

# **International Crimes Tribunal-1**

Old High Court Building,

Dhaka, Bangladesh.

## **ICT-BD [ICT-1] Case No.09 of 2018**

[Arising out of Investigation Agency's compliant register serial no. 61 dated 18.01.2016]

---

Present:

**Justice Md. Shahinur Islam, Chairman**

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

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

---

**The Chief Prosecutor**

**Vs.**

**Abdul Momin Talukder @ Khoka [Absconding]**

---

**For the prosecution**

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

**Mr. Sultan Mahmud, Prosecutor**

**Ms. Rezia Sultana, Prosecutor**

**Mr. Tapas Kanti Baul, Prosecutor**

**For the Accused Abdul Momin Talukder @ Khoka  
[absconding]**

**Mr. Mohammad Abul Hassan, Advocate: State Defence  
Counsel**

---

---

**Date of delivery of Judgment: 24 November, 2021**

**JUDGEMENT**

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

**I. Opening words**

1. In this case in which we are going to render our verdict accused Abdul Momin Talukder @ Khoka has been tried for the offences enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973. The accused remained absconded as he could not be arrested in execution of warrant of arrest issued by Tribunal and thus the trial took place in absentia, by appointing state defence counsel to defend him as permitted by the Act of 1973.

2. The accused Abdul Momin Talukder @ Khoka has been indicted of internationally recognized crimes i.e. ‘crimes against humanity’ and ‘genocide’ which are among the most egregious harms to human dignity perpetrated in 1971 in the territory of Bangladesh, during the War of Liberation, under the International Crimes (Tribunals) Act, 1973. This Tribunal [ICT-1], a domestic court of law constituted under the

International Crimes (Tribunals) Act, 1973 is sitting today's session to deliver its unanimous judgement and verdict.

3. In addition to resolving the legal and factual aspects agitated by both sides, we consider it crucial and relevant to focus on the historical and contextual background, characterization of crimes, commencement of proceedings, procedural history related to the proceedings before the Tribunal, charges framed, in brief, and the laws applicable to the case for the purpose of determining culpability of the accused for committing the crimes arraigned. Finally, in our judgment based on cautious appraisal of evidence adduced, we have penned our reasoned finding in resolving alleged culpability of the accused, in relation to the criminal acts arraigned constituting the offences, by making independent adjudication of each charge framed.

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

## **II. Introductory Words**

5. This judicial body formed of three judges known as International Crimes Tribunal-1 (hereinafter referred to as the “Tribunal”) has been established under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the “Act”) by Bangladesh Parliament to provide provision for the detention, prosecution and punishment of ‘individual’ or ‘group of individuals’ or member of ‘auxiliary forces’ responsible for the offences of ‘genocide’, ‘crimes against humanity’, ‘war crimes’, committed in the territory of Bangladesh, in violation of international humanitarian law in 1971, during the war of liberation.

6. We restate that the notion of fairness and due process as has been contemplated in the Act and the Rules of Procedure, 2010 (ROP) formulated by the Tribunal [ICT-1] under the powers conferred in section 22 of the principal Act is to be assessed with reference to the national wishes such as, the long denial of justice to the victims of the horrific atrocities involving huge scale of violence and attacks committed during the war of liberation in 1971 directing civilian population, together with the recognized norms and jurisprudence evolved.

7. The Act XIX enacted in 1973 which 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. It is to be noted that the ICTY, ICTR and SCSL the *ad hoc* Tribunals backed by the United Nations (UN) have been constituted under their respective retrospective Statute. Only the International Criminal Court (ICC) is founded on prospective Statute [Rome Statute]. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally which to be provided to the person accused of crimes against humanity and genocide. At the same time it responds to nation’s aspiration to come out from the blot and culture of impunity.

### **III. Jurisdiction of the Tribunal**

8. Tribunal-1 further notes that the Act of 1973 is meant to prosecute, try and punish not only the ‘armed forces’ but also the perpetrators who belonged to ‘auxiliary forces’, or who committed the offence as an ‘individual’ or a ‘group of individuals’ or ‘organisation’[as amended with effect from 14.7.2009]. It is patently 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. That is to say, no one is able to evade prosecution if *prima facie* he is found accountable for atrocities committed in 1971, in the territory of Bangladesh directing unarmed civilian population.

9. We reiterate that the Tribunal set up under the Act of 1973 is absolutely a domestic judicial body but meant to try internationally recognized crimes or ‘system crimes’ or ‘group crimes’ committed in violation of customary international law during the war of liberation in 1971 in the territory of Bangladesh. Thus, merely for the reason that the Tribunal is preceded by the word “international” and possessed jurisdiction over crimes such as Crimes against Humanity, Crimes against Peace, Genocide, and War Crimes, it will be mistaken to assume that the Tribunal must be treated as an “International Tribunal”.

#### **IV. Brief Historical Background**

10. It is now historical truth that dreadful and terrible crimes were perpetrated during the nine-month-long war of liberation

in 1971 by the Pakistani occupation army and their local collaborators belonging to auxiliary forces, which at the end resulted in the birth of Bangladesh, an independent state and the motherland of the Bengali nation. Some three million people were killed, nearly quarter million women were raped and over 10 million people were forced to take refuge by deporting in India to escape brutal persecution at home, during the nine-month battle and struggle of Bangalee nation. This truth of tragic history cannot be kept masked. But the perpetrators of the crimes could not be brought to book for long time and thus the impunity they enjoyed held back political stability, saw the rise of militancy, and destroyed the nation's Constitution.

**11.** In August, 1947, the partition of British India based on two-nation theory, gave birth of 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.

12. Despite partition in 1947 some issues remained undecided. The mindset of Pakistani rulers started making socio-political,

cultural, and economic differences and disparities right from the beginning of partition between two wings of Pakistan, i.e., East (Now Bangladesh) and West (now Pakistan). The first difference related to Bangla language.

**13.** In 1952 the Pakistani authorities attempted to impose 'Urdu' as the only State language of Pakistan ignoring Bangla, the language of the majority population of Pakistan. The Pakistan government based in the western wing became hostile and aggressive to the leaders and activists who were on street in demand of Bengali as a state language. The people of the then East Pakistan started movement to get Bangla recognized as a state language and eventually turned to the movement for greater autonomy and self-determination and finally independence. The language movement of 1952 is now observed worldwide as the International Mother Language Day since 1999 as declared by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

**14.** The history goes on to portray that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation became the majority party of Pakistan. But defying the democratic norms Pakistan Government did not care to respect



this overwhelming majority. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7th March, 1971, called on the Bangalee nation to 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.

16. The 'Operation Searchlight' initiated a genocidal attack on the Bengali civilian population of the then East Pakistan (now Bangladesh) who had to cross long path for achieving self-determination. History says that such designed horrific criminal mission was aimed to wipe out Bengali opposition and to take control over major cities in the then East Pakistan.

17. The 'operation' was calculated 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, civilians belonging to Hindu community and

students. Afterwards, diabolical atrocious actions in concert with its local collaborator militias, Razakar, Al-Badar and the key pro-Pakistan political organisation Jamat E Islami (JEI) were intended to resist and stamp out the Bengali national liberation movement and to mash the national feelings and aspirations of the Bangalee nation. This was the policy and plan of the Pakistani occupation army and their local collaborators.

18. After the war of liberation ensued the Pakistan government and the military formed Peace Committee as an ‘associate organization’ and number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams 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 forming part of national group of Bangladesh.

19. Enormously grave and recurrent horrific atrocities directing the Bengali civilians in the territory of Bangladesh starting since 25 March 1971 did not thrive to foil the highest sacrifice

of the nation. The nation always pays humble tribute and homage to the blood of millions of valiant patriotic martyrs and innocent defenceless people who had to experience extreme torment.

**20.** Incontrovertibly the Bangalee nation eventually achieved its victory on 16 December 1971 by crossing the long way of struggle which was strenuous, swabbed with enormous blood, strive and incalculable sacrifices. Conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and long cherished independence. The nation is indebted to the unprecedented and brave sacrifices.

## **V. Brief account of the Accused**

21. Before we proceed to adjudicate the charges of which the accused Abdul Momin Talukder @ Khoka has been indicted we consider it necessary to portray the identity and status of the accused had in 1971.

**Accused: Abdul Momin Talukder alias Khoka (absconded)**

Accused Abdul Momin Talukder @ Khoka (**absconded**) is the son of late Abdul Mazid Talukder and late Rabeya Mazid of village-Kalaikuri, at present Shantahar Bazar (Kalaikuri

College), Police Station-Adamdighi, District-Bogura. He was born on 29.06.1952 (as per his NID). Abdul Mazid Talukder the father of the accused was the President of Adamdighi Thana Muslim League. In 1971, at the inception of War of Liberation Abdul Mazid Talukder formed Adamdighi Thana Peace Committee and he became the Chairman of that committee. Accused Abdul Momin Talukder @ Khoka was an active worker of Muslim League in 1971. His father Abdul Mazid Talukder locally formed Razakar Bahini and he first recruited his son Abdul Momin Talukder @ Khoka as Razakar who was the commander of Adamdighi Thana Razakar Bahini and he allegedly carried out atrocious activities, e.g. crimes against humanity, genocide, other inhumane acts etc. in different places under Adamdighi Thana of District Bogura. Abdul Mazid Talukder, father of the accused joined in Bangladesh Nationalist Party (BNP) in 1979 and in 1991 and 1996 he was elected Member of Parliament (MP) as BNP candidate. In 1978 accused Abdul Momin Talukder alias Khoka joined BNP. He was one of office bearers of Bogura District and Rajshahi Division BNP committee. He was an elected law maker i.e. a Member of Parliament (MP) as BNP candidate in 2001 and 2008.

## **VI. Procedural History**

### **Commencement of Investigation**

22. The investigation Agency of the Tribunal started investigation pursuant to compliant register serial no. 61 dated 18.01.2016, in respect of commission of offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by Abdul Momin Talukder @ Khoka [absconding] in the localities under police station-Adamdighi of District- Bogura, as an active member of the gang of attackers.

### **Prayer seeking pre-trial arrest of accused**

23. During investigation, the IO prayed for causing arrest of the suspected accused Abdul Momin Talukder @ Khoka through the Chief Prosecutor, for the purpose of conducting proper and effective investigation. But despite necessary order by issuing warrant of arrest the accused could not be arrested as he was on the run.

### **Submission of Investigation Report**

24. On conclusion of investigation, the IO submitted its report together with documents and materials collected and statement of witnesses made to the IO, before the Chief Prosecutor on 04.05.2018 recommending prosecution of the accused Abdul

Momin Talukder @ Khoka for the atrocious offences enumerated in the Act of 1973.

### **Submission of Formal Charge**

25. The Chief Prosecutor on examination of the report and documents submitted therewith by the Investigation Agency, placed the 'Formal Charge' on 13.08.2018 under section 9(1) of the Act of 1973 before this Tribunal alleging that the accused Abdul Momin Talukder @ Khoka had committed the offences of 'crimes against humanity' and the offence of 'genocide' during the period of War of Liberation in 1971 around the localities under Police Station-Adamdighi, District-Bogura, as narrated in the formal charge.

### **Taking Cognizance of Offences**

26. The Tribunal, under Rule 29(1) of the Rules of Procedure (ROP), took cognizance of offences as enumerated in section 3(2) read with section 4(1) of the Act of 1973 on 26.09.2018, by application of its judicial mind to the Formal Charge and materials and documents submitted therewith.

### **Publication of Notification**

27. After having the report in execution of warrant of arrest issued against the accused Abdul Momin Talukder @ Khoka the Tribunal, for the purpose of holding proceeding in absentia against him, ordered publication of notice in two national daily news papers as required under law. But the accused, despite publication of such notification did not turn up and as such treating him absconded Tribunal by its order dated 29.11.2018 for holding trial in *absentia* appointed Mr. Mohammad Abul Hassan, Advocate as state defence counsel to defend the accused and fixed 09.01.2019 for hearing on charge framing matter.

### **Commencement of Trial on Framing Charges**

28. On 09.01.2019 hearing on charge framing matter took place. In course of hearing the learned prosecutor and the learned state defence counsel placed their respective submission. The learned state defence counsel agitated discharge of the accused claiming the arraignments recommended untrue.

