

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

ICT-BD Case No.03 OF 2014

[Charges:- Crimes against Humanity, genocide, abetment and complicity in committing as specified in section 3(2)(a)(c)(g)(h) read with section 4(1) of the Act No. XIX of 1973]

The Chief Prosecutor

Versus

1. Sheikh Sirajul Haque alias Siraj Master,
2. Khan Akram Hossain and
3. Abdul Latif Talukder [now dead]

Present:

**Mr. Justice M. Enayetur Rahim, Chairman
Mr. Justice Jahangir Hossain, Member
Mr. Justice Anwarul Haque, Member**

Date of delivery of Judgment on 11 August,2015.

Prosecutors:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Syed Haider Ali

Mr. Hrishikesh Saha

Mr. Syed Saydul Haque

Mr. Sheikh Mosfeq Kabir

Defence counsels:

Mr. Mohammad Abul Hasan

State defence counsel for accused Sheikh Sirajul Haque alias Siraj Master

Mr. Sarwar Hossain with

Mr Gazi M. H. Tamim

Mr. Muhammad Tanvir Hashem Munim

For accused Khan Akram Hossain and Abdul Latif Talukder[now dead]

Judgment

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

I. Introductory Words

01. Accused 1) Sheikh Sirajul Haque alias Siraj Master, son of late Harej Uddin Sheikh and late Saleha Begum of Village-Gotapara, Police Station-Bagerhat Sadar under District-Bagerhat, at present of Village-Morzapur, Police Station Bagerhat Sadar, District-Bagerhat, and of Village-

Bhowalerpara, Ward No.8, Badda Union, Satarkul Road, Police Station-Badda, DMP, Dhaka, 2) Khan Akram Hossain, son of late Md. Joynal Abedin Khan and Zulekha Begum of Village-Daibagghati, Police Station- Morelgonj under District-Bagerhat previously of Village Joshardi, Police Station-Kachua, District-Bagerhat and 3) Abdul Latif Talukder [now dead], son of late Zendar Ali Talukder and Shamartaman Bibi of Village-Solarkola, Police Station-Kachua, District-Bagerhat have been put on trial before this Tribunal at the instance of the Chief Prosecutor to answer charges under section 3(2)(a)(c)(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 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 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 as following manner:

"(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 or 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 International Crimes (Tribunals) Act, 1973 where jurisdictions of the Tribunal and crimes have been stated.

Now let us see the jurisdiction of the other International Tribunals and definition of crimes against Humanity provided in other 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 [ICTR] 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 or 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 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." [Page,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 ICT Act of 1973 to constitute an offence of crimes of 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 ROP of 2010]. Section 23 of the Act 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 [section 19(3) and (4) of the Act]. 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]. The Tribunal shall have discretion to consider hearsay evidence too by weighing its probative value as per rule-56(2) of the ROP of 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(ii) of the ROP of 2010. The accused deserves right to conduct his own case or to have assistance of his counsel [section-17 of the Act]. The Tribunal may release an accused on bail subject to conditions as imposed by it as per rule-34(3) of the ROP of 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 of 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 Act. However, the Tribunal is not precluded from borrowing international references of those are not found inconsistent to the provisions of our Act of 1973 in the interest of fair justice.

18. The Act of 1973 has ensured all the universally recognized rights to the 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 the Tribunal has already resolved some common legal issues agitated by the defence in the following cases of the Chief Prosecutor vs. 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 Quader 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 Mollah Vs Government of Bangladesh and Bangladesh Vs Abdul Quader Mollah 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 have committed crimes against Humanity mentioned in the Act of 1973;
- vii. the Act of 1973 is a protected law and the moment, subsection 3(1) 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;
- x. in the Act of 1973, no limitation has been prescribed for initiating proceedings against any individual or group of individual 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 was 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 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 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 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-Badr Bahini, the Al-Shams, the Peace Committee etc, essentially to collaborate with the military 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-Badr 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 for the offences for which he has been charged.

VII. Brief Account of accused the accused persons:

27. **i) Accused Sheikh Sirajul Haque alias Siraj Master**, son of late Harejuddin Sheikh and late Saleha Begum of village Gotapara, at present village Mirzapur, Police Station Bagerhat Sadar, District Bagerhat having obtained BA[pass] degree joined as a teacher in Sayera Modhudia Colleziat School under Bagerhat Sadar Police Station and thereafter he joined as a teacher in Multilateral High School at Khulna and he continued his service in the said school till Liberation War was stated. Accused Sheikh Sirajul Haque was an activist of National Students Federation [NSF] during his student life and thereafter he joined Muslim League. In 2001 he joined Bangladesh Nationalist Party [BNP] and he was active in that party till 2006.

28. During the Liberation War in 1971 he joined the Razakar Bahini, an auxiliary force of Pakistani occupation army and became a potential leader of of Razakar Bahini of the then Bagerhat Sub-Division and committed various crimes against Humanity in 1971 in different areas under the then Bagerhat Sub-Division.

29. **ii). Accused Khan Akram Hossain**, son of late Md. Joynal Abedin Khan and Zulika Begum of village-Daibaggahati, Police Station-Morelgonj , District-Bagerhat previously of village Joshordi, Police Station- Kachua,

District-Bagerhat was born on 03.12.1955 [as per the National Identity Card]. He passed SSC examination in 1972 and served as a mechanic in Agriculture department and retired from the service in the year 2011. In 1971 during the War of Liberation, he joined the Razakar Bahini and became the camp commander of Daibaggahati Razakar camp and committed various crimes against Humanity in different areas of the then Bagerhat- Sub-Division.

30. **iii). Accused Abdul Latif Talukder** [now dead] son of late Zender Ali Talukder and late Shamartaman Bibi of village Solarkola, Police Station-Kachua, District-Bagerhat read upto class V. In 1985 he was elected a member of Raripara Union Parishad under Kachua Police Station and was a local leader of Jatio Party. In 1990 he joined Bangladesh Awami League and since then has been working in Awami League as a worker. In 1971 during the Liberation War, he joined Razakar Bahini and committed various crimes against Humanity in different areas of the then Bagerhat- Sub-Division.

VIII. Procedural History

31. Pursuant to the order of arrest dated 10.06.2014 passed by this Tribunal in ICT-BD Misc. Case No.03 of 2014, the members of law enforcing agencies having arrested accused Abdul Latif Talukder[now dead], Khan Akram Hossain and Sheikh Sirajul Haque alias Siraj Master produced before this Tribunal on 12.06.2014, 22.06.2014 and 07.08.2014 respectively.

32. The Chief Prosecutor submitted formal charges under section 9(1) of the Act of 1973 in the Tribunal on 14.09.2014 on the basis of Investigation Report of the Investigation Agency. It has been alleged in the formal charges that during the War of Liberation in 1971, the accused persons as the potential members of Razakar Bahini, an auxiliary force of Pakistani occupation army had committed crimes against Humanity, genocide including abetting, aiding, participating and providing moral support to commit such crimes in different places of the then Bagerhat Sub-Division.

On perusal of formal charges, statement of witnesses and the documents submitted by the Prosecution, the Tribunal on 15.09.2014 took cognizance of offences as specified in section 3(2) read with section 4(1) of the Act of 1973 against the accused persons.

33. Accused Sheikh Sirajul Haque alias Siraj Master has expressed his willingness to defend the case by himself as he has no ability to appoint a lawyer. As such, the Tribunal by its order dated 15.09.2014 appointed Mr. Mohammad Abul Hasan as State defence counsel to defend the said accused and fixed the date for hearing on charge matter.

34. The prosecution was then directed to furnish copies of formal charges and documents submitted therewith which it intends to rely upon, for supplying to the learned State defence lawyer and the learned counsel for the other accused persons for preparation of the defence.

35. Before this Tribunal, in course of hearing the charge matter, the learned Prosecutors Mr. Hrishikesh Saha and Syed Sayedul Haque have made submissions in support of framing charge against the accused persons in the light of the formal charges together with statements of witnesses and documents submitted therewith. While Mr. Mohammad Abul Hasan, the learned State defence counsel and Mr. M. Sarwar Hossain, the learned counsel for accused Khan Akram Hossain and Abdul Latif Talukder [now dead] by submitting two separate applications for discharge of the accused, made submissions for discharging the respective accused from the charges brought against them. The Tribunal by its order dated 05.11.2014 having rejected the said application framed 07 [seven] charges against the accused persons.

IX. Fate of the proceeding against accused Abdul Latif Talukder on account of his death.

36. Having regard to the fact that in the instant case three accused persons including Abdul Latif Talukder [now dead] jointly were charged for

committing offences of crimes against Humanity and genocide as specified in section 3(2) of the ICT Act of 1973.

37. While the case was awaiting for verdict after closing the summing up of the prosecution and defence cases accused Abdul Latif Talukder died on 28.07.2015 in Dhaka Medical College Hospital due to Irreversible cardio respiratory arrest due to acute leg of Br. authma with uncontrol HTN with it. Sided hemiparesis with CVD with LBP with osteo arthritis of knee with NSAID induces gastritis.

38. The Tribunal has regretted the death of accused Abdul Latif Talukder.

39. Mr. Sayed Haider Ali, the learned prosecutor intimating the said fact of death of accused Abdul Latif Talukder has submitted that since the case is awaiting for verdict there is no bar to pronounce judgment, in any manner, against the accused Abdul Latif Talukder as the prosecution has already adduced sufficient evidence against him along with other two accused persons.

40. On the other hand, Mr. M. Sarwar Hossain, the learned defence counsel for accused Abdul Latif Talukder has submitted that due to the death of accused Abdul Latif Talukder proceeding against him has been abated automatically and as such there is no scope to pass any judgment relating to him.

41. Having heard the learned prosecutor, the defence counsel and considered the settled proposition of law enunciated by the domestic jurisdiction as well as International jurisdiction on the issue in question, the Tribunal by its order dated 05.08.2015 has observed that from the moment of the death of accused Abdul Latif Talukder the Tribunal has lost its jurisdiction *ratione personae* against the said accused as the event of death extinguished the Tribunal's jurisdiction.

42. Accordingly, the proceeding so far against accused Abdul Latif Talukder stands abated on account of his death.

43. The Tribunal has also held that there is no bar to render verdict against the two remaining accused persons on the basis of evidence presented before the Tribunal and that it is neither possible nor desirable to separate the evidence presented at the trial against accused Abdul Latif Talukder [now dead] from the entire evidentiary record and that the Tribunal can fix a date for delivery of judgment in relation to remaining accused persons on the basis of the evidence that was adduced on the record by the respective parties.

44. Thus, the Tribunal fixed the date of delivery of judgment on 11.08.2015 for remaining two accused persons.

X. Witnesses adduced by the parties

45. The prosecution submitted a list of 64[sixty four] witnesses along with formal charges and documents. But at the time of the trial, the prosecution has examined in all 32[thirty two] witnesses including the investigation officer. The prosecution has also adduced some documentary evidence which were duly marked as exhibit nos. 1-11/1.

46. The learned defence counsels have cross-examined all the prosecution witnesses.

47. On behalf of accused Abdul Latif Talukder [now dead] and Khan Akram Hossain 02[two] and 03[three] defence witnesses have been examined respectively. On behalf of Khan Akram Hossain some documents have also been exhibited marking as exhibits Ka-Ka/3. However, accused Sheikh Sirajul Haque did not adduce any witness.

XI. Defence Case of the accused persons

Defence case of accused Sheikh Sirajul Haque alias Siraj Master

48. It is the defence case of accused Sheikh Sirajul Haque alias Siraj Master that he was a school teacher in 1971 and for his such job he resided at Khulna district town. Prior to 1971 he was never involved with any

political party particularly Jamaat-e Islami, Muslim League or any other political parties those were against the independence of Bangladesh and came forward to collaborate the Pakistani occupation army. He never joined Razakar Bahini and as such the question of becoming the Deputy commander of the Razakar of the then Bagerhat sub-division does not arise at all. He has been implicated in the case falsely by the interested quarter.

Defence case of accused Khan Akram Hossain

49. It is the defence case of accused Khan Akram Hossain that he was aged about 13/ 14 years in 1971 and he never joined Razakar Bahini. He was not the camp commander of Daibaggahati Razakar camp in 1971 and it was not possible to become a camp commander at the age of 13/14 years. Rather Akram Khan who hails from Teligathi was the commander of Daibaggahati Razakar camp. During the Liberation War he used to help the freedom loving people for taking shelter in India. He was never involved with any politics and after independence of the country he passed S.S.C examination and served as a mechanic in Agriculture Department and retired from the service in the year 1971. He has falsely been implicated in the case by the interested quarter.

XII. Burden of the Prosecution

50. 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 were 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 that (1) the perpetrators must know of the broader context in

which the acts committed and (2) the acts must not have been carried out for purely personal motives of the perpetrators.

XIII. Points to be determined

51. In determining culpability of the accused persons for the perpetration of offences with which they has been charged we are to adjudicate the fundamental issues such as:

(i) whether the accused persons were potential leader of Razakar Bahini of the then Bagerhat Sub-Division in 1971 during the Liberation War;

(ii) whether the accused persons were substantially associated with Pakistani army and their activities were for facilitating the commission of offences;

(iii) whether the accused persons physically participated in the commission of crimes as alleged; and

(iv) whether the allegations brought against the accused persons constitute a serious case of 'crimes against Humanity' and 'genocide'.

XIV. Summing up of the prosecution case

52. Mr. Syed Haider Ali, Mr. Syed Sayedul Haq and Mr. Sheikh Moshfeq Kabir, the learned prosecutors referring to the evidence on record have submitted that the prosecution has proved charge nos.1-4 against accused Sheikh Sirajul Haque alias Siraj Master, charge nos.05 and 06 against accused Sheikh Sirajul Haque alias Siraj Master, Abdul Latif Talukder [now dead] and Khan Akram Hossain and charge no.07 against accused Abdul Latif Talukder [now dead] and Khan Akram Hossain beyond all reasonable doubt by adducing both oral and documentary evidence on examining 32 live witnesses including the investigation officer [P.W-32]. Most of the live witnesses are not only the eye witnesses of various atrocious acts of the accused persons but some of them are freedom fighters [Muktijoddha], some are the members of the victim families and some of them are also victims of the occurrences. As such their credible, corroborative and unimpeachable evidence sufficiently have proved that accused persons accompanied by their accomplice Razakars physically participated, conspired, aided and facilitated

in killing of unarmed civilian people particularly the members of Hindu community, plundering, setting fire to the houses, during the Liberation War in 1971. The atrocious acts of the accused persons and their accomplices were part of '**systematic attack directed against civilian population**', which qualify the offences of murder and other inhumane acts as crimes against Humanity as specified in section 3(2) (a) (g) and (h) of the Act of 1973.

53. The learned prosecutors have further submitted that the prosecution has also proved beyond reasonable doubt that the accused persons along with their accomplices also committed offence of genocide as they committed such atrocious acts with discriminatory intent on religious ground to annihilate the Hindu religious people treating them as the enemy of Pakistan.

54. The learned prosecutors have also argued that it has been well proved from the testimonies of the witnesses that all the accused persons had directly participated in the commission of crimes as listed in the respective charges and they guided and aided the Razakars to commit atrocious acts and thus the accused persons are also liable for those crimes committed in the then Bagerhat sub-division in the same manner as if those were done by them alone in view of the provision of section 4(1) of the Act of 1973.

XV. Summing up of the defence case

55. **Mr. Mohammad Abul Hasan, the learned State defence counsel for accused Sirajul Haque alias Siraj Master** having reiterated the defence case and referring to the evidence on record has submitted that the prosecution has failed to adduce any documentary evidence that accused Sirajul Haque was the Deputy Commander of Razakar Bahini of the then Bagerhat sub-division as claimed by the prosecution. He has further submitted that alleged occurrence as listed in charge nos.1,2 and 3 allegedly took place in the month of May and June of 1971 respectively; but exhibit-10, even it is

taken to be genuine one, shows that accused Sirajul Haque was given arms and ammunitions as a Razakar in the month of July 1971 which has destroyed the veracity of the prosecution case regarding charge nos.1-3, the alleged offences which were committed in the month of May and June 1971.

56. Mr. Hasan has further submitted that the prosecution witnesses are managed and tutored ones and as such their testimonies should be left out of consideration. Mr. Hasan has lastly submitted that since prosecution has failed to prove the charges brought against accused Sheikh Sirajul Haque alias Siraj Master beyond reasonable doubt he may be acquitted.

57. **Mr. M. Sarwar Hossain, the learned defence counsel for accused Abdul Latif Talukder [now dead] and Khan Akram Hossain** has submitted that the evidence as adduced by the prosecution witnesses against the accused persons are vague, indefinite and omnibus and the prosecution has failed to prove the mode of participation of accused Abdul Latif Talukder [now dead] and Khan Akram Hossain in committing the offences as listed in the charges. He has further submitted that some of the witnesses have failed to identify accused Khan Akram Hossain in the dock and some of the witnesses have testified that they deposed against Akram Khan of Teligati, not accused Khan Akram Hossain. Mr. Hossain has further submitted that due to previous enmity with some local people accused Khan Akram Hossain and Abdul Latif Talukder [now dead] have been implicated in the case at their instances. He has also submitted that as per prosecution document accused Khan Akram Hossain was a minor boy in 1971 and as such it is an absurd story that he was the commander of Daibaggahati Razakar camp. Mr. Hossain finally has submitted that it is the cardinal principle of criminal jurisprudence that no one should be convicted and punished on the basis of unreliable and unworthy evidence.

XVI. Whether the accused can be prosecuted without prosecuting his accomplices

58. The learned defence counsels referring to the evidence on record and Rule 36 of RoP 2010 have raised a legal question that some Razakars and co-perpetrators, who are still alive, accompanied the accused persons at the crime site 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.

59. It is true that from the testimonies of some prosecution witnesses it is revealed that some armed Razakars and co-perpetrators accompanied the accused persons at the crime scene 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 crimes against Humanity and genocide untrue or give any immunity to the present accused persons. If the accused is found guilty and criminally liable beyond reasonable doubt for his culpable acts, inaction in prosecuting his/ 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 complicity of the said Rule **ipso-facto** does not vitiate the trial.

60. 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.”

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.”

61. However, the failure of the Investigation Agency and the prosecution in not bringing all the co-perpetrators who are still alive in one trial is no doubt frustrating, disappointing and undesirable. We are constrained to express our dissatisfaction on such unmindful investigation of the case. In this connection we would like to mention that as per sections 9 and 10 of the Act of 1973 the Tribunal is not empowered to initiate any proceeding or frame charge [s] against any person [s], against whom formal charges have not been submitted.

XVII. The role and status of the accused persons in committing horrific atrocious acts during the Liberation War in 1971.

62. In every new State there are some struggling endeavours rendered by the independence-seekers behind its Liberation. Bangladesh has a lot of political, social, economical and racial backgrounds which subsequently gave birth to a new independent State after a long journey. In its birth

history many events took place despite a sea of blood. There were some political parties in this country that played anti-liberation roles during the Liberation War in 1971. As a result, many events became a fact of common knowledge in the mind of the people at large. Therefore, it does not need to show the documentary evidence to prove any of the events of common knowledge at the time when it is required as per provision of the Act of 1973.

63. Everyone knows that Pakistani invading force made attacks on bangalee people in this territory by getting assistance from the people who did not want a new State like Bangladesh since the Pakistani invading force were not acquainted with the land of this country. During the Liberation War in 1971 some auxiliary forces popularly known as Razakar Bahini, Al-Badr Bahini, Al-Shams and Peace Committee for the purpose of their [Pakistani invading force] operational support in executing its atrocious activities in furtherance of common plan and design to succeed their mission, were constituted.

64. In the present case there were three accused namely Sheikh Sirajul Haque alias Siraj Master, Abdul Latif Talukdar [now dead] and Khan Akram Hossain. As accused Abdul Latif Talukder has died in the meantime his role and status are not required to asses any more; however, the role and status of other two accused persons should be assessed separatly with a view to understand the issue easily.

(a) In respect of accused Sheikh Sirajul Haque alias Siraj Master the prosecution has urged in its plea that accused Sheikh Sirajul Haque alias Siraj Master not only a Razakar but was a deputy commander of Razakar Bahini in Bagerhat, the then Sub-division and being the deputy commander of Bagerhat Sub-division he had committed several offences during the Liberation War in 1971 upon holding such position.

65. On the other hand, the defence has claimed during cross-examination of prosecution witnesses as well as argument that accused Siraj Master was a teacher and during the Liberation War he was in Khulna town involving with his teaching profession. He was neither a deputy commander of Razakar Bahini in Bagerhat nor he was a member of Razakar Bahini in the locality.

66. Now let us see in the scrutiny of the evidence as to whether he was a Razakar commander or a member of Razakar Bahini and whether he played any role in the commission of offences during the Liberation War in 1971. During proceeding of the instant case accused Siraj Master has been indicted in as many as six charges vide charge nos. 01 to 06.

67. In charge no.01 prosecution has examined 07 witnesses such as p.ws-01 to 06 and 29. Except p.w-06 remaining said witnesses have categorically stated that accused Siraj Master had played a significant role in the commission of offences as one of the members of the Razakar Bahini. In charge no.02 prosecution has examined 05 witnesses [p.ws19-23]. These 05 live witnesses have said about the activities of the accused in committing the horrific atrocious acts as a member of Rajakar Bahini or as a deputy commander of Razakar Bahini.

68. In order to prove charge no.03 prosecution has examined 04 live witnesses [p.ws 24-27]. They have also testified that accused Siraj Master was directly involved in the commission of offence as a Razakar or a deputy commander of Razakar Bhani. In charge no.04 prosecution has examined 04 live witnesses such as pws.01 and 28 to 30 who have also said against him that he committed serious offences of atrocious acts during the Liberation War as a member of Razakar Bahini or a deputy commander of Razakar Bahini.

69. In charge no.05 the prosecution has examined as many as 08 live witnesses such as p.ws-07 to 10 and 15 to 18. Their evidence emerge that the accused played a significant role in committing the offences as indicted in the charge. P.ws 11 to 14 have deposed to prove the charge no.06. Their given evidence have emerged that accused Siraj Master along with others as member of Razakar Bahini played a significant role in the commission of offences.

70. It appears from oral evidence that accused Siraj Master being the deputy commander of Bagerhat Sub-division had committed several offences like genocide, murder, abduction, confinement and other inhumane acts as crimes against Humanity. Here, it finds two important posts, one is commander and another is deputy commander of Razakar Bahini. While Razakar commander was Rajob Ali Fakir, now dead, than deputy commander was accused Siraj Master as evident. Such a deputy commander indicates that accused Siraj Master was a surrogate of Razakar commander Rajob Ali Fakir i.e second-in-command [representative]. There is no such rank and file of an organization as deputy commander emerged in the scrutiny of documentary evidence. It is also evident that he was known as notorious Razakar 'kashai Siraj' [Butcher Siraj] as he used to be very happy to slaughter man cruelly.

71. It is also found in the exhibit no 10 *[running pages from 06 to 45 of the additional volume of documents placed by the prosecution]*, a list of Razakars, prepared on 15.07.1971 by convenor, Sub-division peace committee, Bagerhat, Khulna where it contains his name as Razakar in serial no.26. His conduct in the commission of offences during the Liberation War had also been reported in the 'Daily Janakantha' dated 26.01.2001 of which a paper clipping has been marked as exhibit 03. This paper clipping shows under a

headline that Siraj Master of Bagerhat used to kill ten freedom fighters everyday by axe.

