

International Crimes Tribunal-1

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

Old High Court Building, Dhaka, Bangladesh.

ICT-BD [ICT-1] Case No.05 of 2018

Present:

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member

The Chief Prosecutor

Vs.

Md. Abdus Sattar @ Tipu @ Tipu Sultan

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Zead Al Malum, Prosecutor

Mr. Hrikesh Saha, Prosecutor

Mr. Mokhlesur Rahman Badal, Prosecutor

Mr. Zahid Imam, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

Ms. Sabina Yesmin, Prosecutor

Ms. Rezia Sultana Begum, Prosecutor

.

For the Accused: State defence Counsel

Mr. Gazi M.H. Tamim, Advocate, Bangladesh Supreme Court

Date of delivery of Judgment: 11 December, 2019

JUDGMENT

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

I. Introductory Words

1. The case in which today we are moving to render our verdict involves as many as 02[two] charges arraigning the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan for abetting, facilitating, participating and contributing the commission of offences of crimes against humanity. The trial took place in presence of the accused.

2. On closure of summing up of case by both sides, the Tribunal sent the accused to prison with direction to produce him on the date to be fixed for announcement of verdict. Pursuant to issuance of production warrant the prison authority has produced the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan today before this Tribunal [ICT-1].

3. The charges framed against the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan relate to the events allegedly perpetrated around the localities under police station-Boalia of Rajshahi town of District Rajshahi. The barbaric atrocities were allegedly committed in 1971, during the war of liberation, directing civilian population, aiming to terrorize and wipe out the pro-liberation Bengali civilians, in furtherance

of policy and plan of resisting the nation's aspiration of achieving independence.

4. We prefer to recall the due assistance provided by both the prosecution and the defence, in course of trial to go with the proceeding in accordance with law, securing recognised rights of both sides. We endorse the stamp of our appreciation to their commendable performance and assistance.

5. Now, this Judgement is being rendered by this Tribunal [ICT-1] for the prosecution of accused Md. Abdus Sattar @ Tipu @ Tipu Sultan allegedly responsible for the serious offences, known as universal crimes as enumerated in section 3(2) of The International Crimes (Tribunals) Act, 1973, committed in violation of international humanitarian law in the territory of Bangladesh in 1971. Having jurisdiction under section 10(1) (j), section 20(1) and section 20(2) of the International Crimes (Tribunals) Act, 1973[Act No.XIX of 1973] the 'Tribunal' known as 'International Crimes Tribunal-1' [ICT-1] hereby renders and announces the following **unanimous** judgment.

II. Formation and Jurisdiction of the Tribunal

6. The Act No. XIX enacted in 1973 in our sovereign parliament is meant to prosecute crimes against humanity, genocide and system crimes committed in violation of customary international law is *ex-post facto* legislation. It is fairly permitted. Tribunal notes that the *ad hoc* tribunals

namely ICTY, ICTR and SCSL the judicial bodies backed by the UN have been constituted under their respective retrospective Statutes. Only the ICC is founded on prospective Statute.

7. Bangladesh Government is a signatory to and has ratified the ICCPR, along with its Optional Protocol. It is necessary to state that the provisions of the Act of 1973 [(International Crimes (Tribunals) Act, 1973] and the Rules framed thereunder ensure adequate compatibility with the rights of the accused as enshrined under Article 14 of the ICCPR. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of universally recognized safeguards to be provided to the person accused of offences enumerated in the Act of 1973.

8. The Act of 1973 has been legislated with the object of prosecuting, trying and punishing not only the 'armed forces' but also the perpetrators who belonged to 'auxiliary forces', or an 'individual' or a 'group of individuals' who committed the offence or 'organisation' [as amended with effect from 14.7.2009] as enumerated in section 3(2) of the Act of 1973. Tribunal notes that nowhere the Act says that without prosecuting the 'armed forces' (Pakistani) the person or persons having any other capacity specified in section 3(1) of the Act of 1973 cannot be prosecuted. Rather, it is manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be brought to justice under the Act.

9. The Tribunal-1 set up under the Act of 1973 is absolutely a domestic judicial forum but meant to prosecute and try crimes known as ‘universal crimes’ committed in violation of customary international law during the war of liberation in 1971 in the territory of Bangladesh. Tribunal possesses jurisdiction over crimes such as Crimes against Humanity, Crimes against Peace, Genocide, and War Crimes which are known as internationally recognised crimes. Thus, we reiterate that merely for the reason that the Tribunal is preceded by the word “international” it will be mistaken to assume that the Tribunal must be treated as an ‘International’ judicial institution.

III. Brief Historical Background

10. The Bengali nation experienced diabolical atrocious and dreadful crimes committed during the nine-month-long war of liberation in 1971. The nation eventually in exchange of myriad sacrifice got its dear motherland Bangladesh liberated. Some three million people were killed, nearly quarter million women were raped and over 10 million people were forced to take refuge in India to escape brutal persecution at home, during the nine-month battle and struggle of Bangalee nation.

11. The nation felt pained for decades as the perpetrators of the crimes could not be brought to book, and this indeed left a deep scratch on the country's political awareness and the whole nation. History says that the rise of militancy, and destroying the nation's Constitution by the military usurpers, after the brutal assassination of the Father of the Nation

Bangabandhu Sheikh Mujibur Rahman and his family inmates on 15th August, 1975 started endorsing the culture of impunity.

12. In portraying a brief backdrop of the war of liberation of Bengali nation under gallant leadership of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman we may trace back to the birth of Pakistan. In August, 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

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

14. The history goes on to reveal that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. But defying the democratic norms Pakistan Government did not mind to value this overwhelming majority. As a result, movement started in the territory of this part [now Bangladesh] of Pakistan and Bangabandhu Sheikh

Mujibur Rahman in his gallant historic speech of 7th March, 1971, called on the Bangalee nation to start struggle for independence if people's verdict is not respected.

15. In the early hour of 26th March, following the onslaught of "Operation Search Light" by the Pakistani Military on 25th March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities. The massacres started with planned and organized atrocity called "Operation Searchlight," which was designed to disarm and liquidate Bengali policemen, soldiers and military officers, to arrest and kill nationalist Bengali politicians, soldiers and military officers, to arrest and kill and round up professionals, intellectuals, and students (**Siddiq 1997 and Safiullah 1989**).

16. Afterwards, Pakistani occupation army in concert with their local collaborator militias, Razakar, Al- Badar and the key pro-Pakistan political organisation Jamat E Islami (JEI) continued designed atrocious actions intending to stamp out the Bangalee nation's liberation movement and to mash the national feelings and aspirations of the Bangalee nation, by committing unspeakable mayhem throughout the territory of Bangladesh.

17. The nation participated in the call to make the motherland Bangladesh free excepting a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat E Islami [JEI] and its student

wing Islami Chatra Sangha [ICS] who actively collaborated with the Pakistani occupation army to aggressively resist the aspiration of the nation. To further such policy and plan most of them committed and facilitated the commission of appalling atrocities in violation of customary international law in the territory of Bangladesh, in 1971.

18, History depicts that in 1971 the Pakistan government and the military formed number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams, the Peace Committee etc., essentially to act as a squad with the Pakistani occupation army in identifying and eliminating all those who were perceived to be pro-liberation, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and Bangalee intellectuals and unarmed civilian population of Bangladesh. Split depiction of materialization of such policy and purpose has been mirrored in arraignments brought in the case in hand.

19. Finally, on 16 December 1971 the Bengali nation achieved its long cherished independence and independent motherland—**Bangladesh**, in exchange of mammoth sacrifice and untold trauma. Indubitably the way to self determination for the Bangalee nation was arduous, swabbed with enormous blood, strive and sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and for achieving liberty of motherland.

IV. Brief account of the Accused

20. It is essentially needed to paint an account of the accused that he had in 1971 which is indispensably chained to the arraignments brought. The brief account of the accused as has been described in the formal charge is as below:

Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan

Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan [66] the son of late Dr. Md. Abul Hossain and late Fatema Begum of Holding no. 379 Raninagar under police station-Boalia [under Rajshahi Metropolitan Police] of District-Rajshahi was born on 21.06.1951. He passed HSC in 1969 and B.A [Hons.] in 1979 from Rajshahi University and finally obtained MA degree in 1980 from Rajshahi University. Since prior to 1971 he was an active follower of Islami Chatra Sangha [ICS], the student wing of Jamat E Islami[JEI]. In 1971 he was an active member of Razakar Bahini. In May, 1972 he was arrested under the Collaborators Order, 1972 but however got release on 10.08.1974. He was so arrested not in relation to any of arraignments brought now under the International Crimes (Tribunals) Act, 1973.

V. Procedural History

Initiation of Investigation

21. The Investigation Agency of the Tribunal constituted under the Act of 1973 started investigation pursuant to complaint register's

serial no. 82 dated 02.05.2017, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated in 1971 during the war of liberation around the localities of Rajshahi town under Police Station-Boalia of District-Rajshahi.

Pre-Trial Detention

22. During investigation, on prayer of the IO through the Chief Prosecutor the Tribunal on 14.05.2017 issued production warrant against the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan as he was already detained on 09.05.2017 in connection with Motihar Police station of Rajshahi Metropolitan Police Case no.37 dated 19.01.2017 under sections 3 and 6 of The Explosive Substance Act, 1908. Accordingly the accused was produced before the Tribunal on 10.07.2017 when he was sent to prison, showing him arrested in connection with this case.

Submission of Investigation report

23. On 27.03.2018, the Investigation Officer [IO] submitted report together with documents and materials collected and statement of witnesses before the Chief Prosecutor, wrapping up of investigation against the suspected accused Md. Abdus Sattar @ Tipu @ Tipu Sultan.

Submission of Formal Charge

24. The Chief Prosecutor, on the basis of the investigation report and documents submitted therewith by the Investigation Agency, after completion of investigation, placed the 'Formal Charge' in the form of petition on 29.05.2018 under section 9(1) of the Act of 1973 before this Tribunal alleging that the accused was engaged in committing the offences as enumerated in section 3(2) of the Act of 1973 during the period of War of Liberation in 1971 around the localities of Rajshahi town under Police Station-Boalia [now under Rajshahi Metropolitan Police] of District-Rajshahi, recommending his prosecution.

Taking Cognizance of Offences

25. On 29.05.2018, the Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) of the Act of 1973, by application its judicial mind to the Formal Charge, materials and documents submitted therewith.

Charge Framing on Hearing Both Sides

26. On hearing charge framing matter on 17.07.2018 in presence of the accused detained in prison date 08.08.2018 was fixed for rendering decision. In course of hearing on charge framing matter both sides placed their respective submission, drawing attention to the formal charge and documents submitted therewith.

27. In course of hearing Mr. Gazi M.H Tamim the learned state defence counsel for the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan advanced his respective submission by drawing attention to the grounds agitated in the application seeking discharge.

Commencement of Trial by Framing Charges

28. Tribunal rendered its order on charge framing on 08.08.2018. Two charges framed were read over and explained to the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan present on dock when he pleaded not guilty and claimed to be tried. Thus, trial commenced and Tribunal directed the prosecution to provide copy of documents and materials it relies upon to the defence counsel. Defence was also asked to submit list of defence witnesses and documents, if any, as required under section 9(5) of the Act on or before the next date fixed.

Adducing and Examining Prosecution Witnesses

29. In course of trial prosecution adduced and examined in all 15 witnesses including the Investigation Officer [IO]. Defence did not prefer to submit any document or list of defence witness, as asked.

Summing up of the case

30. On closure of examining witnesses Prosecution placed its summing up first on 27.08.2019 and it got concluded on 18.09.2019. Summing up on part of defence took place on

18.09.2019, 09.10.2019 and 17.10.2019. On wrapping up of summing up Tribunal by its order dated 17.10.2019 kept the case in CAV i.e. for pronouncement and delivery of judgment.

VI. Summing up of Case

Summing up by Prosecution

31. Mr. Mokhlesur Rahman Badal the learned prosecutor started placing summing up by portraying the profile of the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan that he had in 1971. Citing testimony of prosecution witnesses and the documents proved and marked as exhibits the learned prosecutor submitted that being imbued by the ideology of Jamat E Islami [JEI] the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan not only opted to take stance against the war of liberation but also knowingly participated, by his conscious and culpable act and conduct forming part of systematic attack, in committing heinous offences arraigned around the localities under police station-Boalia of Rajshahi town, in exercise of his membership in locally formed Razakr Bahini.

32. It has been submitted too that the accused in exercise of his affiliation with the auxiliary force used to maintain close nexus with the Pakistani occupation army stationed at Shaheed Shamsuzzoha Hall, Rajshahi University and actively and culpably participated in committing the offences arraigned. On legal issues it

has been argued on part of prosecution that there has been no bar in prosecuting the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan even as an individual under the Act of 1973.

33. Mr. **Mokhlesur Rahman Badal**, the learned prosecutor, in advancing argument on charges of which the accused has been indicted cited evidence presented. It has been asserted that the prosecution has been able to prove the arraignments brought against the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan. Facts and circumstances divulged from consistently corroborative evidence of some direct witnesses to the attack indisputably prove accused's participation in accomplishing the crimes in question. Accused sharing intent and common purpose of the criminal enterprise and knowing the consequence consciously contributed and facilitated to the commission of the offences of which he has been charged with.

34. Drawing attention particularly to the ocular evidence of some direct witnesses the learned prosecutor argued that defence could not extricate the event of attack that resulted in brutal killing of numerous pro-liberation civilians, taking them at the army camp set up at Zoha Hall of Rajshahi University, on forcible capture. It simply denied accused's contribution to and involvement with the events claiming too that he was nota Razakar. But defence could not bring anything by cross-examining the P.W.s that may term them to be unreliable and taint their testimony, the learned

prosecutor added. However, we consider it appropriate to address what has been categorically argued on each charge when adjudication of the same shall take place.

Summing up by Defence

35. Conversely, **Mr. Gazi M.H. Tamim**, the learned state defence counsel argued that it could not be proved that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan belonged to Razakar Bahini, by any reliable document. ; that prosecution failed to prove by any documentary evidence that army camp was set up at Shaheed Shamsuzzoha Hall, Rajshahi University; that no case was initiated against the accused over the alleged events, after independence although he had been in prison for more than two years; that recommendation of prosecuting the accused is based on flawed investigation and that delayed prosecution under the Act of 1973 naturally creates doubt as to accused's involvement and complicity with the alleged events.

36. The learned state defence counsel also agitated that testimony of alleged direct witnesses is inconsistent and not credible. None of witnesses had occasion of seeing the alleged ending phase of attacks arraigned. Without bringing the actual perpetrator[s] to justice the accused cannot be held liable for the alleged killings, even if it is accepted to be true that the accused was present at the crime scenes when first phase of alleged attacks was carried out.

Prosecution failed to prove the accusation brought by reliable evidence and thus he deserves acquittal, the learned state defence counsel added. However, Tribunal thinks it proper that detail argument on factual aspects related to the events arraigned may be well addressed at the time of adjudicating the charges independently.

Rebuttal on part of prosecution

37. Mr. Mokhlesur Rahman Badal the learned prosecutor in reply on some legal aspects submits that delay cannot rest any clog in prosecuting an individual for criminal offences prosecuting him. It is now well settled. It has been further submitted that hearsay evidence is not inadmissible per se if it gets corroboration from other evidence and that mere inconsistency on a particular matter does not diminish one's entire testimony.

38. The learned prosecutor also submits that it is not required to show that the accused himself actually perpetrated the principal crime in question. It is to be seen whether the accused had acted being part of the criminal enterprise, to further common purpose and according to provision contemplated in section 4(1) of the Act of 1973 accused incurred equal liability for all the offences proved. However, Tribunal considers that all these aspects agitated on part

of the prosecution may be well addressed in the relevant segment of the judgment.

VII. Applicable laws

39. In dealing with the proceeding under the Act of 1973 some statutory provisions must be kept in mind as the offences to be adjudicated happened not in the situation of normalcy. Proceedings before the Tribunal are guided by a special legislation [International Crimes (Tribunals) Act, 1973] enacted to prosecute, try and punish the offender[s] for the offences enumerated therein which are known as ‘international crimes’, committed in violation of international humanitarian law.

40. Tribunal reiterates that the provisions as contemplated in the International Crimes (Tribunals) Act 1973 and the Rules of Procedure 2010 formulated by the Tribunal [ICT-1] under the powers given in section 22 of the Act are applicable to the proceedings before the Tribunal.

41. The defence exercised its liberty to cross-examine prosecution witness on his credibility and to take contradiction of the evidence given by him [Rule 53(ii)]. Further, it is established that defence shall have right to examine witnesses as permitted in section 10(1) (f) of the Act of 1973.

42. Since the Act of 1973 deals with the prosecution and trial of the person[s] responsible for the offences of crimes against humanity, committed in violation of customary international law, the Tribunal however is not precluded from seeking guidance from international reference and relevant settled jurisprudence, if needed to resolve legal issues or crucial matters substantially related to adjudication of the event constituting the offences alleged and mode of liability of the accused person[s] therewith.

VIII. General Considerations Regarding the Evaluation of Evidence in a case involving the offences of Crimes against Humanity, genocide enumerated in the Act of 1973

43. The proceedings before the Tribunal are guided by the International Crimes (Tribunals) Act, 1973 and the Rules of Procedure 2010 formulated by the Tribunal under the powers given in section 22 of the Act.

44. The Act of 1973 prohibits applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872, in dealing with the cases under the Act of 1973. The Tribunal is however authorized to take judicial notice of fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act].

45. The Tribunal may admit any evidence which it deems to have probative value [Section 19(1) of the Act]. The Tribunal shall have discretion to consider hearsay evidence, even anonymous, by weighing its probative value [Rule 56(2)].

46. Cross-examination is significant in confronting evidence. The defence shall have liberty to cross-examine prosecution witness on his credibility and to take contradiction of the evidence given by him [Rule 53(ii)].

47. The Rules of Procedure [ROP-1] ensures the universally recognized norm that the accused shall be presumed innocent until he is proved guilty. Thus, the prosecution bears the burden of proving the guilt of the accused beyond reasonable doubt. In resolving whether the prosecution has been able to do so with respect to each count of indictment, the Tribunal requires to cautiously consider and appraise whether there is any reasonable interpretation of the evidence admitted other than the guilt of the accused.

48. Circumstantial evidence is considered relevant to facts which shall seem to be chained to an event arraigned on the basis of which a fact in issue may be reasonably inferred. The Tribunal thus may rely even upon circumstantial evidence in order to resolve whether

or not a certain conclusion could be drawn, on particular fact. However, such a conclusion must be established beyond reasonable doubt.

49. The Tribunal may receive in evidence statement of witness recorded by Magistrate or Investigation Officer, if any only when the witness subsequently dies or whose attendance cannot be secured without an amount of delay or expense which the Tribunal considers unreasonable [Section 19(2) of the Act], at the time of trial. But in the case in hand, prosecution has not come up with any such prayer seeking necessary order to receive statement of any witness in evidence.

50. Atrocities as arraigned in the charges framed were committed in wartime situation. Thus, the Tribunal notes that in adjudicating culpability of the person arraigned for alleged criminal acts, context and situations prevailing at the relevant time i.e. during the period of war of liberation in 1971[March 25 to December 16 1971] is to be kept in consideration.

IX. Razakar Bahini: It's Objective in 1971 and whether the accused belonged to the locally formed Razakar Bahini

51. Prosecution asserts that accused Md. Abdus Sattar @ Tipu @ Tipu Sultan had affiliation not only with Islami Chatra Sangha

[ICS], the student wing of Jamat E Islami [JEI] , a potential pro-Pakistan political party but he was an active and notorious member of Razakar Bahini formed in the locality of Rajshahi town.

52. **Mr. Mokhlesur Rahman Badal**, the learned prosecutor submitted that the relevant documentary evidence collected during investigation together with oral testimony of witnesses, acquainted with the accused since prior to the events happened provides valid indication as to his potential affiliation with the locally formed Razakar Bahini. Such affiliation was intended to collaborate with the Pakistani occupation army in conducting attack directing pro-liberation civilian population.

53. The learned prosecutor also submitted that admittedly after independence the accused had been in prison for more than two years and then got release. Presumably, he was so detained under the Collaborators Order 1972, for committing offences during the war of liberation although no document could be collected in respect of which criminal acts the accused was so detained in prison or he got acquittal, on trial.

54. On contrary, **Mr. Gazi M.H. Tamim** the learned state defence counsel asserts that accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was not at all involved in any offence and thus he got

release from prison, after independence. This fact also proves his non-affiliation in locally formed Razakar Bahini. Mere oral testimony is not sufficient to connect the accused with Razakar Bahini; that the alleged documents relied upon by the prosecution showing accused's affiliation in Razakar Bahini are not authoritative and the persons engaged in preparing these documents have not been cited as witnesses by the Investigation Officer [IO], the learned state defence counsel added.

55. We are not with the submission made on part of the defence. First, in absence of anything contrary admitted fact of being detained in prison, after independence it may safely be presumed that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan had been detained in prison in relation with prosecution under the Collaborators Order 1972. However, there has been no document or proof to show that the accused got 'acquittal' on trial under the said Order of 1972.

56. Second, mere prosecution under the Order of 1972 does not preclude prosecuting the accused under the Act of 1973. Because the offences scheduled in the Order of 1972 are not the 'same offences' for which now the accused has been indicted. Third, the admitted fact of being detained in prison, after independence by

itself adds assurance as to the culpable stance that the accused took by his act and conduct in 1971 against the war of liberation.

57. Now, we are to resolve whether the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was an active member of locally formed Razakar Bahini, taking the above into account together with documentary and oral evidence presented in this regard.

