr. Zead-Al-Malum
Mr. Hrishikesh Saha
Mr. Sultan Mahmud
Mr. Md. Altab Uddin
Ms. Tureen Afroz
Mr. Abul Kalam
Ms. Rezia Sultana
Mr. Tapash Kanti Baul

Defence Counsels:

Mr. A.Y. Mashiuzzaman
Mr. Mizanur Rahman,
Mr. Ehsan Siddique, and
Mr. Gazi M.H. Tamim
... For accused Advocate Md. Shamsul Haque and S. M. Yusuf Ali
Mr. Abdus Sobhan Tarafder

... State defence counsel for absconding accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain, Md. Abdul Mannan, Md. Abdul Bari, Harun, and Md. Abul Hashem

Date of delivery of Judgment: 18 July 2016.

JUDGMENT

[Under section 20(1) of the Act No.XIX of 1973]

I. Introductory Words

01. Accused (1) Advocate Md. Shamsul Haque, son of late Safar Uddin Mondal and late Hobironnesa of Village Nandina, Police Station Jamalpur Sadar, District Jamalpur, (2) S.M. Yusuf Ali, son of late S.M. Torab Ali and late Omukjan Bewa of Fulbaria, Old Bus Stand, Modhupur Road, Jamalpur, (3) Md. Ashraf Hossain, son of late Mohammad Hossain and late Syeda Ashrafunnesa of Village Miapara, Police Station Jamalpur Sadar, District Jamalpur, (4) Professor Sharif Ahamed alias Sharif Hossain, son of late Alhaj Jafar Uddin Ahmed alias Jafar Uddin and late Maziron Nesa of Village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur, (5) Md. Abdul Mannan, son of late Mohir Uddin and late Zayeda Bewa of Village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur, (6) Md. Abdul Bari, son of late Abdur Rahman and Jobeda Bewa of Village Bogabaid, Police Station Jamalpur Sadar, District Jamalpur, (7) Harun, son of late Jasim Uddin alias Joshy and late Naziron Begum of Village Bashbora, Police Station Jamalpur Sadar, District Jamalpur, and (8) Md. Abul Hashem, son of late A. Latif and Noytun Bibi of Village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur have

been put on trial before this Tribunal-1 at the instance of the Chief Prosecutor to answer charges under section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973.

02. This International Crimes Tribunal-1 [hereinafter referred to as the "**Tribunal**"] was established under the International Crimes (Tribunals) Act enacted in 1973 [hereinafter referred to as the '**Act of 1973**'] by Bangladesh Parliament to provide for the detention, prosecution and punishment of persons responsible for genocide, crimes against humanity, war crimes and other class crimes committed in the territory of Bangladesh, in violation of customary international law, particularly in between the period of 25 March and 16 December, 1971. However, no Tribunal was set up, and as such, no one could be brought to justice under the Act of 1973 until the government established the Tribunal on 25 March, 2010.

II. Jurisdiction of the Tribunal under ICT Act of 1973.

03. The International Crimes (Tribunals) Act, 1973 states about the jurisdiction of the Tribunal and crimes in section 3 which is as follows:

"(1) A Tribunal shall have the power to try and punish any individual or group of individuals, or organisation, or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of

Bangladesh , whether before or after the commencement of this Act, any of the crimes mentioned in sub-section(2).

(2) The following acts or any of them are crimes within the jurisdiction of a Tribunal for which there shall be individual responsibility, namely:-

(a) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, imprisonment, abduction, confinement , torture, rape or other inhumane acts committed against any civilian population or persecutions on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated;

(b) Crimes against Peace: namely, planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(c) Genocide: meaning and including any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group, such as:

(i) killing members of the group;

- (ii) *causing serious bodily or mental harm to members of the group;*
 - (iii) *deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
 - (iv) *imposing measures intended to prevent births within the group;*
 - (v) *forcibly transferring children of the group to another group;*
- (d) *War Crimes: namely, violation of laws or customs of war which include but are not limited to murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population in the territory of Bangladesh; murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages and detainees, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;*

- (e) violation of any humanitarian rules applicable in armed conflicts laid down in the Geneva Conventions of 1949;*
- (f) any other crimes under international law;*
- (g) attempt, abetment or conspiracy to commit any such crimes;*
- (h) complicity in or failure to prevent commission of any such crimes."*

To our understanding the proper construction of this section should be-

04. Crimes against humanity can be committed even in peace time; existence of armed conflict is, by definition, not mandatory. Neither in the preamble nor in the jurisdiction sections of the Act of 1973 was it mentioned that crime against humanity requires the existence of an armed conflict. Indiscriminate attack on civilian population based on their political, racial, ethnic or religious identity can be termed as crimes against humanity even if it takes place after 1971. However, no one denies the fact that there was an armed conflict in 1971.

III. Consistency of the Act of 1973 with other Statutes on International Crimes

05. We have already quoted section 3 of the International Crimes (Tribunals) Act, 1973 where jurisdictions of the Tribunal and

crimes have been stated. Now let us see the jurisdiction of other International Tribunals and definition of crimes against humanity provided in their Statutes on international crimes.

Article-7 of the Rome Statute

06. According to Article 7 of the Rome Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane

acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Article 3 of the ICTR

07. The International Criminal Tribunal for Rwanda [ICTR] shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds of (a) murder, (b) extermination, (c) enslavement, (d) deportation, (e) imprisonment, (f) torture, (g) rape, (h) persecutions on political, racial and religious grounds and (i) other inhumane acts.

Article 5 of the ICTY

08. The International Criminal Tribunal for former Yugoslavia [ICTY] shall have the power to prosecute persons responsible for the (a) murder, (b) extermination, (c) enslavement, (d) deportation, (e) imprisonment, (f) torture, (g) rape, (h) persecutions on political, racial and religious grounds and (i) other inhumane acts when committed in armed conflict, whether international or internal in character, and directed against any civilian population.

09. Under the Rome Statute [Article 7] and Statute of the International Criminal Tribunal for Rwanda [Article 3] the jurisdiction of the Tribunals were given to try offences of 'crimes

against humanity' such as murder, extermination, deportation, torture, rape etc. of the person/ persons when the offences committed as a **widespread or systematic attack directed against any civilian population on national, ethnic, racial or religious grounds**. According to ICTY [Article 5] existence of armed conflict is the key element to try offences of crimes against humanity, directed against the civilian population.

10. But the Appellate Division of our Supreme Court in the case of **Abdul Quader Molla Vs. Government of Bangladesh**, vis-a-vis has observed to the effect [majority view]:

"Whereas, under our Act, 1973 the tribunal has jurisdiction to prosecute and punish any person irrespective of his nationality who being a member of any armed, defence or auxiliary forces commits, whether before or after the commencement of the Act, Crimes against Humanity, Crimes against Peace, Genocide and other crimes connected therewith during the period of war of liberation. The offences of murder, extermination, rape or other inhumane acts committed against civilian population or persecutions on political, racial, ethnic or

religious grounds are included in the offence of crimes against Humanity. "

"For commission of the said offence [crimes against Humanity], the prosecution need not require to prove that while committing any of offences there must be 'widespread and systematic' attack against 'civilian population'. It is sufficient if it is proved that any person/ persons attack against 'civilian population'. It is sufficient if it is proved that any person/ persons committed such offence during the said period or participated or attempted or conspired to commit any such crime during operation search light in collaboration with the Pakistani Regime upon unarmed civilian with the aim of frustrating the result of 1970 National Assembly election and to deprive the fruits of the election result." [Pages: 241-242].

11. In view of the above observation of the Appellate Division it is now well settled that in our jurisdiction for constituting the offence of crimes against humanity the element 'the attack must be widespread and systematic against civilian population' is not at all necessary or mandatory.

12. However, after making comparative analysis of the definitions provided for crimes against humanity, crimes against peace, genocide and war crimes under section 3(2)(a), (b), (c) and (d) of the Act of 1973 those are found to be fairly consistent with the manner in which these terms are defined under recent Statutes for the International Criminal Tribunal for the former Yugoslavia [ICTY], the International Criminal Tribunal for Rwanda [ICTR], the International Criminal Court [ICC] Rome Statute, and the Statute of the Special Court for Sierra Leone [SCSL], it can be safely said that the Act of 1973 legislation with its amendments upto 2013 provides a system which broadly and fairly compatible with the current international standards.

13. As per section 3(2) of the Act of 1973 to constitute an offence of crime against humanity, the element of attack directed against any civilian population is required. The “*population*” element is intended to imply crimes of a collective nature and thus exclude single or isolated acts. Thus, the emphasis is not on the individual victim but rather on the collective, the individual being victimized not because of his individual attributes but rather because of his membership of a targeted civilian population. This has been interpreted to mean that the acts must occur on a large scale basis [widespread] or, that there must be some form of a governmental, organizational or group policy to commit these acts

[systematic, targeted] and that the perpetrator must know the context within which his actions are taken [knowledge and intent], and finally that attack must be committed on discriminatory grounds in case of persecution.

14. The attack must be directed against any civilian population. The term “*civilian population*” must be interpreted broadly and refers to a population that is predominantly civilian in nature. A population may qualify as “*civilian*” even if non-civilians are among it, as long as it is predominantly civilian. The presence within a population of members of armed resistance groups, or former combatants, who have laid down their arms, does not as such alter its civilian nature.

15. However, for our better understanding it is needed to know the meaning and scope of 'widespread' and 'systematic' attack. '*Widespread*' refers to the large-scale nature of the attack which is primarily reflected in the number of victims. '*Systematic*' refers to the organized nature of the acts of violence and the '*non-accidental repetition of similar criminal conduct on a regular basis.*' Widespread is quantitative while systematic is qualitative.

IV. Salient features of ICT Act of 1973 and International Crimes (Tribunal-1) Rules of Procedure, 2010 [ROP, 2010] applicable to trial procedure.

16. The proceedings before the Tribunal shall be guided by the Act of 1973 and International Crimes (Tribunal-1) Rules of Procedure, 2010 [hereinafter referred to as the 'ROP, 2010'].

Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act, 1872. The Tribunal is authorized to take into its judicial notice of facts of common knowledge and some official documents which are not needed to be proved by adducing evidence [sub-sections (3) and (4) of section 19 of the Act of 1973]. The Tribunal may admit any evidence without observing formality, such as reports, photographs, newspapers, books, films, tape recordings and other materials which appear to have probative value [section 19(1) of the Act of 1973]. The Tribunal shall have discretion to consider hearsay evidence too by weighing its probative value as per rule-56(2) of the ROP, 2010. The defence shall have right to cross-examine prosecution witnesses on their credibility and to take contradiction of the evidence given by them before the Tribunal as per rule-53(2) of the ROP, 2010. Accused deserves right to conduct his own case or to have assistance of his counsel [section 17 of the Act of 1973]. The Tribunal may release an accused on bail subject to conditions as imposed by it as per rule 34(3) of the ROP, 2010. The Tribunal may, as and when necessary, direct the concerned authorities of the government to ensure protection, privacy, and well-being of the witnesses and victims as per rule 58 A of the ROP, 2010.

17. The Act of 1973 is meant to prosecute and try the persons responsible for the offences of crimes against Humanity, genocide and other class crimes committed in violation of customary international law in accordance with the provisions of the said Act. However, the Tribunal is not precluded from borrowing those international references which are not found inconsistent with the provisions of the Act of 1973 in the interest of fair justice.

18. The Act of 1973 has ensured all the universally recognized rights to accused in order to make fair trial. The fundamental and key elements of fair trial are (i) right to disclosure, (ii) holding trial in public, (iii) presumption of innocence of the accused, (iv) adequate time for preparation of defence case, (v) expeditious trial, (vi) right to examine defence witness, and (vii) right to defend by engaging counsel.

19. All the aforesaid rights have been provided to the accused to ensure fair justice. In addition to observation of those elements of fair justice, the Tribunal has adopted a practice by passing an order that while an accused in custody is interrogated by the investigation officer, at that time, the defence counsel and a doctor shall be present in the adjacent room of the interrogation room, and the defence counsel is permitted to meet the accused during break time and at the end of such interrogation. The doctor is also allowed to check-up the physical condition of the accused, if necessary. All

these measures are being taken by the Tribunal to ensure fair investigation as well as trial.

20. Before going into discussion and evaluation of the evidence on record, it is needed to be mentioned here that this Tribunal has already resolved some common legal issues agitated by the defence in the following cases of the Chief Prosecutor vs. Allama Delwar Hossain Sayeedi [ICT-BD Case No. 01/2011], The Chief Prosecutor Vs. Professor Ghulam Azam [ICT-BD Case No. 06/2011], the Chief Prosecutor Vs. Salauddin Qader Chowdhury [ICT-BD Case No. 02/2011] and the Chief Prosecutor Vs. Motiur Rahman Nizami [ICT-BD Case No.03 of 2011]. Apart from this, the Appellate Division of our Supreme Court in the cases of Abdul Quader Molla Vs Government of the People's Republic of Bangladesh and vis-a-vis [Criminal Appeal Nos. 24-25 of 2013], Muhammad Kamaruzzaman vs. The Chief Prosecutor [Criminal Appeal No. 62 of 2013], Ali Ahsan Muhammad Mujahid vs. The Chief Prosecutor [Criminal Appeal No. 103 of 2013], Salauddin Qader Chowdhury vs. The Chief Prosecutor [Criminal Appeal No. 122 of 2013], Allama Delwar Hossain Sayedee vs. The Government of the People's Republic of Bangladesh and vis-a-vis [Criminal Appeal Nos. 39-40 of 2013], Motiur Rahman Nizami vs. The Government of Bangladesh [Criminal Appeal No. 143 of 2014] and Mir Quasem Ali vs. The Chief Prosecutor [Criminal Appeal

No. 144 of 2014] has also decided the legal issues involved in the cases under the Act of 1973.

V. The settled laws/ issues by the Appellate Division and the Tribunal are as follows:

- i. Customary International Law [CIL] shall not be applied if it is contrary to the Act of 1973;
- ii. There is no rule of CIL that prohibits our domestic Tribunal to proceed with the trial as per our domestic legislation;
- iii. Our domestic Tribunal has the jurisdiction to continue with the trial in any manner acting in derogation of rules of public international law;
- iv. There is nothing repugnant to CIL in the Act of 1973, rather it is consonant with the provisions of CIL;
- v. The inordinate delay in commencing any proceedings under the Act of 1973 *ipso facto* can not be a ground to doubt the truth or veracity of the prosecution case;
- vi. By the amendment of section 3(1) of the Act of 1973 through Act No.LV of 2009 the jurisdiction of the Tribunal has been extended to try and punish 'any individual,' 'organization' or 'group of individuals' besides any member of any armed, defence or auxiliary forces, irrespective of his nationality who has committed crimes against Humanity mentioned in section 3(2) of the Act of 1973;

vii. The Act of 1973 is a protected law and the moment, sub-section (1) of section 3 was amended by way of substitution, it became part of the Statute and it got the protection of any legal challenge to be void or unlawful or even to have become void or unlawful in view of the provisions of Article 47(3) of our Constitution;

viii. The clemency given to the admitted prisoners of War, pursuant to the tripartite agreement of 1974, in no way, either match the Act of 1973 or any of its provisions ineffective, invalid or void;

ix. Mere failure of the successive governments to act in accordance with the Act of 1973 for last more than forty years, in no way, gave any right to the accused to be exonerated from being tried for the commission of crimes against Humanity as mentioned in section 3(2) of the Act of 1973;

x. In the Act of 1973, no limitation has been prescribed for initiating proceedings against any individual or group of individuals or organization or any member of any armed, defence or auxiliary forces irrespective of his nationality for the commission of crimes mentioned in section 3(2) of the Act of 1973;

xi. The Collaborators Order, 1972, a different legislation aiming to prosecute the persons for the offences punishable under the Penal Code, were scheduled in the Collaborators Order, 1972, while the Act of 1973 has been enacted to prosecute and try the persons for crimes against Humanity, genocide and other crimes committed in violation of customary international law [CIL], and as such, there is no scope to characterize the offences indulging in the Collaborators Order, 1972 to be the same offences as specified in the Act of 1973;

xii. The Act of 1973 is a codified law, thus, it is not needed to travel to seek assistance from other trials held or is being held by the tribunals/ courts either under the charter of agreements of the nations or under other arrangements under the mandate of United Nations or other International body, such as Nuremburg trial and the Balkan trials.

VI. Historical Backdrop and Context

21. 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 of which the western zone was eventually named as West Pakistan and the eastern zone as East Pakistan, which is now Bangladesh.

22. In 1952, the Pakistan 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, eventually turned to the movement for greater autonomy and self-determination and ultimately independence.

23. In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. Despite this overwhelming majority, Pakistan government did not hand over power to the leader of the majority party as democratic norms required. As a result, movement started in this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7 March, 1971, called on the Bangalee people of the eastern zone to strive for independence if people's verdict would not be respected and power was not handed over to the leader of the majority party. On 26 March, 1971 following the onslaught of "**Operation Search Light**" by the Pakistani Military on 25 March, Bangabandhu Sheikh Mujibur Rahman declared Bangladesh independent immediately before he was arrested by the Pakistani army.

24. In the War of Liberation that ensued, all people of the then East Pakistan wholeheartedly 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 joined and/ or collaborated with the Pakistan military to actively oppose the creation of independent Bangladesh and most of them committed and facilitated the commission of atrocities in the territory of Bangladesh. As a result, 3 million [thirty lakh] people were killed, more than [two lakh] women were raped, about 10 million [one crore] people deported to India as refugees and million others were internally displaced. It also experienced unprecedented destruction of properties all over Bangladesh.

25. The Pakistan government and the military with the help of some pro-Pakistani leaders set up a number of auxiliary forces, such as, the Razakar Bahini, the Al-Badar Bahini, the Al-Shams, the Peace Committee etc, essentially to collaborate with the Pakistani army in identifying and eliminating all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and other pro-independence political parties, Bangalee intellectuals and civilian population of Bangladesh. Undeniably the road to freedom for the people of Bangladesh was arduous and torturous, smeared with blood, toil and sacrifices. In the contemporary world history,

perhaps no nation paid as dearly as the Bangalees did for their emancipation.

26. Having regard to the fact that during the period of War of Liberation in 1971 parallel forces i.e Razakar Bahini, Al-Shams, Al-Badar Bahini and Peace Committee were formed as auxiliary forces of the Pakistani armed forces that provided moral support, assistance and substantially contributed and also physically participated in the commission of horrendous atrocities in the territory of Bangladesh. It is the fact of common knowledge that thousands of incidents happened through out the country as part of organized and planned attacks against the pro-liberation Bangalee civilian population, Hindu community, pro-liberation political group, freedom-fighters and finally the 'intellectuals'. We are to search for answers of all these crucial questions which will be of assistance in determining the culpability of the accused persons for the offences for which they have been charged.

VII. Brief Account of the Accused Persons:

(i) **Accused Advocate Md. Shamsul Haque [75]**, son of late Safar Uddin Mondal and late Hobironnesa of Village Nandina, Police Station Jamalpur Sadar, District Jamalpur was born on 14.05.1942. He obtained M.A.degree from the University of Dhaka in 1963. He served as a teacher of Netrokona College since 1964 to 1969. He became a member of Jamalpur Bar Association in 1969

and has been practicing as a lawyer. In 1961, he was the V.P. of Jamalpur Ashek Mahmud College. He joined the Jamaat-e-Islami in 1970 and has been an active member till now, prosecution alleges.

(ii) Accused S.M. Yusuf Ali [83], son of late S.M. Torab Ali and late Omukjan Bewa of Fulbaria, Old Bus Stand, Modhupur Road, Jamalpur was born on 01.01.1933. He obtained B.A degree in 1955. He completed his B.Ed. in 1959 from Dhaka Teachers' Training College. He was the Headmaster of Bottala M.E. School, Jamalpur and in 1954 he joined Ghothail Junior High School as an Assistant Teacher. In 1961, he joined as the Head Master of Singhojani School and retired in September, 2002. He was a candidate in the M.N.A Election in 1970 as nominated by the Jamaat-e-Islami, but he was defeated. Presently he is not active in politics.

(iii) Accused Md. Ashraf Hossain [64], son of late Mohammad Hossain and late Syeda Ashrafunnesa of Village Miapara, Police Station Jamalpur Sadar, District Jamalpur was born on 01.01.1950. He passed the S.S.C. Examination from Singhajani Bohumukhi High School, Jamalpur in 1967 and then he went to Jamalpur Ashek Mahmud College for H.S.C, but could not complete the course. Prosecution alleges that he was the president of the then Jamalpur Sub-Division Islami Chhatra Sangha [ICS], the student wing of Jamaat-e-Islami [JEI], during the period of the

liberation war in 1971. In 1971, he founded the Al-Badar Bahini in Jamalpur. Immediate after the independence, the accused Md. Ashraf Hossain escaped from Jamalpur and fled to Patna where he got married to one Afroza where he had been residing with his wife and four daughters, prosecution alleges.

(iv) Accused Professor Sharif Ahamed alias Sharif Hossain [71], son of late Alhaj Jafar Uddin Ahmed alias Jafar Uddin and late Maziron Nesa of Village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur was born on 07.11.1943. He completed his M.A. degree from Rajshahi University. He was a lecturer of the Dhonbari College and after the independence of Bangladesh he had been working in the Islami Bank Bangladesh Ltd. at Dilkusha Branch, Dhaka. In 1971, he was a leader of the Jamaat-e-Islami, Jamalpur. After the independence of Bangladesh he was not active in politics, however, he was professionally involved with Jamaat-e-Islami's financial organizations like-Islami Bank Ltd, prosecution alleges.

(v) Accused Md. Abdul Mannan [66], son of late Mohir Uddin and late Zayeda Bewa of Village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur was born on 02.11.1948. He studied in Jamalpur Ashek Mahmud College, but could not pass H.S.C. Examination in 1969. In 1971, he was an active member of

Islami Chhatra Sangha, Jamalpur, prosecution alleges. After the independence of Bangladesh he was not active in politics.

(vi) Accused Md. Abdul Bari [62], son of late Abdur Rahman and Jobeda Bewa of Village Bogabaid, Police Station Jamalpur Sadar, District Jamalpur was born on 17.01.1952. He passed the S.S.C Examination from Singhojani Bohumukhi High School, Jamalpur in 1967 and the H.S.C. Examination from Jamalpur Ashek Mahmud College in 1969. He had been working in the Iranian Embassy for a long period of time. Later, leaving that job he worked in a private company. In 1971, he was an active member of Islami Chhatra Sangha, Jamalpur, prosecution alleges. After the independence of Bangladesh, he was not active in politics.

(vii) Accused Harun [58], son of late Jasim Uddin alias Joshy and late Naziron Begum of Village Bashbora, Police Station Jamalpur Sadar, District Jamalpur was born on 21.02.1956. He is now politically involved with Jamaat-e-Islami, prosecution alleges.

(viii) Accused Md. Abul Hashem [60], son of late A. Latif and Noytun Bibi of Village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur was born on 25.01.1953. He passed the S.S.C. Examination from Jamalpur High School and H.S.C. from Jamalpur Ashek Mahmud College. He joined the Pakistan Police in 1971 and in 1973 he quitted that job and started business. He joined the politics of Islami Chhatra Sangha [ICS], prosecution alleges.

VIII. Procedural History

27. Chief Prosecutor submitted 'formal charge' on having considered the investigation report and documents submitted therewith by the Investigating Agency. Out of eight accused persons only accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali have been in detention since pre-trial stage. The other six accused persons neither could have been arrested nor did they surrender.

28. On 29.04.2015 the Tribunal-2 took cognizance of offences, perpetration of which has been unveiled in course of investigation and also ordered publication of notice in two daily newspapers as required under Rule 31 of the ROP, 2012 [ICT-2] against the six absconded accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Harun, and (6) Md. Abul Hashem as the execution of warrant of arrest issued against them earlier was found unserved.

29. Accordingly, despite publication of the notice in two daily newspapers namely 'Daily Janakantha' dated 26.07.2015 and the 'Daily Sun' dated 25.07.2015 the six absconded accused persons did not make them surrendered, and as such, the Tribunal-2 ordered for holding trial *in absentia* against them and appointed Mr. Abdus Sobhan Tarafder, the learned Advocate to defend accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain and

Md. Abdul Mannan, and Mr. Qutub Uddin Ahmed, the learned Advocate to defend accused Md. Abdul Bari, Harun and Md. Abul Hashem as State defence counsels. The Tribunal-2 also ordered the prosecution for furnishing documents it relies upon to the State defence counsels and fixed a date for hearing the charge framing matter. In the meantime on 03.09.2015 the Tribunal-2 transferred this case record to this Tribunal-1 which received the same on 06.09.2015 and fixed 15.09.2015 for hearing the charge framing matter by renumbering and registering the case as ICT-BD [ICT-1] Case No. 02 of 2015. Ultimately, on 30.09.2015 and 07.10.2015 this Tribunal-1 heard the charge framing matter.

30. Ms. Tureen Afroz and Mr. Tapash Kanti Baul, the learned prosecutors made their submission, drawing our attention to the formal charge, statement of witnesses and the documents collected during investigation. The learned prosecutors submitted that the accused persons were the members of local infamous Razakar and Al-Badar Bahinis, Peace Committee and Islami Chhatra Sangha and those Bahinis were formed intending to collaborate with the Pakistani occupation army in carrying out horrific atrocious activities in furtherance of common plan and design of annihilating the pro-liberation Bengali unarmed civilians and freedom-fighters. The accused persons need to be indicted for the offences they had

committed in the context of war of liberation in 1971 in the territory of Bangladesh.

31. Mr. A. Y. Mashiuzzaman, the learned senior defence counsel along with Mr. Mizanur Rahman and Mr. Gazi M. H. Tamim for accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali placed two separate discharge petitions filed on behalf of these two accused persons which were almost similar to each other. Mr. A.Y. Mashiuzzaman having placed the discharge petitions submitted that the long, inordinate and inexplicable delay of 40 years in bringing the charges against accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali proved conclusively that because of the said accused's political rivalry with the party in power, these accused persons have been falsely implicated in this case.

32. Mr. A.Y. Mashiuzzaman further submitted that there are no documents in the Volume of Seizure List and Documentary Evidence relating to accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali. None of the documents make any reference to the names of these two accused persons, and as such, there is no documentary basis for framing charges against them. Moreover, with regard to proposed charge nos. 01, 03 and 05 none of the witnesses have alleged any involvement of these two accused persons with the alleged offences. The witnesses merely allege that these two accused persons were members of the Peace Committee.

Such allegation of mere membership without any allegation as to any complicity in any offence is not sufficient to frame charges against the accused persons. In fact, these two accused persons were never members of the Peace Committee . Therefore, accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali deserve to be discharged.

33. Mr. Abdus Sobhan Tarafder, the learned State defence counsel for absconded accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain and Md. Abdul Mannan submitted that the said three accused persons did not belong to Razakar Bahini, Al-Badar Bahini or Peace Committee , that no document whatsoever has been provided on part of the prosecution to substantiate these accused persons' membership in any of the said Bahinis or organization. He further submitted that these three accused persons were not involved with the alleged events constituting the offences of murder, abduction, torture or any other inhumane act, in any manner. They have been falsely implicated in this case out of local rivalry, therefore, they deserve to be discharged.

34. Mr. Qutub Uddin Ahmed, the learned State defence counsel for absconded accused Md. Abdul Bari, Harun and Md. Abul Hashem placed three separate discharge petitions filed on behalf of these three absconded accused persons which were almost similar

to each other. The learned State defence counsel having placed the discharge petitions submitted that the allegations set up in the formal charge do not disclose or state specificity of general particulars and the required elements to constitute the offences of crimes against humanity. He further submitted that the formal charge is based on vague and unspecified allegations and it does not disclose the mode of participation of these three accused persons with the alleged atrocious acts, and as such, they are liable to be discharged.

35. The formal charge and the statement of witnesses *prima facie* demonstrated that the accused persons enthusiastically sided with the plan and design of the Pakistani occupation army and had allegedly carried out horrific activities of killing of innocent unarmed civilians, wanton destruction and other inhumane acts, and as such, the prayers seeking discharge of all the accused persons did not deserve consideration, and therefore, the same were rejected.

36. On perusal of the formal charge, statement of witnesses along with other documents submitted by the prosecution, we were of the view that there were sufficient and substantial materials and grounds before the Tribunal to frame charges against accused (1) Advocate Md. Shamsul Haque, (2) S.M. Yusuf Ali, (3) Md. Ashraf Hossain (4) Professor Sharif Ahamed alias Sharif Hossain (5) Md.

Abdul Mannan (6) Md. Abdul Bari (7) Harun, and (8) Md. Abul Hashem for the offences allegedly committed during the war of liberation in 1971 as specified under section 3(2)(a)(g)(h) of the Act of 1973 for which they are alleged to be criminally liable under section 4(1) of the said Act. Accordingly, on 26.10.2015 charges were framed against all the accused persons.

37. The charges so framed [charge nos. 01, 03 and 05] were read over in English and explained in Bengali to accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali, present on dock, to which they pleaded not guilty and claimed to be tried.

38. The six other accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain, Md. Abdul Mannan, Md. Abdul Bari, Harun and Md. Abul Hashem have been in absconsion, and as such, they could not be asked whether they plead guilty or not, after reading over the charges framed against them [charge nos. 02, 03, 04 and 05] in open court.

39. Mr. Qutub Uddin Ahmed, the learned State defence counsel appointed to defend absconding accused Md. Abdul Bari, Harun and Md. Abul Hashem remained absent in the Tribunal on two consecutive dates [07.12.2015 and 08.12.2015] without any step, and as such, on 08.12.2015 by cancelling Mr. Qutub Uddin Ahmed's appointment Mr. Abdus Sobhan Tarafder, Advocate was

appointed as State defence counsel also to defend the above three absconding accused persons.

IX. Witnesses adduced by the parties

40. The prosecution submitted a list of 40[forty] witnesses along with formal charges and documents. But at the time of the trial, the prosecution examined in all 25[twenty five] witnesses including two investigation officers. The prosecution also adduced some documentary evidence which were duly marked as Exhibits 1-19/1 and Material Exhibits I-III.

41. On behalf of accused persons no list of witnesses was submitted under section 9(5) of the Act of 1973 nor any witness was examined on behalf of them. But the learned defence counsels for all the accused persons cross-examined all the prosecution witnesses.

X. Burden of the prosecution

42. The prosecution, in the light of the charges framed, is burdened to prove (a) the commission of crimes narrated in charges, (b) mode of participation of the accused persons in committing the crimes for which they have been charged, (c) what was the status and role of the accused persons at the relevant time and how they had maintained association with the Pakistani occupation army, and (d) the context of carrying out of alleged atrocious crimes directed against civilian population and a particular group of population. In determining culpability of the accused persons prosecution is to establish too that (i) the

perpetrators must know of the broader context in which the acts committed, and (ii) the acts must not have been carried out for purely personal motives of the perpetrators.

XI. Summing up of the prosecution case

43. Mr. Tapas Kanti Baul, the learned prosecutor before placing argument on charges framed took effort to show the status and organizational affiliation of the accused persons, by drawing attention to the oral testimony and the documents i.e news reports published during the period of liberation war in 1971. The learned prosecutor submitted that the witnesses who have testified about the status and political affiliation of 06 accused persons [absconded] were the town dwellers of Jamalpur and students of Ashek Mahmud College and it made them able to be acquainted with this crucial fact. Besides, the news reports published in the daily news papers especially in 1971 which have been exhibited provide endorsement to the fact of membership of the six absconding accused persons in Al-Badar Bahini formed in Jamalpur and accused Md. Ashraf Hossain was the chief of the Al-Badar torture camp and accused Md. Abdul Mannan, Md. Abdul Bari, Harun and Md. Abul Hashem, the workers of Islami Chhatra Sangha [ICS], the student wing of Jamaat-e-Islami [JEI] were also the potential Al-Badar men having close and constant affiliation with the said camp which was in fact a 'torture cell'. Another accused Professor Sharif Ahamed alias Sharif Hossain used to keep him in close contact of

the Al-Badar Bahini and the Al-Badar torture camp as divulged from the evidence tendered.

44. The learned prosecutor next submitted that accused S.M. Yusuf Ali was the then Head Master of Singhajani High School, Jamalpur and he was made the President of Jamalpur Peace Committee and he by virtue of his position used to maintain close association with the Pakistani army camp set up at PTI, Jamalpur and also with the Al-Badar camp and criminal activities carried out there. After forming the Al-Badar Bahini its members were provided with armed training under active coordination and guidance of this accused S.M. Yusuf Ali, the evidence tendered by the P.W.s depicts it indisputably. Accused Advocate Md. Shamsul Haque was also a person of pro-Pakistan political ideology which made him imbued to be engaged with the local Peace Committee knowing its objects. In this way all the accused persons by virtue of their political stance and position of dominance as associates of Al-Badar Bahini and Peace Committee formed in Jamalpur actively and culpably collaborated with the Pakistani occupation army stationed in Jamalpur in accomplishing the common criminal purpose intending to wipe out unarmed pro-liberation civilians during the war of liberation in 1971.

45. Next, the learned prosecutor started placing argument in respect of charge nos. 02, 03, 04 and 05 by drawing attention to the

evidence tendered by the prosecution witnesses, and thus, the learned prosecutor ended his argument on factual aspects which may be conveniently addressed in adjudicating the charges independently.

46. On legal aspects, the learned prosecutor Mr. Tapas Kanti Baul submitted that it is not required to show physical participation of each of the accused persons, the members of the group of attackers in relation to the events narrated in the charges. The accused persons being part of joint criminal enterprise were co-perpetrators under the doctrine of **JCE** [Basic Form and Systematic Form] as they all had acted to further common plan, design or purpose to commit crime directing civilian population. In this regard the learned prosecutor cited the observation of this Tribunal-1 made in the case of **Md. Obaidul Haque alias Taher and Ataur Rahman alias Noni** [**ICT-BD Case No. 04 of 2014, Judgment dated 02 February 2016, Paragraphs 275-277**].

47. The learned prosecutor further submitted that the accused persons knowing the intent of the group accompanied it to the crime sites and made them culpably affiliated with the Al-Badar torture cell set up at the Degree Hostel of Ashek Mahmud College. The mode of their liability refers to ‘common plan of collective criminality’ which corresponds to the theory of **JCE** [Joint Criminal Enterprise]. System cruelties were recurrently practiced

at the Al-Badar torture cell with which the absconding six accused persons had culpable nexus and thus they were concerned with the criminal activities carried out there recurrently and it made them criminally liable under the doctrine of **JCE- Systematic From**.

XII. Suming up of the defence case

[On behalf of accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali]

48. Mr. Syed Mizanur Rahman, the learned defence counsel being assisted by Mr. Gazi M.H.Tamim defending the accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali before placing argument in respect of charge nos. 03 and 05, submitted that prosecution's claim that these two accused persons belonged to Peace Committee and accused S.M. Yusuf Ali was its president could not have been substantiated by any documentary evidence. Rather prosecution document [page 30 of the volume of prosecution documents] goes to demonstrate that one Kajimuddin was the President of Jamalpur Peace Committee. Accused S.M. Yusuf Ali was affiliated with the politics of Jamaat-e-Islami, but merely for this reason he cannot be treated as a member of Peace Committee, in absence of any proof. Some of the prosecution witnesses who have testified identity and status of the accused persons were minor in 1971, and as such, they were not in position of being acquainted with the fact as to what organization the accused persons belonged.

49. Out of five charges these two accused persons have been indicted in charge nos. 01, 03 and 05. The learned defence counsels then started placing argument in relation to charge nos. 01, 03 and 05. We deem it convenient to address the argument advanced on part of the defence at the time of independent adjudication of the charges.

[On behalf of the six absconded accused persons]

50. Mr. Abdus Sobhan Tarafder, the learned counsel appointed by this Tribunal to defend the six absconded accused persons in placing his summing up advanced his submission in respect of charge nos. 02, 03, 04 and 05. The learned State defence counsel chiefly submitted on factual aspect related to those charges which may be well addressed at the time of adjudicating the charges independently.

XIII. Rebuttal by the prosecution

51. Ms. Tureen Afroz, the learned prosecutor in her rebuttal submission, placed the following matters:

(i) Witness's testimony cannot be excluded even he or she was minor at the time of the event and this proposition gets support from the observation of the Appellate Division.

(ii) The Act of 1973 does not make it prioritized to prove a fact only by adducing documentary evidence, and thus, the fact of membership in Jamalpur Peace Committee of

accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali can be well established even by oral testimony tendered by the local inhabitants who were naturally acquainted with this fact which became anecdote too.

(iii) Name of victim Nurul Amin Mollik [victim of charge no.03] does not find place in the book Material Exhibit-III, true, but it readily does not affect the authoritativeness of the book. Besides, the fact of abduction of Nurul Amin Mollik leading to his brutal killing remained undisputed.

(iv) Mere non prosecution of persons, who were made accused in an earlier case under the Penal Code, as submitted by the defence, cannot affect or bar the prosecution of the present accused persons.

(v) In respect of incurring liability of accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque for the crimes mentioned in charge no.01 it has been submitted by Ms. Tureen Afroz, the learned prosecutor that since these two accused persons played a key role in forming Peace Committee they were indivisible part of criminal atrocities to further common purpose and the Peace Committee was formed to materialize the common purpose of wiping out unarmed pro-liberation civilians by collaborating with the Pakistani occupation army and the Al-Badar Bahini, one of

its armed wing, formed under coordination of Jamaat-e-Islami and Peace Committee. Accordingly, these two accused persons incurred criminal liability for the crimes including murders of thousands of civilians as alleged in charge no.01.

XIV. Whether the accused persons can be prosecuted without prosecuting their accomplices

52. The learned defence counsels referring to the evidence on record and rule 36 of ROP, 2010 have raised a legal question that some Al-Badars and co-perpetrators, who are still alive, accompanied the accused persons at the crime sites in committing the crimes have not been brought to book by the prosecution as well as the investigation agency, and as such, initiation of the proceeding against the present accused persons on the basis of '**pick and choose**' policy is malafide one and it has vitiated the whole trial.

53. It is true that from the testimonies of some prosecution witnesses it is revealed that some other Al-Badars and co-perpetrators accompanied the accused persons at the crime sites in committing the crimes. Excepting the present accused persons, none of their accomplices have been brought to justice, but that by itself does not make the horrendous episode of atrocities directing attack on the civilian population constituting the offences of crimes against humanity untrue or give any immunity to the present

accused persons. If the accused persons are found guilty and criminally liable beyond reasonable doubt for their culpable acts, inaction in prosecuting their accomplices cannot be the reason for holding the former innocent or relieved from liability. In this regard we may recall the provision as contained in section 4(1) of the Act of 1973 which states that when any crime as specified in section 3 of the said Act is committed by several persons each of such person is liable for that crime in the same manner as if it were done by him alone. Further, we have no hesitation to hold that rule 36 of ROP, 2010 is not mandatory but directory. Non compliance of the said rule *ipso-facto* does not vitiate the trial.

54. It may be mentioned here that we did not find any provision within the four corners of the Act of 1973 that all the perpetrators of an offence must be tried in one trial, failing which one of the perpetrators against whom if any proceeding is brought that would be vitiated. There is a basic principle of criminal jurisprudence that a man cannot be vexed twice for the same cause of action. But one of the perpetrators of an offence cannot be absolved *ipso facto* for non bringing the other perpetrators in the same trial with him. So, the submission made by the learned defence counsels in respect of this issue has no leg to stand. In this regard we find support from the case of the **Prosecutor vs. Brdjanin [Case No. IT-99-36-T,**

September 1, 2004, para -728] where the ICTY Trial Chamber observed –

“An individual can be prosecuted for complicity in genocide even when the perpetrator of genocide has not been tried or even identified.”

55. The ICTY Trial Chamber in the case of Prosecutor vs. Stakic [Case No. IT-97-24-T, July 31, 2003, para 533] also observed that –

“The trial Chamber is aware that an individual can be prosecuted for complicity even where the perpetrator has not been tried or even identified and that the perpetrator and accomplice need not know each other.”

XV. General Considerations Regarding the Evaluation of Evidence in a case of Crimes against Humanity

56. The accused persons who were allegedly the members of ‘auxiliary forces’ as defined in section 2(a) of the Act of 1973 have been charged for the offences enumerated in section 3(2) of the Act of 1973. The offences for which they have been indicted were ‘system crimes’ committed in violation of international humanitarian law in the territory of Bangladesh in 1971.

57. The accused persons have been brought to justice more than four decades after the barbaric offences occurred. The case so far as it relates to the alleged facts of criminal acts constituting the

alleged offences is predominantly founded on oral evidence presented by the prosecution. Together with the circumstances to be divulged it would be expedient to have a look to the facts of common knowledge of which Tribunal has jurisdiction to take into its judicial notice [section 19(3) of the Act of 1973], for the purpose of unearthing the truth. Inevitably, determination of the related legal issues will be of assistance in arriving at decision on facts in issues.

58. Totality of its horrific profile of atrocities committed in 1971 naturally left little room for the people or civilians to witness the entire events of the criminal acts. Some times it also happens that due to the nature of international crimes, their chaotic circumstances, and post-conflict instability, these crimes usually may not be well-documented by post-conflict authorities.

59. We reiterate that section 23 of the Act of 1973 provides that the 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 this Act. 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.

60. In adjudicating the atrocious events alleged and complicity of the accused persons therewith we have to keep the ‘context’ in mind in the process of assessment of evidence adduced. The reason is that the term ‘**context**’ refers to the events, organizational structure of the group of perpetrators, *para militia* forces, policies that furthered the alleged crimes perpetrated in 1971 during the war of liberation.

61. It is to be noted too that the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration for a finding to be made. This jurisprudence as propounded by our own jurisdiction shall seem compatible to the principle enunciated by *ad hoc* tribunal [ICTR] wherein it has been observed as under -

“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].**

62. In the earlier cases disposed of by this Tribunal in exercise of its jurisdiction it has been settled that hearsay evidence is not readily inadmissible *per se* but it is to be evaluated in light of probability based on corroboration by ‘other evidence’. That is to say, hearsay evidence is admissible and the court can act on it in arriving at decision on fact in issue, provided it carries reasonable

probative value [rule 56(2) of the ROP, 2010]. We have already recorded our same view on this issue in different cases. This view finds support too from the principle enunciated in the case of *Muvunyi* which is as below:

"Hearsay evidence is not per se inadmissible before the Trial Chamber. However, in certain circumstances, there may be good reason for the Trial Chamber to consider whether hearsay evidence is supported by other credible and reliable evidence adduced by the Prosecution in order to support a finding of fact beyond reasonable doubt."
[Muvunyi, (ICTY Trial Chamber), September 12, 2006, para. 12]

63. Next, it has already been settled by the Tribunal and the Apex Court as well, in earlier cases, that an insignificant discrepancy does not tarnish witness's testimony in its entirety. Any such discrepancy, if found, needs to be contrasted with surrounding circumstances and testimony of other witnesses. In this regard, in the case of **Nchamihigo** it has been observed by **the Trial Chamber of ICTR** that --

"The events about which the witnesses testified occurred more than a decade before the trial. Discrepancies attributable to the lapse of time or the absence of record keeping, or other satisfactory explanation, do not necessarily affect the credibility or reliability of the witnesses.....The Chamber will

compare the testimony of each witness with the testimony of other witness and with the surrounding circumstances."