29. Trial commenced on framing charges on 11.04.2019. In course of trial prosecution adduced 15 witnesses including the IO of whom 13 have been examined. Two witnesses have been

tendered. Learned state defence counsel duly cross-examined the prosecution witnesses. In this way phase of examining prosecution witnesses ended on 21.01.2021. Defence declined to adduce any evidence or examine any witness. Accordingly, Tribunal fixed date for placing summing up.

30. On closure of summing up placed on part of prosecution defence also placed its respective argument and date was fixed for rebuttal submission by the prosecution. But it could not take place due to covid-19 pandemic situation. Besides, Tribunal remained non-functioning due to vacancy occurred to the post of one Member of the panel of judges. On reconstitution of Tribunal by appointing one new Member by government notification dated 14.10.2021 Tribunal fixed 31.10.2021 for placing summing up afresh, by both sides. In this way on closure of summing up on 31.10.2021 Tribunal kept the case in CAV.

## **VII. Applicable laws**

31. The judicial proceedings before the Tribunal are guided by the International Crimes (Tribunals) Act 1973 and the Rules of Procedure 2010[ROP] formulated by the Tribunal-1 under the



powers conferred in section 22 of the Act. Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872.

32. Tribunal is authorized to take judicial notice of any fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act]. Even the Tribunal shall not be bound by technical rules of evidence and may admit any evidence which it deems to have probative value [section 19(1) of the Act of 1973].

33. The Tribunal does have discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)]. The defence shall have liberty to cross-examine prosecution witness questioning his credibility and to take contradiction of the evidence given by him [Rule 53(ii)]. Defence does have right to examine witnesses [Section 10(1) (f) of the Act of 1973], in support of defence, if any.

34. Task of cross-examination is imperative in confronting evidence. The Act of 1973 provides right of accused to cross-examine the prosecution witnesses. In determining the charges brought the Tribunal may receive in evidence statement of

witness recorded by Magistrate or Investigation Officer, if any, only when the witness who has subsequently died or whose attendance cannot be procured without an amount of delay or expense which the Tribunal considers unreasonable [Section 19(2) of the Act]. But in the case in hand no such statement of witness has been received as the prosecution did not come with any such prayer.

**35.** Atrocities as listed in the charges framed were committed in war time situations. One may say that why and how the accused alone is said to be accountable for the crimes arraigned in the charges, particularly when the alleged criminal acts could not have been perpetrated by an individual alone. In this regard, the Tribunal reiterates that in adjudicating culpability of the person accused of criminal acts, context and situations prevailing at the relevant time i.e. the period of war of liberation in 1971[ March 25 to December 16 1971] is to be considered.

## **VIII. Placing Summing up**

36. We restate that Tribunal heard summing up afresh duly advanced by both sides on 31.10.2021. In this way on closure

of summing up the case was kept in CAV i.e. for pronouncement and delivery of judgment.

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

37. The learned Prosecutor Mr. Sultan Mahmud at the beginning of placing summing up made a brief portrayal of historical background that had stimulated the Bengali nation to go on with the movement of self-determination which eventually got shape of War of Liberation. It has been submitted that the history says that the then Pakistani government and the occupation troops' policy was to resist the war of liberation in its embryo and as such '**operation search light**' was executed in Dhaka which resulted in killing thousands of innocent civilians and mass destruction, with the aid and organizational support mainly from pro-Pakistan political bodies and individuals affiliated therewith.

38. Mr. Sultan Mahmud, the learned prosecutor in advancing argument submitted that the arraignments brought in all the three charges have been proved beyond reasonable doubt from the evidence of witnesses most of whom are direct witnesses to crucial facts related to the events arraigned. Defence could not dislodge their testimony on material facts relating to

participation and culpable involvement of the accused Abdul Momin Talukder @ Khoka with the commission of horrendous offences for which he has been charged. The learned prosecutor further added that the Tribunal is not bound by the technical rules of evidence and it shall accord in its discretion due consideration even to 'hearsay evidence' on weighing its probative value.**[Rule 56(2) of the ROP]**.

**39.** Next, it has been argued that even evidence of a 'single witness' is enough to prove a charge if it inspires credence and testimony of a single witness is not needed to be corroborated by other evidence. Although ocular testimony of direct witnesses is found to have been consistently corroborated which proves the arraignments brought beyond reasonable doubt.

40. The learned prosecutor further argued that the accused was previously prosecuted for the offences punishable under section 364/302 of the Penal Code based on the facts and criminal acts as have been arraigned in charge no.3 and the said case was not ended after trial. Thus, the previous prosecution under the Collaborators Order, 1972 is now not a bar in bringing arraignment relating to same event of attack,

under the Act of 1973. Rather, previous case initiated in 1972 adds assurance as to accused's status and conscious participation in perpetrating the crimes arraigned in charge no.03.

41. The learned prosecutor drawing attention to testimony and other evidence placed argument in respect of all the three charges. We consider addressing the submission agitated in relation to charges at the time of adjudicating each charge.

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

42. The learned state defence Counsel Mr. Abul Hassan submitted that the accused Abdul Momin Talukder @ Khoka was not involved with the commission of any of offences alleged in any manner. What the witnesses testified was untrue and out of local political rivalry; that the witnesses' inconsistent statement in respect of role of accused with the commission of alleged offences including the killings negates his alleged involvement and participation therewith. The alleged documents relied upon by the prosecution to show accused's affiliation in Razakar Bahini do not carry evidentiary value. The learned defence counsel placed argument, agitating innocence of the accused in respect of all the three charges

which we consider to address at the time of adjudication thereof.

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

43. The case in hand involving the offences of ‘crimes against humanity’ and ‘genocide’ relates to the facts of prohibited criminal acts unveiled in trial. The alleged arraignments are chiefly founded on ocular testimony of witnesses presented by the prosecution. The locals, relatives of victims and sufferers of atrocious activities came on dock and made sworn narrative what they experienced and saw during the alleged atrocious attacks launched in 1971 in and around their localities. Apart from them some are hearsay witnesses. It has already been settled that in a case under the Act of 1973 ‘hearsay evidence’ is admissible and it may be taken into consideration if supported by other facts and evidence. The phrase ‘other evidence’ includes relevant facts, circumstances and testimony of ocular witnesses.

44. Due to lapse of long passage of time the witnesses may not be able to memorize the exact date or time or distance or direction of crime sites from one place. However, the core

essence of the horrific event always remains imprinted in the human reminiscence if a person really had opportunity of experiencing the event of grotesque nature. Taking all these reality into account it is to be assessed as to how far their testimony on material facts inspires credence.

**45.** In a criminal trial involving the ‘system crimes’ two things require to be adjudicated. One is commission of the offence arraigned and another one is culpability of the person accused of such offence. The instant case deals with the offences of ‘crimes against humanity’ and ‘genocide’. This type of crimes are rather known as ‘group crime’ or ‘system crime’ and not an isolated offence punishable under the normal Penal law.

46. Thus, in respect of ‘crimes against humanity’ and ‘genocide’ the person accused of such crimes may not have physical participation. But his act or conduct--amid, prior or subsequent to the event, lawfully makes him responsible for the offence committed by others forming part of group of attackers, if his act or conduct is found to have had substantial effect and contribution to the commission of such crime. It is now settled jurisprudence.

**47.** One objective of criminal trial involving the offences enumerated in the Act of 1973 is to find out the truth. In seeking to establish the truth in its judgment, the Tribunal does have jurisdiction to rely as well on indisputable settled facts and on other authoritative elements relevant to the case even if these were not specifically tendered in evidence by either party during trial.

**48.** In many instances, the defence has alleged inconsistencies and contradictions between the statements made to IO and their evidence at trial. The Tribunal notes that the earlier statement of a witness made to IO was composed by investigating officer and it does not carry any evidentiary value.

**49.** The IO may reduce the statement of any witness in writing as required under section 7(6) of the Act of 1973. But there has been no explicit provision as to contradict witness's sworn testimony to what is stated by him or her to the IO. Thus, mere omission in earlier statement made to non judicial body does not make witness's sworn testimony before the Tribunal tainted and untrustworthy. Besides, detail precision is not expected to have been narrated to IO by the witness and the IO too might not have inquired into detail exactitude. It has



already been settled by the Appellate Division, in the case of *Abdul Quader Molla* that--

“ Even if it is assumed that contradiction of the statements witnesses can be drawn in the manner provided under section 145 of the Evidence Act, it may best be said that the witnesses omitted to make some statements before the investigating officer as they were not asked properly, and those omissions cannot altogether be treated or termed as contradiction..... The contradiction can only be drawn from statements made by the witnesses in course of their examination-in-chief. [**Justice S.K Sinha, Judgment Page 198,199**]

**50.** It has also been observed by the Appellate Division in the case of *Abdul Quader Molla* that the statements made to IO were not made under solemn declaration and were not taken by any judicial body. In the circumstances, no probative value is attached to the statements made to IO. Thus, Tribunal’s view is that the truthfulness of direct sworn testimony made before the Tribunal is subject to the test of cross-examination by the defence.

**51.** The observation of the Apex Court on the issue of ‘contradiction’ is inescapably binding upon this Tribunal and thus in assessing the evidence of witnesses the Tribunal

remained cautious keeping it in mind that *"there is no scope to draw contradiction of the statement of a witness made in course of examination-in-chief with his/her earlier statements made to the investigating officer or other agency."*

**52.** Hearsay testimony is not inadmissible *per se* in a trial under the Act of 1973. Its probative value is to be evaluated taking other relevant facts and circumstances into account and the other evidence may lend corroboration to the hearsay evidence.

**53.** The matter of weighing hearsay evidence depends as to what extent the question of hearsay evidence is clarified by other evidence and it is proved to be reliable. In this regard, in the case of *Limaj* it has been observed that “whether any weight, and if so, what weight will attach to [hearsay opinion] will depend to what extent the question of hearsay is clarified by other evidence and it is shown to be reliable [**Archbold International criminal Courts: page 751: 9-104: HEARSAY**].

**54.** Thus, hearsay evidence is to be viewed and weighed in context of its credibility, relevance and circumstances. Keeping

this settled legal position in mind the Tribunal took advantage to weigh the probative value of hearsay evidence of witnesses made before the Tribunal, in relation to charges framed against the accused.

**X. Formation of peace committee and Razakar Bahini in Adamdighi police station of District-Bogura and the status and role of the accused Abdul Momin Talukder @ Khoka had in 1971.**

55. Before we enter into evaluating evidence presented for adjudication of charges and accused's culpability we deem it appropriate to focus on the position and role of accused that he had in 1971, by virtue of his political ideology.

56. Mr. Sultan Mahmud the learned prosecutor has urged that the accused Abdul Momin Talukder @ Khoka was a notorious member of locally formed Razakar Bahini and prior to his affiliation in Razakar Bahini as its commander he was closely allied with the local peace committee formed under headship of his father Abdul Mazid Talukder. In exercise of such stance the accused started collaborating with the Pakistani occupation army in committing atrocities around the localities under police station-Adamdighi.

57. The learned prosecutor also submitted drawing attention to the ocular testimony of witnesses the residents of the localities together with the documentary evidence that the accused on entrustment of his father belonging to pro-Pakistan ideology he got affiliated in Razakar Bahini. Defence could not impeach it. The document relating to the Criminal Revision No. 129 of 1974 preferred before High Court (Prosecution Documents volume page 57-94) shall also depict that the accused had acted as a notorious collaborator of the Pakistani occupation army in 1971.

58. On contrary, Mr. Abul Hassan the learned state defence counsel argued that the accused Abdul Momin Talukder was not a Razakar and the event alleged in charge no. 01 implicating him as a Razakar is not believable as at that time Razakar Bahini was not formed at all. The alleged documents relating to Criminal Revision preferred in High Court even does not show that he was a Razakar. The alleged list screening him a Razakar has been created for the purpose of the case.

59. It is now well settled that in 1971 during the war of liberation Razakars, an auxiliary force was formed to collaborate with the Pakistani occupation army intending to

annihilate the pro-liberation Bengali civilians forming part of national group and people belonging to Hindu community. Pro-Pakistan political parties including Jamat E Islami, Muslim League etc. had played key role in forming this auxiliary force and they symbolized the pro-liberation Bengali people as their 'enemies' and 'miscreants'.