58. It is now well settled history that formation of Razakar Bahini, a *para militia* auxiliary force was created aiming to perpetrate “the cleansing process” of pro-liberation civilians. Vengeful Pakistani occupation army continued carrying its mayhem in the territory of Bangladesh in 1971 on having active participation and collaboration of people affiliated in local Razakar Bahini, Al-Badar, Al-shams. The people affiliated in those *para militia* forces chiefly associated with pro-Pakistan political party like JEI, Nezam E Islami and student wing of JEI.

59. In the case in hand, accused Md. Abdus Sattar @ Tipu @ Tipu Sultan allegedly carried out prohibited activities constituting the offences with which he has been arraigned and he was affiliated in Islami Chatra Sangha, the student wing of JEI and got enrolled in Razakar Bahini formed in Rajshahi town.

60. We reiterate that the Act of 1973 permits to prosecute and try even an individual, for the offences enumerated in section 3(2) of the Act. However, let us see how far the prosecution has been able to prove the fact of accused's affiliation in Razakar Bahini.

61. Long couple of decades after the alleged atrocious events happened it was a challenging task indeed to collect documents to substantiate this fact -- the fact of accused's affiliation in Razakar Bahini. However, prosecution relies upon a secret report communicated to the Ministry of Home Affairs by the office of the Prime Minister under signature of a Director. It has been marked as **Exhibit-I**.

62. Another report dated 06.09.2017 **Exhibit-II** communicated by the City Special Branch, RMP, Rajshahi is also relied upon by the prosecution in respect of the stance the accused had and his affiliation in Razakar Bahini in 1971.

63. Questioning authoritativeness of those two reports the learned state defence counsel submits that the same do not assure and prove accused's affiliation in Razakar Bahini; that these two reports do not depict the source of information made therein and that the persons under whose signature those reports were communicated have not been cited as witnesses. Defence did not have opportunity

to cross-examine them particularly in relation to source of information made in those reports and that the other persons named in one report as Razakars have not been brought to justice. Thus, the reports have been procured with intention to implicate the accused with the alleged events, learned defence counsel added.

64. On contrary, the learned prosecutor submits that one report is based on secret information and thus the source thereof is not subject to disclosure. Another report states affiliation of seven including the accused in Razakar Bahini formed in Rajshahi town. The five other persons named therein as Razakar are now dead and one could not be traced, the report states and thus naturally they could not be prosecuted.

65. The learned prosecutor further asserts that the core information contained in these two reports gets corroboration from ocular testimony; that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was a resident of known locality of Rajshahi town and that the witnesses had fair opportunity of knowing the accused before hand and the stance and status he had in Razakar Bahini in 1971.

66. We find substance in what has been submitted by the prosecution. It transpires that the report **Exhibit-I** based on secret information states that –

01971 mvtj gnvb faxbZv hyKvtj ivRkvnx
 vekte`vj q` cvK Avig© K`vtuú ZrKvj xb
 cvKevnbx KZR. evsjvt`kxt`i nZ`v I
 gvbeZvefi vax Acivagj-K KgRvU cwi Pmj Z
 nq| G mgq tgv Avāy mivēvi UcyivRvKvi
 I i d Ucy mjZvb(WKvbt knx` igbvi,
 Zvj vBgvi x, _vbr-tevqwj qv , tRj v ivRkvnx)
 Zvt`i Ab`Zg mnthvMx I nZ`vKvtU
 mvlqfivte RvOZ vQvj b| GQvov, gv³hy
 ce@Zx© mgtq vZvb Bmj vgx QvÎ mstNi
 ivRbmvzi mvt_ RvOZ vQvj b|ó

67. The report **Exhibit-I** also shows that Abul Moulavi[now dead] the father of the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was a member of peace committee in 1971. History says that peace committed had acted as a catalyst in forming Razakar Bahini. It may be presumed that the accused too could not keep him distanced from the pro-Pakistan ideology which imbued him to get enrolled in Razakar Bahini.

68. Another report dated 06.09.2017 **Exhibit-II** communicated by the City Special Branch, RMP, Rajshahi also provides information that seven Razakars including the accused had nexus and association with the army camp set up at Shaheed Shamsuzzoha

Hall, Rajshahi University and also with the camps at localities under Boalia police station and Kadirganj.

69. The report **Exhibit-II** also depicts that out of seven Razakars named therein five already died and one Niaz Ahmed could not be traced. Thus, question of prosecuting the rest six Razakars as has been agitated by the defence is devoid of merit and it in no way creates any bar in prosecuting the accused.

70. History says that in 1971, the Pakistani occupation army had no companion in Bangladesh—except a few traitors who took stance against the war of liberation and they belonged to the ideology of pro-Pakistan political parties, e.g. Muslim League, the Convention Muslim League, the Jamaat-E-Islami [JEI] and the Nizam-i-Islami.

71. What was objective of formation of Razakar Bahini, an auxiliary force in 1971? It is now settled history too that the Pakistani occupation army had carried out orchestrated attacks directing civilian population in the territory of Bangladesh in 1971, during the war of liberation. Few Bengali civilians opted to take stance in support of the occupation army and being imbued by its policy and plan got enrolled in auxiliary forces. Such orchestrated attacks would not have been possible to carry out for the Pakistani occupation army without the active assistance, contribution, participation and aid of their local collaborators especially

belonging to Razakar Bahini and Al Badar Bahini. The Razakars accompanying the occupation army in conducting such atrocious activities were from the localities under attack and thus naturally they became known to others of the localities.

72. Razakar force was formed in mid of May 1971 with the aim of resisting the ‘*miscreants*’ and to wipe out the ‘*anti state elements*’ with the aid of army [Source: ‘**The Daily Dainik Pakistan**’, **16 May 1971**; **The Daily Azad**, **17 May, 1971** see also Mahidur Case ICT-2, para 49]]. And Razakar Bahini was recognized by the then East Pakistan Government as an auxiliary force by issuing an Ordinance in August 1971[**The Daily Purbodsh**, **22.08.1971**]

73. The author of the book titled ‘**History of the Liberation War**’, citing **Jagjit Singh Aurora** states an statistics showing the strength of locally formed para militia and other forces intending to provide collaboration with the Pakistani occupation army in 1971--

“During the liberation war in Bangladesh, there were about eighty thousand Pakistani soldiers, twenty five thousand militia, twenty five thousand civilian forces, and fifty thousand Razakars, Al-Badr, and Al-Shams members”

[Source: **Figures from the Fall of Dacca by Jagjit Singh Aurora in the Illustrated Weekly of India, 23 December, 1973**]

74. The untold atrocious resistance on part of thousands of local collaborators belonging to Razakar Bahini, Al-Badar Bahini was intended to impede the nation's valiant journey to freedom and in doing so the occupation army on having assistance and active facilitation from their local collaborators continued accomplishing atrocious activities.

75. It is now an undisputed history that the local collaborators, knowing consequences, actively assisted the Pakistani occupation army in accomplishing their policy and plan of annihilating the pro-liberation Bangalee civilians. The local collaborators truly had acted as traitors. This settled history now needs no further document to prove.

76. In absence of anything contrary the **Exhibit-I and II** fairly prove accused's affiliation in Razakar Bahini formed in Rajshahi town. We do not find any reason to keep these documents aside from consideration. Now, let us eye on the oral testimony presented in this regard.

77. On integrated evaluation of oral testimony of witnesses the residents of the crime localities it transpires that they had rational reason of knowing the accused beforehand. The accused was a

resident of the locality under attack. Naturally, his frequent movement around the locality and his activities made a fair space to the people including the witnesses of knowing the accused and his affiliation in Razakar Bahini which was created to collaborate with the Pakistani occupation army.

78. At this phase, we refrain from resolving the matter of commission of offences alleged and complicity and participation of the accused person therewith. But the testimony of witnesses demonstrates that the accused Md. Abdus Samad @ Tipu @ Tipu Sultan was a Razakar and had close nexus with the Pakistani occupation army stationed at its camp set up at Shamsuzzoha Hall, Rajshahi University.

79. P.W.08 Professor Dr. Muhammad Entazul Huque was a 3rd year student of Honors class in Rajshahi University in 1971. He went on retirement as a Professor of Chemistry, University of Rajshahi in 2015. It stands proved from his testimony that the accused was an active member of Razakar Bahini formed in Rajshahi town.

80. Testimony of P.W.08 demonstrates that in the mid of April 1971 peace committee in Rajshahi town was formed under headship of Muslim League leader Advocate Ayen Uddin [now dead]. The said peace committee next in mid of May 1971 formed

armed Razakar Bahini in Rajshahi town and accused Md. Abdus Sattar @ Tipu @ Tipu Sultan, Mono [now dead] got enrolled in that Razakar Bahini.

81. Testimony of P.W.08 also depicts that the accused had close and culpable nexus with the Pakistani occupation army stationed at Zoha Hall of Rajshahi University. It is fair indicia of accused's affiliation in locally formed Razakar Bahini.

82. The above piece of version made by P.W.08 in respect of formation of Razakar Bahini in Rajshahi town and accused's affiliation therewith could not be controverted. Defence does not seem to have denied it even, in specific manner. Defence simply suggested that the accused was not a Razakar. But P.W.08 denied it blatantly.

83. It appears that in cross-examination, defence suggested P.W.08 that accused Tipu is not the Tipu Razakar implicating whom he testified. Defence is obligated to prove it. But there is nothing before us to establish it in any manner. Be that as it may, narrative made by P.W.08 proves that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was an active and potential associate of the Pakistani occupation army and was engaged in carrying out atrocities.

84. P.W.09 is a resident of Ghoramara under police station-Boalia. In 1971 on 27 March Pakistani occupation army and police came to their house in search of his [P.W.09] father, the then treasurer of Rajshahi Distract Awami League. His father was beaten by them and then they deported to India quitting their home where later on a Razakar camp was set up.

85. The above piece of version does not appear to have been denied even in cross-examination. Thus, it impels that Razakar Bahini was formed in Rajshahi town. In cross-examination of P.W.09, it has been affirmed that the accused could not be seen around the locality till 1975, after independence. Why he could not be seen? We have already found that admittedly the accused had been detained in prison, presumably in relation to prosecution under the Collaborators Order 1972 and this fact adds assurance to accused's membership in Razakar Bahini.

86. P.W.05, a resident of Talaimari also stated that in the month of May 1971, Peace Committee, Razakar Bahini, Al Badr, Al Shams were formed in their locality. His [P.W.05] uncontroverted testimony demonstrates that accused Md. Abdus Sattar @ Tipu@ Tipu Sultan, Mono [now dead], Md. Mujibur Rahman [now dead] and many others joined in Razakar Bahini.

87. In cross-examination, the above pertinent version of P.W.05 has not been denied even. Thus, formation of Razakar Bahini and accused's affiliation therewith stands proved. Accused was a resident of the same locality and as such it was practicable of knowing him and of being acquainted with the activities he carried out, in exercise of his association in Razakar Bahini.

88. In cross-examination in reply to defence question P.W.5 stated that he also knew two brothers of accused who were Samad and Salam. With this it has been rather affirmed that P.W.05 knew the accused and his brothers.

89. Evidence of other witnesses particularly the relatives of victims impels that the accused was their neighbouring resident, nearer to their homes. It may be presumed that in 1971 Rajshahi town was a thinly populated town and the people had natural reason of knowing particularly their neighbouring people and their activities. Thus, testimony of witnesses so far as it relates to accused's status as a member of Razakar Bahini formed in Rajshahi town inspires credence.

90. Oral testimony presented in this regard gets corroboration from the documents **Exhibit-I and Exhibit-II** as discussed above. We do not find any reason whatsoever not to act upon these two

documents which prove indisputably that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan got enrolled in Razakar Bahini, responding to the policy and plan of the Pakistani occupation army and also was affiliated with Islami Chatra Sangha [ICS] the student wing of Jamat E Islami [JEI]

91. In light of reasoned discussion as made above based on documentary evidence and crucial facts unveiled we arrive at decision that in 1971 during the war of liberation the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan enthusiastically and being imbued by the policy and plan of resisting the struggle of liberation of Bengali nation opted to join in locally formed Razakar Bahini and in exercise of such affiliation in an auxiliary force he used to maintain close and culpable nexus with the Pakistani occupation army stationed at Shamsuzzoha Hall, Rajshahi University.

X. The way of adjudicating the charges and the settled jurisprudence

92. The alleged incidents took place more than four decades back, in 1971 and as such memory of direct witness may not naturally act in recounting detail precision .We however need to consider the core of their narrative in rational way. In the case in hand, the evidence presented by the prosecution in support of the alleged arraignments was mainly testimonial.

93. Some of prosecution witnesses happen to be the close relatives of victims who allegedly experienced the facts materially related to dreadful events. They have narrated before the Tribunal the facts they witnessed with trauma they sustained which naturally impact on their testimonies.

94. In search for the truth, Tribunal is to duly weigh value, relevance and credibility of such testimonies and of course in a most dispassionate manner, keeping in mind that the accused is presumed innocent till he is found guilty.

95. Context of war and horrific situation existing in 1971 naturally left little room for the people or civilians to witness all aspects or entire event of attack. Tribunal also kept it in mind that due to the nature of international crimes, their chaotic circumstances, and post-conflict instability, these crimes usually could not be well documented by post-conflict authorities. However, in the case in hand, prosecution depends mainly on testimony made by the witnesses before the Tribunal.

96. It is to be noted too that in particular when the Tribunal acts upon hearsay evidence, it is not bound to apply the technical rules of evidence. Rather, the Tribunal is to determine the probative value of all relevant evidence admitted. Hearsay evidence, in a trial

under the Act of 1973, is not inadmissible *per se*, but it should be considered with caution and if it carries reasonable probative value.

97. Next, the established jurisprudence makes it quite clear that corroboration is not a legal requirement for a finding to be made on factual issue. Tribunal may rely even on a single witness' testimony as proof of a material fact. It is now well settled.

98. However, Onus squarely lies upon the prosecution to prove accused's participation and complicity forming part of attack which resulted in commission of the alleged offences under adjudication.

99. It would be jurisprudentially logical if, in the process of appraisal of evidence, we separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon.

100. We also reiterate that the Tribunal shall not be precluded from borrowing guidance from the jurisprudence evolved for the purpose of arriving at decision as the accused has been indicted for the 'universal crimes' committed in violation of international humanitarian law.

101. Keeping the above settled perspectives and propositions in mind now let us move to adjudicate the charges framed, on rational appraisal of evidence presented by the prosecution.

Adjudication of Charge No.01

[Event no.01 as narrated in page nos.23-25 of the formal charge]

[Offences of abduction, confinement, torture and murder of Babar Mandal, on forcible capture from Gadi no.01 of Shaheb Bazar under police station –Boalia of District-Rajshahi , as crimes against humanity.]

102. Charge: That on 26 September 1971 at about 01:30 P.M a group formed of 15/16 Pakistani occupation army being accompanied by the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan and his 8/10 cohort Razakars forcibly captured Babar Mandal from Gadi no.01 of Shaheb Bazar, now known as zero point and started causing torture to him. The captured victim was then taken away by a truck to the torture camp set up at Shaheed Shamsuzzoha Hall of University of Rajshahi where he was subjected to torture in captivity and eventually in the midnight of 27 September 1971 he was shot to death taking him at the place east to the Shaheed Shamsuzzoha Hall. The victim was buried there and a commemorative plaque has been built there.

Therefore, the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan participated, facilitated, abetted and substantially contributed, by his culpable act and conduct forming part of systematic attack to the commission of offences of ‘abduction’,

‘confinement’, ‘torture’ and ‘murder’ as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses presented

103. Prosecution relied upon 05 witnesses to prove the arraignment brought in this charge. Of five witnesses only one is alleged to have witnessed facts related to first phase of attack. Before we proceed to evaluate what has been narrated by the witnesses let us see what has been testified by them in Tribunal.

104. P.W. 01 Md. Shah Jaman [65] is a resident Sagorpara (Alupotti intersection) under police station- Boalia, RMP of District Rajshahi. In 1971 he was a student of class X. Now he is an Assistant Head Master of Rajshahi Sugar Mill High School (on contractual basis).

105. P.W.01 is the son of victim Babar Mondol. He testified what he heard about the event arraigned in charge no.01 involving the killing of his father, on forcible capture. P.W.01 also testified what he heard about the event arraigned in charge o.02

106. Before recounting the event arraigned in charge no.01 P.W. 01 stated that during the election of 1970 his father Babar Mandal worked robustly as a campaign coordinator for Abdul Hadi the candidate of Awami League. In that election accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan was engaged in campaigning on behalf of Afaz Uddin [now dead] of Jamat E Islami candidate.

107. P.W.01 also stated that after the beginning of the war of liberation, his father joined in local Action Committee and also participated in the training program to join the war of liberation. His father also used to help the freedom-fighters in every aspect before he was annihilated.

108. P.W.01 went on to state that Advocate Md. Ayen Uddin [now dead] who happened to be Muslim Leader of Rajshahi, formed Peace Committee at the end of April[1971] in Rajshahi in collaboration with the local Jamat E Islami leaders. Advocate Md. Ayen Uddin [now dead] acted as its Chair. Afterwards, on recommendation of the Peace Committee, local armed Razakar Bahini was formed at the end of May, 1971. The accused Abdus Sattar @ Tipu Razakar @ Tipu Sultan joined this Razakar Bahini.

109. P.W.01 further stated that after the war of liberation ensued Pakistani occupation army established its camp at Shaheed Shamsuzzoha Hall of University of Rajshahi. Moreover, the accused Razakar Abdus Sattar @ Tipu Razakar @ Tipu Sultan dispossessed Md. Salahuddin @ Raju from his residence, situated beside the police station-Boalia and established Razakar camp at that house. Advocate Md. Ayen Uddin [now dead] established Peace Committee office at his own residence.

110. In respect of the event P.W.01 stated that on 26 September 1971 he was at home. On that day at around 11:00 A.M his father went to Shaheb Bazar to buy usual grocery items. At around 01:30 P.M a group formed of 15/16 Pakistani occupation army being accompanied by the accused Razakar Abdus Sattar @ Tipu Razakar @ Tipu Sultan and 8/10 cohort Razakars forcibly captured his father from Gadi no.01 of Shaheb Bazar which is now known as 'zero point'[of Rajshahi city] and started torturing him. His[P.W.01] cousin brother Kaju Sheikh [P.W.07] witnessed the incident by himself and shared the event with him.

111. P.W.01 went on to state that he heard from his cousin brother Kaju Sheikh[P.W.07] that his captured father was then taken away by a truck to the torture camp set up at Shaheed Shamsuzzoha Hall of University of Rajshahi. Then his cousin brother Kaju Sheikh and

others came to their house and shared everything. In the same evening he [P.W.01], his mother, his elder brother, his cousin brother Kaju Sheikh and others moved to near Shaheed Shamsuzzoha Hall. But they were not allowed to enter into the camp. Thus they returned back home.

112. P.W.01 next stated that afterwards, his uncle Akbar Ali Sheikh [now dead] was also captured by the Pakistani occupation army and Razakars on 02 November, 1971 and was detained at the same torture camp. Later on, after independence his uncle came back being freed. From his uncle he [P.W.01] came to know that his[P.W.01] father was shot to death in the midnight of 27 September 1971, taking him at the place east to the Shaheed Shamsuzzoha Hall [of Rajshahi University]. His father's dead body was dumped there. Finally, P.W. 01 stated that the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan was a resident of their locality and that's why he knew him beforehand.

113. In cross-examination, P.W.01 in reply to defence question stated that he passed SSC in 1973; that his date of birth was 31/05/1958; that he could not recall whether there were any other contestants in their constituency in 1970's election; that he did not know Abdul Matin of Devi Singh Para and Tara Miah of Rani Nagar area.

114. In addition to above, P.W.01 in reply to defence question also stated that freedom-fighter commander of their area was Abdul Hannan; that he could not recall the name of Razakar commander of their locality; after the independence no case over the event he testified was initiated against the accused.

115. P.W.01 denied the defence suggestions that the father of the accused was a *Peer* [Spiritual guide in Islam] and for generations the accused and his family was involved with spreading the idea of *Sufism* [A school of thought in Islam].P.W.01 also denied the defence suggestions that he did not know the accused; that he did not hear the event he testified and that he testified implicating the accused falsely out of political rivalry.

116. P.W. 03 Md. Shaidur Rahman [66]is a resident of Raninagar, under police station-Boalia of RMP, Rajshahi. In 1971 he was student of class IX. He chiefly testified about the event arraigned in charge no.02. He also allegedly heard the fact of killing Babar Mondol [victim of the event arraigned in charge no.01] from two survived detainees, after the independence.

117. P.W.03 stated that after the victory of Bangladesh on 16 December, 1971 two detainees Kurman Ali [P.W.06] and Akbar

Ali came back. He came to know from them that at the end of September 1971 Razakar Abdus Sattar @ Tipu Razakar @ Tipu Sultan and his cohort Razakars forcibly captured Babar Mondol, an organizer of Liberation War and aide of freedom-fighters, from Gadi no.01 of Shaheb Bazar and took him away to the army camp set up at Shaheed Shamsuzzoha Hall of Rajshahi University where he was subjected to torture and eventually shot to death.

118. P.W.03 continued to state that Kurman Ali [P.W.06] and Akbar Ali were compelled to work as cook at the army camp and thus could survive. The house of the accused and that of their own was intervened by just one house and that's why he knew him beforehand.

119. In cross-examination, P.W.03, in reply to defence question, stated that the accused, after the independence did not stay at home and he came back 8/10 years later; that the house of the accused was at south to that of their own, intervened by one home; that they did not initiate any case over the event as no favourable situation existed. P.W.03 denied the defence suggestions that what he testified implicating the accused with the alleged event was untrue and out of local political rivalry.

120. P.W. 04 Md. Hazrat Ali [62] is a resident of H-364, Rani Nagar under police station- Boalia, RMP, Rajshahi. In 1971 he was an examinee of SSC [*Secondary School Certificate Examination*]. He chiefly testified facts in relation to the event arraigned in charge no.02, as an eye witness. He however testified what he heard about the event of killing of Babar Mondol on capture, as arraigned in charge no.01 from the son [P.W.01] of the victim.