72. Learned defence counsel of accused Siraj Master has pointed out at the time of argument that in respect of charge nos. 01-03 the occurrences were seen taking places before promulgation of Razakar Ordinance which has been supported by the prosecution document exhibit-10 itself. If it finds true how the accused before becoming a Razakar or a member of Razakar Bahini had committed such atrocious acts during the alleged time, he [defence counsel] said adding in the argument. In this regard, it is pertinent to state that it is a fact of common knowledge by the people at large that the Pakistani invading force made attacks on Bangalee people on the very night of 25 March 1971 in the name of so called 'operation search light' and subsequent their further actions were assisted by anti-liberation people like accused-perpetrator. Anti-liberation forces started their atrocious activities from the very day when Pakistani military ruler secretly decided not to handover the power to the party which won majority seats in the general election held in 1970. Early atrocious activities of anti-liberation forces can be authenticated by the statements of some people which have been embodied in **Bangladesher Shadhinata Juddya Dalilpatra**, Astom Khonda [volume-08] at page nos. 90, 126 and 301, and Dosom Khonda [volume-10] at page 435 as under,

tgvt রফিকুল্লাহ, Mlg-Kiv i nmbcd, _vbi-mgvi vg, tRj v-tbivLvj x|

*015B Gicj 15 Rb i vRvi Kvi Avgt` i Mtg Avtm, Avng ZLb Avgt` i Mtgi `wY Pivq avb KmUjZwQ|
i vRvKvi Avmqv AvgtK etj th, tZv` i Mlg nBtZ Avgt` i Pvdj Zwj qv w`tZ nBte| -----|0*

tgvt tMvj vg tgv` Zdv gUj, Mlg-RqcjnvU, tRj v-e, ov|

*0tg gvtmi gvSvgnS Ggubfvte KuzCq tj vKtK Mvtovqbi v ersj v`tki mxgvbvq ti tL Avmvi ct_ i vRvKvi i v
H pjU¹ 16/17 Rb MvtovqbtK tMtZvi Kti RqcjnvU n;ç;¹KvgU Avdtm wbtq Avtm| i vZ tmLvtb e`x Kti*

ti tL ciw b Utk Kti kvgxg nenvixi tbZtZj Zvt`i Avt`j cyj igvij Uvix K`vt`c wbtq hvq| tmLvtb Zvt`i fvj K`v
evtki tgvUv tMrov w`tq Kwtq Kwtq H mg`Z MtovqvtK nZ`v Kti | -----|0

Ave`j gvtj K, `Mve`j, ivRkinx|

0niqz`1KvgU Ges ivRvKvt`i mieivnKZ. Zt`i Dci wfvE Kti igvij Uvixiv wewfbæ GvKvq Gtm
Acvtikb Kti tQ| Zviv jYcvU Kti tQ, AvMsthvM Kti tQ, brix al`P Kti tQ Ges gvby nZ`v Kti tQ| Zvt`i Acvtikb
„vj i gta` wbt`q`3 „vj c`vb| Zviv tg gvtmi gvSigmS thvMxmb cvj kvq Acvtikb Kti 42 Rb wv`JK nZ`v Kti |
tmLvtb tqtq`i Dci AZ`vPvi Kti tQ| Rly gvtm Zviv `Mve`j Acvtikb Kti 8/9 RbtK nZ`v Kti | -----
----|0

mv`vKvi t kvgmj Avj g Avj k`vi

0Rly gvtmi c0g mBvtn ki YtLij v _vbtZ ivRvKvi evmbx`Zix nq cvK ivR`jz`»E gbmji i tbZtZj| tg
gvtmi gvSigmS bvtqK mje`vi gayZvi wbr`^`j wbtq tgvj MÄ _vbtq hvq| gay_vbtZ tcvQtj Avng Ges gay
th`fite Kvr`i i` Kwi | 40 Rb ivRvKvi BwZgta` tgvj MÄ _vbtZ Avtm| -----|0

73. By the said statements of the persons concerned it has clearly indicated that the commission of offences like genocide, murder, abduction, torture and other inhumane acts as crimes against Humanity were taken place by the local Razakars long before Razakar Ordinance was promulgated. So, the exhibit 10 does not show that the action of the Razakars started after getting arms and ammunitions by them. It was a list of 150 Razakars recommended by convenor, Sub-Divan. Peace Committee, Bagerhat, Khulna only to supply arms and ammunitions to them. Therefore, contention of the learned counsel for the accused is not sustainable under the above facts and circumstances.

74. Regarding numerous atrocious acts occured by Razakars in the territory of Bangladesh after 26 March,1971 a news report was published on 20 June,1971 in the world famous news paper "The Sunday Times' under the caption-

POGROM IN PAKISTAN

Teachers, Writers, Journalists eliminated

Magistrates shot, Doctors disappear

Gestapo-like raids, rape, extortion.

In the said report it was narrated to the effect:

"A new element in the regime of terror is the Gestapostyle pick-up. Some of those wanted for questioning are arrested openly. Others are called to the army cantonment for interrogation. Most of them do not return. Those who do are often picked up again by secret agent known as RAZAKARS, a term used by the volunteers of the Nizam of Hyderabad who resisted the Indian takeover of the State in 1948....."

-----.

Some University teachers reported for duty on 1st June at the instigation of General Tikka Khan, the Martial Law Administrator, but some of them have since fallen into the hands of the RAZAKARS.

The activities of RAZAKARS are known, if not overtly approved, by the military administration. Occasionally, they are a source of concern.

-----.

Organisations caring for the refugees who came into East Pakistan at the time of Partition and the Razakar backed 'Peace Committee' are publishing press notices inviting applications for "allotment" of shops and houses left by Bengalis."

[Source: Bangladesh Sawdhinata Juddha Dalilpattra: Volume 8, Page 527].

75. Thus, the above materials have also proved that before formal promulgation of Razakar Ordinance in August, 1971 the Razakar bahini was formed and the members of said bahini committed and conducted various atrocious acts like genocide, murder, abduction, torture and other inhumane acts as crimes against Humanity all over the country to implement the common plan and policies of Pakistani occupation army, as its auxiliary force.

76. In support of proving event as deputy commander no documentary evidence is found but there are sufficient oral and documentary evidence by which it has proved that accused Siraj Master as an influential Razakar played a significant role in committing the offences as alleged by the prosecution. Therefore, we have no hesitation to say that the prosecution has undoubtedly proved the role and status of the accused as a leader of Razakar Bahini or an influential person of Razakar Bahini, which subsequently got an status of an auxiliary force of Pakistan army, as specified in section 2(a) of the Act at the time of commission of offences for which the accused has been indicted. Nevertheless, in the capacity of an individual or 'a member of group of individuals' the accused is liable to be prosecuted under section 3(1) of the Act of 1973 if he is found to have committed the offences as specified under section 3(2) of the Act of 1973.

77. Regarding accused Khan Akram Hossain the plea of the prosecution is that accused Khan Akram Hossain was the commander of Razakar Bahini of Doibagghahati Razakar camp and under his leadership many atrocious acts were taken place during the Liberation War. Per contra, defence has claimed that he was a minor boy at the alleged time and he was in Khulna helping his elder brother in the business.

78. It appears from record that this accused has been indicted with three charges vide charge nos. 05, 07 and 08.

79. In respect of charge no.05 prosecution has examined eight live witnesses namely P.Ws 07, 08, 09, 10 and 15-18. Except p.ws-08-and 10 remaining aforesaid witnesses have deposed in their evidence that accused Khan Akram Hossain as a commander of Doibagghahati Razakar camp, or a member of Razakar Bahini, had committed several offences like abduction, murder and other inhumane acts as crimes against Humanity. In respect of proving charge no.06 identical event has been found in the evidence like charge no.05 regarding role and status of the accused by virtue of his position in committing the offence as disclosed by evidence of P.Ws 11-14. It is also evident by the said prosecution witnesses that accused Khan Akram Hossain forcefully possessed Biswas bari, a house of Hindu religious person, of Doibagghahati which is still in their possession. More so, these evidence have been supported by a list of Razakar trainees under army [Dist-Khulna], [2nd batch] platoon No.1 as appeared in exhibit no.10 where it contains his name in serial no.17.

80. In view of the facts and evidence adduced by the prosecution witnesses as mentioned above, we are constrained to hold that it is immaterial whether accused Khan Akram Hossain was the commander of Doibagghahati Razakar camp or not but the prosecution has been able to prove the role and status of the said accused as a local leader of Razakar Bahini as well as an influential person of Razakar Bahini, an auxiliary force of Pakistani army, as specified in section 2(a) of the Act at the time of commission of offences for which the accused has been indicted. Nevertheless, in the capacity of an individual of a member of group of individuals the accused is liable to be prosecuted under section 3(1) of the Act of 1973 if he is found to have committed the offences as specified under section 3(2) of the Act of 1973.

XVIII. Adjudication of charges

Adjudication of charge no. 01

[Genocide, murder and other inhumane acts (plundering and arson) committed on 13.05.1971 at Ranojitpur village under Bagerhat Sadar Police Station]

81. **Summary charge:** On 13 May, 1971 at about 2.00 P.M. under the leadership of accused Sheikh Sirajul Haque alias Siraj Master, the then Deputy Commander of Razakar Bahini of Bagerhat Sub-Division, and Rajob Ali Fakir along with a group of 50/60 Razakars and other anti-liberation people having surrounded the Ranojitpur village under Bagerhat Sadar Police Station plundered many houses of that village and then set them on fire. At the time of said occurrence, accused Sheikh Sirajul Haque alias Siraj Master and his accomplices also killed about 40/50 Hindu people of that village with intent to destroy, in whole or in part, the Hindu religious group. Thus, the said accused has been charged for abetting and facilitating the commission of offences of genocide, murder and other inhumane acts [plundering and arson] as crimes against Humanity as specified in section 3(2) (a)(c)(g) and (h) read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Discussion and evaluation of evidence and findings:

82. To prove charge no. 01, the prosecution has examined as many as six live witnesses [P.Ws. 01, 02, 03, 04, 05 and 29].

83. **P.W-01 Dilip Das** has deposed that during the Liberation War, 1971 he was about 23 years old. Just after the 7th March Speech of Bangabandhu Sheikh Mujibur Rahman, the father of the nation, and the declaration of Independence on 26 March, 1971 the Muslim League, an anti-liberation political party, locally formed a Razakar Bahini of which Rajob Ali Fakir was the commander and accused Sirajul Haque alias Siraj Master was the

deputy commander. Said local Razakar Bahini, after its formation, started killing of Hindu people, plundering and inflaming their houses, and committing rape on women, etc. around the city of Bagerhat. He has further deposed that being informed about the commission of said atrocities the villagers of Ranojitpur including himself formed a village defence party. Most of the villagers of Ranojitpur were the members of Hindu community. At that time they heard the names of Rajob Ali Fakir, accused Sirajul Haque Master, Ishaque, Akizuddin and many others as Razakars whom they knew. They came to know that on 13 May, 1971 Razakar Bahini would attack their Ranojitpur village. On that day [13.05.1971] at about 10.00 A.M. the members of Razakar Bahini assembled at Khanpur village, situated towards east of their village on the other side of Jowkhali river, but seeing their preparation the Razakars went back away from that place. But on that day at about 2.00 P.M. the Razakars came again and having surrounded their village attacked and fired shots indiscriminately. Then he [P.W. 01] and other villagers being afraid of started running hither and thither. Thereafter, most of the villagers including themselves in order to save their lives took shelter in the house of his cousins Gobinda Das and Shailan Das, situated in a big garden behind the Ranojitpur High School. But the Razakars also attacked that house and accused Siraj Master killed Gobinda Das and injured Sailan Das by striking with a sharp cutting instrument. At the time of said occurrence the Razakars killed about sixty persons in their village including said Gobinda Das, and Konek Das, Kanai Lal Das, Paritosh Chowkraborty, Nishikanta Chawkraborty, Binod Chawkraborty, Satish Das, Sanatan Das, Radhakanta Das, Nirmol Das, Dulal Das, Nakul Das, Sreebas Das, Chitta Ranjan Das, Gonesh Das, Babul Devnath, Bijoy Das and Kalipada Das of whom twenty four persons were of their own village and the others were of different villages who took shelter in their village. After having killed those persons the Razakars plundered different houses of their village and then

set them on fire, and tortured women, and at about 5.00 P.M. they left their village. He has also deposed that at the time of said occurrence he along with many others were in hiding in the bush situated behind the house of Gobinda Das. When the Razakars left their village, they came out of the said bush and buried the dead bodies, and thereafter they went to India and took shelter there. After that incident, they called accused Siraj Master as 'Siraj Kashai' [butcher]. Many persons of their village knew said accused as there were many students of him. He has further stated that after having received training from India he came back to Bangladesh in the month of August for participating in the Liberation War. He has identified accused Siraj Master in the dock.

84. In cross-examination he has stated that Razakar commander Rajob Ali Fakir was also present when their village was attacked. They along with 300/350 Hindu people of their village took shelter in India. He has denied the defence suggestion that in a battle, taken place on 13 May, 1971, Shailendra Nath Das, Kali Rani Dasi, Arun Das and Tapon Kumar Das were killed. He has also denied the defence suggestion that he has deposed falsely.

85. **P.W-02 Sailendra Nath Das** has testified that during the Liberation War, 1971 his age was about 27 years. After the 7th March Speech of Bangabandhu and the declaration of Independence on 26 March, 1971 the members of Muslim League formed Razakar Bahini in the area of Bagerhat. Rajob Ali Fakir and accused Sirajul Haque Master were the commander and deputy commander respectively of the then Bagerhat Sub-division Razakar Bahini. The members of said Razakar Bahini having gone to Hindu populated areas of Bagerhat plundered and aflamed houses and tortured women and committed other offences. Having been informed about the said atrocious activities of the Razakars they formed a village defence party in their Ranojitpur village. The members of the village defence party used to

guard their village day and night by turns. They came to know that on 13 May, 1971 the members of that Razakar Bahini would attack their Ranojitpur village. On that day [13.05.1971 at about 10.00 A.M. the members of Razakar Bahini assembled at Khanpur village, situated on the other side of Jowkhali river, adjacent to their village. Having seen 400/500 villagers, who were keeping guard, the Razakars left the place at that time. On that day at about 2.00 P.M. while the persons who were keeping guard went to their respective houses for their lunch, then 100/150 armed Razakars attacked their village and having set fire to the house of member Monindra Nath Das started firing shots. At that time the villagers in order to save their lives took shelter in a thicket of a big garden situated behind the Ranojitpur High School. When he [P.W.02] and his cousin Gobinda Chandra Das tried to enter into that garden to save their lives, accused Sirajul Haque hit on the head of his said cousin with his rifle butt, and then his cousin fell down on the ground, and at that time accused Siraj Master with his knife stabbed him to death. He has also deposed that at the time of said occurrence two Razakars held him and then accused Siraj Master stabbed him with his knife causing injuries from his neck to belly *[at this stage this witness has shown the mark of said injuries to the Tribunal]*. Thereafter, in his [P.W.02] presence accused Siraj Master with his knife stabbed their villagers namely, Nishikanta, Nakul Das, Nirmol Das and Sonaton Das to death, and killed Monindra Nath Das by gun-shots. The members of Razakar Bahini including accused Siraj Master killed about 50/60 persons, of them 24 persons were of their own village, and the rest took shelter in their village. On that day at about 5.00 P.M. the Razakars left their village. After evening, the villagers who went into hiding having come back to their village tried to find out the dead bodies of their relatives who were killed, and he [P.W. 02] buried the dead body of his cousin Gobinda at the place of occurrence. On the following day many other dead bodies were buried at the front side of the

school field by the neighbouring villagers. He knew accused Siraj Master as he was his teacher. He has identified accused Sirajul Haque Master in the dock.

86. In course of cross-examination he has stated that in the garden where they took shelter, another 150/200 persons also took shelter therein, and of them many members of the village defence party were there. They used bamboo-sticks to guard their village, and at noon, when the occurrence took place, a few number of persons were keeping guard their village. When their village was attacked, Razakar Rajob Ali Fakir also came to their village. He has further stated that accused Siraj Master was a teacher of Saera Modhudia High School and at that time Jotindranath Gose was the head-master of that school. He has denied the defence suggestion that accused Siraj Master was never his teacher and he has deposed falsely.

87. **P.W-03 Kamala Rani Chowkraborty** has stated that during the Liberation War, 1971 she was married. On one Thursday of Baishakh, 1971 accused Siraj Master along with 7/8 accomplices attacked their house and at that time she was staying in her father-in-law's house at Ranajitpur village. After having attacked their house accused Siraj Master and his said accomplices shot her husband Poritosh Chowkraborty and father-in-law Nishikanta Chowkraborty to death and killed her grand-father-in-law Binod Chowkraborty by stabbing, and they also having plundered their houses set them on fire. In such a situation she leaving the said dead bodies took shelter into the nearby garden with her two-month daughter. Thereafter, the villagers buried the dead bodies of her husband and others, and she along with others went to India. She has further stated that she knew accused Siraj Master as he was a teacher of Saera High School. She has identified accused Siraj Master in the dock.

88. In cross-examination she has stated that Saera High School is situated 3/4 miles away from their village. During the Liberation War, 1971 all were

afraid of Razakars. After liberation, she did not file any case for killing of her husband and others and aflaming of houses, as she had no ones. She has denied the defence suggestion that she has deposed falsely.

89. **Tapan Kumar Das as P.W-04** has testified that during the Liberation War his age was about 15/16 years. After the 7th March Speech of Bangabandhu and the declaration of Independence on 26th March, 1971, they formed village defence party on 28 March to guard their village. The members of the village defence party started to guard their village Ranojitpur by turns. With a view to attack their village, on 13 May, 1971 at about 10.00 A.M. accused Siraj Kashai and his accomplice Razakars assembled at Khanpur village, situated on the other side of the nearby Jowkhali river. Since at that time 400/500 villagers assembled, the Razakars left the place. At about 2.00 P.M. when most of the villagers went to their respective houses for their lunch, a few number of persons remained to guard their village, and at that time accused Siraj and Razakars attacked their village. At first they attacked the house of Monindra of their village and then set the house on fire, and also started firing shots. Being afraid of hearing the sound of firing shots they started running hither and thither to take shelter. He has further deposed that at that time he himself, his parents and other brothers took shelter under a palm tree of the bush beside their house. While they had been in the bush accused Siraj Master and his accomplices were going beside the said bush and then they having apprehended therefrom tortured them. When they requested accused Siraj Master to release his father Kanai Lal Das, the said accused stabbed him [P.W. 04] in the upper portion of his right knee [*at this stage this witness has shown the mark of said injury to the Tribunal*], and then accused Siraj Master shot his father to death. At that time Nishi Kanta and Dulal of their village were beside them whom accused Siraj Master also shot to death. Nanda Lal, son of said Nishi Kanta also witnessed the said incident. He has also stated that the Razakars after

having plundered and aflamed the houses of their village left the crime site, and thereafter at about 5.00 P.M. the villagers came back to the village. About 50/60 persons were killed by the Razakars in that incident, of them they could identify 24 dead bodies of the persons who were of their own village. The dead bodies of Sanatan Das, Satish Das, Nirmol Das, Konek Das, Chitta Ranjan Das, Aumulla Das, Poritosh Chowkraborty, Nishi Kanta Chowkraborty, Binod Chowkraborty and Aumulla Mohajan were there among said 24 dead bodies. The villagers buried those dead bodies. After two days of the said incident they including other villagers having gone to India took shelter in refugee-centres. He has identified accused Siraj Master in the dock.

90. In course of cross-examination, he has stated that in 1971 he was a student of class III in Ranojitpur School. The house of Monindra Nath is situated 40/50 yards away from their house. He has denied the defence suggestion that accused Siraj Master was not involved with the alleged offences. He has also denied the defence suggestion that he has deposed falsely.

91. **P.W-05 Arun Das** has testified that during the Liberation War, 1971 he was about 11/12 years old. On 13 May, 1971 at noon he suddenly heard sound of chaos, and then he came out of his house and found many people having different arms in their hands and of them he could identify accused Siraj Master. Having seen them his father [Konek Das] started running away. Then he [P.W.05] and his mother went towards their bhiti beside their house and saw there that in the meantime accused Siraj Master and his accomplice Razakars had caught hold of his father who then requested accused Siraj Master not to kill him. He and his mother also holding the hands and legs of accused Siraj Master requested him not to kill his father but his accomplices pushed them away. Thereafter, accused Siraj Master attempted to stab his father with a 'ramdaw' [a sharp cutting weapon] and then his father tried to

resist the said attack with his hands, but by the attack of said 'ramdaw' his fingers of both hands having been cut off fell down on the earth, and at one stage accused Siraj Master shot his father who sustaining bullet injury fell down on the ground, and then the said accused and his accomplices left the crime site guessing that his father was dead. After the departure of the accused and his accomplices he and his mother came to his father and found him groaning, and after sometime he died there. He has also stated that thereafter they having gone to India took shelter in a refugee-centre situated at Sahara. He knew accused Siraj Master since before the said occurrence. He has identified the said accused in the dock.

92. In cross-examination he has stated that he studied at Ranojitpur High School where the boys and girls of neighbouring villages namely Khanpur, Hakimpur and Sonatonia also studied. At that time Nitai Babu was the head-master of that school. After the killing of his father Master Rishikesh Babu came to the crime site who told them to go to a safe place. Perhaps after the Liberation in the month of Powsh B.S. they came back to Bangladesh from the refuge- camp of India. He has denied the defence suggestion that accused Siraj Master was never a teacher of Saera School. He has also denied the defence suggestion that he has deposed falsely.

93. **Shukumar Das as P.W-29** has deposed that during the Liberation War, 1971 his age was about 11/12 years. During the Liberation War in 1971, on one Thursday at about 11.00 /12.00 A.M. under the leadership of accused Siraj Master, Rajob Ali Fakir and Akizuddin a group of Razakars having come from towards Jowkhali river attacked their village Ranojitpur and having plundered houses set them on fire and indiscriminately killed 40/50 Hindu villagers who were unarmed and innocent. On the same day at night he and his parents including other members of their family took shelter in the house of his maternal uncle Sontosh, situated at their neighbouring village Ghanoshempur.

94. In course of cross-examination he has stated that he did not see accused Siraj Master in 1971, but heard about him from his father. He has denied the defence suggestion that he has deposed falsely.

95. Upon scrutiny of the testimonies of the aforesaid six prosecution witnesses, it transpires that most of the said witnesses are the eye-witnesses of the occurrence relating to the charge in hand i.e. charge no. 01. Besides, most of them are the members of the victim families and some of them themselves are victims.

96. P.W-02 Sailandra Nath Das is an eye-witness as well as he himself is a victim. Besides, he is also a member of a victim family. He having implicated accused Sheikh Sirajul Haque alias Siraj Master with the alleged genocide, murder, plundering and arson as listed in the instant charge, has testified that after the 7th March Speech of Bangabandhu and the declaration of Independence on 26 March, 1971 the members of Muslim League formed Razakar Bahini in the area of Bagerhat. One Rajob Ali Fakir and accused Sirajul Haque Master were the commander and deputy commander respectively of the then Bagerhat Sub-Division Razakar Bahini. The members of said Razakar Bahini having gone to Hindu populated areas of Bagerhat used to plunder and aflame houses and torture women and commit other offences. He has further testified that having been informed about the said atrocious activities of the Razakars they formed a village defence party in their village Ranojitpur. On 13.05.1971 at about 2.00 P.M. while the persons who were keeping guard went to their respective houses for their lunch, then 100/150 armed Razakars attacked their village Ranojitpur and having set fire to the house of member Monindra Nath Das started firing shots. At that time the villagers in order to save their lives took shelter in a thicket of a big garden situated behind the Ranojitpur High School. When he [P.W. 02] and his cousin Gobinda Chandra Das tried to enter into that garden to save their lives, accused Sirajul Haque hit on the

head of his said cousin with his rifle butt, and then his cousin fell down on the ground, and at that time accused Siraj Master with his knife stabbed him to death. He has also deposed that at the time of said occurrence two Razakars held him and then accused Siraj Master also stabbed him with his knife causing injuries from his neck to belly. Thereafter, in his [P.W.02] presence accused Siraj Master with his knife also stabbed their villagers namely, Nishikanta, Nakul Das, Nirmol Das and Sonaton Das to death, and killed Monindra Nath Das by gun-shots. The Razakars including accused Siraj Master killed about 50/60 persons. After the departure of the Razakars they buried the dead bodies. He has also testified that he knew accused Siraj Master as he was his teacher.