[The Prosecutor v. Simeon Nchamihigo, ICTR-01-63-T, Judgment, 12 November 2008, para-15]

64. The alleged events of atrocities were committed not at times of normalcy. The offences for which the accused persons have been charged occurred during the war of liberation of Bangladesh in 1971. Requirement of production of dead body as proof to death does not apply in prosecuting crimes enumerated under the Act of 1973. A victim's death may be established even by circumstantial evidence provided that the *only* reasonable inference is that the victim is dead as a result of the acts or omissions of the accused constituting the offence.

65. In order to assess the culpability of accused persons, their act and conduct forming part of the attack have to be taken into account to see whether such act or conduct facilitated or substantially contributed to the commission of the crimes alleged. Physical participation to the actual commission of the principal offence is not always indispensable to incur culpable responsibility. The act and conduct of accused are sufficient to form part of the attack if it had a substantial link to the perpetration of the principal crime. It has been observed in the case of *Tadic*, ***[Trial Chamber: ICTY, May 7, 1997, para. 691]*** that:

"Actual physical presence when the crime is committed is not necessary . . . an accused can be considered to have participated in the commission of a crime . . . if he is found to be 'concerned with the killing.'"

66. However, according to universally recognised jurisprudence and the provisions as contained in the ROP, 2010 onus squarely lies upon the prosecution to establish accused persons' presence, acts or conducts, and omission forming part of attack that resulted in actual commission of the offences of crimes against humanity and genocide as enumerated in section 3(2) of the Act of 1973 for which they have been arraigned. Therefore, until and unless the accused persons are found guilty they shall be presumed innocent. Keeping this universally recognised principle in mind we shall go ahead with the task of evaluation of evidence provided.

67. The accused persons and the witnesses and victims, as we find in the case in hand, were the residents of the same locality. In absence of anything contrary, it was thus quite natural for the people of being aware as to which persons of their locality were the Al-Badars.

68. In the case in hand, most of the prosecution witnesses have testified the acts, conducts of the accused persons which allegedly facilitated and substantially contributed to the commission of the principal events. Naturally, considerable lapse of time may affect the ability of witnesses to recall facts they heard and experienced

with sufficient and detail precision. Thus, assessment of the evidence 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 the context of its relevance and circumstances.

XVI. Objective of forming Al-Badar force and its activities in 1971

69. Prosecution evers that the Al-Badar [AB] force was formed of workers of Islami Chhatra Sangha [ICS], the student wing of Jamaat-e-Islami [JEI] and it had acted as the 'action section' of JEI who took stance against the war of liberation, in the name of preservation and solidarity of Pakistan in 1971. All the offences narrated in the charges were allegedly perpetrated by the members of Al-Badar Bahini and sometimes jointly by the members of Al-Badar Bahini and Pakistani army men in the locality of the then Jamalpur Sub-Division. Therefore, it would be expedient to focus first on formation and objective, role and activities of Al-Badar force in 1971 within the territory of Bangladesh.

70. How the Al-Badar Bahini was formed and manned with? The Al-Badar formed with the workers of Islami Chhatra Sangha [ICS], the student wing of Jamaat-e- Islami [JEI], was created aiming to provide support to the Pakistani occupation armed forces. A report

published in **The Economist 01 July, 2010** speaks as below:

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

[Source: The Economist: 01 July 2010: see also <http://www.economist.com/node/16485517?zid=309&ah=80dcf288b8561b012f603b9fd9577f0e>: Also cited in the judgment dated 02.11.2014 of ICT [ICT-2] -BD Case No. 03 of 2013, Chief Prosecutor v. Mir Quasem Ali, Para -133]

71. The vital role of Jamaat-e-Islami in creating the Al-Badar Bahini is reflected from the narration of the book titled "Sunset at Midday", written by Mohiuddin Chowdhury, a leader of the Peace Committee, Noakhali district in 1971 who left Bangladesh for Pakistan in May, 1972 [publishers note] Qirtas Publications 1998, Karachi, Pakistan at page 97 of the book. The said narration is quoted below:

" To face the situation Rajakar Force, consisting of Pro-Pakistani elements was formed. This was the first experiment in East Pakistan, which was a successful experiment. Following this strategy Rajakar Force was being organized throughout East Pakistan. This force was, later on named Al-Badr and Al-Shams and Al-Mujahid. The workers belonging to purely Islami Chhatra Sangha were called Al-Badr; the general patriotic public belonging to Jamaat-e-Islami, Muslim League, Nizam-e-Islami etc. were called Al-Shams and the Urdu-

speaking generally known as Bihari were called Al-Mujahid."

[Cited in the judgment dated 29.10.2014 of ICT[ICT-1] -BD Case No. 03 of 2011, Chief Prosecutor v. Motiur Rahman Nizami, Para-92]

72. The writer of " Sunset at Midday" is a Bangladeshi origin who in his book claimed himself to be a district level leader of political party and Peace Committee of Noakhali. He candidly narrated that he sided with Pakistani army and played important role to save Pakistan. His narrations about the formation of Razakar and Al-Badar Bahini as depicted in his book appear to be most trustworthy.

73. Predominantly the Al-Badar force had acted as an ‘action section’ of Jamaat-e-Islami [JEI]. This was the core makeup of Al-Badar. **Fox Butterfield** wrote in the **New York Times- January 3, 1972** that -

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

[Source: Bangladesh Documents Vol. II page 577, Ministry of External Affairs, New Delhi: Also cited in the judgment dated 02.11.2014 of ICT[ICT-2] -BD Case No. 03 of 2013, Chief Prosecutor v. Mir Quasem Ali, Para-138]

74. Al-Badar was thus made up of militants from the student wing of Jamaat-e- Islami [JEI]. History accuses this group [force] of working like ‘death squad’---killing, looting and disgracing Bengalis whom they accused of being ‘anti-Islam’, ‘infiltrators’ and ‘miscreants’. Perpetration of systematic atrocities by the Al-Badar

force indeed was no lesser than that of the Pakistani occupation army. JEI and its student wing ICS had acted as the think tank and colluded as key architect of the crimes against humanity committed in 1971 in the territory of Bangladesh.

75. ICS and its potential leaders were fully cognizant about the criminal activities of Al-Badar. It finds support from the narration of the book titled ‘**Muktijudhdhe Dhaka 1971**’ demonstrates substantial contribution of Jamaat -e- Islami and the leaders of its student wing ICS and was centrally guided by JEI. The relevant narration is as below:

“*০*Aj e` i i v i Qj tgav m`ubank` ; i v R% b u Z K K` Wvi |
Bmj vgx QvI mstNi tbZe,` G ewnbx Mv b Kti
Ges tK` i q f i t e R i g v q t Z Bmj vgx i i b q S t b G ewnbx
cwi Pw j Z n q |”

[Source: **Muktijudhdhe Dhaka 1971**: edited by Mohit Ul Alam, Abu Md. Delowar Hossain, Bangladesh Asiatic Society , page 284: Also cited in the judgment dated 02.11.2014 of ICT[ICT-2] -BD Case No. 03 of 2013, Chief Prosecutor v. Mir Quasem Ali, Para-140]

76. **Lawrence Lifschultz** in his book titled “**Bangladesh: The Unfinished Revolution**” narrates that -

“The Al-Badhr organization, a fanatical religious group which operated as a paramilitary arm to the Pakistan Army in 1971, was responsible for some of the worst killings during the war, particularly of nationalist intellectuals.”

[Source: **Bangladesh: The Unfinished Revolution**, Published in 1979, London, page 126: Also cited in the judgment dated 17.07.2013 of ICT[ICT-2] -BD Case No. 04 of 2012, Chief Prosecutor v. Ali Ahsan Muhammad Mujahid, Para-161]

77. That is to say, Al-Badar was a ‘paramilitary arm’ to the Pakistan Army and it acted as its ‘death squad’ in furtherance of policy and plan to annihilate the Bengali pro-liberation civilians, nationalist intellectuals, civilians belonging to Hindu community and freedom fighters [whom they called miscreants].

78. Therefore, when it is established that the Al-Badar force was an armed para militia force created under the active vigilance of Jamaat-e-Islami and Pakistani occupation army it may be unerringly concluded that it acted as an ‘auxiliary force’ for ‘operational’, ‘Static’ and ‘other purposes’ of the occupation armed force. It is also found from the book titled ‘**Muktijudhdhe Dhaka 1971**’ that in 1971, Jamaat -e- Islami with intent to provide support and assistance to the Pakistani occupation army formed armed Razakar and Al-Badar force and obtained government’s recognition for those *para militia* forces. The relevant narration reflected in the book is as below:

ÔRigvqtZ Bmj vgx giv²htxi ii“ t_tK tkl ch⁸@ mvgwi K
RvšZvtK mg_8 Kti | Zvt`i mnvqZvi Rb“ Ab`vb“ agv⁸ `j
wbq cûgZ MVb Kti kvns@ KigwU| cieZxmg⁸q mk`;evnrbx
ivRvKvi I Avj e`i MVb Kti Ges mi Kvix`KZx Av`vq eti |
hxtK ag⁸ix wntmte c⁸vi Yv Pwvj tq DMûag⁸q Db⁸iv bv m⁸oi tPóv
Kti | Avi Gi Avortj`mb`i mnvqZvq Pijvq wbnep⁸ti bksm
MYnZ`v, j⁸Y, bvix wbnvZb, AcniY I Pwv Av`vq| me⁸kl
RwZi weteK enxRix⁸ i nZ`v Kiv nq| Ó

[Source: **Muktijudhdhe Dhaka 1971**: edited by Mohit Ul Alam, Abu Md. Delowar Hossain, Bangladesh Asiatic Society, page 289: Also cited in the judgment dated 09.05.2013 of ICT[ICT-2]-BD Case No. 03 of 2012, Chief Prosecutor v. Muhammad Kamaruzzaman , Para-493]

79. The following narration extracted from the old report of **Fox Butterfield** published in the **New York Times- January 3, 1972** unambiguously establishes that the Al-Badar was equipped and acted as directed by the Pakistani occupation forces.

“.....There is growing evidence that Al Badar was equipped and directed by a special group of Pakistani army officers. Among papers found in the desk of Maj-Gen. Rao Farman Ali, the military adviser to the Governor of East Pakistan, were a series of cryptic references to Al Badar..... “Captain Tahir, vehicle for Al Badar”, and “use of Al Badar”, one scrawled note said. Captain Tahir is believed to have been the almost legendary Pakistani Commander of the Razakars, the Bihari militia used by the Pakistani army to terrorise Bengalis.”

[Source: Bangladesh Documents Vol. II page 576, Ministry of External Affairs, New Delhi: Also cited in the judgment dated 09.05.2013 of ICT[ICT-2] -BD Case No. 03 of 2012, Chief Prosecutor v. Muhammad Kamaruzzaman, Para -494]

80. Since the Al-Badar force was an armed para militia force and it acted in furtherance of policy and plan of Pakistani occupation armed forces no formal letter of document needs to be shown to prove that it was under placement and control of Pakistani occupation armed forces, for designating it as ‘auxiliary force’. Relying on the old reports as conversed above it can be safely concluded that the ‘Al-Badar’ was an ‘auxiliary force’ as defined in section 2(a) of the Act of 1973. Besides, the information depicted from documents, as referred to above, are considered to be the

necessary constituents of the phrases 'placement under the control' of armed force.

81. Now the question arises what was the objective of forming such armed para militia force [Al-Badar]? Was it to protect civilians and their rights from any kind of criminal transgression? It is a fact of common knowledge now that Al-Badar was an armed para militia force which was created for 'operational' and 'static' purpose of the Pakistani occupation army. In the case of Motiur Rahman Nizami, on the basis of sourced information and document this Tribunal recorded its finding that members of Al-Badar Bahini were provided with both psychological and military training by Pakistani army and they were also provided with monthly allowance.

82. Al-Badar Bahini acted as the Pakistani army's ' death squads' and exterminated leading left wing professors , journalists, litterati, and even doctors [**Source: Pakistan Between Mosque and Military**] written by **Husain Haqqani**, published by Carnegie Endowment For International Peace, Washington D.C, U.S.A. first published in 2005, page 79. Acting as 'death squads' of Pakistani occupation army in furtherance of policy and plan unequivocally proves that the Al-Badar Bahini was a para militia force created to assist the Pakistani army as its auxiliary force. The author narrated at page 79 in his said book that-

" The Jamaat-e-Islami and especially its student wing, the Islami Jamiat -e-Talaba (IJT), joined

the military's effort in May 1971 to launch two paramilitary counterinsurgency units. The IJT provided a large number of recruits. The two special brigades of Islamist cadres were named Al-Shams (the sun, in Arabic) and Al-Badr (the moon)A separate Rajakars Directorate was established Two separate wings called Al-Badr and Al-Shams were organized. Well educated and properly motivated students from the schools and madrasas were put in Al-Badr wing , where they were trained to undertake 'Specialized Operations,' while the remainder were grouped together under Al-Shams, which was responsible for the protection of bridges, vital points and other areas Bangladeshi scholars accused the Al-Badr and Al-Shams militias of being fanatical. They allegedly acted as the Pakistan army's death squads and 'exterminated leading left wing professors, journalists, litterateurs, even doctor. "

[Cited in the judgment dated 29.10.2014 of ICT[ICT-1] -BD Case No. 03 of 2011, Chief Prosecutor v. Motiur Rahman Nizami, Para-94]

83. Hussain Haqqani, the writer of the book titled "Pakistan between Mosque and Military" is Pakistani origin. His career as a journalist started with work as East Asian correspondent for the Muslim world . He served as an adviser to three Pakistani Prime Ministers. This book is an authoratative and comprehensive account of the origins of relationship between Islamist group and Pakistani army. The above citation testifies that Jamaat-e-Islami and its student wing Islami Chhatra Sangha had played a substantial role in organising and establishing its notorious wing Al-Badar, the death squads in execution of common policy and plan. Accordingly, the above citation of the book bears probative value to rely upon.

84. It is narrated at page no. 258 of the book named "**Sectarianism and Politico-Religious Terrorism in Pakistan**" revised edition, **1993** by **Musa Khan Jalazai** about the activities of Al-Badar Bahini which is quoted below:

" The campaign confirmed Jamiat's place in rational politics, especially in 1971, when Jamiat began to interact directly with the military government of East Pakistan in an effort to crush Bengali nationalism. As a result of these contracts, Jamiat Joined the Pakistani military's effort in May 1971 to launch two paramilitary counterinsurgency units in East Pakistan, Al-Badr and Al-Shams, to combat Mukti Bahini, the Bengali guerrilla organization. Jamiat provided a large number of recruits for the two units, especially Al-Badr,....."

[Cited in the judgment dated 29.10.2014 of ICT[ICT-1]-BD Case No. 03 of 2011, Chief Prosecutor v. Motiur Rahman Nizami, Para-96]

85. Musa Khan Jalazai is an Afghan author and renowned journalist. He has obtained research experience in politics for more than two decades in all over Asian countries. He is also an expert of intelligence and security analysis . The contents of the book are most authoratative and reliable as the author is a reputed journalist and researcher in the field of terrorism issues.

86. **Seyyed Vali Reza Nasr** wrote a book titled as "**Vanguard of the Islamic Revolution**", published in 1994 in the United States of America. This book contains the structure and social base of the Jamaat-e-Islami narrating its religious and political activities

including its role during the War of Liberation of Bangladesh. A relevant portion of the book cited at the bottom of page no. 66 is as under:

" The campaign confirmed the IJTs (Islami Jamaat-e-Talabah) in national politics specially in May 1971, when the IJT joined the army's counter insurgency campaign in East Pakistan with the help of the army the IJT organised two paramilitary units, called Al-Badr and Al-Shams to fight the Bangalee guerrillas. Most of the Al-Badr consisted of IJT members who also galvanised support for the operation among the Muhajir community settled in East Pakistan,....."

[Cited in the judgment dated 29.10.2014 of ICT[ICT-1]-BD Case No. 03 of 2011, Chief Prosecutor v. Motiur Rahman Nizami, Para-98]

87. Pakistani writer Selim Mansur Khaled wrote a book named "Al-Badr" which was published in February 2010 at Lahore, Pakistan and it was translated in Bengali with the assistance of Abed Hussain. It has been narrated in that book at page nos. 129 to 131 that during War of Liberation of Bangladesh that the members of Al-Badar Bahini were provided both psychological and military training by Pakistani army and they were also provided with monthly allowance to the tune of Tk. 90/- per head. It is also evident that Al-Badar Bahini had structural body with five units indicating requisite number of personnel for each of such units. All the aforesaid informations set out in the book 'Al-Badr' gives us sufficient indication to hold that the Al-Badar Bahini collaborated

Pakistani occupation army as auxiliary force in committing atrocities all over Bangladesh in 1971.

88. Therefore, we are again persuaded to infer that objective of creating the Al-Badar force was not to guard lives and properties of civilians. Rather, it had acted in furtherance of policy and plan of Pakistani occupation army and in so doing it had committed indiscriminate atrocities in a systematic manner against the unarmed Bengali civilians through out the territory of Bangladesh in 1971.

XVII. Whether the six accused [(1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Harun, and (6) Md. Abul Hashem] belonged to Al-Badar Bahini formed in Jamalpur town

89. Prosecution avers that accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari, Harun, and Md. Abul Hashem were the potential members of Al-Badar Bahini formed in Jamalpur town, almost immediately after the Pakistani occupation army got them stationed in Jamalpur town. It is also alleged that accused Md. Ashraf Hossain was the chief of the Al-Badar camp set up at the Degree Hostel of Ashek Mahmud College, Jamalpur. Along with them accused Professor Sharif Ahamed alias Sharif Hossain was a key affiliate of the Al-Badar Bahini, prosecution alleges. These six accused persons by virtue of their position and membership in and culpable affiliation with the Al-Badar Bahini committed the offences for which they have been charged with and in carrying out

some attacks they actively and knowingly accompanied the Pakistani occupation army.

90. Mr. Tapas Kanti Baul, the learned prosecutor before placing argument on charges framed took effort to show that status and organizational affiliation of the accused persons, by drawing attention to the oral testimony and the documents i.e news reports published during that time. The learned prosecutor submitted that the witnesses who have testified about the status and political affiliation of the accused persons were the town dwellers of Jamalpur and students of Ashek Mahmud College and it made them able to be acquainted with this crucial fact.

91. All the above six accused persons have been absconding. The trial took place in their absence. The learned State defence counsel Mr. Abdus Sobhan Tarafder appointed to defend them submitted that they did not belong to Jamalpur Al-Badar Bahini and prosecution has failed to provide any authoritative list showing their membership of Al-Badar Bahini.

92. Already we have made deliberation on objective of formation of Al-Badar Bahini in 1971. The International Crimes (Tribunals) Act, 1973 permits to prosecute and try even an individual or group of individuals. In the case in hand, since prosecution alleges that the accused persons belonging to Al-Badar Bahini had committed offences as narrated in the charges framed, it is felt indispensable to

determine their status and alleged association and membership with the Al-Badar Bahini, an 'armed wing'. And it appears that prosecution, to prove this crucial aspect, depends upon oral testimony of witnesses, the residents of Jamalpur town and some authoritative reports published in the news papers.

93. P.W.10 Md. Fazlul Haque passed HSC examination from Ashek Mahmud College, Jamalpur. He stated that accused Ashraf, Mannan and Harun were affiliated with Islami Chhatra Sangha [ICS] since 1964. He knew these accused persons as they were associated with Islami Chhatra Sangha [ICS] when he [P.W.10] was a student of Ashek Mahmud College.

94. The above version remained unshaken. It is now settled that the Al-Badar Bahini was formed of workers of ICS, the student wing of Jamaat-e-Islami [JEI]. Association with the ICS since 1964 obviously leads to infer that accused Ashraf, Mannan and Harun got them engaged in the Al-Badar Bahini formed in Jamalpur town.

95. P.W.16 Md. Mokhlesur Rahman stated that the Pakistani army occupied Jamalpur town on 22 April 1971 and then they set up Al- Badar camp and started providing its members with training. Accused Md. Ashraf Hossain, Professor Sharif Ahamed, Md. Abdul Mannan, Md. Abdul Bari and many others belonging to Al-Badar Bahini received training there. Jamalpur Singhajani School

field was used for providing training to them. Defence could not impeach it in any manner.

96. According to P.W.20 Md. Shafiqul Islam Khoka, a former lawmaker of Jamalpur-3 constituency accused Ashraf [accused] was the key man of Al-Badar Bahini formed and about 70/80 persons including accused Mannan, Bari and Hashem got them joined in the Al-Badar Bahini as its members.

97. P.W.21 Md. Shahidur Rahman Khan, a teacher of Ashek Mahmud College, Jamalpur on resuming duties as teacher in that college pursuant to a government circular dated 07 June 1971 discovered a camp of Al-Badar Bahini formed of some students at the Degree Hostel of the college. Accused Md. Ashraf Hossain was the head of the camp and 50/60 Al-Badar men including accused Abdul Mannan, Abdul Bari and others used to stay at that camp and accused Professor Sharif Ahamed used to visit the camp occasionally.

98. P.W.01 Azizur Rahman alias Dol was a student of class V of Singhajani Bohumukhi High School in 1971 and had been staying in Jamalpur town. He [P.W.01] also knew some of former students of the said school and they are accused Professor Sharif Ahamed, Abdul Mannan, Abul Hashem, Ashraf Hossain, Harun and others and they were involved with the politics of Islami Chhatra Sangha [ICS].

99. The above version once again proves accused persons' affiliation with the politics of ICS, the student wing of JEI and as a town dweller P.W.01 was reasonably aware of it. He [P.W.01] provides assurance too that accused Professor Sharif Ahamed, Ashraf Hossain, Abdul Mannan, Abdul Bari, Abul Hashem and Harun were in leading position of Jamalpur Al-Badar Bahini.

100. Forming Al-Badar Bahini of the workers of ICS and the fact that it was a para militia force get substantiated from the narration made in the book titled '**Sunset at Midday**'. The authoritative book '**Sunset at Midday**' narrates—

“.....the workers belonging to purely Islami Chatra Sangha were called Al-Badar, the general patriotic public belonging to Jamaat-e-Islami, Muslim League, Nizam-e-Islami etc were called Al-Shams and the Urdu-speaking generally known as Bihari were called al-Mujahid.”

[Source: 'Sunset at Midday' , Mohi Uddin Chowdhury , a leader of Peace committee , Noakhali district in 1971 who left Bangladesh for Pakistan in May 1972 [(Publisher's note): Qirtas Publications, 1998, Karachi, Pakistan, paragraph two at page 97 of the book; also cited in the judgment of Ali Ahsan Muhammad Mujahid[ICT-2], Paragraph, 144]

101. On integrated evaluation of above evidence tendered by competent witnesses it stands proved that in 1971 during the war of liberation Al-Badar Bahini was formed in Jamalpur town and a camp was also set up intending to collaborate with the Pakistani occupation army headquartered there to further policy and plan. Defence could not refute it. Besides it gets corroboration from the

authoritative narration made in the book titled **ÔRvgvj cý tRjvi gy³h³x³i BZnmŎ**. In his book titled **ÔRvgvj cý tRjvi gy³h³x³i BZnmŎ**, Rajab Bakshi narrates that --

" 22 tk GucŃ Rvgvj cý knŃi c³vk⁻vb tmbv³iv wZbvU K³v³ú KŃi | tmM³Ńj v nj w³c³UAvB feb, c³v³b Dbq³b tevW³Ń AvŃkK gving³Ń KŃj R t³v³Ń÷j | c³v³K t³mbv³iv Gme K³v³ú t³ŃK Rvgvj cý m³imn v³bvi w³efb³e⁻v³Ńb AcivŃkb c³v³i P³v³j bv KiZ | tRjv knŃi c³v³K t³mbvev³nbx Qvovl w³gvj w³kqv³Ń i GK³U k³v³x³ ev³nbx w³Qj | GQvovl m³u³q w³Qj GŃ³k³x³ Avj e⁻i ivR³v³Kvi ev³nbx | R³vbv h³vq Rvgvj cý knŃi c³v³KK³v³Ńú w³cm K³ig³U l e⁻i ivR³v³Kvi v h³x m³Ńvš- w³g³U³s `i³evi KiZ | gy³Ń³th³v³ŃŃ i Z³v³vj K³v c³Ńq³bm³n b³xj bK³k³v c³Ńq³b KiZ | "

[Material Exhibit-III: the book " ÔRvgvj cý tRjvi gy³h³x³i BZnm", page 86]

102. We have already got from the evidence tendered by the above P.W.s that accused Md. Ashraf Hossain was the key man and chief of Al-Badar Bahini formed in Jamalpur and prior to his engagement in Al-Badar Bahini he was a potential leader of ICS. This gets corroboration from a report published in the daily ‘Bhorer Kagoj’. Referring to a report published in the Daily Sangram dated 24 April 1971 a report titled " **gyRvwnŃ³i KzKxwZ© Muv_v AvŃQ³ w³bK msMŎvŃ³gi cvZvq**" published in The Daily Bhorer Kagoj dated 31 October 2007 which speaks as below:

"%w³bK msMŎvŃ³gi 24 GucŃŃ Z³v³iŃLi m³ŃL³vq c³K³w³kZ LeŃi AvŃiv ejv nq, 22 GucŃŃ (1971) Z³v³iŃL gqgb³msŃŃn R³gvZ l Bm³jv³x QvŃ³ msŃNi (eZŃv³b Bm³jv³x QvŃ³ik³ei) t³bZv l K³g³x³Ń i GK m³f³v nq | Z³vŃZ m³f³v³c³UZZj KŃib gy³Ń³Ń Av³ivd t³nm³vBb Ges m³f³vq Dc³w³-Z w³QŃj b g³U³ZDi ing³v³b w³bR³v³x l Avj x Av³nm³v³b g³R³v³n³ | GB m³f³vq e³Z³v³ w³ŃZ w³M³tq Avj x Av³nm³v³b g³R³v³n³ e³tj b, ŎAvj -e⁻i GK³U b³vq, GK³U w³e⁻Ńq | Avj -e⁻i GK³U c³ŃZÁv | thL³vŃbB Z³-vK³U_Z gy³Ń³ev³nbx, t³mL³vŃbB vK³Ńe Avj -e⁻i | gy³Ń³ev³nbx Z³-v f³viZxq PiŃ³ i K³vŃQ Avj -e⁻i nŃe m³v³Ń³vr AvR³ivBj | "

[Cited in the case of Ali Ahsan Muhammad Mujahid, Judgment (ICT-2), paragraph 147]

103. Apart from the above it is evinced from the report published in the daily Sangram dated 07 November 1971 [Exhibit-18/1: Prosecution Documents Volume Page-55] that accused Md. Ashraf Hossain was elected as one of the members of Provincial Central Committee of ICS. It provides assurance as to accused Md. Ashraf Hossain's prominence in Jamalpur ICS.

104. Formation of Al-Badar Bahini under leadership of accused Md. Ashraf Hossain gets further assurance from a report titled 'Al-Badar' published in the daily Sangram dated 14 September 1971 [Exhibit-18: Prosecution Documents Volume Page 54] which reads as below:

"22 tk Guicj Rvgvj cji cK-ewnbxi c`vc#bi ci ciB tgvfgbkvnx tRj v Bmj vgx QvT mstNi mfvcwZ Rbve ggv#s Avki vd tnmvBtbi tbZtZi Avj -e`i ewnbx MwZ nq|"

105. The authoritative book titled *OGKvEtii NvZK I `vjvj iv tK tKv_vq0* also narrates that--

"22 tk Guicj Rvgvj cji cK ewnbxi c`vc#Yi ci ciB tgvfgbkvnx tRj v Bmj vgx QvT mstNi mfvcwZ Rbve ggv#s Avki vd tnmvBtbi tbZtZi Avj e`i ewnbx MwZ nq|"

[Material Exhibit-II; *OGKvEtii NvZK I `vjvj iv tK tKv_vq0* Page-109]

106. In view of above, it thus stands well proved that accused Md. Ashraf Hossain was the president of Momenshahi district ICS and after entrance of the Pakistani occupation army in Jamalpur Al-Badar Bahini was formed under his leadership.

107. Accused Md. Abdul Bari and Md. Abdul Mannan too were the potential leaders of Jamalpur ICS. It gets corroboration from a report titled **Ô Rvgvjcyçi QvÎmsN mfvt QvÎt` i cîZ vbiR vBR vk¶v cîZôvfb vdwv qv hvv qvi Avîvô** published in the daily Azad dated 20 October, 1971[**Exhibit-17/6 : Prosecution Documents Volume Page-32**] which speaks that –

"Rvgvj cy , 16 A±vei |- m±úZ Rvgvj cçi cwk`Zvb Bmjvqx QvÎmstNi GK Kgxmfv nq| mfvcwZZ; Ktib QvÎ tbZv ggv± Avāy evix| Avtj vPbvq Ask Mōb Ktib Rbve Avāy gvbb, Avāy nK, Gg. cvntjvqv I Avj e`i KgvUvi Kvgivb| "

108. Another report published in the daily Ittefaq dated 10 March, 1972 [**Exhibit-19/1 : Prosecution Documents Volume Pages 167-168**] speaks of notoriety of accused Md. Abdul Bari in carrying out atrocious activities in Jamalpur, in 1971. The report reads as below:

"Rvgvj cçi Bmjvqx QvÎ mstNi biwckvP tgv Avāy evixi e`i±MZ WvBixi cvZvq Ggb AmsL" Kwnbx wj wce× nBqvQ, hvntZ Zvvi Ges eū Avj - e`i msvMcvst`i `ckvPK cēEi wPÎ aiv cto| D³ biwckvP Zvvi AbPit`i jBqv Rvgvj cy Qvnoqv tKv_vq AvZ#Mvcb KwiqvQ, ejv gkKj| vaxZv msMōgKvtj Rvgvj cçi Îvpmi ivRZ; mōKvix tgv Avāy evixi GKw WvBix D×vi nBqv BtEdvtKi evZr° wfvM Avmqv tcsQqvQ| vaxZvi cæm_r nBevi ce°gyZ° chSZ mzwv Kwi Z cšiq wK Kwiqv vbiXn gvbytK nZ`v& Ges AK_ AZ`vPvi Kiv nBqvQ , Zvvi AtbK wōž `qvSZ wj wce× Kiv AvtQ| WvBixi tKvb cōvq BstRi Rx, tKvb cōvq evsjv , tKv_vlev `úó , tKv_vlev mstKwZKfite Rvgvj cçi Avj -e`it`i bksmZvi Kwnbx ewYZ AvtQ| WvBixi gta` wvfbœ`vfb Acvtikb Pvj vBevi Rb` cōxZ GKlvb bKkvI iwnqvQ| "

109. The above together with the oral testimony proves it beyond reasonable doubt that accused Md. Abdul Mannan and accused Md. Abdul Bari also were in potential position of ICS and afterwards got them enrolled in the Al-Badar Bahini in Jamalpur as its leading men. It is true that in respect of membership of accused Professor Sharif Hossain, Harun and Md. Abul Hashem there has been no report published in the news papers. But merely for this reason testimony of reliable and competent witnesses cannot be excluded, particularly when their testimony in this regard stands uncontroverted by the defence. However, it is found from the narration made in the book titled '**Rvgvj cj tRj vi gy³hḡ×i BvZnm'** that-

"Bmj vgx QvĪms†Ni tgvRinvi tnv†mb, AvkĪd Avj x, Avāy gvbwb, Avt evi x, Kv†mg, nv†kg Avj x I nvi " b cġĒ e` i evnrbx bv†g cwiĪPZ Killing squad Gi m`m" ĪQj |"

[Material Exhibit-III: 'Rvgvj cj tRj vi gy³hḡ×i BvZnm', Page-95]

110. Relying on the old reports together with the oral evidence as conversed above it can be safely concluded that the 'Al-Badar' was a 'killing squad' formed intending to wipe out the freedom fighters, pro-liberation civilians , civilians affiliated with the politics of Awami League and the people belonging to Hindu community, in 1971. The Al-Badar force earned brutal notoriety for its barbaric activities in 1971. Their activities got utter endorsement on part of JEI in the name of preserving solidarity of Pakistan.

111. The Appellate Division of the Supreme Court of Bangladesh in the case of *Muhammad Kamaruzzaman* in rendering finding on the object of forming Al-Badar Bahini in 1971 observed that –

"This Al-Badar force was raised with the object to exterminate the pro-liberation forces and their supporters. In fact this force acted as the Pakistan Army's 'death squad'. Hussain Haqqani, termed them as such and the prosecution evidence also revealed that the accused's force acted as 'killing squad.'"

[Criminal Appeal No. 62 of 2013; Muhammad Kamaruzzaman; Judgment 3rd November, 2014, Page 166]

112. The Apex Court further observed in the same case that –

"The Pak army raised Al- Badar force to act as 'death squad' for exterminating the pro-liberation forces and their supporters and to maintain sovereignty of Pakistan and also to thwart the independence of Bangladesh."

[Criminal Appeal No.62 of 2013; Muhammad Kamaruzzaman; Judgment 3rd November, 2014, Page 169]

113. On the basis of above mentioned testimony of witnesses coupled with the authoritative information narrated in the daily news papers published in 1971 and the authoritative books we come to conclude that it has been proved beyond reasonable doubt that all the six the accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Harun, and (6) Md. Abul Hashem belonged to the Al-Badar Bahini formed in Jamalpur town. And thus we may legitimately say that they have been prosecuted for the offences

they allegedly committed in exercise of their leadership, membership in and close nexus with Al-Badar Bahini formed in Jamalpur in 1971.

XVIII. Objective of forming Peace Committee and whether accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali belonged to it

114. In all eight [08] persons have been arraigned in this case. We have already recorded our reasoned finding that six of them belonged to Al-Badar Bahini and some of them were in leading and steering position of the Al-Badar Bahini and its camp in Jamalpur. Prosecution categorically further alleges that accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque had been in leading position of the Jamalpur Peace Committee and by virtue of their position and dominance together with their pro-Pakistan ideology actively collaborated with the Pakistani occupation army stationed in Jamalpur in 1971 and the Al-Badar Bahini formed and thereby they were engaged in committing atrocious activities directing pro-liberation civilians.

115. The learned prosecutor Mr. Tapas Kanti Baul submitted that the accused S.M. Yusuf Ali, the then Head Master of Singhajani High School, Jamalpur was the president of Jamalpur Peace Committee and Advocate Md. Shamsul Haque was its potential member and they by virtue of their position and dominance used to

cieZxmgq mk`jeumbx ivRvKvi I Avje`i Mvb Kti
 Ges miKvix`AKZx Av`vq Kti| hytK agfly imtme
 cBviYv Pwj`tq DM0agn@ Db# bv mpi tPov Kti| Avi
 Gi Avotj`mb`i mnuqZvq Pvjvq ibvePti bksm
 MYnZ`v, jY, bvix ibhvZb, AcniY I Pvur Av`vq/
 me#kl Ruzi veteK emxRvex`i nZ`v Kivnq| 0

[Source: Muktiyudhdhe Dhaka 1971:
 edited by Mohit Ul Alam, Abu Md.
 Delowar Hossain, Bangladesh Asiatic
 Society, page 289 : Cited in the case of Ali
 Ahsan Muhammad Mujahid, Judgment
 paragraph -164]

119. It is now well settled that objective of forming Peace Committee in 1971 was to provide substantial support and assistance to the Pakistani occupation army in carrying out its activities with intent to combat and liquidate the ‘anti-state elements’, ‘miscreants’, and it was the key purpose of the ‘Peace Committee’. The report titled ‘**Peace Committee formed**’ by **Sydney H. Schanberg** speaks that-

“Throughout East Pakistan the Army is training new para-military home guards or simply arming “loyal” civilians, some of whom are formed into peace committees. Besides Biharis and other non-Bengali, Urdu-speaking Moslems, the recruits include the small minority of Bengali Moslems who have long supported the army----adherents of the right wing religious parties such as the Moslem League Jamaat-e-islami.”

[Source: Sydney H. Schanberg, New York Times July 14 1971; Bangladesh Documents, Vol. I , Ministry of External Affairs, new Delhi, page 414. Also cited in para 136 of the judgment in the case of Md. Abdul Alim]

120. Purpose of forming Peace Committee reflects from the report titled *ÓkwšZ Kugvli Anevq†Ki veewZ: mk̄; ewmbx†K mnvñ Kivi Anevbo* published in *The Daily Dainik Pakistan* dated 23 April 1971 which is as below:

*Ómk̄; ewmbx thLutbB hu†e tmLutb RvZxq cZivKv n†Z
ib†q Gm††q Amvi Ges iv^a ve†ivax e^w I
`yuzKvix†i ibg[®] Kivi Auvh†b mk̄; ewmbx†K
mnvñ K†i Ac††ZKi NUbv Gou†bvi Rb[”] kwš- Kugvli
.....Ó*

[Cited in the judgment of Md. Abdul Alim's case, Paragraph-137]

121. Another report, showing purpose of forming Peace Committee, titled *Ó†K[”] †q kwš-Kugvli A†e` b: mk̄; ewmbxi m†_ mn†hullvZv Ki“bo* published in *The Daily Purbadesh* dated 23 April 1971 speaks that--

*ÓXvKv, 22 †k Gic† (Gic†ic)|- ivó†e†ivax †jvK†i i
a†smvZ†K Kih†jvc c†††iva Ges mk̄; ewmbxi
†jvK†i i me iKg mn†hullvZv Kivi Rb[”] ce[©]cuK⁻††bi
†K[”] †q kwšZ Kugvli ce[©]cuK⁻††bi mKj ††k†c††K
bulmiK†i Av††b Rub†††Qb/Ó*

[Source: msev` c†† gy[®]hy^xi ve†ivaxZv: GKvE†ii NvZK†i Revb Rj†† lohš; v†† : evsj††k t††h B†††††DU, 2013: m[®]úv`bv: `j†† P^a vek†m, c†† 443, Also cited in para 138 of the judgment in the case of Md. Abdul Alim]

122. Thus the core objective of forming Peace Committee was indubitably to facilitate the recurrent barbaric and systematic criminal activities in collaboration with the Pakistani occupation army and its armed wing Al-Badar Bahini toughened to combat the pro-liberation Bengali civilians, ‘miscreants’ [freedom fighters and their local adherents].

123. Accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali allegedly belonged to Jamalpur Peace Committee and in exercise

of their dominant position on it used to maintain nexus with the Pakistani occupation army stationed there and the Al-Badar Bahini formed by providing substantial contribution to the commission of unlawful acts directing the civilian population.

124. In reply to submission made by the learned defence counsel Ms. Tureen Afroz, the learned prosecutor submitted that the Act of 1973 does not require the prosecution to prove a particular fact only by documentary evidence --- it may be well proved even by the oral evidence of competent and reliable witnesses. We do agree with this submission. Due to lapse of long passage of time and for various obvious reasons documentary evidence relating to the atrocities committed and complicity of persons therewith may not be available as the same could not be preserved. In this regard we recall the observation made by the Appellate Division of the Supreme Court of Bangladesh in the case of *Muhammad Kamaruzzaman* which reads as –

"Evidence collection and interpretation in atrocity cases is also complicated by the instability of post-atrocity environments, which results in much evidence being lost or inadequately preserved. The investigation officers and the prosecutors have to trawl through decades-old records, track and verify witnesses."

[Criminal Appeal No.62 of 2013; Muhammad Kamaruzzaman; Judgment 3rd November, 2014, Page 173]

125. Therefore, let us have a look what the witnesses testified in respect of status, position in and affiliation of accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali with the Peace Committee.

126. P.W.01 Azizur Rahman alias Dol was a student of Class V of Singhajani Bohumukhi High School in 1971 and had been staying in Jamalpur town. He stated that S.M. Yusuf Ali [accused] was the Head Master of his school when he [P.W.01] used to study there and he [SM Yusuf Ali] was affiliated with the politics of Jamaat-e-Islami [JEI] and contested in general election in 1971 and was elected uncontested.

127. The above depicts that accused S.M Yusuf Ali was a leader of JEI of local prominence and he was one of the persons occupying leading position of Peace Committee formed in Jamalpur. Accused Advocate Md. Shamsul Haque was also with the Peace Committee formed and presumably by his act and conduct he was known as 'Badar Bhai' in Jamalpur in 1971.

128. P.W.01 also stated that JEI leaders formed Jamalpur Peace Committee and Al-Badar Bahini was formed of Islami Chhatra Sangha's [ICS] local members. Accused S.M.Yusuf Ali was the leader of Peace Committee and accused Advocate Md. Shamsul Haque was also with that Peace Committee and he was known as 'Badar Bhai' in Jamalpur.

129. The above depicts too that accused S.M. Yusuf Ali also contributed in creating the Al-Badar Bahini in Jamalpur and he did it by virtue of his leading position in the Peace Committee already formed.

130. P.W.08 Md. Shahidur Rahman Bhuiyan was a teacher of Sorishabari Degree College in 1971. After the entrance in Jamalpur town on 22 April 1971 the Pakistani occupation army got them stationed at the local WAPDA colony and PTI and later on he knew that at the end of April Peace Committee was formed and S.M. Yusuf Hossain [accused S.M. Yusuf Ali], Vice-Principal Abdul Aziz, Professor Abdul Gani, Moktob Hossain alias Moktob Kabiraj, Advocate Shamsul Haque [accused] were the members of the said Peace Committee.

131. The evidence tendered also demonstrates that the Peace Committee was formed almost instantly after the Pakistani occupation army entered Jamalpur town on 22 April 1971 and accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque along with others got themselves engaged in the said Peace Committee. It also divulges that these two accused persons were with the Pakistani occupation army since the inception of their entry in Jamalpur town.