121. P.W.04 testified that he heard from Md. Shah Jaman that on 26 September 1971 at about 01:30 P.M. accused Razakar Abdus Sattar @ Tipu Razakar and his cohort Razakars took away his father Babar Mondol to the army camp. Shah Jaman later on knew the event of killing his father from Kurman Ali[P.W.06] and Akbar Ali [two survived detainees] after they came back. He[P.W.04] heard too that the detained victim was killed after taking him away [at the camp], on forcible capture. Finally, P.W.04 stated that he knew the accused beforehand as he was their neighbouring resident.

122. In cross-examination, P.W.03 in reply to defence question stated that in 1971 the accused was a student of Rajshahi University; that he heard that the accused was in teaching profession in a college; that he could not recall whether the accused was a homoeopathic doctor since 1972; that the father of the

accused was a peer; that he could not confirm whether the accused conducted *khankah* after his father's death as an heir.

123. P.W.04 however denied the defence suggestion that he did not know the accused Abdus Sattar @ Tipu Razakar @ Tipu Sultan and he did not belong to Razakar Bahini and that the accused was not involved with the event he testified; that what he testified implicating the accused was untrue and tutored and out of rivalry over land dispute and that the accused was not involved with the alleged event.

124. P.W. 07 Md. Kazu Sheikh [65] is a resident of village-Talaimari under police station- Boalia, RMP, Rajshahi. In 1971 he was 16 years old. Victim Babar Mondol was his uncle. P.W.07 allegedly witnessed the act of taking away his uncle on forcible capture, as arraigned in the charge framed.

125. In narrating the event arraigned in this charge P.W.07 stated that one day, in the month of September, 1971 he went to Shaheb Bazar [mid of Rajshahi city]where he met his uncle Babar Mondol[victim]. Few minutes later, a group formed of 10/12 Pakistani occupation army being accompanied by the accused Abdus Sattar @ Tipu Razakar @ Tipu Sultan and 8/10 armed cohort Razakars forcibly captured his uncle and took him away by a

truck to the camp set up at Shaheed Shamsuzzoha Hall of University of Rajshahi. Then he came back home and shared the event he witnessed with his aunt and cousins. Subsequently, the family members moved to Shaheed Shamsuzzoha Hall but they were not allowed to get entered inside the camp. Later, he came to know that the Pakistani army gunned down his uncle to death. Finally, P.W.07 stated that the accused was a resident of their *para* [locality].

126. In cross-examination P.W.07 stated that he could not recall the name of 8/10 cohort Razakars he testified; that the name of the father of the accused Razakar was Abul Moulovi and he used to sell homoeopathic medicine; that the father of the accused Razakar was a peer. P.W.07 denied the defence suggestions that he did not know the accused Razakar Abdus Sattar @ Tipu Razakar @ Tipu Sultan and what he testified implicating the accused was untrue; that the event he narrated did not happen; that he did not see the event he narrated; that the accused did not belong to Razakar Bahini.

127. P.W. 12 Md. Mafizur Rahman Nobi is a resident of Sagorpara, post office- Ghoramara under police station-Boalia, RMP , Rajshahi. He is a freedom-fighter. He is a hearsay witness.

128. Before testifying the event P.W.12 stated that on 13 April the Pakistani army took the control of Rajshahi city. Then under the leadership of Muslim League leader Ayen Uddin Peace Committee and Razakar Bahini were formed in Rajshahi town. Then he[P.W.12] went to India to receive training to participate in the War of Liberation.

129. P.W.12 next stated that he after receiving training there returned back at the end of August [1971] at the locality under police station-Charghat of District Rajshahi. His fellow freedom fighter was Abdul Jalil [now dead] happened to be the nephew of Babar Ali Mondol [victim].

130. P.W.12 stated that he came to know from Abdul Jalil that Pakistani occupation army being accompanied by the accused Abdus Sattar @ Tipu Razakar @ Tipu Sultan and 8/10 cohort Razakars forcibly captured Babar Mandal from Gadi no.01 of Shaheb Bazar and then took him away by a truck to the army camp set up at Shaheed Shamsuzzoha Hall of University of Rajshahi. He [victim] was subjected to torture in captivity and then was shot to death and his dead body was dumped in a ditch, outside Shaheed Shamsuzzoha Hall. Finally, P.W.12 stated that Martyr Babar Ali Mondol [victim] was an associate of the then eminent politician Kamruzzaman.

131. In cross-examination, P.W.12 stated in reply to defence question that his date of birth was 08.11.1952. P.W.12 denied the defence suggestions that the accused did not belong to Razakar Bahini; that what he testified was untrue and tutored and that the accused was not involved with the event he narrated.

Finding with Reasoning on Evaluation of Evidence

Argument advanced by Prosecution

132. Mr. Mokhlesur Rahman Badal, the learned prosecutor drawing attention to the evidence tendered in support of this charge submits that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan, in exercise of his membership in Razakar Bahini accompanied the group of attackers in causing forcible capture of the victim Babar Mondol who was taken away to the army camp at Zoha Hall of Rajshahi University and later on he was killed.

133. The learned prosecutor also argued that the first phase of the attack in materializing forcible capture of the victim and accused's participation therewith has been proved by P.W.07, a direct witness who happened to be the nephew of the victim. Defence could not dislodge his narrative. The other witnesses are hearsay witnesses, true. But their testimony carries probative value as it gets corroboration from ocular evidence of P.W.07. Defence could not

refute the hearsay version of those witnesses. P.W.01 the son of the victim heard the event from P.W.07, the direct witness to the first phase of attack and P.W.04 heard from P.W.01 as to how his [P.W.01] father Babar Mondol was taken away on unlawful capture.

134. The learned prosecutor also argued that the attack was outcome of designed collective criminality and thus even in absence of any direct evidence as to physical participation of accused in causing killing the detained victim it may be lawfully inferred that he was actively concerned also with this phase, the upshot of the attack, sharing intent. In this way, the accused not only aided and abetted the commission of the crimes in question but he had acted as a co-perpetrator, being part of collective criminality and thus incurred equal liability, the learned prosecutor added.

Argument advanced by Defence

135. On contrary, **Mr. Gazi M.H Tamim** the learned defence counsel argued that only one witness i.e. P.W.07 claims to have seen the accused accompanying the gang in taking away the victim on unlawful capture. But this witness had no reason of knowing the accused beforehand. His testimony does not get corroboration from other evidence. The hearsay witnesses testified inconsistently and cannot be acted upon without corroboration.

136. The learned defence counsel also argued that mere alleged presence of accused at the site wherefrom the victim was allegedly taken away does not prove that the accused sharing common purpose was concerned also with the alleged killing of victim. Prosecution failed to bring any credible evidence as to when, where, how and by whom the victim was allegedly killed. All these create doubt as to involvement and complicity of the accused with the commission of alleged killing. Besides, delayed prosecution creates doubt as to the truthfulness of the arraignments brought against the accused.

137. At the outset, in respect of delayed prosecution as agitated on part of defence Tribunal notes that justice delayed is no longer justice denied, particularly when the perpetrators of core international crimes are brought to the process of justice.

138. We have already resolved this much talked issue in our earlier judgments. Article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968 provides protection against even any statutory limitation in prosecuting crimes against humanity, genocide etc.

139. Additionally, neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contemplate any provision on statutory limitation to war crimes and crimes against humanity. Thus, criminal prosecutions are always open and not barred by time limitation.

Matters need to be established

140. Tribunal notes that this charge rests upon five witnesses including the son and relatives of victim. Of them P.W.07 the nephew of the victim is a direct witness to the facts relating to first phase of attack which allegedly happened in day time and in the mid of Rajshahi town. The attack eventually ended in killing to which there has been no direct evidence. In view of arraignment brought in this charge, prosecution requires proving the facts as below:

- (a) victim Babar Mondol was taken away on forcible capture on 26 September 1971 at about 01:30 P.M from mid of Rajshahi town;
- (b) that the group of attackers formed of Pakistani occupation army , accused Md. Abdus Sattar @ Tipu @ Tipu Sultan and his cohorts;
- (c) the accused did not keep him distanced from the group even when the detained victim was taking toward the army camp at Zoha Hall;

- (d) the accused had close nexus with the said army camp;
- (e) that the accused knowingly and being part of the enterprise participated in accomplishing the forcible capture of the victim;
- (f) that the detained victim could not be traced after he was taken away;
- (g) that the detained victim was wiped out eventually;
- (h) that the act of forcible capture was chained to ending phase of the attack;
- (i) the accused aided and substantially contributed and participated as a co-perpetrator even in accomplishing the act of annihilation of the victim, the common purpose of the criminal enterprise..

Portrayal of aggression of the Accused to pro-liberation civilians

141. At the outset let us see what P.W. 01 Md. Shah Jaman the son of victim Babar Mandal heard about the event. It appears that after the event of taking away his father Babar Mandal on forcible capture happened he heard it from his cousin brother Kaju Sheikh [P.W.07] who witnessed the incident by himself and shared the event with him.

142. It transpires from testimony of P.W.01 the son of the victim that in 1971 during the war of liberation, freedom-fighters and pro-liberation civilians who used to assist the freedom-fighters in various ways were the key targets of Pakistani occupation army and their local collaborators. In the case in hand, testimony of P.W.01 demonstrates that his father Babar Mandal worked robustly as a campaign coordinator for the candidate of Awami League Abdul Hadi, during the election of 1970 and after the war of liberation ensued used to assist the freedom-fighters. It has also been unveiled that accused Md. Abdus Sattar @ Tipu @ Tipu Sultan campaigned on behalf of Afaz Uddin [now dead] of Jamat E Islami candidate in that election.

143. The above version does not appear to have been denied even in cross-examination. Thus, it may be justifiably inferred that the accused used to work as an active follower of Jamat E Islami even since prior to the war of liberation ensued and such activities indisputably made the accused known to the residents of the localities of Rajshahi town. At the same time such enthusiastic stance the accused opted to take was rather explicit reflection of his culpable mindset to the people engaged in the war of liberation.

144. It could not be controverted and denied even that the victim Babar Mandal was a pro-liberation civilian and used to keep

providing assistance to the freedom-fighters. It may be presumed that for the reason of taking part in election campaign in support of Awami League candidate in 1970's election the accused who was then in support of Jamat E Islami candidate stocked up aggression in his mind against Babar Mondol. Such aggression eventually became grown up when he in exercise of his affiliation in locally formed Razakar, being part of the criminal enterprise, made himself engaged in carrying out prohibited acts directing non-combatant civilians including the victim Babar Mondol, we conclude.

Facts unveiled from evidence of sole direct witness

145. We reiterate that Tribunal may act upon even on a single witness' testimony as proof of a material fact, related to the event arraigned in arriving at decision. It is now well settled. We are convinced to bear in mind that corroboration is not a legal requirement for a finding to be made on factual issue.

146. Now, let us see what has been unveiled in evidence of P.W.07, the sole direct witness to facts related to first phase of attack? It stands proved from the ocular testimony of P.W.07 that the first phase of attack arraigned resulted in forcibly taking away the victim to the army camp. It happened in day time and in mid of Rajshahi town.

147. Why the gang took away only one civilian? Does killing a single individual constitute an offence of crimes against humanity? It may be justifiably presumed that Babar Mondol was selected target of the gang on account of his potential stance in favor of war of liberation and he was so unlawfully detained pursuant to designed and planned attack which could not be accomplished without active participation and aid of the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan. That is to say, the accused was indivisible part of the designed plan and knowing consequence of the attack he facilitated the capture of the victim.

148. We do not find any reason to keep the ocular version of P.W.07 aside from consideration. We are convinced to act upon his ocular testimony which relates to first phase of attack. We reiterate that Tribunal may act upon even on a single witness' testimony as proof of a material fact, related to the event arraigned in arriving at decision, even in absence of any corroboration his testimony. For corroboration is not a legal requirement for a finding to be made on factual issue.

149. The hearsay version of other witnesses some of whom are relatives of victim Babar Mondol remained unimpeached. Rather, it gets corroboration from ocular testimony of P.W.07 the sole direct witness to the facts related to the first phase of the attack.

150. It stands proved from ocular evidence of P.W.07 that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan accompanied the gang formed of 10/12 Pakistani occupation army and cohort Razakars in effecting forcible capture of his uncle Babar Mondol and taking him away by a truck to the army camp set up at Shaheed Shamsuzzoha Hall of University of Rajshahi. It stands proved too that P.W.07 coming back home shared the event he experienced, with his aunt and cousins.

151. Defence does not seem to have made any effort to controvert the above piece of ocular testimony which is crucially related to the first phase of attack and explicit and deliberate participation of accused therewith, sharing common intent.

152. P.W.07 stated that he knew the accused beforehand as he was a resident of their *para* [locality]. Thus, and since the attack was conducted in day time it was quite practicable of recognizing the accused in participating in committing unlawful act of detaining the victim. We find no reason of disbelieving the P.W.07.

153. The accused was a neighbouring resident of the victim and witnesses, it is proved. Instead of participating in accomplishing the deliberate attack he could have attempted to protect the victim in strategic manner. But he rather in arrogant manner deliberately

acted in unlawfully taking away the victim Babar Mondol on forcible capture to the army camp set up at Shaheed Shamsuzzoha Hall of University of Rajshahi, being part of the criminal enterprise.

Systematic Attack and Common Purpose

154. The arraignment brought in this charge involves offences of crimes against humanity committed during war of liberation in 1971. Such crimes happened not by singular perpetration. Commission of such universal crimes occurs by group formed of several offenders. Thus, the offences under adjudication were 'system crimes' or 'group crimes' resulted from systematic attack. Jurisprudence relating to such crimes permits to act even upon evidence of a single witness. Corroboration is not needed to prove facts materially related to such offences known as universal crimes.

155. Pakistani occupation army who got stationed at Zoha Hall, Rajshahi University were not familiar with the locality and civilians who took firm stance in support of war of liberation. It would not be possible to locate the victim, a potential pro-liberation civilian without active and culpable assistance of the accused and his cohorts.

156. The crucial facts unveiled from direct evidence of P.W.07 force to conclude that the accused Md. Abdus Samad @ Tipu@

Tipu Sultan , in exercise of his affiliation in auxiliary force and knowing consequence of his act substantially contributed in perpetrating the unlawful capture of the victim and he did it sharing common intent. The attack ended in killing the victim. Thus, the common intent or common purpose of the criminal enterprise was to liquidate the victim, a non-combatant potential pro-liberation civilian.

157. The offence committed was not isolated. The crime in question was committed by a group of attackers, in context of war of liberation directing civilian. It stands proved that the attack was thus systematic.. Accused Md. Abdus Sattar @ Tipu@ Tipu Sultan deliberately acted forming part of attack, sharing common purpose and intent which had substantial effect in causing unlawful capture of the victim and taking him away to the army camp. Accused did it consciously and being aware of the common purpose of the squad.

158. The attack eventually ended in annihilation of detained victim, after keeping him detained at the army camp. Thus, the accused was responsible for all aspects of attack including the killing constituting the offences of crimes against humanity, committed in violation of the international humanitarian law, customs of war and grave breaches of the 1949 Geneva Conventions. We conclude it

irresistibly based on pattern of unlawful attack on defenceless civilian which resulted in confinement, torture and murder.

Hearsay evidence: Probative value

159. The fact of killing Babar Mondol, by taking him away, on forcible capture to army camp set up at Shaheed Shamsuzzoha Hall of Rajshahi University remained uncontroverted, as unveiled from ocular evidence of P.W.07.

160. Now, let us see what P.W. 01 Md. Shah Jaman the son of victim Babar Mandal heard about the first phase of the event. It appears that after the event of taking away his father Babar Mandal on forcible capture happened he heard it from his cousin brother Kaju Sheikh [P.W.07] who witnessed the incident by himself and shared the event with him. Hearsay evidence of P.W.01 on this phase of attack is not anonymous. Rather it gets corroboration from P.W.07, the sole direct witness.

161. We are not agreed with the defence submission that hearsay evidence does not carry value and as such is not sufficient to prove the arraignment. Tribunal reiterates that in a case involving the offences as crime against humanity even anonymous hearsay evidence is not inadmissible per se, if the same inspires credence.

In the case in hand, said Kaju Sheikh has been examined as P.W.07 who is the source of hearsay testimony of P.W.01.

162. On meticulous evaluation of evidence of P.W.01, the son of the victim it transpires that he has not made any exaggeration. Rather, he just testified what he heard from Kaju Sheikh [P.W.07] which could not be impeached in any manner by cross-examining him.

163. It has been divulged from hearsay testimony of P.W.01 that on 26 September 1971 at around 01:30 P.M a group formed of 15/16 Pakistani occupation army being accompanied by the accused Razakar Md. Abdus Sattar @ Tipu @ Tipu Sultan and 8/10 cohort Razakars forcibly captured his father from Gadi no.01 of Shaheb Bazar, which is now known as 'zero point' [of Rajshahi city] and started torturing him. His [P.W.01] cousin brother Kaju Sheikh [P.W.07] witnessed the incident by himself and shared the event with him later on.

164. In cross-examination, defence simply put suggestion to P.W.01 that he did not hear the event. P.W.01 denied it. But defence could not controvert what he heard. Killing his father by taking away at the army camp does not seem to have been specifically denied even. Trend of cross-examination does not

appear to have refuted the event and involvement of accused therewith.

165. Hearsay version of P.W.01 is not anonymous. He heard it from his cousin brother Kaju [P.W.07], a direct witness and the act of taking away his father happened in day time and at the place which was center of Rajshahi town.

166. P.W. 03 Md. Shaidur Rahman , a resident of Raninagar, under police station- Boalia of RMP, Rajshahi also heard the event of causing torture to victim Babar Mondol in captivity and causing his death from Kurman Ali and Akbar Ali, two survived victims of the event arraigned in charge no.02.

167. Who were those two persons[Kurman Aliand Akbar Ali]? Testimony of P.W.03 demonstrates that they too were kept detained at the army camp but however they got survived as they agreed to work as cook at the camp under compulsion. Naturally, these two survived detainees [victims of the event arraigned in charge no.02] had opportunity of knowing about the killing of Babar Mondol, the victim. Of them Kurman Ali has testified as P.W.06.

168. P.W.04 heard the event of taking away the victim to army camp on forcible capture from Shah Jaman [P.W.01], the son of the victim. Already it has been found that P.W.01 heard the event of attack that resulted in unlawful detention of his father Babar Mondol from P.W.07, his cousin brother who witnessed the first phase of attack.

169. P.W.12 is a freedom-fighter. He knew the event from his fellow freedom fighter Abdul Jalil [now dead] who happened to be the nephew of victim Babar Ali Mondol. His [P.W.12] hearsay testimony consistently demonstrates that Pakistani occupation army being accompanied by the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan and 8/10 cohort Razakars forcibly captured Babar Mondal from Gadi no.01 of Shaheb Bazar and then took him away by a truck to the army camp set up at Shaheed Shamsuzzoha Hall of University of Rajshahi where he was subjected to torture in captivity and then was shot to death and his dead body was dumped in a ditch.

170. It transpires that hearsay version of P.W.03, P.W.04, and P.W.12 gets consistent corroboration from the ocular testimony of P.W.07, the lone direct witness to the first phase of attack. Defence could not impeach the hearsay version of these witnesses.

171. Hearsay evidence as discussed above carries probative value as it gets steady corroboration from P.W.07, a direct witness. Hearsay evidence of P.W.12 goes to depict that the victim was subjected to torture in captivity, before he was killed. One co-freedom-fighter, nephew of the victim was the source of hearsay evidence of P.W.12 in this respect. Such hearsay evidence cannot be discarded readily. Because, it may be justifiably presumed that in captivity the victim was obviously subjected to torture. Besides, keeping a defenceless civilian in confinement by itself causes torture.

Event of killing: Ending phase of attack

172. Tribunal notes that none of witnesses claims to have seen the killing of detained victim. It was absolutely impracticable of seeing or noticing it. Prevailing horrific context did not allow it. The victim could not be traced after he was taken away to the army camp, on forcible capture. Presumably, none excepting the collaborators and loyalists of Pakistani occupation army stationed at the Zoha Hall concentration camp had access to the camp and around its area.

173. It transpires that the witnesses heard that the victim was gunned down to death, taking him at the place east to the Zoha Hall. The relatives and witnesses came to know the tragic fate of

the victim from two survived victims [of the event arraigned in charge no.02] Kurman Ali and Akbar Ali [now dead] of whom Kurman Ali testified as P.W.06.

174. It remained undisputed that these two victims [of the event arraigned in charge no.02] got survived. What was the reason of such survival? Testimony of witnesses demonstrates that they were forced to work as cook at the army camp. Defence could not refute it.

175. Defence argued that there is no evidence that the accused used to stay with the army at their camp and had participated in killing the detained victim. We are unable to go with this defence submission. It is now well settled that participation in the perpetration of the crime does not require an actual physical presence.

176. Killing the victim was the upshot of the attack. Thus, criminal acts carried out by the accused in course of first phase of attack were indubitably chained to the ending phase, the killing. We require bearing it in mind that knowledge about predictable consequence and intent to assist was sufficient to establish his guilt, being part of the collective criminality.

How the accused acted in accomplishing the purpose of attack

177. The role of accused in accomplishing the purpose of the attack was specifically directed to materialize the liquidation of a detained pro-liberation civilian. He was with the gang of attackers not for any pious purpose. There is nothing before us to deduce that presence of accused with the gang at the crime site was mere ignorant or unwilling presence. Rather, in exercise of his membership in Razakar Bahini, an auxiliary force he joined the gang knowing the consequence and sharing the intent significantly facilitated in achieving the goal of the attack, it may be irresistibly inferred. The accused was thus consciously engaged in the murderous scheme which was intended to achieve the criminal outcome, the killing of detained victim Babar Mondol, a potential organizer of the war of liberation.