97. P.W-04 Tapon Kumar Das is also an eye-witness as well as he himself is a victim. He is also a member of a victim family. He having corroborated the testimonies of P.W-02 has stated that on 13 May, 1971 at about 2.00 P.M. accused Siraj Master and his accomplice other Razakars attacked their village Ranojitpur. At first they attacked the house of Monindra of their village and then set the house on fire, and also started firing shots. He has further stated that at the time of said occurrence he himself, his parents and other brothers took shelter under a palm tree of the bush beside their house. While they had been in the bush accused Siraj Master and his accomplices having apprehended therefrom tortured them. When they requested accused Siraj Master to release his father Kanai Lal Das, the said accused stabbed him [P.W. 04] in the upper portion of his right knee, and then accused Siraj Master shot his father to death. At that time accused Siraj Master also shot his villagers Nishi Kanta and Dulal to death. The Razakars after having plundered and aflamed the houses of their village left the crime site. He has further stated that about 50/60 people were killed by the Razakars in that incident, of them they could identify 24 dead bodies of the persons who were of their own village and the villagers buried those dead bodies.

98. P.W-03 Kamala Rani Chowkraborty and P.W. 05 Arun Das are also eye-witnesses of the occurrence as listed in charge no. 01. Besides, they are also members of victim families. They have also corroborated the testimonies of P.Ws-02 and 04. P.W-03 has deposed that on one Thursday of Baishakh, 1971 accused Siraj Master along with 7/8 accomplices attacked their house and at that time she was staying in her father-in-law's house at Ranojitpur village. After having attacked their house accused Siraj Master and his said accomplices shot her husband Poritosh Chowkroborty and father-in-law Nishikanta Chowkraborty to death and killed her grand-father-in-law Binod Chowkraborty by stabbing, and they also having plundered their houses set them on fire. P.W. 05 Arun Das has deposed that on 13 May, 1971 at noon they found many armed people in their village Ranojitpur including accused Siraj Master. At that time he saw accused Siraj Master and his accomplice Razakars to catch hold of his father and then the said accused attempted to stab his father with a 'ramdaw' [a sharp cutting weapon] and then his father tried to resist the attack with his hands , but by the attack of said ' ramdaw' his fingers of both hands having been cutt off fell down on the earth, and at one stage accused Siraj Master shot his father who sustaining bullet injury fell down on the ground, and then the said accused and his accomplices left the crime site guessing that his father was dead. After the departure of the accused and his accomplices he and his mother came to his father and found him groaning, and after sometime he died there.

99. P.W-01 Dilip Das partly witnessed the occurrence as listed in the instant charge. He is also a member of a victim family. P.W-01 and P.W-29 Shukumar Das have also corroborated the evidence given by P.Ws-02, 03, 04 and 05 as discussed above. It may be mentioned here that P.Ws-01, 02, 03, 04 and 05 have identified accused Siraj Master in dock. The learned defence counsel has cross-examined these live witnesses, but could not shake their evidence, and as such, there is no reason to disbelieve their evidence.

100. At the time of summing up by way of argument, the learned Prosecutor Mr. Syed Haider Ali along with Mr. Syedul Haque submitted that during the Liberation War, 1971 accused Siraj Master was the deputy commander of Razakar Bahini of then Bagerhat Sub-Division and at that time the said accused along with his accomplice other Razakars committed genocide and crimes against Humanity in Bagerhat areas. He has also submitted that it has revealed from Exhibit-10 that accused Siraj Master was a Razakar of Bagerhat area. On the other hand, Mr. Md. Abul Hasan, the learned State defence counsel did not deny that accused Siraj Master was a Razakar of Bagerhat area, but he denied that the said accused was the commander or deputy commander of Razakar Bahini of then Bagerhat Sub-Division. He submitted that in Exhibit-10 it has not been mentioned that accused Siraj Master was the Deputy Razakar Commander. He also submitted that accused Siraj Master was not involved with the commission of the offences as listed in the charge no. 01 and since the said accused was not the deputy commander of Razakar Bahini of Bagerhat area he would not be liable for the offences committed by other Razakars.

101. It appears from Exhibit-10 [running pages from 6 to 45 of the additional volume of documents submitted by the prosecution] that on 15.07.1971 the then Convenor, Sub-Division, Peace Committee, Bagerhat, Khulna wrote a letter to the then Deputy Sub-Administrator, Martial Law, Khulna which is quoted as below:

"Sir,

In forwarding herewith the list of 150 Razakars of Bagerhat Sub-Division. Their C/A has been verified and they are loyal citizen of Pakistan. No adverse report has been received against any of them.

I therefore pray that one rifle and 50 rounds of ammunitions may kindly be issued to each of them."

102. In the list of above mentioned 150 Razakars of then Bagerhat Sub-Division the name of accused Siraj Master including his father's name and address appears in serial no. 26 of the said list. This list was prepared on 15.07.1971 during the Pakistan army regime and that was endorsed by the high ranking civil and military officers, and as such, there is no reason to disbelieve it. So, it is proved from Exhibit-10 as well as from the oral evidence adduced by the above mentioned prosecution witnesses that accused Siraj Master was a Razakar of then Bagerhat Sub-Division during the Liberation War, 1971. It may be mentioned here that some of the above mentioned prosecution witnesses have stated that accused Siraj Master was the deputy commander of Razakar Bahini of then Bagerhat Sub-Division. It is immaterial in this case whether the accused Siraj Master was the deputy Razakar commander or not as no charge has been brought against him under section 4(2) of the Act of 1973 for superior/command responsibility. Rather, he has been charged under section 4(1) of the Act of 1973 for joint criminal enterprise.

103. It may be mentioned here that in the instant charge no. 01 accused Siraj Master has been charged for abetting and facilitating the commission of genocide, and murder and other inhumane acts as crimes against Humanity as specified in section 3(2)(a)(c)(g)(h) read with section 4(1) of the Act of 1973.

104. Upon evaluation of the evidence, both oral and documentary, as discussed above it reveals that Razakar accused Sheikh Sirajul Haque alias Siraj Master along with his accomplice other Razakars on 13 May, 1971 in the afternoon having attacked Ranojitpur village under Bagerhat Sadar Police Station plundered many houses of that village and set them on fire. At that time they also killed about 40/50 Hindu religious people of that village. Now the question arises whether this killing is simply 'murder' as crimes against Humanity under clause (a) or 'genocide' under clause (c) of sub-section (2) of section 3 of the Act of 1973.

Section 3(2)(c) defines 'genocide' as under:

“(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;”*

105. According to said definition the constituent elements of the crime of genocide are: first, that one of the acts listed under section 3(2)(c) of the Act of 1973 was committed; secondly , that this act was committed against a specifically targetted national, ethnic, racial, religious or political group, and thirdly, that act was committed with intent to destroy, in whole or in part, the targetted group.

The ICTR Trial Chamber in the case of Prosecutor vs. Kamubanda [Case No. ICTR-95-54A-T, January 22 , 2004, para-622] observed that-

“The crime of genocide requires a finding of both mens rea and actus reus. The mens rea for genocide comprises the specific intent or dolus specialis described in the general clause of Article 2(2) of the Statute- i.e. the commission of a genocidal act ‘ with intent to destroy, in whole or in part, a national , ethnical, racial or religious group.’ And the actus reus consists of any of the five acts enumerated in Article 2(2) of the Statute, as shown above.”

The ICTR Appeals Chamber in the case of Prosecutor vs. Seromba [Case No. ICTR-2001-66-A, March 12, 2008, para-175] observed about *mens rea* [mental state] as under –

"The Appeals Chamber recalls that in addition to intent and knowledge as regards the material elements of the crime of genocide, the mental element of the crime also requires that the perpetrator have acted with specific intent to destroy a protected group as such in whole or in part."

106. '**Genocide**' is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged. Thus, the special intent in the crime of genocide lies in the intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group. The offender is culpable only when he has committed one of the offences charged under section 3(2) (c) of the Act of 1973 with the clear intent to destroy, in whole or in part, a particular group. The offender is culpable because he knew or should have known that the act committed would destroy, in whole or in part, a group. In the instant charge we find from the above mentioned evidence adduced by the prosecution witnesses that Razakar accused Sheikh Sirajul Haque alias Siraj Master along with his other accomplice Razakars on the date, time and place killed about 40/50 unarmed innocent people and all the victims belonged to Hindu religious group. It appears from the evidence on record that the occurrence took place at Ranojitpur village which was Hindu populated and as such the villagers being afraid of Pakistani army and Razakars formed defence party to guard their village. In the mass killing the said accused had direct participation and overt acts. So, we can infer that accused Siraj Master had specific intent i.e. *mens rea* in

the killing of those unarmed innocent Hindu people to destroy, in whole or in part, the Hindu religious group.

107. It may be mentioned here that even if destruction of a protected group was not original goal, it may become the goal subsequently. In this regard **ICTY Trial Chamber in the case of Prosecutor vs. Krstic [Case No. IT-98-33, August 2, 2001, para – 572]** observed as under:

"It is conceivable that, although the intention at the outset of an operation was not the destruction of a group, it may become the goal at some later point during the implementation of the operation."

108. Genocidal intent need not be formed prior to the commission of genocidal acts, but must be present when committed. **The ICTR Appeals Chamber in the case of Simba vs. Prosecutor [Case No. ICTR-01-76-A, November 27, 2007, para -266]** observed that-

"In the [Appellant's] view, for the crime of genocide to occur, the intent to commit genocide must be formed prior to the commission of genocidal acts. The Appeals Chamber finds no merit in this submission. The inquiry is not whether the specific intent was formed prior to the commission of the acts, but whether at the moment of commission the perpetrators possessed the necessary intent. The Trial Chamber correctly considered whether the Appellant and the physical perpetrators possessed genocidal intent at the time of the massacres."

109. To establish the offence of genocide specific intent to destroy is the key, but it is not necessary to prove actual destruction of group, in whole or in part, although actual destruction may constitute evidence of specific intent. **The ICTY Trial Chamber in the Case of Prosecutor vs. Stakic [Case No. IT-97-24-T, July 31, 2003, para-522]** opined as under-

"The key factor is the specific intent to destroy the group rather than its actual physical destruction. As pointed out by the Trial Chamber in Semanza, 'there is no numeric threshold of victims necessary to establish genocide'. This Trial Chamber emphasizes that in view of the requirement of a surplus of intent, it is not necessary to prove a de facto destruction of the group in part and therefore concludes that it is not necessary to establish, with the assistance of a demographer, the size of the victimized population in numerical terms. It is the genocidal dolus specialis that predominantly constitutes the crime."

110. In the instant charge i.e. charge no. 01 we find from the evidence on record as discussed earlier that accused Siraj Master had not only specific intent to destroy, in whole or in part, the Hindu religious group, but he also along with his accomplice Razakars killed about 40/50 unarmed innocent Hindu religious people. This physical destruction of Hindu people constitutes the evidence of his specific intent to destroy, in whole or in part, the Hindu religious group. Sometime killing of a single person may constitute the offence of genocide, where required intent is shown. **The ICTR Trial Chamber in the Case of Ndindababizi vs. Prosecutor [Case No. ICTR-2001-71-T, July 15, 2004, para-471]** observed that –

"The fact that only a single person was killed on this occasion does not negate the perpetrators' clear intent, which was to destroy the Tusti population of Kibuye and Rwanda, in whole or in part. Accordingly, the killers of Nors committed genocide."

111. It may be mentioned here that although the occurrence took place in 1971, long after about 44 years ago but most of the prosecution witnesses as mentioned earlier have specified the date, time and place of the occurrence as listed in the charge no. 01 in their evidence while the State defence has failed to discard the evidence of any events. Most of the prosecution

witnesses are the eye-witnesses of the occurrence and some of them themselves are the victims and some of them are the members of victim families. According to the evidence adduced by aforesaid prosecution witnesses it has emerged that accused Siraj Master had specific intent to destroy, in whole or in part, the Hindu religious group. Even then, it is not necessary to have criminal intent within the vicinity of the accused in committing an offence of 'genocide'. This view finds support from the principle enunciated by the **ICTR Trial Chamber in the case of Muvunyi, September 12, 2006, para-479** which is as follows:

"An accused can be found guilty of committing genocide even if his personal motivation went beyond the criminal intent to commit genocide."

112. From the aforesaid discussions we are of the view that on the date, time and place of the occurrence as listed in the instant charge the killing of about 40/50 unarmed innocent Hindu religious people is not an offence of simple 'murder' as crimes against Humanity as specified in section 3(2)(a) of the Act of 1973, but an offence of 'genocide' as specified in section 3(2)(c) of the said Act.

113. Considering all the facts, circumstances and the evidence on record as discussed above, we are led to arrive at a decision that the prosecution has been able to prove beyond reasonable doubt that on 13 May, 1971 in the afternoon accused Sheikh Sirajul Haque alias Siraj Master along with his other accomplice Razakars having attacked Ranojitpur village under Bagerhat Sadar Police Station plundered many houses of that village and then set them on fire, and they also killed about 40/50 Hindu people of that village with specific intent to destroy, in whole or in part, the Hindu religious group. Thus, the said accused is criminally liable under section 4(1) of the Act of 1973 and found him guilty for participating, abetting and facilitating the commission of offences of genocide and other inhumane acts [plundering

and arson] as crimes against Humanity as specified in section 3(2)(a)(c) (g) and (h) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Adjudication of charge no. 02

[Genocide, murder and other inhumane acts (plundering and arson) committed on 21.05.1971 at Dakra Kalibari temple under Rampal Police Station]

114. **Summary charge:** During the Liberation War, 1971, about 3/4 thousands Hindu people of different villages being afraid of took shelter at Dakra Kalibari temple under Rampal Police Station of the then Bagerhat Sub- Division to go to refugee –centre in India. Having been informed about the said assembly, with intent to destroy , in whole or in part, the Hindu religious group, on 21 May, 1971 between 3.00 P.M. and 5.00 P.M. under the leadership of accused Sheikh Sirajul Haque alias Siraj Master, the then Deputy Commander of Razakar Bahini of Bagerhat Sub-Division , and Rajob Ali Fakir along with a group of 40/50 armed Razakars went to village Dakra and indiscriminately fired shots to the villagers who were running hither and thither and then the said accused and his accomplices came to that Kalibari temple and killed the persons assembled there and thereby killed about 600/700 Hindu people. At the time of said occurrence the said accused and his accomplices also plundered many houses of that village and then set them on fire. Thus, the said accused has been charged for abetting and facilitating the commission of offences of genocide, murder and other inhumane acts [plundering and arson] as crimes against Humanity as specified in section 3(2)(a)(c)(g) and (h) read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Discussion and evaluation of evidence and findings:

115. To prove charge no. 02, the prosecution has examined as many as five live witnesses [P.Ws. 19, 20, 21, 22 and 23].

116. **P.W-19 Premananda Majumder** has deposed that during the Liberation War, 1971 his age was about 16 years and at that time he was a student of class X in Bagerhat Govt. Nurul Amin High School. In 1971, when the Liberation War started he came to his parents living at their village home in Rampal from Bagerhat city. Being afraid of torture by Razakars he along with his parents, brothers, sisters and all other members of their family in order to take shelter in India, on 21 May, 1971 in the morning having come to Dakra Bazar Kalimandir by boat took shelter in the house of Noa Thakur. They and other 4000/5000 Hindu people of Bagerhat and Rampal took shelter in that mandir [temple] in order to go to India. On that day at about 2.00 P.M. they saw about 40/50 people coming by two boats towards from Bagerhat, one boat having reached in front of Dakra High School stopped there and the other one went towards west of Dakra bazar. After sometime the passengers of said boats by firing shots from both sides indiscriminately killed the persons who took shelter around the said mandir [temple] in order to go to India, and at that time he [P.W-19] and his father were staying in their boat and other members of their family were on the shore. He has further deposed that at one stage of firing, accused Siraj Master shot his father to death and he [P.W-19] jumped into the river when said accused aimed him to shoot at. Before he jumped into the river he also noticed that Razakar Rajob Ali Fakir and his accomplice Razakars had different arms including rifles and knives in their hands. At that time said Razakars killed many people. After the departure of the Razakars from the crime site he came out of the river to the shore and found about 600/700 dead bodies over there. At the time of said incident accused Siraj Master and his accomplice Razakars by firing shots and stabbing killed his father Gopal Krishna Mozumder, elder uncle Radha Nath Mozumder, and his neighbours Aumulla Kumar Mondol, Sharat Mondol, Mohananda Bairagi, Zatin Bairagi, Chitta Bairagi, Mohananda Kabiraj, Pachuram Kabiraj, Niranjana

Chowkraborty, Ashutosh Chowkraborty, Autul Thakur, Narayan Dakua, Sharat Chandra Majumder and Harshit Mondol . Subsequently, he heard that local people threw some dead bodies into the river and burnt some dead bodies. He has identified accused Siraj Master in the dock.

117. In course of cross-examination he has stated that when he was studying at Bagerhat Nurul Amin High School he stayed in a rented house at Amlapara of Bagerhat town. In the first part of May, 1971 he went to his village home at Rampal. The distance between their house and Dakra bazar is about one kilometre and between Dakra bazar and Rampal thana sadar is about three and a half kilometres. At first Rajob Ali Fakir opened fire from western side and thereafter accused Siraj Master fired shots from the eastern side. He has denied the defence suggestions that accused Siraj Master did not go to the place of occurrence nor was he involved with the atrocities. He has also denied the defence suggestions that during the time of occurrence accused Siraj Master was engaged in teaching at Khulna and at that time he never came to the area of Bagerhat. He has further denied the defence suggestion that he has deposed falsely.

118. **Robindranath Adhikari as P.W-20** has testified that during the Liberation War, 1971 his age was about 30/32 years. After the enhancement of the degree of torture committing by Razakars in their locality they being afraid of on 21 May, 1971 in the morning having started by boat went to the premises of Dakra Kalimandir and took shelter there in order to go to India. At about 1.30 P.M. he noticed that 20/25 persons with a boat wearing white clothes and caps on their heads arrived at the side of that mandir [temple], situated towards the west of Dakra bazar, and having got down on the shore from the boat started firing shots indiscriminately aiming at 5000/6000 people who had taken shelter in that mandir, and some of the said passengers of that boat were also stabbing innocent persons to death. Said 5000/6000 people coming from different areas of Bagerhat took shelter there

in order to go to India, and all of them were the members of Hindu religious community. At that time he heard that some people with another boat also arrived at the edge of Kumarkhali river beside Dakra High School and therefrom they also started firing shots. After starting firing shots and killing he first took shelter in the house of 'Thakur' and then took shelter in the house of Nabab Miah which was five/six hundred cubits away towards south from the place of occurrence. When the women of that house being afraid of took initiative to flee away, then Nabab Miah's son Abu Syeed told them that Rajob Ali Fakir and Siraj Master came there to kill Hindu people, and asked them why were they fleeing away? He has further testified that after the departure of those Razakars he having come to the premises of the mandir, the place of occurrence, sometime before dusk found that his father Ram Chandra Audhikari was stabbed with knife and his brother Narayan Chandra Adhikari was shot and also stabbed with bayonet which caused injuries on their persons, and heard from the people present there that accused Siraj Master and other Razakars had hurt his father and brother. At the time of said occurrence about 600/700 people including sixteen persons of their para [locality] were killed by gun-shots and bayonet charges by the Razakars. Among said sixteen persons of his para who were killed, Sharat Majumder, Mohananda Bairagi, Jatinandra Nath Bairagi, Chitta Bairagi, Radha Nath Mojumder, Gopal Mojumder, Niren Chowkraborty, Ashutosh Chowkraborty, Narayan Dakua, Autul Dakua, Pachuram Kabiraj and Mohananda Kabiraj were there. His injured father and brother were taken to the house of Thakur and after about ten days his father died when he was under treatment. His injured brother is still alive, but he cannot move normally. He has also deposed that the Razakars themselves threw many dead bodies into the nearby river, and after 2/3 days the local people arranged to burn the dead bodies lying inside the house of Thakur. He has identified accused Siraj Master in the dock.

119. In cross-examination, he has stated that Dakra Kalimandir is situated about one mile away from their village. They did not resist the Razakars when they attacked them; rather they tried to save their lives. He has further stated that he cannot say how Abu Syeed heard the name of accused Siraj Master. He has denied the defence suggestion that he has deposed falsely.

120. **P.W-21 Kalipada Mondol** has stated that during the Liberation War, 1971 he was about 28 years old. Being oppressed by Razakars, on 6th Jaishtha in 1971 they all took shelter at the premises of Dakra Kalimandir in order to go to India with Noa Thakur to take shelter there. The distance between his house and Noa Thakur's house is about 50 cubits. With the same object more than five thousand Hindu people of different places of Bagerhat took shelter at the premises of said Kalimandir. On that day at about 1.00/2.00 P.M. he noticed that 40/50 Razakars, most of them wearing caps on their heads, came to Dakra area from towards Bagerhat with two boats, and then one boat stopped at the side of Dakra School and the other one stopped at the last bounding- lines of the bazar. Then those Razakars having got down from the boats started killing by firing shots indiscriminately the innocent people who took shelter at the premises of Dakra Mandir. At that time he [P.W-21] having come out of the house of Thakur took shelter in a bush nearer to their house wherefrom he could see accused Siraj Master to kill Kumod Thakur, Rasik Thakur and Sushil Babu by firing shots and stabbing with knife. Then he being afraid of took shelter in the river going through nearby canal. He has further stated that after the departure of the Razakars before dusk he came again to the premises of Mandir and saw about 500/600 bloody dead bodies lying there , among them the dead bodies of Bishhamber Mistri and Aumal Thakhur were there who were known to him. The Razakars threw some dead bodies into the river and after 2/3 days the villagers arranged to burn some other dead bodies. After some days of the said incident he along with his family members went

to India and took shelter there. He has identified accused Siraj Master in the dock.

121. In cross-examination he has stated that he could identify accused Siraj Master among the Razakars who came to the crime site by two boats, and the others were not known to him. He knew accused Siraj Master since before the said occurrence. The distance between his house and the house of accused Siraj Master is about 7/8 miles. He does not know whether accused Siraj Master was teaching at Khulna in 1971. He has denied the defence suggestion that there was no existence of any bush wherefrom he saw the occurrence as he stated in his examination-in-chief. He has also denied the defence suggestions that Pakistani army committed the said killing, and he has deposed falsely.

122. **Pran Krishna Halder as P.W-22** has deposed that he was about 20/21 years old during the Liberation War, 1971. Being afraid of and oppressed by Razakars they and other villagers decided to take shelter in India, and accordingly on 21 May, 1971 at about 10.00A.M. they came to Dakra Kalimandir by boat from their house. That Kalimandir is about a quarter mile away from their house. After reaching Kalimandir they made contact with Noa Thakur who told them that they would leave for India when ebb-tide started. In order to take shelter in India 6000/7000 people of Hindu community of different areas of Bagerhat assembled at the Kalimandir premises. His parents and other members of their family were staying under a big tree beside the Kalimandir while he himself was staying in their boat. He has further deposed that at about 2.00 P.M. he noticed that 40/50 Razakars were coming by two boats towards Kalimandir from the side of Bagerhat and thereafter one of the said two boats stopped at the side of Dakra High School and the other one stopped at the western side of Dakra bazaar. Thereafter, the Razakars having got down from the boats started killing of the innocent persons assembled at the premises of Kalimandir by

firing shots indiscriminately and stabbing with knives. Accused Siraj Master was the leader of the Razakars who were in the boat stopped at the side of Dakra High School and Rajob Ali Fakir [now dead] was the leader of other Razakars who were in the other boat. He has also stated that accused Siraj Master killed his father by gun-shot beside the Kalimandir. He himself saw the said killing of his father and others from his boat. After the departure of the Razakars he went to the place of occurrence in the evening and found 600/700 dead bodies there including the dead bodies of his father Haribor Halder, uncle Ananda Mohon Halder and cousin Sukhendra Halder. He also found his mother and aunt there who told him that under the leadership of accused Siraj Master that killing was committed. He has identified accused Siraj Master in the dock.

123. In course of cross-examination he has stated that they were six brothers and one sister. Nirmolendu Roy, Sukumar Roy and Mrinal Chowkraborty of their village were freedom-fighters. There was a Razakar in their village whose name was Rahadat Sheikh. He has further stated that there were many male babies and 2/3 women among the people who were killed. He has denied the defence suggestions that those persons were killed in a battle taken place between Pakistany army and freedom-fighters and no male babies and women were killed. He has also denied the defence suggestion that he has deposed falsely.