132. P.W.13 Alhaj Ayesha Rahman, the wife of victim Saidur Rahman alias Sadu Chairman [charge no.02] stated that subsequent

to forcible capture of her husband she came to her husband's house in Jamalpur town and disclosed the event to her mother-in-law who then moved to accused S.M. Yusuf Ali Master [accused], Gani Professor, Moktob Kabiraj, Shamsul Advocate [accused], the leaders of local Peace Committee and requested them to get her [P.W.13] husband's release. But they did not pay heed to it. This matter may be well adjudicated while adjudicating the relevant charge. However, now it gives a mere indication as to accused persons' position.

133. P.W.14 Ambia Khanam, the younger sister of Saidur Rahman alias Sadu Chairman [a survived victim of charge no.02] consistently corroborates what has been testified by P.W.13 about making approach to the accused Advocate Md. Shamsul Haque, S.M. Yusuf Ali, Moktob Kabiraj, the leaders of local Peace Committee and some other persons expecting to get her [P.W.14] brother and sister's husband Saidur Rahman alias Sadu Chairman at large. But they [leaders of Peace Committee] did not respond.

134. Accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque were the mighty cogs in the Peace Committee formed as the relatives of detained victim [of charge no.02] approached them to secure release of their dear ones which was scrapped. Making alleged approach to them indicates patently that they were indeed mighty and persons in position of authority in carrying out

activities of Peace Committee and Al-Badar Bahini formed in Jamalpur. It gets assurance from what has been stated by P.W.16. He stated that Accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque were in steering position in offering the training. Indisputably they had a *de facto* authority and dominance also over the Al-Badar Bahini formed and its activities.

135. P.W.16 Md Mokhlesur Rahman, the brother of victim Saidur Rahman alias Sadu Charmin [charge no.02] stated that accused Yusuf Ali, Moktob Kabiraj, Gani Professor, Advocate Kajimuddin, accused Advocate Shamsul Haque were in steering position in offering the training and they were also members of the Peace Committee.

136. P.W.20 Md. Shafiqul Islam Khoka, a former lawmaker of Jamalpur-3 constituency stated that training of Al-Badar members was operated in Singhajani High School and Yusuf[accused], the then Head Master of that school was in charge of organising the training.

137. Accused S.M. Yusuf Ali, the then Head Master of Singhajani High School where in 1971 training of Al-Badar members was operated under his coordination. Surprisingly, despite being a teacher by profession he being imbued by the culpable plan and common purpose got himself engaged with the training

activities arranged for equipping the notorious Al-Badar Bahini. It proves his infamous mindset towards the pro-liberation civilians.

138. P.W.20 also stated that on intervention of accused S.M.Yusuf Ali and Advocate Md. Shamsul Haque, the members of Peace Committee detained Rejaul Karim and Imamur Rashid got released.

139. Releasing one detained civilian on intervention of accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque as stated by P.W.20 once again proved the might and position of authority of these two accused persons over the activities carried out not only by the Peace Committee but by the Al-Badar Bahini and the Pakistani occupation army stationed in Jamalpur.

140. At the same time when it is found that they allegedly scrapped appeal made on part of the relatives of detained Nurul Amin Mollik, the victim of charge no.03 it may be validly inferred that they were indeed persons in position of authority having power to give decision on the matter of releasing a detained civilian and also by omitting to give such decision encouraged and facilitated the commission of the principal crimes.

141. From the evidence of P.W.02 and P.W.04 it transpires that the relatives of the victim [of charge no.02] approached accused S.M. Yusuf Ali Master, Advocate Shamsul Haque, the leaders of local Peace Committee and others to secure release of detained

victim Nurul Amin Mollik[of charge no.03]. But they did not pay heed to it.

142. The above versions of the P.W.s remained unshaken and the same cumulatively depict that the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque were actively engaged in the Jamalpur Peace Committee and they were in its leading position by exercise of which they substantially contributed even to the setting up its camp and Al-Badar camp. It leads to the conclusion as well that they used to maintain close nexus and contact with the Al-Badar Bahini and the Pakistani occupation army stationed in Jamalpur and provided conscious assistance, endorsement and approval in carrying out atrocious activities.

143. In addition to the evidence as discussed above in respect of membership and position of these two accused persons we have got authoritative information which has been narrated in the book titled **ÔRvgvj cj tRjvi gvr³h³xi BZnmŌ**. In his book titled **ÔRvgvj cj tRjvi gvr³h³xi BZnmŌ** Rajab Bakshi narrates that --

"Rvgvj cj tRj vq icimwic, Rvgvqv†Z Bmj vg, tbRvgx Bmj vg, gvrj xg j xM KvBqg, gvrj xg j xM Kb†fbkb, Qv†mst†Ni tbZvKgx©I mg_R`†i †btq MmVZ nq GKU kvr³kvj x kvš-KvgU| tRjvi kvš-KvgU mfvicwZ I tm†µUvi x †Q†j b h_vµg BDmgl Avj x gv÷vi I gKZe KveivR| Bmj vgx Qv†mst†Ni tgvZmvi tnv†mb, Avkivd Avj x, Avājy gvbub, Avājy evi x, Kv†kg, n†mg Avj x I nvi " b cōly Kz`vZ e`i ewmbx b†tg cwi†PZ †Qj | Zviv killing squad Gi m`m" †Qj |

গজ-জ রক রজিব গুতম তক াক কগুতুি াবত াক তরজি, গনকগি,
 াব, BDািবকতব আি e`i iবRiKvi eবনব MবZ নq "

[Material Exhibit -III: the book াবগি ক্ তরজি
 গুতম াক BZনম0 Pages 90-91]

144. Considering the oral evidence cumulatively with the purpose of forming Peace Committee and the above authoritative information it is quite patent that by getting themselves involved with the local Peace Committee, these two accused persons were actively against the war of liberation in 1971 and started acting to frustrate the aspiration of Bengali nation by maintaining close and culpable association with the Pakistani occupation army and Al-Badar Bahini, one of the armed wings of its auxiliary force. And they used to do it being imbued by extreme antagonistic attitude towards the pro-liberation civilians in exercise of their leading position of the Peace Committee of Jamalpur intending to further common policy and plan of the Pakistani occupation army. Accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque are found to have had significant affiliation with the Peace Committee formed in 1971 in Jamalpur and they culpably sided with the Pakistani occupation army and Al-Badar Bahini formed in Jamalpur by virtue of their leading and dominant position in the Peace Committee.

XIX. Adjudication of Charges

Now let us move to adjudicate the charges. For the sake of convenience of discussion and decision we deem it appropriate to resolve charge no. 01 after determining the other four charges.

Adjudication Charge No. 02

[Abduction, confinement, torture, murder and other inhumane acts: Event No. 02 narrated in the formal charge]

145. Summary charge: That on 7 July, 1971 at about 10.00 P.M. Abdul Hamid Mokhter, a former MPA and a supporter and organizer of the liberation war, along with about 100/150 local people was listening to radio in the backyard of his house. At that time armed members of Al-Badar Bahini including accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3)Md. Abdul Mannan (4)Md. Abdul Bari, and (5)Harun along with a few Pakistani army men having surrounded the house of Abdul Hamid Mokhter captured and beat them recklessly and tied Abdul Hamid Mokhter and Shamsul Alam together with a rope, and their accomplice Al-Badar members being instigated by the accused shot Yad Ali Mondol to death on the spot whose dead body was buried in his house. Then the accused persons and their accomplices having gone to Rois Uddin Bhuiyan's house, next to said Abdul Hamid Mokhter's house, captured Professor Shahidur Rahman, an organizer and freedom-fighter, who escaped from the accused persons by diving in the pond, and then the accused

persons and their said accomplices captured and tied their domestic servant Mohir Sheikh alias Madhu and took him to Ismail Hossain's [former IGP] house in Fulbaria. Thereafter, the accused persons and their accomplices took said three captured persons to Amir Ali Khan's house situated at Bodra Bausi Ponchopeer and captured their son-in-law Saidur Rahman alias Sadu Chairman and his brother-in-law Abdul Hamid Khan alias Hiru. Then the accused persons and their accomplices took those five captured persons together to Hatiya Vatra Jaforshahi Railway Station and put them all in a train and from Jamalpur Railway Station the accused freed Shamsul Alam and Mohir Sheikh alias Madhu among them. Thereafter, the accused persons and their accomplices took rest three captured persons namely, Abdul Hamid Mokhter, Saidur Rahman alias Sadu Chairman and his brother-in-law Abdul Hamid Khan alias Hiru to Jamalpur P.T.I. camp and having confined tortured them there.

146. That in continuation of the event dated 7 July 1971 as mentioned above, on 14 July 1971 in the afternoon one Pakistani army man freed Abdul Hamid Mokhter from the aforesaid P.T.I camp and then he took shelter in the house of late Hozrat Ali Muhuri's house situated at Amlapara, Jamalpur. Before Asre prayer, the accused persons along with others again captured Abdul Hamid Mokhter from that house and thereafter he was never found.

147. That in continuation of the above mentioned two events dated 7 July and 14 July 1971, on 22 July 1971 after midnight the accused persons and their accomplice Al-Badar men having tied Saidur Rahman alias Sadu Chairman and his brother-in-law Abdul Hamid Khan alias Hiru with other 16/17 people took them from the P.T.I. camp to Jamalpur Sashanghat and put them in a queue in the river side of the Sashanghat. Among them Saidur Rahman alias Sadu Chairman saved his life having dived in the river and fled to India. Thereafter, the accused persons and their accomplice Al-Badar men killed said Abdul Hamid Khan alias Hiru along with other 16/17 people and left their dead bodies in the river.

148. Thereby, accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari, and (5) Harun are charged for participating, aiding, abetting, facilitating, conspiracy and complicity in the commission of offences of abduction, confinement, torture, murder and other inhumane acts as crimes against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Presented

149. To prove charge no. 02, the prosecution has examined as many as 11 [eleven] live witnesses [P.Ws. 08, 09, 10, 11, 12, 13, 14, 15, 16, 20 and 21]. Before we enter the task of evaluation of evidence adduced, let us first see what the witnesses examined have narrated in the Tribunal.

150. P.W.08 Md. Shahidur Rahman Bhuiyan [69] is a direct witness to the event of attack launched on 07 July 1971 at his village Dhopadaha under Police Station Sorishabari of the then Jamalpur Sub-Division [now district]. He is a retired Deputy Inspector General [DIG], Bangladesh Police. In 1971 he was a teacher of Sorishabari Degree College. In addition to the event of attack occurred on 07 July 1971 P.W.08 stated some facts related thereto.

151. P.W.08 stated that after 25 March 1971 he started encouraging the local students and youth to join the liberation war. Possibly on 22 April 1971 the Pakistani occupation army entered Jamalpur town and got them stationed at local WAPDA colony and PTI and with this he went into hid at village Dhopadaha and he knew that at the end of April Peace Committee was formed under the leadership of Kajimuddin in Jamalpur town and SM Yusuf Hossain [accused], Vice-Principal Abdul Aziz, Professor Abdul Gani, Moktob Hossain alias Moktob Kabiraj, Advocate Shamsul Haque [accused] were the members of the said Peace Committee.

The offices of the Peace Committee were set up at 'Kalpataru Clinic' of Moktob Kabiraj and 'Sadhana Oushadhalya' adjacent to it. He also heard that Al-Badar Bahini formed in Jamalpur town collaborated with the Pakistani occupation army and received their training at Jamalpur Singhojani High School, P.W.08 added. He [P.W.08] knew that Al-Badar men used to torture the civilians bringing them on forcible capture and maintained affiliation with the Pakistani army.

152. P.W.08 in respect of the event of attack occurred at his village stated that on 07 July 1971 he had been at his native village home, Dhopadaha. At about 10:30 P.M. they were on the alert as they heard sound of gun firing possibly from the end of the house of Advocate Abdul Hamid. Within a short while they sensed that the Pakistani army and Al-Badar men besieged their house and with this he [P.W.08] attempted to go into hid inside the jute field and the ditch on the western part of their house by running out, but one Al-Badar man or an army man obstructed him by grabbing his wearing Panjabi and then he [P.W.08] jumped to the ditch and his wearing Panjabi got ragged. Then he took shelter beneath a tree half mile far from their house by crawling through the jute field and then he heard a gun firing. His younger brother Mujibur Rahman Bhuiyan also took shelter beneath the said tree and he[P.W.08] knew from him that the Al-Badar and army men forcibly took away

their aid Mohi alias Madhu, their neighbours Abdul Hamid Mokhter, Shamsul Alam and 4/5 others. He [P.W.08] knew further from his brother that Yad Ali alias Shukur, the son of Abdul Hamid Mokhter's brother was gunned down to death. They [P.W.08 and his brother] remained in hiding beneath the said tree till dawn and on the following day at about 12:00 P.M. he [P.W.08] became aware from the locals that former chairman of Jamalpur Municipality Sadu Chairman and his brother-in-law Abdul Hamid were also taken away on forcible capture from the house of Sadu Chairman's father-in-law on the night of the event of attack and all the captured people were taken away to Jamalpur town on that night.

153. P.W.08 also stated that he heard later on that amongst the detained persons Mohi alias Madhu and Shamsul Alam however got released and detained Hamid Mokhter and Abdul Hamid were killed. Detained Sadu Chairman was taken to crematorium to cause his death but he however luckily escaped, P.W.08 added.

154. P.W.08 finally stated that after the event he narrated he decided to join the war of liberation and then went to Mahendraganj, India and joined as a freedom-fighter under Sector No. 11 and possibly 2/4 days before the independence was achieved he came back to his native home in Sorishabari.

155. In cross-examination, defence did not dispute the event of attack that resulted in forcible capture of the persons from their houses in the night of 07 July 1971 possibly for the reason that P.W.08 did not state anything implicating any of the accused persons with the event of attack. However, defence simply put suggestion to P.W.08 that accused Advocate Md. Shamsul Haque and SM Yusuf Ali were not the leaders of Jamalpur Peace Committee and accused Ashraf, Mannan, Bari did not belong to Al-Badar Bahini. P.W.08 denied it.

156. P.W.09 Mohir Sheikh alias Madhu [70], a survived victim of the event of 07 July 1971, is a resident of village Maisha Bhaduria under Sorishabari Police Station of the then Jamalpur Sub-Division. He is an illiterate man. He stated that during the war of liberation in 1971 he used to serve as a domestic aid in the house of DIG Md. Shahidur Rahman Bhuiyan [P.W.08]. In one night suddenly he heard sound of gun firing while he was listening to radio and then moved towards one side of the house when someone told him not to move as the Pakistani army came to the house of Mokhter[Abdul Hamid Mokhter]. He then attempted to flee by running but the Pakistani army caught him hold and brought on the road at the southern part of DIG's [P.W.08] house where he found Hamid Mokhter and Shahid detained in tied up condition. On order of Pakistani army he [P.W. 09] was also tied up by the Al-Badar

men who banged him severely. He [P.W.09] however could not recognise who assaulted him. Afterwards, he was first taken to Bhatara via Phulpur and then to Jamalpur by vehicle. One Pakistani Major on checking a note book spared him [P.W.09] and detained Dudu [P.W.11] and they [army] started moving forward along with detained Mokhter [Abdul Hamid Mokhter] saying – "we will shoot you if you try to see Mokhter, go back home." Then he [P.W.09] along with Dudu returned back home.

157. Defence declined to cross-examine P.W.09, presumably for the reason that he did not testify anything implicating any of the accused persons with the facts related to the attack. Thus the facts related to the act of forcible capture of Abdul Hamid Mokhter and others by launching attack in the night remained undisputed.

158. P.W.10 Md. Fazlul Haque [72] is a resident of crime village Maisha Bhaduria. In 1971 he was 27/28 years old when he was a jute trader. He passed HSC examination from Ashek Mahmud College, Jamalpur. He appeared in B.Com examination but could not succeed. In 1971 he had been at his native home.

159. P.W.10 stated that Hamid Mokhter was his grand-father by relation who along with family inmates and his [P.W.10] uncles including Yad Ali Mondol used to reside at their house during the war of liberation in 1971. His [P.W.10] grand father Abdul Hamid was a Mokhter by profession and was a member of Provincial

Assembly [1962-1965] and was the deputy leader of opposition as well.

160. In respect of the event of attack narrated in this charge P.W.10 is a direct witness to facts related to the attack launched. He testified that on 07 July 1971 at about 10:00 P.M. 70/80 people were listening to radio at the courtyard of Hamid Mokhter's house and he [P.W.10] was listening to BBC news remaining inside a room at the western side of the courtyard. At this stage, at about 10:30 P.M. a group of Al-Badar Bahini and Pakistani army besieged them. It was moonlit night and thus he could recognise Ashraf, Mannan, Bari, Harun, Khalek and Natur, the Al-Badar members through the opened door of the room where he was lying. He then went towards a bush at the south by coming out of their house when they were coming to his room and remained in hiding inside a jute field one mile far from his house.

161. P.W.10 went on to state that the Pakistani army men and Al-Badar men tied up 70/80 people present at the courtyard when he [P.W.10] had been at his house. He returned back four hours after and found the bullet hit dead body of his uncle Yad Ali Mondol lying and also heard that the Pakistani army and Al-Badar members forcibly took away his [P.W.10] younger brother Shamsul Alam and Hamid Mokhter. Pakistani army and Al-Badar members after tying up Hamid Mokhter and Shamsul Alam on forcible capture

first moved to the house of DIG Md. Shahidur Rahman Bhuiyan [P.W.08] to cause his capture but they did not get him available and then they took away his domestic aid Mohir [P.W.09]. Therefrom they [the perpetrators] along with the detained persons moved towards the houses of IG Ismail Hossain at Fulbaria and then to the house of Amir Khan at Bausi Panchopeer wherefrom they detained and abducted his [Amir Khan] son-in-law Saidur Rahman and brother-in-law Abdul Hamid and went to Jamalpur by train from Bhatara station along with the detainees. Mohir alias Madhu [P.W.09], his [P.W.10] brother Shamsul Alam returned back home on foot as they were released by the army and Al-Badar men.

162. P.W.10 further stated that on 14 July 1971 detained Hamid Mokhter was set at liberty from PTI camp wherefrom Hamid Mokhter went to his [P.W.10] uncle Hajrat Ali's house at Amlapara. But on the same day after *Asar* prayer, Ashraf, Sharif, Bari and others again took away Hamid Mokhter therefrom forcibly to the PTI camp where he was subjected to torture. Afterwards, detained Hamid Mokhter was taken to Jamalpur crematorium where he was gunned down to death. Co-detainee Saidur Rahman later on informed him [P.W.10] that Pakistani army had killed Hamid Mokhter at the said crematorium, P.W.10 added.

163. In respect of reason of knowing some of accused persons, P.W.10 stated that accused Ashraf, Mannan and Harun were

affiliated with Islami Chhatra Sangha [ICS] since 1964. He [P.W.10] used to reside at the house of Hamid Mokhter on lodging. Those accused persons used to move through the road in front of Hamid Mokhter's house and accused Ashraf's house was adjacent to that of Hamid Mokhter. He knew these accused persons as they were associated with Islami Chhatra Sangha [ICS] when he [P.W.10] was a student of Ashek Mahmud College.

164. In cross-examination, P.W.10 expressed ignorance as to since which year accused Ashraf, Mannan, Bari and Harun were the students of Ashek Mahmud College and he [P.W.10] heard that they were associated with ICS. Defence put suggestion to P.W.10 that the accused persons were not involved with the event he testified and what he testified implicating the accused persons was untrue and tutored. P.W.10 denied it. However, defence does not appear to have disputed the event of attack that resulted in abduction of civilians, keeping them in captivity at PTI camp and killing the detainee Abdul Hamid Mokhter as has been testified by P.W.10.

165. P.W.11 Shamsul Alam Dudu [63] is a resident of village Maisha Bhaduria under Police Station Sorishabari of the then Jamalpur Sub-Division. In 1971 he was 19 years old and a student of Ashek Mahmud College, Jamalpur. He is a direct witness to some pertinent facts relevant to the attack launched on 07 July 1971

at their village that resulted in forcible picking up civilians including him and killing his grand father Hamid Mokhter, Yad Ali Mondol and Abdul Hamid of village Bausi Ponchopeer.

166. P.W.11 stated that in 1971 he used to stay at his native home along with his elder brother Fazlul Haque[P.W.10], brother's wife Lutfunnesa, uncle Yad Ali Mondol and Ashraf Hossain. His grand-father by relation Hamid Mokhter who was a Mokhter [legal practitioner] by profession also used to reside at his house adjacent to that of theirs [P.W.11]. His [P.W.11] grand-father Hamid Mokhter was a Member of Provincial Assembly and deputy leader of opposition as well. In 1971 he [Hamid Mokhter] was an organiser of the war of liberation.

167. Corroborating the P.W.09 and P.W.10 in respect of the event of attack, P.W.11 testified that on 07 July 1971 at about 10:00 P.M. his grand-father Hamid Mokhter and 70/80 persons were listening to news in radio sitting at the courtyard while he [P.W.11] and his elder brother Fazlul Haque [P.W.10] too were listening to news in another radio remaining inside a room at the northern side of the courtyard. The door of the room remained opened. He [P.W.11], suddenly on hearing sound of a gun firing, moved near the door. It was moonlit night and thus he could see the Pakistani army and Al-Badar men started torturing the people present at the courtyard, besieging them. One Al-Badar man caught him [P.W.11] hold,

forced to take seat with the people at the courtyard and started beating him. He [P.W.11] could recognise some of Al-Badar men who were Ashraf, Mannan, Bari, Khalek and Natu, P.W.11 added.

168. P.W.11 went on to narrate further that his grand-father Hamid Mokhter was tied up. Hamid Mokhter too could recognise some of Al-Badar men whom he [Hamid Mokhter] then told – ‘Ashraf, Mannan, Bari, Khalek and Natu --they are innocent people, do not beat them, the fault if any has been done by me’. Defying it the Al-Badar men moved towards east targeting the house of Rois Uddin Bhuiyan intending to cause forcible capture of his son Professor Shahidur Rahman[P.W.08] but on failure to get him detained they[Al-Badar men] got their domestic aid Mohi alias Madhu [P.W.09] captured and therefrom they along with them[P.W.09 , P.W.11 and detained Abdul Hamid Mokhter] went to the house of the former IGP Islamil Hossain at Fulbaria where they could not get anybody to be detained and then they[Al-Badar men and army] moved towards the house of Amir Ali Khan at village Ponchopeer wherefrom they forcibly detained Saidur Rahman alias Sadu Chairman and Abdul Hamid, the son-in-law and son respectively of Amir Ali Khan and therefrom they, the five detainees, were taken to Bhatara Jafarshahi rail station and then to Jamalpur town by train. The Al-Badar men however released him [P.W.11] and Madhu [P.W.09]. One week subsequent to it,

he[P.W.11] heard that detained Abdul Hamid Mokhter, Saidur Rahman alias Sadu Chairman and Abdul Hamid were taken to PTI camp [in Jamalpur town], P.W.11 added.

169. In respect of the upshot of the event of attack that resulted in killing Abdul Hamid Mokhter, P.W.11 is a hearsay witness. He stated that on 14 July 1971 an elderly Subedar [non commissioned officer] of Pakistani army allowed Abdul Hamid Mokhter to walk free and then he came to the house of Hajrat Ali Muhuri [now dead] at Amlapara [in Jamalpur town] who happened to be his [P.W.11] uncle. But on the same day, before *Asar* prayer the Al-Badar men Ashraf, Mannan, Sharif, Bari and others had picked up Abdul Hamid Mokhter again and since then he could not have been traced. P.W.11 stated that he heard from Hajrat Ali Muhuri's wife how he [Abdul Hamid Mokhter] was subjected to torture at the PTI camp and the act of forcibly taking away Abdul Hamid Mokhter again from their house[at Amlapara].

170. P.W.11 also stated that on getting released he and Madhu[P.W.09] returned back home on foot through the rail line and found the bullet hit dead body of his uncle Yad Ali Mondol lying on the ground. In conjunction with the attack happened on 07 July 1971 their house was looted and destructed too, P.W.11 added.

171. In respect of the fate of two other detainees – Saidur Rahman alias Sadu Chairman and his brother-in-law Abdul Hamid, P.W.11

is a hearsay witness. P.W.11 stated that during the war of liberation he came to know that detained Saidur Rahman alias Sadu Chairman survived and after independence he learnt from him [Saidur Rahman alias Sadu Chairman] that the Al-Badar men dragged 15/16 detainees including him and his brother-in-law [Abdul Hamid] at the crematorium where they were shot to death excepting Sadu Chairman as he could survive by jumping to the river and the dead bodies of persons gunned down to death were hurled to the river.

172. In cross-examination done on behalf of accused Ashraf, Mannan, Sharif and Bari, P.W.11 stated that in 1971 Shahidur Rahman [P.W.08] was a professor. Accused Ashraf was the president of Islami Chhatra Sangha [ICS] of Ashek Mahmud College Unit, so far he could recollect, P.W.11 stated. In reply to question put to him P.W.11 stated that excepting he and his grandfather [Abdul Hamid Mokhter] none of 70/80 people present at their courtyard was tied up by the Al-Badar and Pakistani army men [at the time of besieging them]. On question made on part of the defence about the identity of accused persons, P.W.11 stated that accused Ashraf, Mannan and Bari were his senior students in Ashek Mahmud College. P.W.11 also stated in reply to question put by the Tribunal that he [P.W.11] saw accused Ashraf, Mannan and Bari holding meeting in Ashek Mahmud College in 1970/71.

173. Defence put suggestion to P.W.11 that he did not know these accused persons, that they were not involved with the event he testified in any manner, that his grand-father Hamid Mokhter could not recognise these accused persons and what he testified implicating these accused persons was untrue and tutored. P.W.11 obviously denied it. Excepting denying complicity of these accused persons with the event of attack defence does not appear to have disputed the event that resulted in abduction of civilians, keeping them in captivity and killing of Abdul Hamid Mokhter and Abdul Hamid Khan, by cross-examining the P.W.11.

174. P.W.12 Md. Asadullah alias Shona Miah [60] is a resident of village Maisha Bhaduria under Police Station Sorishabari of the then Jamalpur Sub-Division. In 1971 he was 15 years old and a student of class VII in Bhatara High School. He is the son of martyr Yad Ali Mondol who was killed in his house at the initial phase of the attack carried out on 07 July 1971 when he used to stay with his parents and inmates. He testified some facts relevant to the attack, as a direct witness.

175. Before narrating what he observed in respect of the attack launched P.W.12 stated that in 1971 during the war of liberation his father Yad Ali Mondol and grand-father Abdul Hamid Mokhter were killed. In 1971 his grand-father Abdul Hamid Mokhter was an independent member of Provincial Assembly since 1962 to 1965

and was the deputy leader of opposition too. He [Abdul Hamid Mokhter] was an organiser of the war of the liberation and in the month of July 1971 he came to his native home and since then their neighbours used to come to their house every night to listen to the news broadcast by 'Swadhin Bangla Betar Kendra'.

176. P.W.12 went on to state that on 07 July 1971 at about 10:00 P.M. about 70/80 persons were listening to news in radio assembling at their courtyard. He [P.W.12] had been at his father's room. At that time a group of 4/5 Pakistani army men, Al-Badar members and Razakars besieged their house and started torturing the persons present at the courtyard when his[P.W.12] grand-father Abdul Hamid Mokhter told the Pakistani army men, Al-Badar members and Razakars – "they are innocent labour class people, they don't have any fault, it is me who has done fault, if any". At this stage he [P.W.12] heard sound of gun firing from outside. With this he [P.W.12] and his mother attempted to go to neighbouring house but on their way Al-Badar members and Razakars having apprehended him brought at their courtyard when he saw his father's bullet hit dead body lying at a junction of their house. Half an hour after, he [P.W.12] was forced by the Pakistani army men to go outside of the house and half an hour later, returning home he could not find his grand-father Abdul Hamid Mokhter and cousin

brother Shamsul Alam [P.W.11]. Later on, he knew that they were taken away to Jamalpur town.

177. P.W.12 further stated that in the early morning of 08 July 1971 his cousin brother Shamsul Alam [P.W.11] came back home. But his grand-father Abdul Hamid Mokhter did not return back and they knew that he was subjected to torture at PTI camp and he knew it in detail after Shamsul Alam[P.W.11] came back home.

178. In respect of the fate of detained Abdul Hamid Mokhter P.W.12 testified that on 14 July 1971 at about 11:00 A.M. an elderly Subedar of Pakistani army facilitated the release of his [P.W.12] grand-father Abdul Hamid Mokhter and thus he readily took shelter at the house of his [P.W.12] uncle Hajrat Ali Muhuri at Amlapara in Jamalpur town. But immediate before *Asar* prayer on the same day, Al-Badar commander Ashraf, Al-Badar men Sharif, Mannan, Bari and their cohorts once again took away Abdul Hamid Mokhter therefrom on forcible capture and since then he could not have been traced. Later on, they came to know that 16/17 detainees including Abdul Hamid Mokhter were shot to death by the Al-Badar men and Razakars, bringing them at the crematorium on the bank of river Brahmaputra.

179. P.W.12 has been cross-examined only on behalf of accused Md. Ashraf Hossain, Sharif Ahmed, Abdul Mannan and Abdul Bari. In cross-examination, P.W.12 stated that he went to their

house [at a stage of launching attack] as he was spared by the Pakistani army and in the night of the event his grand-mother was also with his grand-father Abdul Hamid Mokhter. This version made in reply to question put to P.W.12 by the defence rather affirms the event of launching attack at their [P.W.12] house as has been testified. P.W.12 admits that he did not see the event of forcible capture of his grand-father Abdul Hamid Mokhter from the house of Hajrat Ali and the act of killing him and others at the crematorium but he heard it. Defence put suggestion to P.W.12 that accused Ashraf was not the commander of Al-Badar Bahini, that the accused persons were not involved with the event of abducting Abdul Hamid Mokhter and that what he testified implicating these accused persons was untrue and tutored. P.W.12 denied it. It transpires that defence did not suggest P.W.12 that accused Sharif, Mannan and Bari did not belong to Al-Badar Bahini.

180. P.W.13 Alhaj Ayesha Rahman [72] is the wife of victim Saidur Rahman alias Sadu Chairman who was abducted along with other detainees by launching attack on 07 July 1971. She [P.W.13] as a direct witness narrated facts relevant to the attack carried out that resulted in forcible capture of her husband and younger brother Abdul Hamid from their house. She stated that she got married to Saidur Rahman [now dead] in 1957 and she passed SSC examination in 1972 from Jamalpur Girls High School. Her

husband was Vice Chairman of Jamalpur Municipality before the war of liberation ensued. After the Pakistani army occupied Jamalpur town she and her younger sister had gone to her parental home at village Bausi Modhyapara.

181. P.W.13, as regards the event under adjudication, stated that on 07 July 1971 at about 12:00 A.M. Pakistani army accompanied by accused Ashraf Hossain, Abdul Bari, Anju, Abdul Mannan, Khalek and others besieging their house forcibly captured her husband Saidur Rahman and her younger brother Abdul Hamid Khan and took them away. She [P.W.13] could know the names of these accused persons accompanying the Pakistani army from the conversation made amongst them. The Pakistani army men and their cohorts the accused persons looted their house as well and they took away her detained husband and brother to the PTI camp in Jamalpur town where they were subjected to severe cruelty. After her husband and brother were taken away on such forcible capture, she came to her husband's house in Jamalpur town and disclosed the event to her mother-in-law who then moved to accused Yusuf Ali Master, Gani Professor, Moktob Kabiraj, Shamsul Advocate, the leaders of local Peace Committee and requested them to get her[P.W.13] husband's release. But they did not pay heed to it.

182. P.W.13 next stated that her husband and brother were kept in captivity at PTI camp and on 22 July 1971, 17/18 detainees including her husband and brother were taken to Jamalpur crematorium where the Pakistani army and Al-Badar men fired on them by gun which caused their death excepting her husband who somehow survived by jumping to the river. Her husband took shelter at the house of his maternal uncle by relation at village Baghaldichar, 10 miles away. Afterwards, they got this information from her husband's said uncle and her husband went to India therefrom and returned back home after the independence achieved.

183. P.W.13 stated that she heard the fact of killing detainees at the crematorium and survival of her husband from the people. Her husband on returning back home after the independence described them the event she [P.W.13] testified. Her husband died on 04 April 2014, P.W.13 added.

184. On cross-examination done on behalf of accused Advocate Shamsul Haque and SM Yusuf Ali, P.W.13 stated that she did not have occasion of meeting her husband in between the event occurred on 07 July 1971 and the independence achieved. P.W.13 denied the suggestion put to her that these two accused persons did not belong to Peace Committee and her [P.W.13] mother-in-law did not move to them with a request for release of her husband and that what she testified in this regard was untrue.

185. In cross-examination done on part of accused Ashraf Hossain, Abdul Mannan and Abdul Bari P.W.13 has been simply suggested that what she testified implicating these accused persons with the criminal acts was untrue and tutored. P.W. 13 denied it. Defence does not appear to have made any effective effort intending to refute what the P.W.13 testified in respect of abducting her husband and brother and complicity of these accused persons therewith, by cross-examining her.

186. P.W.14 Ambia Khanam [58] is the younger sister of Saidur Rahman alias Sadu Chairman's [a survived victim] wife Alhaj Ayesha Rahman [P.W.13]. In 1971 she studied in class IX in Jamalpur Government Girls' High School and used to reside at her sister's house at Dewan Para in Jamalpur town. She is a direct witness to the act of forcibly taking away her brother and sister's husband Saidur Rahman alias Sadu Chairman along with three other detainees from her paternal home.

187. P.W.14 stated that she along with her elder sister, sister's husband Saidur Rahman who was the Vice Chairman of Jamalpur Municipality had to go to their paternal home at village Bausi Ponchopeer as the Pakistani army occupied Jamalpur town on 22 April 1971. Her[P.W.14] brother Hamid Khan came back home from India on 06 July 1971 and then on 07 July 1971 at about 12:00 A.M. a group formed of Pakistani army and Al-Badar men

besieging their house apprehended her brother Abdul Hamid Khan and sister's husband Saidur Rahman and tied them up. She [P.W.14] herself saw it as at that time she had been in the house. Her sister's husband could recognise some of attackers who were accused Md. Ashraf Hossain, accused Md. Abdul Bari, accused Abdul Mannan, Anju, accused Harun, Soleman and her sister's husband Saidur Rahman requested them[Al-Badar men] calling by their names to let off them[Saidur Rahman and brother of P.W.14] . Some Al-Badar men also brought Hamid Mokhter, Shamsu [P.W.11], Madhu [P.W.09] of their neighbouring village Maisha Bhaduria with them to their house on forcible capture. Then the Al-Badar men along with all the detained persons including her brother and sister's husband Saidur Rahman tying them up moved towards Jafar Shahi rail station on foot and therefrom they took away them to PTI camp in Jamalpur town by train. Of five detainees Shamsu[P.W.11] and Madhu[P.W.09] on getting release came back home and informed them that the Al-Badar men took away the other three detainees to PTI camp in Jamalpur with continuous cruelties.

188. P.W.14 further stated that on the following morning [08.07.1971] her mother Hajera Begum and elder sister Ayesha Rahman [P.W.13] went to her [Ayesha Rahman] father-in-law's house in Jamalpur town and then her elder sister and sister's

mother-in-law moved to accused Advocate Shamsul Haque, SM Yusuf Ali, Moktob Kabiraj, the leaders of local Peace Committee and some other persons expecting to get her [P.W.14] brother and sister's husband Saidur Rahman at large. But they [leaders of Peace Committee] did not respond.

189. P.W.14 next stated that later on, she heard from Saidur Rahman that on 22 July 1971 some 15/16 detainees including Saidur Rahman and her [P.W.14] brother were taken at the crematorium wherefrom Saidur Rahman managed to escape by jumping to the river by removing his hand cuff and after swimming some time he got a boat by which he arrived at his maternal uncle's house wherefrom he then went to India on 23 July 1971. She also heard that the detainees who were taken to the crematorium on 22 July 1971 were shot to death by the Al-Badar men excepting her sister's husband Saidur Rahman and the dead bodies of those detainees were thrown to the Brahmaputra river.

190. P.W.14 also stated that she heard from the locals of village Maisha Bhaduria that Hamid Mokhter of village Maisha Bhaduria got released seven days after his capture and then he took shelter at the house of Hajrat Ali Muhuri at Amlapara in Jamalpur town. But the Al-Badar men again had picked him up therefrom and gunned him down to death taking at the crematorium.

191. Finally, P.W.14 stated that after independence her sister's husband Saidur Rahman returned back home from India and described the events she testified and different TV channels took his interview on the event he[Saidur Rahman] experienced.

192. On cross-examination done on behalf of accused Advocate Md. Shamsul Haque and SM Yusuf Ali P.W.14 stated that she had been at her parental home since 07 July 1971 to 23 July 1971 along with her sisters, brother and parents, that their parental home was about 15/16 miles far from Jamalpur town and that the Al-Badar men and Pakistani army did not enter the room wherein she had been staying at the time of the event. P.W.14 denied the suggestion put to her that these two accused persons were not the members of Peace Committee and they were not involved with the event she testified in any manner and that what she testified about making appeal to these accused persons seeking release of her brother and sister's husband was untrue and tutored.

193. In cross-examination done on behalf of accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari and Harun P.W.14 in reply to question put to her stated that the group was formed of about one hundred Al-Badar men and Pakistani army men when it had launched attack their house on 07 July 1971. It rather affirms the fact of launching attack by the group formed of Pakistani army men accompanied by Al-Badar members. Defence however, as it

transpires, does not dispute the group of attackers formed of Pakistani army and Al-Badar men had the three other detainees with them who were forcibly captured from village Maisha Bhaduria when they had attacked the house of Saidur Rahman alias Sadu Chairman that resulted in abduction of Saidur Rahman alias Sadu Chairman and his wife's younger brother Hamid.

194. P.W.14 denied the suggestion put to her that these accused persons could not be recognised by Saidur Rahman, that they were not involved with the event she narrated, that released detainees Shamsu and Madhu did not describe the act of causing torture to the other three detainees while they were taking to Jamalpur PTI camp and that what she testified implicating the accused persons was untrue and tutored.

195. P.W.15 Md. Malek Newaz [58] is the son of martyr Abdul Hamid Mokhter who was a legal practitioner by profession and was an independent Member of Provincial Assembly and the deputy leader of opposition. In 1971 P.W.15 studied in class IX in Jamalpur High School and used to stay at their house in Jamalpur town, he stated.

196. Before narrating the attack under adjudication, P.W.15 testified why and when they had gone to their native home at village Maisha Bhaduria, from Jamalpur town. He stated that his father [Abdul Hamid Mokhter] asked them to go their native home

as the Pakistani army might have occupied Jamalpur town at any time and thus he along with his mother Majeda Khatun, sister Jahanara Begum [now dead] and her children had gone to their native village Maisha Bhaduria wherefrom he [P.W. 15] went to his sister Jahanara Begum's father-in-law's house at village Panchasi under Sorishabari Police Station. Well ahead the Pakistani army occupied Jamalpur town, his [P.W.15] father also came to their native home and started staying there.

197. P.W.15 is a hearsay witness about the event. In respect of the event of attack that resulted in abduction of his father and others, P.W.15 testified that in the night of 07 July 1971 his father and some villagers were listening to radio, gathering at their courtyard. At about 10:00 P.M. some Pakistani army men and Al-Badar members besieged their house and apprehended his father and brother's son Shamsul Alam [P.W.11] and started beating others and with this, his father [Abdul Hamid Mokhter] told them –‘why are you beating them’. At that time he [P.W.15] had been at the house of his sister's father-in-law's house at village Panchasi.

198. P.W.15 stated further that his father and detained Shamsul Alam could recognize Al-Badar men, namely accused Md. Ashraf Hossain, Professor Sharif Ahmed, Md. Abdul Mannan, and Md. Abdul Bari accompanying the group. He [P.W.15] heard it later on from Shamsul Alam [P.W.11] who also described that in

conjunction with the attack the Pakistani army men and Al-Badar members had gunned down his cousin brother Yad Ali Mondol to death. The Pakistani army men accompanied by the Al-Badar men then taking his detained father and Shamsul Alam with them moved to 'Bhuiyan Bari' of their village wherefrom they apprehended a domestic aid Madhu [P.W.09] as they failed to cause capture of Shahidur Rahman Bhuiyan [P.W.08]. Next, the group along with his[P.W.15] detained father, nephew Shamsul Alam [P.W.11] and Madhu[P.W.09] moved to village Bausi and finally they apprehended Sadu Chairman[Saidur Rahman] and his brother-in-law Hamid Khan from Saidur Raman's father-in-law's house at village Ponchopeer. In this way, the group of Pakistani army and Al-Badar men took away detained five persons including his[P.W.15] father Abdul Hamid Mokhter to Jamalpur by train wherefrom two detained persons Shamsul Alam[P.W.11] and Madhu[P.W.09] were set at liberty and thus they came back home. He [P.W.15] learnt the phases of the event he narrated from his nephew Shamsul Alam [P.W.11] and Asadullah, the son of victim Yad Ali Mondol.

199. About the fate of his detained father Abdul Hamid Mokhter, P.W.15 is a hearsay witness. P.W.15 stated that his father was kept in captivity at PTI camp in Jamalpur where he was subjected to torture by the Pakistani army and Al-Badar men. On 14 July 1971

one elderly Subedar of Pakistani army released his father considering his old age and then he [Abdul Hamid Mokhter] went to his[P.W.15] cousin brother Hajrat Ali Muhuri's house at Amlapara in Jamalpur town. But on the same day in the evening the Al-Badar men accused Md. Ashraf Hossain, Professor Sharif Ahmed, Abdul Mannan, Abdul Bari and others again took away his father therefrom on forcible capture and kept detained and afterwards in the night of the same day the Al-Badar men shot his father to death taking him at the crematorium and his body was thrown to the river. He [P.W.15] heard it from Hajrat Muhuri.

200. Later on, he [P.W.15] also heard from Sadu Chairman [one of the detained persons] that he [Sadu Chairman] and his brother-in-law Hamid Khan along with 15/16 other detainees were taken to the crematorium by the Al-Badar men where they fired them by gun when Sadu Chairman jumped to the river by removing the hand cuff which was slack and thus he could survive and the other detainees died due to gun shots.