178. However, actual physical presence of the accused when the killing was committed need not be proved by any direct evidence. It was not at all practicable of noticing how the detained victim was treated after he was taken at the army camp set up at Shaheed Shamsuzzoha Hall of Rajshahi University.

179. Naturally, no civilian had access to the said base of Pakistani occupation army. It may however be deduced that the accused who accompanied the gang formed of army men and cohort Razakars

took away the victim by truck to the army camp to be killed. Thus, the accused and all the members forming the gang can be considered to have participated even in the commission of the killing, as co-perpetrators.

Killing: Upshot of the Attack and Accused's concern therewith

180. Killing the detained victim Babar Mondol was the upshot of his forcible capture in committing which the accused substantially contributed and participated. Facts lead to the conclusion that the victim was annihilated after taking him at the army camp at Zoha Hall. Dead body of the victim could not be traced. Tribunal notes that dead body is not required to prove the act of killing. Such killing happened not in normalcy. It was a system crime committed in violation of international humanitarian law.

181. Proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. The fact of a victim's death can be inferred circumstantially from all of the evidence presented to the Trial Chamber [*Krnjelac ICTY Trial Judgement, para. 326*]

182. In view of above, even in absence of any evidence it may be inferred justifiably that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was 'concerned' also with the killing of the detained

victim Babar Mondol. We recall the observation made by the **ICTY Trial Chamber** in the case of Tadic that--

“[i]f people were all present together at the same time, taking part in a common enterprise which was unlawful, each one in their own way assisting the common purpose of all, they were all equally guilty in law.”

[Tadic, ICTY Trial Chamber, Judgment para 688]

183. Since the event happened not in times of normalcy, it is inappropriate to ask for evidence of causing death of the detained victim. It stands proved that the victim was taken to the army camp set up at Shaheed Shamsuzzoha Hall of Rajshahi University and was kept confined there. Obviously the victim was taken there not to further any virtuous intention.

184. It has been unveiled that the army camp at Zoha Hall was indeed a ‘mini cantonment’. Two survived victims [as arraigned in charge no.02] were forced to work as cook at the camp. Naturally, they had no fair opportunity of seeing and knowing all the activities carried out inside the camp or at the place outside the camp. For the same reason they were not acquainted to the presence or visit of accused or his cohorts at the camp.

185. Thus, the version of P.W.06 that he during his captivity at the concentration camp did not see the accused there does not diminish the fact of maintaining close and constant nexus of the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan with the camp. It may also be presumed that the army stationed at the base used to carry out odious activities of course with the active and culpable assistance of their local collaborators.

186. It emerges from the reports cited in the *evsj v`tki `r`axbZv hy`wjcI* volume 8 [page 417-418] that thousands of civilians were calculatingly wiped out after keeping them confined at the army camp at Zoha Hall. All these myriad brutality happened during the war of liberation, till the nation achieved its independence.

187. Not only the two events involving arraignment of killing ten defenceless pro-liberation civilians [as listed in two charges] were accomplished by the army men with culpable assistance of their notorious local collaborators including the accused but countless barbaric extermination occurred in Zoha Hall in 1971. Surprisingly the investigation agency did not care to investigate into all those atrocities. The arraignment brought in two charges is thus the fragmented portrayal of recurrent unspeakable barbarism accomplished by the Pakistani occupation army stationed at Zoha Hall camp on culpable assistance of their local collaborators. .

Nexus with the Army Camp and Collective Criminality

188. Totality of evidence sufficiently links the nexus of the accused with the camp and causing death of the victim. Circumstantial evidence provides the only reasonable inference that the victim's death was resulted from collective criminality to which the accused was a conscious part.

189. The proved fact of forcible capture of the victim, mistreatment directed against him, taking him away to the army camp, disallowing the relatives to contact the detained victim, the length of time which was elapsed since forcible capture of the victim collectively formed circumstantial case as to the death of the ill-fated victim. It has been established by the evidence presented on part of the prosecution.

190. In essence, the Tribunal is convinced, eyeing at the evidence presented as a whole, that the only reasonable inference from evidence is that the victim was annihilated, as a result of what occurred, prior to taking the victim at the army camp on forcible capture.

191. Why the victim Babar Mondol alone was forcibly captured and taken away to army camp? What was the purpose of the attack? Why the accused accompanied the criminal gang and how he

assisted and participated in accomplishing the forcible capture of the victim?

192. We have got it proved that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was affiliated in locally formed Razakar Bahini and was associated also with the Islami Chatra Sangha[ICS] the student wing of JEI. All these patently reflect the stance and antagonistic mindset against the war of liberation that the accused had in 1971. Thus, it may be justifiably inferred that the accused was with the gang not as a mere spectator and not for any pious purpose. Rather, he was with it knowingly and sharing common purpose and the purpose was to snuff out a potential pro-liberation civilian and organizer of the war of liberation, in a designed way.

193. For the P.W.06, a survived detainee it was practicable of knowing the fact of killing Babar Mondol even after he [P.W.06] was kept confined at the camp where the victim too was taken on forcible capture earlier. Besides, if his hearsay version is kept aside from consideration the fact of killing Babar Mondol after taking him away at the army camp shall not go on air. Because, the facts and circumstances lead to the unerring conclusion that detainee Babar Mondol was killed as he could not be traced since he was taken away to the camp on forcible capture.

Facts Proved: Act and Conduct of Accused forming part of Attack

194. The arraignment brought in this charge involves offences of crimes against humanity committed during war of liberation in 1971. Such crimes happened not by singular perpetration. Commission of such universal crimes occurs by group formed of several offenders.

195. In the case in hand, only P.W.07 had occasion of seeing the facts related to first phase of attack. The other witnesses are hearsay witnesses and their narrative gets corroboration from P.W.07. However, now depending only on P.W.07 we are satisfied to arrive at decision that a group formed of Pakistani occupation army being actively accompanied by the accused and his cohorts had carried out systematic attack in causing unlawful capture of the victim.

196. It stands proved too that the unlawfully detained victim was taken away toward the army camp at Zoha Hall, Rajshahi University. There is nothing to show that after causing forcible capture the accused kept him distanced from the gang. It may thus be presumed that the accused continued staying with the group till it accomplished the principal crime, the killing, sharing intent and common purpose.

197. Facts and circumstances lead to the conclusion that the victim was liquidated after he was so taken away. There is no evidence as to who was actual perpetrator of the killing the detained victim. Army camp at Zoha Hall was in fact a concentration camp. Presumably, the civilians detained there were annihilated taking them at the place outside the camp. Horrific existing context did not leave space of noticing it by civilian. But in absence of anything contrary it is lawfully inferred that the group that had accomplished its first phase of the criminal mission materialized the goal of attack, the killing. Unerring conclusion is that the first phase of attack causing forcible capture of the victim was indisputably chained even to the act of accomplishing the killing.

198. It was indeed foreseeable that the forcible removal of the victim, on unlawful capture at gunpoint might well result in his death. All the other participants including the accused in the common design who first accomplished unlawful detention of the victim are criminally responsible also for the killing of detained victim as it was predictable. Moral gravity of accused's participation, by his conscious and substantial aid and assistance was no less as the crime in question was international crime committed in war time context. It has been observed by the **ICTY Appeal Chamber** in the case of **Tadic** that-

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

[Tadic, ICTY Appeal Chamber Judgment 15 July 1999, Para 191]

199. Thus, all the members including the accused, sharing intent and common purpose remained engaged with the ending phase of the attack which resulted in killing. Accordingly, under the theory of JCE [Basic Form] which refers to statutory provision contemplated in section 4(1) of the Act of 1973 all the members of the gang including the accused were equally liable for the commission of killing the detained victim.

Liability of Accused for proved offence of crimes against Humanity

200. It has been argued on part of the defence that in absence of evidence in respect of accused's presence during the actual participation of the commission of killing he cannot be held liable for the murder of detained victim.

201. The learned prosecutor, in reply, submits that since the accused being conscious part of the enterprise and being aware of the consequence of his act participated in detaining the victim unlawfully and taking him away to the army camp the accused incurred responsibility also for the outcome of the attack, the killing.

202. We find merit in submission advanced on part of prosecution. Accused's active act and conduct forming part of attack was intended to decisively contribute to materialize the goal and common purpose of the criminal mission, we have already found it proved. Convincing facts lead to the irresistible conclusion that accused's mode of participation and role in causing unlawful apprehension of the victim was indeed a decisive contribution in perpetrating his killing. Accordingly, the accused incurred liability for all the crimes committed, as a co-perpetrator. In the **Zeljko Lelek** case, the **Bosnia and Herzegovina** appellate panel held that-

“.....it was not required that the accused be present during the actual commission of the criminal offence if his prior acts constituted a decisive contribution.”

[Court of BiH, Zeljko Lelek, Case No. X-KRZ-06/202, 2nd instance verdict, 12 Jan, 2009, 33,95-96]

203. In this case, the appellate panel found that the accused was not present in the room when the crimes occurred, but he was liable as a co-perpetrator by leading the group of perpetrators to the critical location and giving consent to carry out the criminal acts.

204. In the case in our hand we may safely deduce, based on facts and circumstances that the accused knowing consequence of his act which has been indisputably proved indeed provided decisive contribution even in perpetrating the offence of murder. This view gets support from the proposition as cited above.

205. It stands proved that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan participated by way of aiding and substantially contributing with intent to materialize the goal and common purpose of the criminal enterprise. Killing of the detained victim was the upshot of the act of taking him away on unlawful capture to which the accused was an active co-perpetrator, we conclude.

206. Totality of evidence suggests the irresistible conclusion that the accused was 'concerned with the killing'. Indisputably the accused had previous knowledge about the consequence of his criminal act forming part of systematic attack. In this way, the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan contributed substantially even to the commission of the killing, sharing the

criminal intent of the gang and thus he is equally criminally liable both as an abettor and as a co-perpetrator.

207. Does the killing of a single individual constitute the offence of crime against humanity, a universal crime? The offences for which the accused Md. Abdus Samad @ Tipu @ Tipu Sultan has been indicted were not isolated crimes. We reiterate that a crime need not be carried out against a multiplicity of victims or entire civilian population in order to constitute the offence of crime against humanity. In this regard the legal proposition propounded in the case of **Nahimana, Barayagwiza and Ngeze, ICTR Appeals Chamber** is that --

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

[**Nahimana, Barayagwiza and Ngeze, ICTR Appeals Chamber, Judgment, November 28, 2007, para. 924**]

208. Thus, it is now well settled proposition that even a single murder if it was done in context of systematic attack may be characterized as an offence of crimes against humanity. This view finds support also from the observation of the **ICTR** made in the case of **Seromba** that-

“A single murder may constitute a crime against humanity if it is perpetrated within the context of a widespread or systematic attack.”

[Seromba, (Trial Chamber), December 13, 2006, Para. 357]

209. It transpires that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan not only shared the intent of the criminal gang chiefly formed of Pakistani occupation army but he was also aware of the consequence of his acts which provided substantial assistance and contribution in perpetrating the killing, the principal crime. Affirmative and aggressive action of the accused in effecting unlawful capture of the victim itself is the unerring indicia of his imputative responsibility even of committing the killing of detained victim Babar Mondol.

210. In the case in hand, on appraisal of facts and circumstances unveiled we are convinced to render the view that any person being part of criminal enterprise if found to have had substantially

contributed sharing common purpose can be held vicariously liable for the contribution of all the members forming the criminal gang and as such can be considered equally liable for the whole crime.

211. There is no indication that the accused had actively withdrawn him from the group when it took away the detained victim by truck toward the army camp at Zoha Hall. That is to say, the accused continued staying with the group which had substantial and encouraging effect in extinction of the victim and in this way he substantially facilitated the commission of the principal crime as well, as a co-perpetrator, being part of the criminal enterprise.

212. The internationally settled legal proposition is that the basic form of JCE attributes individual criminal liability when all members of the enterprise act pursuant to a common plan or design and possess the same criminal intent, even if each member as co-perpetrator carries out a different role within the JCE. The *mens rea* for this form of JCE is the shared intent of all members to commit a certain crime.

213. In the case in hand, there is nothing before us to deduce that the accused participated in causing forcible capture of the victim without sharing the core intent of the gang. Rather, facts and circumstances lead to the conclusion that sharing common intent

and purpose the accused substantially contributed in accomplishing the attack, knowing consequence of the outcome of the attack.

214. In view of above we may safely deduce that the accused thus had acted being part of the JCE pursuant to a common plan or design and thus incurred individual criminal liability as a co-perpetrator. We prefer to reiterate that the doctrine of JCE [Basic Form] in fact corresponds to the notion contemplated in **Section 4(1) of the Act of 1973** which reads as below:

“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”.

215. The above statutory provision in respect of liability for the crimes as specified in section 3(2) of the Act of 1973 we find no space to keep us aside in finding the accused equally liable even for the offence of killing as it already stands proved that the accused had acted as a co-perpetrator sharing intent of the gang in materializing the goal, the killing.

216. The act and conduct of accused in course of the first phase of attack are sufficient to form part of the attack which had a substantial link to the perpetration of the principal crime, the

killing. Thus, evidence is not required to prove accused's physical or actual presence also at the site where the victim was shot to death as already it stands proved that the accused was concerned with the act of killing. It has been observed in the case of *Tadic*, that:

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

[Trial Chamber: ICTY, May 7, 1997, para. 691]

217. In light of facts and circumstances divulged together with jurisprudential proposition we consider it indispensable to add further view that since it stands proved that the accused had acted as a 'conductor' of the enterprise and he participated actively knowing the consequence of his culpable act in committing the unlawful detention of the victim he is also responsible for the upshot or result of the deliberate and systematic attack. This view finds support from the observation made by the ICTY Trial Chamber in the case of *Tadic* which is as below:

“In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.”

[Tadic, ICTY Trial Chamber Judgment 7 May 1997 1999, Para 692]

218. Finally, in light of findings made above based on evidence and settled legal proposition we unanimously conclude that prosecution has been able to prove beyond reasonable doubt that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan by his culpable act and conduct forming part of attack consciously participated, aided, abetted, instigated, substantially contributed to the commission of the offences of **‘abduction’**, **‘confinement’** , **‘torture’** and **‘murder’** as crimes against humanity as enumerated in section 3(2) of the International Crimes (Tribunals) Act , 1973 and thus the accused is found criminally liable under section 4(1) of the Act which is punishable under section 20(2) read with section 3(1) of the Act.

Adjudication of Charge No.02

[Event no.02 as narrated in page nos.25-29 of the formal charge]

[Offences of abduction, confinement, torture, plunder and murder of numerous civilians at Talaimari under police station–Boalia of District- Rajshahi, as crimes against humanity.]

219. Charge: That on 02 November 1971 at about 02:00 A.M a group formed of 40/50 Pakistani occupation army being accompanied by the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan and his 15/20 armed cohort Razakars by launching systematic attack at village- Talaimari under police station- Boalia of District-Rajshahi, as the gang had information about staying of freedom fighters with their family there, started hunting of freedom fighters and got (1) Chand Mia (2) Ajahar Ali Sheikh (3) Md. Keyamat Ali Mandal (4) Abul Hossen (5) Md. Afiluddin (6) Md. Safiuddin (7) Md. Shafiqur Rahman @ Kalu Mia (8) Md. Bazlar Rahman (9) Md. Jalaluddin (10) Akbar Ali and (11) Md. Kurman Ali forcibly captured from their houses.

In conjunction with the attack, on instigation of the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan , his cohort Razakars and Pakistani occupation army plundered the houses of those freedom-fighters and looted households. Then the detained non-combatant freedom-fighters were taken away by a truck to the torture camp set up at Shaheed Shamsuzzoha Hall of University of Rajshahi where they were subjected to inhumane torture in

captivity. Relatives of victims moved toward the camp for securing release of the victims but were not allowed to enter into the camp.

On 04 November 1971 in the midnight the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan being accompanied by his cohort Razakars and Pakistani occupation army took away 09 detained victims (1) Chand Mia (2) Ajahar Ali Sheikh (3) Md. Keyamat Ali Mandal (4) Abul Hossain (5) Md. Afiluddin (6) Md. Safiuddin (7) Md. Shafiqur Rahman @ Kalu Mia (8) Md. Bazlar Rahman (9) Md. Jalaluddin to the place, the killing field east to Shaheed Shamsuzzoha Hall of University of Rajshahi where they were gunned down to death. The two other detainees Akbar Ali [now dead] and (11) Md. Kurman Ali were forced to get engaged with manual labours and as such they got survived.

Therefore, the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan participated, facilitated, abetted and substantially contributed, by his culpable act and conduct forming part of systematic attack to the commission of offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’, ‘**plunder**’ and ‘**murder**’ as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act 1973 read with section 4(1) of the Act, 1973 which are punishable under section 20(2) of the said Act.

Evidence of Witnesses Presented

220. The charge of which the accused has been indicted rests on oral testimony of witnesses. Of them some happen to be the close relatives of victims who had allegedly witnessed the facts related to the first phase of the attack. One witness namely P.W.06 is a survived victim. The witnesses claim to have heard the tragic fate of nine detainees, when two survived victims came back after independence, prosecution alleges. Now, let us see what has been narrated by the witnesses.

221. P.W. 01 Md. Shah Jaman [65] is a resident of Sagorpara (Alupotti intersection) under police station- Boalia, RMP of District Rajshahi. In 1971 he was a student of class X. He is the son of victim of the event arraigned in charge no.01. In addition to the arraignment brought therein he also testified the facts related to charge no.02.

222. P.W.01 stated that his younger uncle Akbar Ali Sheikh took training to participate in the war of liberation and he used to assist the freedom-fighters his best in many ways. On 02 November 1971 at about 02:00 A.M a group formed of 40/50 Pakistani occupation army being accompanied by the accused Razakar Abdus Sattar @ Tipu Razakar @ Tipu Sultan and 15/20 armed cohort Razakars

cordoned off his uncle's house and neighboring houses. After that they entered into house smashing the door and forcibly captured his uncle. Moreover, they captured 10 more persons of the area and took them away to the army camp at Shaheed Shamsuzzoha Hall. P.W.01 also stated that they attempted to gain access to Shaheed Shamsuzzoha Hall but failed as they were not allowed.

223. P.W.01 further stated that after the independence of Bangladesh, his detained uncle [Akbar Ali Sheikh] and Kurman Ali [P.W.06] got free with 16/17 other detainees. From the survived victims he [P.W.01] came to know that the detainees had been engaged in the kitchen as cook which consequently saved them from being killed. Moreover, from his uncle he came to know that 09 detainees who were forcibly captured with them were shot to death taking them to the site east to Shaheed Shamsuzzoha Hall of University of Rajshahi. Finally, P.W. 01 stated that the accused Abdus Sattar @ Tipu Razakar was an inhabitant of their locality and that's why he knew him from beforehand.

224. In cross-examination, P.W.01 in reply to defence question stated that after independence no complaint was lodged against the accused over the event he testified; that the accused is a follower of Jamat E Islami. P.W.01 denied the defence suggestions that he did

not know the accused and that what he testified implicating the accused was untrue and out of political rivalry.

225. P.W. 02 Habibur Rahman @ Habib [60] is a resident of 366, Raninagar, under police station- Boalia , RMP, District Rajshahi. In 1971 he was a student of class III in Rajshahi Collegiate School. He is the son of one victim Chand Mia. In portraying the profile of his father P.W.02 stated that his father, Chand Miah was a potential organizer of the war of liberation and used to assist and co-operate the freedom-fighters in different ways.

226. In respect of the event P.W.02 stated that on 01 November, 1971 at about 04:00 P.M. their neighbour accused Tipu Razakar's mother visited them and collected information as to who lived in which room. On 02 November, 1971 at around 02:00 A.M., before *Sahri* [*Sahri* is the name of meal consumed by Muslims before Fazar prayer during or outside the Islamic month of Ramadan] a group formed of 30/40 Pakistani occupation army being accompanied by the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan and 15/20 armed cohort Razakars cordoned off their house.

227. What happened next? P.W.02 went on to state that Pakistani occupation army and armed Razakars pushed and shoved the main door of their house and with this his mother made his father hidden in the rooftop. At some point Pakistani occupation army and armed Razakars smashed the door and made entrance into the house. At that time he [P.W.02] and his brother Sayedur Rahman were sleeping in a room. They got awoken by the piercing screaming and saw accused Tipu Razakar and few army men moving to the rooftop and they brutally dragged down his [P.W.02] father by beating him heartlessly. Then he [P.W.02] witnessed his father was being taking to a truck. Standing in the veranda he saw few unknown unarmed civilians detained on the truck. Afterwards, the truck headed to the east direction. Moreover, in the morning they heard that neighbouring 10/12 houses were looted by cohort Razakars and Pakistani occupation army.

228. P.W.02 also stated that in the morning local people informed them that the accused Razakar Abdus Sattar @ Tipu Razakar @ Tipu Sultan took away his [P.W.02] father to Shaheed Shamsuzzoha Hall of University of Rajshahi. Then he [P.W.02] along with his mother, maternal uncle and others moved to the army camp at Shaheed Shamsuzzoha Hall, but they could not get any clue of his father. Then they came back.

229. P.W.02 next stated that after the victory of Bangladesh on 16 December, 1971 his maternal uncle Kurman Ali [P.W.06], Akbar Ali [now dead] who too were detained and taken away to the army camp at Shaheed Shamsuzzoha Hall along with his [P.W.02] father came back. They knew from Kurman Ali that 09 detainees including his [P.W.02] father were gunned down to death on 04 November 1971, taking them at the place, east to the Shaheed Shamsuzzoha Hall and their dead bodies were dumped there.

230. P.W.02 also stated that his maternal uncle Kurman Ali and Akbar Ali [two survived victims] were forced to work as cook at the army camp, in captivity and thus they could return back, after independence. Finally, P.W.02 stated that the accused was their neighbour and that's why he knew him beforehand.