124. **P.W-23 Shishir Kumar Biswas** has testified that in 1971 he was about 17 years old and at that time he was a S.S.C examinee from Dakra High School, and at present he is an Assistant Teacher of that school. When the Liberation War started after the 7th March, 1971 Speech of Bangabandhu, on 26 March he joined with the pro-liberation people, on the other hand anti-liberation people were organizing the Peace Committees and Razakar Bahinis. Rajob Ali Fakir and accused Sirajul Haque alias Siraj Master were the commander and Deputy Commander respectively of the

then Bagerhat Sub-Division Razakar Bahini. Thereafter, the Razakars started committing atrocities in their locality. He has further testified that being afraid of the said activities of the Razakars they decided to go to India for taking shelter there. There was a Kalimandir in the Dakra area of which Binod Bihari Chawkraborty was the priest who was known as Noa Thakur in the locality. Since before 21 May, 1971 the members of Hindu community including themselves were taking shelter around said Kalimandir so that they all along with Noa Thakur could go to India. On 21 May in the morning about five thousand people of Hindu community of different villages of Bagerhat assembled around that Mandir [temple]. Being informed about the said assembly Razakar Commander Rajob Ali Fakir and Deputy Commander accused Siraj Master along with 40/50 Razakars at about 2.00 P.M. came to Dakra area by two boats through Kumarkhali river, one boat stopped at Dakra bazar, the western side of that temple and Rajob Ali Fakir was the leader of the Razakars who were staying in that boat, and the other boat stopped nearer to Dakra High School, the eastern side of the temple, and accused Siraj Master was the leader of the Razakars who were staying in that boat. Thereafter, the Razakars having got down from both the boats started coming towards the temple by killing people by firing gun-shots, and at that time he [P.W-23] was sitting on a boat at the northern side of the temple, and being afraid of seeing the Razakars coming towards the temple he got down from the boat and took shelter in a bush wherefrom he could see that accused Siraj Master himself and under his leadership and direction other Razakars killed by gun-shots his elder uncle Baroda Kanta, three uncles Upendra Nath, Rashik Lal and Brazo Mohon, cousin Sushil and sister-in-law [®h±çc] Prachi. The Razakars killed about six hundred Hindu people till afternoon. At about 5.00/5.30 P.M. after the departure of the Razakars from the crime site he having come out of the bush went to the crime site and found innumerable dead bodies over there. After 2/3 days the

local people burnt some dead bodies and threw some other dead bodies in the river. He has identified accused Siraj Master in the dock.

125. In cross-examination he has stated that the bush, wherein he hid himself, was situated on about 5/7 kathas of land. He does not know whether accused Siraj Master was a leader of any political party, but he was engaged with the activities of Razakar Bahini. There was no camp of freedom-fighters around Dakra bazar. He has denied the defence suggestions that accused Siraj Master was teaching in a school at Khulna town in 1971 and at that time he [said accused] never went to Rampal or Dakra area. He has further denied the defence suggestions that he did not see accused Siraj Master since before he saw him in the Tribunal and he has deposed falsely.

126. Upon scrutiny of the testimonies of the above mentioned five prosecution witnesses, it appears that all of them are the eye-witnesses and four of them are the members of victim families. It also appears that their evidence is very much corroborative to each other.

127. P.W-19 Premananda Majumder has vividly described the occurrence as listed in charge no. 02. His father and elder uncle were killed amongst many others in the said incident. He has stated in his examination-in-chief that in 1971, being afraid of torture by Razakars he along with his parents, brothers, sisters and all other members of their family in order to take shelter in India on 21 May, 1971 in the morning having come to Dakra bazar Kalimandir [temple] by boat took shelter in the house of Noa Thakur. Like them about 4000/5000 Hindu people of Bagerhat and Rampal took shelter in that mandir in order to go to India. On that day at about 2.00 P.M. they saw about 40/50 people coming by two boats towards from Bagerhat, one boat having reached in front of Dakra High School stopped there and the other one went towards west of Dakra bazar. After sometime the passengers of said boats by firing shots indiscriminately killed persons who had taken shelter around the said mandir in order to go to India. He has further stated

that at one stage of firing, accused Siraj Master shot his father to death and he [P.W-19] jumped into the river when said accused aimed him to shoot at. After the departure of the Razakars from the crime site he came out of the river to the shore and found about 600/700 dead bodies over there. At the time of said incident accused Siraj Master and his accomplice Razakars by firing shots and stabbing killed his father Gopal Krishna Mozumder, elder uncle Radha Nath Mojumder and many other people. He has also mentioned the names of many Hindu people who were killed in the said incident. In cross-examination he has stated that at first Rajob Ali Fakir opened fired from western side and thereafter accused Siraj Master fired shots from the eastern side.

128. P.W-20 Robindranath Adhikari is also an eye-witness. His father and brother were also killed in the said incident. Having corroborated the evidence of P.W-19 he has stated that being afraid of, on 21 May, 1971 they took shelter in Dakra Kalimandir premises in order to go to India. On that day at about 1.30 P.M. he noticed that 20/25 persons with a boat wearing white clothes and caps on their heads having arrived at the mandir started firing shots indiscriminately aiming at 5000/6000 Hindu people who had taken shelter in that mandir in order to go to India, and they also stabbed many innocent persons to death. At that time he heard that some people with another boat also arrived at the edge of Kumarkhali river beside Dakra High School and therefrom they also started firing shots. At that time he took shelter in the house of 'Thakur' and subsequently in the house of Nabab Miah. He has further testified that after the departure of those Razakars he came to the crime site and found there that his father Ram Chandra Audhikari was stabbed with knife and his brother Narayan Chandra Adhikari was shot and also stabbed with bayonet which caused injuries on their persons, and heard from the people present there that accused Siraj Master and other Razakars had hurt his father and brother. At

the time of said occurrence about 600/700 people were killed by the gunshots and bayonet charges by the Razakars. He has mentioned the names of many Hindu people who were killed in that incident. He has also stated that after about ten days his father died when he was under treatment, and his injured brother is still alive, but he cannot move normally.

129. P.W-21 Kalipada Mondol, P.W-22 Pran Krishna Halder and P.W-23 Shishir Kumar Biswas are also eye-witnesses and of them P.Ws-22 and 23 are the members of victim families. In the incident as listed in the instant charge i.e. charge no. 02 the father of P.W-22 and many relatives of P.W-23 were killed. They have also deposed in line with the evidence of above mentioned two eye-witnesses i.e. P.Ws-19 and 20. It is also revealed from their evidence that on 21 May, 1971 at about 2.00 P.M. accused Siraj Master and his accomplice 40/50 Razakars having come to Dakra Kalibari Mandir premises by two boats killed there about 600/700 Hindu religious people, by firing shots and stabbing with knives and bayonets, who had taken shelter there in order to go to India. Besides, P.Ws. 22 and 23 have stated that the said barbarous atrocities were committed by Razakars under the leadership of accused Siraj Master. All the above mentioned five eye-witnesses have identified accused Siraj Master in the dock. They have directly implicated accused Siraj Master with the mass-killing of Hindu religious people as narrated in the instant charge. The learned State defence counsel cross-examined the prosecution eye-witnesses, but their evidence remains unshaken. Of course, we find some minor inconsistencies and contradictions among the evidence given by the above mentioned witnesses, but an assessment is to be made on the basis of the totality of the evidence presented in the case. The Tribunal, however, is not obliged to address insignificant inconsistencies, if occur in witnesses' testimonies. In this context, we may refer to the decision of **ICTR Appeals Chamber held in the case of Muhimana** as under:

“The Appeals Chamber reiterates that a trial chamber does not need to individually address alleged inconsistencies and contradictions and does not need to set out in detail why it accepted or rejected a particular testimony. ”

130. At the time of argument the learned Prosecutor Mr. Syed Haider Ali submitted that during the Liberation War, 1971 accused Siraj Master was the Deputy Commander of Razakar Bahini of then Bagerhat Sub-Division. But this contention of the prosecution was denied by the learned State defence counsel Mr. Md. Abul Hasan. It may be mentioned here that we have already observed in charge no. 01 that it is proved from Exhibit -10 as well as from the oral evidence that accused Siraj Master was a potential Razakar of the then Bagerhat Sub-Division during the Liberation War, 1971.

131. Upon evaluation of the evidence as discussed above it reveals that accused Sheikh Sirajul Haque alias Siraj Master along with his accomplice 40/50 Razakars on 21 May, 1971 in the afternoon having gone to Dakra Kalibari Mandir areas under Rampal Police Station killed about 600/700 people, who were all Hindu religious people, by firing indiscriminate shots and stabbing with knives and bayonets. Now the question arises whether this killing is simply ‘murder’ as crimes against Humanity under cause (a) or ‘genocide’ under clause (c) of sub-section (2) of section 3 of the Act of 1973. We have already discussed in details in charge no. 01 which act (s) constitutes the offence of genocide.

132. In the instant charge i.e. charge no. 02, we find from the above mentioned evidence adduced by the prosecution witnesses that Razakar accused Sheikh Sirajul Haque alias Siraj Master with his accomplice 40/50 Razakars on the date, time and place killed about 600/700 unarmed innocent people and all of the victims belonged to Hindu religious group who took shelter at Dakra Kalimondir in order to go to India. In the said mass killing accused Siraj Master had direct participation and overt acts. So, we

can infer that the said accused had specific intent i.e. *mens rea* in the killing of those unarmed innocent Hindu people to destroy, in whole or in part, the Hindu religious group.

133. From the discussions made above we are of the view that on the date, time and place of the occurrence as listed in the instant charge the killing of about 600/700 unarmed innocent Hindu religious people is not an offence of simple 'murder' as crimes against Humanity as specified in clause (a), but an offence of 'genocide' as specified in clause (c) of subsection (2) of section 3 of the Act of 1973.

134. It may be mentioned here that in the instant charge, besides 'genocide' there is also allegation of the offence of crimes against Humanity against accused Siraj Master that on the above mentioned date, time and place the said accused and his accomplice Razakars also having plundered many houses set them on fire. But in support of those inhumane acts [plundering and arson] as crimes against Humanity prosecution could not adduce any evidence, either documentary or oral. So, the prosecution has hopelessly failed to prove the charge of other inhumane acts [plundering and arson] as crimes against Humanity against accused Siraj Master.

135. Considering all the facts, circumstances and the evidence on record as discussed above, we are led to arrive at a decision that the prosecution has been able to prove the instant charge in part beyond reasonable doubt that on 21 May, 1971 in the afternoon accused Sheikh Sirajul Haque alias Siraj Mater along with his other accomplice Razakars having gone to Dakra Kalibari Mandir [temple] areas under Rampal Police Station killed about 600/700 Hindu religious people, who had assembled there in order to go to India, by firing indiscriminate shots and stabbing with knives and bayonets, with specific intent to destroy, in whole or in part, the Hindu religious group. Thus, the said accused is criminally liable under section 4(1) of the Act of 1973 and found him guilty for participating, abetting and facilitating the

commission of offence of 'genocide' as specified in section 3(2)(c)(g) and (h) of the Act of 1973 which is punishable under section 20(2) of the said Act.

Adjudication of charge no. 03

[Murder, abduction, confinement and torture committed on 18.06.1971 at villages, Besorgati, Kandapara and Kandapara bazar].

136. **Summary charge:** On 18 June, 1971 at about 10.00 A.M., under the leadership of accused Shiekh Sirajul Haque alias Siraj Master, Deputy Commander of Razakar Bahini of the then Bagerhat Sub-Division, 20/25 Pakistani army men and 30/35 armed Razakars having attacked the villages, Besorgati, Kandapara and Kandapara bazar abducted twenty people therefrom and took them to Kandapara bazar and confined them there. Thereafter, said accused and his accomplices having tortured all of them severely killed nineteen persons and the rest Sheikh Sultan Ali luckily survived who died in 1984. Thus, the said accused has been charged for abetting and facilitating the commission of offences of murder, abduction, confinement and torture as crimes against Humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Discussion and evaluation of evidence and findings:

137. To prove charge no. 03, the prosecution has examined as many as four live witnesses [P.Ws-24, 25, 26 and 27].

138. **P.W-24 Sheikh Mostafizur Rahman alias Badsha** has deposed that during the Liberation War, 1971 his age was about 19 years and then he was a student of B.S.C first year of Bagerhat P.C. College. When the Liberation War started on 26 March, 1971 he along with many other students and youths of Bagerhat under the leadership of local ANSAR commander Habibur Rahman started receiving training for participating in the Liberation War. Having been informed that Pakistani army would come to Bagerhat from Khulna, they set up a camp for freedom-fighters on 23

April, 1971 in the Besorgati Primary School situated at the eastern side of Bhairab river. During their stay in the said camp they got information through their sources that Moulana AKM Yousuf had formed Razakar Bahini in Khulna, and Rajob Ali Fakir and accused Sirajul Haque alias Siraj Master were made Commander and Deputy Commander respectively of the then Bagerhat Sub-Division Razakar Bahini. On 18 June, 1971 at about 10.00/10.30 A.M. they went to Kandapara bazar, a quarter mile away from their camp, for shopping. During their stay at the bazar at about 11.00 A.M. they heard sound of firing shots coming from the western side, and after sometime 20/25 Pakistani army men and their accomplice 30/35 Razakars arrived at the bazaar. Among the said Razakars he could identify accused Siraj Master. Being afraid of seeing the Pakistani army men and Razakars they took shelter in the bush of a garden situated towards northern side of the bazaar. At that time since they had few arms, they did not attack the Pakistani army men and Razakars. He has also stated that he saw from inside the said bush that accused Siraj Master along with some Pakistani army men and Razakars were going towards Besorgati village, and some other Pakistani army men and Razakars remained in the bazaar. After about 1 ½ hours he could see that accused Siraj Master, Pakistani army men and Razakars brought about 20/25 people to the bazar by beating them, of whom he could identify Abdul Ali Sheikh, Mokbul Ali Sheikh, Ansar Ali Sheikh, Mobarak Ali, Mojibor, Mohabbot Ali, Yakub Ali, Kanchan Sheikh and Barkat Sheikh, all of village Besorgati, and Samad Sheikh, Safar Uddin Sheikh and Hamza Sheikh, all of village Kandapara. Then those abducted persons having been brought to the side of a canal nearer to the bazaar, accused Siraj Master started stabbing them with knife in his hand and he also directed his accomplices to stab them, and thereafter they killed all the abducted persons by firing shots. Sometime before dusk when accused Siraj Master and his accomplice Pakistani army men and Razakars left the crime

site they came to the crime site from their hiding place and found nineteen dead bodies lying there. They also having found there one Sheikh Sultan Ali with neck-cut injury, rescued him and arranged his treatment. Some dead bodies were taken by their relatives and the rest were lying in the canal. After the liberation of the country they apprehended accused Siraj Master as he killed and tortured innocent people during the Liberation War. He has identified accused Siraj Master in the dock.

139. In course of cross-examination he has stated that they heard from their source Abdur Rahim that Rajob Ali Fakir and accused Siraj Master had been made as the Commander and Deputy Commander respectively of the then Bagerhat Sub-Division Razakar Bahini. He has denied the defence suggestions that on 18 June, 1971 there was a battle at Kandapara bazaar between Pakistani army and freedom-fighters and at that time he himself led the freedom-fighters. He has also denied the defence suggestions that accused Siraj Master was not involved with the incident of killing at Kandapara on 18 June, 1971 and the said accused was not present at the place of occurrence, and that he was never a Razakar, and that Nokib Sirajul Haque Master of Singakapur was a Razakar and he was involved with the atrocities. He has further denied the defence suggestion that he has deposed falsely against said accused to grab his property.

140. **Ahmed Ali Sheikh as P.W-25** has testified that during the Liberation War, 1971 his age was about 18/19 years. On 18 June, 1971 he having taken cow from their house went to the nearby field, and at that time he heard that Pakistani army and Razakars had come to their village. After coming back to their house his mother informed him that the Razakars having abducted his uncle Kanchan, who was a supporter of the Awami League and organizer of the Liberation War, went away, and his elder brother was sent to get a trace of his said uncle. At that time his mother also asked him to find out his said uncle. Then he started going towards

Kandapara bazar, and having reached behind the bush of said Kandapara bazaar saw his elder brother Mohammad Ali Sheikh and many others who had been hiding themselves there. He has further stated that he could see from there that Razakars beating nineteen persons including his uncle Kanchan Sheikh brought them to the bazaar, and at that time there were about 20/25 Razakars along with 15/20 Pakistani army men. The Razakars were carrying different arms including knives and guns and accused Siraj Master was the leader of those Razakars. He could also see from inside the said bush that the said Razakars after having beaten his uncle and other abducted persons stabbed them with bayonets and knives, and accused Siraj Master stabbed his uncle Kanchan Sheikh first with a knife at his waist and then his uncle fell down on the ground and at that time accused Siraj Master slaughtered him with a bayonet, and at the instruction of the said accused other Razakars stabbed other abducted persons with knives to death. Sometime before dusk accused Siraj Master along with other Razakars having plundered and torched two shops of the said bazaar, the owners of those shops were the pro-liberation people, left the place of occurrence. After the departure of the Razakars he [P.W-25] and his brother having come out of the bush went to the place of occurrence and found the dead bodies of his uncle Kanchan Sheikh and others there. He has also stated that thereafter they brought the dead body of his uncle to their village and buried the same there. Later on, he came to know that some dead bodies were taken away by their relatives and other dead bodies remained lying in the khal [canal] beside the bazaar. He knew Abdul Ali, Mokbul Ali and Sahur who were killed along with his uncle Kanchan Sheikh and others in the said incident. Thereafter, he went to India for participating in the Liberation War. He has identified accused Siraj Master in the dock.

141. In cross-examination he has stated that the distance between the bush, wherein they hid themselves, and the road nearer to the place of

occurrence is about 50/60 cubits. Many people went into hiding in that bush, but he cannot remember their names at this moment. The Razakars killed all the persons who were abducted and brought to the place of occurrence. He has denied the defence suggestion that Razakars did not commit the killing as he has stated in his examination-in-chief, rather those persons were killed in a battle taken place between Pakistani army and freedom-fighters. He has further stated that after the liberation they lodged a G.D. with the police station regarding the killing of his uncle, but later on they were not informed about the fate of the G.D. He has denied the defence suggestion that accused Siraj Master did not live in his own village home in 1971, rather he was teaching at Khulna. He has also denied the defence suggestion that he has deposed falsely against accused Siraj Master to grab his property.

142. **P.W-26 Soleman Halder** has deposed that during the Liberation War, 1971 his age was about 30 years and at that time he was a businessman. On 18 June, 1971 at about 8.30 A.M. he came to Kandapara bazar to sell rice, and at about 10.30 A.M. he heard that Pakistani army and Razakars were coming towards Kandapara bazar. Having heard the said news the people staying at the bazaar started running hither and thither to save their lives. He also with his rice having got up on his boat lying in the river went towards the nearby 'khal' [canal]. After sometime, he heard sound of firing shots. Thereafter, he with his boat proceeded a little bit more towards north and went into hiding in the bush of a 'khal' wherefrom he could see that Pakistani army and Razakars were going towards Besorgati village through the bamboo-bridge of the river. After about 1 ½ / 2 hours he could also see that Pakistani army and Razakars having abducted about 18/20 persons were going towards Kandapara bazar. He could identify Kanchan Ali, Abdul Ali and Mokbul Ali among the said abducted persons. Accused Siraj Master was the leader of those Razakars. Besides, he could identify Razakars

Basharat Halder, Nabir Halder and Khelabat Halder. The Pakistani army men and Razakars had different arms including rifles and knives with them. After sometime of taking away the abducted persons, he heard hue and cry and sound of firing shots coming from the eastern side of the bazar and southern side of the place where he was staying. He has further stated that sometime before dusk he came to know that Pakistani army men and Razakars had gone away, then he started with his boat towards his house and on the way he saw that different houses of Besogati village were burning. Having reached his house he came to know that Pakistani army and Razakars had killed about 18/20 persons at the side of Kandapara bazaar, and 1/ 2 persons survived of whom one was Sultan [now dead]. He has identified accused Siraj Master in the dock.

143. In course of cross-examination he has stated that the distance between the place where he went into hiding with his boat and Kandapara bazar is about 400/500 cubits. He has denied the defence suggestion that the persons killed in the incident as he has stated in examination-in-chief were killed in a battle taken place between Pakistani army men and freedom-fighters, and accused Siraj Master living at Khulna was teaching in a school during the Liberation War, 1971 . He has further stated that accused Siraj Master used to live in Bagerhat Gotapara village at his own house in 1971. He knew accused Siraj Master's father who was a 'Muhuri' [clerk]. He has denied the defence suggestion that he has deposed falsely.

144. **Mir Abdur Razzak as P.W-27** has stated that in 1971 during the Liberation War he was about 17 years old. On 18 June, 1971 at about 8.30 A.M. he went to Kandapara bazar. During his stay at the bazar at about 10.00 A.M. the people present there started saying that Pakistani army and Razakars were coming towards the bazar. After sometime having heard of sound of firing shots he became scared and went into hiding in the bush of the canal situated towards east of the bazar at the side of the road, and saw

therefrom that 15/20 Pakistani army men and accused Siraj Master along with 20/25 Razakars having appeared at the said bazar they were moving hither and thither, and after sometime they went towards Besorgati village, situated to the northern side of the bazar. He has further stated that at 12.00 A.M. Pakistani army and Razakars having abducted about 20/22 people brought them nearer to the bazar. Thereafter, he [P.W-27] noticed that accused Siraj Master started stabbing the abducted persons with a knife in his hand on the road and at the side of the canal situated beside the bazar and also ordered other Razakars present there to attack the said abducted persons. Then the Razakars having killed the abducted persons by firing shots and stabbing threw their dead bodies in the nearby canal. Sometime before dusk the Razakars and Pakistani army men having plundered 2/3 shops of the bazar belonging to the supporters of the liberation set them on fire and left the place of occurrence. After their departure he [P.W-27] along with local people came to the place of occurrence and found bloody dead bodies lying there. Having seen the dead bodies he felt himself sick and went to his house quickly. Thereafter, he came to know that nineteen persons in all were killed in that incident and one Sultan Sheikh luckily survived though he sustained grievous injury. He knew Abdul Ali, Mokbul Ali, Ahmed Ali, Sabur Sheikh, Saka Majhi and Kanchan who were killed among said nineteen persons in the aforementioned incident. After that incident he participated in the Liberation War as a freedom-fighter. After the Liberation War accused Siraj Master was known as 'Kashai Siraj Master' [butcher Siraj Master] in the locality. He has identified accused Siraj Master in the dock.

145. In course of cross-examination he has stated that he has freedom-fighter's certificate and he gets State allowance. At first he joined the Besorgati camp as a freedom-fighter. The army men and Razakars came from Bagerhat through Moniganj Chitalmari road. He heard the sound of

firing shots before the army men and Razakars entered into the bazar. Many other people went into hiding with him around the bush. He has denied the defence suggestion that in 1971 accused Siraj Master was teaching at Khulna and he did not live in his village home. He has further denied the defence suggestion that he has deposed falsely.

146. Upon scrutiny of the testimonies of the above mentioned four prosecution witnesses, it transpires that all of them are the eye-witnesses of the occurrence relating to the charge in hand i.e. charge no. 03. Besides, P.W-25 is a member of a victim family as his uncle was killed in the said occurrence. The evidence of these four witnesses are very much corroborative to each other.

147. P.W-24 Sheikh Mostafizur Rahman alias Badsha in his testimony has vividly narrated the occurrence relating to murder, abduction, confinement and torture as crimes against Humanity as listed in the instant charge. He has stated that during the Liberation War, 1971 he received training for participating in the Liberation War. Having been informed that Pakistani army would come to Bagerhat they set up a camp for freedom-fighters on 23 April, 1971 in the Besorgati Primary School. On 18 June, 1971 at about 10.00/10/30 A.M. they went to Kandapara bazar for shopping. During their stay at the bazar at about 11.00 A.M. they heard sound of firing shots coming from the western side, and after sometime 20/25 Pakistani army men and their accomplice 30/35 Razakars arrived at the bazar. Among the said Razakars he could identify accused Siraj Master. Being afraid of Pakistani army men and Razakars they took shelter in a nearby bush of a garden wherefrom he could see that accused Siraj Master along with his accomplice some Pakistani army men and Razakars were going towards Besorgati village. After about 1 ½ hours he noticed that accused Siraj Master, Pakistani army men and Razakars brought about 20/25 people to the bazar by beating them . He could identify many of the said abducted

persons and he has also mentioned their names in his deposition. He has further stated that accused Siraj Master started stabbing the abducted persons with knife and he also directed his accomplices to stab them, and then they killed all the abducted persons by firing shots. After the departure of accused Siraj Master and his accomplices from the crime site they having come to the place of occurrence found nineteen dead bodies lying there. They also having found there one Sheikh Sultan Ali with neck-cut injury rescued him and arranged his treatment. He has deposed in support of the instant charge relating to murder, abduction, confinement and torture.