201. In cross-examination done on behalf of accused Md. Ashraf Hossain, Professor Sharif Ahmed, Md. Abdul Mannan and Md. Abdul Bari, P.W.15 stated that his father Abdul Hamid Mokhter was known to many people of Jamalpur but his Muhuri [clerk] Hajrat was not known to many more people. P.W.15 however denied the suggestion put to him by the defence that he did not hear

from Shamsul Alam that these accused persons were with the group, that Shamsul Alam could not recognize these accused persons, that these accused persons had no complicity in taking away his father on abduction once again and that what he testified implicating these accused persons was untrue and tutored. It transpires that defence does not dispute the phases of the event in effecting forcible capture of five persons, killing Yad Ali Mondol, releasing two detainees, keeping the detained persons at PTI camp in Jamalpur and two of the detainees were killed.

202. P.W.16 Md Mokhlesur Rahman [67] is the brother of victim Saidur Rahman alias Sadu Charmin. In 1971 he was a student of HSC class in Tejgaon College, Dhaka and was the Assistant Organizing Secretary of Chhatra League of that college unit. On 13 March 1971 he went to their home in Jamalpur town. He stated that his elder brother Saidur Rahman alias Sadu Chairman was the Vice Chairman of Jamalpur Municipality in 1971.

203. P.W.16 then stated that he went to India to join the war of liberation on 25 April 1971 as the Pakistani army occupied Jamalpur town on 22 April 1971. The Pakistani army then set up Al- Badar camp and started providing them training. Accused Md. Ashraf Hossain, Professor Sharif Ahmed, Md. Abdul Mannan, Md. Abdul Bari and many others belonging to Al-Badar Bahini received

training there. Jamalpur Singhojani School field was used for providing training to them. Accused Yusuf Ali, Moktob Kabiraj, Gani Professor, Advocate Kajimuddin, accused Advocate Shamsul Haque were in steering position in offering the training and they were also members of Peace Committee. The members of Peace Committee in collaboration with the Pakistani army used to carry out the acts of torture and killing the innocent civilians of Jamalpur. Peace Committee formed in Jamalpur used to carry out its activities by occupying *Sadhana Oushadhalya* and other houses.

204. P.W.16 next stated that after the Pakistani army occupied Jamalpur town his brother Saidur Rahman alias Sadu Chairman along with his family and wife's sister Ambia Khanam [P.W. 14] got sheltered at the house of his father-in-law at village Ponchopeer under Sorishabari Police Station.

205. In respect of the event of taking away his brother Saidur Rahman alias Sadu Chairman, keeping him confined at PTI camp and his survival, P.W.16 is a hearsay witness. He heard it from his brother Saidur Rahman alias Sadu Chairman after independence.

206. P.W.16 stated that on 07 July 1971 at about 12:00 A.M. a group of Pakistani army accompanied by Al-Badar men besieged his brother's father-in-law's house at village Ponchopeer wherefrom they apprehended Saidur Rahman alias Sadu Chairman and his brother-in-law Abdul Hamid. Before the attack launched

the group also apprehended Abdul Hamid Mokhter, Shamsul Alam and one domestic aid from Bhuiyan Bari and had killed Yad Ali Mondol, brother's son of Abdul Hamid Mokhter. He [P.W.16] later on also heard from his brother Saidur Rahman alias Sadu Chairman that accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari, Anju and accused Harun were with the group of attackers and they first moved to Bausi rail station on foot along with five detained persons wherefrom they arrived in Jamalpur by train and therefrom two of the detainees, the domestic aid and one other got released and then the group took away the three other detained persons at the PTI camp in Jamalpur town. Few days later, one elderly Subedar of Pakistani army allowed Abdul Hamid Mokhter to go away considering his old age and thus he got sheltered readily at the house of one Muhuri [Assistant] at Amlapara in Jamalpur town. But on the same day, accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari, Professor Sharif Ahmed and Anju once again apprehended Abdul Hamid Mokhter therefrom and took him away at the crematorium where he was shot to death and his dead body was thrown to the river.

207. P.W.16 stated too that he heard from his mother Karimunnesa and brother's wife Ayesha Rahman [P.W.13] that they made approach to Moktob Kabiraj, Gani Professor, accused

Yusuf Ali and others seeking release of Saidur Rahman alias Sadu Chairman. But the attempt was in vain.

208. P.W.16 heard from his brother Saidur Rahman alias Sadu Chairman that on 22 July 1971 the Pakistani army and Al-Badar members had brought 16/17 detainees including his brother Saidur Rahman alias Sadu Chairman and his brother-in-law Abdul Hamid at the crematorium on the bank of river Brahmaputra where they fired them by gun when his brother Saidur Rahman alias Sadu Chairman jumped to the river by removing the hand cuff which was slack and thus he could survive and the other detainees died due to gun shots. Saidur Rahman alias Sadu Chairman then took shelter at the house of his maternal uncle at village Bagaldi Char and afterwards went to India and came back home after independence. Saidur Rahman alias Sadu Chairman died one year back, P.W.16 stated and before his death he described the event in TV talk implicating the accused persons.

209. On cross-examination by accused Advocate Shamsul Haque and SM Yusuf Ali P.W.16 stated that he had no occasion to meet his brother Saidur Rahman alias Sadu Chairman while he had been in India. He himself did not see what happened since 23 April 1971 in Jamalpur. P.W.16 denied the suggestion that these accused persons were not the members of Jamalpur Peace Committee, that

he did not learn what he testified and that what he testified was untrue and tutored.

210. In cross-examination done for the absconded five accused persons P.W.16 stated that he had been in India when the Al-Badar men were receiving training in Jamalpur town and he could not say how many Al-Badar members received training. P.W.16 denied the suggestion put to him by the defence that he deliberately suppressed the identity of the persons who really operated the Al-Badar camp set up at Degree Hostel of Ashek Mahmud College.

211. In reply to question put to him by the defence P.W.16 stated that his brother had been in captivity at PTI camp when Abdul Hamid Mokhter was killed and that the PTI camp was about six kilometres far from Amlapara. P.W.16 denied the suggestion put to him that these accused persons were not involved with the event he narrated as heard from others and that they did not belong to Al-Badar Bahini and that what he testified about the event was untrue and tutored.

212. P.W.20 Md. Shafiqul Islam Khoka [68], a former lawmaker of Jamalpur-3 constituency chiefly testified when the Pakistani occupation army entered Jamalpur town, how the Peace Committee and Al-Badar Bahini were formed, who were culpably affiliated with those organisations, the atrocious activities carried out by them around the locality of Jamalpur , operating torture

camps of Pakistani army and Al-Badar Bahini and the role and status of accused persons and their complicity and influence with those torture camps. In 1971 he [P.W.20] was 23/24 years old and joined the war of liberation as a freedom fighter.

213. P.W.20 stated that in Jamalpur Peace Committee was formed of about 50 members including Moktob Kabiraj, Vice-Principal Abdul Aziz, Principal Mozammel Haque, Professor Sharif, Professor Rabbani and Ashraf [accused] was the key man of Al-Badar Bahini formed and about 70/80 persons including Mannan, Bari, Hashem, Moyna, Mokhter, Hannan, Samad got them joined in the Al-Badar Bahini as its members. Training of Al-Badar members was operated in Singhajani High School and Yusuf, the then Head Master of this school was in charge of organising the training.

214. P.W.20 also stated that in 1971 the Pakistani army set up a torture camp at PTI [Primary Training Institute] in Jamalpur town while the Al-Badar torture camp was at Ashek Mahmud College's Degree Hostel. He [P.W.20] stated that the Pakistani army and Al-Badar men brutally tortured one Manjur of village Kalibari keeping in captivity at PTI torture camp for three days that resulted in his death. Numerous civilians including the then deputy leader of opposition [of Provincial Assembly] Advocate Abdul Hamid Mokhter, Professor Imamur Rashid, Saidur Rahman Sadu, Vice-Chairman of Jamalpur Municipality, Rejaul Karim Chowdhury,

Haider Chairman were subjected to inhuman cruelties at PTI torture camp keeping them confined there under guidance of Pakistani army men and accused Al-Badar Ashraf and his accomplice Al-Badar men, P.W.20 added.

215. P.W.20 further stated that the Pakistani army and Al-Badar men had gunned down Abdul Hamid Mokhter to death taking him at the crematorium and Saidur Rahman Sadu was also shot but he escaped by jumping to the river and survived, crossing the river by swimming. On intervention of SM Yusuf and Advocate Shamsul Haque, the members of Peace Committee detained Rejaul Karim and Imamur Rashid got released. Detained Haider Chairman was also set at liberty but later on he and his brother were abducted again from their house by a group of Al-Badar members led by accused Ashraf.

216. On cross-examination P.W.20 stated that accused Ashraf, Bari, Mannan and Hashem were students of Singhajani High School and then of Ashek Mahmud College, Jamalpur, that he[P.W.20] passed HSC examination from the said college in 1967.

217. P.W.20 further stated in cross-examination that he did not see accused Ashraf after independence as he fled away. He [P.W.20] came to Jamalpur town several occasions in between 22 April and 10 December, 1971 for carrying out operations. P.W.20 denied suggestion put to him by the defence that accused Ashraf,

Mannan, Bari, Hashem did not belong Al-Badar Bahini, that accused Ashraf was not the commander of Al-Badar Bahini, that they were not involved with any atrocious activities, that accused Advocate Md. Shamsul Haque and S.M.Yusuf Ali were not members of Peace Committee and that what he testified implicating the accused persons with the atrocious activities was untrue and tutored.

218. P.W.21 Md. Shahidur Rahman Khan [73] is a resident of Jamalpur town and his native home is at village Bhatara under Police Station Sorishabari of the then Jamalpur Sub-Division. In 1971 he had been serving as a teacher in Ashek Mahmud College, Jamalpur. Sujaet Ali [now dead] was the principal of the college at that time, P.W.21 added. He[P.W.21] principally testified what he experienced about the activities of the Pakistani occupation army after it entered Jamalpur town, formation of Peace Committee and Al-Badar Bahini and the persons affiliated to those organisations in 1971, during the war of liberation.

219. P.W.21 stated that on 22 April the Pakistani army entered Jamalpur town and the army officers used to stay in WAPDA rest house and the army men got them headquartered at PTI. After the entry of Pakistani army in Jamalpur town they all the teachers quitted the college [Ashek Mahmud College]. Afterwards, they resumed duties as teachers in that college pursuant to a government

circular dated 07 June 1971 and then he discovered a camp of Al-Badar Bahini formed of some students at the Degree Hostel of the college. Accused Md. Ashraf Hossain was the head of the camp and 50/60 Al-Badar men including accused Abdul Mannan, Abdul Bari, Abdul Khalek and others used to stay at that camp as members of Al-Badar Bahini. They were the students of Ashek Mahmud College. Accused Professor Sharif Ahmed used to visit the camp occasionally.

220. In respect of activities of Al-Badar men in 1971, P.W.21 stated that the Al-Badar men used to bring civilians on forcible capture from different localities at the Al-Badar torture camp at Degree Hostel of Ashek Mahmud College where they were subjected to torture and after killing them their bodies were left abandoned at graveyard where there has been a monumental column to remember those martyrs.

221. In cross-examination, P.W.21 stated that he did not see the students of the college after independence who were affiliated with the Al-Badar camp set up at Degree Hostel of the college.

222. P.W.21 denied the suggestion put to him, during cross-examination, that accused Ashraf Hossain, Abdul Mannan, Abdul Bari were not the members of Al-Badar camp set up at Degree Hostel and they were not involved with any of events he testified, that he did not see them in Jamalpur, that the accused SM Yusuf

Ali and Shamsul Haque were not the members of Jamalpur Peace Committee, that he did not see the accused Ashraf Hossain, Abdul Mannan, Abdul Bari, Sharif Ahmed in Jamalpur town even at time before the war of liberation ensued and that what he testified implicating the accused persons was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

223. Mr. Tapas Kanti Baul, the learned prosecutor submitted that this charge chiefly rested on testimony of P.W.08, P.W.09, P.W.10, P.W.11, P.W.12, P.W.13, P.W.14, P.W.15 and P.W.16. Of these nine witnesses P.W.09 and P.W.11 are victims who were eventually released by the group of perpetrators, and thus, they had occasion to see the act and conduct of the accused persons accompanying the group in accomplishing the act of forcible capture of three other civilians, namely Abdul Hamid Mokhter, Saidur Rahman alias Sadu Chairman and Abdul Hamid Khan alias Hiru. P.W.08 is also a direct witness to facts relevant to that attack launched at their house wherefrom their domestic aid P.W.09 Mohir Sheikh alias Madhu was taken away forcibly.

224. The learned prosecutor further argued that the act of abducting Saidur Rahman alias Sadu Chairman and Abdul Hamid Khan alias Hiru, in conjunction with the attack, happened within the sight of P.W.13 Alhaj Ayesha Rahman, the wife of victim Saidur Rahman alias Sadu Chairman and P.W.14 Ambia Khanam,

the sister of victim Abdul Hamid Khan alias Hiru. P.W.14 had been at the house wherefrom those two civilians were forcibly captured and taken away. And thus these two witnesses had fair opportunity to experience and see how the attackers accompanied by the accused persons took away their near ones and they knew the identity of the accused persons from the conversation made among them, in conjunction with the attack.

225. The learned prosecutor also submitted that defence does not dispute the event of attack that resulted in abduction, confinement, torture and murder of Abdul Hamid Mokhter and Abdul Hamid Khan alias Hiru. It remained uncontroverted too that at the initial phase of the attack launched at the native home of Abdul Hamid Mokhter the group of attackers had gunned down Yad Ali Mondol, a relative of Abdul Hamid Mokhter to death. All the three detainees were taken to Pakistani army camp at PTI in Jamalpur and few days later Abdul Hamid Mokhter was set at liberty by an elderly Subedar of Pakistani army considering his[victim] age and with this he readily took shelter at the house of Hajrat Ali Muhuri in Jamalpur town wherefrom on the same day in the evening a group of Al-Badar men accompanied by the accused persons including the accused Professor Sharif Ahamed alias Sharif Hossain again forcibly took away Abdul Hamid Mokhter and since then he could not have been traced.

226. Mr. Tapas Kanti Baul, the learned prosecutor also added that the event ended with the killing of Abdul Hamid Mokhter and Abdul Hamid Khan alias Hiru while another detainee Saidur Rahman alias Sadu Chairman managed to escape and his brother P.W.16 Md. Mokhlesur Rahman heard the event from him after independence. Defence could not impeach his [P.W.16] testimony. P.W.15 Md. Malek Newaz is the son of Abdul Hamid Mokhter. He [P.W.15] heard the event of second time abduction of his father by the group of Al-Badar men accompanied by the accused persons who have been indicted in this charge from Hajrat Ali Muhuri. It was quite natural. Defence could not bring anything by cross-examining him [P.W.15] that may prompt to exclude his evidence. Participation of accused Professor Sharif Ahamed alias Sharif Hossain, a close affiliate of Al-Badar Bahini in abducting Abdul Hamid Mokhter even after his release from the PTI army camp proves his nexus and concern with the entire event that started with the act of killing Yad Ali Mondol and forcible capture of five civilians from their native village, by launching a systematic attack. All the accused persons were part of joint criminal enterprise and thus they incurred equal liability for the crimes. Prosecution succeeded proving this charge beyond reasonable doubt.

227. Mr. Abdus Sobhan Tarafder, the learned counsel appointed by this Tribunal to defend the six absconded accused persons

submitted that the prosecution could not bring any evidence to substantiate the act of killing, although it tendered evidence to substantiate the act of abduction of civilians. Complicity and participation of accused Harun and Professor Sharif Ahamed alias Sharif Hossain could not be proved.

228. This charge involves a systematic attack by the group formed of accused persons, the members of local Al-Badar Bahini and Pakistani occupation army men that resulted in abduction, confinement, torture and killing of pro-liberation civilians of village Maisha Bhaduria and surrounding localities under Police Station Sorishabari of the then Jamalpur Sub-Division. The attack was allegedly launched at about 10:00 PM on 07 July 1971 and it was allegedly initiated first at the house of Abdul Hamid Mokhter, a former MPA and organiser of the war of liberation and the attack ended with abduction of P.W.09 Mohir Sheikh alias Madhu, Saidur Rahman alias Sadu Chairman and Abdul Hamid Khan alias Hiru from the neighbouring locality.

229. Accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahmed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari, and (5) Harun allegedly accompanied the group of attackers in carrying out the criminal mission to further common purpose.

230. Testimony of P.W.20 and P.W.21 provides assurance as to culpable affiliation of accused persons with the Al-Badar camps in

Jamalpur and criminal activities carried out by them bringing the civilians there on abduction. It is a fact relevant to status and attitude of the accused persons in 1971.

231. Prosecution contends that this charge rests upon testimony tendered by 12 witnesses examined. Of them P.W.09 Mohir Sheikh alias Madhu and P.W.11 Shamsul Alam Dudu were allegedly taken away on forcible capture along with three other detained persons and later on they were set at liberty, and thus, they testified what they experienced in relation to the attack, till their release. The other witnesses, namely P.W.13, P.W.14, P.W.15 and P.W.16 examined are relatives of victims and they are alleged to have had witnessed, experienced and heard the facts relevant to the attack that resulted in the commission of the crimes of abduction, confinement and murder.

232. The group of attackers, as transpires from the charge framed, in carrying out the attack first besieged the house of Abdul Hamid Mokhter, and as such, we consider it convenient to eye on the testimony of P.W.11 first as he at the relevant time used to reside at the house adjacent to that of his grandfather Abdul Hamid Mokhter.

233. In 1971 P.W.11 Shamsul Alam Dudu was 19 years old and a student of Ashek Mahmud College, Jamalpur. He is a direct witness to some pertinent facts relevant to the attack launched on 07 July 1971 at their village that resulted in forcible picking up civilians

including him [P.W.11] and killing his grand-father Abdul Hamid Mokhter, Yad Ali Mondol and Abdul Hamid Khan alias Hiru of village Bausi Ponchopeer. At the relevant time on the day of event he had been at his native home.

234. His[P.W.11] testimony demonstrates that on 07 July 1971 at about 10.00 P.M. his grand-father Abdul Hamid Mokhter and 70/80 persons were listening to news in radio sitting at the courtyard while he [P.W.11] and his elder brother Fazlul Haque [P.W.10] too were listening to news in another radio remaining inside a room at the northern side of the courtyard. The door of the room remained opened. He [P.W.11], suddenly on hearing sound of a gun firing, moved near the door. It was moonlit night and thus he could then see the Pakistani army and Al-Badar men started torturing the people present at the courtyard, besieging them. One Al-Badar man caught him [P.W.11] hold, forced to take seat with the people at the courtyard and started beating him. He [P.W.11] could recognize some of Al-Badar men who were Ashraf, Mannan, Bari, Khalek and Natu.

235. The above version relating to the attack and knowing the accused Al-Badar men Ashraf, Mannan and Bari have been re-affirmed in cross-examination as P.W.11 in reply to question put to him by the defence stated that excepting he and his grand-father [Abdul Hamid Mokhter] none of 70/80 people present at their

courtyard was tied up by the Al-Badar and Pakistani army men [at the time of besieging them]; accused Ashraf, Mannan and Bari were his[P.W.11] senior students in Ashek Mahmud College and he saw them holding meeting in Ashek Mahmud College in 1970/71. Thus, it stands proved that the attack was launched at the house of Abdul Hamid Mokhter at the relevant time and the accused Ashraf, Mannan and Bari were with the group, presumably intending to facilitate and contribute in accomplishing the crimes.

236. What the P.W.11 experienced next? It transpires from his testimony that detaining him[P.W.11] and Abdul Hamid Mokhter tying him up the accused Al-Badar men whom Abdul Hamid Mokhter also could recognize moved to the house of Rois Uddin Bhuiyan [the father of P.W.08] wherefrom the accused Al-Badar men and their accomplices captured Mohi alias Madhu [P.W.09], a domestic aid of Professor Shahidur Rahman[P.W.08] and then they moved to the house of former IGP Ismail Hossain at Fulbaria but getting none available there they moved the house of Amir Ali Khan at village Ponchopeer wherefrom they forcibly detained Saidur Rahman alias Sadu Chairman and Abdul Hamid, the son-in-law and son respectively of Amir Ali Khan.

237. The above version of P.W.11, a direct witness to the attack that resulted in forcible capture of Abdul Hamid Mokhter, Mohir Sheikh alias Madhu [P.W.09], Saidur Rahman alias Sadu Chairman

and Abdul Hamid Khan alias Hiru remained unimpeached. The criminal acts by the same group accompanied by the accused Al-Badar men were carried out, in conjunction with the attack, resulted in abduction of 05[five] civilians including the P.W.11 and P.W.09. It remained totally unshaken in cross-examination. Besides, defence does not appear to have disputed the event of attack that resulted in abduction of 05[five] civilians, as narrated by P.W.11 and P.W.09. It simply denies complicity of the accused persons with the event of attack.

238. In view of above, it stands proved that the attack was carried out successively at the house of Abdul Hamid Mokhter, house of Rois Uddin Bhuiyan, at house of former IGP Ismail Hossain at Fulbaria and finally at the house of Amir Ali Khan [father-in-law of Sadu Chairman]. In all 05[five] civilians including P.W.11 and P.W.09 were detained by carrying out such organised successive attack and it is quite patent that the pro-liberation civilians who sided with the war of liberation were the targets of the group formed of Al-Badar men and Pakistani occupation army.

239. P.W.11, one of the 05[five] detainees, stated that after taking them to Bhatara Jafar Shahi railway station the Al-Badar men however released him[P.W.11] and Madhu[P.W.09] and thus they returned back home and found bullet hit dead body of his[P.W.11] uncle Yad Ali Mondol lying on the ground. P.W.09 consistently

corroborates it. Hearing sound of a gun firing at the initial phase of the attack as stated by P.W.11 together with the fact of finding dead body of Yad Ali Mondol indisputably suggests the conclusion that the group accompanied by the accused Al-Badar men gunned down him to death. It could not be refuted by the defence. Thus, it transpires that P.W.11 had opportunity to see the attack that included the act of abduction of P.W.09 Madhu, Sadu Chairman and Abdul Hamid. In respect of some other facts relevant to the killing his grand-father Abdul Hamid Mokhter P.W.11 is a hearsay witness.

240. The fact of attack launched at the relevant time at the house of Rois Uddin Bhuiyan wherefrom on failing to apprehend Professor Shahidur Rahman [P.W.08], an organizer and freedom-fighter forcibly picking up the domestic aid Mohir Sheikh alias Madhu [P.W.09] has been corroborated by P.W.08 as he stated that the group of attackers actually intended to apprehend him but they could not as he managed to flee ignoring the resistance on part of Al-Badar men. Defence does not appear to have disputed the attack and forcible capture of P.W.09 from the house of P.W.08. It simply suggests that the accused persons were not with the group.

241. And he heard from his [P.W.08] younger brother Mujibur Rahman Bhuiyan when he also took shelter beneath the tree some half mile far from their house that the Al-Badar and army men

forcibly took away their aid Mohir Sheikh alias Madhu[P.W.09], their neighbours Abdul Hamid Mokhter, Shamsul Alam[P.W.11] and 4/5 others. He [P.W.08] knew further from his brother that Yad Ali alias Shukur, the son of Abdul Hamid Mokhter's brother was gunned down to death.

242. P.W.10 Md. Fazlul Haque is the brother of P.W.11, one of the victims. At the relevant time he had been at their native village. Victim Abdul Hamid Mokhter was his grand-father by relation. In respect of the attack he stated that at initial stage of the attack launched at about 10:30 P.M by a group of Al-Badar members and Pakistani army besieged them when he had been staying in his room keeping the door opened and he could recognize Ashraf, Mannan, Bari, Harun, Khalek and Natur, the Al-Badar members through the opened door as it was a moonlit night. P.W.10 then went towards south of their house and remained in hiding inside a jute field, one mile far from his house.

243. The above version of P.W.10 as well provides corroboration to the fact that the accused persons were with the group of perpetrators when it launched attack directing the house of his grand-father Abdul Hamid Mokhter, one of the victims. Defence could not refute it in any manner. He [P.W.10] passed HSC examination from Ashek Mahmud College, Jamalpur. The accused persons were affiliated with the politics of Islami Chhatra Sangha

[ICS] of the said college, and as such, it was quite practicable to recognize the accused persons as it was a moonlit night, as stated by P.W.10. Besides, version in this regard as well remained unimpeached.

244. We have already recorded our finding that the accused persons belonged to Al-Badar Bahini formed in Jamalpur and accused Md. Ashraf Hossain was in steering position of the Bahini, an ‘armed wing’ of Jamaat-e-Islami [JEI]. Additionally, testimony of P.W.16 and P.W.20 demonstrates that the accused persons had close and culpable affiliation with the Al-Badar torture camp set up at the Degree Hostel of Ashek Mahmud College, Jamalpur and the accused persons were the students of the said college and were associated with the Islami Chhatra Sangha, the student wing of Jamaat-e-Islami.

245. From the testimony of P.W.08, P.W.09 [victim] and P.W.11 [victim] it is transpired that after targeting the house of P.W.08 the group of Al-Badar men and their cohorts moved towards the house of former IGP Ismail Hossain but getting none available there they then moved to the house of Saidur Rahman alias Sadu Chairman wherefrom he and Abdul Hamid Khan alias Hiru were forcibly picked up and were taken away along with three other detainees including P.W.09 and P.W.11.

246. Defence does not dispute that out of 03[three] detained persons taken to PTI army camp in Jamalpur two were wiped out and Saidur Rahman alias Sadu Chairman survived as he jumped to the river when he along with other detainees were taken to the local crematorium to accomplish their killing by gunning down. Saidur Rahman alias Sadu Chairman is now dead.

247. In respect of abduction of Saidur Rahman alias Sadu Chairman and Abdul Hamid Khan alias Hiru in conjunction with the attack by the group formed of the accused persons and their cohort Al-Badar men and Pakistani occupation army, P.W.13 Alhaj Ayesha Rahman [wife of Sadu Chairman] and P.W.14 Ambia Khanam [younger sister of Sadu Charmin] consistently testified how the attackers had forcibly picked up the duo. Defence could not dislodge it. P.W.16 Md. Mokhlesur Rahman is the brother of victim Saidur Rahman alias Sadu Chairman. He heard the event and complicity of accused Ashraf, Harun, Mannan and Bari therewith from his brother Saidur Rahman alias Sadu Chairman [victim, now dead]. His hearsay evidence is sufficient as it is found to have been compatibly corroborated by the evidence of two direct witnesses, namely P.W.13 and P.W.14, and as such, his hearsay evidence carries probative value.

248. P.W.20 Md. Shafiqul Islam Khoka, a former law maker, did not specifically narrate the event. He however stated that a torture

camp of Pakistani army was set up at PTI [Primary Training Institute] in Jamalpur and Al-Badar men had affiliation with it. The version of P.W.20 that Al-Badar Bahini in Jamalpur was formed of 70/80 persons including accused Ashraf, Mannan, Bari and Sharif. It makes his [P.W.20] next version that detained Abdul Hamid Mokhter was subjected to torture at the PTI camp [army camp] under guidance of accused Ashraf, a key man of local Al-Badar Bahini, credible as the Al-Badar Bahini had acted intending to provide assistance, aid and guidance to the Pakistani occupation army to further policy and plan.

249. P.W.21 Md. Shahidur Rahman Khan is a resident of Jamalpur town and was a teacher of Ashek Mahmud Degree College, Jamalpur. He narrates the status of accused and their activities being associated with the Al-Badar camps. Accused Ashraf, Mannan, Bari, and Sharif had affiliation with the Al-Badar camp at Degree Hostel.

250. Accused Md. Ashraf Hossain was a potential and key member of Al-Badar Bahini formed in Jamalpur. It is now a settled history that formation of Al-Badar Bahini, an armed wing, existed on tacit endorsement of the Pakistani occupation army and it made this Bahini equipped and armed to collaborate with them to further policy and plan.

251. Referring to a report published in **The daily Sangram** dated 24 April 1971 a report titled **ওগুৱনত্‌ i KKৱZ©Mৱv AvfQ ^`vbK msMôgi cvZvq0** published in **The Daily Bhorer Kagoj** dated 31 October 2007 speaks as below:

" %vbK msMôgi 24 Guicj Zwi†Li msL'vq cKmkZ Leti Av†iv ejv nq, 22 Guicj (1971) Zwi†L gqgbwms†n RvgvZ I Bmjvqx Qv† mst†Ni (eZQvb Bmjvqx Qv†mkwei) tbZv I Kgx® i GK mfv nq| Zv†Z mfvvZZj K†ib gvxš AvKivd tnmvBb Ges mfvq Dcw~Z wQ†jb gwZDi ingvb vbRvgx I Avj x Avnmvb gRvn | GB mfvq e³Zv. w†Z wM†q Avj x Avnmvb gRvn` etj b, ÔAvj -e`i GKwU bvg, GKwU we`sq| Avj -e`i GKwU c†ZÁv| thLv†bB Z_vKw_Z gvxševnbx, tmLv†bB _vKte Avj -e`i | gvxševnbx Z_v fviZxq Pi† i Kv†Q Avj -e`i nte mvr†v AvRivBj "

[Cited in the case of Chief Prosecutor vs. Ali Ahsan Muhammad Mujahid (ICT-2-BD Case No. 04 of 2012), Judgment: 17 July 2013, Para-147]

252. The above report unerringly demonstrates that goals and activities of Jamaat-e-Islami [JEI], Islami Chhatra Sangha [ICS] and Al-Badar Bahini formed mainly of ICS workers were chained together. The above again proves it unambiguously that accused Md. Ashraf Hossain was in dominating position of Al-Badar Bahini formed in Jamalpur and it also reflects his [accused Md. Ashraf Hossain] approval to such inflammatory and inciting speech delivered in the said meeting presided by him [accused Md. Ashraf Hossain] when the pro-liberation people and freedom-fighters were categorically termed as the ‘agents of India’. The speech delivered in the said meeting presided over by accused Md. Ashraf Hossain also triggered the Al-Badar to act as ‘Azrail’ [The Angel of Death]

to liquidate pro-liberation Bangalee people and freedom-fighters wherever they [Al-Badar] get them.

253. Detained Abdul Hamid Khan alias Hiru could not have been traced since he was taken to PTI camp in Jamalpur on abduction. Presumably, the act of his abduction eventually resulted in his death at any time subsequent to keeping him confined at the camp and the accused persons who were culpably engaged in materializing his act of abduction are held responsible for his death as well as the act of forcible capture was indisputably chained to the act of his confinement and killing and the inference which we are forced to conclude is incompatible with the non-involvement of the accused persons even with the killing of Abdul Hamid Khan alias Hiru.

254. Already it stands proved that detained Abdul Hamid Mokhter was set at liberty by an elderly Pakistani army Subedar, few days after his confinement at the PTI camp in Jamalpur and on release he readily took shelter in the house of his Muhuri named Hajrat Ali. But on the same day in evening the accused persons and their cohorts again captured him from that house and thereafter he was never found.

255. We reiterate that all legal authorities agree that where a common design of a group of attackers exists and the group has carried out its purpose, then no distinction can be drawn between the 'finger man' and the 'trigger man'. This view finds support

from the observation made by the **ICTY Appeals Chamber, in the case of Prosecutor v. *Tadic*** that-

“Although only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or villages, etc.), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question.”

[Case No. IT-94-1-A, Judgment: 15 July 1999, Para-191]

256. The fact of attack launched at the relevant time at the house of Md. Shahidur Rahman Bhuiyan [P.W.08] and picking up forcibly their domestic aid Mohir Sheikh alias Madhu [P.W.09] has been corroborated by P.W.08 as he stated that the group of attackers actually intended to apprehend him but they could not as he managed to flee ignoring the resistance on part of Al-Badar men. Defence does not appear to have disputed the attack and forcible capture of P.W.09 from the house of P.W.08. It simply suggests that the accused persons were not with the group.

257. We have already recorded our finding that the accused persons belonged to Al-Badar Bahini formed in Jamalpur and accused Md. Ashraf Hossain was in its steering position. Additionally, P.W.19, P.W.20 and P.W.21 by testifying in the Tribunal stated that the accused persons had close and culpable affiliation with the Al-Badar torture camp set up at the Degree

Hostel of Ashek Mahmud College, Jamalpur and the accused persons were the students of the said college and were associated with the Islami Chhatra Sangha, the student wing of Jamaat-e-Islami.

258. From the testimony of P.W.08, P.W.09 [victim] and P.W.11 [victim] it transpires that after targeting the house of P.W.08 Md. Shahidur Rahman Bhuiyan, the group of Al-Badar men and their cohorts moved towards the house of former IGP Ismail Hossain but getting none available there they then moved to the house of Amir Ali Khan situated at Bodra Bausi Panchopeer and forcibly picked up their son-in-law Saidur Rahman alias Sadu Chairman and his brother-in-law Abdul Hamid Khan alias Hiru and took them away along with the three detainees including P.W.09 and P.W.11.

259. Defence does not dispute that out of 03[three] detained persons taken to PTI army camp in Jamalpur two were wiped out and Saidur Rahman alias Sadu Chairman survived as he jumped to the river when he along with other detainees were taken to the local crematorium to accomplish their killing by gunning down. Saidur Rahman alias Sadu Chairman is now dead.

260. In respect of abduction of Saidur Rahman alias Sadu Chairman and Abdul Hamid Khan alias Hiru, in conjunction with the attack, by the group formed of the accused persons and their cohort Al-Badar men and Pakistani occupation army men, P.W.13,

P.W.14 and P.W.15, the near relatives including the wife of Saidur Rahman alias Sadu Chairman consistently testified how the attackers being accompanied by the accused persons had forcibly picked up the duo. Defence could not dislodge it.

261. P.W.13 Alhaj Ayesha Rahman, wife of Saidur Rahman alias Sadu Chairman, is a direct witness to the act of abduction. She could know the names of accused Ashraf Hossain, accused Abdul Bari, and accused Abdul Mannan, Anju, Khalek accompanying the Pakistani occupation army from the conversation made amongst them when they were engaged in accomplishing the act of abduction. The Pakistani army men and their cohorts the accused persons looted their house as well and they took away her detained husband Saidur Rahman alias Sadu Chairman and brother Abdul Hamid Khan alias Hiru to the PTI camp in Jamalpur town where they were subjected to severe cruelty. P.W.13 heard the fact of killing civilians detained at the PTI camp taking them at the local crematorium and survival of her husband from the people and on return of her husband, after independence, she also heard what he[her husband] described about the event.

262. P.W.14 Ambia Khanam, the younger sister of P.W. 13 Alhaj Ayesha Rahman, is another direct witness to the fact relating to the phase of abduction of her brother Abdul Hamid Khan alias Hiru and sister's husband Saidur Rahman alias Sadu Chairman. P.W.14

consistently corroborates the unlawful act of taking away those two pro-liberation civilians which they [P.W.13 and P.W.14] could not resist excepting to observe it as mere silent spectators. P.W.14 saw this phase of the event to happen as at the relevant time she had been at the house of her sister's husband Saidur Rahman alias Sadu Chairman.

263. P.W.14 also corroborates the fact of taking three other detained persons including Abdul Hamid Mokhter by the group of perpetrators accommodated by the accused persons, and Pakistani army men when they attacked the house of Saidur Rahman alias Sadu Chairman, her [P.W.14] sister's [P.W.13] husband could recognize the accused Md. Ashraf Hossain, Md. Abdul Bari, Abdul Mannan, Harun and others accompanying the group. Defence could not impeach what has been testified by P.W.14.

264. Thus, it stands proved that in launching the attack at the native home of Abdul Hamid Mokhter, Saidur Rahman alias Sadu Chairman and other pro-liberation civilians of local prominence accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari and Harun were with the group of attackers formed of Pakistani army men and Al-Badar members. Why the accused persons accompanied the Pakistani army men? Why the Pakistani army men thought the companionship of Al-Badar men including these accused persons indispensable in carrying out the attack?

265. It may be reasonably inferred that the attack was organized and planned intending to accomplish the forcible capture of some potential pro-liberation civilians including Abdul Hamid Mokhter, former MPA and Saidur Rahman alias Sadu Chairman [Vice Chairman of Jamalpur Municipality]. We have got it proved that after the war of liberation ensued, Abdul Hamid Mokhter, Saidur Rahman alias Sadu Chairman and others opted to stay at their native homes, leaving their respective residence in Jamalpur town.

266. Tribunal notes, in view of the context, policy and plan, it was indeed impracticable for the Pakistani occupation army headquartered in Jamalpur town to trace out those prominent pro-liberation civilians, their location and staying etc. without the aid and assistance of Al-Badar men, especially accused Ashraf, Mannan, Bari and Harun, the key men of the Al-Badar Bahini formed in Jamalpur town. The accused persons being mighty Al-Badar men were affiliated with the Pakistani occupation army headquartered in Jamalpur town, and thus, they were culpably concerned with the planning of launching the attack targeting the victims by the group of Pakistani occupation army, to further common purpose. The army men would not have been able to locate the native homes of the victims, and the victims and their locations could not have been identified without the aid and assistance of the accused persons who, with intent to further the

object of formation of Al-Badar Bahini, were extremely antagonistic to the potential pro-liberation civilians directing whom the systematic attack was launched.

267. It has been divulged on evaluation of evidence tendered that Abdul Hamid Mokhter, a couple days later, was set on release from the Pakistani army camp at PTI in Jamalpur town by an elderly army Havildar. There has been no indication that any of the accused persons had kind role of any manner in setting the detainee Abdul Hamid Mokhter at liberty, facts and circumstances lead to this inference. Rather, the accused persons, the mighty Al-Badar men became more notorious when release of a potential detainee from PTI army camp went to their knowledge.

268. Evidence tendered demonstrates that in the evening on the day Abdul Hamid Mokhter was so released from the Pakistani army camp at PTI, the accused persons and their cohorts once again had forcibly picked him up from the house of Hajrat Ali Muhuri in Jamalpur town and took him away to unknown place and since then he could not be traced. Thus, it is quite clear that the accused persons' intention of abducting Abdul Hamid Mokhter from his native home was to wipe him out. But when they found that the Pakistani army instead of annihilating, set him at liberty they [the accused persons] became enraged like wolves that imbued them to cause the victim's second time abduction and it appears that it

happened without the participation and knowledge of the Pakistani occupation army stationed at the PTI camp, Jamalpur, we conclude. It signifies the barbaric might and authority of Al-Badar men in carrying out atrocious activities directing civilian population in 1971 during the war of liberation.

269. Act of second time abducting Abdul Hamid Mokhter as above inevitably tends to prove that the accused persons, the notorious Al-Badar men participated and contributed in accomplishing the killing of detainee Abdul Hamid Mokhter, even in absence of any direct evidence in this regard. Presumably, the detained victim was killed at any time subsequent to detaining him for second time after release from the PTI army camp and the accused persons who were culpably engaged in materializing the act of such second time abduction are held criminally responsible for his[Abdul Hamid Mokhter] death as the act of his forcible capture was indisputably chained to the act of his killing and the inference which we are forced to conclude is incompatible with the non-involvement of the accused persons with the killing of Abdul Hamid Mokhter.

270. In respect of another detainee Abdul Hamid Khan alias Hiru it transpires that after taking him to the PTI army camp with the aid and substantial facilitation and contribution of the accused persons he could not be traced. Another detainee Saidur Rahman alias Sadu

Chairman managed to escape by jumping to the river when he along with many other detainees were taken to the crematorium on the bank of river to face the death by gun shot. Evidence of P.W.13 and P.W.14 the wife and sister-in-law respectively of victim Saidur Rahman alias Sadu Chairman depicts that subsequent to forcible capture the relatives of victims [Saidur Rahman alias Sadu Chairman and Abdul Hamid Khan alias Hiru] moved to local potential leaders of Peace Committee including accused S.M. Yusuf Ali and Advocate Shamsul Haque with the hope of getting the detained victims released. But those mighty persons so requested did not respond to the appeal as the victims were the followers of Awami League. It is to be noted that accused S.M. Yusuf Ali and Advocate Shamsul Haque have not been indicted in this charge. However, on cumulative evaluation of facts and circumstances unveiled we may draw legitimate inference that detained Abdul Hamid Khan alias Hiru was eventually wiped out keeping him detained at the PTI army camp. Causing death of detained persons was the goal of the Pakistani army men stationed at the PTI army camp and the accused persons, their cohort Al-Badar men and also the members of the local Peace Committee were with them intending to facilitate and contribute to the commission of the principal crime, the killing.

271. Therefore, act of abduction of Abdul Hamid Khan alias Hiru was chained to the act of his killing. Since the accused persons actively aided, facilitated and contributed to cause Abdul Hamid Khan alias Hiru's abduction and taking to the PTI army camp, Jamalpur where he was kept confined the accused persons were thus consciously concerned with the entire phase of the event, and thus, incurred equal criminal responsibility for killing Abdul Hamid Khan alias Hiru. The accused persons had acted in abducting Abdul Hamid Khan alias Hiru and other victims pursuant to a common design of wiping them out.

272. It stands proved that by launching attack the group formed of Pakistani occupation army men, accused persons, the Al-Badar members and their cohorts intended to apprehend targeted pro-liberation civilians staying at the crime sites[native villages of the victims].

273. The Pakistani occupation army men naturally were not familiar with the rural locality and the persons targeted. We may safely conclude, on rational evaluation of evidence presented keeping the context prevailing at that time in mind, that the accused persons and their cohorts knowingly and antagonistically accompanied and led the group of Pakistani occupation army men to the sites, and the accused persons, the potential members of Al-Badar Bahini in Jamalpur were actively associated with the

culpable plan of the 'criminal mission', knowing the consequence of their act and conduct.

274. The above inference gets unerring corroboration when it is found proved that the accused persons did not keep them distanced even in effecting second time abduction of Abdul Hamid Mokhter from the house of Hajrat Ali Muhuri in Jamalpur town on the day he was set released by an elderly Pakistani army Havildar of the PTI army camp where he was kept detained. It once again suggests conclusion that Abdul Hamid Mokhter, a potential pro-liberation civilian was one of the key targets of the Jamalpur Al-Badar Bahini.

275. Hajrat Ali Muhuri [now dead] was the cousin brother of P.W.15 Md. Malek Newaz, the son of martyr Abdul Hamid Mokhter, P.W.15 stated. He [P.W.15] heard from said Hajrat Ali Muhuri about the act of forcibly taking away his[P.W.15] father again by the accused persons and their cohorts and it happened in day time. Defence does not dispute the act of second time abduction of Abdul Hamid Mokhter on the day he was set released from the PTI army camp, and as such, the hearsay evidence provided in this regard carries weight and probative value.

276. The accused persons were affiliated with the politics of Islami Chhatra Sangha [ICS], the student wing of Jamaat-e-Islami [JEI] and they studied in Jamalpur Ashek Mahmud College, and as

such, naturally they were known to the Jamalpur town dwellers. Therefore, it was practicable to recognize the accused persons, the notorious members of Jamalpur Al-Badar Bahini accompanying the group in abducting Abdul Hamid Mokhter again from the house of Hajrat Ali Muhuri.