231. In cross-examination, P.W.02 in reply to defence question stated that he did not know the name of the father of the accused; that after the independence no complaint was lodged against the accused over the event he testified. On being questioned put by the Tribunal P.W.02 stated that the house of Md. Shah Jaman [P.W.01] was around half kilometer far from their house.

232. P.W.02 denied the defence suggestions that he did not hear and see the event he testified; that the event he narrated did not

happen; that he did not know the accused person; that the accused did not belong to Razakar; that the accused was not involved with the alleged event; that what he testified was untrue and tutored.

233. P.W. 03 Md. Shaidur Rahman [66] is a resident of H-366 Raninagar, under police station- Boalia of District Rajshahi. He is another son of victim Chand Miah.

234. Before recounting the event, P.W.03 testified that his father Chand Miah was a freedom-fighter during the Liberation War. On 01 November, 1971 at around 04 P.M. their neighbour accused Tipu Razakar's mother visited them and collected information who lived in which room. Then at night on 02 November, 1971 at around 02:00/02:30 A.M. when he along with his father who came to house and other family inmates were sleeping, a group formed of 30/40 Pakistani occupation army being accompanied by the accused Md. Abdus Sattar @ Tipu Razakar @ Tipu Sultan and 15/20 armed cohort Razakar smashing the main door entered into the house.

235. P.W.03 next stated that the intruders started searching for his father, being failed to get him on the ground floor, Razakar Abdus Sattar @ Tipu Sultan went to the rooftop and brutally dragged down his father, on capture. Then his father was made got on a

truck. He[P.W.03] also witnessed 4/5 unknown unarmed civilians detained in truck. Afterwards, the captured victims were taken away by a truck to the army camp setup at Shaheed Shamsuzzoha Hall of University of Rajshahi.

236. P.W.03 also stated that in morning they came to know that along with his father other detainees namely Ajahar Ali, Abul Hossain, Afil Uddin, Shafiqur Rahman Kalu, Kurman Ali[P.W.06], Akbar Ali, Safi Uddin, Jalaluddin, Keramot Mondol were taken away. Then they moved to the army camp to get his father released. But they were not allowed to enter into.

237. P.W.03 next stated that after the independence achieved, detained Kurman Ali and Akbar Ali came back. He[P.W.03] came to know from them that on 04 November 1971 Razakars and Pakistani occupation army taking 09 detained victims to the east to Shaheed Shamsuzzoha Hall of University of Rajshahi where they were gunned down to death . Their dead bodies were dumped there. P.W.03 continued stating that he also knew from them that they [survived detainees] were forced to work in the kitchen at the army camp to cook meal and that is why they got survived. Finally, P.W. 03 stated that the house of the accused was situated just one house after their house and that's why he knew him beforehand.

238. In cross-examination, P.W.03 in reply to defence question stated that during the war of liberation their house was made of bamboo; that the father of the accused was a peer; that after the independence the accused did not stay in his home and he came back 8/10 years later.

239. In cross-examination, P.W.03 also stated that after the independence no complaint was lodged over the event on behalf of their family as favourable situation did not exist.

240. P.W.03 denied the defence suggestions that the accused was not a Razakar; that he did not see the event he testified; that what he testified implicating the accused was untrue and out of rivalry over land dispute.

241. P.W. 04 Md. Hazrat Ali [62] is a resident of H-364, Rani Nagar under police station- Boalia of District Rajshahi. During the glorious Liberation War he was an examinee of SSC [*Secondary School Certificate Examination*]. He testified facts which he allegedly witnessed as an eye witness. He is the nephew of one victim Chand Mia.

242. P.W.04 testified that his uncle Chand Miah was a freedom-fighter, an organizer of Liberation War. His uncle's house was situated to the north side of their house. His [Uncle of P.W. 04] house was burnt down on 25 March, 1971 and thus he shifted in the neighboring Golam Rasul's building.

243. In respect of the event P.W.04 stated that on 02 November, 1971 at around 02 A.M. they heard the sound of smashing door which made them awaken up. Then he found their building and the building of Golam Rasul encircled by the Pakistani occupation army and Razakars. After some time he heard the sound of beating from the building of Golam Rasul and ear piercing screaming of his uncle [victim Chand Miah]. Then the intruders [Pakistani occupation army and Razakars] moved back to their truck. Like others, he [P.W.04] too moved out when he saw Razakar Abdus Sattar @ Tipu Razakar @ Tipu Sultan, his cohorts and the army men dragging his uncle into the truck. 6/7 more captured people were also detained there. The truck then headed toward south.

244. P.W.04 next stated that in the morning they came to know that Pakistani army and Razakars took away 10 other people too, on forcible capture, in addition to his uncle and carried out looting household [in conjunction with the attack]. Later on, he [P.W.04] also heard from others that his uncle along with other detainees was

taken to the army camp set up at Shaheed Shamsuzzoha Hall. Then they attempted to get their detained relatives released by moving toward the army camp. But they were not consented enter into.

245. In respect of the fate of the detainees P.W.04 is a hearsay witness. He [P.W.04] testified that after the independence achieved two detainees Kurman Ali [P.W.06] and Akbar Ali came back. From them he [P.W.04] knew that detainees were subjected to torture in captivity at the army camp and then on 04 November 1971, 09 detainees were gunned down to death, taking them to the place east to Shaheed Shamsuzzoha Hall of University of Rajshahi. Their dead bodies were dumped there. The survived victims were employed in kitchen at the camp which made them fortunate to survive. Finally, P.W.04 stated that he knew the accused Razakar Abdus Sattar @ Tipu as his house was two houses far from that of their own.

246. In cross-examination, P.W.04 in reply to defence question stated that he could not confirm whether the accused was 2nd year Honors' student of Islamic Studies at Rajshahi University during the war of liberation; that he heard that the accused was in teaching profession in a college; that he could not recall whether the accused was a homoeopathic doctor since 1972; that the father of the accused was a peer.

247. In cross-examination, P.W.04 also stated in reply to defence question that during the war of liberation there was electricity in their area.

248. P.W.04 however blatantly denied the defence suggestion that he did not know the accused Abdus Sattar @ Tipu Razakar @ Tipu Sultan; that the accused did not belong to Razakar Bahini and that the accused was not involved with the event he testified; that he did not see the alleged event and what he testified was untrue and tutored.

249. P.W. 05 Md. Nazim Uddin Sheikh [63] is a resident of H- 430, Shaheed Minar, Talaimari, under police station- Boalia of District Rajshahi. In 1971 he was 16 years old. He is the brother of one of victims Md. Azahar Ali Sheikh. He allegedly witnessed the attack that resulted in taking away his brother on forcible capture.

250. Before recounting the event he allegedly experienced P.W.05 stated that during the glorious war of liberation, his eldest brother Ainuddin and second eldest brother Md. Azahar Ali Sheikh [victim] organized local youths to participate in the war of liberation and arranged their training.

251. In respect of the event of first phase of attack P.W.05 testified that on 02 November, 1971 [Arabic month 12 Ramadan] at around 02:00 A.M. a group formed of 20/25 armed cohort Razakars and 30/40 Pakistani occupation army besieging their house started knocking. With this his younger uncle Moslem Uddin [now dead] opened the gate [of the house]. Then the Razakars and Pakistani occupation army intruded their house, entered into his elder brother Md. Azahar Ali Sheikh's room and started beating him. He[P.W.05] having heard the sound of screaming, staying from his room he came out and saw the Razakar Tipu Sultan, his cohorts taking away his brother with beating and also saw other Razakars looting the household.

252. In relation to other facts, P.W.05 is a hearsay witness. P.W.05 in morning came to know from neighbors that Chand Mia, Keyamat Ali, Abul Hossain, Akil Uddin, Bazlar Rahman, Kalu Mia, Safi, Jalal, Akbar Ali, Kurman Ali were also taken away to the army camp set up at Shaheed Shamsuzzoha Hall of University of Rajshahi, on forcible capture from their houses[in conjunction with the attack].

253. P.W.05 also stated that in morning they moved to the army camp intending to get the detainees rescued though they were not allowed to enter into. Afterward they came to know from others

that on 04 November 1971, in night 09 detainees were shot to death taking them to the site east to Shaheed Shamsuzzoha Hall.

254. P.W.05 also testified that after the independence achieved on 16 December, 1971 detained Kurman Ali and Akbar Ali came back. From them too they knew that Razakar Tipu Sultan very often used to visit the army camp at Shaheed Shamsuzzoha Hall. The survived victims [Kurman Ali and Akbar Ali] were forced to get employed in kitchen of the army camp and that kept them alive. Finally, P.W.05 stated that the accused Tipu Sultan was a resident of their *moholla* [locality] and that's why he knew him beforehand.

255. In cross-examination, P.W.05 in reply to defence question stated that during the war of liberation he used to stay with his elder brother[victim] at their house at Talaimari and his parents and other family inmates used to live in Meher Chondi village; that his elder brother [Md. Azahar Ali Sheikh] was 20 years older to him; that after the independence the accused remained in hiding; that he or his family did not lodge any complaint over the event he testified; that he knew two brothers of the accused namely Samad and Salam.

256. P.W.05 however denied the defence suggestion that he did not see and hear the event he testified; that what he testified was untrue, tutored and out of rivalry.

257. P.W. 06 Kurman Ali [90] is a resident of Rani Nagar under police station- Boalia, RMP, Rajshahi. He is one of two survived victims. As a vital direct witness he recounted the horrific attack launched in their locality.

258. P.W.06 stated that on 12 Ramadan [1971] he had been at home. At night at around 01:30/02:00 P.M. he heard somebody knocking door of his room. With this when he opened the door he noticed in electric light 04 Razakars and 04/05 Pakistani occupation army standing. They detained him and forcefully took him in the army truck. Among the Razakars, he could recognize the accused Tipu Razakar. After some time his brother-in-law Chand Miah was also brought in the truck, on forcible capture. Pakistani occupation army and Razakars also forcefully captured Kalu Mia, Afil Mia, Sofa Mia, Bozla Mia, Azahar Mia, and Keramot from their houses and then they taking eleven detainees including them in truck moved to the army camp set up at Shamsuzzoha Hall of Rajshahi University.

259. Then P.W.06 next stated that three days later among the captured 11 victims, 09 were shot to death taking them to the site east to Shaheed Shamsuzzoha Hall. He [P.W.06] and Akbar Ali [another survived detainee] were compelled to work in the kitchen of army camp and that's why they got survived and came back, after independence achieved on 16 December, 1971. He [P.W.06] shared the tragic fate of nine detainees with their near and dear ones. Finally, P.W.06 stated that the accused Tipu Razakar was his neighbor and that's why he knew him beforehand.

260. In cross-examination P.W.06, in reply to the defence question, admitted that the father of the accused was a doctor and peer; that after the death of his father the accused operated the khankah; that after the independence achieved the accused used to stay at home; that he[P.W.06] did not lodge any complaint over the event.

261. In cross-examination, P.W.06 stated in reply to defence question that he did not see the accused Tipu Sultan at the camp during his captivity there, but he saw him on the day of the event happened. P.W.06 volunteered that he was kept in captivity at the army camp and thus he had no occasion of seeing what happened outside.

262. P.W.06 denied the defence suggestion that the accused was not a Razakar; that the accused was not involved with the event; that he did not know the accused and what he testified was untrue and tutored.

263. P.W. 07 Md. Kazu Sheikh [65] is a resident of village-Talaimari under police station- Boalia of District Rajshahi. In 1971 he was around 16 years old. He is the son of one survived victim Akbar Ali Sheikh. He is a direct witness to the first phase of attack. He however heard the next phase from his father, a survived victim.

264. In narrating the event of first phase of attack P.W.07 stated that on 12 Ramadan [1971] at about 02:00 P.M somebody started knocking the door of their house. With this his elder brother Batash [now dead] opening the gate saw Razakar Tipu Sultan [accused] along with 10/12 Razakars and 15/20 Pakistani army entering into their house. Then they [intruders] tied up his father [Akbar Ali Sheikh] and made him get on in their truck. He also found few others detained in the truck. Pakistani occupation army and Razakars then took away the captured detainees toward Rajshahi University. In next morning they moved to the place nearer to Shamsuzzoha Hall of Rajshahi University to get his father released but they were not allowed to enter into the camp.

265. P.W.07 next testified that after the victory of Bangladesh his father detained Akbar Ali Sheikh and Kurman Ali [P.W.06] came back. He came to know from his father that 09 victims captured along with him were gunned down to death taking them at the site east to Shaheed Shamsuzzoha Hall. His father told too that he and detainee Kurman Ali were forced to work in the kitchen of the army camp and thus they got survived. Finally, P.W.07 stated that Razakar Tipu Sultan was from the same neighborhood and that's why he knew him beforehand.

266. In cross-examination P.W.07 stated that the name of the father of the accused Razakar was Abul Moulovi who used to sell homoeopathic medicine; that the father of the accused was a peer and he had his khankah; that after the independence the accused used to stay at home; that he did not know the accused who was involved with teaching profession; that he did not know whether the accused was a regular student of Islamic studies.

267. P.W.07 denied the defence suggestions that he did not know the accused; that what he testified implicating the accused was untrue; that he did not see and hear the event he testified; that the accused did not belong to Razakar Bahini.

268. P.W. 08 Professor Doctor Muhammad Intazul Haque [71] is a resident of 220/1 Kadirganj (Soshtitola) under police station-Boalia, RMP of District Rajshahi. In 1971 he was a third year student of Chemistry (Hons), Rajshahi University. At that time he was a residential student of the then Jinnah Hall [now Sher-E-Bangla Hall]. He retired from Rajshahi University as a Professor from Department of Chemistry in 2015. Afterward, on contractual basis he served as the Registrar of University of Rajshahi. In respect of the event he is a hearsay witness.

269. P.W.08 narrated what he experienced after the war of liberation ensued. He stated that on 01March, Chemistry first paper exam started. At that time non-cooperation movement was ongoing. On 03March Pakistani occupation army launched an attack against the student protestors in front of Rajshahi telephone exchange. Consequently the movement got momentum and the University was closed. The students left the campus. He himself walked for five miles and went to his village home at Kadirpur.

270. P.W.08 then stated that on 13 April a contingent of Pakistani army entered into Rajshahi town, gunned down people and set houses on fire. As a result most people of Rajshahi town fled wherever they could. On 5/6 May he too went to India.

271. P.W.08 also stated that he came back after the independence of Bangladesh on 20/21 of December, 1971. Few days later, he [P.W.08] came to know from many others of University of Rajshahi that during the war of liberation, in the mid of April, under the leadership of Muslim League leader Advocate Md. Ainuddin [now dead] Peace Committee was formed in Rajshahi. That committee formed the armed Razakar force in mid of May. He heard that Musa Sarkar [now dead], Tipu Razakar and Mono [now dead] joined in that armed Razakar force. Those Razakars along with the Pakistani occupation army by launching attack in Rajshahi town, neighboring areas and different villages, captured countless people who were subjected to inhumane torture keeping them confined at the camp set up at Shaheed Shamsuzzoha Hall of University of Rajshahi and eventually gunned them down to death and were dumped at the mass grave, east to the Hall. A commemorative memorial has been built there.

272. P.W. 08 next stated that when his class started he came to know that on 02 November 1971 Pakistani occupation army and Razakars captured 11 civilians from Ramchandrapur area of Rajshahi town and kept them confined at the camp set up at Shaheed Shamsuzzoha Hall. Among the 11 detainees, 02 came back, after independence. He [P.W.08] heard from the people that those two survived victims disclosed that nine detainees were

tortured inhumanely, gunned down to death and their dead bodies were dumped at the mass grave. He also heard that the two survived victims were forced to work as cook at the camp and that is why they got survived. Moreover, he [P.W.08] heard that when the 11 innocent civilians were captured, at that time Tipu Razakar was with his cohort Razakars.

273. In cross-examination, P.W.08 in reply to defence question stated that he heard that Tipu Razakar is a resident of Ramchandrapur area; that he did not see him [Tipu Razakar].P.W.08 denied the defence suggestions that he did not hear the event he testified; that the accused was not a Razakar; that accused Tipu is not the Tipu Razakar implicating whom he testified and that what he testified was untrue and tutored.

274. P.W. 09 Md. Salah Uddin @ Raju [59] is a resident of 371, Ghoramara under police station- Boalia, RMP of District Rajshahi. He is a hearsay witness in respect of the event arraigned in this charge.

275. Before narrating the event P.W.09 stated that his father was the treasurer of Rajshahi Awami League. On 27 March, 1971 Pakistani occupation army and police searched their home for his father. Failing to get his father, the invaders banged his uncle.

Afterwards, when they fled to India, the Razakars set camp at their house.

276. In narrating the facts related to the alleged killing of numerous civilians P.W. 09 testified that after the independence, they came back to their grandfather's home. From local people and Kurman Ali[survived victim], he came to know that on 02 November 1971 Pakistani occupation army and Razakars forcibly captured 11 civilians including Kurman Ali and Akbar Ali Sheikh, took them away to the camp at Shaheed Shamsuzzoha Hall of Rajshahi University, and gunned them down to death taking at the site east to the Hall. He also heard that the survived victims were forced to work in the kitchen of the camp and thus they got survived.

277. P.W.09 also stated that he heard too that Tipu Razakar and his accomplice 10/12 Razakars forcibly captured 11 innocent civilians from Talaimari, Ramchandrapur and Raninagar area, looted their household and burnt down their houses.

278. In cross-examination, P.W.09 in reply to defence question stated that after the independence the accused did not live in the area; that he had no idea whether anybody lodged any complaint against the accused over the event he testified and that after independence he did not see the accused in the locality till 1975.

279. P.W.09 denied the defence suggestions that the accused was not a Razakar; that he was not involved with the alleged event; that he did not hear the event and that what he testified implicating accused was untrue and tutored.

280. P.W. 10 Mst. Joynob Bewa [68] is a resident of village-Ramchandrapur under police station- Boalia of District Rajshahi. She is the daughter of one victim. She is a hearsay witness.

281. P.W.10 stated that on 02 November,1971 [12 Ramadan] Pakistani occupation army being accompanied by accused Tipu Razakar and 15/20 other Razakars took away her father on forcible capture from their house at Ramchandrapur. On the following morning, hearing it she moved to her father's place and knew that including her father 11 people were taken away on forcible capture to the camp at Shaheed Shamsuzzoha Hall. Relatives of the detainees they moved toward the camp though they were not allowed to get into there.

282. P.W.10 also stated that after the independence of Bangladesh they came to know from survived victims Akbar Ali and Kurman Ali [P.W.06] that the 09 detainees including her father were gunned down to death. She also heard that Akbar Ali and Kurman Ali got

survived as they were employed in kitchen at the army camp to work as cook.

283. In cross-examination, P.W.10 in reply to defence question stated that they did not initiate any case over the event after independence. P.W.10 denied the defence suggestions that what she testified implicating accused was untrue and tutored.

284. P.W. 11 Mst. Hamida Begum @ Bilkis [53] is a resident of Ramchandrapur Kedur morh under police station- Boalia, RMP of District Rajshahi. She is a hearsay witness. She is the daughter of one victim Afil Uddin. During the glorious Liberation War P.W. 11 was a little kid.

285. P.W.11 stated that when she grew older she came to know from her mother and other relatives that on 02 November, 1971 Pakistani occupation army being accompanied by Tipu Razakar and other 15/20 Razakars besieged their house. Then Tipu Razakar called his father and he [his father] came out from home. Eventually he was caught. Moreover, she came to know that at that same night 10 more people were captured and taken away to the camp of Shaheed Shamsuzzoha Hall.

286. P.W.11 stated too that two survived victims Akbar and Kurman came back and they disclosed that nine detainees including her [P.W.11] father were gunned down to death after one day under the guidance of Tipu Razakar. In that place a commemorative memorial has been built.

287. P.W.11 continued to state that his father was involved with the politics of Awami League and used to help the freedom-fighters and that is why he was so targeted and killed.

288. In cross-examination P.W.11 denied the defence suggestions that the accused did not belong to Razakar Bahini; that the event she testified did not happen; that the accused was not involved with the event alleged and what she heard in respect of the alleged event was untrue and tutored.

289. P.W. 12 Md. Mafizur Rahman Nabi [67] is a resident of 428/3, Shishirkona, Sagorpara, post office- Ghoramara under police station- Boalia, RMP of District Rajshahi. He is a freedom-fighter. In respect of the event arraigned in this charge he is a hearsay witness.

290. P.W. 12 stated that after impendence he came to know from Akbar Ali and Kurman Ali [two survived victims] that on 02

November 1971 Pakistani occupation army accompanied by Razakar Abdus Sattar and other Razakars by launching attack at Talaimari area forcibly captured 11 civilians , took them away to the army camp at Shaheed Shamsuzzoha Hall, Rajshahi University. He [P.W.12] also heard that among them 09 were gunned down to death on 4 November, 1971. The two victims got survived as they were employed in kitchen of the camp as cook.

291. In cross-examination P.W.12 denied the defence suggestions that the accused did not belong to Razakar Bahini; that the accused was not involved with the event alleged and that what he testified was untrue and tutored. P.W.12 denied all these suggestions blatantly.

292. P.W. 13 Md. Aminul Islam @ Manik [55] is a resident of 226/3, Talaimari under police station-Boalia of District Rajshahi. He is the son of one victim Abul Hosen. He is a hearsay witness. In 1971 he was 5/6 years old. He is the son of one victim Abul Hosen. One survived victim Akbar Ali was his grand-father.