148. P.W-25 Ahmed Ali Sheikh is another eye-witness. His uncle was also killed in the occurrence as narrated in the instant charge. He has also deposed in line with the charge and the deposition of P.W. 24 as well. He has stated that on 18 May, 1971 after his coming back to their house from the field his mother informed him that Razakars having abducted his uncle Kanchan Sheikh, who was a supporter of the Awami League and organizer of the Liberation War, went away, and his elder brother was sent to get a trace of his said uncle. Then he started towards Kandapara bazar, and having reached behind the bush where his elder brother Mohammad Ali Sheikh and many others had been hiding themselves. He has further stated that he could notice from there that Razakars beating nineteen people including his said uncle brought them to the bazar, and at that time there were about 20/25 armed Razakars along with 15/20 Pakistani army men, and accused Siraj Master was the leader of those Razakars. He could also notice that the Razakars after having beaten the abducted persons including his uncle stabbed them with bayonets and knives, and accused Siraj Master stabbed his uncle first with a knife at his waist and then his uncle fell down on the ground and at that time accused Siraj Master himself slaughtered him with a bayonet, and at the instruction of the said accused other Razakars stabbed other abducted persons with knives to death. He has also stated that after

the departure of the Pakistani army men and Razakars they went to the crime site and found the dead bodies of his uncle Kanchan Shieikh, Abdul Ali, Mokbul Ali, Sabur and others there.

149. P.W-26 Soleman Halder and P.W-27 Mir Abdur Razzak are also eye-witnesses. On perusal of their testimonies we find that their testimonies and the testimonies of P.Ws-24 and 25 are very much corroborative to each other. They have also stated that on 18 June, 1971 before noon accused Siraj Master and his accomplice other Razakars and Pakistani army men having abducted about 20/22 people from the villages Besorgati and Kandapara brought them to Kandapara bazar and having confined there firstly tortured them and then killed them. P.W-26 has stated that he came to know that they killed about 18/20 persons and 1/ 2 persons survived of whom one was Sultan [now dead]. P.W-27 has stated that after the departure of accused Siraj Master and his accomplices he came to the crime site and found bloody dead bodies lying there. Thereafter, he came to know that nineteen people in all were killed in that incident and one Sultan Sheikh luckily survived though he sustained grievous injury. P.W-26 has stated that accused Siraj Master was the leader of those Razakars. P.W-27 has stated that he could see that accused Siraj Master started stabbing the confined persons with knife and also directed other Razakars to attack them, and then the Razakars killed them. He has also stated that after the Liberation War accused Siraj Master was known as 'Kashai Siraj Master' [Butcher Siraj Master] in the locality.

150. At the time of summing up the case by way of argument, the learned State defence counsel Mr. Md. Abul Hasan contended that the allegations brought against accused Siraj Master in the instant charge i.e. charge no. 03 is that the said accused accompanied by other Razakars and Pakistani army men jointly committed the offences of murder, abduction, confinement and torture as crimes against Humanity, but it is not specifically stated in the

charge that the said accused himself alone perpetrated those offences nor it is stated that he directly participated in the commission of those offences. In reply to the said contention of the learned State defence counsel, Mr. Syed Haider Ali, the learned prosecutor along with Mr. Syed Saydul Haque, argued that in the instant charge, accused Siraj Master has been charged for abetting and facilitating the commission of the above mentioned offences as specified in section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973, and as such, specific overt act (s) or direct participation in the commission of those offences is not necessary, though accused Siraj Master had specific overt acts and direct participation in the commission of those offences.

151. In this regard the **ICTR Trial Chamber in the case of Prosecutor vs. Kamubanda [Case No. ICTR-95-54A-T, January 22, 2004, para - 588]** observed that criminal responsibility for any crime is incurred not only by individuals who physically commit that crime, but also by individuals who participate in and contribute to the commission of a crime. The said observation is quoted as under:

"Article 6(1) reflects the principle that criminal responsibility for any crime in the Statute is incurred not only by individuals who physically commit that crime, but also by individuals who participate in and contribute to the commission of a crime in other ways, ranging from its initial planning to its execution, as specified in the five categories of acts in this Article: planning, instigating , ordering, committing, or aiding and abetting. "

152. Similar observation as quoted above was also made by the **ICTR Trial Chamber in the cases of Prosecutor vs. Bisengimana [Case No. ICTR-00-60-T-April 13, 2006, para-31]** and **Prosecutor vs. Kajelijeli [Case No. ICTR 98-44A-T, December, 1, 2003, para-757]**.

153. In respect of responsibility for acts committed by others the **ICTR Trial Chamber in the case of Prosecutor vs. Rutaganda [Case No. ICTR-96-3, December 6, 1999, para -35]** also observed that-

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

154. **The ICTY Appeals Chamber in the case of Prosecutor vs. Vasiljevic [Case No. IT-93-32-A, February 25, 2004]** set out the *actus reus* and *mens rea* of aiding and abetting which is as follows:

“(i) The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of certain specific crime (murder, extermination, rape, torture, wanton destruction of civilian property, etc), and this support has a substantial effect upon the perpetration of the crime. [.....]”

(ii) In the case of aiding and abetting, the requisite mental element is knowledge that the acts performed by the aider and abettor assist [in] the commission of the specific crime of the principal. [.....]”

155. Accordingly to the above observations, ‘aiding and abetting’ is an act of rendering practical assistance, encouragement or moral support, which has substantial effect on the perpetration of certain crime. **The ICTY Trial Chamber in the case of Prosecutor vs. Strugar [Case No. IT-01-42-T, January 31, 2005, para- 349]** observed as under-

“Aiding and abetting has been defined in the case-law of the Tribunal as the act of rending practical assistance, encouragement or moral support, which has substantial effect on

the perpetration of a crime, before , during or after the commission of the crime, and irrespective of whether these acts took place at a location other than that of the principal crime."

156. The Joint Criminal Responsibility or commonly known as, Joint Criminal Enterprise [**JCE**] is a widely used liability doctrine that has been playing a central role in the allocation of guilt in International Criminal Tribunals. Section 4 of the Act of 1973 incorporates the **JCE** doctrine into our legislation. Section 4(1) of the Act reads as:

"when any crime as specified in section 3 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."

157. There are three forms of **JCE**: Basic, Systemic and Extended. The Basic mode of **JCE** liability arises when all participants shared the common intent to the concerned crime although only some of them may have *physically perpetrated* the crime. The Systematic Mode of **JCE** liability is concerned with crimes committed by members of military or administrative units on the basis of common plan or purpose. The Extended Mode of **JCE** liability arises where some extra crimes have been committed beyond the common plan or purpose, but the extra criminal act was nonetheless a *natural and foreseeable consequence* to the perpetrator of the common plan.

158. According to settled jurisprudence, the required *actus reus* for each form of Joint Criminal Enterprise [**JCE**] comprises three elements. First, a plurality of persons is required. They need not be organized in a military, political or administrative structure. Second, the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required. There is no necessity for this purpose to have been previously arranged or formulated. It may materialize extemporaneously and be inferred from the facts. Third, the participation of the accused in the common purpose is required, which involves the

perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime under one of the provisions [for example, murder, extermination, torture or rape], but may take the form of assistance in, or contribution to, the execution of the common purpose.

159. In the instant charge [charge no. 03] it is alleged that on 18 June, 1971 at about 10.00 A.M. under the leadership of Deputy Razakar Commander accused Sheikh Sirajul Haque alias Siraj Master 20/25 Pakistani army men and 30/35 armed Razakars having attacked the villages Besorgati, Kandapara and Kandapara bazar abducted twenty people therefrom and took them to Kandapara bazar and confined them there. Thereafter, said accused and his accomplices having tortured killed nineteen persons of them and the rest Sheikh Sultan Ali luckily survived who died in 1984. In support of this charge all the four prosecution eye-witnesses [P.Ws. 24, 25, 26 and 27] have deposed before this Tribunal. Of them, P.W. 25 is a member of a victim family. These witnesses have directly implicated accused Siraj Master with the above mentioned offences, and all of them have identified said accused in the dock of the Tribunal. The acts of the said accused, as it appears from the evidence of the witnesses, had substantial effects upon the perpetration of the above mentioned crimes of murder, abduction, confinement and torture as crimes against Humanity. This is a common knowledge of fact that during the Liberation War in 1971, the principal perpetrators i.e. Pakistani army men possessed the requisite criminal intent to destroy the members of Hindu religious group, freedom-fighters, pro-liberation people and the supporters of Awami League who were in favour of the Liberation. Accused Siraj Master was aware of the said criminal intent of the principal perpetrators whom he along with his accomplice Razakars assisted or encouraged for the commission of offences. As such accused Siraj Master who contributed substantially to the

commission of the aforesaid offences as listed in the instant charge by the Pakistani army men and other Razakars, and who shared above mentioned intent of the principal perpetrators, is criminally responsible both as an aider and abettor and as a co-perpetrator through participating in the Joint Criminal Enterprise [JCE].

160. It may be mentioned here that by giving suggestions to the above mentioned prosecution witnesses the defence has raised an alibi that accused Siraj Master was not present at the crime site when the alleged atrocities were committed, rather he was teaching in a school at Khulna during the Liberation War in 1971 . Another alibi defence is that Razakars did not kill the persons in the crime site; rather those persons were killed in a battle taken place between Pakistani army and freedom-fighters. Of course, the prosecution witnesses have denied these defence suggestions. The defence did not produce any evidence, either oral or documentary, to substantiate their alibi. It may be mentioned here that accused's reliance on the alibi defence does not alter the burden of proof. The burden of proof of an offence always lies with the prosecution. In this regard **the ICTR Appeals Chamber in the case of Nahimana, Barayagwiza and Ngeze vs. Prosecutor [Case No. ICTR-99-52-A, November 28, 2007, para-417]** observed as under-

"The Appeals Chamber recalls that, in raising an alibi defence, the defendant is claiming that, objectively, he was not in a position to commit the crime. It is for the accused to decide what line of defence to adopt in order to raise doubt in the mind of the judges as to his responsibility for the offences charged, in this case by producing evidence tending to support or to establish the alleged alibi. The only purpose of an alibi is to cast reasonable doubt on the Prosecutor's allegations, which must be proven beyond reasonable doubt. In alleging an alibi, the accused merely

obliges the Prosecution to demonstrate that there is no reasonable likelihood that the alibi is true. In other words, the Prosecution must establish beyond a reasonable doubt that, 'despite the alibi, the facts alleged are nevertheless true.'

161. In respect of the above mentioned context i.e. alibi defence the **ICTY Appeals Chamber in the case of Prosecutor vs. Delalic, Mucic, Delic and Landzo [Case No. IT-96-21, February 20, 2001, para-58]** observed that-

*"It is a common misuse of the word to describe an alibi as a 'defence'. If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he is charged. That is not a **defence** in its true sense at all. By raising that issue, the defendant does not more than require the Prosecution to eliminate the reasonable possibility that the alibi is true."*

162. After consideration of the above mentioned 'alibi' raised by the defence and the evidence on record as discussed earlier it reveals that all the four eye-witnesses [P.Ws-24, 25, 26 and 27] have directly implicated accused Siraj Master with the offences listed in the instant charge. The learned State defence counsel has cross-examined them, but could not shake their evidence. All the four eye-witnesses also have identified the said accused in the dock of the Tribunal. As such, there is no reason to disbelieve their evidence. Against the said strong and trustworthy evidence the above mentioned alibi defence could not cast any doubt on the prosecution's allegations brought against accused Siraj Master.

163. Considering all the facts, circumstances, the evidence on record and the alibi raised by the defence as discussed above, we are led to arrive at a decision that the prosecution has been able to prove the instant charge [charge no. 03] against accused Sheikh Sirajul Haque alias Siraj Master beyond reasonable doubt. Thus, the said accused is criminally liable under

section 4(1) of the Act of 1973 and found him guilty for participating, abetting and facilitating the commission of offences of murder, abduction, confinement and torture as crimes against Humanity as specified in section 3(2)(a)(g) and (h) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Adjudication of charge no. 04

[Offences of murder, abduction, confinement, torture and other inhumane acts (plundering and arson) at Chulkathi Bazar, Ghanoshempur and other surrounding places]

164. **Summary charge:** On 14.10.1971 at about 10.00A.M, under the leadership of accused Sheikh Sirajul Haque alias Siraj Master allegedly the then deputy commander of Razakar Bahini of Bagerhat Sub-Division and Rajob Ali Fakir along with a group of 100/150 armed Razakars attacked the places namely, Chulkathi Bazar, Chulkathi, Ghanoshempur and other neighbouring places and plundered about 42 houses and set them on fire. Thereafter, he along with his accomplices having abducted seven persons from those villages took them to Chulkathi Bazar and confined them there and then killed all of them after having tortured.

165. Thus, accused Sheikh Sirajul Haque alias Siraj Master has been charged with abetting and facilitating the commission of offences of murder, abduction, confinement, torture and other inhumane acts [plundering and arson] as crimes against Humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

Discussion and evaluation of evidence and findings:

166. Prosecution, in order to prove this event as depicted in the indictment relies upon P.Ws 01, 28, 29 and 26 who have been thoroughly cross-

examined by the state defence counsel in favour of accused Sheikh Sirajul Haque alias Siraj Master.

167. **Dilip Das as P.W-01** has testified that he was about 23 year old during the Liberation War in 1971. He joined Liberation War in the month of June, 1971 and received training at 'Deradun' in India. He has stated further that because of horrific atrocious acts accused Siraj Master became known as 'Siraj kashai' [Siraj butcher]. He further came to know during his stay in the areas of Debhatra and Paikpara that accused Siraj Master along with the members of Razakar Bahini butchered innocent people on the wooden bridge nearby Chulkathi Bazar. He has identified the accused in the dock.

168. In cross-examination he has responded that he does not know the accused at present what political party he belongs to but he belonged to Muslim League, an anti-Bangladesh political party, in 1971. He has denied the suggestion that he has deposed falsely.

169. **Mollik Kholilur Rahman as P.W-28** has deposed that he was about 24/25 year old and was also a student during the period of Liberation War in 1971. He participated in the Liberation War as a freedom fighter. Freedom fighter Monir and he took shelter in a bush nearby a canal beside Chulkathi Bazar early in the morning on 14.10.1971 after occurring a combat with a group of Razakars and Pakistani army under leadership of Siraj Master. They heard hue and cry from surrounding areas near Chulkathi Bazar and could realize that Razakars were plundering and setting fire to the houses of Hindu people around Chulkathi Bazar. About 30/40 shops of Chulkathi Bazar were burned by Razakars. They could see from the bush at 11/12 O'clock that 50/60 Razakars under leadership of accused Siraj Master dragged 7/8 people from Ghanoshempur area to wooden bridge nearby Chulkathi Bazar. Freedom fighter Sunil was among them. Relatives of those apprehended men begged their [victims] lives touching legs of accused Siraj

Master but he [accused Siraj Master] and other Razakars kicked them away. Thereafter, accused and his accomplice Razakars killed those people by firing gun shots along with bayonet charges and throng their dead bodies in a nearby canal. After departure of Razakars they came and saw dead bodies of Santosh Kumar Debnath, Rakhal Debnath, Jagodish Pal, Khurshed Mollik, Durgacharan Das, Bijoy Das and freedom fighter Sunil Iying at the scene. He has indentified accused Siraj Master in the dock.

170. In cross-examination he has denied the defence suggestion that accused Siraj Master was not a member of any political party or he was not a Razakar. He has also denied the defence suggestion that he has given false evidence before the Tribunal against accused Siraj Master.

171. **P.W-29 Sukumar Das** has testified that he was about 11/12 year old during the Liberation War in 1971 and at that time he used to help his father in the family function. On 14 October 1971 in the morning hour a group of Razakar apprehended his father from the house and took him to Chulkathi Bazar. He tried to go behind them but in vain because of Razakar's intervention under threat. He got message on that very night from his maternal uncle's friend, who was a cobbler by profession that accused Siraj Master, Razakar Rajob Ali Fakir along with other accomplice Razakars killed his father at wooden bridge nearby Chulkathi Bazar. He did not find his father's dead body the following day of the incident at the spot but could see blood stain there. His father's dead body was floated from the canal because of tide going on at that time.

172. In cross-examination he has replied that he did not see accused Siraj Master in 1971 but he heard about him from his father. He has denied the defence suggestion that he has deposed falsely before the Tribunal against accused Siraj Master because of local enmity.

173. **Md. Monirul Islam as P.W-30** has stated that he was about 19 year old during the Liberation War in 1971 and he was a student. He used to stay at Khalishpur in Khulna. He joined the Liberation War as a freedom fighter when captain Afzal established a freedom fighter's camp at Boyerbhanga High School. Razakar commander Rajob Ali Fakir, accused Siraj Master along with other Razakars made attack on their camp on 13 October and counter-attack was made by exchanging gun firing all day long. He along with his accomplice freedom fighter Khalil Mollik went out of the camp under instruction of camp commander captain Afzal and took shelter in a bush nearby Chulkathi Bazar canal early in the morning on 14.10.1971. During their stay over there around 9/10 A.M they could see smoke/fume in the sky around Chulkathi Bazar and heard shouting of human being. Sometimes later they could see that a group of 50/60 Razakars confined 7/8 people and brought them to nearby wooden bridge beside Chulkathi Bazar under torture. Relatives of the apprehended people were weeping behind the Razakars. He could see his associate freedom fighter Sunil was among the victims. He could also see that relatives of the victims touching leg of accused Siraj Master made request to release them but Siraj Master and his men did not pay heed to that effect rather they kicked them away. Thereafter, Siraj Master and his accomplice Razakars killed all of the apprehending people one after another with bayonet stab and by gun shots and their dead bodies were throng into the canal. He and freedom fighter Khalil Mollik came to the scene after departure of accused Siraj Master and his accomplice Razakars before evening and could hear that Santosh Debnath, Jugeshor Pal, Khorshed Mollik, Rakhal Debnath, Bijoy Das, Sunil Debnath and Durgacharon were killed by Razakars. They also came to know that Razakars apprehended and killed them as they extended their helping hands to the freedom fighters. He has identified accused Siraj Master in the dock.

174. In cross-examination he has denied the defence suggestion that accused Siraj Master was not involved in any political party and he was not a Razakar. He has also denied that on being tutored he has deposed falsely before the Tribunal against the accused.

175. On a careful scrutiny of the evidence presented by the aforesaid four live witnesses in support of the prosecution case it has emerged that three of them are having direct observance of the incident occurred by the perpetrators including accused Siraj Master as a group leader of the event. It is further revealed in the evidence of the said witnesses that P.Ws-28 and 30 are the freedom fighters who participated in the counter-battle with the accused along with his accomplices upon an attack on them [witnesses] one day before the present incident took place. All of them have been thoroughly cross-examined by the state defence counsel in favour of the accused to ascertain their [witnesses] veracity and credibility.

176. Now the question is before us whether the prosecution has been able to prove the instant charge beyond reasonable doubt. From the evidence of P.W-28 it is found that a Songgram committee formed by them for which Razakar commander Rajob Ali Fakir and accused Siraj Master became annoyed with them.

177. It further appears that this witness is quite adult to work in a significant character and as such his joining the Liberation War is also found quite natural and therefore his given evidence is no doubt a trustworthy. It is found in his evidence that in the killing mission accused Siraj Master had horrifically given leadership on his accomplice Razakars. No sympathy he had shown even to the relatives of the victims when they begged for lives of the victims touching his unholy legs. In any way his mind did not weaken or shaken in the mercy of human dignity even than his

hands were not vibrated during the killing of seven innocent people at the scene.

178. Victims of the incident were seemed to be so innocent and their killing is no doubt a heinous offence as it was done by accused along with his cohorts not only by gun shots but also with bayonet stab. Direct participation of the accused in the killing of the victims is found present in the evidence of this witness which advances the hands of justice to find him [accused] guilty. It also finds in his evidence that he has categorically mentioned the names of the victims killed by the perpetrators including the accused in question. His [witness] memory as it appeared in the evidence is not yet faded even after passage of a long time.

179. P.W-29 was a teenager who had directly seen the apprehension of his father by the Razakars at the alleged time as he was with him [father]. In the interest of evaluation, his version [evidence] is more important as he is the son of a victim. He had seen how his father was taken from their house to Chulkathi Bazar together with other victims by the perpetrators. Such evidence has been found corroborated by evidence of other witnesses. It is true in finding evidence that he did not see the killing of his father directly as he was pushed away by accused and others but source of killing news of his father has been stated by him that a friend of his maternal uncle, a cobbler by profession narrated the killing incident to them. So, there is no scope to disbelieve his evidence in any way.

180. In the whole evidence it is found that at a time the perpetrators killed seven persons under an attack by gun shots. The settled jurisprudence states that the targeted population must remain predominately civilian in nature. The victims killed by the perpetrators were no longer in position in taking part in hostilities and they were no longer bearing arms and thus had

placed *hors de combat*, due to their being detained. In this respect the principle laid down by the ICTY is as beneath:

"The definition of a 'civilian' is expansive and includes individuals who at one time performed acts of resistance, as well as persons who were hors de combat when the crime was committed."

[Limaj, ICTY Trial Chamber, November 30, 2005, para. 186]

181. Timing of apprehension and bringing his father to Chulkathi Bazar have been corroborated by the version of P.W- 28. In the evidence it finds that target as well as attack of the perpetrators was to finish a section of people i.e. the Hindu community from the soil of this territory and the attack was directed against the civilian population. Crimes against Humanity by an accused be proved that the crimes are related to the attack upon a civilian populations. This view finds support from the case of **Tadic, [Appeals Chamber]**, July 15, 1999, para. 271 which is quoted as below,

"[T]o convict an accused of crimes against humanity, it must be proved that the crimes were related to the attack on a civilian population".

182. The acts of an accused must be part of a widespread or systematic attack, targeted on civilian population.

183. It also finds support from the case of **Blaskic, (Appeals Chamber)**, July 29, 2004, para. 98 which is as follows:

"It is well established in the jurisprudence of the International Tribunal that in order to constitute a crime against humanity, the acts of an accused must be part of a widespread or systematic attack directed against any civilian population."

184. It has appeared in the evidence of P.W-30 that he is a freedom fighter who was with P.W-28 before and during the occurrence taken place. So, his evidence is very important for corroboration with the evidence of P.W-28 who has disclosed in his evidence that one day before the occurrence their leader captain Afzal and freedom fighter Sunil, an associate of him, had been injured in a counter-fight with accused and his accomplices. Exactly similar statement has been found present in the evidence of this witness [P.W-30]. The apprehension of injured Sunil as disclosed by P.W-28 has also been corroborated by this witness. Even though, an explanation has been given by him how injured freedom fighter Sunil was apprehended by accused Siraj Master and his cohorts from a local man's house. Conduct of the perpetrators including the accused and killing spot has been found corroborated between the evidence of P.W- 28 and this witness. This witness has mentioned the names of the victims corroborating the evidence of P.W-28. No difference of evidence in this regard is found present between them.

185. Begging for lives by relatives of the victims to the accused perpetrator has been emerged in his evidence as appeared in the evidence of P.W-28. Defence has totally failed to come forward to discard the evidence of the said witnesses. Therefore, there is a positive assertion to find the evidence of this witness as credible and trustworthy.