277. Additionally, it stands proved that the accused persons actively participated in abducting Abdul Hamid Mokhter and other civilians by launching an organised attack at his house and the locality around it which provides valid inference about their participation and complicity in abducting Abdul Hamid Mokhter again, on the day of his release from the PTI army camp, we have already concluded. Presumably, somehow the accused persons and their cohorts did not accept the release of the victim, and thus, they again apprehended him from the place in Jamalpur town where he took shelter after release. Such act proves again extreme notoriety of Al-Badar Bahini which was a ‘death squad’ formed of workers of Islami Chhatra Sangha, the student wing of Jamaat-e-Islami.

278. Section 3(2) (a) of the Act of 1973 enumerates which acts are categorized as the offences of crimes against humanity. Any of such acts committed ‘against any civilian population’ shall fall within the offence of crimes against humanity. The notion of ‘attack’ thus embodies the notion of acting purposefully to the detriment of the interest or well being of a civilian population and

the 'population' need not be the entire population of a state, city, or town or village. A single act of an accused forming part of attack committed against even a single unarmed civilian causing criminal act constituting the offence enumerated in the Act of 1973 is sufficient for holding him criminally responsible.

279. Thus, by conscious act of accompanying and leading the group of Pakistani occupation army men in the capacity of potential Al- Badar members in abducting the civilians, as part of attack, the accused persons are found to have had participated in committing the act of abduction, knowing consequence of their act and conduct, and as such, they were 'concerned with the commission' of the murder of two detainee Abdul Hamid Mokhter and Abdul Hamid Khan alias Hiru, the upshot of such unlawful forcible capture. The conscious act of accompanying and leading the group of Pakistani occupation army men to the crime sites intending to materialize the plan of causing forcible capture of the victims signifies common intent of the accused persons which is a constituent of their 'participation' even to the phase involving the killing of detainees.

280. The offences involving abduction, confinement and murder of two pro-liberation civilians and killing another civilian Yad Ali Mondol at the crime site were committed in context of war of liberation in 1971 and those were not isolated crimes. Section 23 of the Act of 1973 provides that provisions of the Criminal Procedure

Code, 1898(V of 1898) and the Evidence Act, 1872(I of 1872) shall not apply in any proceedings under the Act of 1973. Thus, in the case in hand, if we keep the provision of section 23 together with section 19 of the Act of 1973 in mind it would be clear that the task of determination of culpability of a person accused of offences enumerated in section 3 of the Act of 1973 involves a quite different jurisprudence. Proof of all forms of criminal responsibility, through participation in any manner can be given by direct or circumstantial evidence. It is now settled jurisprudence.

281. It is now jurisprudentially settled that the offence of murder as a crime against humanity does not require the prosecution to prove that the accused personally committed the killing. Personal commission is only one of the modes of responsibility. It is to be noted that the alleged crimes as enumerated in section 3(2)(a) of the Act of 1973 were committed in furtherance of attack directed against the civilian population. It is not the ‘act’ but the ‘attack’ is to be systematic in nature and even a single act of accused person forms part of the ‘attack’. It has been observed by the **ICTY Appeals Chamber in the case of *Deronjic*** that—

"The acts of the accused need only be a part of the attack and, all other conditions being met, a single or limited number of acts on his or her part would qualify as a crime against humanity, unless those acts may be said to be isolated or random."

[Prosecutor v. Miroslav Deronjic, Case No. IT-02 -61-A, Judgment: 20 July 2005, Para-109]

282. Objective of such criminal acts, as already proved, of the accused persons were to expel the detained pro-liberation civilians beyond the boundary of their lives by causing their death. It is to be noted that criminal act directed even against a single victim constitutes a crime against humanity if it forms part of systematic attack. In this regard we recall the observation of the **ICTR Appeals Chamber in the case of *Nahimana, Barayagwiza and Ngeze v. The Chief Prosecutor*** which states --

"The Appeals Chamber considers that, except for extermination, a crime need not be carried out against a multiplicity of victims in order to constitute a crime against humanity. Thus an act directed against a limited number of victims, or even against a single victim, can constitute a crime against humanity, provided it forms part of a widespread or systematic attack against a civilian population."

[Case No. ICTR -99-52-A, Judgment: 28 November 2007, Para-924]

283. We, on evaluation of evidence provided, arrive at irresistible conclusion that killing Abdul Hamid Mokhter and Abdul Hamid Khan alias Hiru was the upshot of their forcible capture from their residences at native villages by carrying out an organised attack to which these four accused persons, namely Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari and Harun were part. The criminal acts carried out jointly by the accused persons, their

cohorts and Pakistani occupation army men were manifestly part of ‘group plan’.

284. It may legitimately be inferred from the evidence discussed above that the accused persons and their cohorts and the Pakistani occupation army men had acted in unison to put into effect a joint criminal enterprise. It is now well settled that the term ‘participation’ may be defined broadly and it may take the form of assistance in, or contribution to, the execution of the common plan. Participation includes both direct participation and indirect participation. In this regard the **ICTY Trial Chamber in the case of Prosecutor v. Blagojevic and Jokic** has rendered its observation that--

“There are various ways in which a person may participate in a joint criminal enterprise: (i) by personally committing the agreed crime as a principal offender; (ii) by assisting the principal offender in the commission of the agreed crime as a co-perpetrator, i.e. facilitating the commission of the crime with the intent to carry out the enterprise; or (iii) by acting in furtherance of a particular system in which the crime is committed by reason of the accused’s position of authority or function and with knowledge of the nature of that system and intent to further that system.”

[Case No. IT-02-60-T, Judgment: 17 January 2005, Para-702]

285. Here, in the case in hand, ‘common plan’ of the group of attackers was to wipe out the pro-liberation Bengali civilians of prominence on forcibly taking them away to the army camp at PTI, Jamalpur, by launching a systematic attack. The accused persons

being the potential and mighty Al-Badar men consciously and actively assisted the Pakistany occupation army men and also contributed to the execution of their common plan of annihilating the detainees. It stands well proved.

286. Therefore, even in absence of any direct evidence it may be safely and unerringly concluded that the accused persons were concerned as ‘participants’ even to the commission of their murder as the act of abduction and taking them away to the PTI army camp in Jamalpur town where they were kept in captivity was indisputably chained to the act of their killing.

287. Association of the accused persons with the Al-Badar Bahini in Jamalpur as its mighty members adds further assurance to the fact of their role as ‘participants’ in committing the crimes as narrated in the charge. P.W.20 Md. Shafiqul Islam Khoka, a former law maker of Jamalpur-3 constituency and P.W.21 Md. Shahidur Rahman Khan, a former teacher of Ashek Mahmud College, Jamalpur testified about the setting up Pakistany army camp at PTI, Jamalpur and Al-Badar camp at the Degree Hostel of the Ashek Mahmud College under leadership of accused Md. Ashraf Hossain and they also stated that all the five accused persons including the accused Professor Sharif Ahamed alias Sharif Hossain had constant and culpable affiliation with that Al-Badar camp. The unshaken version of these two witnesses also adds strength to the fact of their

being affiliated with the criminal acts carried out in concerted manner and to further common purpose of the group.

288. All the 05[five] accused persons indicted for the crimes narrated in charge no.02 are found to have had ‘participation’ as they were concerned about the entire criminal mission carried out in a concerted manner to further common purpose and plan. Here, it is not required to show which accused had played what role and in which manner or whether they were physically present in accomplishing the principal crime the killing of detained persons. In this regard it has been observed by the **ICTY Trial Chamber in the case of Prosecutor v. Tadic** that-

".....actual physical presence when the crime is committed is not necessary . . . an accused can be considered to have participated in the commission of a crime . . . if he is found to be ‘concerned with the killing.’"

[Case No. IT-94-1-T, Judgment: 7 May 1997, Para-691]

289. Defence does not attack the truthfulness of the event of attack as has been testified by the witnesses, particularly the relatives of the victims who had opportunity to observe the acts and conducts of the accused persons. It however, disputes the presence of the accused persons at the crime sites with the group formed of Pakistany occupation army men. The Tribunal notes that chiefly the relatives of the victims i.e Abdul Hamid Mokhter, Saidur Rahman alias Sadu Chairman and Abdul Hamid Khan alias Hiru had opportunity to see the attack and the acts of facilitation of the

accused persons provided in conjunction with the attack. Thus , let us eye on the evidence of P.W.11[victim], P.W.10[brother of P.W.11] and P.W.16 [the brother of survived victim Saidur Rahman alias Sadu Chairman] to resolve this crucial aspect involving liability of the accused persons.

290. P.W.11 Shamsul Alam Dudu [victim] and his brother P.W.10 Md. Fazlul Haque who observed the initial phase of the attack recognized accused Ashraf, Mannan, Bari, Harun accompanying the group. Testimony of P.W.10 in this regard inspires credence as he [P.W.10] passed HSC examination from Ashek Mahmud College, Jamalpur and the accused persons were affiliated with the politics of Islami Chhatra Sangha of the said college. That is to say, it was quite practicable for P.W.10 to recognize the accused persons at the time of occurrence as it was a moonlit night. Similarly, P.W.11, one of the victims and a key direct witness to the act of forcible taking away of Abdul Hamid Mokhter could recognize the accused Ashraf [accused], Mannan[accused], Bari[accused], Khalek and Natu as they were his senior students in Ashek Mahmud College and saw them holding meeting there in 1970/71.

291. It appears that the name of accused Harun does not find place in the testimony of P.W.11, true. But it does not affect what has been stated by P.W.10. Both of them observed the initial phase

of the attack, it stands proved. But the way they observed the event of attack to happen might not be identical due to many practical factors and thus variation may reasonably occur in stating the presence of accused persons or the members of the group of perpetrators at the crime site. Testimony of P.W.16 Md. Mokhlesur Rahman, the brother of survived victim Saidur Rahman alias Sadu Chairman goes to show that he heard the event and complicity of accused Ashraf, Harun, Mannan and Bari therewith from his brother Saidur Rahman alias Sadu Chairman. Defence could not refute it.

292. Accused Professor Sharif Ahamed alias Sharif Hossain too was an active affiliate of the Al-Badar Bahini in Jamalpur and used to visit the Al-Badar camp set up at the Degree Hostel of Ashek Mahmud College, Jamalpur. We have already recorded our reasoned finding in this regard that accused Professor Sharif Ahamed alias Sharif Hossain too was a potential affiliate of Al-Badar Bahini. P.W.15 Md. Malek Newaz, the son of martyr Abdul Hamid Mokhter heard from Hajrat Ali Muhuri that the Al-Badar men accused Md. Ashraf Hossain, Professor Sharif Ahamed, Abdul Mannan, Abdul Bari and others again took away his father forcibly from the house of said Hajrat Ali where he [victim] took shelter on release from the PTI Pakistani army camp.

293. The act of participation and complicity of accused Professor Sharif Ahamed alias Sharif Hossain, as depicted above, in picking up victim Abdul Hamid Mokhter again on forcible capture indisputably connects him [accused Professor Sharif] even with the ‘criminal mission’ of causing abduction, by launching attack which eventually ended with the killing of Abdul Hamid Mokhter and Abdul Hamid Khan alias Hiru. It is to be noted that accused’s act -- amid, prior or subsequent to the commission of the offence formed part of the attack.

294. P.W.16 Md. Mokhlesur Rahman heard from his brother Saidur Rahman alias Sadu Chairman, a survived victim that accused Ashraf, Mannan, Bari and Harun were with the group of attackers formed of Pakistani army men and Al-Badar men while it had launched attack at their native village. Hearsay evidence of P.W.16 carries probative value as it is not anonymous and gets corroboration from the facts and circumstances unveiled.

295. Evidence of P.W.16 demonstrates that another detainee Abdul Hamid Khan alias Hiru and 16/17 other detainees along with Saidur Rahman alias Sadu Chairman were taken to the crematorium on the bank of the river Brahmaputra [from the PTI army camp] by the Pakistani occupation army men and Al-Badar men where they fired them by gun when his [P.W.16] brother Saidur Rahman alias Sadu Chairman managed to escape as he jumped to the river

removing his hand cuff as it was slack and thus he could survive. Now Saidur Rahman alias Sadu Chairman is dead. Thus what the P.W.16 learnt from the survived victim carries value and credence. Besides, it gets corroboration from the fact, circumstances and evidence provided by other witnesses.

296. On integrated evaluation of competent and direct witnesses it stands proved beyond reasonable doubt that the accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain, Harun, Md. Abdul Mannan and Md. Abdul Bari consciously and culpably accompanied the group of Pakistani occupation army men and other Al-Badar men to the crime sites, to further common purpose and they had conscious concern with the entire event that resulted in death of Yad Ali Mondol first[at the native village and at initial phase of the attack], abduction and torture caused to the detained civilians by keeping them in captivity at PTI army camp, Jamalpur and causing death by gun shot to two detained civilians along with other civilians detained at the said army camp.

297. Thus, it has been proved beyond reasonable doubt that by conscious act of accompanying and leading the group of Pakistani occupation army men in the capacity of potential Al-Badar members in abducting the civilians, as part of attack, the accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari, and (5) Harun

are found to have had 'participated' in committing the act of abduction, knowing consequence of their act and conduct, and as such, they were 'concerned with the commission' of the confinement of three civilians and murder of two detainees Abdul Hamid Mokhter and Abdul Hamid Khan alias Hiru, the upshot of such confinement on unlawful forcible capture.

298. The conscious act of accompanying and leading the group of Pakistani occupation army men to the crime sites intending to materialize the plan of the criminal enterprise causing forcible capture of the victims signifies common intent of the accused persons which is a constituent of their 'participation' even to the phase involving the killing of the detainees.

299. Therefore, accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari, and (5) Harun are found criminally liable under section 4(1) of the Act of 1973 for 'participating', 'abetting', 'facilitating' and substantially 'contributing', and also for complicity, by their culpable act and conduct forming part of attack, intending to the actual commission of killing of defenceless unarmed civilians constituting the offences of '**abduction**' '**confinement**' and '**murder**' as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act.

Adjudication of Charge No. 03

[Abduction and murder of Nurul Amin Mollik: Event No. 03 narrated in the formal charge]

300. Summary charge: That on 10 July 1971 at about 3.00 A.M. in the early morning, Al-Badar accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Md. Abul Hashem (6) Advocate Md. Shamsul Haque, and (7) S.M. Yusuf Ali along with other members of Al-Badar Bahini and Peace Committee abducted Nurul Amin Mollik, an Awami League leader and organizer of the liberation war, from his house situated at C & B Road [old], Mollik Villa, Doyamoyee Lane, Jamalpur, who had been sleeping in his room with his younger son Rokonuzzaman and younger daughter Nasrin . Thereafter, on the same day [10.07.1971] at about 10.00 A.M. the dead body of said Nurul Amin Mollick was found floating on the west side of the Brahmaputra river at Chaptala ghat.

301. Thereby accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Md. Abul Hashem (6) Advocate Md. Shamsul Haque, and (7) S.M. Yusuf Ali are charged for participating, aiding, abetting, facilitating, conspiracy and complicity in the commission of offences of abduction and murder as crimes against humanity as part of systematic attack directed against unarmed civilians as

specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Presented

302. To prove the instant charge [charge no. 03], the prosecution has examined 07[seven] witnesses[P.Ws. 01, 02, 03, 04, 05,06 and 07]. Let us now see what the witnesses examined have stated in the Tribunal.

303. P.W.01 Azizur Rahman alias Dol [56] of Singhojani High School Road under Police Station Jamalpur of the then Sub-Division Jamalpur is the district agent of the daily newspaper 'Daily Janakantha' and former General Secretary of the Jamalpur Press Club. In 1971 he was a student of Class V of Singhojani Bahomukhi High School and had been staying in Jamalpur town. He [P.W.01] knew some of former students of the said school and they are Professor Sharif Ahamed, Abdul Mannan, Abul Hashem, Shah Alam, Ashraf Hossain, Harun, Harunur Rashid Mokhta, and Matiur Rahman Majnu. They [the former students] used to come to their school very often during the liberation war and they were involved with the politics of Islami Chhatra Sangha [ICS].

304. P.W.01 also stated that S.M. Yusuf Ali was the Head Master of his school when he [P.W.01] used to study there and he[SM Yusuf Ali] was affiliated with the politics of Jamaat-e-Islami and

contested in general election in 1971 and was elected uncontested. Before narrating the facts related to killing his maternal uncle Nurul Amin Mollik, on forcible capture P.W.01 described what he knew about the entrance of Pakistani occupation army in Jamalpur, formation of Peace Committee, Al-Badar Bahini, Razakar force and setting up camps and training centres of those organisations in Jamalpur town.

305. P.W.01 Azizur Rahman alias Dol narrated that on 22 April 1971 Pakistani occupation army entered Jamalpur town with indiscriminate gun firing from the end of Madhupur, Tangail and they got them stationed at the WAPDA rest house and Jamalpur PTI. Pakistani occupation army since their stationing in Jamalpur town started committing genocide, looting, women ravishment, detaining civilians, arson and the local leaders of Jamaat-e-Islami[JEI] and members of Islami Chhatra Sangha [ICS]engaged themselves with such atrocious activities. JEI leaders formed Jamalpur Peace Committee and Al-Badar Bahini was formed of ICS' local members. Accused Yusuf Ali was the leader of Peace Committee and Moktob Kabiraj [now dead], Mozammel Haque [now dead], Kazimuddin [now dead], Md. Goni [now dead], accused Advocate Shamsul Haque were also with that Peace Committee.

306. P.W.01 further stated that in 1971 accused Advocate Shamsul Haque was known as 'Badar Bhai' in Jamalpur. Two separate offices of Peace Committee were set up at Ayurvedic Kutir of Moktob Kabiraj [now dead] and Sadhana Oushadhalya where civilians were subjected to torture by bringing them on forcible capture and intimidated them to take side with them. The owners of Sadhana Oushadhalya deported to India and thus it remained closed since mid of May 1971 and afterwards on instruction of accused Yusuf Ali, Moktob Kabiraj set up Peace Committee office there by occupying it breaking lock. In the month of May 1971 Al-Badar and Razakar force were formed by the Peace Committee already constituted.

307. P.W.01 went on to state that accused Professor Sharif Ahamed, Ashraf Hossain, Abdul Mannan, Abdur Bari,, Abul Hashem, Harun, Harun Rashid Mokhta, Shah Alam, Motiur Rahman Majnu were the leaders of Jamalpur Al-Badar Bahini and Razakar force. Training centres of Al-Badar Bahini were set up at PTI [Primary Training Institute] and Degree Hostel of Ashek Mahmud College in Jamalpur and at the ending part of the war of liberation Al-Badar camp was also set up at 'Sadhana Oushadhalya'.

308. In relation to the event narrated in the charge no.03 P.W.01 testified as hearsay witness. He is a near relative of the victim Nurul Amin Mollik. He stated that his maternal uncle Nurul Amin

Mollik, an Awami Leaguer had a pharmacy at Medical Road in Jamalpur town and he used to provide assistance secretly to the freedom-fighters, and thus, accused Professor Sharif Ahamed, Ashraf Hossain, Abdul Bari and Abdul Mannan planned to pick him [maternal uncle of P.W.01] up. In the night of 09 July 1971 his [P.W.01] maternal uncle Nurul Amin Mollik had been at his house 'Mollik Villa' at C & B road, Jamalpur with his kids. At about 03:00 A.M. [10 July 1971] the above accused persons and their accomplices Shah Alam, Motiur Rahman Majnu, Harunur Rashid Mokhta coming to the first floor of his maternal uncle's house started knocking door and then his maternal uncle kept the door shut from inside. But the accused persons pushed the bayonet through the door and with this his [P.W.01] maternal uncle opened the door and could recognize accused Professor Sharif Ahamed as he was cousin brother of Nurul Amin Mollik. On hearing screaming Nurul Amin Mollik's parents went to up stair from ground floor and his [Nurul Amin Mollik] father seeing accused Professor Sharif Ahamed there asked him – 'where are you going to take your *phupato bhai* [Nurul Amin Mollik], do not cause a grave harm to me'. Then accused Professor Sharif Ahamed told – 'Nurul Amin Mollik is an Awami Leaguer and we are going to take him to our camp to resolve it'. Then on direction of accused Professor Sharif Ahamed and accused Ashraf Hossain accused Abdul Bari and Abul

Hashem brought him [Nurul Amin Mollik] to down stair tying his hands up.

309. P.W.01 next stated that on the following day his grand-father Amin Uddin Mollik [father of Nurul Amin Mollik, now dead] and elder maternal uncle Shahjahan Ali went to accused Professor Sharif Ahamed's house and accused S.M. Yusuf Ali's school and requested them for release of Nurul Amin Mollik. Then accused Professor Sharif Ahamed told –'Nurul Amin Mollik is an Awami Leaguer and he will have to face trial'. Then his [P.W.01] grand-father and maternal uncle returned back therefrom.

310. P.W.01 stated too that on 11 July 1971 bullet and bayonet injured dead body of Nurul Amin Mollik was found floating at Chapatala ghat of the river Brahmaputra situated beside Jamalpur town. Then they brought the dead body of Nurul Amin Mollik and buried it at Jamalpur graveyard. P.W.01 stated that his grand-father, grand-mother and elder maternal uncle are not alive. His[P.W.01] grand-father very often used to express frustration that he did not get justice for the killing of his son[Nurul Amin Mollik] by accused Ashraf Hossain, Professor Sharif Ahamed, Abdul Mannan, Abdul Bari, Abul Hashem, Harun, Matiur Rahman Majnu, Harunur Rashid Mokhta, Shah Alam. In 1998 he[P.W.01] sued in Jamalpur Court seeking justice for the killing of Nurul Amin Mollik and the case got untraced after BNP-Jamaat alliance came to power in

2001. Later on in 2007 he again initiated a case on the event, P.W.01 added.

311. On cross-examination by the accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali facing trial remaining in detention P.W.01 stated that in 1971 he was aware about the political activities of their locality and he became aware of it more from his father who was affiliated with Awami League politics. Accused S.M. Yusuf Ali was his [P.W. 01] teacher. His [P.W.01] grandfather did not sue for the event of killing his son in his lifetime. In reply to question put him P.W.01 also stated that he saw in the office of Jamalpur Muktijodhdha Sangsad the documents relating to membership of accused Advocate Shamsul Haque and S.M. Yusuf Ali in the Peace Committee.

312. In cross-examination, defence did not dispute the event of killing Nurul Amin Mollik by forcibly taking him away from his house. Defence simply suggested P.W.01 that accused Advocate Shamsul Haque and S.M. Yusuf Ali were not the members of Jamalpur Peace Committee and were not involved in forming Jamalpur Peace Committee, Al-Badar Bahini and they were not requested for release of Nurul Amin Mollik. P.W.01 blatantly denied it.

313. On cross-examination by the State defence counsel defending the absconded accused Md. Abdul Bari, Harun and Md.

Abul Hashem P.W.01 stated that accused Md. Abul Hashem was a resident of Kacharipara of Jamalpur town and in 1971 he was involved with the politics of Islami Chhatra Sangha[ICS]. He did not see but heard about the atrocities committed around the locality of Jamalpur by accused Md. Abdul Bari, Harun and Md. Abul Hashem. P.W.01 denied the suggestion put to him that these accused persons did not belong to Al-Badar Bahini and were not involved with the event he testified.

314. On cross-examination by the State defence counsel defending the absconded accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain and Md. Abdul Mannan P.W.01 stated that his house was about one-fourth kilometre far from the house of his maternal uncle Nurul Amin Mollik. He [P.W.01] did not see the event of attack that resulted in forcibly taking away his maternal uncle from his house and making request for his [Nurul Amin Mollik] release.

315. P.W.01 expressed ignorance as to in which year accused Md. Ashraf Hossain and Abdul Mannan completed their education in Singhojani High School. In reply to question put to him P.W.01 stated that his school was about one and half kilometres away from WAPDA rest house and in the months of June-July 1971 his school remained opened. Accused Md. Abdul Mannan was arrested after the independence and accused Md. Ashraf Hossain went into

absconsion and since then he did not see him and accused Md. Abdul Mannan and none has been staying at his home in Jamalpur town. P.W.01 denied the suggestion put to him that these accused persons were not with the politics of Islami Chhatra Sangha, that he did not see these accused persons in his school in 1971 and they were not involved with the commission of the event he testified.

316. P.W.02 Rawshan Ara Mollik [68] is the wife of martyr Nurul Amin Mollik. She is a direct witness to the event of taking away her husband forcibly from their house. She stated that she got married to Nurul Amin Mollik in 1961 when she was 14 years old and a student of classVII. Her husband had a pharmacy known as 'Mollik Pharmacy' in Jamalpur town and he was involved with Awami League politics. In 1971 they had been residing at C&B road in Jamalpur town along with her children and some other relatives including her father-in-law and mother-in-law.

317. P.W.02 went on to state that in the night of 09 July 1971, after dining, her husband told his parents to stay safe as on that day Ashraf and Sharif had completed their Badar training. Then they went to sleep in the first floor. There had been a room adjacent to that of theirs which was intervened by a door. At about 01:00 A.M. [10 July 1971] she woke up for taking medicine and again went lying on bed. 20/25 minutes afterwards, she through the intervening door observed something like light moving inside the

adjacent room. With this they got feared and soon after they heard knocking the door of their room and her husband attempted to lock the door but could not as another hard knock was done on it and instantly three Razakars entered their room and two of them dragged her husband out of the room. She too attempted to go with her husband but was resisted by an armed Razakar standing there. She heard her husband calling 'Ma' [mother] twice or thrice and then did not hear any response of her husband and thus she became fainted. She after regaining sense came to down stair when she heard her father-in-law telling with shout that –"Ashraf, Sharif, Mannan, what ruin you have caused to me". They could not go outside in that night due to curfew situation.

318. P.W.02 further stated that on the following day elder cousin brother of her husband came from his native home on getting message and then he and her father-in-law started haunting her husband and contacted the leaders of local Peace Committee and Al-Badar Bahini. Yusuf Master, Moktob Kabiraj, Sharif and Shamsul Advocate, the leaders of Peace Committee were of them. Her father-in-law and elder cousin brother of her husband came back home having no trace of her husband and informed them that the leaders of Peace Committee and Al-Badar Bahini gave them hope of returning Nurul Amin Mollik.

319. On the following day [11 July 1971] her husband's bullet hit and bayonet injured dead body was found floating at Chapatala ghat of the river Brahmaputra. Afterwards her husband's dead body was buried at the graveyard.

320. In cross-examination done by the present accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali P.W.02 stated that she did not know these accused persons prior to the event. P.W.02 denied the suggestion put to her that these accused persons were not the members of local Peace Committee. Defence however did not cross-examine denying the event of attack that resulted in unlawful taking away her husband who was subsequently killed.

321. On cross-examination by the State defence counsel defending the absconded accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain and Md. Abdul Mannan, P.W.02 stated that she knew accused Md. Abdul Mannan beforehand but did not see accused Ashraf Hossain. P.W.02 also stated in reply to question put to her that accused Professor Sharif Ahamed alias Sharif Hossain was her husband's cousin brother [gvgvZ †`ei]. Her father -in-law and mother-in-law did not initiate any case in respect of her husband's killing in their life time. P.W.02 also stated that she regained her sense when she had been in the first floor of their house.P.W.02 denied that these accused

persons were not involved with Al-Badar training and that what she testified in respect of the event was untrue and false.

322. P.W.03 Nurjahan Begum alias Rosy Mollik [52] is the daughter of martyr Nurul Amin Mollik. In 1971 she was 07 years old. She is a direct witness to the event of forcibly taking away her father by the group of Al-Badar and their accomplices. P.W.03 stated that in 1971 her father had pharmacy business and was involved with Awami League politics. In the night of 09 July 1971 she and her younger brother had been with her grand-mother on the ground floor of their house and her parents along with her[P.W.03] two younger brother and sister had been at the room on the first floor. In that night, after dining, her father told them to stay safe as accused Md. Ashraf Hossain, Sharif Ahamed and Abdul Mannan had their Al-Badar training completed. In the mid of night she woke up hearing screaming of her grand-father and saw their room opened and her grand- father was targeted by someone by a gun on his chest while her grand-father told—‘ Ashraf, Sharif, Mannan—do not cause harm to my son’. Then the Al-Badar men took away her father.

323. P.W.03 next stated that on the following morning her grand-father, elder uncle and other relatives went out to have trace of her father and they also moved too to the Peace Committee leaders

accused Sharif Hossain, Moktob Kabiraj, Yusuf and others. But her father could not be traced despite their optimism.

324. P.W.03 further stated that on 11 July 1971 her father's bullet hit and bayonet injured dead body was found floating at Chapatala ghat of the river Brahmaputra. They buried the dead body of her father after bringing it therefrom.

325. On cross-examination on behalf of accused SM Yusuf Ali, Md. Ashraf Hossain, Professor Sharif Ahamed and Md. Abdul Mannan, P.W.03 stated that her national ID card shows 11.09.1964 as her date of birth. Defence chiefly put suggestion to P.W.03 that the accused persons did not belong to Peace Committee and what she testified was untrue and tutored. P.W.03 denied it straight way. Defence does not appear to have cross-examined on the material facts testified by P.W.03 intending to refute it.

326. P.W. 04 Rafiquzzaman Mollik [50] is the son of victim martyr Nurul Amin Mollik. In 1971 he was 05 years old. He testified the facts related to forcible taking away his father from their house in 1971 during the war of liberation. He stated that in the night of 09 July 1971 he was with his grand-father on the ground floor of their house and he woke up by the sound of crying and saw it was his grand-father and grand-mother, who were crying out loudly standing in front of the door of their room. He saw a gun barrel pointing at the chest of his grandfather. He [grand-father]

was saying, 'Sharif, Mannan, Ashraf, you please don't harm my son'. The intruders then left the place. P.W.04 also stated that in the night of the event, after dining, his father told them --'everybody should stay safe as the Al-Badar training has been completed today in Singhojani School'.

327. P.W.04 next stated that after the departure of the attackers from their house he got it learnt that Al-Badar men took away his father [Nurul Amin Mollik] away. On the following morning the elders of his family rushed to members of local Al-Badar and Peace Committee including Yusuf, Sharif Ahamed, Moktob Kabiraj and Abdul Gani to secure the release of his father. They assured that nothing will happen to his father. But on the following day i.e. on 11 July 1971 his father's bullet hit and bayonet injured dead body was found floating at Chapatala ghat of the river Brahmaputra. The dead body was brought therefrom and was buried at Jamalpur graveyard.

328. In cross-examination done on behalf of accused S.M. Yusuf Ali, Md. Ashraf Hossain, Professor Sharif Ahamed and Md. Abdul Mannan, P.W.04 denied the suggestion put to him that the accused persons were not involved with the alleged event he testified and what he testified was untrue and tutored. P.W.04 in reply to question put to him by the Tribunal stated that stairway was at north to the room where he had been in sleep in the night of the

event and no one needed to enter inside his grand-gather's room for moving on the first floor[of their house].

329. P.W.05 A.F.M Hedayetul Islam alias Faruk [66] is a resident of Jamalpur town. He is a jute trader. In 1971 he was a BA class student in Ashek Mahmud College. In 1971 his father Khondokar Tojammel Hossain alias Bagha Moulavi [now dead] was a member of local Jamaat- e -Islami. He stated that on any day in 1971 his father told that one girl was raped by the Pakistani army which was anti-Islam and misdeed. His father moved to army camp set up at SDO Bungalow where one non-Bengali Aftab kept his father detained for 7/8 hours and scolded and then allowed to come out. He [P.W.05] knew some of his father's political colleagues who were Professor Mozammel Haque [now dead], Moktob Kabiraj [now dead], Professor Gani and Head Master S.M. Yusuf Ali [accused].

330. P.W.05 next stated that in 1971 Al-Badar camp was set up at the Degree Hostel of Ashek Mahmud College. After independence he heard that accused Ashraf, Mannan, Bari, Harun were associated with that camp. He[P.W.05] also heard that innocent people were kept detained at that camp.

331. In respect of the killing of Nurul Amin Mollik P.W.05 simply testified when and how the dead body of Nurul Amin Mollik was found. He did not claim to have learnt the event. He

stated that on 11 July 1971 his sister's son Ataur Rahman Bulbul informed him that his maternal uncle Nurul Amin Mollik's dead body was found floating at Chapatala ghat of the river Brahmaputra. He [P.W.05] went there and found the bullet injured dead body of Nurul Amin Mollik floating there. He found Nurul Amin Mollik's father and relatives there. At a stage an army vehicle arrived there and wanted to know how the man [Nurul Amin Mollik] died. He [P.W.05] replied that he died drowning under water and then the army men asked them to get the dead body buried quickly. Afterwards, they buried Nurul Amin Mollik's dead body at the municipal graveyard.

332. In cross-examination, P.W.05 stated that his father was a teacher of Singhojani High School and accused S.M. Yusuf Ali was its Head Master. P.W.05 denied the suggestion put to him that accused Ashraf, Mannan, Bari and Harun were not affiliated with the Al-Badar camp and that what he testified was untrue.

333. P.W.06 Ataur Rahman Bulbul [58] is the sister's son of Nurul Amin Mollik. In 1971 he was a student of class VI in Jamalpur Zilla School and used to stay in the house of his maternal uncle [Nurul Amin Mollik] situated at C&B road in Jamalpur town. He is a direct witness to the facts related to his maternal uncle's abduction and killing. In the tragic night he had been in the house of Nurul Amin Mollik. P.W.06 stated that in the night of 09 July

1971 at about 02.00-03:00 A.M. [10 July] some Al-Badar men took away his maternal uncle on forcible capture from the first floor of his house and at that time he had been in room on the ground floor. On hearing sound on the door he [P.W.06] came out when the Al-Badar men pointed a gun on his chest and they[AB men] asked him to shut the door and then he saw the Al-Badar men leaving the place. His [P.W.06] grand-father and grand-mother coming out of the room started crying out loudly saying –‘ Ashraf, Sharif, Mannan, Bari have taken away your[P.W.06] maternal uncle.’

334. P.W.06 also stated that he last met his maternal uncle at the time of dining in the night of 09 July 1971 when he[Nurul Amin Mollik] told them to stay safe as the Al-Badar training was completed. Al-Badar members were trained at Singhojani Bohumukhi High School and their camp was at Degree Hostel of Ashek Mahmud College and there had been a sub-camp of Al-Badar Bahini at Sadhana Oushadhalya at Medical road. P.W.06 also testified that a Pakistani army camp was at PTI [Primary Training Institute] and another Al-Badar camp was at opposite to the army camp. He[P.W.06] heard that Ashraf, Mannan, Sharif, Bari, Hashem, Harun, Shah Alam received Al-Badar training.

335. In respect of the event of Nurul Amin Mollik's abduction, P.W.06 further stated that his another maternal uncle Shahjahan Mollik came at about 09:00 A.M. to his grand-father's house on

information of the event and then he and his [P.W.06] grand-father moved to Peace Committee leaders accused Yusuf Sir, accused Professor Sharif, Moktob Kabiraj, accused Advocate Md. Shamsul Haque and others to have trace of Nurul Amin Mollik. His [P.W.06] maternal uncle Shahjahan Mollik later on informed that accused Professor Sharif told them that nothing would happen to Nurul Amin Mollik. But his uncle Shahjahan Mollik returned back home as they did not have trace of Nurul Amin Mollik.

336. P.W.06 next stated that on 11 July 1971 his uncle Shahjahan got information that Nurul Amin Mollik's dead body was found floating at Chapatala ghat of the river Brahmaputra and with this he[P.W.06] and their relatives rushed there and found Nurul Amin Mollik's dead body floating there. A Pakistani army vehicle arrived there and the army men wanted to know whose dead body it was. They replied that he [Nurul Amin Mollik] died due to drowning under water. The army men asked them to bury the dead body quickly. Then they brought the dead body therefrom and buried it at Jamalpur Municipal graveyard.

337. In cross-examination, it has been re-affirmed that in between 09:00-10:-00 A.M. his uncle and grand-father went out to have trace of Nurul Amin Mollik. P.W.06 denied the suggestion put to him that accused Advocate Md. Shamsul Haque and SM Yusuf Ali did not belong to Peace Committee and that what he testified in

relation to forcible capture of Nurul Amin Mollik implicating the accused persons was untrue and tutored. Defence does not seem to have made any effective effort to refute the testimony of P.W.06 on material particular by cross-examining him.

338. P.W.07 Md. Moazzem Hossain Mollik alias Rakhal [55] is the son of victim Nurul Amin Mollik's sister. In 1971 he [P.W.07] was a student of class V. He is a hearsay witness. He stated that on the day following 09 July 1971 [10.07.1971] his younger maternal uncle Ruhul Amin Mollik [now dead] came to their native home and informed about the event of forcibly taking away his maternal uncle Nurul Amin Mollik. Then his [P.W.07] elder maternal uncle Shahjahan [now dead] and other relatives moved to his grandfather's home in Jamalpur town and started searching for Nurul Amin Mollik but they did not have his trace and thus his [P.W.07] maternal uncle Shahjahan Mollik returned back to his native home and he [P.W.07] knew from him that accused Yusuf, Sharif Professor, Advocate Shamsul Haque and Moktob Kabiraj, the Peace Committee leaders assured them about Nurul Amin Mollik's trace.

339. P.W.07 also stated that on 11 July 1971 his maternal uncle Shahjahan again went to Jamalpur town and at about 11:00 A.M. he [P.W.07] became aware from the locals that his maternal uncle Nurul Amin Mollik's dead body was found at Chapatala ghat of the

river Brahmaputra. On hearing it he [P.W.07] along with relatives rushed there and found Nurul Amin Mollik's bullet hit and bayonet injured dead body floating there. He also found his other maternal uncles and relatives there. At a stage a Pakistani army vehicle arrived there and after it had left the place they buried Nurul Amin Mollik's dead body at Jamalpur graveyard.

340. P.W.07 finally stated that he heard his maternal uncle Shahjahan and grand-father often telling in their lifetime that Al-Badar members accused Ashraf, Mannan, Sharif Professor and Harun had killed Nurul Amin Mollik.

341. In cross-examination P.W.07 stated that he had been at his native home when he heard that his uncle Nurul Amin Mollik's dead body was found floating on the river, that their native home was about four kilometres far from the house of Nurul Amin Mollik in Jamalpur town and that bicycle and rickshaw were the means of communication, at that time. P.W.07 denied the suggestion put to him that he was a boy of below 11 years in 1971 and what he testified implicating the accused persons was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

342. This charge involves the event of killing Nurul Amin Mollik on forcible capture from his residence in Jamalpur town. Mr. Tapas Kanti Baul, the learned prosecutor submitted that defence does not dispute the event of killing Nurul Amin Mollik which was the

upshot of his abduction from his house and thus the inmates had natural occasion to see and observe the act and conduct of the members of the group including the five accused persons belonging to Al-Badar Bahini.

343. The learned prosecutor further submitted that the two other accused persons facing trial remaining detained in prison were potential leaders of local Peace Committee and they had significant dominance over the Al-Badar men and the Pakistani occupation army headquartered in Jamalpur. These two accused persons, subsequent to the event of abduction scrapped the appeal made on part of the victim's family to set him free and such act and conduct obviously connects them with the entire event. Omission to show grace responding to victim's family's approach those two accused persons rather had endorsed, encouraged and facilitated the principal perpetrators, the Al-Badar men in accomplishing the principal crime, the murder. In this way they also participated to the commission of the crimes committed. Defence failed to refute what has been testified by the prosecution witnesses in relation to facts relevant to the principal crime. Thus, prosecution succeeds in proving this charge as well.

344. Mr. Sayed Mizanur Rahman, the learned defence counsel for two accused facing trial being in prison submitted that admittedly a case was initiated earlier on killing of Nurul Amin Mollik where

these two accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque were not made accused. Had they any involvement with the event narrated in charge no.03 they would have been prosecuted in the earlier prosecution under the Penal Code. Thus, now bringing arraignment against them creates doubt as to the truthfulness of their participation with the alleged event in any manner.

345. The learned defence counsel further submitted that the alleged fact of moving to these two accused persons with an approach by the relatives of the victim Nurul Amin Mollik to secure release of the victim is not credible. Testimony of P.W.02 and P.W.03 in this regard is hearsay in nature. Beside, P.W.02 admitted that she did not know these two accused persons beforehand and P.W.03 was a minor girl of 07 years, and as such, their testimony carries no credence. Besides, mere making approach to these two accused persons, the elderly citizens of Jamalpur town and their failure to act in response to such approach does not make them liable for providing abetment and substantial contribution to the commission of the principal crime. There has been nothing that may reasonably prompt to the inference that these two accused persons had authority and dominance over the Al-Badar Bahini, and thus, cannot be said to have contributed and facilitated the commission of the crimes, simply for the reason of

omission to respond the appeal to release the victim, the learned defence counsel added.

346. Mr. Abdus Sobhan Tarafder, the learned State defence counsel for the absconded accused persons who have been indicted in this charge submitted that from the evidence tendered by the prosecution it reveals that some other Al-Badar men too were with the group. But they have not been prosecuted in this case. P.W.01 was 08 years old in 1971, and as such, he is not in position to recall the event or facts related to it as human memory is faded with the lapse of passage of time.

347. The fact of killing Nurul Amin Mollik was the upshot of the attack that resulted in his forcible capture from his residence in Jamalpur town, as narrated in this charge. The event of attack happened in mid night and only the family inmates including wife, sons, daughter and parents had occasion to see and observe the act and conduct of the individuals accompanying the group, forming part of attack, in taking away the victim. Who were with the group in carrying out the attack? Out of total eight accused persons seven have been indicted in this charge. Accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain, Md. Abdul Mannan, Md. Abdul Bari and Md. Abul Hashem, the potential Al-Badar men were with the group of perpetrators, the charge framed arraigns.

348. Accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque have been indicted too for abetting, aiding, facilitating and substantially contributing to the commission of the principal crime as they did not respond to the appeal the relatives of the victim made on the following day to secure release of the detained victim, the charge alleges. However, they are not alleged to have physically participated in accomplishing the act of abduction and they have not been arraigned to have physically participated at any phase of the event.