293. P.W.13 stated that after the independence he came to know from his mother and grandfather Md. Akbar Ali and other relatives that on 02 November 1971 at about 02:00/02:30 A.M a group

formed of 40/50 Pakistani occupation army being accompanied by the accused Razakar Abdus Sattar @ Tipu Razakar @ Tipu Sultan and 15/20 armed cohort Razakars captured his father Abul Hosen forcibly. He also heard that including his grandfather total 11 people were captured and taken away to the army camp set up at Shaheed Shamsuzzoha Hall of University of Rajshahi. His grandfather Akbar Ali [one survived victim] told that 09 detainees along with his [P.W.13] father were subjected to torture in captivity and then gunned down to death and their bodies were dumped in a ditch adjacent to Zoha Hall. He[P.W.13] also heard that his grandfather Akbar Ali and Kurman Ali were forced to work as cook at the camp and thus they eventually came back home, after independence.

294. In cross-examination P.W.13 in reply to defence question stated that they did not initiate any case over the event, after independence. P.W.13 denied the defence suggestions that the accused did not belong to Razakar Bahini; that he did not hear the event he testified was untrue and tutored.

Finding with Reasoning on Evaluation of Evidence

Argument of Prosecution

295. Mr. Mokhlesur Rahman Badal, the learned prosecutor submits that this charge rests upon 13 witnesses of whom many are

direct witnesses to the facts related to the first phase of attack which resulted in taking away 11 pro-liberation civilians, non-combatant freedom-fighters and organizers of the war of liberation on forcible capture. Killing of nine detainees happened two days later, after subjecting torture keeping them confined at the army camp at Zoha Hall, Rajshahi University. Two detainees got survived as they had to agree to work in the kitchen of the camp as cook under coercion.

296. The learned prosecutor also argued that the first phase of attack was visibly linked to the ending phase of the event; that the goal of the collective criminality was to liquidate the detainees; that the accused actively and culpably participated in the first phase of attack; that devastating activities were also carried out, in conjunction with the attack. In recounting the event happened couple of decades back inconsistency may naturally occur. But it does not taint the evidence on core facts testified by the witnesses. Direct evidence of some witnesses who happen to be the near relatives of victims together with that of one survived victim P.W.06 Kurman Ali patently prove accused's participation and concern also with the event of killing. Defence could not impeach the crucial facts they testified.

297. Mr. Mokhlesur Rahman Badal, the learned prosecutor submitted too that existing situation did not allow anybody to see the act of killing; that the defence could not controvert the fact of annihilation of nine detainees after taking them at the army camp; that the accused had close nexus with the army stationed at the camp at Zoha Hall, Rajshahi University; that the witnesses had natural occasion of recognizing the accused accompanying the gang as he was a resident of their neighbouring locality. The accused in exercise of his membership in locally formed Razakar Bahini knowingly and sharing intent of the criminal enterprise participated in accomplishing the goal; that facts and circumstances must lead to the conclusion that the accused had acted as a co-perpetrator even in accomplishing the killing, the learned prosecutor added.

Argument of defence

298. On contrary, **Mr. Gazi M.H. Tamim** drawing attention to the evidence presented by the prosecution submitted that the first phase of alleged attack involved the act of taking away 11 civilians forcible and alleged killing happened later on. Prosecution witnesses claim to have seen the accused present with the group, during the first phase of attack but there is no evidence to show that the accused was involved with the act of alleged killing.

299. It has been further argued by the learned defence counsel that the alleged event of first phase of attack happened at 02:00 A.M and as such it was not possible of to see and recognize the accused as testified. Testimony of witnesses in this regard is not credible. Testimony of P.W.02 and P.W.03 the sons of victim Chand Mia are inconsistent. P.W.04 could not say the name of the father of the accused although he claims that he knew the accused beforehand as he was their neighbour. Hearsay evidence is inconsistent with the testimony of alleged direct witnesses. Prosecution failed to prove the accusation brought against the accused and as such he deserves acquittal.

The matters need to be resolved

300. The arraignment brought in this charge involves two phases. Both phases are chained to each other. We agree with the submission advanced in this regard, on part of prosecution. First phase relates to forcible capture of eleven civilians from their house, looting household, causing torture and taking the detainees away to the army camp at Zoha Hall, Rajshahi University. The attack was allegedly carried out at the same locality i.e. around the locality of Talaimari under police station-Boalia, Rajshahi town. Eleven [11] civilians were allegedly forcibly captured from their houses and were taken away, in conjunction with the same attack launched at 02:00-02:30 A.M.

301. It is also arraigned that the second or ending phase of the attack involved the killing 09 detainees, keeping 02 victims detained in captivity who were forced to work at the camp as cook. These two detainees eventually got survived and came back home, after independence, the charge framed arraigns. Kurman Ali one of survived victims deposed in Tribunal as P.W.06.

302. Some of witnesses relied upon in support of this charge happen to be the close relatives of victims and they had allegedly seen the first phase of attack causing unlawful capture of victims and taking them away by truck towards army camp at Zoha Hall. The other witnesses relied upon are hearsay witnesses. Naturally, there has been no direct evidence in respect of accomplishing killing of nine detainees which happened two days later, after taking them at the army camp, as arraigned.

303. In view of above the matters need to be proved are—

- (a) A group formed of Pakistani occupation army, accused Md. Abdus Sattar @ Tipu @ Tipu Sultan and his cohort Razakars had launched attack to cause unlawful capture of civilians of the same locality, on the date and time arraigned ;

- (b) Accused actively participated by his culpable and prohibited acts in effecting unlawful capture of victims;
- (c) Act of looting household was conducted, in conjunction with the attack;
- (d) The detained victims were taken away by truck to the army camp at Zoha Hall;
- (e) Accused did not make him distanced from the group when it took away the detained victims to the army camp;
- (f) The attack ended in liquidating nine detained victims;
- (g) Two victims got survived as they agreed to provide forced labor by working as cook at the camp;
- (h) First phase of attack was chained to the act of killing nine victims;
- (i) Accused had acted knowingly and sharing intent of the group and thereby substantially contributed to the commission of principal crime, the killing, the goal of the attack;
- (j) Accused incurred liability as aider and abettor and also as a co-perpetrator, being part of the JCE[Basic Form]

Conducting the attack and participation of accused therewith

304. It transpires that P.W.01, the nephew of one survived victim Akbar Ali Sheikh. He saw the act of taking away his uncle and 10 other civilians of their locality by a group formed of Pakistani occupation army and armed Razakars accompanied by the accused Abdus Sattar @ Tipu.

305. It stands proved that accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was a resident of their [P.W.01] locality. Thus, it was practicable of recognizing the accused accompanying the criminal gang in conducting criminal activities. Narrative made in this regard by P.W.01 does not appear to have been denied even and no attempt has been made on part of defence to refute it.

306. What the P.W.01 recounted also proves that the group had launched attack in a concerted and designed way in the same locality. Testimony of P.W.01 manifests that his [P.W.01] uncle Akbar along with 10 were taken away on unlawful capture, 09 of detainees were killed and Akbar and Kurman Ali [P.W.06] were forced to work as cook at the army camp and thus they got survived and accused was an active part of the enterprise who substantially contributed in achieving the goal of the criminal mission. All these crucial facts do not seem to have denied even.

307. Uncontroverted ocular testimony of P.W.02, the son of one victim Chand Mia also depicts that the accused actively and aggressively participated in locating and capturing Chand Miah, entering into the house, by breaking door. P.W.02 being an inmate of the family naturally had occasion of seeing the gang taking away his father and other civilians detained in truck. It leads to the conclusion that the accused had acted as a conductor of the attack in extremely aggressive manner and knowing the consequence.

308. Ocular testimony of P.W.02 demonstrates that the group in conjunction with the attack also carried out looting at their 10/12 neighbouring houses. It remained unimpeached in cross-examination. Defence does not seem to have denied it even. This fact by itself proves that the attack of this phase was conducted at the same locality by the members including the accused forming the gang directing the neighbouring houses of P.W.02.

309. Defence could not controvert what the P.W.02 recounted in relation to the fact of taking away numerous civilians along with his father and how the accused aided and participated in accomplishing the common purpose of the gang..

310. P.W.03 Shaidur Rahman is another son of victim Chand Mia. He too as a direct witness recounted how and when his father was

unlawfully detained and taken away together with other detainees by truck. His ocular testimony on crucial part of attack patently demonstrates that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was one of active members of the criminal enterprise.

311. Ocular testimony of P.W.03 in respect of first part of the attack gets consistent corroboration from P.W.02, another direct witness. Defence could not bring anything in cross-examination which may taint credibility of what has been recounted by P.W.02 and P.W.03, the two sons of one victim Chand Mia.

312. In cross-examination, it has been affirmed that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was a nearer neighbour of P.W.02 and P.W.03. Thus, it was indeed practicable of recognizing the accused accompanying the gang in participating to materialize unlawful detention of selected civilians having strong stance in support of the war of liberation.

313. Testimony of P.W.01 and P.W.02, the sons of victim Chand Miah demonstrates that their father was a freedom-fighter. In the preceding evening accused's mother who happened to be their neighbour visited their home and collected information as to who used to live in which room. Defence could not dislodge this pertinent fact. This fact leads to the conclusion that such curious

inquiry was part of the designed plan of attack to be launched to which the accused was an active part.

314. The learned defence counsel submits that P.W.02 in reply to question put to him stated that in 1971 their house was made of bamboo and if it so detaining the victim Chand Mia from the rooftop of the building as testified by P.W.02 and P.W.03 is not at all credible and it creates doubt as to truthfulness of the narrative made by these two witnesses.

315. We are not with the above defence submission. It stands proved from testimony of P.W.04, nephew of victim Chand Mia that his uncle was an organizer of war of liberation and thus on 25 March 1971 his house was burnt down and thus his uncle Chand Mia had to start residing with his family at the Golam Rasul's building, nearer to their house. This fact could not be impeached by the defence in any manner. Thus, admission in cross-examination of P.W.03 that their house was made of bamboo in 1971 does not diminish the fact of unlawful detention of victim Chand Mia by the group accompanied by the accused, by launching attack at Golam Rasul's building.

316. In view of above, we are forced to conclude that the attack was carried out targeting Chand Mia who, at the relevant time had been

staying at Golam Rasul's building as the house of his own, made of bamboo was burnt down on 25 March 1971.

317. P.W.04 is the nephew of the victim Chand Mia. It depicts from his uncontroverted testimony that in 1971 P.W.04 used to stay at their residence just adjacent to the Golam Rasul's building. Thus, it was quite practicable of hearing the sound of beating from the building of Golam Rasul and ear piercing screaming of his uncle [victim Chand Miah], as testified by him.

318. The above gets consistent corroboration from P.W.02, the son of victim Chand Miah. Direct evidence of P.W.02 demonstrates that the accused actively participated in unlawfully detaining the victim Chand Mia who was dragged down from the rooftop of the building with severe beating. It reflects intense brutality of the accused.

319. P.W. 05 Md. Nazim Uddin Sheikh, brother of one of victims Md. Azahar Ali Sheikh also experienced the attack launched at their house by a group of army men, Razakars and the accused. He too saw the accused and his cohorts taking away his brother with beating and looting household.

320. It has been revealed too from his [P.W.05] testimony that his brother Md. Azahar Ali Sheikh used to organize the local youths to participate in the war of liberation and arranged their training. Presumably, this was the reason of aggression the gang had shown to him. Accused Tipu Sultan was a resident of their *moholla* [locality] and that's why P.W.05 knew him beforehand. It could not be controverted. Thus, what the P.W.05 narrated in respect of facts related to the attack and accused's participation therewith inspires credence. Defence does not seem to have impeached the facts unveiled from testimony of P.W.05.

321. The above version of P.W.05 leads to the conclusion that the gang had carried out attack concurrently around the same locality intending to secure forcible capture of selected pro-liberation civilians, organizers of the war of liberation and none but the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan himself had acted significantly in locating the targets and affecting their forcible capture, in exercise of his affiliation in Razakar Bahini.

322. P.W.07 Md. Kaju Sheikh is another direct witness to the prohibited acts occurred in course of the first phase of attack. He is the son of one survived victim Akbar Ali Sheikh. It transpires that he witnessed the gang formed of 15/20 Pakistani occupation army accompanied by accused Abdus Sattar @ Tipu and his 10/12 cohort

Razakars detaining his father entering their house, at the relevant time. He [P.W.07] also saw the group of attackers taking away his detained father along with other detainees by truck toward Rajshahi University.

323. Consistently corroborating testimony of P.W.07 demonstrates that in morning an attempt was made on part of relatives of victims to get the detainees released, moving to the place near Zoha Hall. But it was in vain as they were turned out.

324. It could not be impeached that one victim Akbar Ali Sheikh came back as he got survived. How the victim Akbar Ali Sheikh [now dead] got survived? P.W.07 the son of this survived victim is the competent witness in this regard. Evidence of P.W.07 depicts that after independence his father and another detainee Kurman Ali [P.W.06] came back and from them he knew that nine[09] detainees who were forcibly taken to the army camp at Zoha Hall along with them were shot to death, taking them at the site east to Zoha Hall. The above narrative made by P.W.07 gets corroboration from P.W.06 Kurman Ali, another survived victim.

325. The learned state defence counsel submitted that P.W.07 cannot be relied upon as he was not familiar with the accused as he, in cross-examination, could not say whether the accused was

involved with teaching profession and whether the accused was regular student of Islamic studies.

326. We disagree. Because, ignorance of those suggested fact by itself does not mean that the P.W.07 did not know the accused beforehand. It is not necessary for someone to know the entire account of a person and his family to justify the claim that he is known to him beforehand.

327. Next, the learned state defence counsel asserts that it has been unveiled in cross-examination of some prosecution witnesses that the father of the accused was a peer and had a khankah of his own; that the accused was engaged in teaching profession, after the independence achieved. All these negate accused's alleged involvement with the alleged events.

328. We are not agreed with the above submission. All these facts are subsequent to the offences committed. We are of the view that act or status subsequent to the commission of the offences in question cannot make the accused absolved of liability if he is found proved to have had participation in perpetrating those offences. Thus, not the status and act of accused subsequent to the offences committed but we require resolving accused's alleged

participation and role in committing the offences for which he has been indicted.

329. P.W.06 Kurman Ali is a vital witness. He is one of two survived victims. He narrated how the gang accompanied by the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan participated in causing his and other civilians' forcible capture, by launching designed attack. Defence could not taint it in any manner. His ocular testimony depicts that he, his brother-in-law Chand Miah along with forcefully captured Kalu Mia, Afil Mia, Sofa Mia, Bozla Mia, Azahar Mia, and Keramot and were taken away by a truck to the army camp set up at Shamsuzzoha Hall of Rajshahi University.

330. In a case involving offences known as universal crimes corroboration is not a matter or rule. However, in the case in hand, unimpeached testimony of one survived victim P.W.06 provides consistent corroboration to the narrative made by other direct witnesses.

331. In light of discussion made above based on direct evidence it has been found proved that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was with the gang of attackers at the scene and actively participated in causing unlawful capture of selected 11

pro-liberation civilians from their house, by launching systematic attack.

332. It stands proved too that the eleven detainees were taken away by truck to the army camp at Zoha Hall, Rajshahi University. The witnesses including P.W.06, one survived victim had natural occasion of observing the criminal acts carried out and it was practicable of recognizing the accused as he was a resident of their locality.

Killing, Confinement, Torture and Enslavement: Ending phase of attack

333. It is true that there is no direct evidence as to causing annihilation of nine detainees and accused's actual participation therewith. Crimes committed are known as universal crimes. Those occurred in context of the war of liberation. We have already found that the army camp set up at Zoha Hall was a concentration camp and the place besides it was the killing site. Naturally, none and even two survived victims who were kept in captivity had opportunity of seeing the killing accomplished.

334. The witnesses heard the tragic fate of nine detainees, after the independence from two survived victims --P.W.06 and Akbar Ali Sheikh [now dead].

335. Now, it is settled jurisprudence that ‘committing’ is not confined to direct and physical perpetration. Acts and conduct of a member of the JCE can constitute direct participation in the *actus reus* of the crime in question. Thus, it is not required to show that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan who had acted as part of the criminal enterprise personally committed the crime, the killing. Tribunal reiterates that act of accompanying the group ‘sharing intent’ in perpetrating the principal crime makes an accused part of criminal enterprise.

336. In light of facts and circumstances unveiled we arrive at indisputable conclusion that the killing was the ending phase of the attack that resulted in forcible capture of victims. That is to say, the proved acts the accused had played in course of first phase of attack were chained to the act of killing. Now, we are to see whether the accused can be held liable even for the killing.

337. Learned state defence counsel argued that P.W.05 claims to have heard the facts related to the ending phase of the event and he stated that P.W.06 Kurman Ali, during his captivity often saw the accused visiting the army camp. But P.W.06 Kurman Ali does not say it. Such discrepancy corrodes the credibility of P.W.05 and P.W.06.

338. We are not convinced with the above submission. First, such discrepancy does not corrode the credibility of a witness. It does not affect the core of the prosecution case and does not prompt to reject their entire evidence. Second, the mental capabilities of a human being cannot be expected to be attuned to absorb all the details he heard or witnessed and thus minor discrepancies are bound to occur in the statements of witnesses.

339. It transpires that in cross-examination, P.W.06 stated in reply to defence question that he did not see the accused Tipu Sultan at the camp during his captivity there, but he saw him on the day of the event happened. P.W.06 volunteered that he was kept in captivity at the army camp and thus he had no occasion of seeing what happened outside.

340. Thus, it has been affirmed that P.W.06 was kept in detention at the army camp set up at Zoha Hall and he had seen the accused there on the day of the event. That is to say, accused remained stayed with the group till it had brought the 11 detained civilians at the army camp. It also amply proves accused's close and culpable nexus with the army camp.

341. Testimony of P.W.06 Kurman Ali , a survived victim and other witnesses indisputably proves that the detainees were first

taken at the army camp at Zoha Hall, they were kept there in confinement and then nine of them were gunned down to death, taking them at the place east to Zoha Hall, the killing site.

342. It also depicts from the version made by P.W.06 in cross-examination that it was naturally not possible of seeing what happened inside and outside the camp as he was kept in captivity. But it may be inferred justifiably that P.W.06, one survived victim somehow might have known the tragic fate of nine other detainees, even remaining in captivity at the army camp.

343. Since it has been proved that nine victims along with P.W.06 Kurman Ali and Akbar Ali Sheikh were taken at the same army camp where they were kept confined and since two days later nine detainees could not be traced it is lawfully inferred that the nine detainees were eventually annihilated which somehow reached to knowledge of two survived detainees.

344. The army camp based at Shaheed Shamsuzzoha Hall, Rajshahi University was rather a concentration camp. Not only the victims of the events arraigned in the case in hand but thousands of civilians were liquidated and dumped at the place east to the Zoha Hall. Presumably, the Pakistani occupation army stationed at the camp with the active assistance of their local collaborators first used to

keep civilians, forcibly captured from different localities, in confinement at the camp, before causing their killing.

345. Events arraigned in the case in hand which resulted in barbaric killing of numerous civilians, after keeping them confined at the camp constitute split depiction of the mayhem carried out by joint perpetration of the Pakistani occupation army and their collaborators belonging to Razakar Bahini, we are convinced to infer it. They continued such horrendous atrocities till independence achieved. In this regard we take notice of the narrative made in the book *Ôersj v`tki` -`taxbZvhy` `vj j cÎ 8g LÛ* page-417-418, citing the report titled *Ôi vRkvnx vekte` `vj tq cvK emnbxi nZ`v, j y I vbhvZb0* published in **The Daily Azad 7 February, 1972** that--

Ôvekte` `vj q GjvKvq AmsL` Kei itqtQ hv t`tk Avil eû jvk D×vi Kiv thtZ cufi | vekte` `vj tqi vC| b Avej evkvi tRinv ntj i vbKU evm Ki tZv| ZvK Kei Lbb Ki tZ eva` Kiv ntZv| Zvi KvQ t`tk Rvbn hvq th, tRinv ntj i vbKU Abb`ctÿ vZb nvrvi jvki Kei t` I qv ntqtQ|0

[Source: *ersj v`tki` -`taxbZv hy` `vj j cÎ, 8g LÛ, cÿv 417-418t` `vbK AvRv` 7 tdegvix 1972]*

346. It gets further and strong assurance also from the information unveiled in another report titled **‘RU memorials carry hallmark of independence war’** published in **The New Age** Bangladesh: Mar 24, 2019 that--

“On 14 April in 1971, the Pakistani military entered the university campus and first stationed their headquarters at the Rajshahi University guesthouse Juberi Bhavan. Later, they shifted the headquarters to Doctor Zoha hall which was used as a concentration camp until the Pakistani occupation forces retreated on December 18 night, 1971. The freedom and peace loving people were whisked away by the army and their collaborators and kept at the Zoha hall and tortured to death. From their RU base, the Pakistani army led their destructive activities in the nearby areas of the city.

[Source:link:<http://www.newagebd.net/article/68236/rumemorials-carry-hallmark-of-independence-war>]

347. The above patently reflects what extent of barbaric criminal activities was carried out at the concentration camp set up at Zoha Hall in 1971 and presumably those atrocities were accomplished obviously on active and substantial contribution of local collaborators, particularly belonging to Razakar Bahini. The above also depicts that thousands of civilians were annihilated after keeping them in captivity at the camp.

348. The charge framed arraigns that the victims were kept in unlawful confinement and were subjected to torture, before they were killed. Victims were taken at the army camp, after causing their forcible capture and two days later they were killed, it stands proved. This fact by itself proves that the victims were kept in unlawful 'confinement' for two days.

349. There is no evidence to show that the victims were subjected torture in captivity. But the army camp was rather a concentration camp. It was not possible for anybody of observing the activities carried out inside the camp. However, keeping someone in unlawful confinement by itself is a kind of 'torture'. Confining a defenceless civilian unlawfully is rather grave deprivation of one's freedom and liberty. From this point of view it may be presumed that the victims were subjected to '**torture**' in captivity constituting the offence of crime against humanity.