186. P.W-01 is not an eye witness with regard to this charge. In his evidence it is found that he had simply heard while staying in the areas of Debhattra and Paikgachha that accused Siraj Master and members of Razakar Bahini slaughtered innocent people at wooden bridge nearby Chulkathi Bazar. Although hearsay evidence has no probative value alone as we discussed earlier in other cases but it may have probative value being an important piece of evidence if the same is supported by other credible and reliable evidence. The hearsay evidence is to be considered together with the

circumstances and relevant material facts depicted. Hearsay evidence is admissible and the court can rely on it in arriving at a decision on fact in issue, provided it carries reasonable probative value [**Rule 56(2) of the Rules of Procedure, 2010**]. This view finds support from the principle enunciated in the case of **Muvunyi** which is quoted beneath:

“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]

187. The allegation against the accused has already been discussed and evaluated in the evidence of three other eye witnesses in which it finds the evidence against the accused are trustworthy. For which there is no ample opportunity to brush away the evidence of this hearsay witness as it has supported and corroborated their evidence.

188. In the case in hand the defence has claimed throwing suggestions to the prosecution witnesses in course of cross-examination that the accused was not involved with the horrific atrocious acts taken place at the alleged crime sites and the accused used to stay at Khulna involving himself with his teaching profession during the Liberation War in 1971. In support of this plea of alibi no evidence both orally or documentary has been found to be considered to be true as claimed by the defence counsel.

189. However, the burden of proof of alibi does not lie upon the accused to establish his claim but in the instant case there was a great opportunity on the part of the accused to produce both oral and documentary evidence in support of his stay at Khulna as teacher during the alleged time of

occurrence. But he has not done so. Nevertheless, such claim brought by him does not mean that he has to prove it himself.

190. In support of this view it was held by Appeals Chamber in the case of **Delalic**, ICTY February 20, 2001, Para. 581:

"It is a common misuse of the word to describe an alibi as a 'defence'. If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he is charged. That is not a defence in its true sense at all. By raising that issue, the defendant does not more than require the prosecution to eliminate the reasonable possibility that the alibi is true."

191. It also opined in the case of **Vaseljevic**, [ICTY, Trial Chamber] **November 29, 2002, para. 15:**

"When a defence of alibi is raised by an accused person, the accused bears no onus of establishing that alibi. The onus is on the Prosecution to eliminate any reasonable possibility that the evidence of alibi is true."

192. Upon scrutiny of the evidence adduced by the foresaid witnesses, it is well established that the accused was a leader and an influential person of Razakar Bahini. This being the status that the accused was holding the relevant time, his presence at the crime site as an active offender inevitably prompts us to infer that in addition to his direct participation in the killing at the time of commission of offence, he substantially provided practical assistance, encouragement and moral support to his co-perpetrators in perpetration of the offence of crimes against Humanity that resulted in the killing of six persons belonging to Hindu community which is a distinct religious group and another one. In the present case prosecution has brought the liability against the accused under section 4(1) of the Act of

1973 which refers to the concept of Joint Criminal Enterprise [JCE] that when any crime as enumerated in section 3 of the Act is committed by several persons staying in a group then the liability has to be assessed separately as if the crime were done by him individually. Crime may be done by a group of offenders but punishment should be imposed upon each of the persons separately.

193. JCE doctrine requires some elements that a group of individuals had a common plan, design or purpose to commit a crime. In the present case it appears from evidence that the accused heinously delivered his participation in some way in the plan to commit the crime on the basis of intention with the accomplishment of common plan and design. In the case in hand, prosecution has been able to establish that the accused was related to a scheme or system which had a criminal outcome as a potential leader of his accomplice Razakar and he had significant influence in carrying out criminal acts at the time of occurrence at crime site during the Liberation War in 1971. The active conduct of the accused has been established considering the whole evidence of the prosecution witnesses to include him in joint criminal responsibility.

194. Considering all aspects along with the views and circumstances as narrated above, we finally conclude that the prosecution has successfully been able to prove the instant charge beyond reasonable doubt. Thus, the accused Sirajul Haque alias Siraj Master is criminally liable under section 4(1) of the Act of 1973 as he actively and directly participated in the aforesaid atrocious activities targeting to finish a group of civilian population and found him guilty for abetting, contributing, facilitating and complicity in the commission of offences of murder, abduction, confinement, torture and other in-humans acts as crimes against Humanity as specified in section

3(2)(a)(g) and (h) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Adjudication of charge No.05

[Offences of abduction, murder and other inhumane acts at Shakhari Kathi Bazar under Kachua police station]

195. **Summary Charge:** On 5 November, 1971 at about 3:00 P.M accused 1. Sheikh Sirajul Haque alias Siraj Master 2. Khan Akram Hossain and 3. Abdul Latif Talukder [now dead], the local leaders of Razakar Bahini accompanied by 50/60 Razakars having attacked surrounding areas of Shakhari Kathi Bazar under Kachua police station presently district-Bagerhat apprehended 40[forty] Hindu people and 2[two] supporters of Liberation War amongst the persons who came to the Bazar for marketing and thereafter said 42 [forty two] persons were killed by accused persons along with their accompanied Razakars by gun shots and bayonet stab.

196. Thus, all the three accused have been charged with abetting, contributing, facilitating and complicity in the commission of offences of abduction, murder and other inhumane acts as crimes against Humanity as specified in section 3(2)(a)(g) and (h) of the Act of 1973 and section 4(1) of the Act of 1973 which are punishable under section 20(2)of the said Act.

Discussion and evaluation of evidence and findings:

197. In order to prove the instant charge prosecution has examined as many as eight live witnesses [P.Ws. 07, 08, 09, 10, 15, 16, 17 and 18].

198. **Nimai Chandra Das as P.W-07** has testified that he was about 20 year old during the Liberation War in 1971 and was a student. On 5 November 1971, Friday in the afternoon he along with three others went to Shakhari Kathi Bazar. After a while of their going to Bazar they could see that around 50-60 Razakars were coming towards Bazar from south direction, and they

imposed restriction on three passages of the Bazar after their arrival. Then accused Siraj Master spoke to the men of the Bazar stating that "do not try to escape, you do not have fear. We have come here to apprehend some freedom fighters present in the Bazar who made attack on Doibagghahati camp." He [witness] along with another freedom fighter Altaf Kotal went into hiding in a mosque situated at the Bazar and could see from there that Razakars apprehended many people of Hindu community and tied them on a pair basis with a 'gamcha' [napkin] brought from the shop of Jotindra Nath [on one's right hand and another left hand basis]. Among the Razakars he could recognize Idris Mollah, Rostam Mollah, Mojibor, Idris Sheikh and Akram Khan of Doibagghahati [ancestral house was Jessordi], Latif Talukder [now dead], Siraj Master, Babor Ali, Muslem Member and Nona. He heard that another Akram Khan from Teligathi was there but he did not see him. Thereafter, Razakars having assembled set all of the apprehended men in a queue at north-south direction taking them to the bank of a canal in the western area of the Bazar. Razakars started firing gun shots towards the apprehended men when accused Siraj Master made whistle blow for three consecutive times. At that time he along with Altaf Kotal came out of the mosque and jumped into the canal and crossed the canal by way of plunging and laid in a paddy field. At that time he got many sounds of gun shots. Forty two men were killed in that incident. His elder maternal uncle was one of them. Razakars with the help of other people by boat took all the dead bodies from the scene to Ramchandrapur village near the bank of Bishkhali River next morning at about 10/11 A.M, Saturday and buried all of the dead bodies in a hole by covering earth. Regarding that incident he lodged a complaint with Chief Judicial Magistrate at Bagerhat on 10.05.2009 against 19 persons. He has identified the accused in the dock.

199. In cross-examination he has replied that Shakhari Kathi Hat was set on Monday and Friday in a week. It is not true that forty two people were killed in a combat occurred between Pakistani army and freedom fighters. He has further willingly told that accused and other Razakars killed them. He has denied the defence suggestion that accused Siraj Master stayed at Khulna in 1971 and he was not a Razakar. It is not true that accused Akram Khan made a complaint before the Deputy Commissioner, Bagerhat against him in 2008 over a saw mill dispute and for that reason he filed a case against accused Akram Khan in 2009 and has given false evidence in the present case. He has denied the defence suggestions that because of political and financial gain and previous enmity he has given false evidence against the accused before the Tribunal.

200. **Ananda Lal Das as P.W-08** has deposed that he was about 17 year old during the Liberation War in 1971. On 18 Kartik, Friday in 1971 at about 4.00/4.30 P.M he along with his father went to Shakhari Kathi Bazar in order to sell vegetables. All on a sudden around 40/50 Razakars with rifles in hands cordoned off the Bazar. They apprehended many Hindus who came to Bazar for marketing and tied them with 'gamcha' on a pair basis. They [witness and his father] embraced each other in fear of Razakar. At that time some Razakars came to them and started beating his father. Razakars hit left side of his head with the butt of rifle when he embraced his father *[he has shown injury sign of left side of his head to the Tribunal]*. He was accused Siraj Master who hit him [witness] with the butt of rifle. In the meantime another Razakar Abdul Latif Talukder [now dead] came and started pulling his father to take him from there. He embraced his father so that they could not take him away. Accused Abdul Latif [now dead] started beating him and his father. He suffered severe injury in his left leg by that beating *[he has shown injury sign to the Tribunal]*. Thereafter, his father was taken to the

east of the Bazar and assembled him with other apprehended men. Then he could see that all apprehended people were taken to south nearby canal and put them in a queue. Other Razakars took attention when Siraj Master made a whistle blow. On hearing sound of whistle made by accused Siraj Master, Razakars started gun firing towards apprehended people. After ending of gun firing they chanted slogan 'Pakistan Jindabad' and departed the place of occurrence. After their departure his mother came to him and asked him about his father. He replied that perhaps his father was killed by Razakars. His mother gave him first aid to halt bleeding with the place of head and leg injuries. One month after the incident they came to know that all dead bodies including his father's dead body were buried at one place by covering earth nearby Bishkhali canal of Ramchandrapur village. He heard that Razakars killed forty two people in that incident. He has identified accused Abdul Latif and Siraj Master in the dock.

201. In cross-examination he has told that he does not know whether accused Sirajul Haque was involved with teaching profession at Khulna. It is not true that he did not see the occurrence and on being tutored he has given false evidence.

202. **Hazi Abdul Aziz as P.W-09** has testified that he was about 39/40 year old during the Liberation War in 1971. On 18 Kartik, Friday, 1971 at about 8.00/8.30 P.M Hashem Jamader, Kalu Munshi and he came to Shakhari Kathi Bazar where they could see around 40-50 Razakars who apprehended 40-45 Hindus and fastened them on a pair basis and lined them up in the western side of the Bazar under north-south direction. Razakars had rifles, guns and knives in their hands. Kalu Munshi, Hashem Jamader and he told Razakar Afsar and Harun Dider to release apprehended people as they were innocent poor Hindus. Then, Razakar Afsar reacted saying that 'you trio stand in the queue'. At that time Siraj Master told that today he got seven

amputated heads and he needed three more heads, gave him those heads. Accused Siraj Master fingering at him [this witness] told Razakar Afsar that pushed those three to him. Accused Abdul Latif Talukder [now dead] and Khan Akram Hossain were among the said Razakars. Razakar Haron Dider then told them to remove from there. Then they went towards south direction of the Bazar through Bamboo Bridge. They got sound of whistle and then gun firing from there. They escaped on hearing sound of gun firing in their own capacity. Around 8/9 P.M at night he come to know that Razakars killed forty two persons in total by gun shots. Next morning at about 9/10 A.M Razakars took all dead bodies through boat to the bank of Bishkhali where they buried all of the dead bodies in a hole by covering earth. He has identified three accused in the dock.

203. In cross-examination he has replied that gun firing was made at Shakhari Kathi Bazar some times before Magrib prayer. It is not true that on being tutored by investigation officer he has given false evidence before the Tribunal. He has told about accused Akram Hossain who was perhaps from Telegathi. In further cross-examination he has told that he could recognize Abdul Latif Talukder.

204. **P.W-10 Md. Altaf Hossain Kotal** has deposed that he was 15/16 year old during the Liberation War in 1971. 18 Kartik was Friday. On that day at 03.30 P.M in the afternoon he went to Shakhari Kathi Bazar in order to do marketing. After a while he could see that 25-30 Razakars being armed under leadership of accused Siraj Master came to Shakhari Kathi Bazar from Doibagghahati Razakar camp. Seeing the Razakars at the Bazar people started running hither and thither. Razakars having seen this told them not to run hither and thither as only freedom fighters would be held. He recognized accused Abdul Latif Talukder [now dead], Fazlu Talukder, Babor Ali Talukder, Atahar Ali Mollah and Majibor Mollah among the Razakars.

Razakars brought 'gamcha' [Napkin] from a shop of the Bazar and tied the hands of the apprehended people with 'gamcha' on a pair basis. There was a canal in the west of the Bazar. Razakars set the apprehended people under north-south direction beside the canal. He, at that time, went into hiding in a mosque situated at the Bazar from where he could see the incident. At the same time two more persons including Nimai took shelter at the mosque. Thereafter he could see that accused Siraj Master made a whistle blow and then Razakars started gun firing on the apprehended people. He having seen the incident took shelter in a paddy field after crossing the canal. It was at the eve of the evening. Bullet injured people fell into the canal. Thereafter locals of Hindu community came to the spot from the surrounding areas after departure of Razakars and they tried to find out their beloved ones among the deceased. All dead bodies were lying intact in the canal for whole night. Next morning Razakars came again to the scene and with the help of locals they picked up the dead bodies in the boat. All dead bodies were buried in a hole by covering earth near the canal of Ramchandrapur village. He has identified accused Sirajul Haque alias Siraj Master and accused Abdul Latif Talukder [now dead] respectively in the dock.

205. In cross-examination he has denied the suggestion that accused Sirajul Haque Master was known as wise man in the locality and on being tutored by the prosecution he has given false evidence before the Tribunal. It is true that he could not see the Razakar [s] who directly fired gun shot. Fazlu Talukder, Babor Ali Talukder, Ataher Ali Mollah and Mojibor Mollah are now dead. Forty two people were killed in that incident. He has denied the suggestions that the murder incident took place at Shakhari Kathi Bazar by Pakistani army. Accused Abdul Latif Talukder [now dead] was not known to him in 1971 and due to personal grudge and enmity he has given false evidence against him.

206. **Sohrab Nakib as P.W-15** has testified that he was about 21 year old. He joined Telegathi camp as freedom fighter when the liberation war was started. Because of nuisance of Razakars they left Telegathi camp to Bhatkhali Mukti Juddya camp. On 4 November, 1971 at night they made an attack on Doibagghahati Razakar camp. Accused Akram Khan was the commander of that camp. But operation was not successful because of heavy rainfall and they came back Bhatkhali camp. Next day was Friday. Shakhari Kathi Bazar was set on that day. On that day in the afternoon accused Siraj Master, Razakar commander Khan Akram Hossain of Doibagghahati camp, accused Abdul Latif Telukder [now dead], Babor Ali, Rustom Ali Mollah along with other Razakars killed forty two Hindu people by an attack on Shakhari Kathi Bazar. They heard such information staying in Bhatkhali camp. He has identified the three accused in the dock.

207. In cross- examination he has denied the suggestion that on being tutored by investigation officer he has given false evidence before the Tribunal even though he did not observe the incident.

208. **P.W-16 Solaiman Sarder** has deposed that he was 17 year old during the Liberation War in 1971. He joined the Liberation War and took training at Telegathi School field. On 4 November, 1971 at night they attacked Doibagghahati Razakar camp. Operation was not successful because of heavy rainfall and they returned to Bhatkhali camp. Accused Khan Akram Hossain was the commander of Doibagghahati Razakar camp. He heard the sound of gun firing from the side of Shakhari Kathi Bazar at about 03.00/03.30 P.M on 05 November.

209. In the evening he heard from several persons that accused Siraj Master, Abdul Latif Talukder [now dead], Khan Akram Hossain, Ukil Sheikh, Idris Sheikh, Rostom Mollah, Syed Uddin along with other Razakars from

Bagerhat, Doibagghahati and kachua camps having come made attack on Shakhari Kathi Bazar and killed forty two Hindu people by gun shots.

210. In cross-examination he has replied that killing incident took place by Razakars only, not by Pakistani army. He has denied the defence suggestion that having being influenced by investigation officer he has given false evidence before the Tribunal.

211. **Abdul Jabbar Bepari as P.W-17** has testified that he was about 27/28 year old during the Liberation War in 1971. He participated in the Liberation War as freedom fighter on being trained at Telegathi Mukti Juddya Camp. On 04 November, 1971 at night they attacked Doibagghahati Razakar camp but did not succeed due to heavy rainfall and came back to their Bhatkhali camp. During their stay at the camp they got sound of gun firing at about 03.00/04.00 P.M on 05 November. His associate freedom fighter Sohrab Nakib told that the sound of gun firing was coming from the side of Shakhari Kathi Bazar. In the evening hour his associate freedom fighter Nimai Chandra Das intimated them that Razakars killed 40/42 people under an attack at Shakhari Kathi Bazar. He further told them that accused Akram Hossain, accused Abdul Latif Talukder [now dead], accused Siraj Master, Sultan Dakua and many others were among the perpetrators in the killing carnage.

212. In cross-examination he has denied the suggestions that accused Siraj Master was not present while the killing incident of Shakhari Kathi Bazar was taking place on 05 November, 1971 and he never saw accused Siraj Master beforehand or he does not know him and on being tutored by prosecution he has given false evidence against accused Siraj Master.

213. He has further denied the suggestions that he had never seen accused Khan Akram Hossain and accused Abdul Latif Talukder [now dead]

beforehand or he does not know them and on being tutored by investigating officer he has deposed falsely before the Tribunal.

214. **P.W-18 Abdul Mojibor Kha** has deposed that he was about 19 year old during the Liberation War in 1971. He joined the Liberation War when it was started and took training from Telegathi High School Camp. Accused Akram Khan established a Razakar camp at Doibagghahati and they shifted their camp to Bhatkhali because of nuisance created by Razakars. On 04 November 1971 at night they made an attack on Doibagghahati Razakar camp but no success was made due to heavy rainfall and lastly they returned to the camp. Next day i.e 05 November, Friday at around 03.00/03.30 P.M during their stay at the camp, got sound of heavy gun firing from north. In the evening freedom fighter Nimai told them that accused Siraj Master, accused Khan Akram Hossain and Abdul Latif [now dead] along with other Razakars attacked Shakhari Kathi Bazar from three directions and killed forty two people by gun shots.

215. In cross-examination he has denied the suggestion that he did not know accused Abdul Latif Talukder [now dead] and Khan Akram Hossain before giving evidence in the Tribunal.

216. On perusal of the aforesaid evidence adduced by the prosecution witnesses for proving the instant charge it is found that a large number of innocent people had been killed by the perpetrators at the alleged time and place of occurrence. In order to prove this charge prosecution has examined as many as eight live witnesses. Of whom P.Ws.07-10 have been located as eye witnesses in the scrutiny of the evidence while remaining P.Ws. 15-18 are hearsay witnesses. Prosecution has argued that the alleged accused had committed horrific atrocious acts by killing forty two unarmed persons during the war time and such claim the prosecution has brought, has been proved by the said evidence without any iota of doubt. Per contra, defence

has contended in reply that all the three accused are quite innocent having no involvement in the killing of forty two people who might have been killed by Pakistani soldiers in a combat.

217. Now the question is before us as to whether the prosecution by adducing evidence has been able to establish the instant charge beyond reasonable doubt. It appears from record that all the aforesaid witnesses have been thoroughly cross-examined by the defence counsels to discard the evidence against the accused and to ascertain veracity and credibility of the witnesses.

218. From the testimony of P.W-07 it has revealed that he joined the Liberation War as a freedom fighter at the age of twenty. He has narrated how he went to India and took training to fight against the Pakistani army and anti-liberation forces. At the time of alleged incident he along with another named Altaf Kotal took shelter in a mosque located at the Shakhari Khati Bazar on which the accused along with their cohorts made attack on 05 November, 1971 in the afternoon. This witness had directly seen the apprehension of forty two unarmed people from the Bazar by the accused imposing restriction on three routes of the Bazar and fastening of the detainees on a pair basis with 'gamcha' [napkin] fetched from the shop of Jotindra Nath. Accused Siraj Master was seen very ferocious leading to the group in the execution of apprehending forty two people. His leadership during the commission of offence was being climbed up by his conduct as appeared in the evidence of this witness who had observed how accused Siraj Master along with his cohorts took the apprehended forty two men to the killing spot and assembling them in a queue.

219. It is evident that before firing gun shots by the perpetrators, accused Siraj Master drew attention to his cohorts by making whistle blow for three consecutive times. This witness could recognize accused Akram Khan and

Latif Talukder [now dead] among the other perpetrators in committing the offence. The entire event before execution of the apprehending people, this witness and one another had observed from the hiding place i.e in a mosque. They escaped their causalities coming out of the mosque while accused Siraj Master vehemently took decision to execute the apprehending people by using whistle blow. On hearing sound of gun shots this witness realized from the paddy field that the liquidation was made on forty two people horrendously. His [witness] elder maternal uncle was one of the victims.

220. It was no doubt a painful and unethical event that the dead bodies of forty Hindus and two Muslims were dumped jointly in a hole by covering earth at the instigation of the Razakars, the following day of the killing incident in the morning. The respective relatives of the victims could not get any scope to do ritual in accordance with their religious rules and formalities. With regard to the above evidence as revealed from the testimony of this witness, the defence could not impeach any of its versions in disproving the instant charge. Defence has completely failed to shaken the credibility and veracity of the witness in course of cross-examination. But regarding accused Khan Akram Hossain a suggestion has been made that due to a complaint lodged by him [accused Khan Akram Hossain] before the Deputy Commissioner, Bagerhat against this witness in the year 2008 over a saw mill dispute, he has deposed falsely against the said accused.

221. It is P.W-08 who was with his father, a victim of the incident, when accused along with their accomplices made attack on Shakhari Kathi Bazar on 18 Kartik, Friday in 1971 around 04.00/04.30 P.M. In order to sell vegetables he went to the Bazar along with his father on the day of occurrence. He also sustained injuries in his left leg and head with rifle butt of accused Siraj Master and Abdul Latif Talukder [now dead]. Apprehension of the victims as well as their fastening with napkin on a pair basis he had

seen from a very close distance. The role of accused Siraj Master before liquidation of his father and 41 others he helplessly observed in a broad day light. He has corroborated the evidence of P.W-07 without any different mode of expression. Sequence of the history of the incident in the given evidence is also found appropriate similar to the evidence of p.w-10. It is also evident that he took first aid with the help of his mother to halt bleeding in the head and leg after their [accused] departure. As an eye witness he had given all happening events by the perpetrators to his mother immediately after their [accused] departure from the scene when his mother came to him. So there is no question of any discrepancies between the evidence of P.W-07 and him to undermine the same in any way. From his [p.w-08] testimony it is found exactly identical to the evidence of P.Ws-07, 09 and 10 regarding the time, date and place of occurrence. Only one thing is absent in his evidence i.e involvement of accused Khan Akram Hossain. This witness has failed to locate accused Khan Akram Hossain along with other perpetrators that he was with them during commission of the offence. Except this failure all other events have supported and corroborated the testimonies of other eye witnesses. Thus, it finds no piece of shaken evidence even in course of cross-examination by the defence.

222. An impartial and neutral witness is Haji Abdul Aiziz as P.W-09 who has said about the time, date and place of occurrence like other witnesses and he had seen as to how Razakars along with accused apprehended forty two innocent unarmed people from Shakhari Kathi Bazar and tied them up with napkin on a pair basis. This witness was neglected roughly when he requested the perpetrators to release the innocent victims. He was luckily saved from the hands of accused Siraj Master due to interference of Razakar Haron Dider who told them to leave the place of apprehension of forty two innocent people. Like P.W-08, this witness heard sound of whistle blow and

gun firing from the side of execution place. Regarding disposal of the dead bodies by Razakars the following day of the incident in the morning on the bank of Bishkhali in a hole by covering earth has been supported and corroborated by the version of P.W-07 in toto. In course of cross-examination defence has failed to create doubt in the given evidence of this witness, except about Khan Akram Hossain. Although this witness has identified all three accused in the dock of the Tribunal but he has given confusing reply to a question put to him regarding recognition of accused Khan Akram Hossain during commission of the offence. In reply he has told that perhaps accused Akarm Hossain was from Telegathi.