60. In the case in hand, formation of peace committee under headship of Abdul Mazid Talukder the father of the accused in the locality under police station-Adamdighi is not disputed. Rather, it appears from testimony of witnesses that the accused was engaged in activities carried out by the locally formed peace committee since Pakistani occupation army got stationed in the localities under police station-Adamdighi. Peace Committees were also formed and designed with the identical plan.

61. The report titled **ওকশি কিয়ুজি আনুগতকি বেয়জ: মক্ জেবনখতক মন্বহঁ কবি আবেবঁ** published in **The Daily Dainik Pakistan 23 April 1971 states that --**

**ওমক্ জেবনখ তহলুৎবব হুৎে তমলুৎবব RvZxq cZvKv  
নুৎZ বতৎ GvMttq Avmvi Ges ivóAetivax e'w³ I  
` ,ZKvixt` i vbg©Kivi Anfhvfb mk` জেবনখতক**

১৩৩৩ ক্রী অসি ক্রী নুব গওব্বি রবী ক্রী  
 ক্রী .....০

[Alim Judgment, ICT-BD-2, para 137]

62. The above report thus portrays that ‘peace committee’ around the territory of Bangladesh was formed in the month of April 1971; that it was formed to act as an ‘auxiliary organisation’ meant to provide active assistance to combat and annihilate the freedom fighters, proliferation Bengali people and Hindu civilians having spirit of Bengali nationalism.

63. The fact of common knowledge also goes to demonstrate that the central peace committee was formed during the second week of April 1971 under the active initiation of leaders belonging to JEI, Muslim League, Convention Muslim League and other rightists Muslim parties after they met General Tikka Khan and thus the process was started to extend its committee at district, thana, union and village levels throughout the country aiming to assist the occupation army to resist the pro-liberation people who were termed as ‘miscreants’, ‘agents of India’, in the name of preserving Pakistan. Evidence of prosecution witnesses demonstrates that the accused Abdul

Momin Talukder @ Khoka first got culpably affiliated with the locally formed peace committee of which his father Abdul Mazid Talukder was admittedly the chairman. Such stance of the accused was indisputably against the pro-liberation civilians.

64. Ghulam Azam the then Amir of Jamat E Islami and member of Central Peace Committee almost since the beginning of war of liberation started appealing the Pakistan government for arming the people who believed in solidarity of Pakistan and to combat the '*miscreants*' [**Source: The Daily Sangram**, 21 June 1971, **Press conference of Ghulam Azam; see also The daily Sangram** 20 June 1971].

65. The narrative made by **Hussain Haqqani** in his book titled "**Pakistan-Between Mosque and Military**" merits considerable attention. The narrative portrays the vigorous role of the pro-Pakistan political parties in forming peace committee, even at village levels, with a designed objective of assisting the Pakistani troops. **Hussain Haqqani** narrates that-

“ On addition to motivating the troops with religious frenzy, the regime gave the Jamaat-e-Islami, the **various**

**factions of the Muslim League**, the Nizam-e-Islam Party, and the Jamiat Ulema Pakistan—the parties that had lost the election to the Awami League—a semiofficial role. The members of these parties formed peace committees throughout Pakistan’s eastern wing [Bangladesh], at district and even village levels. These parties functioned as the intelligence network of the Pakistan army.....”

[**Source: Hussain Haqqani** in his book titled “*Pakistan-Between Mosque and Military*”, page 77, also Maniruzzaman, Bangladesh Revolution, page 101

66. In the case in hand, forming Razakar Bahini in the locality under Adamdighi police station could not be refuted. Presumably, it was formed on vigorous initiation of Abdul Mazid Talukder the father of the accused Abdul Momin Talukder @ Khoka and the accused was made its commander.

67. Almost all the witnesses are relatives of victims and are the residents of the localities under Adamdighi police station of District Bogura. They all consistently stated that in April 1971 first local peace committee was formed under headship of Abdul Mazid Talukder, the father of the accused. It has also been divulged that since formation of peace committee the accused Abdul Momin Talukder @ Khoka got consciously



engaged in carrying out atrocious activities around the localities and started actively collaborating with the Pakistani occupation army stationed at Adamdighi and Santahar.

68. The witnesses knew the accused and his father beforehand. The reason of knowing the accused and his father as claimed by the witnesses is quite believable. For the accused Abdul Momin Talukder @ Khoka and his father were potentially associated with pro-Pakistan political party Muslim League. Naturally, they were known to the residents of localities under Adamdighi police station.

69. Consistent and corroborative testimony of witnesses proves it indubitably that the accused later on got enrolled in local Razakar Bahini formed on initiation of his father and he was assigned with its commanding position. Strong pro-Pakistan political affiliation the accused had inevitably leads to the unerring conclusion that accused was a potential commander of locally formed Razakar Bahini, an 'auxiliary force' under control of Pakistani army for their operational and other purposes.

70. The oral evidence of witnesses gets corroboration from documentary evidence as well. P.W.15 Z.M Altafur Rahman the Investigation Officer (IO) proved the attested photocopy of Razakar List which has been marked as **Exhibit-3 (page 18 of documents volume)**. He stated that accused's name finds place in serial no.01 of the list as Razakar commander.

71. P.W.15 also stated that he seized two reports published in daily Janakantha and daily Bhorer Kagoj from Bangladesh press institute's archive. P.W.15 proved attested photocopy of these two reports which have been marked as **Exhibit-6**(page 24-27 of documents volume) and **Exhibit-7 (documents volume 28-29)**. Narrative made in these reports show the notorious stance the accused and his father had against the war of liberation and also the aggressive activities they had carried out directing civilian population.

72. The report published in the Daily Bhorer Kagoj on 19.11.2007-**Exhibit-7 (prosecution document volume page nos. 28-29)** seems to be a patent portrayal of notoriety of the accused Abdul Momin Talukder @ Khoka and his father and atrocities carried out by them in 1971 around the localities under police station-Adamdighi. The report titled -- **ইব্রাহীম**

**GKvEibvqv-200** states what barbaric atrocities were carried out by the accused and his father around the localities in 1971. At this stage, we are not going to resolve the arraignments brought against the accused. We are just eying on evidence adduced to resolve the status and stance the accused Abdul Momin Talukder @ Khoka had in 1971. –

73. It also stands proved from the documentary evidence that accused Abdul Momin Talukder and his father Abdul Mazid Talukder were prosecuted under the Collaborators Order, 1972. The High Court first refused granting bail (Order dated 12.02.1974 in Criminal revision 129 of 1974: Prosecution Documents Volume page no. 91) to the accused as he was facing prosecution under Collaborators Order, 1972. However, he got bail on 05.04.1974. All these are not denied by the defence. It thus rather adds strong assurance as to status and stance the accused had in 1971.

74. It also appears from the photocopy of certified copy of order dated 14.01.1976 of the High Court in a case being Criminal Revision No. 129 of 1974 that eventually the Rule was discharged as the Collaborators Order, 1972 was repealed.

75. The above fact indisputably adds assurance as to active engagement of the accused Abdul Momin Talukder @ Khoka in committing heinous atrocities around the localities under Adamdighi police station of District-Bogura as a notorious collaborator of the Pakistani occupation army stationed in Adamdighi.

76. The above together with the document **Exhibit-3** has established that the accused Abdul Momin Talukder @ Khoka was a potential member of locally formed Razakar Bahini. And since inception of the war of liberation the accused got culpably associated with the locally stationed Pakistani occupation army and peace committee which was led by his father Abdul Mazid Talukder, till he got enrolled in Razakar Bahini, we deduce it based on facts unveiled and documents relied upon.

77. We consider it indispensable to state that the legislation known as the Collaborators Order, 1972 enacted to prosecute and try the local collaborators for the offences punishable under the Penal Code committed during the war of liberation, got repealed by the military ruler and consequently the individuals or collaborators facing prosecutions were allowed

to be set at liberty. It was indeed a grave blow to the rule of law and the spirit of the war of liberation as well. In this way the military regime endorsed the culture of impunity, ignoring the right to justice which impacted significantly on the justice system and the rule of law of the country.

78. History says that the military started ruling the country in 1975 and at a stage it started rehabilitating the local collaborators who actively participated to the commission of atrocious activities causing genocide and crimes against humanity in 1971 in the territory of Bangladesh. The International Crimes (Tribunals) Act of 1973 remained dormant for decades. The nation felt immensely pained and helpless. It could not raise its voice due to nature of unconstitutional state power existing at that time. The world's leaders too remained silent.

79. But decades after, due to voice moved up by the nation now the perpetrators have been brought to justice under the Act of 1973. We reiterate that there is no time bar to prosecute the criminal offences. Besides, the Act of 1973 permits it, even if it is seen that a person as an 'individual' committed the offences enumerated in the Act of 1973.

80. On cumulative evaluation of facts and documents relied upon we deduce that the accused Abdul Momin Talukder @ Khoka in 1971 first started acting as a notorious collaborator and as an active associate of his father, the local peace committee chairman and then later on got enrolled in local Razakar Bahini and was made its commander on endorsement of his father Abdul Mazid Talukder who was the chairman of the local peace committee.

## **XI. Way of Adjudication of Charges**

81. The instant case involving the appalling atrocities occurred in 1971 in the territory of Bangladesh during the war of liberation chiefly rests upon ocular testimony. Considering the context prevailing in war time it was impracticable to witness the detail of the events occurred, particularly the outcome of the attack conducted. It should be kept in mind that the alleged incidents took place more than four decades back, in 1971 and as such memory of live witness may have been faded. Invaluable documents could have been destroyed. Collecting and organizing evidence was a real challenging task for the prosecution.

82. Therefore, in a case like one in our hand involving adjudication of charges for the offences of ‘crimes against humanity’ and ‘genocide’ we are to depend upon (i) facts of common knowledge (ii) available documentary evidence (iii) old reporting of news paper, books etc. having probative value (iv) relevant facts (v) circumstantial evidence (vi) careful and rational evaluation of witnesses’ version (vii) Political affiliation of the accused had in 1971 and conduct of the accused at the relevant time and (viii) the jurisprudence evolved on these issues in our Apex Court and the observations of *ad hoc* tribunals as well, if deemed necessary to adjudicate any point of law.

83. Keeping the settled way together with applicable laws and jurisprudence as stated above in brief now let us adjudicate the arraignments brought in the charges of which the accused Abdul Momin Talukder @ Khoka has been indicted.

## **Adjudication of Charge 01**

**[Offences of ‘confinement’, ‘torture’, ‘looting’, ‘arson’, ‘other inhumane acts’ and ‘murder’ of 10[ten] civilians, of villages-Kalsha Bazar, Rathabari and Teorpara under Police Station-Adamdighi of District-Bogura.]**

84. Charge: That on 22.04.1971 at about 12:30 P.M the accused Abdul Momin Talukder @ Khoka along with 5/6 unknown armed Razakars and 15/20 Pakistani occupation army by launching systematic attack at village-Kalsha Bazar, Rathabari and Teorpara under Police Station-Adamdighi of District-Bogura apprehended Md. Ansar Ali Pramanik and his elder brother Md. Islam Uddin Pramanik and handed over them to the Pakistani occupation army and then moved with the said detained victims toward west of the crime site. On being chased by the villagers the accused person and his cohorts began to beat the victims and at one stage shot Md. Islam Uddin Pramanik to death and the victim Md. Ansar Ali Pramanik however escaped.

Thereafter, at 01:00 P.M on the same day the accused person and his accomplices attacked the house of Zaminder Shurendra Nath Das at Kalsha Rathabari and forcibly captured (1) Sree Shurendra Nath Das, (2) Haribhabini Das, (3) Shudhin Chandra Das, (4) Chhoton alias Chhuti Saha, (5) Kamana Bala and (6) Shudhir Chandra Mali and made them stood in a line by the side of a well ( locally known as *Idara*) and shot them to death and dumped their dead bodies into the well and then



carried out looting the houses of the said victims and set those on fire.

In conjunction with the attacks, at 02:00 P.M the accused person and his accomplices then forcibly captured (1) Badesh Munshi Pramanik, (2) Nezam Uddin Pramanik and (3) Hazrat Ali of village-Teorpara when they attempted to escape, sensing the attack and the accused then killed them by shooting with fire arms on the bank of a pond of Md. Ali Doctor.