350. It is not disputed that P.W.06 is a survived victim. Defence could not controvert it. It transpires from testimony of P.W.06 that he and another survived victim Akbar Ali Sheikh [father of P.W.07] were taken away on forcible capture along with nine other detainees. How these two detainees got survived? Ocular testimony of P.W.06 demonstrates that they the two detainees were forced to work as cook at the army camp at Zoha Hall and thus they got

survived. P.W.07 the son of another survived victim Akbar Ali Sheikh also heard it from his father.

351. That is to say, keeping in unlawful confinement P.W.06 and Akbar Ali Sheikh were forced to be engaged in such labor under coercion. Such prohibitory act formed part of systematic attack which is listed as a crime against humanity under section 3(2) of the Act of 1973. Thus, two detainees were kept in captivity under armed supervision. Indication of enslavement includes the exaction of forced or compulsory labour or service. In this regard we recall the observation made by the **ICTY Trial Chamber** in the case of Krnojelac which is as below: --

“‘[T]he exaction of forced or compulsory labour or service’ is an ‘indication of enslavement,’ and a ‘factor to be taken into consideration in determining whether enslavement was committed.’

[Krnojelac, (Trial Chamber), March 15, 2002, para. 359]

352. In the case in hand, it stands proved that two detainees were kept detained at the army camp for the purpose of being used for forced labour. Such forced labour was imposed on them in

deprivation of their liberty. Thus, it constituted the offence of **‘enslavement’** as crime against humanity.

Hearsay Evidence adduced and its probative value

353. P.W.08, P.W.09, P.W.10, P.W.11, P.W.12 and P.W.13 are hearsay witnesses, in addition to above direct witnesses to the facts related to the first phase of attack. It is now settled jurisprudence that even a single witness’ testimony is sufficient to prove the arraignment if the same inspires credence and carries probative value. However, let us eye on what has been heard by these hearsay witnesses, some of who happen to be near relatives of victims.

354. P.W.08 Professor Dr. Muhammad Intazul Haque is a responsible person. He served as the Registrar of Rajshahi University. Hearing the event as testified by P.W.08 could not be controverted in any manner. P.W.09 heard the event after independence from the locals and two survived victims including P.W.06. Defence does not seem to have denied it. Besides, hearing the event from survived victims was natural.

355. In cross-examination of P.W.09 it has been affirmed that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan had not been in the locality till 1975. It transpires from testimony of the IO [P.W.14]

that the accused had been in prison till that time, under the Collaborators Order 1972.

356. The above fact adds assurance as to accused's engagement in carrying out atrocious activities in 1971, in exercise of his membership in Razakar Bahini, being imbued by the policy and plan of Pakistani occupation army. Tribunal notes that Razakar Bahini was an auxiliary force which was created to provide static support to and collaboration with the Pakistani occupation army, to further its policy and plan. What was the policy? Resisting the war of liberation by annihilating pro-liberation civilians was the policy of carrying out atrocious mayhem directing civilian population.

357. The event of attack which resulted in taking away eleven civilians on forcible capture stands proved even from hearsay testimony of P.W.10, the daughter of one victim Shafi Uddin. At the relevant time P.W.10 had been at her conjugal home. Her testimony depicts that on the following morning she became aware of the event of taking away 11 civilians including her father on forcible capture. She heard from two survived victims [including P.W.06], after independence that 09 detainees including her father were shot to death. P.W. 09 also heard the event from two survived victims, after independence.

358. It appears that defence simply denied accused's involvement with the event as testified by P.W.10. But the event of attack that resulted in forcible capture of 11 civilians and later on gunning down 09 to death as testified by P.W.10 has not been denied in cross-examination.

359. P.W. 11 is the daughter of one victim Afil Uddin. She heard the event from her mother and relatives. In 1971 she was a little kid. Naturally, she became aware of the tragic event when she grew up. She heard about the tragic fate of her father and other detainees of whom Kurman Ali [P.W.06] and Akbar Ali Sheikh [now dead] got survived .Defence could not shake it.

360. Testimony of P.W.11 Most. Hamida Begum @ Bilkis the daughter of one victim Afil Uddin demonstrates that two survived victims coming back home after independence disclosed that nine detainees including her[P.W.11] father were shot to death on guidance of accused Razakar Tipu, taking them at the site behind Zoha Hall. It appears that defence does not seem to have made any effort to impeach it, by cross-examining the P.W.11. It has not been denied even.

361. Learned state defence counsel argued that since the above version does not get corroboration the same does not carry any value and cannot be acted upon.

362. It is true that the survived victim P.W.06 does not state anything as to presence of accused at the time of killing, true. Tribunal notes that lapse of long passage of time might have obstructed his memory in recounting detail precision with exactitude. Besides, the above version of P.W.11 is not the sole hint to connect the accused with the act of accomplishing the killing. Other facts and circumstances require to be viewed in rational way to arrive at decision in this regard.

363. It has already been proved that deliberate criminal acts of the accused resulted in abduction, confinement, devastating activities, and murder of numerous defenceless civilians. Accused Md. Abdus Sattar @ Tipu @ Tipu Sultan being part of collective criminality opted to carry out such prohibited acts directing civilian population. Thus, in absence of anything contrary the uncontroverted version of P.W.11 together with facts and circumstance as found proved too indisputably signifies accused's nexus with the army camp and his concern and participation with the event of killing.

364. P.W. 12 heard the event, after impudence from Akbar Ali and Kurman Ali, two survived victim. There is no reason of disbelieving him. He does not seem to have made any degree of exaggeration. P.W.13, the son of one victim Abul Hossain heard the event from his relatives and his maternal grandfather Akbar Ali, one survived victim.

365. Hearsay evidence of P.W.13 carries probative value as it gets corroboration. Thus it is found from evidence of P.W.13 that his father was shot to death along with other detainees and his detained maternal grand-father however got survived and came back. Defence could not bring anything to impeach this pertinent hearsay version.

366. We reiterate that the case in hand does not rest upon hearsay testimony. Already on evaluation of direct evidence we have arrived at reasoned finding in respect the event of attack and accused's participation therewith. Hearsay version of above witnesses seems to be attuned with the facts unveiled from direct evidence.

367. Testimony of P.W.09, P.W.10, P.W.11, P.W.12 and P.W.13 is not anonymous hearsay evidence. They heard the dreadful fate of

their dear ones, the nine victims from their relatives and two other survived detainees including P.W.06. In absence of anything contrary their hearsay evidence carries probative value as it gets sturdy corroboration from facts recounted by the direct witnesses.

368. Above discussion based on hearsay evidence inspiring credence also tends to unerring conclusion that 11 civilians were taken away on forcible capture by launching systematic attack; that the accused was an active part of the criminal enterprise; that the victims were kept confined at the army camp; that two days later nine victims were killed and two were forcefully engaged to work as cook at the camp. The second phase of attack stands proved from circumstances unveiled and also from testimony of P.W.06 Kurman Ali, one survived victim.

Systematic Attack and how the accused had acted

369. The designed attack that first resulted in forcible capture was deliberate and designed. It was directed against civilian population. Purpose of such attack was to wipe out pro-liberation civilians. It is lawfully inferred as eventually nine out of eleven detainees were shot to death. Intrinsic pattern of attack and violent activities carried out in juncture of the first phase of attack caused untold pain and horror to the relatives of victims. Such prohibited acts were conducted as part of systematic attack, we deduce.

370. Facts and circumstances suggest to deduce that the accused, in addition to liability for aiding and abetting incurred liability as a co-perpetrator as he had acted to further the common design of the criminal enterprise, sharing common intent. It is now settled jurisprudence that when criminal purpose is carried out by a group pursuant to common design there existed no distinction between the 'finger man' and the 'trigger man'.

371. The facts and circumstances unveiled forced us to irresistible conclusion that the accused, his accomplice Razakars accompanying the Pakistani occupation army carried out the criminal acts forming part of systematic attack, sharing common purpose. Proved act of participating in effecting forcible capture of victims made the accused inevitably linked and concerned even with the next phase of attack that happened after taking away the detainees to the army camp by army truck.

372. We are convinced to conclude that such act of accused amply signifies his conscious participation even in materializing the goal of the criminal mission which eventually ended in wiping out nine detained civilians, by sharing common intent. Pattern of the acts of accused in effecting forcible capture of eleven unarmed civilians were well fitted into a group's plan.

373. It is now settled that if a person is found to have contributed and facilitated the commission of the crime jointly with a group, he would be a joint perpetrator and responsible for having committed the crime in question. The word “committed” is not meant to exclude participants who had not themselves executed the crimes at the crime scene.

374. Committing may be done individually or jointly with others. It is not required to show that the accused himself participated in all aspects of the alleged criminal mission. It is now well settled. The term ‘committing’ encompasses also indirect participation, individually or jointly with others. ICTY Trial Chamber observed in this regard that-

“The Trial Chamber prefers to define ‘committing’ as meaning that the accused participated, physically or otherwise directly or indirectly, in the material elements of the crime charged through positive acts or, based on a duty to act, omissions, whether individually or jointly with others.”

[*Stakic*, ICTY Trial Chamber, July 31, 2003, para. 439]

375. In the case in hand, it stands proved that the victims of the event arraigned in charge no.02 happened to be accused’s nearer neighbours and potential pro-liberation civilians. Instead of

safeguarding them the accused, in exercise of his membership in locally formed Razakar Bahini enthusiastically opted, agreeing with the intent and purpose of the group, to make them targeted and to further policy and plan by providing substantial contribution in committing killing of nine, after taking them away to army camp, on unlawful capture.

Liability incurred by the accused

376. Killing of nine detained civilians was the outcome of 'collective criminality' and the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan being an active member of the 'joint endeavor' thus incurred equal liability as a co-perpetrator for all the criminal acts including the killing .All members of the enterprise including the accused, by their contribution had acted in unison to put into effect the goal of the enterprise.

377. It is to be noted that the mode of liability need not involve the physical commission of a specific crime by all the members of JCE but may take the form of assistance in or contribution to, the execution of the common purpose [**Stakic (IT-97-24-A), ICTY Appeals Chamber, 22 March 2006, para. 64**]

378. It stands proved that accused's participation in joint criminal enterprise was specifically directed to the furthering of the common

plan or purpose and thus he and all the participants in the enterprise are equally guilty for the killing, the upshot of the attack.

379. 'Common purpose' is a material element of a joint criminal enterprise [JCE]. Common purpose or plan may be well inferred from circumstances. Intending to materialize what common purpose the group of attackers had forcibly captured eleven civilians? Had the perpetrators mere purpose of such abduction of keeping those detained civilians only in confinement? No, the facts and circumstances do not suggest it.

380. It has been found proved that nine of detainees were gunned down to death after keeping them confined at the army camp. They were killed at site, east to Zoha Hall where the army camp was based. The accused Abdus Sattar @ Tipu @ Tipu Sultan toowas an active and conscious part of the common purpose of the JCE.

381. It has been argued on part of the defence that prosecution failed to bring any evidence to show accused's participation to the commission of killing nine detainees and as such the accused cannot be connected with this phase of event.

382. Disagreeing with the above argument we reiterate that the term 'participation' is defined broadly and may take the form of

assistance in or contribution to, the execution of the common plan. Participation includes both direct participation and indirect participation. We take note of the observation made by ICTY in the case of **Blagojevic and Jokic** that-

“Regardless of the role each played in its commission, all of the participants in the enterprise are guilty of the same crime.”

[*Blagojevic and Jokic*, ICTY Trial Chamber, January 17, 2005, para. 702]

383. Liability concerning the offences enumerated in section 3(2) of the Act of 1973 under the doctrine of JCE [Basic Form] need not involve the physical commission of crimes by all the members of the JCE.

384. The doctrine of JCE [Basic Form] corresponds to the statutory provision contemplated in **Section 4(1) of the Act of 1973** which reads as below:

“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”.

385. We have already viewed that the killing was the outcome of the first phase of attack. Now, Tribunal notes that facts and

circumstances revealed unerringly suggest that accomplishing the act of killing nine detained civilians is manifestation of collective criminality to which the accused was an active part. Thus, the accused incurred equal liability for the horrendous killing of numerous unarmed pro-liberation civilians including freedom-fighter and organizer of the war of liberation.

386. The above view is approved by the well settled jurisprudence that when the sum of the coordinated individual contribution of a plurality of persons results in the realization of all the objective elements of a crime, any person making a contribution can be held vicariously responsible for the contributions of all others and, as a result, can be considered as a principal to the whole crime. This recognized jurisprudence goes compatibly with the notion contemplated in section 4(1) of the Act of 1973.

387. Thus, it is immaterial to show with specificity as to how the accused person being the member of the enterprise had acted, to further the agreed object of the criminal mission, i.e. killing of detained civilians. Legal proposition evolved in this regard in the **ICTY** may be cited here as relevant which is as below:

“If the agreed crime is committed by one or other of the participants in a joint criminal

enterprise such as has already been discussed, all the participants in that enterprise are equally guilty of the crime regardless of the part played by each in its commission.”

[Vasiljevic, ICTY Trial Chamber, Judgment: November 29, 2002, para 67]

388. Liability accrues when it is found that the accused had conscious and intentional presence, sharing intent, at the site or sites where unlawful and prohibited acts were carried out. It is sufficient to trigger his individual criminal responsibility as ‘participant’ under the doctrine of JCE-I [Basic Form].

389. Accused person’s active participation in the initial phase of attack that resulted in unlawful detention and abduction of 11 victims and then keeping them confined at the killing base set up at Zoha Hall is quite fair indicative as to his contribution constituting ‘participation’ and ‘concern’ even to the commission of the killing.

390. The accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was thus consciously ‘concerned with the commission’ of actual commission of the event of killing. Providing assistance and substantial facilitation by a member of a group at the pre-execution level also tantamount to physical assistance and contribution in committing the principal the crime at the execution level and thus

he shall be held liable even for his ‘concern’ and ‘complicity’ in concurrence when the crime is committed. It has been observed in the case of **Tadic**, that

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

[Tadic, (Trial Chamber), May 7, 1997, para. 691]

391. The accused Md. Abdus Sattar @ Tipu @ Tipu Sultan being part of the criminal enterprise participated in an integral part of the attack that ended in annihilation of detained victims. This mode is significantly culpable indeed and substantially facilitated and contributed the accomplishing of brutal annihilation of nine detainees.

392. It stands proved that the accused was present at the site with the group when it moved to cause unlawful detention, beating the detainees and looting household. His presence and aggressive act had an encouraging effect in carrying out the first phase of attack, it stands proved.

393. It may be lawfully viewed that the accused participated even in ending phase of the attack. It is assumed that the accused did not keep him distanced from the group, even after conducting the first phase of attack. Facts and circumstances and pattern of attack suggest the conclusion that 'state of mind' or 'culpable mental state' of the accused was intended to commit the specific *actus reus* of the crime. Accused had purposely acted by being part of the joint criminal enterprise consciously and knowing objective of the attack conducted. Indisputably he knew desired consequence of the attack and forceable outcome of group activity.

394. Active affiliation of accused Md. Abdus Samad @ Tipu @ Tipu Sultan in Razakar Bahini, an auxiliary force and his close nexus with the Pakistani occupation army stationed at Zoha Hall, Rajshahi University unerringly indicate that he culpably and knowingly sided with the group chiefly formed of Pakistani occupation army in committing the offences in question, sharing intent and common purpose. All these collectively involve his 'participation' even in accomplishing the phase of killing nine detainees, as a co-perpetrator. Criminal conducts of the accused encapsulate is participation in effecting the goal of the criminal enterprise, we conclude.

395. It is now well settled that a group crime can be committed individually or jointly with others. There can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence. Annihilation of nine civilians, as found proved would not have occurred if they could not be located and unlawfully detained with substantial contribution of the accused.

396. In the case in hand, common plan or purpose of the mission was to wipe out the detainees. Eventually it happened. Thus, it is inferred that everyone including the accused in the group had conscious knowledge about the predicted result of the criminal enterprise. They all are found to have had contributed to the commission of commonly intended crime, the killing. In this regard the **ICTR Appeal Chamber** in the case of **Nizeyimana** has observed that —

‘.....In order to find an individual liable for the commission of a crime through a basic joint criminal enterprise:[a] trier of fact must find beyond reasonable doubt that a plurality of persons shared the common criminal purpose; that the accused made a contribution to this common criminal purpose; and that the commonly intended crime [...] did in fact take place.

[**Nizeyimana** , ICTR Appeal Chamber, Judgment 29.9.2014, para 325]

397. In the case in hand, it has been proved that accused Md. Abdus Samad @ Tipu @ Tipu Sultan had acted as the conductor of the first phase of attack. He deliberately and actively participated in effecting taking away 11 civilians on unlawful capture. It may be inferred that the knowing and predicting the goal of the attack he substantially contributed in locating and capturing the selected civilians of the same locality under Boalia police station of Rajshahi town.

398. All the proved prohibited acts the accused had carried out aggressively in course of the first phase of the attack, in exercise of his affiliation in Razakar Bahini was pursuant to orchestrated plan and common purpose, it may be inferred justifiably. This fact is indubitably chained to the upshot of the purpose of the enterprise. It stands proved too that the accused continued his staying with the group when it took away the detainees by truck to the army camp at Zoha Hall, Rajshahi University. This fact provides assurance as to accused's nexus and affiliation with the army camp and its activities.

399. It stands proved that the accused got consciously engaged in launching the attack in furtherance of common purpose of the group and therefore he incurred equal liability as a co-perpetrators

and did it knowingly. The ICTY in the case of **Limaj** has observed that--

“Where, however, the accused knows that his assistance is supporting the crimes of a group of persons involved in a joint criminal enterprise and shares that intent, then he may be found criminally responsible for the crimes committed in furtherance of that common purpose as a co-perpetrator.”

[Limaj, ICTY Trial Chamber, November 30, 2005, para. 510 (similar).

400. Does only the actual executor of the crime incur liability for the commission of a ‘group crime’? The principled conception in this regard states that--

‘The principle of fair attribution of personal liability, however, permits criminal law liability not only for the physical executor of the crime (for instance, person A, who with intent stabbed B to death and thus committed murder), but also for others who exercised their freedom of choice to participate in a criminal plan or enterprise (for example, to murder person B). This makes it possible to attribute criminal liability to persons other than the principal perpetrator for

the exact roles they played in carrying out the offence.’

[‘A Theory of Punishable Participation in Universal Crimes’]: Terje Einarsen and Joseph, Rikh of; 2018, Torkel Opsahl Academic E Publisher Brussels, page 85]

401. The facts and circumstances unveiled in the case in hand cumulatively force us to irresistible conclusion that the attack was systematic attack to which the accused was an active part, sharing common purpose. Proved act of participating in effecting forcible capture of a number of defenceless civilians made the accused inevitably linked and concerned even with the next phase of attack. It amply signifies accused’s joint-perpetration in the criminal mission which eventually ended in wiping out nine detainees.

402. In the case in hand, accused is found to have acted as a responsible facilitator of the organised criminal enterprises. ‘Participation’ in committing universal crimes does not only relate to the executors at the crime scene. Rather, it applies even to all members of the group who sharing mental awareness and intent made substantial contribution towards the end of the crime in question, the upshot of the attack.

403. The facts unveiled crucially related to the event are of clinching nature and all of them lead to the irresistible conclusion that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan was with the gang and actively participated as a co-perpetrator also in accomplishing the killing nine unarmed civilians.

404. The circumstances unveiled seem to be consistent only with the hypothesis of the guilt of the accused and are totally inconsistent with his innocence.. It stands proved that the accused had acted as a joint perpetrator or co-perpetrator and responsible for having committed the crime of killing and thus incurred 'commission liability'.

405. On integrated evaluation of evidence tendered it appears that the prosecution has been able to prove it beyond reasonable doubt that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan by his conscious and culpable act facilitated the prohibited act of detaining and confining the victims, the 11 civilians at the army camp where they were subjected to torture and two days later nine were shot to death by taking them at the site east to the Camp at Zoha Hall and two were forced to work as cook at the camp, in deprivation of liberty.

406. Finally, rationale evaluation of evidence tendered indisputably demonstrates that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan by his act and conduct forming part of systematic attack being part of collective criminality consciously participated, aided, abetted and substantially contributed in committing the offences of **‘abduction’, ‘confinement’, torture’, enslavement’** and **‘murder’** as crimes against humanity enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan incurred criminal liability under section 4(1) of the Act of 1973.

XI. Task of Investigation

407. It is significant to note that the task of investigation under the Act of 1973 is a quite unique and challenging job for the officer assigned with it. In holding investigation under the Act of 1973 the Investigation Officer had to deal with the alleged offences of crimes against humanity occurred long more than four decades back, in violation of customary international law together with the matter of unearthing *prima facie* involvement and complicity of the accused therewith.

408. The learned state defence counsel asserted that the case is based on flawed investigation ; that defence has been prejudiced as

the persons preparing the documents relied upon by the prosecution have not been cited as witnesses.

409. In the case in hand, the IO as it appears, submitted the report on closure of investigation on the basis of evidence he could collect in relation to two atrocious events involving killing of numerous unarmed civilians , the residents of Rajshahi town, taking them to the army camp at Zoha Hall, Rajshahi University, on forcible capture.

410. The document relied upon by the prosecution states name of seven Razakars including the accused and of them five already died and one could not be traced. Thus, question of prosecuting other Razakars as agitated on part of defence does not arise.

411. Next, non citation of the persons under whose signature the documents have been communicated as witnesses does not create any flaw in investigation. We have already expressed our reasoned view in this regard. Thus, the investigation cannot be termed flawed and it does not taint the prosecution case in any manner.

412. However, we feel constrained to express our view that it transpires that not only the victims of the events arraigned in two charges framed but thousands of civilians had to face the untold

tragic fate, after they were taken at the 'concentration camp' and 'repression centre' set up at Zoha Hall, Rajshahi University, it stands proved from the authoritative reports as already discussed. Presumably, the pro-liberation civilians of Rajshahi town and adjacent localities were made target of the aggressors, till the nation achieved its independence. The mass grave discovered beside the Zoha Hall is one of largest mass graves detected in the territory of Bangladesh.