223. P.W-10 has stated in his deposition by corroborating the evidence of P.W-07 that the attack was made on Shakhari Kathi Bazar by Razakars under leadership of accused Siraj Master on 18 Kartik, 1971 in the afternoon. He had taken shelter at a mosque along with two others including P.W-07. From where he could see how forty two people were apprehended and tied with 'gamcha' on a pair basis. Thereafter, Razakars killed them by gun shots when accused Siraj Master made a whistle blow. Final execution was done at the eve of the evening and all dead bodies were laid in a canal for whole night. Next morning all dead bodies were dumped in a hole by covering earth near the canal of Ramchandrapur village. The statements given by this witness do not contradict to the evidence of other eye witnesses. Rather it has been supported in toto by testimony of P.W-07 who went into hiding in a mosque along with this witness during commission of the offence and they escaped themselves by crossing the canal and again took shelter in a paddy field. This version of evidence invites the recognition of proper justice to find the involvement of the accused in the commission of offence. Identification of accused Siraj Master and Abdul Latif Talukder [now dead] has been stated by this witness while identification as well as

involvement of accused Khan Akram Hossain is absent in this evidence. But the evidence of this witness has not been shaken against the accused Siraj Master and Abdul Latif Talukder [now dead] in course of cross-examination by the defence in any way.

224. P.Ws-15-18 are hearsay witnesses who did not observe the incident directly when it was taken place. These four witnesses are freedom fighters having contributions in the liberation war for independence of the country. They have given similar statements in their depositions as hearsay witnesses that the Razakars including the accused perpetrators killed forty two persons by gun shots at the place of occurrence on 05 November, 1971 at around 03.00 to 04.00 P.M. Now the question is before us whether testimonies of these witnesses can be given probative value together with the evidence of eye witnesses. Apparently it seems to the effect that evidence of four eye witnesses are enough to find a perpetrator guilty or not and there has been no necessity to evaluate the hearsay evidence in addition as to the guilt. But ignorance of hearsay evidence under assessment is not sustainable in legislation because it has extra values together with the testimonies of eye witnesses.

225. As per settled principle of International Law hearsay evidence is not inadmissible per se, even when it is not corroborated by the direct evidence. The Tribunal may safely act on 'anonymous hearsay' evidence even without any corroboration. This view finds support from the case of **Lubanga [Lubanga-ICC Pre-Trial Chamber, January 29, 2007, para-106.]** For the sake of argument if we brush away the evidence of the hearsay witness nos. 15-18, the evidence of eye witness nos. 07-10 remain unshaken though they were examined in course of cross-examination by the defence. In the present case, the testimonies of the eye witnesses are very much corroborative to each other and they have directly implicated the accused in the commission

of offences as stated in the instant charge. This Tribunal may arrive at a decision even on the basis of single testimony and 'corroboration' is simply one of the factors to be considered in assessing witness's credibility. It was opined by **ICTR Trial Chamber** that,

"There is no requirement that convictions be made only on the evidence of two or more witnesses.....Corroboration is simply one of potential factors in the Chamber's assessment of a witness's credibility. If the Chamber finds a witness credible, that witness's testimony may be accepted even if not corroborated."

[Nyiramasuhuko, ICTR Trial Chamber, 24 June 2011, Para-174]

226. The present charge includes crimes against Humanity i.e. murder, abduction, confinement and other inhumane act. The prosecution has also produced evidence through the aforesaid witnesses to establish the offence of crime against Humanity. It appears from evidence that the attack was made by the perpetrators in a systematic way against civilian population. In the context of a crime against Humanity the civilian population is the primary object of the attack. It is evident that the civilian population i.e. the victims of the occurrence were not carrying any arms or ammunitions. They were simply innocent villagers but the attack was directed by the perpetrators to be part of a widespread and systematic as disclosed in the evidence of the witnesses. This view finds support in the case of **Blaskic, [ICTY, Appeals Chamber]**. July 29, 2004, Para. 98:

"It is well established in the jurisprudence of the International Tribunal that in order to constitute a crime against humanity, the acts of an accused must be part of a widespread or systematic attack directed against any civilian population."

227. In view of the facts and discussions as stated above, we are constrained to hold that the prosecution has proved the instant charge beyond reasonable doubt that on 05 November, 1971 in the afternoon a group of Razakars under leadership of accused Sheikh Sirajul Haque alias Siraj Master and his accomplice accused Abdul Latif Talukder [now dead] having attacked Shakhari Kathi Bazar abducted forty two unarmed people and killed them by gun shots on the bank of a canal in the western area of the Bazar. Thus, accused Sheikh Sirajul Haque alias Siraj Master is criminally liable under section 4(1) of the Act of 1973 and found him guilty for participating, abetting, contributing, facilitating and had complicity in the commission of offences of abduction, murder and other inhumane acts as crimes against Humanity as specified in section 3(2)(a)(g) and (h) of the Act of 1973 which are punishable under section 20(2) of the said Act.

228. Regarding accused Khan Akram Hossain it finds from a careful scrutiny of the evidence of four live witnesses that the defence has taken a plea of allegation in course of cross-examination that he has given false evidence against Khan Akram Hossain because he lodged a complaint against p.w-07 before the Deputy Commissioner of Bagerhat in the year 2008 over a saw mill dispute. P.W.08 has brought no allegation in his deposition that accused Khan Akram Hossain was in any way present along with the perpetrators at the time of commission of the offence. Even he does not identify accused Khan Akram Hossain in the dock of the Tribunal. P.W-09 has given confusing reply to a question put by defence in course of cross-examination that perhaps Khan Akram Hossain was from Telegathi. P.W.10 has not also mentioned the name of accused Khan Akram Hossain as one of the perpetrators involving in committing the offence of atrocious acts.

229. So, the evidence of these four witnesses is not satisfactory to justify his guilt in any manner. Evidence of P.Ws.07 and 09 has created doubt

involving the accused Akram Hossain in the commission of offence. Therefore, such benefit of doubt goes solely to the account of the accused Khan Akram Hossain. When in a case the doubt has been established in the scrutiny of the evidence the accused will get its all sort of benefit. More so, there is no necessity to discuss evidence of hearsay witnesses in respect of involvement of the accused since the substantive evidence of eye witnesses have become doubtful regarding involvement of accused Khan Akram Hossain in the commission of offence. Only on the basis of hearsay evidence conviction cannot be imposed upon an offender as discussed previously in other cases.

230. In view of the facts and circumstances as stated above, we are convinced to hold that the prosecution has created doubt in proving the instant charge against accused Khan Akram Hossain and has failed to prove the same beyond reasonable doubt that accused Khan Akram Hossain by his act or conduct abetted, contributed, facilitated and/or had complicity in the commission of offences of abduction, murder and other inhumane acts as crimes against Humanity as specified in section 3(2)(a)(g) and (h) of the Act of 1973 and section 4(1) of the Act of 1973.

Adjudication of Charge no.06

[Abduction and Murder]

231. **Summary charge:** On 22.11.1971 between 10.00 A.M and 05.00 P.M accused 1. Sheikh Sirajul Haque alias Siraj Master, 2. Khan Akram Hossain and 3. Abdul Latif Talukder [now dead] with a prior plan apprehended 1. Shatish Chandra Mondal of village Tengrakhali, 2. Babu Khan of village Kachua, 3. Nazarul Islam Sheikh of village Hazrakhali, 4. Monindra Nath Shaha of village Baruikhali and 5. Hashem Ali Sheikh of village Char Tengrakhali under Kachua Police Station, Bagerhat, the freedom loving

people, from their respective houses, and they all were taken to Razakar camp situated at Kachua Sadar and thereafter accused Sheikh Sirajul Haque alias Siraj Master ordered to kill them and accordingly they were taken to the northern bank of the river near Thana parishad and then the Razakars killed all of them by gun shots and the dead bodies were thrown into the river.

232. Therefore, all the above three accused persons have been charged for conspiracy, complicity in, abetting and facilitating the commission of offences of abduction and murder as crimes against Humanity as specified in section 3(2)(a)(g) and (h) of the Act of 1973 read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Discussion and evaluation of the evidence and findings:

233. In order to prove the instant charge the prosecution has examined 04[four] live witnesses.

234. **Hazra Zahidul Islam @ Monnu as P.W-11** has testified that he is a freedom fighter and was a student during the Liberation War in 1971. On 12.11.1971 he along with his other fellow freedom fighters took shelter beside the Bhairob river, opposite to Kachua Razakar camp; on that day at about 4.00 P.M under the leadership of accused Siraj Master, Abdul Latif Talukder [now dead] and Khan Akram of Teligathi 10/12 Razakars having apprehended Ashraf Ali Khan and Shatish Chandra Mondal from Tengrakhali, Babu Khan and Nazrul Sheikh from Kachua and Monindronath Shaha from Baroikhali took all of them to Kachua Razakar camp and in the said camp they all were tortured by the Razakars. They witnessed the said occurrence from the opposite site of the Bhairob river. At about 5.30 P.M under the leadership of accused Siraj Master, Latif Talukder [now dead] and Akram Khan the other Razakars brought the said 05[five] apprehended persons near to the Bhairob bridge from the Razakar camp and then as per their instructions the other Razakars killed all of them by gun shots.

Eventually, the local people staying at Kachua Bazar came to the crime site and found the dead bodies of the victims. This witness has identified accused Siraj Master and Abdul Latif Talukder [now dead] present in the dock.

235. In cross-examination P.W-11 could not say when he went to India for participating in the Liberation War. He has stated that at the time of the occurrence the wide of Bhairob river was 50/60 yards and at the relevant time the boats and small launces used to ply in the said river. He has denied the defence suggestion that at the time of the occurrence he was not staying to the other side of Bhairob river. He could not say whether accused Siraj Master was a teacher and that when he [P.W-11] was elected as the Chairman of Kachua Sadar Union Parishad. He knows Moniruzzaman, the Razakar camp commander of Kachua, Razakars Gani Sarder and Gani Shikder. His house is 4/5 k.m away from the house of accused Abdul Latif Talukder [now dead]. He has denied the defence suggestion that while he was the Chairman of the Union Parishad there was a dispute with accused Abdul Latif Talukder [now dead] regarding money as he took Tk.1,00,000/- from accused Abdul Latif Talukder [now dead] in the year 1988 out of that money he returned only Tk.7000/- to accused Abdul Latif Talukder [now dead].

236. **P.W-12 Sheikh Fozor Ahmed** has testified that on 22 November 1971 he along with his fellow freedom fighters Shukur Ali Sheikh, Zahidul Islam Monnu and Subodh Chandra Karati took shelter in a garden, opposite to the Bhairob river to over see the activities of Kachua Razakar camp. At about 3.00 P.M they came to know from their source that the Razakars having abducted 05 persons confined them in the Razakar camp. At about 5.00 P.M he could see that accused Siraj Master raising his hand gave a signal to the other Razakars and then accused Abdul Latif Talukder [now dead] and Akram Khan, and Razakars Hashem Sheikh, Idris Molla, Rustom Molla and

Moniruzzaman took all the said abductees near to the bank of the river and thereafter the Razakars killed them by gun shots and thereafter threw the dead bodies in the river. He along with his other three fellow freedom fighters witnessed the said occurrence. Having seen the said occurrence they returned to their freedom fighter's camp as they did not have heavy arms with them at that time. He has identified all the accused persons present in the dock.

237. In cross-examination he has stated that he was neither involved with Awami Muktiyoddha Dal or Jatiotabadi Muktiyoddha Dal. In the year 2010 he filed a complaint case before the Chief Judicial Magistrate, Bagerhat implicating Idris Sheikh, Nuru Shikder, Abu Shikder, Delowar and others; but he did not implicate accused Siraj Master, Abdul Latif Talukder [now dead] and Akram Khan in the said case. He has denied the defence suggestion that with ulterior motive he did not implicate Moniruzzaman, the Razakar camp commander of Kachua Sadar and Razakars Abdul Goni Shikder and Abdul Goni Sarder who are still alive. He has denied the defence suggestions that he had tried to save the real perpetrators and it was not possible to see any incident from the opposite site of the river.

238. **Subodh Chandra Karati** as P.W-13 has deposed that as per instruction of camp commander Captain Tajul Islam on 22 November 1971 he along with his fellow freedom fighters Md. Shukur Ali, Sheikh Fozor Ahmed and Hazra Zahidul Islam Monnu took shelter beside Bhairab river, opposite to Kachua Razakar camp. On that day at about 4.00 P.M the Razakars having abducted Shatis Chandra Mondal and Hashem Ali of village Tengrakhali, Babu Khan of village Kachua, Nazrul Islam of Hazra Khali, and Monindranath Shaha of Barui Khali, took all of them to Kachua Razakar camp and the said abductees were tortured by the Razakars in the camp and they heard the sound of weeping of the abductees. After some times, they could see that under the leadership of accused Siraj Master, Akram Khan

and Abdul Latif Talukder [now dead] some other Razakars took all the abductees to the bank of Bhairab river and thereafter they all were killed one after another by gun shots. Later on he came to know that the relative of Hashem Ali having found the dead body of him took the same to their house and buried him. He has identified the accused persons present in the dock.

239. In his cross-examination he has stated that he made statement before the investigating officer in the case of A.K.M Yousuf [another accused implicated in another case] and could not remember whether he mentioned the name of accused Akram Khan and Abdul Latif [now dead] before the investigation officer. Razakars Gani Shikder, Gani Sardar, Hashem Sheikh, Yakub Sheikh, Sayab Sheikh of Kachua Sadar and Moniruzzaman, the camp commander of Kachua Sadar Razakar camp, are still alive. He has denied the defence suggestions that he could not know accused Abdul Latif Talukder [now dead] and Khan Akram and that he saw them in the court premises as he came to the Tribunal on the previous day and that the Pakistani army killed those victims and that he deposed falsely.

240. **P.W-14 Sobhan Sheikh** has testified that his father Hashem Ali Sheikh used to help the freedom fighters. In the month of Agrahayan 1971 at about 10.00/11.00 A.M 04[four] Razakars including Sultan Daua came to their house and having abducted took him to Kachua Razakar camp. He followed the said Razakars and stayed outside the Razakar camp and at one stage he was ousted by the Razakars from the camp area. He was crying at that time but the local people sent him to his house. In that night they came to know that Razakars Siraj Master, Abdul Latif Talukder [now dead], Khan Akram Hossain, Sultan Daua and Moniruzzaman killed his father. On the following morning his brother-in-law [sister's husband] Shikhu took the dead body of his father having seen them floating in the river.

241. In cross-examination he has stated that he heard that Razakar Sultan Daua is now dead.

242. On scrutiny and careful examination of the above evidence it appears to us that though it is the positive case of the prosecution that accused Sheikh Sirajul Haque alias Siraj Master, Khan Akram Hossain and Abdul Latif Talukder [now dead] with a prior plan having apprehended Shatish Chandra Mondal of village Tengrakhali, Babu Khan of village Kachua, Nazarul Islam Sheikh of village Hazrakhali, Monindra Nath Shaha of village Baruikhali and Hashem Ali Sheikh of village Char Tengrakhali under Kachua Police Station, Bagerhat from their respective village homes confined in the Kachua Razakars camp; but except P.W-14 none of the witnesses has stated anything about the manner of abduction or apprehension of the above five victims from their respective village homes situated in different areas. P.W-14 has stated simply that under the leadership of Razakar Sultan Daua 04 Razakars apprehended his father Hasem from their house. The prosecution has miserably failed to adduce an iota of evidence with regard to the abduction or apprehension of the five victims implicating the accused persons.

243. P.W-11 Hazra Zahidul Islam @ Monnu could not identify accused Khan Akram and he has stated that he deposed against Akram Khan of village Teligathi, not the present accused Khan Akram Hossain. This witness in his cross-examination has failed to say when he performed as the Chairman of Kachua Sadar Union Parishad. This failure, which is a memorable event in the life of the P.W-11, makes his evidence shaky.

244. P.W-12 Sheikh Fozor Ahmed has deposed that he could see that accused Siraj Master gave a signal by raising hand and then accused Abdul Latif Talukder [now dead] and Akram Khan along with Razakars Hashem Ali Sheikh, Moniruzzaman, Idrish Molla, Rustom Molla, Moniruzzaman and 07 [seven] other Razakars took the victims to the bank of the river; but said material fact of giving signal by raising hand to the other Razakars by accused Siraj Master has not been stated by the P.W-11 and P.W-13. Rather

P.Ws-11 and 13 have deposed that under the leadership of accused Siraj Master, Abdul Latif Talukder [now dead] Akram Khan and the other Razakars killed the victims by gun shots.

245. P.W-12 Sheikh Fozor Ahmed in his cross-examination has admitted that in the year 2010 he filed a complaint case before the Chief Judicial Magistrate, Bagerhat where he did not implicate accused Siraj Master, Abdul Latif Talukder [now dead] and Khan Akram Hossain and in the said case he implicated Razakars Idris Sheikh, Nuru Shikder, Abu Shikder and Delower and he also did not implicate Moniruzzaman, the Kachua Razakar camp commander.

246. P.W-13 Subodh Chandra Karati in his deposition in a lump manner has stated that under the leadership of accused Siraj Master, Akram Khan and Abdul Latif Talukder [now dead] the other Razakars having taken the five abductees to the bank of the Bhairob river killed them one after another by gun shots and in his cross-examination he has failed to remember whether he mentioned the name of accused Akram Khan and Abdul Latif Talukder [now dead] before the investigating officer.

247. Having discussed and considered the above evidence we are of the view that to prove the instant charge the prosecution has failed to adduce trustworthy and credible evidence. The evidence of P.Ws-11, 12 and 13, the alleged eye witnesses, do not inspire us to find guilt of the accused persons in commissioning the offence of abduction and murder as listed in the instant charge. Rather their evidence appears to be contradictory, inconsistent and unworthy of credit on the material points.

248. It is by now well settled proposition of law that a Trial Chamber does not need to individually address alleged inconsistencies and contradictions and does not need to set out in detail why it accepted or rejected a particular testimony.

[Reference: ICTR Appeal Chamber in the case of Muhimana, para 99 & 176].

249. More so, P.W-11 could not identify accused Khan Akram Hossain in the dock and he categorically has stated that he deposed against Akram Khan of village-Taligathi, not against the present accused Khan Akram Hossain and P.W-12 did not implicate the present accused persons in the complaint case filed earlier in the court of Chief Judicial Magistrate, Bagerhat.

250. It is the prosecution case that 05[five] persons having been abducted from their respective village homes situated in different area were taken to Kachua Sadar Razakar camp and they were tortured in the said camp and thereafter they were taken to the bank of Bhairab river and thereafter they were killed one after another by gun shots. It is also found from the evidence that one Moniruzzaman was the Kachua Razakar camp commander where the victims were confined and tortured and he along with Razakars Abdul Goni Shikder, Idris Sheikh, Nuru Sheikh and Abu Shikder of Kachua Sadar are still alive; they have not been indicted in the instant charge by the prosecution as the Investigation Agency did not file any report against them, which is very surprising to us and it also creates doubt about the veracity of the prosecution case and makes the defence version probable that the prosecution has brought the instant charge against the present accused persons at the instance of the interested quarter with a view to save the real perpetrators. Thus, we are of the view that the prosecution has failed to prove the instant charge relating to abduction and murder as crime against Huminty as specified in section 3(2) (a)(g) and (h) of the Act of 1973 beyond reasonable doubt against the accused persons.

Adjudication of Charge no.07

[Abduction and Murder]

251. **Summary charge:** On 13.12.1971 in the evening [about 06.00 P.M] while freedom fighter Fazlur Rahman Shikder along with 04[four] other

freedom fighters were going to their respective houses from freedom fighters' camp situated at Bhatkhali in order to meet their inmates and when they reached nearer Teligati Bazar, at that time Fazlur Rahman was somehow captured by accused Khan Akram Hossain, Abdul Latif Talukder [now dead] and other Razakars and they having tortured took him to nearer the river and killed him by gun shots.

252. Therefore, accused Khan Akram Hossain and Abdul Latif Talukder [now dead] have been charged for complicity in the commission of abduction and murder as crimes against Humanity as specified under section 3(2) (a) read with section 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

Discussion and evaluation of the evidence and findings

253. To prove the instant charge the prosecution has examined 04[four] live witnesses.

254. **P.W-15 Sohrab Nakib**, a freedom fighter, has testified that on 13 December 1971 at the evening having taken permission from their camp commander he along with fellow freedom fighters Solaiman Sarder, Lutfor Rahman Nakib, Majibor Khan, Mannan Sheikh, Jabbar Khan and Fazlur Rahman started for the house of their fellow Solaiman Sarder in order to see his ailing mother. When they reached near Teligati Bazar from Bhatkhali camp, he and Fazlur Rahman having left the other fellows near Muchibari, southern side to the Teligati Bazar, moved forward towards the Teligati Bazar for purchasing cigarettes. Eventually, he halted near a bridge of Teligati Bazar to respond the call of nature when Fazlur Rahman went inside the Bazar. When Fazlur Rahman entered into the Bazar accused Khan Akram Hossain and Abdul Latif Talukder [now dead] and Razakars Rustom Mollah and Belal Mollah captured him. Having heard the shout of Fazlur Rahman he came back to Muchibari where his other fellows were staying and from that place they could see that the Razakars took Fazlur Rahman to near a

canal, southern side of the Bazar. Thereafter Khan Akram shot him first and then accused Abdul Latif Talukder [now dead] and Rustam Mollah also shot him and thereafter they threw the dead body of Fazlur Rahman in the canal. Having seen the said incident they returned to their camp without going to the house of Solaiman Sarder. The occurrence had taken place at the time of sunset.

255. In cross-examination P.W-15 has stated that Razakar Rustom Ali is still alive but Razakar Babor Ali is dead. Daibaggahati Razakar camp was two miles and Kachua Sadar is three miles away respectively from Teligati Bazar. He has denied the defence suggestion that after independence of the country he was sent to jail for committing dacoity. He could not say where Fazlur Rahman was buried and who recovered the dead body of Fazlur Rahman. He has also denied the defence suggestions that he deposed falsely and that Fazlur Rahman was apprehended by the Pakistani army and thereafter his whereabouts was not known to any body.

256. **P.W-16 Solaiman Sarder**, a freedom fighter, has deposed that on 13 December 1971 hearing the news of his mother's illness he having obtained permission from the camp commander of Bhatkhali freedom fighter's camp along with fellow freedom fighters Fazlur Rahman, Lutfor Rahman, Majibor Rahman Khan, Sohrab Nakib, Mannan Sheikh and Jabbar started towards their house. Before sunset they reached near Teligati Bazar and took shelter in front of the house of Muchibari; but Fazlur Rahman and Sohrab Nakib moved towards the Bazar and eventually, Sohrab Nakib halted to respond the call of nature and Fazlur Rahman entered into the Bazar. After sometimes they heard hue and cry from the Bazar and Sohrab Nakib having returned to them informed that the Razakars apprehended Fazlur Rahman. Eventually, they could see that accused Khan Akram Hossain and Abdul Latif Talukder [now dead] and Razakars Rustam Mollah, Ukil and others were taking Fazlur Rahman towards the canal, southern side of the Bazar.

Having taken him to near the canal they killed Fazlur Rahman by gun shots and threw the dead body in the canal. Having seen the said incident they returned to their Bhatkhali camp.

257. In cross-examination he has stated that Daibaggahati Razakar's camp was three miles away from Teligati Bazar. Razakar Ukil now lives in Khulna. He could not say where Razakar Rustam is living at present. He disclosed their names before the investigating officer. He came to know accused Akram Khan in 1971 when he joined as Razakar. He had no knowledge whether the uncle of accused Akram Khan was a leader of Awami League in 1971. He has also denied the defence suggestion that the accused Akram Khan was not the commander of Daibaggahati Razakar camp but Akram Khan son of Mukter Khan was the commander of said the Razakar camp. He has also denied the defence suggestions that he did not see any occurrence as stated by him and that Fazlur Rahman was not with them. He could not say where the dead body of Fazlur Rahman was buried. He had no knowledge whether any case was filed in the year 2009 before the Chief Judicial Magistrate, Bagerhat with regard to the killing of Fazlur Rahman. He has also denied the defence suggestion that a criminal case was filed against him in the year 1972/ 1973.