Therefore, the accused Abdul Momin Talukder @ Khoka by such deliberate criminal acts forming part of 'systematic attack' directing non combatant civilian population and members of Hindu religious group, with intent to destroy, in whole or in part, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted and substantially contributed to the commission of the offences of 'looting', 'arson', 'other inhumane acts' and 'murder' as **crimes against humanity** as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 or in the alternative offence of '**genocide**' as enumerated in section 3(2)(c)(g)(h) read with

section 4(1) of the International Crimes (Tribunals) Act, which are punishable under section 20(2) of the said Act of 1973.

## **Evidence of Witnesses Examined**

85. Prosecution adduced and examined six (06) witnesses to substantiate the arraignment brought in this charge. Four of those witnesses are relatives of victims and direct witnesses to facts crucially chained to the horrific event of attacks. They by making sworn testimony in Tribunal recalled the tragic events leading to barbaric killing of pro-liberation civilians and numerous civilians belonging to local Hindu community. Before we weigh and evaluate first let us see what the witnesses narrated.

86. **P.W.01 Md. Ansar Ali Pramanik (63)** is a resident of village- Kalsha Bazar, police station-Adamdighi of District-Bogura. He is one son of victim martyr Badesh Munshi Pramanik. He is a direct witness to the event of mayhem of killing his dear ones.

87. P.W.01 stated that on 22 April, 1971 he along with his elder brother Islam Uddin Pramanik went to Kalsha Bazar and at about 10:00 A.M about 100/150 Pakistani army men got

down from Train at Santahar Railway Station when the Chairmen of peace committee Abdul Majid Talukder, his son Abdul Momin Talukder (accused) and some other people welcomed the army men by chanting slogans. Seeing it he (P.W.01) instantly returned back home and told it to his parents and then he and his brother attempted to flee and on their way at about 12:00/12:30 P.M. he saw the accused Abdul Momin Talukder being accompanied by 5/6 men of peace committee and 15/16 army men coming out having firearms in hand. When he and his brother arrived at Rathabari Kalsha road Abdul Momin Talukder by chanting 'Mukti Jai' (freedom-fighter is going) shot his (P.W.01) brother Islam Uddin Parmanik to death. Being gravely scared with this he (P.W.01) rushed toward Zaminder Bari at the east and went into hiding inside a bush.

88. P.W.01 also stated that at about 01:00 P.M he saw the accused Abdul Momin Talukder being accompanied by Pakistani army men and peace committee members entering inside the Surendra Nath Zaminder Bari at Rathabari and few minutes later he(P.W.01) heard 7/8 gun firing from that end and also saw that house ablaze.

89. P.W.01 continued narrating that after the gang had left the site he along with Kalam, Golam Hossain, Prodip of Zaminder Bari and others moved to Zaminder Bari and found the courtyard covered with blood and also found dead bodies of Surendra Nath Das, his wife Haribhabini Dasi and four others dumped inside the 'Idara'. Then he (P.W.01) leaving the site came to *morh* of 'chou rasta' where he saw the accused Abdul Momin Talukder @ Khoka and army men and peace committee members taking away his (P.W.01) father Badesh Munshi, brother Nijam and maternal uncle Hajrat Ali tying them up toward the bank of 'Tiarpara pond' where Abdul Momin Talukder shot down the detainees to death. After seeing it he (P.W.01) returned back home and found their house ablaze and his mother and two younger brothers remained in hiding inside a bush nearer to their house. Then he (P.W.01) fled to village-Rampura taking his mother and younger brothers with him. Finally, P.W.01 testified that he knew the accused Abdul Momin Talukder as he was their neighbouring resident.

90. In cross-examination, P.W.01 stated that no case was initiated over the event after independence. In reply to defence

question P.W.01 stated that he alone remained in hiding place when he saw the event.

91. P.W.01 denied defence suggestion that the martyrs he named were killed at the time of exchanging gun firing with Pakistani occupation army and the accused did not kill them by gunshot and that the accused was not a member of peace committee and was not involved with the event and that he (P.W.01) testified falsely implicating the accused out of political rivalry.

92. **P.W.02 Pradip Bhoumik (57)** is a resident of village-Kalsha Rathabari, police station- Adamdighi of District-Bogura. In 1971 he was a minor boy. He is the grand-son of Zaminder Surendra Nath Das, one of victims. He allegedly had opportunity of seeing the facts pertinently related to brutal killings.

93. P.W.02 stated that on 22 April, 1971 at about 01:00 P.M he had been at their house when he saw Abdul Momin Talukder of peace committee being accompanied by 15/20 Pakistani army men and 5/6 peace committee members approaching toward their house. With this he went into hiding inside a

narrow place between two houses wherefrom he saw the gang entering inside their house when they forcibly captured his grand-father Zaminder Surendra Nath Das, grand-mother Haribhabini Dasi, Sudhir Chandra Saha, Sudhir Mali, Kamla Bala, Choton @ Chuti Saha and shot them to death making them stand beside the ring-well (Idara) and then dumped their bodies inside the ring-well (Idara). The gang then looted their house and set it on fire.

94. P.W.02 next stated that after the gang had left the site he (P.W.02), Hadesh Ali, Hatem Ali, Mokbul Hossain, neighbour Ansar Ali (P.W.01), Abul Kalam Azad, Golam Hossain came to their house and found dead bodies inside the ring-well.

95. P.W.02 also stated that later on, he heard that the gang being accompanied by the accused Abdul Momin Talukder on their way back toward village Tiarpara forcibly captured Badesh Munshi (father of P.W.01), his son Nijam Uddin and Hajrat Ali and shot them to death taking on the bank of the Tiarpara pond.

96. In respect of reason of recognizing the accused at the time of attack conducted P.W.02 stated that accused Abdul Momin

Talukder was a resident of their neighbouring locality and thus he knew him beforehand.

97. In cross-examination, P.W.2 stated in reply to defence question that they did not initiate any case over the event of killing six civilians. P.W.02 denied the defence suggestions that in 1971 accused Abdul Momin Talukder was 10/12 years old; that he did not belong to peace committee; that he was not involved with the event alleged; that what he testified implicating the accused was untrue and tutored out of political rivalry.

98. **P.W.03 Abul Kalam Sardar (76)** of village-Kalsha Rathabari under police station-Adamdighi of District-Bogura is a direct witness to the atrocious facts related to the event arraigned. In 1971 he was a businessman. In addition to crucial facts related to the event of attack arraigned P.W.03 stated some facts which are explicit portrayal of mindset and status of the accused and his father in 1971.

99. P.W.03 stated that in 1971 peace committee was formed in the locality under Adamdighi police station on initiation of Muslim League leader Abdul Mazid Talukder and he was its

Chairman. Afterward Razakar Bahini was formed of 8/10 Razakars and his son Abdul Momin Talukder was its commander.

100. In narrating the event arraigned P.W.03 stated that on 22 April 1971 at about 10:00/10:30 A.M he had been at his shop at the market adjacent to Santahar Railway Station when he saw 100/150 Pakistani army getting down from a train and they were welcomed and received by the peace committee Chairman Abdul Majid Talukder, his son Abdul Momin Talukder and the people belonging to peace committee, by chanting slogans and they arranged their staying at the local duk bungalow and other places. Seeing it he (P.W.03) going back home disclosed it to his elder brother Mobarak Ali.

101. P.W.03 also stated that few minutes later he heard from villagers that Abdul Momin Talukder and 10/15 Pakistani army men were coming toward the residence of Zaminder Surendra Nath Das of their village. On hearing it he (P.W.03) and his brother Mobarak coming out of house moved toward Zaminder Bari where they remained stayed inside the mango tree garden, on the bank of the pond of Zaminder's Bari (residence) wherefrom he saw Abdul Momin Talukder having rifle in hand



being accompanied by 10/15 army men going inside the residence of Zaminder Surendra Nath Das. Few minutes later he heard sound of frequent gun firing from the end of Zaminder Bari which was set in ablaze.

102. What happened next? P.W.03 continued narrating that few minutes later Abdul Momin Talukder and his accomplices and army men moved back toward east. Then he (P.W.03) and his brother coming out of the hiding place moved inside the Zaminder Bari where they saw Zaminder's son-in-law Pradip (P.W.02) , Golam Hossain of village-Rathabari, Ansar Ali (P.W.01) and some others lamenting and also saw the Idara (well) surrounded by blood. Pradip told them that Abdul Momin Talukder and Pakistani army men gunned down six including Zaminder Surendra Nath and his wife to death and dumped them inside the Idara. Then he (P.W.03), looking inside the Idara saw the dead bodies. Ansar Ali present at Zaminder Bari disclosed that Abdul Momin Talukder shot his elder brother Islam Uddin to death, on the road of Kalsha.

103. P.W.03 finally stated that on that day at about 03:00 P.M they quitted the Zaminder Bari and started moving toward Rampura through Tiarpara and on the way he found bullet hit

dead body of Badesh Munshi the father of Ansar Ali, Ansar Ali's brother Nijam and his maternal uncle Hajrat Ali lying on the bank of a pond at Tiarpara. On the same day, at night Ansar Ali (P.W.01) told that he saw Abdul Momin Talukder himself gunning down his (P.W.01 Ansar Ali) father, brothers and maternal uncle to death.

104. P.W.03 in respect of recognizing the accused stated that he knew the accused Abdul Momin Talukder since his father Abdul Majid Talukder participated in 1970's election as a Muslim League candidate.

105. In cross-examination, P.W.03 stated in reply to defence question that in 1971 his shop was about 100 yards far from Santahar Railway Station; that in 1971 Pradip the grand-son of Zaminder was 15/16 years old and Ansar Ali was about 13/14 years old; that in 1971 the mango garden was situated on some bighas of land on the bank of the pond, south to the Zaminder Bari. P.W.03 also stated in reply to defence question that the shops were got closed after the Pakistani army troops arrived at Santahar Railway Station.

106. P.W.03 admits the defence suggestion that after independence Abdul Majid Talukder and Abdul Momin Talukder were prosecuted under the Collaborators order of 1972.

107. P.W.03 however denied the defence suggestion that the victims were not killed in the manner he stated and that they died in a battle with the Pakistani army; that the accused was not involved with the killings he testified and that what he testified implicating him was untrue and out of political rivalry.

108. **P.W.04 Md. Golam Hosen (71)** is a resident of village-Kalsha Rathabari under police station-Adamdighi of District Bogura. In 1971 he used to run a shop at Santahar Railway Station Bazar. In addition to the facts related to the event he also testified that on 22 April 1971 at about 09:00 A.M when he was returning back after shopping from Santahar Railway station bazaar he saw Abdul Mazid Talukder, local peace committee chairman, his son Abdul Momin Talukder and some members of peace committee waiting at Santahar railway station. Next, at about 10:00/10:30 A.M he saw 100/150 Pakistani army men arriving at Santahar Railway Station by train when the peace committee chairman and others received

and welcomed them by chanting slogan 'Pakistan Zindabad' and they arranged their staying at Santahar Duktungalow and highway workshop bungalow.

109. In respect of the event arraigned P.W.04 narrated that on the same day i.e. on 22 April 1971 at about 12:00 noon Abdul Momin Talukder (accused) being accompanied by 10/15 Pakistani army men came to their village when he heard sound of gun firing. They (the gang) entering in the house of their (P.W.04) neighbour Badesh Munshi, looted household and burnt down the house. Being scared he went into hiding inside the mango tree garden on the bank of the pond of Zaminder Surendra Nath Das's residence. Remaining stayed in hiding there he could see Abdul Momin Talukder having rifle in hand along with 15/20 army men entering inside the Zaminder Bari. Few minutes later he heard frequent gun firing from the end of Zaminder Bari and also saw some rooms of the residence ablaze.

110. P.W.04 also stated that at a stage, Abdul Momin Talukder and army men moved back toward Teorpara. Then he (P.W.04) came out of the hiding place and entering inside the Zaminder Bari he saw Pradip the grand-son of Zaminder, Ansar Ali, Abul

Kalam of their village and employees of Zaminder screaming. He saw the Idara surrounded by huge blood. Pradip(grand-son of Zaminder) then disclosed that six including his grand-father Surendra Nath Das, grand-mother Haribhabini were gunned down to death and their bodies were dumped inside the Idara (well) . He also could see the bodies on having a look inside the Idara. Ansar Ali then told that his elder brother Islam Uddin was shot to death on Kalsha road by Abdul Momin Talukder (accused).