413. By conducting more extensive and effective investigation it could be unfolded how, when and on whose participation and contribution all those countless killings happened, on taking the civilians at the army camp at Zoha Hall, on forcible capture, in 1971.

414. However, on total appraisal, we do not find anything flawed in the investigation task so far as it relates to the two events arraigned in two charges framed. The Tribunal notes that the Investigation Officers [P.W.14] , in compliance with the norms and provisions contemplated in the Act of 1973 and the ROP, carried out the task of investigation on completion of which the IO duly submitted 'report' before the Chief Prosecutor. Accordingly, the submission advanced by the learned state defence counsel terming the task of investigation flawed does not carry any merit, we conclude.

XII. Conclusion

415. In the case in hand, the two charges framed arose from two events occurred methodically and in systematic way. Both the events of attack happened in localities under police station Boalia of Rajshahi town. The event of attack arraigned in charge no. 01 happened in mid of Rajshahi town, in day time and the attack was calculated to kill the victim, it stands proved. The accused is found to have had actively and substantially contributed at all aspects of the event, as a part of collective criminality and the common purpose of the gang was to liquidate the victim Babar Mondol, prosecution has been able to prove it beyond reasonable doubt.

416. The event arraigned in charge no.02 involves killing nine civilians and unlawfully detaining two captured victims at the army camp at Zoha Hall, Rajshahi University till the Pakistani occupation army retreated. Both the events arraigned happened in context of the War of Liberation in 1971.

417. On adjudication of the charge no.02 we got it proved that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan consciously and aggressively participated in causing forcible capture of eleven civilians from their respective house, sharing common purpose of

the criminal enterprise formed of Pakistani occupation army and cohort Razakars.

418. Already we have recorded our reasoned finding based on the evidence, oral, documentary and circumstantial, led by the prosecution that the accused in exercise of his membership in locally formed Razakar Bahini spontaneously opted to substantially contribute in accomplishing the attack which ended in barbaric killing of nine civilians, after causing torture keeping them confined at the army camp at Zoha Hall, Rajshahi University.

419. It is now undisputed history that by creating Razakar Bahini an auxiliary squad the Pakistani occupation army started acting together in perpetrating the atrocious activities by launching systematic attack directing civilian population throughout the territory of Bangladesh in 1971, to further policy and plan. Policy and plan was to resist and diminish the ideology of the war of liberation by eliminating pro-liberation civilians.

420. The event arraigned in charge no.02 which has been proved is rather a patent manifestation of such brute policy. The history says that the members of such auxiliary force being imbued by such policy and plan remained engaged in participating in carrying out horrendous atrocious activities with intent to liquidate the pro-

liberation civilians and non-combatant freedom-fighters terming them 'anti-state elements', 'miscreants' and this was the key purpose of forming such auxiliary squad of pro-Pakistan people.

421. Already it stands proved that the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan had affiliation with Islami Chatra Sangha [ICS] the student wing of Jamat E Islami [JEI] a potential pro-Pakistan political party. And he was also an active member of Razakar Bahini formed in Rajshahi town. Naturally he was a known person to the locals for his stance and notoriety. It has been unveiled that he was a resident of neighbouring locality of many of prosecution witnesses, the relatives of victims of the event arraigned in charge no.02.

422. We have already articulated our reasoned finding that conducting attacks directing selected civilians in planned and systematic manner and killing the detained civilians [as arraigned in both charges] would not have been likely without active, culpable and enthusiastic engagement and contribution of the accused Md. Abdus Samad @ Tipu @ Tipu Sultan belonging to locally formed Razakar Bahini who knowingly participated in the enterprise, sharing common purpose. The accused has been found to have participated in conducting the attack with extreme barbaric attitude, knowing the consequence and goal of the attack.

423. It stands proved too that the army camp set up at Shamsuzzoha Hall, Rajshahi University was a 'concentration camp' and the Pakistani occupation army in collaboration with their local loyalists belonging to Razakar Bahini continued carrying recurrent killing of huge number of civilians at the site behind the Hall after keeping them confined at the camp, till the army retreated.

424. We have rendered our reasoned finding in preceding deliberation that the accused Md. Abdus Samad @ Tipu @ Tipu Sultan was actively involved in picking up civilians on forcible capture and contributed in taking them away to the army camp at Zoha Hall, Rajshahi University leading to their confinement, torture, murder and enslavement.

425. The proved facts as arraigned in both charges have indisputably proved accused's close and culpable nexus with the army stationed at Zoha Hall. According to section 4(1) of the Act of 1973 the accused, being equally responsible, has incurred individual criminal liability for the commission of crimes already proved.

426. In the case in hand, the prohibited acts constituting the offences proved were not divisible from the horrendous atrocities

committed in the territory of Bangladesh in 1971 during the war of liberation. It has now become an undisputed history.

427. The Tribunal already rendered its reasoned decision, on adjudication of all the 02 charges, holding the accused Md. Abdus Sattar @ Tipu @ Tipu Sultan criminally liable under the doctrine of JCE [Basic Form] which corresponds to section 4(1) of the Act of 1973 for the commission of crimes proved as listed in all the 02 charges [offences of ‘abduction’, ‘confinement’, ‘torture’, ‘enslavement’ and ‘murder’ as crimes against humanity] and therefore he be convicted for the offences, the ‘group crimes’ proved.

XIII. VERDICT ON CONVICTION

428. For the reasoned finding set out herein above, based on analysis of evidence and taking the settled legal proposition into account in adjudicating charges and having considered arguments, we **unanimously** find—

The accused Md. Abdus Sattar @ Tipu @ Tipu Sultan

Charge No.01:GUILTY of participating , aiding, abetting, instigating and substantially contributing by his culpable act and conduct forming part of systematic attack, in accomplishment of the criminal

acts constituting the offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and the accused incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.02:GUILTY of participating, aiding, abetting and substantially contributing by his culpable act and conduct forming part of systematic attack, in committing criminal acts constituting the offences of ‘**abduction**’, ‘**confinement**’, ‘**torture**’, ‘**enslavement**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and the accused incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

XIV. Verdict on Sentencing

Sentencing argument: Prosecution

429. Mr. Mokhlesur Rahman Badal the learned prosecutor in advancing justification on sentence awarding issue submits that the accused had shown extreme notoriety and aggression in materializing the goal and common purpose of attacks which resulted in killing of numerous pro-liberation civilians. The nature

of committing atrocious activities aggravates the gravity of crimes proved. It together with the manner in which the accused Md. Abdus Sattar @Tipu @ Tipu Sultan, being a co-perpetrator contributed and facilitated the commission of the killing a number of civilians, the upshot of the attacks proved commensurate to appropriate and highest punishment as permitted in the Act of 1973, the learned prosecutor added.

430. It has been further asserted that the accused's active and deliberate participation in effecting forcible capture of one civilians Babar Mondol from the place, mid of Rajshahi town in day time was a patent reflection of his antagonistic mindset. He did it sharing common purpose of the gang. The accused being a notorious loyalist of Pakistani occupation army and in exercise of his affiliation in locally formed Razakar Bahini not only abetted but participated too in wiping out the detained victim, it stands roved.

431. Mr. Mokhlesur Rahman Badal the learned prosecutor also emphatically submitted that since it has been proved the accused being active part of collective criminality participated in causing forcible capture of eleven civilians with deliberate aggression and took them away to the army camp at Zoha Hall, Rajshahi University and the criminal acts were carried out in presence of victims' relatives which caused immense and unspeakable trauma

to them. The killing of nine detainees was the outcome of their unlawful capture to which the accused was an active participant. Accused deserves highest punishment which may reduce the cries and colossal trauma of the relatives of victims they have been carrying since couple of decades.

Sentencing argument: Defence

432. On contrary, **Mr. Gazi M.H Tamim** in advancing submission on sentencing matter submits that prosecution could not bring any evidence that the accused was the actual perpetrator of the principal crime, the killing and without bringing the principal perpetrator to book highest punishment cannot be awarded to the aider and abettor. In this regard the learned defence counsel cited the observation of the **Appellate Division** made in the Criminal Appeal nos. 39-40 of 2013 in the case of **Delwar Hossain Sayedee** which reads as below:

“It is true that both the offences are heinous in nature, but in the absence of the principal offender, the abettor cannot be sentenced to death.”

[Criminal Appeal Mos. 39-40 of 2013, **Delwar Hossain Sayeedi Judgment 17 September 2014, page 148**]

433. Relying upon the above observation the learned state defence counsel Mr. Gazi M.H. Tamim has opted to justify that the accused

deserves lesser punishment if he is eventually found to have had acted as an ‘abettor’ in perpetrating the crimes arraigned and since the principal offender has not been brought to justice. The act of abetting the commission of a crime constitutes a mitigating circumstance, the learned state defence counsel submitted.

434. Tribunal notes that it should be borne in mind that mitigating circumstance is relevant only to the assessment of sentence and in no way derogates the gravity of the crime and that it mitigates punishment, not the crime.

435. At the outset we reiterate that punishment to be awarded must reflect norms and values and aspirations of a particular society at a given time. Traumatized victims and sufferers may legitimately insist appropriate and highest sentence while the defence may demand acquittal or lesser punishment, 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.

436. 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 horrendous crimes committed during the war of liberation in 1971.

437. First, aiding or abetting does not constitute any mitigating circumstance. Aiding or abetting by itself is an offence under the Act of 1973. Next, already we have rendered our reasoned finding, in adjudicating the charges that the accused Md. Abdus Sattar @ Tipu@ Tipu Sultan being an active member of the criminal enterprise and sharing its common purpose and designed goal had consciously participated in accomplishing the crimes not only as abettor and aider but also as a ‘co-perpetrator’.

438. Tribunal notes that in the case of **Abdul Quader Molla** the **Appellate Division** in its judgment rendered on 17th September, 2013 observed that—

“Abetment by itself is a substantive offence and the abettor can be convicted even before the principal is apprehended and put on trial (1969 Ker LJ 215).”

**[Appellate Division: Abdul Quader Molla
Judgement page-748]**

439. The above observation of our Apex Court suggests arriving at the view that it will be erred in holding that act of aiding and abetting warrants a lesser sentence than other forms of criminal

participation. Mitigating circumstances do not excuse or justify the criminal conduct of an accused.

440. Further, there can be no room to deduce that the accused cannot be held responsible for the act done by other members of the gang. In this regard we recall the observation of the **Appellate Division of Bangladesh Supreme Court** which is as below:

“.....instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the crimes defined in the ICT Act are responsible for the act performed by any one of them in execution of such plan.”

[Ali Ahsan Muhammad Mujahid Criminal Appeal No.103 of 2013.Judgment, 16 June 2015]

441. What has been found proved in the case in hand? It has already been proved that the convicted accused Md. Abdus Sattar @ Tipu @ Tipu Sultan not only aided and abetted the commission of the principal crime but also by his culpable act and substantial contribution he got engaged in execution of the designed plan and purpose as a co-perpetrator. The purpose was to annihilate the detained civilians, after taking them at the army camp at Zoha Hall of Rajshahi University.

442. It is now well settled jurisprudence that –

“ a person who contributes substantially to the commission of a crime by another person and shares the criminal intent behind such commission is criminally responsible both as an aider and abettor and a co-perpetrator.”

[Mpambara, ICTR Trial Chamber, Judgment 11 September 2006, para 17].

443. This settled proposition corresponds to the provision contemplated in section 4(1) of the Act of 1973 which 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.”

444. Additionally, in the case in hand, convicted accused’s culpable and active act and conduct forming part of designed attack did not only harm the victims of the crimes and their immediate relatives, but fuelled explicit encouragement and moral support in getting countless pro-liberation civilians captured intending to annihilate, after keeping them confined at the army camp at Zoha Hall, Rajshahi University.

445. In the case in hand, we did not find that the convicted accused expressed remorse of any degree meriting recognition for sentencing purpose. There has been no defence case that the accused was engaged in committing the crimes under compulsion or he did it out of a heat of passion or at any stage of trial he had shown any degree of remorse.

446. Pattern of aiding, abetting and substantial contribution of the convicted accused provided intended to achieve the goal and common purpose of the criminal enterprise which in no way constitute the justified basis of lesser punishment. Besides, the convicted accused is found to have acted as a conscious and antagonistic co-perpetrator in accomplishing the brutal crimes in question.

447. In view of above discussion based of settled proposition we are not in agreement with the defence submission that the accused deserves lesser punishment , treating him a mere abettor or aider for the commission of crimes proved which are inherently of monstrous nature .

448. Sentencing policy is an imperative task in a criminal case. There is no straitjacket formula for awarding sentence to a convicted accused for the crimes proved. However, the principle of

proportionality in sentencing a convicted accused for the crimes proved is well entrenched in criminal jurisprudence.

449. One of the prime objectives of awarding punishment is imposition of appropriate, just and proportionate sentence commensurate with the nature, extent and gravity of crimes committed. The manner in which the crimes committed also needs to be taken into consideration.

450. In light of settled jurisprudence and based on evidence and circumstances we have already deduced that the convicted accused Md. Abdus Sattar @ Tipu @ Tipu Sultan sharing common purpose of the criminal enterprise actively participated by his culpable act which ended in barbaric killing of numerous civilians.

451. In adjudicating the charge no.02 the facts and circumstances unveiled have led us to the conclusion that taking away the unlawfully detained eleven civilians by launching designed attack was not for any pious purpose. Knowing the consequence the accused substantially contributed in accomplishing the principal crime, the goal and common purpose of the criminal enterprise.

452. We got it proved from evidence of P.W.13 that his father along with his maternal grand-father Akbar Ali [now dead] and

others were taken away to the army camp on unlawful capture. Victim Akbar Ali got survived. But the father of P.W.13 was shot to death along with eight other detainees. What a brutality!

453. Vulnerable detainee Akbar Ali [now dead] had to experience the tragic fate of his near relative and others, remaining detained at the concentration camp. Such barbarity must shock the entire humanity. The sacrifice the brave victims laid has made the nation indebted. The nine detainees and the victim of the event of charge no.2 who were shot to death deserve due tribute, homage and salute, particularly in this month of nation's great victory.

454. The convicted accused has been found criminally responsible under the doctrine of JCE for all the acts of the collective criminal mission to which he was an active part intending to execute its plan and purpose and thus he incurred equal liability. We reiterate that the doctrine of JCE [Basic Form] corresponds to Section 4(1) of the Act of 1973.

455. It stands proved that mode of participation of the convicted accused by providing aid, abetment and substantial contribution intended to achieve the goal of the criminal enterprise. By such deliberate act and conduct the convicted accused had acted as a conscious co-perpetrator in accomplishing the crimes in question.

456. In awarding sentence the court of law must consider the facts and circumstances of each case, the gravity of the crime, nature of the offence and all other attendant circumstances. In **State of Madhya Pradesh Vs. Surendra Singh, (AIR 2015 SC 3980,** based on the theory of proportionality, it is laid down by Hon'ble Apex Court that,

“Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.

457. In the case in hand, victims of the barbaric events arraigned in both the charges were annihilated after taking them at the army camp set up at Shaheed Shamsuzzoha Hall, on forcible capture. In captivity the victims were subjected to torture, before they were shot to death, taking at the site behind Zoha Hall.

458. The convicted accused Md. Abdus Sattar @ Tipu @ Tipu Sultan is found to have had active and culpable participation in materializing the goal of the common design. In this way, he had acted as a conscious part of collective criminality. It stands proved that the convicted accused had close and culpable nexus with the

army camp at Zoha Hall. All these have been proved. All these are constituents of aggravating factors, we conclude.

459. In the case in hand, convicted accused's culpable and active act and conduct forming part of designed attack did not only harm the victims of the crimes and their immediate relatives, but fuelled explicit encouragement and moral support in getting countless pro-liberation civilians captured intending to annihilate.

460. We have got it unfolded that the Pakistani occupation army men did not get simply stationed at the Zoha Hall, Rajshahi University in 1971. They transformed Shaheed Shamsuzzoha Hall into a 'concentration camp' and the army stationed there had recurrently carried out killing of countless civilians bringing them at the camp on forcible capture, till they retreated. Targeting the civilians for liquidation would not have been possible without the active assistance, contribution and collaboration of the Bengali traitors belonging to Razakar Bahini and people belonging to pro-Pakistan political parties.

461. We get a vicious portrayal of the army camp set up at Zoha Hall from an article titled '**Honouring a Rare Sacrifice**' published in the **Daily Star on March 31, 2011** where it has been narrated that-

“Around mid April, a huge force of the Pakistani Army entered the city. Most of the campus residents left the area as the Pakistani army established their base at the university halls. The army turned Shaheed Shamsuzzoha Hall into a 'concentration camp' and 'repression centre'. After torturing them, the barbarians killed the students, the intellectuals and able-bodied males at the mass graveyard behind Zoha Hall.”

[Source link: <https://www.thedailystar.net/news-detail-179760>]

462. We fail to comprehend why the investigation agency did not care to concentrate the other countless events which resulted in killing of thousands of civilians, after keeping them confined at the army camp at Shaheed Shamsuzzoha Hall of Rajshahi University. More extensive investigation could make the space of knowing what extent of barbaric recurrent atrocities were carried out at the army camp at Zoha Hall in collaboration with the local collaborators during the nine-month blood stained war of liberation.

463. The offences as crimes against humanity shock the human conscience, precisely on account of their extreme and intrinsic gravity. In the case in hand, the horrendous offences committed by the accused therefore gravely aggrieved all human beings, we conclude. Thus, these must be punished by awarding appropriate sentence, in exercise of judicial discretion.

464. In the case in hand, we did not find that the convicted accused expressed remorse of any degree meriting recognition for sentencing purpose. It is to be noted that statutory provision contemplated in section 20(2) of the Act of 1973 provides the ‘sentence of death’ or such other punishment proportionate to the gravity of the crime. The **Appellate Division** of Bangladesh Supreme Court in the **Criminal Appeal nos. 24-25 OF 2013, Abdul Quader Molla** has observed that --

“A plain reading of sub-section (2) shows that if the tribunal finds any person guilty of any of the offences described in subsection (2) of section 3, awarding a death sentence is the rule and any other sentence of imprisonment proportionate to the gravity of the offence is an exception..... In awarding the appropriate sentence, the tribunal must respond to the society’s cry for justice against perpetrators of Crimes against Humanity.”

[Criminal Appeal Nos. 24-25 of 2013, Abdul Quader Molla Judgment, page 247]

465. Keeping the above into account we are of the view that the ethos of criminal justice dispensation to prevent and punish the heinous crimes must respond to the cries of victims and their dear ones. We are to eye on the aggravating circumstance as found evident in the case in hand which tilts the balance in favour of just and just punishment.

466. The accused has been found guilty for committing universal crimes and not for committing any isolated offence as codified in normal penal law and as such the crimes proved itself portray horrific magnitude, gravity and diabolical nature. Thus, in the event of success of prosecution in proving the crimes and accused's participation therewith the accused must and must deserve just and appropriate punishment.

467. It is the solemn duty of the Tribunal to award sentence which must be just and commensurate to the diabolical pattern of crimes proved so that injustice is not caused only to the victims of crimes but the nation as well. Letters of law cannot remain unvoiced in this regard.

468. In view of reasoned deliberation as made herein above and considering the pattern and magnitude of offences proved and proportion to the gravity of the offences proved and also taking the factors as focused above into account we arrive at **UNANIMOUS DECISION** that justice would be met if the convicted accused **Md. Abdus Sattar @ Tipu @ Tipu Sultan** who has been found guilty beyond reasonable doubt for the crimes proved [as arraigned in both the charges] is condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973.

TRIBUNAL'S ORDER ON SENTENCE**SENTENCE**

That the accused **Md. Abdus Sattar @ Tipu @ Tipu Sultan** [66] the son of late Dr. Md. Abul Hossain and late Fatema Begum of Holding no. 379 Raninagar under police station-Boalia[under Rajshahi metropolitan Police] of District-Rajshahi is found **UNANIMOUSLY guilty** of the offences of **'abduction', 'confinement', 'torture' and 'murder' as listed in charge no.01 AND of the offences of 'abduction', 'confinement', torture', 'enslavement' and 'murder' as listed in charge no.02 as crimes against humanity** enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 . Accordingly, he be **UNANIMOUSLY convicted and condemned to the sentence as below for the two charges, under section20(2) of the Act of 1973:**

'Sentence of death' for the crimes as listed in **charge no.01** and he be hanged by the neck till he is dead, under section20(2) of the International Crimes (Tribunals) Act, 1973.

AND

'Sentence of death' for the crimes as listed in **charge no.02** and he be hanged by the neck till he is dead, under section20(2) of the International Crimes (Tribunals) Act, 1973.

The '**sentences of death**' as awarded above, in respect of **charge nos. 01 and 02** will get merged.

The convicted accused Md. Abdus Sattar @ Tipu @ Tipu Sultan [present on dock as has been brought from prison] be sent to the prison with conviction warrant accordingly.

The '**sentence of death**' awarded as above under section 20(2) of the International Crimes (Tribunals) Act , 1973 [The Act No.XIX of 1973] shall be carried out and executed in accordance with the order of the Government as required under section 20(3) of the said Act.

The convict is at liberty to prefer appeal before the Appellate Division of the Bangladesh Supreme Court against his conviction and sentence within 30 [thirty] days of the date of order of conviction and sentence as per provisions of section 21(1) of the International Crimes (Tribunals) Act, 1973.

Let certified copy of this judgment be provided to the prosecution and the convict accused **Md. Abdus Sattar @ Tipu @ Tipu Sultan**, free of cost, at once.

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

Let a copy of this judgment together with the conviction warrant of
the convict accused **Md. Abdus Sattar @Tipu @ Tipu Sultan** be
sent to the IG [Prison] for information and necessary action.

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member