349. Defence, as it transpires from the trend of cross-examination of the prosecution witnesses, does not dispute the event of killing Nurul Amin Mollik by forcibly taking him away from his house. Defence simply suggested the prosecution witnesses that accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali were not associated with Jamalpur Peace Committee and they were not allegedly requested for securing release of Nurul Amin Mollik. Defence further disputes that accused Ashraf, Sharif, Mannan, Bari and Hashem were not with the politics of Islami Chhatra Sangha [ICS] and they were not involved with the commission of the event as testified by the witnesses. It transpires that the P.W.s blatantly denied all these suggestions. It is to be noted that mere denial does not taint the truthfulness of what has been testified in examination-in-chief unless it is found to have been refuted in cross-

examination. But as we see, the defence could not impeach the testimony made on material particulars, and as such, the same carries value and the same deserves to be taken into account for adjudicating this charge.

350. In view of above the matters pertinently need to be determined are --

- (i) Whether the accused Ashraf, Sharif, Mannan, Bari and Hashem belonging to Al-Badar Bahini being accompanied by their cohorts participated and facilitated the act of abduction of the victim?
- (ii) Whether the inmates of the victim's family had reason of being acquainted with the identity of the five accused persons?
- (iii) How the relatives of the victim became aware of the identity of those five accused, the Al-Badar men?
- (iv) Whether the relatives of the victim approached the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque seeking release of the victim?
- (v) How the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque participated or aided or abetted or facilitated the actual commission of the principal crime?
- (vi) Where and in what condition the dead body of the victim was found?

351. Prosecution relied upon as many as seven witnesses to prove this charge and they have been examined as P.W.01, P.W.02, P.W.03, P.W.04, P.W.05, P.W.06 and P.W.07. Of them P.W.02, P.W.03 and P.W.04 are the wife, daughter and son of victim Nurul Amin Mollik respectively. P.W.05, a resident of Jamalpur town allegedly found the dead body of victim Nurul Amin Mollik

floating at Chapatala ghat of the river Brahmaputra on 11 July 1971 . P.W.06 and P.W.07 are the near relatives of victim Nurul Amin Mollik who have testified facts relevant to the event and on 11 July 1971 they saw the victim's dead body floating at Chapatala ghat. In addition to the facts relevant to the attack that resulted in abduction the inmates of the victim's family and other witnesses also testified the effort by making approach to the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque for securing the victim's release. Now let us evaluate the evidence tendered by the prosecution witnesses.

352. P.W.01 Azizur Rahman alias Dol, a resident of Jamalpur town was a student of Class V of Singhajani Bohumukhi High School in 1971 and had been staying in Jamalpur town. He is a near relative of the victim Nurul Amin Mollik. In respect of the event narrated in this charge P.W.01 is a hearsay witness. Presumably later on he heard the event from the relatives of the victim Nurul Amin Mollik, and as such, his evidence can be acted upon together with some other corroborative evidence.

353. It transpires from the evidence of P.W.01 that accused Professor Sharif Ahamed alias Sharif Hossain was cousin brother of victim Nurul Amin Mollik; that at the relevant time on hearing screaming Nurul Amin Mollik's parents went to up stair from ground floor and seeing accused Professor Sharif Ahamed there

asked him-----“ where are you going to take your *phupato bhai* [Nurul Amin Mollik], do not cause a grave harm to me’. Accused Professor Sharif Ahamed who was a relative of the victim was also with the group of attackers and just before taking the victim away accused Professor Sharif Ahamed in response to query made by victim’s father told that –‘Nurul Amin Mollik is an Awami Leaguer and we are going to take him to our camp to resolve it’ and then on direction of accused Professor Sharif Ahamed and Md. Ashraf Hossain accused Md. Abdul Bari and Md. Abul Hashem brought him [Nurul Amin Mollik] to down stair tying his hands up.

354. P.W.02 Rawshan Ara Mollik, the wife of martyr Nurul Amin Mollik is a key direct witness to the event of attack that resulted in her husband’s forcible capture. Her husband had a pharmacy known as ‘Mollik Pharmacy’ in Jamalpur town and he was involved with Awami League politics. In 1971 they had been residing at C&B Road in Jamalpur town along with her children and some other relatives including father-in-law and mother-in-law.

355. Evidence of P.W.02 provides corroboration to what has been stated by P.W.01 and it demonstrates that at the relevant time i.e at about 01:00 A.M. [10 July 1971] she woke up for taking medicine and 20/25 minutes after she saw three ‘Razakars’[presumably AB men] entering their room when two of them dragged her husband out of the room and with this she too attempted to go with her

husband but was resisted by an armed 'Razakar'. She became fainted and after regaining sense came to down stair when she heard her father-in-law telling with shout that –"Ashraf, Sharif, Mannan-- what ruin you have caused to me"[*Akiyd , kixd , gubnb tZviv Avgvi K meDvk Kijj*].

356. The above was thus the manner the victim was taken away forcibly from his residence and the inmates including wife and father of the victim had occasion of observing such criminal acts. Defence does not dispute the event of abduction, we reiterate. It simply disputes the presence and participation of the accused persons with the event in any manner.

357. P.W.03 Nurjahan Begum alias Rosy Mollik is the daughter of martyr Nurul Amin Mollik. In 1971 she was 07 years old. She is a direct witness to the event of forcibly taking away her father by the group of Al-Badars and their accomplices. Her testimony provides corroboration to what has been stated by P.W.02. P.W.03 consistently stated what she observed at the time of taking away her father forcibly. According to her, in the mid of night she woke up hearing screaming of her grand-father and saw their room opened and her grand- father was targeted by someone by a gun on his chest while her grand-father told—‘ Ashraf, Sharif, Mannan—do

not cause harm to my son' [*Ai ki id, ki id, gi bab tZivv Aivvi tQij i meBvk Kim by*]. Then the Al-Badar men took away her father.

358. Testimony of P.W.03 so far relates to making approach to Peace Committee leaders seeking release of detained victim and on the following day finding dead body of captured Nurul Amin Mollik provides corroboration to what has been testified by P.W.02, another key direct witness to facts relevant to abduction leading to his killing, the upshot of the attack which was carried out by the accused persons and their accomplice Al-Badar men. P.W.04 Rafiquzzaman Mollik, the son of the victim consistently corroborated his sister [P.W.03] and mother [P.W.02] on material particular. Mere tender age of P.W.03 and P.W.04 cannot render their testimony unreliable as it based on their observation which made them severely traumatized and such horrific trauma retains in human memory for long time, it rather never erased.

359. P.W.06 Aatur Rahman Bulbul is the son of victim's sister and had been at the residence of victim, at the relevant time. In 1971 he was a student of Class VI in Jamalpur Zilla School. He saw the act of his maternal uncle's abduction. His testimony consistently corroborates to that of P.W.02, P.W.03 and P.W.04, the direct witnesses to the event of attack that resulted in forcible capture of Nurul Amin Mollik. At a stage of attack, he [P.W.06] was kept resisted on gun point on the ground floor and then his

[P.W.06] grand-father and grand-mother coming out of the room started crying out loudly saying – ‘Ashraf, Sharif, Mannan, Bari have taken away your[P.W.06] maternal uncle.’ Defence could not controvert this piece of evidence which pertinently leads to the conclusion about active participation of five accused persons belonging to Al-Badar Bahini with the attack.

360. It has been divulged that victim Nurul Amin Mollik used to run pharmaceutical shop in Jamalpur town. But he was a significant supporter of Awami League and after the war of liberation ensued he used to assist the freedom fighters by providing information and in 1971 he had been staying at his residence in Jamalpur town with his family and parents. In view of facts and circumstances unveiled we may safely infer that affiliation of the victim with pro-liberation political party which led the war of liberation was the reason of marking him as a prey by the notorious Al-Badar Bahini.

361. It stands proved that accused Md. Ashraf Hossain, the chief of Jamalpur Al-Badar Bahini, being accompanied by his cohort Al-Badar men including accused Mannan, Bari, Hashem and Sharif by launching attack in mid night had picked up victim Nurul Amin Mollik from his residence when his inmates including wife and parents could not resist the offenders, the Al-Badar men. It also reveals that accused Professor Sharif Ahamed was cousin brother of victim Nurul Amin Mollik. But he [accused Sharif] who uttered

before the victim was taken away forcibly that – Sharif in response to query made by victim’s father told that – ‘Nurul Amin Mollik is an Awami Leaguer and we are going to take him to our camp to resolve it’.

362. What ‘matter’ the Al-Badar men intended to ‘resolve’ by taking Nurul Amin Mollik to their camp? Yes, their common purpose of ‘resolving’ the ‘matter’ ended with the act of causing brutal death of the victim Nurul Amin Mollik. How notorious the Al-Badar men were in 1971? The planned killing was committed by the Bengali youths belonging to this Al-Badar Bahini, the ‘killing squad’. They were engaged deliberately intending to wipe out non-combatant civilians whom they found sided with the war of liberation. It was rather an attack to the Bengali nation.

363. Victim was the maternal uncle of P.W.07 Md. Moazzem Hossain Mollik alias Rakhal who also heard the event on the following morning [10 July 1971]. His elder maternal uncle Shahjahan [now dead] and other relatives moved to victim’s home at Jamalpur town in the morning of 10 July 1971 on being informed of the event; that his maternal uncle Shahjahan approached to accused S.M. Yusuf Ali, Advocate Shamsul Haque, accused Professor Sharif and Moktob Kabiraj who were the leaders of Jamaat-e-Islami and local Peace Committee and they gave hope of

doing something [about victim's release]. P.W.06, another son of victim's sister also made similar version which remained unshaken.

364. Naturally, the adult male relatives of the victim had initiated the approach to accused S.M. Yusuf Ali , Advocate Shamsul Haque and other leaders of local Peace Committee seeking release of the victim. And the family inmates and victim's relatives had practicable reason of hearing the above move from them who made it to those two accused persons who were the potential leaders of local Peace Committee. Therefore, their consistent testimony in this regard carries value. What we may conclude from this fact?

365. We may safely infer that these two accused persons, namely S.M. Yusuf Ali and Advocate Md. Shamsul Haque by virtue of their position in Jamaat-e-Islami and local Peace Committee had authority to resist the commission of crime or grave wrong to a civilian detained even by the Al-Badar men and it irresistibly forces us to conclude that inaction or omission demonstrated on part of the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque in securing release of the victim rather had an encouraging effect which eventually facilitated the commission of the actual crime of killing the detained victim and these two accused persons , for the reason of their status and position, were quite aware about the consequence of their act and conduct of 'inaction' and 'omission' which were patently culpable indeed. These two accused persons'

appropriate action, in exercise of their position and dominance, might have saved the life of the detained victim. But these two accused persons being aware that causing death of the detained victim was a possible consequence of the execution of the group of Al-Badar men they remain abstained from responding to the appeal made by relatives of the victim.

366. By such culpable omission these two accused persons, in other words, intended to facilitate causing grave wrong to the detainee, a protected person under the Geneva Convention 1949. This charge involves killing one non-combatant civilian. The group which committed the crime was formed of leading and mighty men of Jamalpur Al-Badar Bahini, an armed wing created to collaborate with the Pakistani occupation army. It together with the pattern of attack in perpetrating the crime leads to safe conclusion that even these accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque were also concerned with the total event that ended with the murder of abducted victim. They had a close nexus with the common purpose and policy and plan of the Pakistani occupation army being imbued by which they facilitated and encouraged the accomplishment of the crime of killing the upshot of victim's abduction, deliberately and culpably flouting the appeal made by the victim's relatives seeking his release..

367. The charge framed states that on the same day i.e on 10 July 1971 bullet hit dead body of victim Nurul Amin Mollik was found floating at Chapatala ghat. But the evidence tendered depicts that on the following day i.e on 11 July victim's dead body was discovered as above and it remained unimpeached.

368. In respect of the killing of Nurul Amin Mollik P.W.05 A.F.M. Hedayetul Islam alias Faruk simply testified when and how the dead body of Nurul Amin Mollik was found. He did not claim to have learnt the event. Naturally, the context prevailing in 1971 in the territory of Bangladesh did not allow others to observe the actual commission of murder. P.W.06 and P.W.07, as evinced, along with relatives rushed to Chapatala ghat of the river Brahmaputra on 11 July 1971 where they found the bullet hit dead body of Nurul Amin Mollik floating. It remained unimpeached.

369. Thus, it stands proved that the act of the victim's abduction ended with his horrific death. Thus, even in absence of any direct evidence in respect of killing the totality of event suggests irresistible conclusion that the act of killing was chained to the act of abduction and therefore, the accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari, and (5) Md. Abul Hashem participating physically in causing forcible capture of the victim are indisputably responsible for the killing, the principal crime.

370. What more happened during the time in between the act of abduction of the victim on 10 July mid night and finding his dead body on 11 July one day after his abduction? It is evinced from the evidence provided further divulges that approach was initiated in the following morning [10 July 1971] to the accused S.M. Yusuf Ali, Advocate Md. Shamsul Haque and other leading persons affiliated with the Peace Committee and Al-Badar Bahini for securing victim's release.

371. The charge framed alleges that on the same day i.e on 10 July 1971 victim's dead body was found. But mere inconsistency about the date of finding victim's dead body does not render the fact of making above approach untrue particularly when it remained unshaken in cross-examination. On integrated evaluation of evidence tendered on relevant facts we may safely conclude that the captured victim's death was caused after the approach was made to accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque for securing his release.

372. It is also found from the evidence of P.W.02 Rawshan Ara Mollik that on the following morning elder cousin brother of her husband coming from his native home on getting message and her father-in-law started haunting her husband and contacted and approached Yusuf Master [accused], Shamsul Advocate [accused], the leaders of local Peace Committee seeking release of the

detained victim. But they did not have any trace of Nurul Amin Mollik despite the leaders of Peace Committee and Al-Badar Bahini gave them hope of returning Nurul Amin Mollik.

373. The above evidence indisputably signifies that the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque were in a position to secure victim's release. But they did not do it. Such inaction and omission rather reflected their culpable intent and endorsement of providing facilitation and aid to the principal offenders in executing the plan by causing grave wrong to the detainee.

374. We have already found in adjudicating charge no.02 that the relatives of abducted victims in similar fashion, finding no other way, moved to these two accused persons holding potential position in local Peace Committee securing release of detained victims. However, the victims were eventually had to face death. This piece of evidence tends to prove the position of authority and dominance of these two accused persons over the Al-Badar Bahini in Jamalpur town even in deciding the fate of captured civilians.

375. Accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque were actively affiliated with the Peace Committee as its members, P.W.08 Md. Shahidur Rahman Bhuiyan stated. It transpires too from the testimony of P.W.01 that on order of accused S.M. Yusuf Ali, office of Peace Committee was formed by occupying 'Sadhana

Oushadhalya' in Jamalpur town. It indicates how mighty member the accused S.M. Yusuf Ali was. Political affiliation of these two accused persons with Jamaat-e-Islami added more might to their position in the Peace Committee.

376. We may infer it justifiably that this was the reason of making approach to them [accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque] by the mother of victim Saidur Rahman alias Sadu Chairman [victim of charge no.02] begging her son and detained Abdul Hamid to get back on release, but they turned them out as the victims were the followers of Awami League, the leading pro-liberation political party. This pertinent version made by P.W.13 Alhaj Ayesha Rahman, wife of said Saidur Rahman alias Sadu Chairman forces to infer unerringly the extent of might and position of these two accused persons in Jamalpur town.

377. In view of above it may also be inferred unerringly that the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque were extremely antagonistic to the pro-liberation civilians, and as such, endorsed and encouraged the criminal activities of Al-Badar men by showing 'inaction' to the approach made to them for securing release and they did it intending to share the intent and purpose of the principal offenders, the Al-Badar men and with this they knowing the predictable consequence of such culpable inaction

aided and substantially facilitated the principals in completing its criminal mission of wiping out the victim Nurul Amin Mollik. Peace Committee and its members especially the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque holding mighty and leading position in the organization of course were not with any pious object.

378. These two accused persons were the leading men of local Peace Committee. It was formed with intent to collaborate with the Pakistani occupation army and its auxiliary forces in carrying out atrocious activities. Therefore, omission on their part to respond the appeal deliberately and with the intention to facilitate the victim's death or to cause serious bodily harm as they despite being aware of the fact of abduction of an unarmed civilian.

379. Giving hope of returning the detained victim signifies that the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque had knowledge about the fact of keeping the victim detained on forcible capture and the victim's life could have been saved if those two accused persons responding the approach by the relatives of the victim had shown humanity. Rather, on the following day [11 July 1971] her husband's bullet hit and bayonet injured dead body was found floating at Chapatala ghat of the river Brahmaputra. Afterwards her husband's dead body was buried at the graveyard.

380. We are not convinced with the defence argument that mere 'inaction' on part of these two accused persons cannot connect them with the event of killing, for the reasons above. We reiterate that in some circumstances even such 'inaction' is considered as an act forming part of attack when it is found proved that the accused had a position of authority or domination over the principals. We have already rendered our reasoned finding that the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque were the potential leaders of Jamalpur Peace Committee who had affiliation with the politics of Jamaat-e-Islami, a pro-Pakistan political party.

381. Tribunal notes that in a case involving the offence[s] of crimes against humanity an accused need not be proved to have had physical participation in any of phases of the event carried out by the principals. It is now settled that participation, by an act of abetment, may occur before, during or after the actual commission of the offence.

382. It stands proved that despite approach made to them for release of detainee Nurul Amin Mollik accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque had shown grave inaction on their part and they rather by such 'inaction' and 'omission' had made themselves part of the entire event that ended in brutal killing of the detained victim.

383. We may safely conclude that these two accused persons having leading and dominant position in Peace Committee and Al-Badar Bahini as well by their conduct substantially encouraged and endorsed the commission of the principal crime, the killing of the victim. In this way they provided assistance, encouragement that had substantial effect on the completion of the principal crime.

384. The act of aiding and abetting need not be tangible. But it may be inferred from the act of providing moral support to the principals. Accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque are not alleged to have had any manner of physical participation to the commission of the crime. But as already found they by their inaction and omission provided moral support and endorsement which were rather culpable act of aiding and abetting the commission of the principal crime. In this regard **ICTY Trial Chamber in the case of *Simic, Tadic, and Zaric*** observed that-

“The acts of aiding and abetting need not be tangible, but may consist of moral support or encouragement of the principals in the commission of the crime.”

[Case No. IT-95-9-T, Judgment: 17 October 2003, Para-162]

385. Tribunal notes that the matter of having culpable affiliation with the group of perpetrators, the Al-Badar men or enterprise and occupying position of authority on it need to be inferred from the circumstances revealed. Accused S.M. Yusuf Ali and Advocate

Md. Shamsul Haque deliberately 'inacted' to the approach presumably for the reason that the detained victim was a blind follower of local Awami League, and thus, by their act of 'omission' and 'inaction' forming part of the 'attack' these two accused persons have incurred responsibility of abetting and substantially contributing and facilitating the actual commission of the killing of detained victim Nurul Amin Mollik.

386. In this way, these two accused persons made them 'consenting part' in the commission of the crime alleged and it is reasonably inferred that they had 'connection' with plans or enterprise or activities of the group of Al-Badar men, the principals involving commission of the crimes. These two accused persons being aware that causing death of detained victim was a possible consequence of the execution of the group of Al-Badar men, they remained abstained from responding to the appeal made by relatives of the victim.

387. It is the only reasonable inference that can be made from the totality of the evidence , as discussed above, that by an act of 'inaction' that encompasses endorsement or approval the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque consciously and knowing the foreseeable consequence refused to prevent the crime. Instead of preventing the commission of crimes, these two accused persons who had effective control over the Peace Committee and

local Al-Badar Bahini, rather approved its commission by their act of culpable inaction and thus they incurred liability.

388. The detained victim could have been slaughtered instantly he was forcibly taken away by the group of Al-Badar men. But the victim's bullet hit and bayonet charged dead body was found floating at Chapatola ghat on 11 July 1971, i.e the day following his abduction took place. Thus, 'refusal' of these two accused persons to respond for release of detainee as approached by his relatives leads us to an unerring conclusion that surely on getting endorsement from these two accused persons or considering their [two accused] 'inaction' as an 'approval' or 'moral support' the principals eventually killed the detained victim Nurul Amin Mollik.

389. Crime against humanity is a 'group crime' and usually it happens by participation of several individuals who act in different manners. Thus, there can be several perpetrators in relation to the same crime where the conduct of each one of them forming 'attack' fulfills the requisite elements to constitute the substantive offence.'

390. On rational appraisal of evidence, the acts [inaction and omission to prevent commission of crime] done on part of accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque are not found to be isolated. These formed part of 'attack'. The Tribunal notes that it is possible to conclude that even a single act constituting the offence makes an accused culpable for the offence of crime against

humanity. In this regard the **ICTY Appeals Chamber has observed in the case of *Deronjic that-***

“.....all other conditions being met, a single or limited number of acts on his or her part would qualify as a crime against humanity, unless those acts may be said to be isolated or random.”

[Case No. IT-02-61-A, Judgment: 20 July 2005, Para-109]

391. In view of deliberation made above based on evidence tendered we conclude that the prosecution has been able to prove it beyond reasonable doubt that accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari, and (5) Md. Abul Hashem and their cohort Al-Badar men formng group had attacked the residence of the victim Nurul Amin Mollik in Jamalpur town and keeping victim’s inmates resisted on gun point took away the victim on forcible capture. All these five accused persons have been found to have had physical participation in effecting the unlawful act of abduction.

392. The event ended with the victim’s brutal killing and his dead body was found on 11 July 1971 floating on Chapatola ghat of the river Brahmaputra. The reason of targeting the victim was that he was a potential follower of Awami League and used to provide

information to the freedom-fighters which was contrary to the object of forming Peace Committee and Al-Badar Bahini. These five accused persons, the potential members of Jamalpur Al-Badar Bahini were thus concerned also with the actual commission of the act of killing.

393. On total evaluation of evidence tendered we have already got a frightening portrayal of a systematic attack directed against an unarmed civilian who belonged to pro-liberation ideology. Victim's ideology was the reason that made the two other accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque imbued showing deliberate and culpable 'omission' or 'inaction' on their part despite their mighty position in local Peace Committee and Jamaat-e-Islami to prevent the actual commission of offence. Tribunal notes that even a single 'behaviour' of an accused may in fact clearly constitute 'instigation' or 'abetment' to the perpetrators of the crime if it had substantial effect in execution of the principal crime.

394. It is now settled that 'abetment' or 'instigation' may arise from a positive act or a culpable omission. Accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque could have acted, by virtue of their leading position, to set the victim spared by ensuring his release. But they by their act of 'omission' or 'inaction' abetted, substantially contributed, provided moral support and

encouragement to the actual perpetrators, the Al-Badar men and thereby facilitated the perpetration of the offence of killing.

395. Therefore, in view of above, the accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari, and (5) Md. Abul Hashem are found guilty for ‘participating’, facilitating, abetting and for ‘complicity’ in the committing abduction and murder of an unarmed civilian by launching systematic attack constituting the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973, and accused (6) S.M. Yusuf Ali and (7) Advocate Md. Shamsul Haque are also found guilty for ‘abetting’, ‘facilitating’, ‘contributing’ and for complicity in the commission of the offence of said murder as crime against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973, and thus, all the seven accused persons incurred criminal liability under section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Adjudication charge No. 04

[Confinement, torture, murder and other inhumane acts committed in the Torture Cell at Ashek Mahmud College Degree Hostel: Event No. 04 narrated in the formal charge]

396. Summary charge: That as soon as the Pakistan occupation army occupied Jamalpur, on 22 April 1971 Al-Badar Bahini was formed in Jamalpur under the leadership of accused Md.Ashraf Hossain, who was the president of the then Jamalpur Sub-Division

Islami Chhatra Sangha. Soon after, Al-Badar Bahini occupied the Degree Hostel of Ashek Mahmud College and used it as their 'torture cell' of which accused Md. Ashraf Hossain was the chief. Besides him, Al-Badar members accused Professor Sharif Ahamed alias Sharif Hossain, an influential leader of the then Jamalpur Sub-Division Jamaat-e-Islami, Md. Abdul Mannan and Md. Abdul Bari, and others used to stay in that 'torture cell' regularly to run the same. Since 22 April to 11 December, 1971 the said four accused persons and about 50/60 other Al-Badar members regularly used to confine, torture and kill a lot of unarmed innocent civilians in the said 'torture cell'.

397. Thereby accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alisa Sharif Hossain (3) Md. Abdul Mannan, and (4) Md. Abdul Bari are charged for participating, aiding, abetting, facilitating and complicity to the commission of offences of confinement, torture, murder and other inhumane acts as crimes against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Evidence of Witnesses Presented

398. To prove charge no. 04, the prosecution has examined as many as 07 [seven] witnesses [P.Ws. 05, 06, 16, 17, 19, 20 and 21]. Before we enter the task of evaluation of evidence adduced, let us first see what the witnesses examined have narrated in the Tribunal.

399. P.W.05 A.F.M Hedayetul Islam alias Faruk [66] is a resident of Jamalpur town. He is a jute trader. In 1971 he was a BA class student in Ashek Mahmud College. In 1971 his father Khondokar Tojammel Hossain alias Bagha Moulavi [now dead] was a member of local Jamaat- e -Islami. He stated that on any day in 1971 his father told that one girl was raped by the Pakistani army which was anti -Islam and misdeed. His father moved to army camp set up at the SDO Bungalow where one Aftab Bihari having kept his father detained for about 7/8 hours scolded him and then allowed him to come out. He [P.W.05] knew some of his father's political colleagues who were Professor Mozammel Haque [now dead], Moktob Kabiraj [now dead], Professor Goni and Head Master S.M. Yusuf Ali [accused].

400. P.W.05 next stated that in 1971 Al-Badar camp was set up at the Degree Hostel of Ashek Mahmud College. After independence he heard that accused Ashraf, Mannan, Bari, Harun were associated with that camp. He[P.W.05] also heard that innocent people were kept detained at that camp.

401. In cross-examination, P.W.05 stated that his father was a teacher of Singhojani High School and accused S.M. Yusuf Ali was its Head Master. P.W.05 denied the suggestion put to him that accused Ashraf, Mannan, Bari and Harun were not affiliated with the Al-Badar camp and that what he testified was untrue.

402. P.W.06 Md. Ataur Rahman Bulbul [58] is the sister's son of victim Nurul Amin Mollik. In 1971 he was a student of Class VI in Jamalpur Zilla School and used to stay in the house of his maternal uncle [Nurul Amin Mollik] situated at C&B road in Jamalpur town. He is a direct witness to the facts related to his maternal uncle's abduction and killing.

403. He [P.W.06] stated that Al-Badar members were trained at Singhojani High School and their camp was at Degree Hostel of Ashek Mahmud College and there had been a sub-camp of Al-Badar Bahini at Sadhana Oushadhalya at Medical Road. P.W.06 also testified that a Pakistani army camp was at PTI [Primary Training Institute] and another Al-Badar camp was at opposite to the army camp. He[P.W.06] heard that Ashraf, Mannan, Sharif, Bari, Hashem, Harun, Shah Alam received Al-Badar training.

404. In cross-examination P.W.06 denied the suggestions put to him that he did not hear about the receiving Al-Badar training by accused Ashraf, Mannan, Sharif, Bari, Harun and Hashem and that he testified falsely keeping the truth secret.

405. P.W.16 Md Mokhlesur Rahman [67] is the brother of victim Saidur Rahman alias Sadu Charmin. In 1971 he was a student of HSC class in Tejgaon College, Dhaka and was Assistant Organizing Secretary of Chhatra League of that college unit. On 13 March 1971 he went to their home in Jamalpur town.

406. P.W.16 stated that he went to India to join the war of liberation on 25 April 1971 as the Pakistani army occupied Jamalpur town on 22 April 1971. The Pakistani army then set up Al Badar camp and started providing them training. Accused Md. Ashraf Hossain, Professor Sharif Ahamed, Md. Abdul Mannan, Md. Abdul Bari and many others belonging to Al-Badar Bahini received training there. Jamalpur Singhojani School field was used for providing training to them. Accused Yusuf Ali, Moktob Kabiraj, Gani Professor, Advocate Kajimuddin, accused Advocate Shamsul Haque were in steering position in offering the training and they were also members of Peace Committee. The members of Peace Committee in collaboration with the Pakistani army used to carry out the acts of torture and killing the innocent civilians of Jamalpur. Peace committee formed in Jamalpur used to carry out its activities by occupying Sadhana Oushadhalya and other houses.

407. P.W.16 in respect of setting up Al-Badar camps in Jamalpur town stated that Al-Badar camp was set up at the Degree Hostel of Jamalpur Ashek Mahmud College where innocent civilians were

subjected to cruelties and were killed keeping them confined there by the Al-Badar members. Accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari, Harun and some other Al-Badar men were responsible for operating the said camp and its activities. Pakistani army set up a camp at PTI Training Centre in Jamalpur town. The Pakistani army and the Al-Badar members together used to bring the captured civilians at that camp, keep them detained and tortured there and used to shoot them to death by taking them, putting hand cuff, at the crematorium on the river Brahmaputra.

408. On cross-examination by accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali P.W.16 stated that he had no occasion to meet his brother Saidur Rahman while he had been in India. He himself did not see what happened since 23 April 1971 in Jamalpur. P.W.16 denied the suggestion that these accused persons were not the members of Jamalpur Peace Committee, that he did not learn what he testified and that what he testified was untrue and tutored.

409. In cross-examination done for the absconded accused persons P.W.16 stated that he had been in India when the Al-Badar men were receiving training in Jamalpur town and he could not say how many Al-Badar members received training. P.W.16 denied the suggestions put to him by the defence that he deliberately suppressed the identity of persons who really operated the Al-Badar

camp set up at Degree Hostel of Ashek Mahmud College and that what he testified about the event was untrue and tortured.

410. P.W.17 Md. Ainal Hossen [59] of village Bonpara under Police Station Jamalpur of the then Sub-Division Jamalpur is the son of victim Ayub Ali Fakir. In 1971 he[P.W.17] was 14/15 years old and a student of Class IX of Singhajani High School, Jamalpur and his father had been serving as night guard in the Degree Hostel of Ashek Mahmud College, Jamalpur and they used to reside at their house adjacent west to the Degree Hostel. P.W.17 stated that in 1971, the said Degree Hostel was turned into a camp of the Al-Badar Bahini and its members used to torture civilians inside the camp, taking them on forcible capture. Accused Md. Ashraf Hossain, Abdul Mannan, Abdul Bari and others were involved with this Al-Badar Bahini, he added.

411. P.W.17 next stated that in 1971 his father used to provide information about the activities of Al-Badar Bahini to the freedom-fighters. In the first week of Bangla month Bhadra in 1971, the Al-Badar men led by accused Md. Ashraf Hossain abducted his father from their house and tortured him keeping in captivity inside a tin-roof house beside the Degree Hostel of Ashek Mahmud College, he said.

412. He [P.W.17] went to the college's Vice Principal Aziz, Al-Badar commander accused Md. Ashraf Hossain, accused Abdul

Mannan and accused Abdul Bari to request his father's release. The Al-Badar men broke his father's hands and legs before releasing him after 7/8 days of torture in confinement. Due to said torture his father became physically challenged and 14/15 years back he died.

413. On cross-examination done on behalf of accused Md. Ashraf Hossain, Md. Abdul Mannan and Md. Abdul Bari P.W.17 stated that in 1971 Sujaet Ali was the principal of Ashek Mahmud College and his residence was north-west corner to the college field and the Degree Hostel of Ashek Mahmud College was situated adjacent south to that field. Their house was about 200/300 feet far from the residence of the principal and vice principal's residence was very closer to the college boundary. In reply to question put to him by the defence P.W.17 stated that his father lost his job, even after independence as he became physically challenged. It however affirms the arraignment of causing brutal cruelties to him in captivity in the Degree Hostel that resulted in his disability, as testified by P.W.17. Defence suggested P.W.17 that his father's disability was not caused by alleged torture, that the accused persons were not involved with the act of abducting, confining and torturing his father, that they were not affiliated with the Al-Badar Bahini and that what he testified implicating the accused persons was untrue and tutored. P.W.17 blatantly denied it. The suggestion

put to P.W.17 rather affirms the existence of Al-Badar camp at the Degree Hostel of Ashek Mahmud College.

414. P.W.19 Shah Mohammad Jahangir Alam Chowdhury [65] is a resident of Amlapara of Jamalpur town. In 1971 he was a second year student of Polytechnic Institute, Mymensingh. They used to reside at their own home in Jamalpur town, in 1971. The Pakistani army entered Jamalpur town on 22 April 1971 and thus they along with their family had to go to their native home in Sherpur. His [P.W.19] elder brother Rejaul Karim Chowdhury studied in Mymensingh Agricultural University and used to stay in Mymensingh and his another elder brother Shah Mohammad Rafiqul Bari Chowdhury went to India at the end of April to join the war of liberation.

415. P.W.19 went on to state that Al-Badar camp was set up at Jamalpur Ashek Mahmud College's Degree Hostel and they had to receive training in the field of Singhajani High School. Accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari and others were associated with the said camp and Al-Badar training spot.

416. On cross-examination P.W. 19 denied the suggestions put to him by the defence on behalf of accused Md. Ashraf Hossain, Md. Abdul Mannan and Md. Abdul Bari that these three accused persons did not stay in the Al-Badar camp and they were not

involved with alleged event he testified and that what he testified was untrue and tutored. It may be mentioned here that cross-examination was declined on behalf of accused Professor Sharif Ahmed alias Sharif Hossain.

417. P.W.20 Md. Shafiqul Islam Khoka [68], a former lawmaker of Jamalpur-3 constituency chiefly testified when the Pakistani occupation army entered Jamalpur town, how the Peace Committee and Al-Badar Bahini were formed, who were culpably affiliated with those organisations, the atrocious activities carried out by them around the locality of Jamalpur , operating torture camps of Pakistani army and Al-Badar Bahini and the role and status of accused persons and their complicity and influence with those torture camps. In 1971 he [P.W.20] was 23/24 years old and joined the war of liberation as a freedom fighter.

418. P.W.20 stated that in Jamalpur Peace Committee was formed of about 50 members including Moktob Kabiraj, Vice-Principal Abdul Aziz, Principal Mozammel Haque, Professor Sharif, Professor Rabbani and Ashraf [accused] was the key man of Al-Badar Bahini formed and about 70/80 persons including Mannan, Bari, Hashem, Moyna, Mokhter, Hannan, Samad got them joined in the Al-Badar Bahini as its members. Training of Al-Badar members was operated in Singhajani High School and Yusuf [accused], the

then Head Master of this school was in charge of organising the training.

419. P.W.20 also stated that in 1971 the Pakistani army set up a torture camp at PTI [Primary Training Institute] in Jamalpur town while the Al-Badar torture camp was at Ashek Mahmud College's Degree Hostel. Al-Badar Ashraf was the leader of the Al-Badar torture camp set up at the Degree Hostel of Ashek Mahmud College and about 70 Al-Badar men including Mannan, Bari, Hashem and Hannan were his accomplices. Halim, the then General Secretary of Jamalpur Sub-Division Chhatra League was kept confined at this camp as brought forcibly by Al-Badar Ashraf and his cohorts and he was tortured to death in captivity there.

420. In narrating what he experienced on visiting those torture camps, after independence, P.W.20 stated that Jamalpur town became liberated on 10 December 1971 and on that day at about 09:00 A.M. he along with his co-freedom-fighters visited the PTI torture camp when they found blood stained wearing apparels and cut off fingers and hands of human beings scattered over there and then they moved to the Al-Badar torture camp at the Degree Hostel of Ashek Mahmud College at about 11:00 A.M. where they found too blood stained wearing apparels and cut off organs of human beings scattered over.

421. On cross-examination P.W.20 stated in reply to question put to him that possibly on 9/10 May in 1971 Peace Committee was formed in Jamalpur town, that on 22 April 1971 the Pakistani army and their collaborators burnt down the house of local MNA Abdul Hakim. P.W.20 also stated that accused Ashraf, Bari, Mannan and Hashem were students of Singhajani High School and then of Ashek Mahmud College, Jamalpur, and that he[P.W.20] passed HSC examination from the said college in 1967.

422. In cross-examination P.W.20 further stated that he did not see accused Ashraf after independence as he fled away. He came to Jamalpur town several occasions in between 22 April and 10 December, 1971 for carrying out operations. P.W.20 denied suggestions put to him by the defence that accused Ashraf, Mannan, Bari, Hashem did not belong to Al-Badar Bahini, that Ashraf was not the commander of Al-Badar Bahini, that they were not involved with any atrocious activities and that what he testified implicating the accused persons with the atrocious activities was untrue and tutored.

423. **P.W.21 Md. Shahidur Rahman Khan [73]** is a resident of Jamalpur town and his native home is at village Bhatara under Police Station Sorishabari of the then Jamalpur Sub-Division. In 1971 he had been serving as a teacher in Ashek Mahmud College, Jamalpur. Sujaet Ali [now dead] was the principal of the college at

that time, P.W.21 added. He[P.W.21] principally testified what he experienced about the activities of the Pakistani occupation army after it entered Jamalpur town, formation of Peace Committee and Al-Badar Bahini and the persons affiliated to those organisations in 1971, during the war of liberation.

424. P.W.21 stated that on 22 April the Pakistani army entered Jamalpur town and the army officers used to stay in WAPDA rest house and the army men got them headquartered at PTI. After the entry of Pakistani army in Jamalpur town they all the teachers quitted the college [Ashok Mahmud College]. Afterwards, they resumed duties as teachers in that college pursuant to a government circular dated 07 June 1971 and then he discovered a camp of Al-Badar Bahini formed of some students at the Degree Hostel of the college. Accused Md. Ashraf Hossain was the head of the camp and 50/60 Al-Badar men including accused Abdul Mannan, Abdul Bari, Abdul Khalek and others used to stay at that camp as members of Al-Badar Bahini. They were the students of Ashok Mahmud College. Accused Professor Sharif Ahamed used to visit the camp occasionally.

425. P.W.21 also stated that the Al-Badar men brought Harunur Rashid Khan alias Hiru, a student of the Ashok Mahmud College to that camp on capture. Hiru was his[P.W.21] neighbour and, as such, in one evening in the first part of June 1971 he along with his

colleague teacher Abdul Salam went to that Al-Badar camp and wanted to know from Al-Badar man Abdul Khalek when he came to them whether they had brought Hiru on capture. In reply, Khalek denied it. P.W.21 further stated that on that day at the time of dusk Hiru started shouting saying—‘ save me, save me, they will kill me’ when he was being taken away by the Al-Badar men from the Al-Badar camp by a truck through the road near Hiru’s house and since then Hiru could not have been traced. The road in front of his [P.W.21] current residence has been named as ‘Shahid Hiru Sarok’.

426. In respect of activities of Al-Badar men in 1971, P.W.21 stated that the Al-Badar men used to bring civilians on forcible capture from different localities at the Al-Badar torture camp at Degree Hostel of Ashek Mahmud College where they were subjected to torture and after killing them their bodies were left abandoned at graveyard where there has been a monumental column to remember those martyrs.

427. P.W.21 further testified that at the end of August, 1971 he got invitation at the Al-Badar camp set up at Degree Hostel of their college, through their principal. With this he and 15/20 professors of their college went to that Al-Badar camp in the evening and they took their seats at the veranda of a tin-roof house. Few minutes later one army Captain Shamsad arrived there from PTI camp and asked

accused Ashraf to bring 'someone' and with this accused Ashraf Hossain brought out two boys from inside the said Al-Badar camp's torture cell in the hostels' field. They [detainees] were 20/22 years old. Captain Shamsad asked accused Ashraf Hossain to start 'cock-fighting' and then accused Ashraf Hossain ordered those boys to blow fist to each other and the boys started doing it. At a stage, Captain Shamsad told- ' I shall show you a charity show that is how the Japanese soldiers torture the war prisoners'. Then on instruction of Captain Shamsad an army man kicked on the waist of one boy when he fell down and then also kicked on his neck. Then Captain Shamsad told aiming at them [the professors sitting there] –'you will face the same consequence'. And then the Captain inviting them for dinner had left the place.

428. In cross-examination, P.W.21 stated that Principal Sujaet Ali used to reside within college campus along with family, that he did not see the students of the college after independence who were affiliated with the Al-Badar camp set up at Degree Hostel of the college, that all the professors along with whom he attended the invitation at the Al-Badar camp were not pro-Pakistan.

429. P.W.21 denied the suggestion put to him, during cross-examination, that accused Ashraf Hossain, Abdul Mannan, Abdul Bari were not the members of Al-Badar camp set up at Degree Hostel and they were not involved with any of events he testified,

that he did not see them in Jamalpur, that he did not see the accused Ashraf Hossain, Abdul Mannan, Abdul Bari, Sharif Ahamed in Jamalpur town even at time before the war of liberation ensued and that what he testified implicating the accused persons was untrue and tutored.

Finding with reasoning on Evaluation of Evidence

430. Prosecution claims that in all 07 [seven] witnesses [P.W.s. 05, 06, 16, 17, 19, 20 and 21] have been examined to substantiate this charge. Before we evaluate the evidence adduced, let us first see what the witnesses examined have narrated in the Tribunal.

431. This charge arraigns that after the Pakistani occupation army entered Jamalpur town Al-Badar Bahini was formed and a 'torture cell' of Al-Badar Bahini was set up at the Degree Hostel of Ashek Mahmud College, Jamalpur and accused Md. Ashraf Hossain was its chief. The camp [torture cell] was operated by accused Md. Ashraf Hossain, Md. Abdul Mannan and Md. Abdul Bari, the Al-Badar men and accused Sharif Hossain, a leader of Jamaat-e-Islami was closely affiliated with it and its activities, by virtue of his leading position and dominance in Jamalpur Al-Badar Bahini, the charge framed alleges. During the period of the war of liberation, the said four accused persons and their accomplice 50/60 Al-Badar members recurrently used to carry out criminal activities by causing

torture and death of ‘ a lot of innocent civilians’ keeping them confined at the said 'torture cell', the charge framed alleges.

432. Thus, the prime allegation as understood from the essence of the charge framed is that the status and steering position of the said four accused persons over the Al-Badar torture cell, set up at the Degree Hostel of Ashek Mahmud College adequately indicates their nexus and ‘conscious part’ with the horrendous criminal activities committed there and such criminal activities happened recurrently by confining the civilians in the said camp, during the entire period of the war of liberation in 1971.

433. Mr. Tapas Kanti Baul, the learned prosecutor submitted that this charge involved commission of recurrent and system criminal activities at the Al-Badar camp, set up at the Degree Hostel of Ashek Mahmud College and all the collective criminality happened within the knowledge and on approval of the accused persons of whom accused Ashraf Hossain, Abdul Mannan and Abdul Bari were mighty Al-Badar members having dominance over the said camp. Mere non specifying identity of victims and date of event happened there cannot render the charge framed flawed, particularly when the defence got due opportunity to cross-examine the prosecution witnesses who testified some facts constituting the offences of abduction, confinement, torture and murder as crimes against humanity .