111. P.W.04 further narrated that on his way of coming back (from Zaminder Bari) he heard from people that Abdul Momin Talukder killed Badesh Munshi, his son Nijam Uddin and his brother-in-law Hajrat Ali by gun shot on the bank of pond at Teorpara. Then he (P.W.04) came back home and in evening he moved to Karojbari to take refuge.

112. In respect of reason of knowing the accused Abdul Momin Talukder P.W.04 stated that Abdul Mazid Talukder the father of accused Abdul Momin Talukder contested 1970's election as a candidate of Muslim League and he (P.W.04) saw Abdul Momin Talukder campaigning along with his father. During the war of liberation, in exercise of chairmanship in

local peace committee Abdul Mazid Talukder later formed local Razakar Bahini by appointing his son Abdul Momin Talukder as its commander.

113. P.W.04 in reply to defence question stated that the Idara of Zaminder Bari was about 200 yards far from the place where he remained in hiding. P.W.04 denied defence suggestions that the accused was not involved with the event of alleged killings; that he was not Razakar or associated with the local peace committee and that what he stated was untrue and out of political rivalry.

114. **P.W.13 M Sarwar Khan (67)** is a reporter of Daily Bhorer Kagoj. He proved the report published on 19.11. 2007 in the said daily news paper which has been marked as **Exhibit-1 (prosecution document volume page nos. 28-29)**.

115. **P.W.14 Md. Abir Uddin Khan (68)** of village-Rampura under police station-Adamdighi of District-Bogura in addition to narrative he made in relation to the event arraigned in charge no. 02 also stated what he heard about the event arraigned in charge no.01.

116. P.W.14 stated that on 22 April 1971 at about 10:00 A.M Pakistani occupation army arrived at Santahar railway station when local Muslim League leader Abdul Mazid Talukder (now dead), his son Abdul Momin Talukder(accused) and anti liberation people welcomed the troops. Later, he (P.W.14) heard that on that day under guidance of Abdul Mazid Talukder and his son Abdul Momin Talukder (accused) the troops had carried out attacks at localities which resulted in killing of 10 civilians, indiscriminate looting and arson. In cross-examination defence simply denied what the P.W.14 stated in examination-in-chief.

### **Finding on Evaluation of Evidence adduced**

**117. Mr. Sultan Mahmud**, the learned prosecutor drawing attention to ocular evidence of P.W.1, P.W.02, P.W.03 and P.W.04 submits that these witnesses experienced the appalling facts linked to the horrific event of indiscriminate killing of local Hindu religious group and pro-liberation civilians forming part of ‘national group’ which had stance in favour of the spirit of the war of liberation. Defence could not refute their consistent corroborative sworn narrative in any manner.

118. The learned prosecutor further submits that P.W.01 is the ocular witness to the event of killing his brother by the accused Abdul Momin Talukder who was with the gang of Pakistani occupation army. P.W.02 Pradip the grand-son of victim Zaminder Shurendra Nath Das saw the tragic event of indiscriminate killing carried out by the accused and his armed accomplices by launching attack at Zaminder Bari. P.W.04 could see the attack conducted by the gang being actively accompanied by the accused. P.W.03 corroborates it as he too had occasion of seeing the gang entering inside the Zaminder Bari.

119. It has been argued too, on part of prosecution, that all the above facts linked to the mayhem prove it beyond reasonable doubt that accused Abdul Momin Talukder@ Khoka was with the gang and being conscious part of the criminal enterprise had acted and participated aggressively and deliberately in accomplishing the indiscriminate killings. Defence could not impeach what has been testified by these ocular witnesses in respect of facts relating to the consecutive attacks leading to such horrific annihilation.



120. The learned prosecutor also submits that on the same day the accused by accompanying and guiding the gang formed of Pakistani occupation army men physically participated even in liquidating four other civilians perceiving them the members of 'national group'. Intent of perpetrating indiscriminate killing of civilians was to destroy the Hindu religious group and national group, either in whole or in part.

121. It has been argued too that the proved fact of welcoming and receiving the army men at Santahar railway station on the day prior to conducting attacks arraigned adds assurance as to accused's explicit and close affiliation with the Pakistani occupation army and their policy and plan and the accused in exercise of stance he took against the war of liberation opted to actively guide and participate in actuating the criminal mission of mass killing of protected groups which constituted the offence of 'genocide', the learned prosecutor added.

**122. Mr. Abul Hassan**, the learned state defence counsel, on contrary, argued that the accused was not with the gang formed of Pakistani army men; that at the relevant time Razakar Bahini was not formed and he did not belong to peace committee and thus, the accused had no reason of being affiliated with the

alleged event of attacks leading to killings. The victims in fact died in a battle with the Pakistani army. Evidence relied upon by the prosecution does not reveal the elements to constitute the offence of 'genocide'. The witnesses testifying the alleged event are not credible as they had no opportunity of seeing the alleged attacks.

123. The learned state defence counsel also submits that the accused has been implicated in the case out of political rivalry. Merely for the reason of his father's affiliation with pro-Pakistan political party and local peace committee the accused cannot be held responsible for the offences of which he has been arraigned. In cross-examination it has been admitted by P.W.2, the grand-son of victim Zaminder Shurendra Nath Das that no case was initiated over the event of killing six Hindu civilians instantly after independence achieved and thus unusual delay now makes the accusation doubtful and the accused has been implicated in this case falsely and out of political rivalry.

124. Defence also argued that the accused was a minor boy of 10/12 years in 1971 and it too creates doubt as to his alleged participation to the commission of offences arraigned. It has

been further argued that P.W.02 was a Minor boy in 1971 and thus he did not have reason of knowing the accused and it is not possible to recollect the event even if really he allegedly had opportunity of seeing it. His evidence does not carry value. Accordingly, the accused deserves acquittal as the arraignment brought in charge no.01 could not be proved beyond reasonable doubt by credible evidence.

125. At the outset let us resolve the question of delayed prosecution as has been agitated on part of defence. Questioning delay in prosecuting the accused for the crimes arraigned the learned state defence counsel argued that since no earlier prosecution was initiated over the event as admitted by P.W.2, the grand-son of victim Zaminder Shurendra Nath Das now arraigning the accused suffers from doubt.

126. We disagree with the above submission extended by the learned state defence counsel. We reiterate that justice delayed is no longer justice denied, particularly when the perpetrators of core international crimes are brought to the process of justice. It is to be borne in mind that there is no limitation in bringing criminal prosecution, particularly when it relates to

‘international crimes’ committed in violation of international humanitarian law.

127. It should not be forgotten that crimes against humanity and genocide, the gravest crime never get old and that the perpetrator who is treated as the enemy of mankind must face justice. Delay or passage of time does not lessen the culpability of perpetrator, if he is found accountable and guilty.

128. Time bar should not apply to the prosecution of human rights crimes. Neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity. Thus, criminal prosecution is always open and not barred by time limitation. Accordingly, mere delayed prosecution itself does not *ipso facto* cast any degree of doubt as to accused’s involvement with the crimes of which he is arraigned. Chiefly we are to see how far the prosecution has been able to prove the accusation brought by lawful evidence.

129. Next, let us eye on the matter as to the age of the accused in 1971. It has been asserted by defence that in 1971 the accused was 10/12 years old. But the information as revealed from the NID card of the accused, as stated in the Formal

Charge, depicts that his date of birth is 29 June, 1952. Defence does not dispute it. Besides, it transpires that the IO collected the copy of NID card of the accused from the election commission which has been annexed in the Case Diary (**page- 283 of the Case Diary**). Another document annexed with the case Dairy (**page- 297 of the Case Diary**) is a certificate issued by the Head Master of Naogaon K.D Government High School which unmistakably demonstrates that the accused Abdul Momin Talukder passed SSC examination in 1967 and his date of birth is 29.06.1952. Thus, and in absence of anything contrary all these documents together speak it indisputably that in 1971 the accused Abdul Momin Talukder @ Khoka was 19 years old. It transpires too that it has been affirmed in cross-examination of P.W.06 as he stated in reply to defence question put to him that the accused was about 17/18 years old in 1971. It adds assurance as well to the information contained in the NID Card of the accused. Thus, the contention agitated on part of defence as to age of the accused in 1971 seems to be a mere futile effort to keep the accused abstained from liability for committing the crimes arraigned.

130. It appears that this charge involves killing of 10 civilians. The victims belonged to protected groups and the indiscriminate killing was conducted with 'specific intent' i.e. intent to destroy the Hindu religious group and pro-liberation civilians forms part of 'national group' of the locality under police station-Adamdighi of District-Bogura.

131. The charge framed arraigns that the group of attackers formed of Pakistani occupation army men, accused Abdul Momin Talukder @ Khoka and his accomplices belonging to local peace committee. Event allegedly happened in three phases on the same day and consecutively and immediately after arrival of Pakistani occupation army men at Santahar.

132. It appears that three successive attacks were allegedly conducted on the same day around the localities of Kalsha Bazar, Rathabari and Teorpara under Police Station-Adamdighi of District-Bogura. The indictment arraigns first that one pro-liberation civilian Md. Islam Uddin Pramanik was shot to death. Next, six Hindu civilians were killed at Zaminder Bari and finally, three more civilians Badesh Munshi Pramanik, Nezam Uddin Pramanik and Hazrat Ali were shot

to death perceiving them pro-liberation civilians forming part of 'national group'.

133. This charge chiefly rests upon ocular testimony of 04 witnesses– P.W.01, P.W.02, P.W.03 and P.W.04 who allegedly saw and experienced atrocious facts materially linked to the mass killing. Now, to substantiate perpetration of the event arraigned and also to find out alleged liability of the accused Abdul Momin Talukder @ Khoka prosecution requires proving that –

- a. On 22 April the gang of army men being accompanied and guided by the accused Abdul Momin Talukder @ Khoka and his accomplices had carried out successive attacks around the locality;
- b. The attacks were resulted in killing 10 unarmed civilians;
- c. The victims belonged to Hindu religious community and some victims were pro-libration civilians forming part of 'national group' ;
- d. That the alleged indiscriminate killing was intended to destroy those protected group, either in whole or in part;

- e. That the accused himself deliberately and physically participated in accomplishing the indiscriminate killing;
- f. That the killing constituted the offence of 'genocide'.

134. First, let us see when and how the accused Abdul Momin Talukder @ Khoka got affiliated with the Pakistani troops. The fact that the Pakistani occupation army men arrived at Santahar by train on 22 April, 1971 morning and got stationed in the locality under police station-Adamdighi of District-Bogura as unveiled in evidence could not be denied even by the defence.

135. We got it well proved from unshaken testimony of P.W.04 that on 22 April in morning the accused, his father Abdul Mazid Talukder, the local peace committee chairman and their associates received and welcomed the Pakistani troops when they arrived at Santahar railway station, by chanting slogan 'Pakistan Zindabad'. Defence simply denied it but could not controvert it in any manner. It thus leaves a patent manifestation of stance the accused and his father had in 1971 against the war of liberation.



136. The above proved fact indisputably demonstrates that the accused, his father being sturdily enthused by pro-Pakistan ideology welcomed the Pakistani army men. Later on, on the same day on active guidance and participation of accused Abdul Momin Talukder @ Khoka the gang of attackers formed of Pakistani army men started attacking directing the civilian population of the locality, it stands proved on cumulative evaluation of corroborative testimony of prosecution witnesses.

137. P.W.01 and P.W.02 are the key witnesses to the indescribable brutal killings which happened inside the Zaminder Bari, in conjunction with the attack. They witnessed the annihilation phase carried out by the group. P.W.03 saw the accused Abdul Momin Talukder @ Khoka and his accomplices entering inside the Zaminder Bari and few minutes later he heard frequent gun firing.

138. P.W.03 at the relevant time had been staying inside the mango garden of Zaminder Bari. After the gang had left the site P.W.03 going inside the Zaminder Bari found six dead bodies dumped inside an Idara. Key eye witnesses P.W.01 and P.W.02 disclosed to P.W.03 as to who and how perpetrated the

killing of Zaminder, his spouse and four others belonging to Hindu community.

139. Why P.W.01 Ansar Ali remained stayed inside the Zaminder Bari at the relevant time? Was it natural and believable? Let us see what has been revealed in this regard. Testimony of P.W.01 demonstrates that when (on the day of event happened) he (P.W.01) and his brother Islam Uddin Parmanik arrived at Rathabari Kalsha road accused Abdul Momin Talukder @ Khoka by chanting 'Mukti Jai' (freedom-fighter is going) shot his (P.W.01) brother Islam Uddin Parmanik to death. Being gravely scared with this he (P.W.01) then rushed toward Zaminder Bari and at the east of it he went into hiding inside a bush.