258. **P.W-17 Abdul Jabbar Bepari**, a freedom fighter, has testified that 2/3 days before the independence he along with Solaiman, Lutfor Nakib, Sohrab Nakib, Fazlur Rahman and Majibur Rahman reached near the house of Muchibari at Teligati Bazar in order to see the ailing mother of their fellow Solaiman. Sohrab Nakib and Fazlur Rahman moved towards the Bazar for purchasing cigarettes. After sometimes Soharab Nakib having returned to them informed that the Razakar captured Fazlur Rahman. Thereafter they hid in a place near Muchibari and they could see that the Razakars having tortured Fazlur Rahman took him to near the canal beside the Bazar and thereafter accused Akram Khan shot him first and then Abdul Latif Talukder

[now dead] also shot him and after killing Fazlur Rahman his dead body was thrown in the canal. Having seen the said incident they returned to their freedom fighter's camp.

259. In cross-examination he has stated that he filed an application for correction of his age mentioned in the National Identity Card. Bhatkhali camp was situated three miles away towards south of Teligati Bazar and Daibaggahati is 1 k.m from Teligati Bazar. Mukter Khan of Teligati Bazar area was the chairman of the Union Parishad and also peace committee. His son Akram Khan was also a Razakar. He could not say whether any case was filed in the Court of Chief Judicial Magistrate, Bagerhat with regard to the killing of Fazlur Rahman. He also could not say the fate of the dead body of Fazlur Rahman. He has denied the defence suggestions that he has deposed falsely and did not see any occurrence as stated by him before the Tribunal.

260. **P.W-18 Abdul Mojibor Kha**, a freedom fighter, has testified that on 13 December 1971 they came to learnt that the mother of their fellow Solaiman became sick and having taken permission from camp commander he along with Solaiman Sarder, Fazlur Rahman, Lutfor, Jabbar, Mannan and Sohrab Nakib started towards the house of Solaiman. When they reached Teligati Bazar they stopped near Muchibari and Fazlur Rahman and Sohrab Nakib moved towards the Bazar. After sometimes Sohrab Nakib having returned to them informed that the Razakars apprehended Fazlur Rahman. Thereafter they could see that the Razakars having tortured Fazlur Rahman took him to near the canal, southern side of the Bazar, and thereafter Akram Khan shot him at first and thereafter accused Latif Talukder [now dead] and Razakar Rustam Sheikh also shot him and then they threw the dead body in the canal. Having seen the said incident they returned to the freedom fighter's camp.

261. In cross-examination he has stated that being a freedom fighter he has been getting remuneration. Sultan Kha, Rashid Kha, Jhuna Kha, Monsur Kha, Ashraf Kha, Amir Bayati, Rustam Sheikh and Eunos Sheikh of Teligati area had joined as Razakars. Out of them Eunos Sheikh, Rustam and Sultan Sheikh are still alive. They did not try to resist the Razakars as they did not have sufficient arms and ammunition. He had no knowledge about the dead body of Fazlur Rahman. He has denied the defence suggestion that he has deposed falsely.

262. On a careful examination of the above evidence it appears to us that P.Ws-15, 16, 17 and 18 are the freedom fighters and eye witnesses of the occurrence. All the above witnesses having corroborated each other in a same voice have testified that on 13 December 1971 in the evening having taken permission from the camp commander of Bhatkhali freedom fighter's camp they along with their fellow Fazlur Rahman started towards the house of Solaiman Sarder in order to see his ailing mother and on the way to the house of Solaiman Sarder they halted near Muchibari at Teligati Bazar and Fazlur Rahman and Sohrab Nokib further moved towards the Bazar for purchasing cigarettes. Eventually, Sohrab Nakib halted near a Bridge of Teligati Bazar to respond the call of nature and Fazlur Rahman went inside the Bazar. When Fazlur Rahman entered into the Bazar accused Khan Akram Hossain, Abdul Latif Talukder [now dead] and other Razakars captured him and started torturing him. Eventually, Fazlur Rahman was taken to near the canal southern side of the Teligati Bazar and thereafter Khan Akram Hossain shot him first and thereafter accused Abdul Latif Talukder [now dead] also shot him. Having killed Fazlur Rahman the dead body was thrown in the canal and ultimately the dead body of Fazlur Rahman was not recovered. They could see the said incident from their hiding place beside Muchibari.

263. We do not find any inconsistencies or material contradictions amongst the evidence of above 04[four] eye witnesses on material points particularly the factums of apprehension Fazlur Rahman by the accused Abdul Latif Talukder [now dead] and Khan Akram Hossain and other Razakars from Teligati Bazar when he entered into Bazar for purchasing cigareetes and that having captured Fazlur Rahman the accused persons along other Razakars tortured him and eventually took him to near the canal southern side of the Taligati Bazar and thereafter accused Khan Akram Hossain and Abdul Latif Talukder [now dead] killed him by gun shot and then his dead body was thrown in the canal, which was not ultimately recovered. All the above 04[four] eye witnesses are most competent, trustworthy and credible witnesses and their testimonies do not suffer from any infirmity. They being the freedom fighters had participated in the Liberation War in 1971 to sacrifice their lives for independence of the country and they have deposed before the Tribunal regarding the killing of their one of the fellows Fazlur Rahman, who was unarmed at the relevant time, and accompanied by them before his killing. The defence has failed to shake the evidence of the said eye witnesses in any manner. As such, there is hardly any scope to disbelieve or discard their evidence and thus, we have no hesitation rely to on their evidence.

264. Having discussed and considered as above we are of the view that the prosecution has proved the charge no.07 that accused Khan Akram Hossain participated, abetted and faciliatuted the commission of offences of abduction and murder of Fazlur Rahman, as crimes against Humanity as enumerated in section 3(2)(a)(g) and (h) read with section 4(1) of the International Crimes Tribunal Act 1973, beyond reasonable doubt and as such he is liable to be punished under section 20(2) of the Act of 1973.

XIX. Conclusion

265. It is a fact of common knowledge as well that the Pakistani occupation army organized Razakar, Al-Badr, Al-Shamas Bahini for the purpose of their support in implementing its atrocious activities in furtherance of common plan and policies.

266. Together with the Al-Badr and Al-Shams paramilitary forces, the Razakars were under Pakistani army command. The Razakar force was composed of mostly pro-Pakistani Bengalees. Razakars were actively associated with many of the atrocities committed by the Pakistan army during the 9 month War of Liberation in 1971. On September 7, 1971, Pakistan Defence Ministry through an official order [No.4/8/52/543 P.S=1/Ko/3659 D-2Ka] elevated the Razakar Bahini to the status of auxiliary force of the Pakistan Armed Force, it is true, but even before such elevation, the alleged East Pakistan Razakars Ordinance, 1971 was promulgated by the Government of East Pakistan on 2 August 1971 and prior promulgation of the said Ordinance the accused persons as member of volunteer Razakar force acted and conducted actively along with and in association with the Pakistani army in committing atrocities. This is enough for an unerring inference that the accused persons had acted as member of a militia force under control of Pakistani army for their operational and other purposes and therefore, we are of the view that at the time of committing crimes for which the accused persons have been charged with, the accused persons were member of 'auxiliary force' as defined in section 2(a) of the Act of 1973.

267. Now it is indeed a history that the Pakistani army with the aid of its auxiliary forces, pro-Pakistan political organizations implemented the commission of atrocities in 1971 in the territory of Bangladesh in furtherance of following policies:

- i. policy was to target the self-determined Bangalee civilian population particularly the Hindu religious people;

- ii. high level political or military authorities, resources military or other were involved to implement the policy;
- iii. auxiliary forces were established in aiding the implementation of the policy; and
- iv. the regular and continuous horrific pattern of atrocities perpetrated against the targeted non combatant civilian population.

268. The above facts in relation to policies are not only widely known but also beyond reasonable dispute. The context itself reflected from above policies is sufficient to prove that the offences of crimes against Humanity as specified in section 3(2)(a) of the Act of 1973 were the inevitable effect of part of systematic attack directed against civilian population.

269. It is quite coherent from the facts of common knowledge involving the backdrop of our War of Liberation for the cause of self determination that the Pakistani armed force, in execution of its plan and policy in collaboration with the local anti liberation section belonging to Jamaat-e-Islami [JEI] and its student wing Islami Chhatra Sangha [ICS], Muslim League, Nezam-e Islam parties and auxiliary forces, had to deploy public and private resources and target of such policy and plan was the unarmed civilian Bangalee population, pro-liberation people, Hindu community and pursuant to such plan and policy atrocities were committed to them as a 'part of a regular pattern basis' through out the long nine months of War of Liberation. It may be legitimately inferred from the phrase "**directed against any civilian population**" as contained in the Act of 1973 that the acts of the accused persons comprise part of a pattern of '**systematic**' crimes directed against civilian population.

270. Therefore, the crimes for which the accused persons have been charged and found guilty, were not isolated crimes, rather those were part of organized and planned attack intended to commit the offence of crimes

against Humanity as enumerated in section 3(2)(a) of the Act of 1973 **in furtherance of policy and plan with the aim of frustrating the result of general election of 1970 and to deprive the fruits of election result.**

271. From the backdrop and context it is thus quite evident that the existence of factors, as discussed above, lends assurance that the atrocious criminal acts **'directed against civilian population'** formed part of **'systematic attack'**. Section 3(2) (a) of the Act of 1973 enumerates the offences of crimes against Humanity. If any of such offences is committed **'against any civilian population'** shall fall within purview of crimes against Humanity.

272. Despite lapse of long 44 years time the testimonies of prosecution witness most of whom are live witnesses to the incidents of atrocities narrated in the charges do not appear to have been suffered from any material infirmity. Besides, no significant inconsistencies appear between their examination in chief made before the Tribunal and cross-examination.

273. It has been proved from the testimonies of witnesses that the accused Sheikh Sirajul Haque alias Siraj Master had directly participated and facilitated in the commission of crimes as listed in respective charge nos.01-05 as a local leader of Razakar Bahini [force]. More so, we have found that for the reason of his atrocious acts in the locality the accused Siraj Master was widely known as **'Kashai [Butcher] Siraj'**. It has also been proved that accused Khan Akram Hossain had participated in the commission of crimes as listed in charge nos.07. According to section 3(1) of the Act of 1973 it is manifested that even any person **[individual or a member of group of individuals]** is liable to be prosecuted if he is found to have committed any of the offences specified in section 3(2) of the Act of 1973.

274. We are convinced from the evidence both oral and documentary led by the prosecution that all the accused persons were the potential members of Razakar Bahini [force] of the then Bagerhat Sub-Division. The purpose of

Razakar Bahini was to assist the Pakastani occupation army to implement their common design and plan in the commission of their atrocious acts against the Bengalee civilian population including the Hindu religious group, intellectuals and pro-liberation civilians. As such we may legitimately infer that the accused Sheikh Sirajul Haque alias Siraj Master being a potential member of Razakar Bahini committed the offences of genocide and crimes against Humanity as listed in charge nos.01-05 and accused Khan Akram Hossain also being a potential member of Razakar Bahini committed the offence of crimes against Humanity as listed in charge no.07.

275. Section 4(1) of the Act of 1973 refers to Joint Criminal Enterprise [JCE] that when any crime as specified in section 3(2) 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. In the case in hand, in dealing with the respective charges we have found that accused Sheikh Sirajul Haque alias Siraj Master and Khan Akram Hossain himself participated and contributed along with their accomplices Razakars in the commission of crimes against Humanity and genocide [as listed in the respective charges] and as such they also held criminally liable under section 4(1) of the Act of 1973.

Verdict on conviction

53. For the reasons set out in the judgment and having considered all the evidence and arguments advanced by both the parties, this Tribunal unanimously finds accused Sheikh Sirajul Haque alias Siraj Master and Khan Akram Hossain guilty and not guilty in the following charges framed against them.

54. **Charge No.1:** The accused Sheikh Sirajul Haque alias Siraj Master is found **GUILTY** of the offences of **genocide** and **other inhumane acts** [plundering and arson] as crimes against Humanity as specified in section

3(2)(a)(c)(g) and (h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

55. **Charge No.2:** The accused Sheikh Sirajul Haque alias Siraj Master is found **GUILTY** of the offences of **genocide** as specified in section 3(2)(c)(g) and (h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

56. **Charge no.3:** The accused Sheikh Sirajul Haque alias Siraj Master is found **GUILTY** of the offences of murder, abduction, confinement and torture as **crimes against Humanity** as specified in section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

57. **Charge no.4:** The accused Sheikh Sirajul Haque alias Siraj Master is found **GUILTY** of the offences of murder, abduction, confinement, torture and other inhumane acts as **crimes against Humanity** as specified in section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

58. **Charge no.5:** The accused Sheikh Sirajul Haque alias Siraj Master is found **GUILTY** of the offences of murder, abduction and other inhumane acts as **crimes against Humanity** as specified in section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

59. The accused Khan Akram Hossain is found **NOT GUILTY** of the offences of murder, abduction and other inhumane acts as crimes against Humanity as specified in section 3(2)(a)(g) and (h) of the Act of 1973 and thus he be acquitted of the said charge no.5.

60. **Charge no.6:** The accused Sheikh Sirajul Haque alias Siraj Master and Khan Akram Hossain are found **NOT GUILTY** of the offences of murder and abduction as as crimes against Humanity as specified in section

3(2)(a)(g) and (h) of the Act of 1973 and thus they be acquitted of the said charge.

61. **Charge no.7:** The accused Khan Akram Hossain is found **GUILTY** of the offences of murder and abduction as crimes against Humanity as specified in section 3(2)(a)(g) and (h) read with section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Verdict on sentence

62. Mr. Syed Haider Ali, the learned prosecutor along with Mr. Syed Saydul Haque has submitted that accused Sheikh Sirajul Haque alias Siraj Master and Khan Akram Hossain should face the highest sentence, being a sentence of death, as they are proved to have participated in the commission of barbaric criminal acts constituting the offences of genocide and crimes against Humanity. The intrinsic gravity and extent and pattern of criminal acts constituting the offences of genocide and crimes against Humanity deserve to be considered as an 'aggravating factor' in awarding the highest sentence. He has also submitted that only such sentence would be just and appropriate to punish, deter those crimes at a level that corresponds to their overall magnitude and reflect the extent of the suffering inflicted upon the million of victims.

63. Per contra, Mr. Mohammad Abul Hasan, the learned State defence counsel for accused Sheikh Sirajul Haque alias Siraj Master and Mr. M. Sarwar Hossain, the learned defence counsel for accused Khan Akram Hossain have sought for acquittal of the accused persons as the prosecution has failed to prove their culpability with any of the event of atrocities.

64. As a cursory review of the history of punishment reveals that the forms of punishments reflect norms and values and aspiration of a particular society at a given time. Distressed victims may legitimately insist appropriate and highest sentence while the defence may demand acquittal, in a criminal trial. But either of such demands is never considered as a catalyst in

deciding the sentence to be inflicted upon the person found guilty of a criminal charge, in a court of law. Undeniably, the punishment must reflect both the calls for justice from the persons who have directly or indirectly been victims and sufferers of the crimes, as well as respond to the call from the nation as a whole to end impunity for massive human rights violations and crimes committed during the War of Liberation in 1971.

65. We have taken due notice of the intrinsic magnitude of the offences of genocide and crimes against Humanity which are predominantly shocking to the conscience of mankind. We have also carefully considered the mode of participations of the accused persons to the commission of crimes proved beyond reasonable doubt and proportionate to the gravity of offences.

66. We have already found in our foregoing discussions that accused Sheikh Sirajul Haque alias Siraj Master is guilty of the offences mentioned in 05 [five] charges being charge nos.01,02,03,04 and 05 in the commission of those offences as specified in section 3(2) of the Act of 1973. The accused Khan Akram Hossain is guilty of the offences mentioned in charge no.07 in the commission of those offences as specified in section 3(2) of the Act of 1973.

67. On perusal of the evidence as discussed earlier it is found in charge no.01 that on 13 May, 1971 in the after noon accused Sheikh Sirajul Haque alias Siraj Master along with his other accomplice Razakars having attacked Ranjitpur village under Bagerhat Sadar Police Station plundered many houses of that village and then set them on fire, and they also killed about 40/50 Hindu religious people of that village with specific intent to destroy, in whole or in part, the Hindu religious group and thus, the said accused substantially participated, abetted and facilitated the actual commission of offences of genocide and other inhumane acts [plundering and arson] as crimes against Humanity.

68. As regards crimes narrated in charge no.02, it has been proved beyond reasonable doubt that on 21 May, 1971 in the afternoon accused Sheikh Sirajul Haque alias Siraj Master along with his other accomplice Razakars having gone to Dakra Kali Mandir [temple] areas under Rampal Police Station killed about 600/700 Hindu religious people, who had assembled there in order to go to India, with specific intent to destroy, in whole or in part, the Hindu religious group and thus the said accused substantially participated, abetted and facilitated the actual commission of offences of genocide.

69. It appears from charge no.03 that on 18 June, 1971 at about 10.00 A.M. under the leadership of accused Sheikh Sirajul Haque alias Siraj Master 30/ 35 armed Razakars and 20/ 25 Pakistani army men having attacked the villages Beshorgati, Kandpara and Kandapara bazar abducted 20[twenty] people therefrom and took them to Kandapara bazar and confined them there. Thereafter, said accused and his accomplices having tortured killed 19[nineteen] civilian of them and the rest Sheikh Sultan Ali luckily survived. Thus, the said accused substantially participated, abetted and facilitated the actual commission of the offences of murder, abduction, confinement and torture as crimes against Humanity.

70. It is found in charge no.04 that on 14 October, 1971 at about 10.00 A.M. under the leadership of accused Sheikh Sirajul Haque alias Siraj Master along with a group of 100/150 armed Razakars attacked Chulkathi bazar, Chulkathi, Ghanoshempur and other neighbouring places and plundered about 42 houses and set them on fire. Thereafter, the said accused and his accomplices having abducted 07[seven] persons from those villages took them to Chulkathi bazar and confined them there and then killed all of them after having tortured. Thus, the accused Sheikh Sirajul Haque alias Siraj Master substantially abetted, contributed and facilitated

the actual commission of murder, abduction, confinement, torture and other inhumane acts as crimes against Humanity.

71. As regards crimes narrated in charge no.05 are that on 5 November, 1971 at about 3.00 P.M accused Sheikh Sirajul Haque alias Siraj Master along with two other accused persons and 50/ 60 Razakars having attacked surrounding areas of Shakhari Kathi Bazar under Kachua Police Station apprehended 40[fourty] Hindu religious people and 2[two] supporters of the Liberation War therefrom and thereafter all of them were killed by the accused person and his accomplices by firing shots and stabbing with bayonets. Thus, accused Sheikh Sirajul Haque alias Siraj Master substantially abetted, contributed and facilitated the commission of the offences of murder, abduction and other inhumane acts as crimes against Humanity.

72. All the crimes mentioned in the above five charges [charge nos.01,02,03,04 and 05] relating to genocide and crimes against Humanity were massive human rights violations committed during the War of Liberation in 1971. The fierceness of the events of genocide and crimes against Humanity were extremely detrimental to basic humanness. It deserves to be evaluated as '**crimes of serious gravity**' intending to demean the human civilization. Designed plan and pattern of such heinous crimes inescapably aggravate the magnitude of the criminal acts and liability of accused Sheikh Sirajul Haque alias Siraj Master as well.

73. We have weighed up the gravity of offences proportionately which had been committed by accused Sheikh Sirajul Haque alias Siraj Master during the War of Liberation of Bangladesh in 1971 as discussed earlier. All the crimes, particularly listed in charge nos.01,02,03,04 and 05 relating to genocide and crimes against Humanity were worst and barbarous types of crimes and are particularly shocking to the conscience of mankind. It is well

proved that accused Sheikh Sirajul Haque alias Siraj Master had direct complicity and substantially participated, abetted, contributed and facilitated commission of such barbarous types of crimes and as such no punishment other than death will be equal to the said horrendous crimes for which the said accused has been found guilty beyond reasonable doubt in the above mentioned five charges. It may be mentioned here that the said accused expressed no repentance for his such conduct at any stage, and as such, we do not find any mitigating factors to award lesser sentence to the said accused other than death.

74. Considering all the factors and circumstances as mentioned above we are of agreed view that justice would be met if for the crimes as listed in charge nos.01,02,03,04 and 05 accused Sheikh Sirajul Haque alias Siraj Master who has been found guilty beyond reasonable doubt is sentenced to death for each of the said five charges under section 20(2) of the Act of 1973.

75. It is pertinent to mention here that this Tribunal has already held in ICT-BD Case No.02 of 2014 [The Chief Prosecutor Vs. Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali] that in the International Crimes (Tribunals) Act, 1973 there is no specific provision relating to the mode of execution of death sentences. But section 368 of the Code of Criminal Procedure provides that when any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead. Section 34 A of the Special Powers Act, 1974 also provides the provision relating to the mode of execution of death sentences. As per said provision when a person is sentenced to death under the said Act, the sentence may be executed by hanging him by the neck or by shooting him till he is dead. So, it appears that in our jurisdiction a death sentence may be executed either by hanging the accused by the neck or by shooting him, till he is dead.

76. However, we are of the further view that considering the proportionate to the gravity of the offences, accused Khan Akram Hossain deserves **'imprisonment for life till his natural death'** for charge no.07.

77. Accordingly, we do hereby render the following ORDER ON SENTENCE.

Hence, it is

ORDERED

That **accused Sheikh Sirajul Haque alias Siraj Master**, son of late Harejudding Sheikh and late Saleha Begum of village-Gotapara, at present village-Mirzapur, Police Station-Bagerhat Sadar, District-Bagerhat and of village Bhowaler Para, Ward No.8, Badda Union, Satarkul Road, Police Station-Badda, D.M.P Dhaka is found guilty of the offences of **'genocide'** and **'crimes against Humanity'** enumerated in section 3(2) (a)(c)(g) and (h) of the International Crimes (Tribunals) Act, 1973 as listed in charge no.01, the offence of **'genocide'** enumerated in section 3(2)(c)(g) and (h) of the said Act as listed in charge no.02, and the offences of **'crimes against Humanity'** enumerated in section 3(2)(a)(g) and (h) of the said Act as listed in charge nos.03, 04 and 05 and he be convicted accordingly **and sentenced thereunder to death for each of the said five charges** and the said sentences of death be executed by hanging said accused by the neck till he is dead or by shooting him till he is dead, as decided by the government, under section 20(2) of the said Act.

However, as and when any one of the five sentences to death will be executed, the other sentences to death would naturally get merged into the sentence to death first executed.

The accused Khan Akram Hossain, son of late Md. Joynal Abedin Khan and Zulekha Begum of village-Daibaggahati, Police Station-Morelganj, previously of village Jashordi, Police Station-Kachua, District-Bagerhat is found guilty of the offences of '**crimes against Humanity**' enumerated in section 3(2)(a)(g) and (h) read with section 4(1) of International Crimes (Tribunals) Act, 1973 as listed in charge no.07, and he be convicted accordingly **and sentenced thereunder to suffer imprisonment for life till his natural death** under section 20(2) of the said Act.

The accused Khan Akram Hossain is found not guilty of the offences of '**crimes against Humanity**' enumerated in section 3(2)(a)(g) and (h) of the International Crimes (Tribunals) Act, 1973 as listed in charge no.05 and he be acquitted of the said charge.

The accused Sheikh Sirajul Haque alias Siraj Master and Khan Akram Hossain are found not guilty of the offences of '**crimes against Humanity**' enumerated in section 3(2)(a)(g) and (h) of the International Crimes (Tribunals) Act, 1973 as listed in charge no.06 and they be acquitted of the said charge.

The sentences of the death and imprisonment for life till natural death awarded as mentioned 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.

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 be sent to the prison with conviction warrants accordingly.

Let a certified copy of this judgment be provided to the prosecution and the convicts free of cost, at once.

Let a copy of this judgment be transmitted to the District Magistrate, Dhaka for information and necessary action.

(M. Enayetur Rahim, Chairman)

(Jahangir Hossain, Member)

(Anwarul Haque, Member)