434. Drawing attention to the narrative made by P.W.17, P.W.19, P.W.20 and P.W.21 in respect of some facts, the learned prosecutor submitted that their evidence does not lack specificity and the same impels to the conclusion that those facts were part of recurrent criminal activities carried out at the said Al-Badar torture cell directing a lot of civilians detained there and the accused persons had acted in furtherance of common purpose and criminal plan. Defence could not refute the truthfulness of the facts narrated by those witnesses constituting the offences as crimes against humanity and what has been depicted from their evidence is a fractional portrayal of recurrent system cruelties committed at the Al-Badar torture cell during the war of liberation in 1971.

435. Structuring a monumental column at a place near graveyard in the memory of numerous martyrs as stated by P.W.21 Md. Shahidur Rahman Khan forces to the conclusion that the dead bodies of civilians were left abandoned there after they were killed. Finding cut-off human organs and blood wrapped wearing apparels at the Al-Badar torture camp, instantly after independence achieved as stated by P.W.20 Md. Shafiqul Islam Khan, a freedom fighter adds assurance of carrying out mayhem there routinely by the Al-Badar men particularly under the culpable dominance of accused Ashraf Hossain, Abdul Mannan and Abdul Bari, the learned prosecutor added.

436. The learned prosecutor relying upon the observation made by the **Appellate Division in the case of *Ali Ahsan Muhammad Mujahid*** argued that charge no.06, in the said case, involved the 'killing of intellectuals' occurred between 10-14 December 1971 but the charge did not spell the identity of victim[s] and date and time of the event of attack with specificity that resulted in killing of a number of notable intellectuals and the Appellate Division rendered its decision based on evidence tendered on 'intellectuals killing' affirming the judgment and conviction on this charge. In the case in hand, charge no.04 resembles to the charge no.06 in the case of *Ali Ahsan Muhammad Mujahid*. There has been sufficient and specific evidence to prove the arraignment of committing recurrent system criminal activities at the Al-Badar torture cell. Mere non specification of victims' identity and the manner of occurring the criminal acts happened inside the camp categorically constituting the offences does not render the charge framed 'unspecified' or 'flawed', the learned prosecutor added.

437. Mr. Abdus Sobhan Tarafdar, the learned State defence counsel chiefly submitted that the prosecution could not prove the accused persons' complicity and participation by tendering credible evidence. The charge framed as well does not state any specific event of attack that resulted in commission of a particular crime.

438. Tribunal notes that formation of Al-Badar Bahini in Jamalpur town is not disputed. From the trend of cross-examination of prosecution witnesses as has been extracted it transpires that the defence simply denied accused persons' membership with the Al-Badar Bahini and their close affiliation with the Al-Badar torture cell, set up at the Degree Hostel of Ashek Mahmud College.

439. It transpires that P.W.17, P.W.20 and P.W.21 categorically testified some events of attack that resulted in abduction, confinement, torture and torture to death at the Al-Badar torture cell which may legitimately be considered to be part of recurrent atrocious acts constituting the offences of confinement, torture and killing 'a lot of civilians' at the said camp during the war of liberation in 1971. Given the nature of the crimes alleges, it is not required to describe details as to identity and number of all the victims.

440. It is now jurisprudentially settled that mere error or omission in the charge framed does not render the trial flawed and vitiated, particularly when the accused persons gets sufficient opportunity of being defended by cross-examining the prosecution witnesses who narrate facts or events relating to the crimes stated in the charge.

441. In the Appeal preferred by *Ali Ahsan Muhammad Mujahid* before the Appellate Division of the Supreme Court of Bangladesh it was submitted, in respect of charge no.06 involving the 'killing of

numerous intellectuals' in between 10 and 14 December 1971, on part of the convict appellant that -

".....there is no particulars of the alleged crime in the charge as framed against the appellant. In reply, learned Attorney General submits that in case of mass killings it is difficult to narrate the names of victims in the charge."

[Ali Ahsan Muhammad Mujahid, Criminal Appeal No. 103 of 2013, Judgment 16.6.2015, page 123]

442. In this regard the Appellate Division observed that --

"In Gacumbitsi (Appeal Chamber) Judge Shahabuddeen observed that it is settled jurisprudence that, in the case of a mass killing, individual victims do not have to be specifically referred to in the indictment."

In view of the contents of the charge No.6, it is difficult to accept the submissions that the particulars of the charge of the crime were not reasonably sufficient."

[Ali Ahsan Muhammad Mujahid, Criminal Appeal No. 103 of 2013, Judgment 16.6.2015, page 124]

443. Finally the Appellate Division observed in respect of the charge no.06 [**in the case of Ali Ahsan Muhammad Mujahid**] that--

"From the facts, circumstances and evidence on record, the elements of instigation to Badr Bahini by the appellant to commit such atrocities has been proved beyond reasonable doubt."

[Ali Ahsan Muhammad Mujahid, Criminal Appeal No. 103 of 2013, Judgment 16.6.2015, page 156]

444. In view of above, we are to see whether the evidence tendered by the prosecution is reasonably sufficient to prove the crimes allegedly committed recurrently at the Al-Badar torture cell and concern and complicity of the accused persons therewith. According to the charge, the Al-Badar camp set up at Degree Hostel of Ashek Mahmud College was the ‘crime den’ where crimes were committed recurrently by keeping innocent pro-liberation civilians confined there.

445. We have already recorded our finding based on settled history and authoritative information and evidence tendered that in 1971 during the war of liberation of Bangladesh Al-Badar Bahini was formed mainly of Islami Chhatra Sangha [ICS] workers and accused Md. Ashraf Hossain was in dominating position of Al-Badar Bahini in Jamalpur.

446. In our preceding deliberation we have rendered reasoned finding too that in 1971 the accused Md. Ashraf Hossain, Md. Abdul Mannan and Md. Abdul Bari, the Al-Badar men and accused Sharif Hossain were the key persons in operating the Al-Badar torture camp set up at the Degree Hostel of Ashek Mahmud College, Jamalpur. Al-Badar Bahini formed in Jamalpur had an inseparable chain with the Islami Chhatra Sangha [ICS], the student wing of Jamaat-e-Islami [JEI], we conclude it irresistibly. Next, accused Md. Ashraf Hossain was a significant and potential

leader of ICS of greater Mymensingh. It may thus be unambiguously concluded that accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari were in dominating position over the Al-Badar Bahini formed of ICS workers and its camp set up in Jamalpur town. Accused Professor Sharif Ahamed alias Sharif Hossain, a leader of JEI was culpably with them in carrying out activities at the Al-Badar camp.

447. What was the nature of this 'force' [Al-Badar Bahini] and how it acted in the name of collaborating with the Pakistani occupation army, to further policy and plan? In addition to deliberation already made on it we feel it necessary to recall the observation of the Appellate Division of the Supreme Court of Bangladesh in the case of *Muhammad Kamaruzzaman* which is as below-

"This Al-Badar force was raised with the object to exterminate the pro-liberation forces and their supporters. In fact this force acted as the Pakistan Army's 'death squad'. Hussain Haqqani, termed them as such and the prosecution evidence also revealed that the accused's force acted as 'killing squad'"

"The Pak army raised Al- Badar force to act as 'death squad' for exterminating the pro-liberation forces and their supporters and to maintain sovereignty of Pakistan and also to thwart the independence of Bangladesh."

[Criminal Appeal No.62 of 2013; Muhammad Kamaruzzaman, Judgment 3rd November, 2014, Pages 166 and 169]

448. P.W.05 A.F.M. Hedayetul Islam alias Faruk stated about setting up the Al-Badar camp at the Degree Hostel of Ashek Mahmud College. After independence he heard that accused Ashraf, Mannan, Bari, Harun were associated with that camp where innocent people were kept detained at that camp. P.W.16 Md. Mokhlesur Rahman corroborating P.W.05 in respect of setting up Al-Badar camp stated that innocent civilians were subjected to cruelties and were killed keeping them confined there [Al-Badar camp] by the Al-Badar members and accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari, Harun and some other Al-Badar men were responsible for operating the said camp and its activities. P.W.19 Shah Mohammad Jahangir Alam Chowdhury, a resident of Amlapara of Jamalpur town also stated that Al-Badar camp was set up at Jamalpur Ashek Mahmud College's Degree Hostel and accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari and others on receiving training got themselves engaged and culpably associated with the said camp.

449. Defence does not appear to have made any effort to refute the above version on material particular by cross-examining the above P.W.s. It simply denied accused persons' complicity with the Al-Badar camp. In 1971 Jamalpur was a small sub-divisional town, and as such, naturally the town dwellers had fair opportunity of being aware about the status and position of the accused persons

belonging to ICS, the student wing of JEI and also the formation of Al-Badar camps, army camps and Peace Committee offices in Jamalpur town and complicity of accused persons with any of those notorious organizations became an anecdote. Therefore, the evidence tendered by P.W.05, P.W.16 and P.W.19 so far as it relates to formation of Al-Badar camp and accused persons' affiliation carries probative value. Besides, the essence of testimony tendered by these three witnesses gets assurance even from that of P.W.06 Md. Aatur Rahman Bulbul.

450. P.W.16 Md Mokhlesur Rahman, a resident of Jamalpur town stated that accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari, Harun and some other Al-Badar men were responsible for operating cruelties and killing innocent civilians keeping them confined at the Al-Badar camp set up at the Degree Hostel of Jamalpur Ashek Mahmud College. This version compatibly goes with the core essence of the charge framed.

451. Jamalpur Al-Badar Bahini was formed after the Pakistani occupation army occupied Jamalpur on 22 April 1971 under the leadership of accused Md. Ashraf Hossain. P.W.20 Md. Shafiqul Islam Khoka, a former lawmaker of Jamlpur-3 constituency is a reliable witness. He testified that accused Ashraf Hossain was the key man of Jamalpur Al-Badar Bahini formed of 70/80 persons

including accused Mannan, Bari and Hashem and they received training at Singhajani High School, Jamalpur.

452. A report titled **ÓRvgvj cj gnKgvq : 10 nvRvi tj vK nZ`vt 75 nvRvi Mp aÿsmt 12 †KvU UvKv ¶wZ Ő** published in the daily Ittefaq, 20 February 1972[Exhibit-19], **Prosecution Documents Volume Page 166**] narrates that:

"Rvgvj cj, 17B tde" qvix MZ bq gv†m cvK nvbv`vi I Zvi t`vm†i iv th ¶wZ Kwi qv†Q Zvi GLb chS-I Z`†S-i KvR Pw†j †Z†Q Z†e cŪB temiKvix wnmv†e Rvbv wMqv†Q, gnKgvq 75000 evoxNi aÿsm I jy Ges Kgct¶¶ `k nvRvi e"³ wbnZ ev w†Lvb nBqv†Q|"

453. It is already evinced that the Al-Badar Bahini formed in Jamalpur actively and culpably collaborated with the Pakistani occupation army, on receiving armed training, in carrying out atrocious activities by setting up camps and torture cells in Jamalpur town. Thus, the essence of the above report forces to conclude that the Al-Badar Bahini led by accused Md. Ashraf Hossain, Md. Abdul Mannan and Md. Abdul Bari and their close accomplice accused Sharif Hossain used to carry out criminal acts of torture, other inhumane acts and killing of numerous civilians keeping them confined there on forcible capture which is quite compatible with the arraignment brought in the charge framed [charge no.04].

454. In respect of pattern and extent of barbaric activities carried out at the Al-Badar torture cell at the Degree Hostel of Ashek

Mahmud College, P.W.21 Shahidur Rahman Khan, a teacher of the said college stated that accused Md. Ashraf Hossain was the head of the camp and 50/60 Al-Badar men including accused Abdul Mannan, Abdul Bari, Abdul Khalek and others used to stay at that camp as members of Al-Badar Bahini. They were the students of Ashek Mahmud College. Accused Professor Sharif Ahamed used to visit the camp very often. P.W.21, a natural and competent witness also stated that the Al-Badar men used to bring civilians on forcible capture from different localities at the Al-Badar torture camp at Degree Hostel of Ashek Mahmud College where they were subjected to torture and after killing them their dead bodies were left abandoned at graveyard where there a monumental column has been erected to remember those martyrs.

455. The above version remained unimpeached and it together with the reports published in the newspapers as already conversed in the preceding segment conjointly leads to conclude that during the period of the war of liberation in 1971 pro-liberation civilians were forcibly brought to the said camp which was a 'torture cell' where they were subjected to torture and tortured to death and such criminal activities happened in recurrent manner to which the accused Md. Ashraf Hossain, Md. Abdul Bari, Md. Abdul Mannan and Sharif Hossain were conscious and took active part.

456. It is evinced that accused Md. Ashraf Hossain, Md. Abdul Bari and Md. Abdul Mannan were in leading position of the Al-Badar Bahini in Jamalpur and accused Professor Sharif Hossain being one of its potential associates too had constant affiliation with the Al-Badar camp and all kinds of recurrent system criminal activities at the Al-Badar torture cell obviously happened within their knowledge and with their participation as well by way of providing approval, and as such, they cannot absolve of the responsibility of those criminal acts constituting the offences of confinement, torture, other inhumane acts and killing merely for the absence of specific mode of their participation and detail of identity of victims in the charge framed. In this regard we find substance in what has been argued by the learned prosecutor.

457. Additionally, it is not necessary to show specific mode of participation of accused persons if they are found to be part of collective criminality accomplished to further common purpose. The recurrent system crimes are alleged to have been perpetrated at the Al-Badar camp which were operated under the guidance and coordination of the accused persons, evidence tendered tends to suggest it unerringly. Accordingly, all the accused persons who were conscious part of system and collective criminality carried out at the camp are held equally liable. On this aspect we recall the observation of the Appellate Division of the Supreme Court of

Bangladesh made in the case of *Muhammad Kamaruzzaman* reflecting the pattern of activities of Al-Badar Bahini and participation of its members therewith that-

"The very nature of the job of the force in which the accused was engaged presupposed that whenever these forces participated in any encounter or killed a person or set ablaze a house or raped a woman, it were done with the common intention/object of all, and every one of them is as much guilty as the other, and it is not necessary that every one of them should have participated in the commission of the offence to the same extent and degree as the other person."

[Criminal Appeal No.62 of 2013, Muhammad Kamaruzzaman, Judgment 3rd November, 2014, Pages 169 and 170]

458. P.W.16 Md. Mokhlesur Rahman heard that accused Md. Ashraf Hossain, Md. Abdul Mannan, Professor Sharif Ahamed, Md. Abdul Bari and many others received Al-Badar training at Singhajani High School, Jamalpur. P.W.17 Md. Ainal Hossen, a resident adjacent to the Degree Hostel of Ashek Mahmud College where the Al-Badar torture cell was set up stated that in the first week of Bhadra [1971] Al-Badar men led by accused Md. Ashraf Hossain abducted his [P.W.17] father from their house and took him away to the said torture cell and tortured him keeping in captivity for 7/8 days scrapping his appeal he made to accused Md. Ashraf Hossain , Md. Abdul Mannan, Md. Abdul Bari for his father's release. Making appeal to those trios indicates that they were the key Al-Badar men of the camp and they had authority to

decide detainee's fate and in carrying out criminal activities there [torture cell].

459. 'A lot of civilians' as stated in the charge framed included the victims of the criminal acts directing the father of P.W.17, Halim who was tortured to death as stated by P.W.20, Harunur Rashid Khan alias Hiru who was tortured in captivity and then taken to unknown place and since then could not be traced as testified by P.W.21 and two boys kept in captivity who were forced to demonstrate 'cock-fight' as experienced by P.W.21. All these criminal events could have been spelt out specifically in the charge framed. But in view of facts and circumstances revealed mere absence of it the charge framed does not cause any prejudice to the persons accused of the offences committed on numerous civilians as the defence got due opportunity to cross-examine the witnesses examined who specifically narrated those criminal events.

460. The crimes alleged are not isolated crimes. These are 'system or group crimes' committed in the context of the war of liberation in 1971 to further policy and plan of the Pakistani occupation army with intent to annihilate the pro-liberation civilians. In this charge, criminal activities allegedly carried out in the Al-Badar camp situated at the Degree Hostel of Ashek Mahmud College and complicity and concern of the accused persons have to be chiefly adjudicated. The Al-Badar camp was rather acted as a

‘torture and death cell’, and as such, no individual had occasion to observe and know the activities carried out there and also the fate of all the civilians detained there. Number of victims of crimes might not have been possible to be calculated, due to war time situation and context. Since the charge framed involves the offences of confinement, torture and killing of ‘a lot of civilians’ happened recurrently at the Al-Badar camp we are to see whether the civilians as stated by P.W. 17, P.W.20 and P.W.21 were the victims of recurrent crimes committed at the Al-Badar camp and whether the accused persons were concerned with the same.

461. The charge framed chiefly arraigns setting up Al-Badar camp at the Degree Hostel of Ashek Mahmud College over which the accused persons had culpable and steering position and control and thus the accused persons had concern, participation to the accomplishment of recurrent criminal activities carried out there.

462. Let us see what the P.W.17, P.W.20 and P.W.21 testified in relation to criminal acts committed by the Al-Badar men at the Al-Badar torture cell, as part of recurrent system criminal activities .

463. P.W.17 Md. Ainal Hossen is the son of victim Ayub Ali Fakir. In 1971, he [P.W.17] was 14/15 years old and a student of Class IX of Singhajani High School, Jamalpur and his father had been serving as night guard in the Degree Hostel of Ashek Mahmud College, Jamalpur and his father used to provide information about

the activities of Al-Badar Bahini to the freedom- fighters. It may be validly inferred that P.W.17 had opportunity to know the activities carried out at the Al-Badar camp set up at the Degree Hostel of Ashek Mahmud College.

464. Evidence of P.W.17 demonstrates that Al-Badar Bahini and its members used to torture civilians inside the camp, taking there on forcible capture. Accused Md. Ashraf Hossain, Md. Abdul Mannan, Md. Abdul Bari and others were involved with this Al-Badar Bahini. This piece of unimpeached version indicates that recurrent system cruelties were being carried out at the Al-Badar camp. It is also found from the evidence tendered by P.W.17 that in the first week of Bangla month Bhadra in 1971, the Al-Badar men led by accused Md. Ashraf Hossain abducted his father from their house and he was subjected to torture in captivity for 7/8 days at the Al-Badar camp.

465. The above version relating to abduction and causing torture to the father of P.W.17 keeping him in protracted confinement at the Al-Badar camp does not appear to have been denied even in cross-examination. And the act of making appeal to the accused Md. Ashraf Hossain, Md. Abdul Mannan and Md. Abdul Bari for securing release of the victim too remained undenied. All these indisputably proves the act of causing torture to P.W.17's father by keeping him detained in the Al-Badar camp to which the accused

persons were conscious part and approving participants. Causing severe cruelties to the father of P.W.17 resulted in his physical disability –it has been reaffirmed in cross-examination. Thus, the extent of torture inflicted to the father of P.W.17 was significantly grave, no doubt. It signifies again the barbaric notoriety of Al-Badar men.

466. Next, it is evinced again from the testimony of P.W.20 Md. Shafiqul Islam Khoka, a former lawmaker of Jamalpur-3 constituency that accused Md. Ashraf Hossain was the key man of Al-Badar Bahini formed in Jamalpur. It has been unveiled from his evidence that Al-Badar Md. Ashraf Hossain was the leader of the Al-Badar torture camp set up at the Degree Hostel of Ashek Mahmud College and accused Md. Abdul Mannan and Md. Abdul Bari were his accomplices. Evidence of P.W.20 divulges that Halim, the then General Secretary of Jamalpur Sub-Division Chhatra League was kept confined at that Al-Badar camp as brought forcibly by Al-Badar Md. Ashraf Hossain and his cohorts and he was tortured to death in captivity there. Defence does not appear to have denied this event of specific criminal act that resulted in killing of a pro-liberation civilian in confinement at the Al-Badar camp.

467. P.W.21 Md. Shahidur Rahman Khan is a resident of Jamalpur town. In 1971 he had been serving as a teacher in Ashek

Mahmud College, Jamalpur. His evidence depicts that a camp of Al-Badar Bahini was formed of some students at the Degree Hostel of the college. Accused Md. Ashraf Hossain was the head of the camp and 50/60 Al-Badar men including accused Md. Abdul Mannan, Md. Abdul Bari and other Al-Badar men used to stay at that camp and accused Professor Sharif Ahmed used to visit the camp very often.

468. The above version of P.W.21 remained unshaken, and thus, it together with evidence of other P.W.s and documentary evidence [Exhibited reports of newspapers as already discussed] inevitably proves accused persons' constant and culpable nexus with the Al-Badar camp set up at the Degree Hostel of Ashek Mahmud College.

469. From the evidence of P.W.21 it is found that Al-Badar men took away his[P.W.21] neighbour Harunur Rashid Khan alias Hiru, a student of the Ashek Mahmud College to the Al-Badar camp on capture and afterwards, in the first part of June 1971 at the time of dusk he [P.W.21] heard Hiru started shouting saying—‘**save me, save me, they will kill me**’ when he was taken away by the Al-Badar men from the Al-Badar camp by a truck through the road near Hiru's house and since then Hiru could not have been traced. The road in front of his [P.W.21] current residence has been named as ‘Shahid Hiru Sarok’.

470. The above version remained totally unimpeached. On rational evaluation of what has been testified by P.W.21 we may arrive at a sane conclusion that said Hiru was kept in captivity at the Al-Badar camp where he was subjected to torture and then taking him out of the camp the Al-Badar men intended to create horror amongst the civilians and finally the victim Hiru had to face the fate of brutal death. This barbaric event was also part of recurrent system crimes committed at the Al-Badar camp, rational prudence suggests to infer it..

471. Another event adds irresistible conclusion about carrying out recurrent system criminal acts directing civilians keeping them at the Al-Badar torture cell in protected captivity. This event relates to ‘other inhumane act’ committed to innocent youths in confinement, as stated by P.W.21. It depicts from his [direct witness] evidence that at the end of August, 1971 he [P.W.21] got invitation at the Al-Badar camp at Degree Hostel of their college, through their principal. On being invited he and others had to go there in the evening. One army Captain Shamsad arrived there and asked accused Md. Ashraf Hossain to bring ‘someone’ out and with this accused Md. Ashraf Hossain brought out two boys from inside the Al-Badar camp’s torture cell in the hostel's field. Being ordered by Captain Shamsad accused Md. Ashraf Hossain asked those boys to start ‘cock-fighting’ and then the boys started blowing fist to each

other. At a stage, Captain Shamsad told- ‘ I shall show you a charity show that is how the Japanese soldiers torture the war prisoners’. Then on instruction of Captain Shamsad an army man kicked on the waist of one of boys who fell down and then also kicked on his neck. Then Captain Shamsad told aiming at them [the professors sitting there] –‘you will face the same consequence’. And then the Captain inviting them for dinner had left the place [Al-Badar camp].

472. The above event as narrated by the P.W.21 remained unshaken. This event in its entirety was gravely detrimental to civility and human rights. The Al-Badar men led by accused Md. Ashraf Hossain and his accomplices intended to give a message through the officials of Pakistani occupation army, by demonstrating the act of kicking the detained boys in public that the pro-liberation civilians would not be spared if they sided with the war of liberation. And in extending such message the Al-Badar men led by accused Md. Ashraf Hossain committed severe wrong to the two boys detained at the Al-Badar camp causing gross mental and bodily harm to them which constituted the offence of ‘other inhumane act’ .

473. Such criminal acts indisputably caused mental harm also to the P.W.21 and others who being present there on invitation had to experience the criminal acts as silent spectators. It is to be noted

that the right to be free from cruel, inhumane or degrading treatment is recognised in customary international law and is enshrined in international human rights instruments. Cruel and inhumane treatment has been defined by the **ICTY Appeals Chamber in the Celebici case** as below:

".....an intentional act or omission which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity."

[*Case No. IT-96-21-A, Judgment: 20.02.2001, Para-424*]

474. The above four specific events of criminal acts constituted the offences of crimes against humanity. It stands proved too that those crimes were committed by the Al-Badar men under the leadership of accused Ashraf, Mannan and Bari and of course on their explicit approval and with their knowledge. Accused Sharif Hossain was their potential associate. All those crimes were carried out at the Al-Badar camp as part of system and recurrent criminalities to further common purpose.

475. The criminal activities carried out recurrently at the Al-Badar torture cell makes the object of formation of Al-Badar Bahini clear again. In Jamalpur this 'squad' had acted under the leadership of accused Md. Ashraf Hossain to wipe out the pro-liberation Bengali civilians. The Appellate Division of the Supreme Court of Bangladesh in the case of *Mir Quasem Ali* observed that—

"This Al-Badar force was raised with the object to exterminate the pro-liberation forces and their supporters. In fact this force acted as the Pakistan Army's 'death squad'. Hussain Haqqani, termed them as such and the prosecution evidence also revealed that the accused's force acted as 'killing squad'".

[Mir Quasem Ali, Criminal Appeal No.144 of 2014, judgment: 08 March 2016, Page-188]

476. The events as testified by the PW.17, P.W.20 and P.W.21 lead us to an unerring inference that intending to further the object the Al-Badar Bahini by setting camp which was turned into a 'torture cell' the accused persons having position of dominance over it and the Al-Badar camp used to carry out recurrent system cruelties directing the civilians detained there on forcible capture that resulted even in their death. It gets unerring assurance from the testimony of P.W. 20 who stated that Jamalpur town became liberated on 10 December 1971 and on that day he [P.W.20] moved to the Al-Badar torture camp at the Degree Hostel of Ashek Mahmud College at about 11:00 A.M. where he found blood stained wearing apparels and cut off human organs scattered over.

477. Dominating position of the accused persons over the Al-Badar camp as already proved makes them criminally responsible for all the criminal activities done directing civilians keeping them in protected captivity at the Al-Badar camp, during the period of the war of liberation in 1971 and they cannot evade responsibility merely for the reason that the charge framed does not state any

event of committing crime with specificity. In this regard we find substance in what has been argued by the prosecution.

478. In the case in hand, in respect of charge no.04 we find that accused Ashraf, Mannan and Bari had acted as leading Al-Badar men having position of authority over the Al-Badar camp and accused Sharif Hossain too had a culpable nexus with the said Al-Badar torture camp where the civilians were recurrently subjected to torture and tortured to death. We have got it evinced from the evidence tendered by the prosecution witnesses. Thus, it can be said that the particulars made in this charge no.04 are quite sufficiently clear to enable the persons accused of the offences as stated therein to defend.

479. On totality of evidence it has been found proved that the accused persons, namely Ashraf, Mannan and Bari were the leading Al-Badar men having effective control and dominance of the Al-Badar camp and accused Sharif Hossain was a close and culpable accessory of the Al-Badar torture cell, and thus, it may be validly inferred that they all took part in a 'common enterprise' and 'system criminal activities' which were unlawful, and each of them in their own way participated, assisted, facilitated and contributed in accomplishing the common purpose of all by carrying out recurrent criminal activities at the said camp, and thus, they all are equally guilty in law.

480. The charge involves committing recurrent criminal activities in the said Al-Badar camp during the war of liberation in 1971. For holding the accused persons liable it is not necessary to prove that they were directly concerned in the commission of crimes there. Even without being present at the camp when the criminal act was done the accused may be said to have had taken part in the perpetration for the offence as it was to further the object of the Al-Badar Bahini to which the accused persons belonged dominating position.

481. Accused Md. Ashraf Hossain, the chief of the Al-Badar camp indisputably was the cog in the wheel of the events occurred at the Al-Badar torture camp as he by virtue of his position in the Al-Badar Bahini formed in Jamalpur exercised dominant position of authority to further common purpose and object of notorious Al-Badar Bahini which was in fact a 'slaughter gang' as it was engaged in organized system of cruelties and crimes in the camp and it covers the doctrine of **JCE-Form-II** [Systematic Form] committing system crimes.

482. It is to be noted that organized system of cruelties and crimes are not at all unusual in war time situation and it occurs recurrently in concentration camps and detention camps. In the case in hand, we find that this charge no.04 alleging commission of recurrent criminal acts directing civilians kept them in captivity at

the Al-Badar camp, during the war of liberation in 1971 involves organized system of cruelties and crimes. Thus, the doctrine of **JCE-Systematic Form** is applicable to all crimes committed at the Al-Badar torture cell set up at the Degree Hostel of Ashek Mahmud College, Jamalpur as it makes it ideal to address the system mass crimes committed in Al-Badar torture camp, during the war of liberation in 1971.

483. The evidence tendered by the prosecution proves it beyond reasonable doubt that the accused persons being the leading Al-Badar men having whole time affiliation with the Al-Badar camp were thus responsible for the offences of confinement, torture and torture to death of civilians brought there on forcible capture. The accused persons being in leading position of Al-Badar Bahini could have attempted to resist all those criminal activities if really setting up of the camp was intended to serve any holy purpose or for the well being of civilians. But the accused persons consciously endorsed, facilitated and participated in perpetrating the horrendous activities directing civilians bringing them at the Al-Badar camp on abduction.

484. The activities carried out at the Al-Badar camp was gravely detrimental to humankind and recognized fundamental rights of non-combatant civilians who are considered as protected persons according to the Geneva Convention 1949 in war time situation.

The events of criminal acts as found proved from the evidence of the P.W.17, P.W.20 and P.W.21 constituted the offences of abduction, torture, confinement, other inhumane acts and killing which were of course part of grave wrongs caused to 'numerous civilians' or 'lot of civilians' keeping them in captivity at the Al-Badar torture camp in Jamalpur town during the period of the war of liberation in 1971 as stated in the charge framed.

485. It stands proved that recurrent criminal activities including the events narrated by the P.W.17, P.W.20 and P.W.21 were committed in a systematic manner at the Al-Badar torture camp operated and led by the accused persons, the Al-Badar men having steering position over the said camp. It is compatible with the charge framed. The activities of the Al-Badar camp involved multiple commissions of crimes directing numerous civilians detained there.

486. The civilians detained at the Al-Badar camp were indeed subjected to torture which obviously resulted in the intentional infliction of severe pain or suffering, whether physical or mental, upon them in captivity and under the control and approval of the accused persons as they were responsible in running the said camp and its activities. Presumably, such 'system criminalities' were conducted at the Al-Badar camp with a high degree of orchestration and methodical planning designed by the accused persons who

were in commanding and leading position of the said camp and Al-Badar Bahini formed in Jamalpur as well.

487. The instant charge [charge no.04] involves criminal activities committed at the Al-Badar camp which was used as a torture cell by the accused persons and their cohort Al-Badar men during the entire period of the war of liberation in 1971, after the Al-Badar Bahini was formed in Jamalpur instantly after the Pakistani occupation army got them stationed there. Thus, here we are to see whether within a given and alleged time period the offences occurred once or twice or ten times or recurrently at the Al-Badar torture cell which is a matter of proof and not of pleading. Thus, we conclude that the particulars specified in this charge framed [charge no.04] stating the offences occurred recurrently at the Al-Badar camp from 22 April to 11 December 1971 are sufficient for adjudication of accused persons' culpability particularly when their close nexus with the Al-Badar camp, the 'torture cell' stands proved.

488. The identity of some of the victims and accused persons' participation and complicity with the grave wrongs and criminal acts done to them have been unveiled from the unimpeached evidence of prosecution witnesses which minimized the matter of its non-specification in the charge framed, particularly when the defence got due opportunity to refute it by cross-examining those

witnesses. Additionally, in dealing with this charge no.04 it appears from the facts and circumstances divulged that the accused persons, the potential members of Al-Badar Bahini used to carry out recurrent criminal activities directing civilians keeping them detained at the Al-Badar torture cell chiefly operated by them.

489. The crimes committed recurrently at the Al-Badar torture cell were ‘agreed crimes’ to which all the accused persons were part as they had steering position and dominance over the camp, and thus, they all are ‘participants’ and are criminally responsible for the crimes regardless of the part played by each in committing those crimes. This view is compatible with the doctrine of **JCE-Systematic Form**. In this regard we recall the observation of **ICTY Trial Chamber made in the case of Stakic** which is as below:

"Provided the agreed crime is committed by one of the participants in the joint criminal enterprise, all the participants are equally guilty of the crime regardless of the role each played in its commission."

[Prosecutor v. Milomir Stakic, Case No. IT-97-24-T, Judgment: 31.07.2003, Para-435]

490. The same proposition has been echoed in the observation made in the case of **Vasiljevic by the ICTY Trial Chamber** which reads as below:

"If the agreed crime is committed by one or other of the participants in a joint criminal enterprise such as has already been

discussed, all of the participants in that enterprise are equally guilty of the crime regardless of the part played by each in its commission."

[Prosecutor v.Mitar Vasiljevic, Case No. IT-98-32-T, Judgment: 29.11.2002, Para-67]

491. ‘Physical participation’ of an accused need not be a *conditio sine qua non* for the commission of the offence. Here, culpable and constant ‘involvement’ of the accused persons with the Al-Badar camp made them all linked in the chain of causation. In the case in hand, we see that the four accused persons were consciously concerned and part of activities carried out at the Al-Badar camp which was in fact a ‘torture cell’ and they by virtue of their leading and dominant position in Al-Badar Bahini were quite aware of the crimes committed there and those happened with their endorsement and approval, it may legitimately be concluded. And as such the events involving the criminal acts as evinced are quite sufficient to prove the instant charge [charge no.04] as those events adequately suggest committing recurrent crimes at the Al-Badar camp keeping the civilians in captivity there.

492. The accused persons had knowledge of the system crimes committed recurrently and knowing such activities of the camp they used to maintain constant association with the camp and they did it by virtue of their position of authority over the camp, facts and circumstances lead us to conclude it. Therefore, the liability incurred by the accused persons attracts the doctrine of **JCE-**

Systematic Form. In this regard we recall the observation of **ICTY Trial Chamber made in the case of Limaj** which is as below:

"In such cases the requisite intent may also be able to be inferred from proved knowledge of the crimes being perpetrated in the camp and continued participation in the functioning of the camp, as well as from the position of authority held by an accused in the camp."

[Prosecutor v. Fatmir Limaj and others, Case No. IT-03-66-T, Judgment: 30.11.2005, Para-511]

493. On extensive and rational evaluation of evidence tendered as made above and in view of facts and circumstance divulged we arrive at decision that the prosecution has been able to prove it beyond reasonable doubt that the accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan, and (4) Md. Abdul Bari were consciously concerned with the Al-Badar camp and criminal activities carried out there recurrently. The system crimes happened within their knowledge and they were part of those collective criminalities. Accordingly all the four accused persons incurred liability under the doctrine of **JCE-Systematic Form**. As a result all these four accused persons were participants to the commission of crimes at the said camp. It stands proved. Therefore, accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain(3) Md. Abdul Mannan, and (4) Md. Abdul Bari are found criminally liable under section 4(1) of the Act of 1973 for 'participating', 'abetting',

'facilitating' and substantially 'contributing', and also for complicity, by their conscious culpable acts and conduct forming part of attack, intending to the actual commission of recurrent criminal acts directing unarmed civilians constituting the offences of 'abduction' 'confinement', 'torture,' 'other inhumane acts' and 'murder' as crimes against humanity' as enumerated in section 3(2) (a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Adjudication charge No. 05

[Confinement, torture, murder and other inhumane acts committed in P.T.I. Hostel Torture Camp, Jamalpur: Event No. 05 narrated in the formal charge]

494. Summary charge: That on 22 April 1971 Pakistan occupation army occupied Jamalpur and camped in the P.T.I. Hostel of Jamalpur and WAPDA Rest House. In the P.T.I. Hostel, the Pakistani army and Al-Badar Bahini jointly established a torture centre. Since 22 April to 11 December 1971, the Al-Badar accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alisa Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Md. Abul Hashem (6) Advocate Md. Shamsul Haque, and (7) S.M. Yusuf Ali, and some other members of local Al-Badar Bahini and Pakistani army used to confine and torture thousands of innocent unarmed civilians in the said P.T.I. Hostel and at night took them to the

Soshanghat situated on the bank of the river Brahmaputra and killed them and left their dead bodies in the said river.

495. Thereby, accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Md. Abul Hashem (6) Advocate Md. Shamsul Haque, and (7) S.M. Yusuf Ali are charged for participating, aiding, abetting, facilitating, conspiracy and for complicity in the commission of offences of confinement, torture, murder and other inhumane acts as crimes against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which the accused persons have incurred liability under section 4(1) of the Act.

Finding with Reasoning on Evaluation of Evidence

496. This charge, as it appears, speaks of committing the offences of confinement, torture, other inhumane acts and murder of thousands of unarmed civilians at the army camp at PTI, Jamalpur allegedly happened there recurrently in between 22 April and 11 December 1971. Out of eight accused persons seven have been indicted and Al-Badar man accused Harun has been kept aside.

497. Prosecution, in course of summing up, claimed that P.Ws.01, 06, 08, 10, 11, 12, 13, 14, 15, 18, 19, 20 and 22, in all 13 witnesses testified in support of this charge no.05. Their testimony

demonstrates that the seven accused persons indicted in this charge were engaged in committing the offences of confinement, torture and murder of thousands of unarmed civilians at the army camp at PTI, Jamalpur. As understood, the accused persons have been indicted for incurring liability as they and Pakistani occupation army jointly used to commit recurrent crimes directing thousands of civilians keeping them in captivity at the PTI army camp.

498. At the outset the Tribunal notes that this charge does not narrate any particular crime[s] and how the accused persons aided, abetted, conspired, participated and facilitated the commission of recurrent crimes happened at the PTI army camp.

499. On going through the evidence of the above 13 P.W.s it transpires that excepting P.W.19 all of them testified the events of attacks and facts relevant to it as narrated in charge nos. 02, 03 and 04. Only P.W.19 Shah Mohammad Jahangir Alam Chowdhury claimed an event of abducting his elder brother Rejaul Karim Chowdhury by two Al-Badar men and P.W.20 Md. Shafiqul Islam Khoka claimed abduction of another civilian. No other witnesses stated any particular crime[s] or facts relevant to it which may form part of alleged killing of thousand of civilians at PTI army camp.

500. For the above reasons the learned prosecutor abstained from making submission drawing attention to what has been testified by the above P.W.s excepting P.W.19 and P.W.20. Accordingly, we

deem it appropriate to resolve this charge on eyeing on the argument advanced by both sides, without concentrating to the evidence of other 11 P.W.s. However, let us see what the P.W.19 and P.W.20 testified and whether it goes compatibly with the essence of this charge.

501. Mr. Tapas Kanti Baul, the learned prosecutor submitted that this charge although does not speak of any specific event, identity of victim[s] and date of committing crime[s] it may be legitimately inferred that the accused persons being potential and mighty Al-Badar men and leaders of Peace Committee were substantially engaged in carrying out recurrent criminal activities directing civilian population around Jamalpur Sub-Division during the period of 22 April and 11 December 1971. Evidence of P.W.19 relating to the act of taking away his elder brother Rejaul Karim Chowdhury to the PTI army camp on forcible capture was part of entirety of recurrent criminal activities committed there. Besides, finding cut-off human organs and blood stained wearing apparels at the PTI army camp after independence as stated by P.W.20 provides assurance as to commission of recurrent mayhem at the PTI army camp and by the Pakistani army being aided, abetted and facilitated by the accused Al-Badar men and the accused persons who were the leaders of local Peace Committee that resulted in torture and killing of thousands of civilians.

502. The learned defence counsel Mr. Gazi M.H. Tamim submitted that this charge suffers from specificity as to how i.e. by which act or conduct the accused persons contributed or abetted or aided to cause torture to whom and which date and even there has been no evidence whatsoever to connect the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque with the commission of a particular crime. Contribution and facilitation must be directed to the commission of particular crime. Accused persons' mere membership, if assumed to be true, does not constitute 'participation'. All these annul the validity of arraignment brought in charge no.05.

503. Mr. Abdus Sobhan Tarafdar, the learned State defence counsel chiefly submitted that this charge lacks of specificity. It does not state which accused caused torture or injury to which persons or civilians that resulted in their death. There has been no evidence whatsoever to implicate the accused persons indicted in this charge with the unspecified atrocities.

504. P.W.19 Shah Mohammad Jahangir Alam Chowdhury in testifying before the Tribunal claimed that at the end of July 1971 his elder brother Rejaul Karim Chowdhury came to their Jamalpur home from Mymensingh and afterwards in one morning at about 10.00/11.00 A.M. Al-Badar men accused Abdul Mannan and Abdul Bari detained him when he went at a place nearer to 'Yakub

Bakery' in Jamalpur town and was then taken away to PTI army camp which was beside the Al-Badar camp.

505. First, it is not clear whether P.W.19 himself witnessed the said event or heard it from some other persons who had occasion to see it. Second, the P.W.19 does not disclose the ultimate fate of his brother who was taken away to the PTI army camp, as claimed by him. Third, his [P.W.19] brother was forcibly taken away by two Al-Badar men. Fourth, it is not clear how P.W.19 knew that his brother was taken to the PTI army camp and not at the Al-Badar camp or elsewhere.

506. We agree that history says that the Pakistani occupation army and their local collaborators like notorious Al-Badar men and Razakars had killed not only thousands but millions of unarmed Bengali civilians in the territory of Bangladesh in 1971. But the lone act of forcible capture as claimed by P.W.19, even if believed, cannot be the lawful basis of drawing an inference as to involvement and complicity of accused persons with the alleged confinement, torture and killing of thousands of civilians keeping in captivity at PTI army camp.

507. Prosecution should have adduced sufficient evidence showing specific crimes forming part of alleged recurrent killing of thousands of civilians at the PTI army camp. It is true that some of witnesses relied upon in respect of charge no.05 have essentially

testified the act of forcible taking away their relatives to the PTI army camp on Jamalpur [as listed in charge no.02]. Those criminal acts constituting the offences have been categorically narrated in charge no.02 which has already been adjudicated. Charge no.03 does not relate to engagement of Pakistani army or their camp at PTI and this charge has already been determined on appraisal of evidence adduced. Charge no.04 involves commission of recurrent crimes committed at the Al-Badar camp set up at the Degree Hostel of Ashek Mahmud College and only the accused persons, the potential Al-Badar men having dominance over the Al-Badar camp have been found guilty for this charge no.04, taking particular crimes as evinced from the narration made by the witnesses.