140. Defence could not controvert the above piece of crucial fact relating to killing of Islam Uddin Parmanik, the brother of P.W.01 and the reason of his going into hiding inside the jungle of Zaminder Bari, nearer to the site where the brother of P.W.01 was shot to death.

141. It has not been denied that the P.W.01 knew the accused beforehand. Defence could not dislodge the horrific phases of

event as has been narrated by P.W.01, a direct witness who lost his father, brothers and maternal uncle. Defence case as has been suggested to witnesses in cross-examination is that the victims were killed during exchange of gunfire with Pakistani occupation army. But this defence case seems to be simply a futile attempt to negate the event of killing numerous unarmed pro-liberation civilians perpetrated on active participation and substantial contribution of the accused. There is no indication even in support of such speculative defence case.

142. Besides, mere denial is not sufficient to taint the probative value of testimony of witness, if it inspires credence. Credibility of ocular narrative made in examination-in-chief can only be shaken or impeached by cross-examining the witness. But it appears that the narrative testified by P.W.01 could not be fettered in any manner. Thus, we do not find any rationale to keep this version of P.W.01 aside treating false and tutored.

143. We also got it proved from evidence of P.W.03 that at the time of conducting indiscriminate killing inside Zaminder Bari he remained in hiding inside the mango tree garden, on the bank of the pond of Zaminder's Bari (residence) wherefrom he

saw accused Abdul Momin Talukder @ Khoka having rifle in hand and being accompanied by 10/15 army men entering inside the residence of Zaminder Surendra Nath Das. Few minutes later he (P.W.03) heard sound of frequent gun firing from the end of Zaminder Bari which was in ablaze. This crucial piece of testimony of P.W.03 reveals that the accused Abdul Momin Talukder @ Khoka being equipped with fire arm aggressively participated in accomplishing the criminal mission of the enterprise.

144. It stands proved too that after the gang had left the site, he (P.W.03) going inside the Zaminder Bari found the P.W.02 and others screaming gravely and saw six dead bodies dumped inside the Idara. This pertinent fact gets consistent corroboration from the testimony of P.W.01 and P.W.02, the grand-son of victim Zaminder. In no way this crucial fact could be impeached by cross-examining the P.W.03. Besides, P.W.01, P.W.02 and P.W.03 are natural witnesses who had obvious space of experiencing facts chained to the horrific deliberate attacks conducted and we do not find any reason to question the truthfulness of their testimony.

145. It could not be denied and refuted even that the accused Abdul Momin Talukder @ Khoka and his cohorts belonging to local peace committee welcomed the group of Pakistani troops at Santahar Railway Station, as testified by P.W.01. It proves the mighty and notorious stance of the accused against the pro-liberation civilians of the locality in 1971. It adds assurance his culpable participation in all phases of attack carried out by the criminal gang.

146. P.W.01 is direct witness of some crucial facts relating to close affiliation of accused Abdul Momin Talukder @ Khoka with Pakistani occupation army. He also saw how the accused being part of the criminal enterprise shot down his brother to death which occurred in conjunction with the attack arraigned.

147. It stands proved that the event of this phase of killing happened when P.W.01 and his victim brother were about to flee, sensing attack. P.W.01 managed to escape by running toward the jungle of Zaminder Bari, it depicts from his uncontroverted ocular testimony. But his brother had to face the tragic fate. He was shot to death there terming him 'Mukti' (freedom-fighter) by the accused. P.W.01 thus had tragic opportunity of seeing the killing his brother. Defence could not

diminish this decisive fact relating to annihilation of Islam Uddin Pramanik, the brother of P.W.01.

148. The above phase of event of killing Islam Uddin Parmanik demonstrates that the accused Abdul Momin Talukder @ Khoka and the Pakistani troops were extremely antagonistic to the pro-liberation civilians and thus they started killing the unarmed pro-liberation civilians of the locality perceiving them to be members of pro-liberation 'national group'. Intent was thus clear. It may be safely inferred that the accused and the Pakistani occupation army men intended to resist and destroy the pro-liberation civilians forming part of 'national group' which was in favour of the war of liberation.

149. P.W.01, on the same day, also saw the deliberate attack launched at Zaminder Bari wherefrom he heard frequent gun firing and later on he found six dead bodies dumped inside Idara of Zaminder Bari. Act of killing numerous Hindu civilians there was the upshot of the attack which was observed by P.W.01.

150. Additionally, P.W.01 witnessed how the accused himself brutally killed his father, brother Nijam and maternal uncle. It has been divulged from unimpeached testimony of P.W.01 that quitting the site i.e. Zaminder Bari, after the gang had left he (P.W.01) moved to *morh* of 'chou rasta' where he saw the accused Abdul Momin Talukder @ Khoka, army men and peace committee members taking away his (P.W.01) father Badesh Munshi, brother Nijam and maternal uncle Hajrat Ali tying them up toward the bank of 'Tiarpara pond' where Abdul Momin Talukder shot down the detainees to death.

151. After seeing the tragic event of killing dear ones he (P.W.01) returned back home and found their house ablaze and his mother and two younger brothers remained in hiding inside a bush nearer to their house. These facts are fair *indicia* that the gang before getting the victims forcibly captured conducted devastating activities attacking their house which were calculated to destroy the livelihood of survived civilians.

152. It transpires too that afterward the P.W.01 deported to village- Rampura taking his mother and younger brothers with him, presumably being scared and intimidated. In this way group condition of lives of fragmented part of 'national group'

of the locality was intended to keep in grave intimidation. Thus, we are of considered view that the attack leading to killing numerous pro-liberation civilians were activated with specific intent, to cause harm and destruction of the 'national group' the victims belonged.

153. It also stands proved that first, the same gang conducted its attack at the house of Badesh Munshi, looted household and burnt down the house. With this the P.W.04 became scared and opted to go into hiding inside the mango tree garden adjacent to Zaminder Bari.

154. It stands proved too that after attacking the house of Badesh Munshi next phase of attack was carried out at Zaminder Bari. Since the P.W.04 remained in hiding, naturally he could not see the actual perpetration of killing conducted inside the Zaminder Bari. But he heard frequent gun firing and saw the rooms ablaze, remaining in hiding.

155. Actually what happened when P.W.04 remained in hiding inside the mango tree garden adjacent to Zaminder Bari? It transpires that after the gang of perpetrators accompanied by the accused had left the site P.W.04 moved inside the



Zaminder Bari when he heard the event from Pradip the grand-son of Zaminder Shurendra Nath Das and others whom he found present there. P.W.04 also saw the six dead bodies including Zaminder Shurendra Nath Das, his spouse and other dumped inside the Idara. This piece of crucial narrative made by P.W.04 seems to have been consistently corroborated by P.W.02 Pradip the grand-son of Zaminder Shurendra Nath Das.

156. P.W.02 testified that he saw the attack at Zaminder Bari where the accused being part of the gang of attackers had conducted the brutal killing of his grand-father Zaminder Shurendra Nath Das, grand-mother Haribhabini Dasi, Sudhir Chandra Saha, Sudhir Mali, Kamla Bala and Choton. It could not be dislodged in cross-examination. Besides, narrative made by P.W.02 on the event of attack leading to appalling killing of numerous Hindu civilians gets consistent corroboration from P.W.01, son of one victim Badesh Munshi.

157. Thus, we got it proved that P.W.02 had natural occasion of seeing the event of killing his dear ones. Not only that, one Ansar Ali, the P.W.01 who was present at the site at the relevant time also experienced the horrific event of horrendous killings. Indisputably P.W.02 the grand-son of victim

Zaminder still has been carrying untold trauma he sustained as the annihilation of his dear ones was conducted within his sight.

158. Mr. Abul Hassan the learned state defence counsel argued that in 1971 P.W.02 was a minor boy and thus he was not expected to recall the event he allegedly saw. Thus, his testimony does not carry value.

159. We are not agreed with the submission agitated by the learned state defence counsel. We reiterate that in the case of **Ali Ahsan Muhammad Mujahid** the Appellate Division of **Bangladesh Supreme Court**, on this aspect, observed that –

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

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

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

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

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

161. It has been also argued by the learned state defence counsel that it is not likely to memorize what happened about five decades back and thus narrative made by the witnesses does not carry any credibility.

162. We do not concede with the above defence submission. In this regard we reiterate that in dealing with the arraignments involving barbaric atrocious events occurred in 1971 during the war of liberation we are to keep it in mind that the event happened in enormously shocking context and narration made by the witnesses in court, chiefly on core aspect of the event they experienced may remain still alive in their memory.

163. Research on human cognition suggests that a piece of information or act causing enormous trauma, once it is stored in long-term memory, stays alive. Thus, we conclude that trauma stored in their episodic memory of the horrific event

has been reliably portrayed in the sworn narrative of the witnesses.

164. The fact of entering of the gang accompanied by the accused Abdul Momin Talukder inside the Zaminder Bari, hearing frequent gun firing from the end of Zaminder Bari and seeing the six dead bodies dumped inside the Idara, just immediate after the gang had left the site, as testified by P.W.04 are indisputably chained together. All these cumulatively prove active and conscious participation and concern of the accused Abdul Momin Talukder @ Khoka in perpetrating the dreadful killing of six Hindu civilians, belonging to Hindu religious group, a protected group.

165. Defence could not impeach the above crucial facts in any manner. All these unshaken crucial facts are linked to the act of killing six unarmed civilians belonging to Hindu community.

166. Abdul Mazid Talukder the father of the accused Abdul Momin Talukder @ Khoka was a potential Muslim League leader of the locality and contested in 1970's election as a candidate of Muslim League. Pakistani occupation army men were not acquainted with the locality and people who were

perceived to be people taking stance in favour of the war of liberation forming part of 'national group' or 'Hindu religious group'. Local Bengali traitors like the accused substantially collaborated with the Pakistani occupation army by providing assistance and also by their culpable participation in launching attacks, to further its policy and plan. It is now settled history.

167. It thus may be unmistakably inferred that by abusing pro-Pakistan ideology it was not impracticable of having or procuring fire arms, predominantly after the accused, his father and their associates of local peace committee received and welcomed the Pakistani troops with culpable enthusiasm. We find no reason to disbelieve the narrative made by the P.W.01 and P.W.02 so far as it relates to active and physical participation of accused Abdul Momin Talukder @ Khoka in accomplishing the killings.

168. Zaminder, his spouse and employees annihilated brutally obviously were the potential members of the local Hindu community. Presumably, the gang on active guidance, encouragement, facilitation and participation of the accused Abdul Momin Talukder @ Khoka, with specific intent to cause

destruction of the local Hindu religious group, conducted the criminal scheme of such indiscriminate killing, by spreading extreme horror and intimidation. Such intent leads to conclude that the gang had carried out the mission of killing of numerous Hindu civilians also to cause destruction of group condition of local Hindu community.

169. Apart from the killing mission conducted at the residence of Zaminder Shurendra Nath Das the same gang accompanied by accused Abdul Momin Talukder @ Khoka deliberately liquidated four other pro-liberation civilians forming fragmented part of 'national group'.

170. We got it proved from testimony of P.W.01 Ansar Ali that on the same day and just before the criminal mission conducted at Zaminder Bari the accused accompanying the same gang gunned down Islam uddin, the brother of P.W.01 to death terming him 'Mukti' (people belonging to pro-liberation group), on the road of Rathabari Kalsha.

171. The charge framed arraigns that the group formed of Pakistani occupation army, accused Abdul Momin Talukder and his cohorts apprehended Md. Ansar Ali Pramanik and his

elder brother Md. Islam Uddin Pramanik and handed over them to the Pakistani occupation army. And at one stage Md. Islam Uddin Pramanik was shot to death and the victim Md. Ansar Ali Pramanik (P.W.01) however escaped.

172. What the P.W.01 Ansar Ali testified before Tribunal? He stated that when he and his brother (Md. Islam Uddin Pramanik ) arrived at Rathabari Kalsha road Abdul Momin Talukder by chanting 'Mukti Jai' (freedom-fighter is going) shot his (P.W.01) brother Islam Uddin Parmanik to death. This version seems to be a bit different from what has been narrated in the charge framed, though remained uncontroverted.