508. It transpires that by framing charge no.05 the seven accused persons have been indicted alleging that they used to confine and torture thousands of innocent unarmed civilians in the army camp set up at P.T.I. Hostel and at night took them to the crematorium situated on the bank of the river Brahmaputra where killing them threw their dead bodies in the river. All those nature of atrocities happened in between 22 April and 11 December 1971 and the accused persons participated, aided, abetted, facilitated, conspired in accomplishing those crimes, the charge framed alleges.

509. First, the Tribunal notes that this charge no.05 as well, like charge no.01, suffers from gross non specificity of necessary

particulars as required under section 16(1) of the Act of 1973. Although some of witnesses testified, stating detail of victims and manner and date of occurring of the events of attack, that civilians were subjected to torture in captivity at the PTI army camp. But said testimony categorically relates to the events narrated in charge no.02 which has already been adjudicated on evaluation of evidence tendered. Therefore, now taking the crimes narrated in charge no.02, already proved on due adjudication, to be part of killing ‘thousands of civilians’ into consideration once again is not permitted for the purpose of adjudicating the charge no.05 which lacks of specificity as to particulars of crimes, participation and complicity of any of accused persons therewith.

510. It has already been proved that the civilians detained by launching attack were taken to PTI army camp where they were subjected to torture [as narrated in charge no.02] and for the offences of abduction, confinement and murder caused to detainees at PTI army camp five accused persons have been found guilty for collaborating with the Pakistani occupation army by participating and providing aid, contribution and facilitation to them in perpetrating the crimes.

511. We have also found it proved, while adjudicating charge no.02, that Saidur Rahman alias Sadu Chairman and Abdul Hamid Khan alias Hiru [victims of charge no.02] were kept in captivity at

PTI army camp and on 22 July 1971, 17/18 detainees including them were taken to Jamalpur crematorium where Pakistani army and Al-Badar men fired on them by gun which caused their death excepting Saidur Rahman alias Sadu Chairman who somehow survived by jumping to the river. Detainee Abdul Hamid Mokhter was also subjected to torture at the PTI camp, it already stands proved too.

512. Therefore, the above events involving the offences of abduction, confinement and murder of civilians taking them to the PTI army camp [as narrated in charge no.02] need not be adjudicated once again considering the same to be part of ‘massive atrocities’ causing killing of thousands of innocent unarmed civilians carried out at the said PTI army camp in between 22 April and 11 December 1971, in collaboration with the Al-Badar men and Peace Committee leaders as narrated in this charge no.05.

513. P.W.20 Md. Shafiqul Islam Khoka in deposing before the Tribunal claimed that Rejaul Karim Chowdhury and one U.P. Chairman Haider were subjected to inhumane cruelties in captivity at the PTI torture camp by the Pakistani army and Al-Badar men. But P.W.20 could not state how, when and who forcibly took away the U.P. Chairman Haider to the PTI army camp. What was the fate of those two civilians? P.W.19 and P.W.20 did not explain it.

514. Does the claim of P.W.19 and P.W. 20 tend to prove the matter sought to believe? The answer is 'no'. Prosecutor must satisfy the Tribunal that the said item of testimony, if believed, reasonably supports an inference of guilt of the accused persons. Prosecution failed to do it. Additionally, it is to be borne in mind that claim is to be substantiated by any other evidence based on observation of an individual by his five senses. Thus, their claims cannot be considered sufficient particularly when the charge framed remained silent about abduction of those two civilians. It is not understood why the investigation agency could not collect sufficient evidence to substantiate this charge.

515. Undeniably Pakistani army camps during the war of liberation in 1971 were not set up for the well being of civilians, true. But mere two acts of abduction of two civilians at PTI army camp as claimed by P.W.19 and P.W.20 do not remove the patent flaw of non specification of particulars necessary to constitute the offences of killing thousands of civilians and mode of participation of accused persons as alleged in this charge no.05. At the same time the claim of P.W.19 and P.W.20 is not considered to be sufficient at all to prove the alleged arraignment brought in charge no.05. It is to be noted that 'claim' is not synonymous to 'evidence'. A 'claim' needs to be established by sufficient evidence. But prosecution failed to tender sufficient evidence in support of this charge.

516. In view of above and since this charge no.05 does not spell specificity of particulars necessary for constituting crimes and adjudication of participation and complicity of accused persons and since the facts as unveiled from the evidence of P.W.19 and P.W.20 lacks of sufficiency we conclude that the prosecution failed to prove the arraignment designed in charge no.5 and thus the accused persons be acquitted thereof.

Adjudication of charge no. 01

[Abduction, torture, murder, plundering, arson and other inhumane acts: Event No. 01 narrated in the formal charge]

517. Summary charge: That during the war of liberation in 1971, accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali, both as the leaders of Jamaat-e-Islami and members of Peace Committee of the then Jamalpur Sub-Division along with their other accomplices substantially facilitated and contributed to the commission of offences of abduction, torture, murder, plundering, arson and other inhumane acts as crimes against humanity caused to unarmed civilians around the then Jamalpur Sub-Division by way of participating, aiding, abetting, facilitating, conspiracy and complicity in the commission of such crimes by establishing and maintaining Peace Committee in the then Jamalpur Sub-Division. As per the advice and guidance of the said Peace Committee the Pakistani occupation army and the local Al-Badar Bahini

committed mass atrocities around the then Jamalpur Sub-Division since 22 April to 11 December, 1971. During that period, due to their participation and substantial facilitation and contribution thousands of unarmed pro-liberation civilians were killed and wanton destruction of civilians' properties was caused around the then Jamalpur Sub-Division.

518. Thereby, accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali are charged for participating, aiding, abetting, facilitating, conspiracy and for complicity in the commission of offences of abduction, torture, murder, plundering, arson and other inhumane acts as crimes against humanity as part of systematic attack directed against unarmed civilians as specified in section 3(2)(a)(g)(h) of the Act of 1973 which are punishable under section 20(2) of the Act for which these two accused persons have incurred liability under section 4(1) of the Act.

Finding with reasoning and decision

519. This charge involves 'mass atrocities' allegedly committed in between 22 April and 11 December 1971 around Jamalpur Sub-Division. The accused persons belonging to local Peace Committee allegedly abetted, facilitated and substantially contributed to the commission of such 'mass atrocities' by the act of providing 'guidance' and 'advice' to the perpetrators i.e. Pakistani occupation army and the local Al-Badar Bahini. As understood, the accused

persons have been indicted chiefly for their membership in the local Peace Committee, an organization created to collaborate with Pakistani occupation army. The charge framed does not state the commission of any particular crime or crimes which may form part of alleged 'mass atrocities'.

520. It appears that the witnesses examined by the prosecution, in addition to state the status and position of the accused persons, testified what they experienced or saw or heard about specific criminal acts as compatible with the charge nos. 02, 03 and 04. But we failed to find any evidence relating to any particular crimes[s] that may reasonably form part of 'mass atrocities' as have been attempted to mirror in charge no.01. Therefore, we consider it convenient to resolve this charge no.01 chiefly taking the argument advanced by both sides into account.

521. Ms. Tureen Afroz, the learned prosecutor in laying her argument in respect of charge no.01 submitted that this charge [charge no.01] is not vague as the two accused persons indicted here were actively engaged in forming Peace Committee office and orchestrated a system and network that substantially facilitated 'mass atrocities' within the geographical area of Jamalpur in between the period of 22 April and 11 December 1971. There had been a common plan and objective to which these two accused persons, potential leaders of local Peace Committee, were part.

Participation of the accused persons as stated in this charge need not involve commission of specific crime and it is required to show whether they were part of the common plan. These two accused persons committed crimes happened during the period in between 22 April and 11 December 1971, in addition to that for which they have been indicted in charge nos. 03 and 05.

522. The learned prosecutor further submitted that some facts relevant to the commission of criminal activities as unveiled from the evidence tendered make valid space to conclude that by virtue of their position and authority in the local Peace Committee formed these two accused persons, namely S.M. Yusuf Ali and Advocate Md. Shamsul Haque did not keep them distanced in carrying out mayhem by the Pakistani occupation army headquartered in Jamalpur and the Al-Badar Bahini around the localities of Jamalpur during the period of 22 April and 11 December 1971. The crimes under adjudication were 'group crimes' and the accused persons indicted in this charge no.01 substantially facilitated and contributed to the commission of offences of abduction, torture, murder, arson and other inhumane acts as crimes against humanity around the then Jamalpur Sub-Division, the learned prosecutor added.

523. Ms. Tureen Afroz continued to submit that these two accused persons had acted as 'catalyst' in forming and maintaining

Peace Committee and Al-Badar Bahini in Jamalpur, and thus, they were actively engaged in abetting, aiding and providing facilitation and in designing plot in committing crimes being concerned with the group of perpetrators , to further common plan, and as such, they cannot absolve of liability for the crimes committed by the Pakistani occupation army and Al-Badar men under the doctrine of **JCE[Form I, Form II and Form III]** and evidence of the prosecution witnesses reasonably reflects it.

524. On contrary, Mr. Ehsan Siddique, the learned counsel defending the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque drawing attention to the settled legal proposition and observations rendered by the Tribunals [ICT-BD] in various cases chiefly submitted that the prosecution needs to show minimum participation by way of presence or act or conduct to hold the accused persons liable under the theory of **JCE**. But neither the charge no.01 nor evidence tendered divulges anything which may lawfully indicates participation of the accused persons in any manner with the crimes named in the charge framed.

525. The learned defence counsel further submitted that mere influence, by virtue of position in an organization, is not enough to show ‘authority’ and it does not amount to a mode of participation, assuming it to be true that these two accused persons were the persons of authority and influence. Evidence tendered by the

prosecution does not satisfy the requirement of **JCE** mode of participation. The charge framed does not spell about specific event of crime and there has been no evidence portraying participation of the accused persons in any manner with the commission of specific crime[s]. Mere membership in an organization does not constitute a crime. It is distinguishable from the liability for committing a crime under the doctrine of **JCE**.

526. Mr. Ehsan Siddique went on to submit that mere membership in an organisation does not constitute ‘participation’ to the commission of a crime. It is not necessary to show that the accused participated physically in accomplishing the crime, true. But it has to be shown by which ‘act’ or ‘conduct’ –amid, prior or subsequent to the crime, accused facilitated or contributed to its actual commission. The learned defence counsel also submitted that even there has been no fact and circumstances which may reasonably lead to the inference of accused persons’ ‘participation’ to the actual perpetration of any particular crime forming ‘mass atrocities’ alleged. Omission or failure to respond the appeal of victim’s relatives to secure victim’s release, as claimed by the witnesses testified in relation to charge no.03 does not mean providing ‘guidance’ and ‘advice’ to the principal offenders in perpetrating the crime.

527. Charge no.01 involves ‘mass atrocities’ allegedly committed on advice and guidance of the Jamalpur Peace Committee led by accused Advocate Md. Shamsul Haque and S.M. Yusuf Ali around the then Jamalpur Sub-Division since 22 April to 11 December, 1971 that resulted in killing of thousands of unarmed pro-liberation civilians and wanton destruction of civilians' properties. And in this way the accused persons facilitated, contributed, abetted and aided the Pakistani occupation army and Al-Badar Bahini to the commission of offences of abduction, torture, murder, plundering, arson and other inhumane acts as crimes against humanity, the charge framed spells.

528. First, it appears that the charge framed does not speak of any specificity as to probable date and place of committing particular crime. Mass atrocities allegedly committed around the geographical area of the then Jamalpur Sub-Division since 22 April to 11 December, 1971, as stated in the charge framed, does not provide any specificity. It also lacks as to which criminal event of attack was carried out on advice and guidance of the accused persons. Mere leading the Peace Committee of Jamalpur does not provide any specificity as to the allegation of the act of guiding and advising the Pakistani occupation army and Al-Badar Bahini in carrying out criminal acts forming ‘mass atrocities’.

529. It is to be noted that the event involving killing of civilians taking them to the PTI army camp on abduction as narrated in charge no.02 happened on 07 July 1971 i.e during the period between 22 April and 11 December 1971, the charge framed alleges. But these two accused persons who allegedly belonged to Jamalpur Peace Committee have not been indicted for the said crimes [as listed in charge no.02].

530. Charge no.02 and charge no.03 as well spell out particulars necessary for adjudication of the commission of crime[s] and accused persons' role or how they acted and facilitated in accomplishing the same. But the charge no.01 seems to be devoid of any such necessary particulars, and as such, the same is not compatible with the provisions contained in section 16(1) of the Act of 1973.

531. Besides, the Tribunal notes that the witnesses examined by the prosecution testified mostly on some specific events of attacks that resulted in abduction, confinement, torture and killing of some particular civilians stating manner of occurring the event and mode of participation of accused persons as specified in charge nos. 02 and 03 and also some crucial facts relevant to the criminal activities carried out recurrently at the Al-Badar torture cell set up at the Degree Hostel of Ashek Mahmud College which was operated predominantly under the leadership and guidance of accused Md.

Ashraf Hossain and his cohort Al-Badar men who have been indicted in charge no.04 and found guilty thereof.

532. It is to be noted that the accused Advocate Md. Shamsul Haque and S.M Yusuf Ali have already been found responsible along with five other accused persons for the offences narrated in charge no.03 as they are found to have had ‘concern’ and ‘complicity’, by their conduct and culpable inaction and encouragement that facilitated the commission of the principal crime i.e killing of Nurul Amin Mollik as narrated in the said charge [charge no.03].

533. But none of the witnesses examined by the prosecution is found to have testified fact[s] which may reasonably lead to the conclusion that the accused Advocate Md. Shamsul Haque and S.M Yusuf Ali, the leaders of local Peace Committee advised and guided the Pakistani army stationed in Jamalpur and the local Al-Badar Bahini or by their act or conduct in carrying out killing ‘thousands of civilians’ and wanton destruction of civilians’ properties in the period in between 22 April and 11 December 1971 around the geographical area of the then Jamalpur Sub-Division as alleged in charge no.01.

534. Ms. Tureen Afroz, the learned prosecutor submitted that these two accused persons had acted as ‘catalyst’ in establishing and maintaining Peace Committee and Al-Badar Bahini and

thereby they facilitated all the atrocious activities carried out in Jamalpur in between 22 April and 11 December 1971 and they incurred liability under the doctrine of **JCE**. Single act, if found linked to systematic attack may qualify as a crime against humanity, the learned prosecutor added.

535. We are not ready to agree with the above argument as it does not go with the charge framed. It is to be noted that ‘a single act’ must form part of attack and an attack must refer to a particular event that results in commission of a particular crime[s] as enumerated in the Act of 1973. For the reason of mere membership in Jamalpur Peace Committee the accused persons cannot be said to have acted as ‘catalyst’ in respect of all the atrocious activities carried out by the Pakistani occupation army and Al-Badar Bahini in Jamalpur during the entire period of the war of liberation.

536. Tribunal notes that in order to attract the theory of **JCE** prosecution requires to show whether, as between the physical perpetrator[s] and the accused, there was a common plan to commit a ‘particular crime’. But in the case in hand, charge no.01 does not speak of any specific event constituting ‘particular crime’. Even there has been no evidence whatsoever that may lead to infer that the same was part of ‘mass atrocities’ committed around Jamalpur Sub-Division. The pertinent question is by which act or conduct of providing guidance and advice the accused persons participated or

facilitated or abetted such mass atrocities? In absence of sufficient evidence in this regard how the accused persons are said to have had acted as catalyst in committing ‘mass atrocities’ in Jamalpur Sib-Division? There has been no specific and sufficient evidence to answer these questions.

537. We are agreed with the defence submission that **JCE** is a mode of liability in a ‘completed crime’ requiring---in addition to the common criminal purpose---the accused’s significant contribution to its commission. We are forced to observe that neither the charge framed nor the evidence tendered provides specificity of a ‘completed crime’ and thus contribution of the accused persons by providing alleged guidance and advice to its commission stands unfounded too.

538. It is true that Peace Committee was formed to collaborate with the Pakistani occupation army and the Al-Badar Bahini, an armed squad to further policy and common plan. It stands proved too that the accused persons were the leading members of Jamalpur Peace Committee. But the accused persons and Peace Committee did not have dominance and control over the Pakistani occupation army stationed in Jamalpur and the Al-Badar Bahini. The totality of evidence does not suggest inferring it.

539. We have already found it proved that only the Al-Badar men had carried out criminal activities and they did it without any kind

of guidance and advice of the local Peace Committee or its leaders the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque [as listed in charge no.02 and charge no.04]. The leading Al-Badar men have been found liable for the recurrent criminal atrocities committed at the Al-Badar camp [as listed in charge no.04] on the basis of evidence tendered by some witnesses who narrated some specific events constituting 'particular crimes', although the charge no.04 does not specify the identity of victims of those events of attacks. But the charge no.01 does not appear to have been stood justified by any sufficient evidence which may connect the accused persons with the 'mass atrocities' alleged.

540. Therefore, the charge no.01 suffers from non specificity of necessary particulars. Merely acting again on the testimony tendered by the prosecution witnesses which relates to the criminal acts forming part of attack and criminal activities carried out at the Al-Badar camp as narrated in charge no. 02, 03 and 04 we do not find any room to adjudicate the charge no.01. Prosecution failed to adduce evidence with specificity and sufficiency showing perpetration of particular and completed crime[s] to prove the charge no.01.

541. The criminal acts constituting the offences as arraigned in charge nos. 02, 03 and 04 as well were part of mass atrocities committed in Jamalpur during the period of 22 April to 11

December 1971, true. Those charges have been determined on evaluation of evidence tendered. But the indictment as has been brought in charge no.01 is not reasonably sufficient to give the accused persons notice of the matter with which they have been charged. And also there has been no piece of evidence to mitigate such insufficiency and non specificity, for finding the accused persons liable as averred.

542. Finally, mere membership of the accused persons in the Peace Committee, an organization formed intending to collaborate with the Pakistani occupation army stationed in Jamalpur does not constitute any crime and does not render them liable for the crimes carried out at the PTI army camp. There can be no circumstance before us to deduce that the accused persons had effective control and significant dominance over the said army camp. Be that as it may, they cannot be held responsible for abetting, facilitating and contributing, by act of guidance and advice, the commission of 'mass atrocities' around Jamalpur Sub-Division during the entire period of the war of liberation in 1971. In this regard we are agreed with what has been submitted by Mr. Ehsan Siddique, the learned defence counsel, drawing our attention to the settled legal proposition.

543. In view of above and in absence of evidence whatsoever we conclude that the prosecution failed to prove the arraignment

brought in this charge no.01, and as such, accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque be acquitted thereof.

XX. Conclusion

544. Four decades after the events occurred it was really a challenging job for the Investigation Agency constituted under the Act of 1973 in collecting evidence, especially documentary evidence. The 'report' submitted by the investigation officer arraigning the accused persons does not relate to the offences punishable under the normal Penal Law. In fact the investigation officer had to deal with the alleged offences of crimes against humanity committed in violation of customary international law and *prima facie* involvement of the accused persons therewith.

545. It appears that the investigation officer chiefly examined the victims, sufferers of the atrocious events and made them witnesses to the case. Any procedural flaw, even if found in the task of investigation, does not necessarily impair the entire investigation and in no way affects the merit of the case.

546. In the case in hand, 05 charges have been pressed by the prosecution. Eight persons have been prosecuted jointly in this case. Of them six persons belonged to the Al-Badar Bahini formed in Jamalpur town and two persons belonged to Jamaat-e-Islami[JEI] and contributed and led the creation of the Peace Committee, Jamalpur and its activities. Prosecution has been able to

prove 03 charges out of 05, by tendering oral as well as documentary evidence.

547. Accused S.M. Yusuf and Advocate Md. Shamsul Haque who have been indicted in charge no.01 are found not liable for the arraignments brought therein and accordingly they have been absolved thereof. In respect of charge no.05 all the seven accused persons have been found not guilty, for the reasons stated in the adjudication segment.

548. Prosecution witnesses have testified the substantial facts relevant and material to the event of attacks that resulted in abduction, confinement, torture, other inhuman act and killing numerous civilians and culpability and mode of participation of the accused persons. Being aware about the status and position of accused persons was quite practicable for them as they were mostly the Jamalpur town dwellers. Their testimony does not seem to have been suffered from any material infirmity.

549. It stands well proved that conscious and culpable act of accompanying the group of Pakistani occupation army and Al-Badar men to the crime sites in launching attack directing pro-liberation civilians of prominence and conduct of accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain, Md. Abdul Mannan, Md. Abdul Bari and Harun--antecedent, contemporaneous and subsequent, as have been found---all point to

their unerring guilt which is well consistent and chained even with their 'complicity' and 'participation' in the commission of the principal crimes, the killing of detained civilians [as listed in charge no.02].

550. The event narrating the commission of crimes [as listed in charge no.02] was horrific indeed. It was a planned and designed attack and the accused persons, the potential Al-Badar men were actively engaged in accomplishing the upshot of the act of abduction. At the initial phase of the attack an unarmed civilian Yad Ali Mondol, a relative of victim Abdul Hamid Mokhter was shot to death. And finally detained victim Abdul Hamid Mokhter and Abdul Hamid Khan alias Hiru had to face the fate of death. Another detained victim Saidur Rahman alias Sadu Chairman [now dead] somehow managed to escape from the cave of death.

551. The charge no.02 narrating the criminal acts and accused persons' participation therewith carries severe barbarity. Without the culpable and active assistance that had substantial effect in perpetrating the crimes of confining, torturing and killing detained Abdul Hamid Khan alias Hiru might not have been possible by the Pakistani occupation army stationed at the PTI camp, we concluded. The accused persons Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain, Md. Abdul Mannan, Md. Abdul Bari and Harun, the notorious Al-Badar men went too far in

the name of showing their allegiance to the policy and plan of the Pakistani occupation army as they by forming a group of their own once again took away Abdul Hamid Mokhter on forcible capture subsequent to his release from the PTI army camp as desired by an elderly army Subedar. With this the accused persons had shown real satanic attitude.

552. We have already resolved too in our foregoing deliberations that accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque were the potential members of Jamalpur local Peace Committee having leading position in it and used to maintain close and culpable nexus with the criminal activities carried out by the Al-Badar Bahini which make them criminally liable as they were conscious and approving part of collective criminality as proved in adjudication of charge no.03, by virtue of their leading stance in the Peace Committee. It is to be noted that an individual is termed as a 'leader' when his activity involves establishing a goal and common purpose by sharing the vision with others for an act to be executed. Leadership is a process by which a person influences others to accomplish an organizational objective.

553. In the case in hand these two accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque by their culpable inaction and tacit approval, in other words, facilitated the principal offenders to go ahead with their intention to materialize their goals. Accordingly

these two accused persons therefore have been found criminally liable along with five other accused, namely Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain, Md. Abdul Mannan, Md. Abdul Bari and Md. Abul Hashem belonging to the infamous Al-Badar Bahini in Jamalpur in respect of the event of killing Nurul Amin Mollik by lifting him forcibly from his residence in Jamalpur as he was a follower of Awami League and sided with the war of liberation. In accomplishing the crimes narrated in this charge [charge no.03] the perpetrators, the Al-Badar men demonstrated extreme antagonistic attitude to pro-liberation civilians. Truly, they had acted as the angel of death [Azrail].

554. We being convinced on evaluation of evidence presented concluded that the accused Md. Ashraf Hossain, Professor Sharif Ahamed alias Sharif Hossain, Md. Abdul Mannan and Md. Abdul Bari were liable for the recurrent criminal activities constituting the offences of confinement, torture, other in humane acts and murder of civilians keeping them in captivity at the Al-Badar camp set up at the Degree Hostel of Ashek Mahmud College, Jamalpur [as listed in charge no.04]. Evidence tendered also depicts that the said Al-Badar camp was in fact a ‘torture cell’ which was operated chiefly by accused Md. Ashraf Hossain and his potential associates Professor Sharif Ahamed alias Sharif Hossain, Md. Abdul Mannan

and Md. Abdul Bari. In 1971, accused Md. Ashraf Hossain became the incarnation of the angel of death [Azrail] in Jamalpur.

555. The events of attack directing protected civilians that resulted in offences of crimes against humanity, as we find in the case in hand, are the mere fraction of horrific recurrent atrocities committed in the then Jamalpur Sub-Division by the Al-Badar Bahini, Pakistani occupation army headquartered in Jamalpur and the Peace Committee. The organizations—Al-Badar Bahini, Razakar Bahini and Peace Committee were not formed for the cause of well being and protection of civilians. Rather those organizations and the persons affiliated with those enthusiastically sided with the plan and policy of resisting the Bengali nation in achieving its independence by wiping out the pro-liberation civilians. Prosecuting and trying the persons accused of horrific offences [as listed in charge nos. 02, 03 and 04]directed against the protected civilians, even long more than four decades after the atrocities committed rather has made a space of coming out from the culture of impunity.

556. The offences for which the accused persons have been found responsible[offences narrated in charge nos. 02, 03 and 04] are the part of horrendous atrocities directed against the civilian population committed in the context of the war of liberation in1971 in the territory of Bangladesh, in collaboration with anti-liberation and

antagonistic political organisations, namely Jamaat-e-Islami, Muslim League, Convention Muslim League, Nejam-e-Islami, group of pro-Pakistan people with the objective to annihilate the Bengali nation intending to spoil the great war of liberation.

557. The accused persons despite being Bengali people not only sided with the Pakistani occupation army but remained engaged in committing routine and systematic atrocious activities even by setting up a 'torture cell' occupying the Degree Hostel of Ashek Mahmud College, Jamalpur. Accordingly, the accused persons are held criminally responsible under section 4(1) of the Act of 1973 for the commission of crimes proved as listed in charge nos. 02, 03 and 04.

XXI. Verdict on conviction

558. For the reasons set out in this judgement and having considered all evidence, both oral and documentary, and arguments advanced by the parties, the Tribunal unanimously finds--

The accused (1) Advocate Md. Shamsul Haque, and (2) S.M. Yusuf Ali in,

Charge No.01: NOT GUILTY of the offences of participating, aiding, abetting, facilitating, conspiracy and for complicity in the commission of offences of **abduction, torture, murder, plundering, arson and other inhumane acts** as crimes

against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and they be acquitted thereof accordingly.

Accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari, and (5) Harun in,

Charge No.02: GUILTY of the offences of participating, abetting, facilitating, contributing and for complicity in the commission of offences of **abduction, confinement and murder** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Accused (1) Advocate Md. Shamsul Haque, and (2) S.M. Yusuf Ali in,

Charge No.03: GUILTY of the offences of abetting, facilitating, contributing and for complicity in the commission of offence of **murder** as crime against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act;
AND

Accused (3) Md. Ashraf Hossain (4) Professor Sharif Ahamed alias Sharif Hossain (5) Md. Abdul Mannan (6) Md. Abdul Bari, and (7) Md. Abul Hashem in,

Charge No.03: GUILTY of the offences of participating, facilitating, abetting and for complicity in the commission of offences of **abduction and murder** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan, and (4) Md. Abdul Bari in,

Charge No. 04: GUILTY of the offences for participating, abetting, facilitating, contributing and for complicity in the commission of offences of **abduction, confinement, torture, other inhumane acts and murder** as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 and they be convicted and sentenced under section 20(2) of the said Act.

Accused (1) Advocate Md. Shamsul Haque (2) S.M. Yusuf Ali (3) Md. Ashraf Hossain (4) Professor Sharif Ahamed alias Sharif Hossain (5) Md. Abdul Mannan (6) Md. Abdul Bari, and (7) Md. Abul Hashem in,

Charge No.05: NOT GUILTY of the offences of participating, aiding, abetting, facilitating, conspiracy and for complicity in the commission of offences of **confinement, torture,**

murder and other inhumane acts as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and they be acquitted thereof accordingly.

XXII. Verdict on sentence

559. Ms. Tureen Afroz, the leaned prosecutor ended the summing up by submitting that the offences committed by the accused persons were grave in nature and happened in systematic manner in the context of war of liberation in 1971. The accused persons being the leaders of Jamalpur Al-Badar Bahini and potential members of local Peace Committee deliberately and knowing the consequence of their act and conduct consciously participated in launching attacks that resulted in murders of numerous civilians.

560. The learned prosecutor submitted too that by virtue of steering position the accused persons, the Al-Badar men used to exercise their authority and influence over the Al-Badar Bahini and its camp. It together with the pattern of crimes proved inevitably aggravates their culpability. Therefore, the accused persons deserve only the highest punishment.

561. On contrary, Mr. Sayed Mizanur Rahman defending the accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque submitted that prosecution failed to prove the involvement and complicity of these two accused persons with the offences with which they have been charged, that there has been no evidence to

show their physical or any mode of participation with any of the offences alleged. And as such these two accused persons are liable to be acquitted of the charges brought against them.

562. Mr. Abdus Sobhan Tarafdar, the learned State defence counsel appointed to defend the six absconded accused persons submitted that there has been no evidence to prove direct participation of accused Professor Sharif Ahamed alias Sharif Hossain, Harun and Md. Abul Hashem, that the evidence tendered by the prosecution simply connects the accused Md. Ashraf Hossain, Md. Abdul Mannan and Md Abdul Bari with the act of alleged abduction of civilians and not with the act of killing any civilians. All these may be taken into account in awarding sentence if they are convicted for the alleged arraignments.

563. It is now settled that principally inherent level of gravity of crime and degree and mode of participation of the convict accused need to be considered as the factors in awarding sentence. Conscious knowledge of an accused about the consequence of his act or conduct increases his culpability.

564. Pattern and characteristics of the offences proved influence the severity of the sentence to be awarded---we are of this view. This is the legitimate objective of criminal justice system. The offences of crimes against humanity by nature are monstrous and diabolical and committed directing defenceless civilian population protected under

the Geneva Convention 1949. In the case of *Abdul Quader Molla* the Appellate Division of the Supreme Court of Bangladesh in respect of awarding sentence observed as below:

"In awarding the appropriate sentence, the tribunal must respond to the society's cry for justice against perpetrators of Crimes against Humanity. The perpetrator like the appellant has committed most worst and barbarous types of Crimes against Humanity. He participated in the killing and rape of innocent persons without just cause. His acts are comparable with none..... Justice demands that it should impose a sentence befitting the crime so that it reflects public abhorrence of crime. In Cases of murders in a cold and calculated manner without provocation cannot but shock the conscience of the society which must abhor such heinous crime committed on helpless innocent persons."

[Criminal Appeal Nos. 24 and 25 of 2013, Judgment: 17 September 2013, pages 247-248]

565. In the **Criminal Review Petition No. 62 of 2015** [*Ali Ahsan Muhammad Mujahid's case*] the Appellate Division observed that Lord Justice Denning, Master of the Rolls of the Court of Appeal in England, appearing before the British Royal Commission on Capital Punishment, stated his views on this point as under:

"Punishment is the way in which society expresses its denunciation of wrongdoing; and in order to maintain respect for law; it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of

punishment as being deterrent or reformatory or preventive and nothing else----- . The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrong doer deserves it, irrespective of whether it is a deterrent or not”.

[Judgment: 18 November 2015, Pages 21-22]

566. In the case in hand, the crimes proved particularly as narrated in charge no.02 are severely outrageous for which the sufferers, the society and even the nation may justifiably look for adequate punishment. The court of law should not forget pains and sufferings the dear ones of victims still have been hauling since more than last four decades. In this regard the Appellate Division of the Supreme Court of Bangladesh observed –

"While awarding the sentence, the Court must take into consideration the unbearable pains, tears rolling down the cheeks and sufferings of the widows and children of the victims who cried for getting justice for about 43 years."

[Criminal Review Petition No. 62 of 2015, Judgment : 18 November 2015, Page-28]

567. Deliberate and systematic perpetration of offences as specified in the Act of 1973 itself portrays enormity, gravity and diabolical nature of the crimes. Now, in assessing the aggravating factors, we must eye on the pattern and extent of the offences committed and the role the convict accused persons had played in

accomplishing the crimes and their organizational position and status which enthused them culpably to remain engaged in committing such horrific atrocious activities. In the case in hand, out of five charges, prosecution has been able to prove the charge nos. 02, 03 and 04.

568. In respect of **charge no.03** it has been proved that a group of Al-Badar men accompanied by convict accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Md. Abul Hashem (6) S.M. Yusuf Ali, and (7) Advocate Md. Shamsul Haque have been found guilty. Of them, first five accused persons participated in abducting the victim Nurul Amin Mollik from his residence. It stands proved. Two other accused S.M. Yusuf Ali and Advocate Md. Shamsul Haque have been found guilty as well for their act of culpable inaction to the approach made to them securing release of the victim and thereby they encouraged, approved and endorsed the principal offenders in materializing the upshot of the act of abduction. On the following day the victim's bullet hit dead body was discovered at Chapatala ghat of the river Brahmaputra. All the said seven accused persons have been found equally guilty as their act and conduct were reasonably chained to the commission of the principal crime starting from the act of abduction.

569. Charge no.04 relates to the commission of recurrent torture, other inhumane acts and killing civilians keeping them in captivity at the Al-Badar camp set up at the Degree Hostel of Ashek Mahmud College, Jamalpur. It stands proved that the accused persons had position of steering and controlling the activities carried out at the said camp which was known as 'torture cell'. They used to remain consciously engaged by their act and approval, in exercise of their leading position in Al-Badar Bahini. All the four accused persons, namely (1) Md. Ashraf Hossain, (2) Professor Sharif Ahamed alias Sharif Hossain, (3) Md. Abdul Mannan, and (4) Md. Abdul Bari arraigned were the integral parts of the Al-Badar camp who have been found guilty. In finding them guilty some facts involving abduction, confinement and killing as testified by the P.W.17, P.W.20 and P.W.21 have been relied upon.

567. The event as listed in **charge no.02** seems to be graver than that narrated in charge nos.03 and 04. Charge no.02 relates to systematic attack launched by the group of Pakistani occupation army and the Al-Badar men accompanied and guided by the accused (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari, and (5) Harun.

571. It has been found proved that all of them had acted actively in accomplishing the forcible capture of several civilians[as listed in

charge no.02]. All the five accused persons have been found equally liable for the attack that started with killing one civilian Yad Ali Mondol and ended with killing of two detainees Abdul Hamid Mokhter and Abdul Hamid Khan alias Hiru, pro-liberation civilians of potential prominence. Their dead bodies could not be traced even. Recurrent attack upon the victim Abdul Hamid Mokhter by the leading Al-Badar men increases the gravity and severity of the crimes proved.

572. Of those five accused persons accused (1) Md. Ashraf Hossain (2) Md. Abdul Mannan, and (3) Md. Abdul Bari were in leading position of Jamalpur Al-Badar Bahini. It already stands proved. Their position of authority and level of dominance must come forward as an aggravating factor which may be considered in awarding sentence upon them.

573. We got it proved that the group led by these three leading Al-Badar men abducted Abdul Hamid Mokhter[victim of charge no.02] second time after he got release from captivity in PTI army camp few days after he was first taken away there on abduction. This second time abduction of Abdul Hamid Mokhter was orchestrated by the devilish mindset of these three accused (1) Md. Ashraf Hossain (2) Md. Abdul Mannan, and (3) Md. Abdul Bari, the leading Al-Badar men which justifiably aggravates their liability. In this regard it has been observed by the Appellate

Division of the Supreme Court of Bangladesh in the case of **Motiur Rahman Nizami** 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]

574. The Tribunal reiterates that in a case involving the offences of crimes against humanity as enumerated in the Act of 1973 the forms of punishment must reflect both the calls for justice from the persons who have been victims and sufferers of the crimes, chiefly considering the 'gravity of crimes'. In the case in hand, the sentence to be awarded must be proportionate to the gravity and pattern of the crimes proved. In the case of **Mir Quasem Ali** the Appellate Division of the Supreme Court of Bangladesh in respect of awarding sentence observed that-

" Sub-Section (2) of the Section 20 provides that the tribunal shall award sentence of death or such other punishment proportionate to the gravity of the crime appears to the tribunal to be just and proper. The offences of crimes against humanity or genocide are by nature serious and heinous type of offences because the

perpetrators committed those offences against unarmed innocent civilians. These crimes cannot be compared with ordinary crimes. They are of incomparable scale and seriousness. The Bangladesh perspective with regard to the perpetration is quite distinct with other crimes of similar nature."

**[Criminal Appeal No. 144 of 2014,
Judgment: 08 March, 2016, Page-242]**

575. In view of discussion and reasons rendered herein above and considering the nature and proportion to the gravity of offences in respect of **charge nos. 02** together with the aggravating factors as conversed above we are of the view that justice would be met if three out of five convict accused persons, namely (1) Md. Ashraf Hossain (2) Md. Abdul Mannan, and (3) Md. Abdul Bari who have been found guilty beyond reasonable doubt for the offences of which they have been charged with [in respect of **charge nos. 02**] are convicted and sentenced to highest punishment. Sentence of imprisonment is considered appropriate and just to be awarded to the two other convict accused persons, namely (4) Professor Sharif Ahamed alias Sharif Hossain, and (5) Harun [in respect of charge no.02].

576. At the same time in view of reasons recorded herein above, it would be appropriate if the convict accused persons found guilty

for the **charge nos.03 and 04** are condemned to the sentence of imprisonment to be awarded as below.

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

Hence it is

ORDERED

That accused (1) Md. Ashraf Hossain [absconded] son of late Mohammad Hossain and late Syeda Ashrafunnesa of Village Miapara, Police Station Jamalpur Sadar, District Jamalpur (2) Md. Abdul Mannan [absconded] son of late Mohir Uddin and late Zayeda Bewa of Village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur and (3) Md. Abdul Bari [absconded] son of late Abdur Rahman and Jobeda Bewa of Village Bogabaid, Police Station Jamalpur Sadar, District Jamalpur are found guilty of the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 02** and all of them be convicted accordingly and sentenced thereunder to death under section 20(2) of the said Act; **AND**

Accused (4) Professor Sharif Ahamed alias Sharif Hossain[absconded] son of late Alhaj Jafar Uddin Ahmed alias Jafar Uddin and late Maziron Nesa of Village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur, and (5) Harun

[absconded] son of late Jasim Uddin alias Joshy and late Naziron Begum of Village Bashbora, Police Station Jamalpur Sadar, District Jamalpur are found guilty of the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed of **charge no. 02** and both of them be convicted accordingly and sentenced thereunder to imprisonment for life i.e. rest of their natural life under section 20(2) of the said Act.

Accused (1) Advocate Md. Shamsul Haque son of late Safar Uddin Mondal and late Hobironnesa of Village Nandina, Police Station Jamalpur Sadar, District Jamalpur (2) S.M. Yusuf Ali son of late S.M. Torab Ali and late Omukjan Bewa of Fulbaria, Old Bus Stand, Modhupur Road, Jamalpur (3) Md. Ashraf Hossain [absconded] (4) Professor Sharif Ahamed alias Sharif Hossain [absconded] (5) Md. Abdul Mannan [absconded] (6) Md. Abdul Bari [absconded], and (7) Md. Abdul Hashem [absconded] son late A. Latif and Noytun Bibi of Village Kacharipara, Police Station Jamalpur Sadar, District Jamalpur are found guilty of the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no.03** and all of them be convicted accordingly and sentenced thereunder to imprisonment for life i.e. rest of their natural life under section 20(2) of the said Act.

Accused (1) Md. Ashraf Hossain[absconded] (2) Professor Sharif Ahamed alias Sharif Hossain[absconded] (3) Md. Abdul Mannan [absconded], and (4) Md. Abdul Bari [absconded] are found guilty the offences of crimes against humanity' as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 04** and all of them be convicted accordingly and sentenced thereunder to imprisonment for life i.e. rest of their natural life under section 20(2) of the said Act.

Accused (1) Advocate Md. Shamsul Haque, and (2) S.M. Yusuf Ali are found not guilty of the offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 01** and they be acquitted of the said charge.

Accused (1) Advocate Md. Shamsul Haque (2) S.M. Yusuf Ali (3) Md. Ashraf Hossain [absconded] (4) Professor Sharif Ahamed alias Sharif Hossain [absconded] (5) Md. Abdul Mannan[absconded] (6) Md. Abdul Bari [absconded], and (7) Md. Abul Hashem [absconded] are found not guilty of offences of crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 as listed in **charge no. 05**, and they be acquitted of the said charge.

The above mentioned sentence of death awarded in respect of charge no.02 be executed by hanging the accused persons convicted as above by the neck or by shooting them till they are dead, as decided by the government.

The sentence of imprisonment for life i.e. rest of natural life awarded to the convicted accused persons as above shall run concurrently.

However, as and when the sentence of death awarded to a convict accused as above will be executed, the other sentences of imprisonment for life i.e. rest of his natural life awarded to him as above would naturally get merged into the sentence of death executed.

The sentence of death and sentence of imprisonment for life i.e. rest of natural life awarded as above under section 20(2) of the International Crimes (Tribunals) Act, 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.

Since the convicted accused persons, namely (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Harun, and (6) Md. Abul Hashem have been absconding the 'sentences of death' and 'sentences of imprisonment for life' awarded to them as above shall

be executed after causing their arrest or when they surrender before the Tribunal, whichever is earlier.

The convicts are at liberty to prefer appeal before the Appellate Division of the Supreme court of Bangladesh against their conviction and sentence within 30[thirty] days of the date of order of conviction and sentence as per provisions of section 21 of the International Crimes (Tribunals) Act, 1973.

The convicts Advocate Md. Shamsul Haque and S.M. Yusuf Ali be sent to the prison with conviction warrants accordingly.

Issue conviction warrants against the six absconding accused, namely (1) Md. Ashraf Hossain (2) Professor Sharif Ahamed alias Sharif Hossain (3) Md. Abdul Mannan (4) Md. Abdul Bari (5) Harun, and (6) Md. Abul Hashem.

The Secretary, Ministry of Home Affairs and the Inspector General of Police [IGP] are hereby directed to ensure the apprehension of the above mentioned six fugitive convict accused persons, if necessary with the help of the Inter-Pol.

Let certified copy of this judgment be provided to the prosecution and the convicts Advocate Md. Shamsul Haque and S.M. Yusuf Ali free of cost, at once.

If the above mentioned absconding convicts are arrested or surrender within 30[thirty] days of the date of order of conviction

and sentence they will be provided with certified copy of this judgment free of cost.

Let a copy of this judgment together with the conviction warrant of the above mentioned six fugitive convict accused persons be sent to the District Magistrate, Dhaka for information and necessary action.

Let a copy of this order be sent together with the conviction warrant of the above mentioned six fugitive convict accused persons to the (1) Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka, and (2) Inspector General of Police [IGP] , Police Head Quarters, Dhaka for information and compliance.

(Justice Anwarul Haque, Chairman)

(Justice Md. Shahinur Islam, Member)

(Justice Md. Shohrwardi, Member)