173. But such error by itself does not make P.W.01's ocular testimony untrue. Besides, learned state defence counsel had due opportunity of questioning it to P.W.01. It appears that what the P.W.01 stated in relation physical participation of accused in accomplishing the killing of his brother remains uncontroverted. Thus, merely for the reason of insignificant inconsistency between testimony of P.W.01 and the narrative made in the charge framed the event of killing and participation of the accused therewith shall not go on air.

174. In respect of above aspect **the Appellate Division** of Bangladesh Supreme Court in the appeal of **Mir Quasem Ali** has observed that-

“It is now the established jurisprudence that mere error, omission or irregularity in the charge does not vitiate the trial or conviction. The accused has defended the charge by Counsel and he knows what have been deposed by the witnesses against him, and therefore, no prejudice is caused to the accused, and the accused cannot plead in such a case that by reason of such error, a failure of justice has occasioned due to defect in framing the substantive charge against him. It is now established that mere omission to frame a proper charge will not vitiate the trial if the accused has sufficient opportunity to defend the accusation and cross-examine the witnesses. [**Criminal Appeal No.144 of 2014; Mir Quasem Ali vs. The Chief Prosecutor; Judgment: 8th March, 2016, page-183**]

175. In the case in hand, it stands proved that the accused Abdul Momin Talukder @ Khoka being aware of consequence culpably participated in conducting attack, being an active part of the criminal enterprise, which resulted in unlawful detention and killing of unarmed civilians. Facts lead



to deduce that he was with the gang at the crime scene consciously and by uttering inciting words intending to provide substantial contribution to materialize the inhumane policy of the gang. Such act and conduct of accused amid the attack are sufficient to prove his criminal liability and culpability. In this regard we may rely upon the observation made by **The Appellate Division** in the appeal preferred by **Mir Quasem Ali** that --

“It is, therefore, sufficient to convict an accused person charged with offences of crimes against humanity if it is proved that the offender has some knowledge of, and sympathy for the inhumane policy so as to give him a mental element more culpable than that of the ordinary offender.

**[Criminal Appeal No.144 of 2014; Mir Quasem Ali vs. The Chief Prosecutor; Judgment: 8th March, page,160-161]**

176. It has been proved that in course of one phase of attack the accused on seeing one pro-liberation civilian shouted saying – ‘ Mukti Jai( freedom-fighter is going) ‘ and instantly the said unarmed civilian was shot to death. Such inciting utterance made by the accused persuaded to attack upon pro-liberation civilian forming part of ‘national group’.

177. Now we need to resolve whether the mass atrocities carried out constituted the offences of crimes against humanity or the offence of genocide. The settled proposition is that the offence of genocide requires specific 'genocidal intent'. Intent of perpetrators may be well inferred from facts and circumstances.

178. Targeting the Hindu Zaminder and his inmates belonging to local Hindu community residing at the same crime vicinity itself is rather emblematic of the overall Hindu community of the locality. Therefore, targeting Hindu Zaminder and his inmates obviously qualifies as substantial, for the purpose of inferring the 'genocidal intent'.

179. Cumulative evaluation of evidence and facts unveiled leads us to conclude that the accused Abdul Momin Talukder @ Khoka was active part of the criminal enterprise. The mission of the gang formed of him and his accomplices and army men was calculated to wipe out the local Hindu religious group and pro-liberation unarmed civilians, in part. Portrayal of horrific event formed of phases of attacks conducted on the same day unerringly lead to the conclusion that the criminal

gang was extremely hostile to the Hindu religious community and local pro-liberation civilians.

180. Direct witnesses to the horrific atrocities committed upon their near ones that resulted in brutal killings had to experience as mere defenseless spectators with untold pain and trauma. The witnesses had to see the dead bodies of their dear ones. All the grave criminal acts indisputably crippled the normal livelihood of relatives of victims. The witnesses and relatives of victims have been still carrying the trauma and torment they sustained and the same constituted serious mental harm to them. The massacre they observed indisputably fall within the ambit of 'serious mental harm'.

181. Pattern and magnitude of attack as has been depicted demonstrate indisputably that perpetrators' intent was to wipe out potential members of local Hindu community and civilians belonging to pro-liberation group which was fragmented part of 'national group'.

182. It is not required to show that the offence of 'genocide' must be done directing entire population of any of protected groups. Even killing of a number of non-combatant civilians of

fragmented part of such group constitutes the offence of 'genocide'.

183. What we see in the case in hand? It stands proved that by launching organised and methodical attack the accused Abdul Momin Talukder @Khoka , his cohorts and Pakistani army men participated in wiping out six civilians belonging to Hindu religious group and four victims who were shot to death had potential stance in favour of war of liberation.

184. We need to resolve whether the mass atrocities carried out constituted the offences of crimes against humanity or the offence of genocide. The settled proposition is that the offences of crimes against humanity require a linkage to 'widespread' or 'systematic attack' directed against any civilian population and the offence of genocide requires specific 'genocidal intent'.

185. ICTY and ICTR jurisprudence acknowledges that perception of the perpetrators of the crimes may, in some circumstances, be taken into account for purposes of determining membership of a protected group. [**Emmanuel Ndindabahizi, Case No. ICTR-01-175, Trial Judgement, 15 July, 2004**]. In the case in hand, pattern of entirety of attacks

leads to the unmistakable conclusion that on the same day by conducting successive attacks around the locality the gang being accompanied by the accused brutally liquidated a number of Hindu civilians and pro-liberation civilians who were perceived to be active members of the group they targeted.

186. Phases of attacks leading to numerous killing happened on the same day and almost just after the Pakistani army men arrived at Santahar and got stationed. It stands proved that the Pakistani troops were welcomed and received with spontaneous zeal by the accused Abdul Momin Talukder @ Khoka , his father Abdul Mazid Talukder, the local peace committee chairman and some other peace committee members.

187. True that Razakar Bahini did not exist on 22 April 1971 when the event of attacks happened. It has been proved that later on, the father of the accused contributed in forming local Razakar Bahini and assigned his own son, the accused to act as its commander. The history also says that in 1971 Razakar Bahini was formed on recommendation and endorsement of local peace committee. It is thus believable that Abdul Mazid

Talukder, later on, played explicit role in forming local Razakars Bahini and in making his son Abdul Momin Talukder its commander.

188. Since it stands proved that the accused physically participated in perpetrating the indiscriminate killings it may be justifiably presumed that the accused Abdul Momin Talukder @ Khoka on the strength of his strong affiliation with the local peace committee and pro-Pakistan political party Muslim League had no difficulty in managing fire arms when he enthusiastically guided the group of Pakistani army men whom he, his father and his accomplices welcomed in the locality.

189. On the day the event happened the Pakistani army men who arrived in the locality in morning naturally had no acquaintance about the locality and they were not familiar with the people having stance in favour of the war of liberation. We got it proved that the accused Abdul Momin Talukder @ Khoka accompanied the Pakistani troops to guide, facilitate and encourage with intent to annihilate the Hindu religious group. Local Zaminder Shurendra Nath Das and his family, the potential icon of the local Hindu community were thus targeted

by the accused in accomplishing the specific intent to destroy the Hindu community of the locality, we deduce it unerringly.

190. We safely assume that after formation of the central peace committee during the early part of April, 1971 its local committee was also formed in Adamdighi under the patronage of Abdul Mazid Talukder the local leader of Muslim fanatic political party aiming to provide ‘assistance’ to the Pakistani occupation army in executing their activities targeting the unarmed Bangalee pro-liberation civilians, in the name of preserving Pakistan.

191. Further, the **Exhibit-7** a report published on 19.11. 2007 in the Daily Bhorer Kagoj (**prosecution document volume page nos. 28-29**) speaks of notoriety of accused Abdul Momin Talukder @ Khoka and his father Abdul Mazid Talukder. **The reporter M. Sarwar Khan** making the report has been examined as **P.W.13** who has proved the report which states that –

গণিতের ক্রমিক বিন্যাসের বিপরীতমুখী তথ্যের ভিত্তিতে  
এই বিষয়ে বঙ্গদেশের জনসংস্কৃতিকার গণিতের ভিত্তিতে  
গণিতের ক্রমিক বিন্যাসের বিপরীতমুখী তথ্যের ভিত্তিতে  
এই বিষয়ে বঙ্গদেশের জনসংস্কৃতিকার গণিতের ভিত্তিতে

Gj vKvi `Rb nvi vtbv` i `sZ t\_tK Zvt` i tmw` tbi tmB  
 bksmZv-eePZvtK g\$0 tdj tZ cvtiwb.....|0 (The  
**Daily Bhorer Kagoj, 19.11. 2007)**

192. Defence could not impeach the authenticity of this report which was published more than two years prior to formation of the Tribunal under the Act of 1973. This report itself mirrors the extreme antagonism and notoriety of the accused Abdul Momin Talukder in committing horrendous crimes directing pro-liberation unarmed civilians in the name of preserving Pakistan. Narrative made in this report thus adds further assurance as to accused person's participation in perpetrating prohibited criminal acts constituting the offences of crimes against humanity and genocide in 1971 around the localities under police station-Adamdighi of District Bogura.

193. It transpires that P.W.14 also narrated the pertinent fact of welcoming the Pakistani troops by the accused, his father and their accomplices just before they started conducting attacks around the localities. It could not be impeached at all.

194. As a resident of locality P.W.14 naturally had space of knowing and hearing the event of attacks which resulted in killing 10 unarmed civilians of protected groups. Defence



simply denied it in cross-examination. But it could not be diminished in any way. Besides, this piece of hearsay version of P.W.14 gets corroboration from other natural and direct witnesses.

195. It is now fact of common knowledge that peace committee was formed to act as an 'auxiliary organisation' meant to provide active assistance to combat and annihilate the pro-liberation Bengali people having spirit of Bengali nationalism were termed as 'miscreants', 'agents of India', 'anti-social elements'. And Hindu civilians were treated too as 'miscreants' and 'agent of India'. In the case in hand it stands proved that the people including the accused Abdul Momin Talukder @ Khoka started acting, in exercise of affiliation with the 'auxiliary organisation' in carrying out atrocities around the localities under Adamdighi police station.

196. It has been also argued on part of defence that the alleged event eventually ended in killing 10 civilians and thus such killing of less number of civilians does not constitute the offence of 'genocide'.

197. We do not concede with this submission. ‘There need not be a large number of victims to enter a genocide conviction.’ [ ***Ndindabahizi, (ICTR Appeals Chamber), January 16, 2007, para. 135***]. The phrase ‘destroy in whole or in part’ of a targeted group does not imply a numeric approach. ‘There is no upper or lower limit to the number of victims from the protected group . . .’ [ ***Muvunyi, (ICTR Trial Chamber), September 12, 2006, para. 479***].

198. Thus, even killing of a single person belonging to a protected group may constitute the offence of genocide, where it reveals that intent of such killing was to destroy the group, either in whole or in part. It stands proved that the attack leading to brutal killing of numerous civilians was directed against Hindu religious group and also against pro-liberation civilians which indisputably demonstrates the ‘specific intent’ of perpetrators.

199. It is now well settled that there is no need to prove that the entire or significant part of a protected group was calculated to be wiped out with such specific intent. The well settled proposition is that – “There is no numeric threshold of victims necessary to establish genocide.” [ ***Seromba, (ICTR Trial***

**Chamber), December 13, 2006, para. 319].** Even a lesser number of victims, would qualify as genocide if carried out with the intent to destroy the part of the group as such located in this small geographical area.

200. The offence of ‘genocide’ is one of the gravest breaches on the moral and physical integrity of individuals of a group. Genocide is intended to mean a coordinated plan of criminal actions with ‘intent to destroy’ the essential foundation of the life of protected group, by annihilating the members of the group. Intent to destroy a protected group, in whole or in part can be proven from a systematic pattern of coordinated acts. But perpetrators need not intend to destroy the entire group.

201. In the case in hand, it stands proved from the chain of facts and circumstances that the attack carried out successively were coordinated and pursuant to plan of destroying essential foundation of the groups of which the victims formed part. The accused actively and consciously participated in mass killings pursuant to specific intent and plan. We reiterate that one may be found guilty of genocide even if he is proved to have killed only one person, so long as he knew he was participating in a

larger plan with ‘intent to destroy the group, in whole or in part’.

202. Settled proposition states that a ‘**national group**’ means a set of individuals whose identity is defined by a common country of nationality or national origin. Based on facts and circumstances and pattern of attack we are convinced to conclude that the four civilians who were annihilated, in addition to killing six Hindu civilians at Zaminder Bari formed fragmented part of ‘national group’.

203. In the case in hand, facts and circumstances together with the context lead us to conclude that the victims were chosen not because of their individual identity, but rather on account of their membership of ‘national and religious’ group. Facts unveiled suggest to an unerring conclusion that accused perpetrator and his accomplices perceived the victims to be inspired by spirit and patriotism of Bengali nation. Thus, the victims became their counterpart. It stands proved that attacking the victims was deliberate and on account of their membership of protected groups. It indisputably enables us to infer unerringly that the criminal acts leading to brutal annihilation of victims were intended to destroy the group they belonged, in whole or in part.

204. In view of above, it may be thus deduced that the accused knowingly guided and facilitated the gang to conduct coordinated attack perceiving these four civilians having stance in favour of the war of liberation. Fact and context together suggest that apart from six victims belonging to Hindu community these four victims formed a set of individuals whose identity may be characterized by their national origin and spirit.

205. According to evolved jurisprudential proposition a genocidal act may even be committed against one or several individuals because of their identity as members of a protected group. Thus, a 'national group' may be defined as a collection of people who are perceived, by the perpetrators, to share the common bond and spirit of the nation. Thus, these four civilians formed part of 'national group'.

206. In light of settled jurisprudence we are of the view that even the fact that mere a number of persons belonging to protected group[s] were killed does not negate the perpetrators' intent, which was calculated to destroy the Hindu religious

group and pro-liberation civilians forming part of national group , in whole or in part.

207. ‘Specific intent’ to destroy a protected population, either whole or in part is the key element which is required to constitute the offence of genocide. But it does not mean that *de facto* destruction of the entire or part of the targeted group is to be committed. Chiefly it is to be seen whether the perpetrators had acted to materialize ‘specific intent’ to destroy the group, in whole or in part. It is not necessary to prove any *de facto* destruction of the total group of certain vicinity.

208. ‘Genocidal intent’ is to be inferred from factual circumstances of the crime arraigned. In respect of ‘specific intent’ and ‘destruction of group, the ICTY Trial Chamber has observed in the case of **Milomir Stakic** that--

“The key factor is the specific intent to destroy the group rather than its actual physical destruction. ....there is no numeric threshold of victims necessary to establish genocide.....it is not necessary to prove *de facto* destruction of the group in part .....It is the genocidal *dolus specialis* that predominantly constitutes the crime.”

**[Milomir Stakic, ICTY , Trial Chamber,  
Judgment 31 July, 2003 para 522]**

209. Specific intent to destroy a protected population, either whole or in part is the key element which is required to constitute the offence of genocide. But it does not mean that *de facto* destruction of the entire of the targeted group is to be committed. Genocidal intent is to be inferred from factual circumstances of the crime arraigned.

210. It already stands proved that accused Abdul Momin Talukder @ Khoka was physically present at the massacre sites, being equipped with fire arms. He had acted in aggressive and antagonistic manner in conjunction with all the phases of attacks, evidence tendered depicts. Such intense antagonism was to actuate the 'specific intent' of the criminal mission.

211. In the case in hand, facts and circumstances together with the context lead us to conclude that the victims were chosen not because of their individual identity, but rather on account of their membership of national and religious group.

212. Facts, circumstances and context prevailing cumulatively lead to deduce that accused perpetrator and his accomplices perceived the victims to be inspired by spirit and patriotism of Bengali nation. Thus, the victims became their counterpart. It stands proved that attacking the victims was deliberate and on account of their membership of protected groups. It irrefutably enables us to infer unerringly that the criminal acts leading to brutal annihilation of victims were intended to destroy the group they belonged, either in whole or in part.

213. Cumulative evaluation of evidence presented indisputably leads to the conclusion that the accused was quite aware of targeting the Hindu 'religious group' and the pro-liberation civilians forming fragmented part of 'national group'. Thus, the only irresistible conclusion is that at the moment of attacks launched, he, sharing the object of the gang, had acted with 'genocidal intent.

214. Facts and circumstances unveiled in ocular testimony of natural witnesses suggest that attacks leading to indiscriminate killing of Hindu civilians and civilians belonging to fragmented part of 'national group' were accomplished with 'specific intent' which was also intending to spread horrific



intimidation directing these protected groups and thus lead to the irresistible conclusion that at the moment of attacks launched, the accused deliberately and actively had acted with 'genocidal intent', to further policy and plan of Pakistani occupation army.

215. Accused's role in committing crimes proved by launching systematic attacks cannot be viewed nonchalantly as he incurred liability even for the killings, the upshot of the designed attack conducted. Finally, Tribunal notes that the accused Abdul Momin Talukder @ Khoka cannot be considered merely as an absentee accused. Evading trial for the offences of which he has been charged signifies his culpability too, as a relevant fact. Remaining in such deliberate absconsion is a material incriminating circumstance which lends further assurance as to guilt of the accused particularly when he has been found criminally liable for the criminal acts constituting the offence of 'genocide'.

216. On total appraisal of evidence and related facts and circumstances depicted we arrive at decision that prosecution has been able to prove beyond reasonable doubt that in exercise of his mighty and notorious affiliation and authority

with the local peace committee accused Abdul Momin Talukder @ Khoka actively and consciously guided, facilitated and encouraged the Pakistani troops in conducting attacks proved and he himself too actively participated in annihilating six civilians belonging to Hindu community and four pro-liberation civilians forming part of 'national group', with specific intent and thereby he is found guilty of participating, abetting, assisting and substantially contributing, by his explicit and aggressive act and conduct forming part of criminal enterprise in accomplishing indiscriminate killing of Hindu civilians and pro-liberation civilians bearing spirit of the war of liberation forming part of 'national group' constituting the offence of '**genocide**' as enumerated in section 3(2)(c) ((i)(ii)(g)(h) of the Act of 1973.

## **Adjudication of Charge 02**

**[Offences of 'abduction', 'confinement', 'torture', 'looting', 'arson', 'other inhumane acts' and 'murder' of 05[five] civilians on forcible capture from the village-Kashimala under Police Station-Adamdighi of District-Bogura]**

217. Charge: That on 24.10.1971 at about 10:00 A.M the accused Abdul Momin Talukder alias Khoka along with 6/7 unknown armed Razakars and 30/35 Pakistani occupation army by launching systematic attack at village-Kashimala

under Police Station-Adamdighi of District-Bogura forcibly captured non-combatant civilians **Jasim Uddin, Momtaz Sakider and Khayebar Pramanik**, set the house of Jasim Uddin on fire and then took the detained victims away to the Santahar Army and Razakar camp under the supervision of some Pakistani occupation army.

In conjunction with the attack the accused person and his accomplices also by launching attack at the houses of freedom fighters and pro-liberation people [name of them have been mentioned in the formal charge] carried out destruction by setting those on fire and the accused gunned down Farej Ali and Hurmut Ali to death when they attempted to escape.

On 27.10.1971 at about 10:00 A.M taking the detained victims Jasim Uddin, Momtaz Sakider and Khayebar Pramanik at the Sudin Rail Bridge nearer to Adamdighi Railway Station where the accused person shot them to death.

Therefore, the accused Abdul Momin Talukder alias Khoka by such criminal acts forming part of systematic attack directing non combatant civilian population, to further policy and plan of the Pakistani occupation army participated,

facilitated, abetted, aided and substantially contributed to the commission of the offences of ‘abduction’, ‘confinement’, ‘looting’, ‘arson’, ‘other inhumane acts’ and ‘murder’ as **crimes against humanity** as enumerated in section 3(2)(a)(g)(h) read with section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act of 1973.

### **Evidence of witnesses presented**

218. This charge involves the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘other inhumane acts’ and ‘murder’ of 05[five] civilians, on forcible capture from the village-Kashimala under Police Station-Adamdighi of District-Bogura allegedly committed by launching systematic attack on 24.10.1971 which ended in killing three detainees on 27.10.1971.

219. It has been arraigned that the group of attackers was formed of Pakistani occupation army, accused Abdul Momin Talukder @ Khoka and his accomplices armed Razakars. The arraignment brought in this charge rests upon testimony of four witnesses who have been examined as P.W.05, P.W.06, P.W.07 and P.W.14. Of them P.W.05 and P.W.06 are direct

witnesses and P.W.14 is a hearsay witness. P.W. 07 has been tendered. Before we weigh the worth of their testimony first let us see what they have narrated on dock.

**220. P.W.05 Most. Asiran Begum (71)** of village-Kashimala under police station-Adamdighi of District Bogura is the wife of one victim Momtaj Shakhidar. She testified what she tragically experienced in course of attack launched.

221. P.W.05 stated that in 1971 on the 3<sup>rd</sup> Ramadan she had been at home along with her husband and children. At about 10:00 A.M. accused Abdul Momin Talukder along with some army men and Razakars entered their village. Being scared the villagers started fleeing with screaming. She and her husband too attempted to flee and on the way Razakars captured her husband. With this she (P.W.05) appealed to Abdul Momin Talukder to spare her husband. But attempt was in vain. Other Razakars looted many houses and burnt down those. Few minutes later she heard sound of gun firing. Later on, she heard from villagers that Razakar Momin Talukder gunned down Farej Ali and Harmuj Ali to death.

222. In respect of fate of captured husband, P.W.05 stated that later on she learnt that her detained husband, Jasim Uddin and Khoibar Pramanik were taken away to the Razakar-army camp set up at Adamdighi rail station by the Razakars she named and army men. She (P.W.05) later on also learnt that on 06<sup>th</sup> Ramadan i.e. three days later her husband and two other detainees were shot to death taking them beside the rail bridge of village-Sudin by the Razakars she named and their dead bodies were dumped at that village.

223. Finally, P.W.05 stated that at the time of event happened she could not identify the accused Abdul Momin Talukder, but later on she heard that Abdul Momin Talukder was with the gang of Razakars.

224. In cross-examination, in reply to defence question put to her P.W.05 stated that she or any of her family inmates did not initiate any case over the event of killing her husband after independence. P.W.05 denied that in 1971 Abdul Momin Talukder was 13/14 years old; that the event of attack leading to killing was carried out by the gang formed of Pakistani army men; that the accused was not Razakar and was not involved

with the event alleged and that what she testified was tutored and untrue.

**225. P.W.06 Md Mozammel Haque (61)** of village-Kashimala under police station Adamdighi of District Bogura is the son of one victim Jasim Uddin. He is a live witness as he had occasion of seeing the criminal acts conducted in course of attack leading to taking away his father on forcible capture.

226. P.W.06 stated that on 03<sup>rd</sup> Ramadan in 1971 at about 10:00 A.M. he had been at home when a group formed of 30/35 Pakistani army men, 5/6 armed Razakars and the accused Razakar Abdul Momin Talukder @ Khoka entered their village. On getting this information he being scared went into hiding inside a paddy field, 200/300 hands far from their home. Few minutes later he, remaining in hiding place saw their house ablaze and afterward he heard screaming of his father. With this he moved to his father and coming home he saw army men and Razakars beating his father. At that time, on hearing screaming of his grand-father he (P.W.06) moved to him and found his body burnt with fire. The army men and Razakars started taking away his (P.W.06) father tying his hands up. He then started following them. Suddenly he heard

sound of gun firing. He heard from people that Razakars and army men shot down Farej and Harmuj to death. 15/16 houses including that of their own were set on fire. Perpetrators took away his father and detained Khayebbar Pramanik and Momtaj Sakidar of their village to Razakar camp at Adamdighi railway station.

227. In respect of killing his detained father P.W.06 is a hearsay witness. P.W.06 stated that later on he learnt from people that his father and two other persons detained at that Razakar camp were subjected to brutal torture in captivity and on 06<sup>th</sup> Ramadan they were gunned down to death by taking them at the place near Sudin bridge and later on their dead bodies were made dumped there.

228. Finally, P.W.06 stated that he could not recognise any of Razakar, but his grand-father told that Abdul Momin Talukder was with the gang.

229. In cross-examination, in reply to defence question put to him P.W.06 stated that in 1971 he was student of class IV; that they did not initiate any case over the event of his father's killing and that in 1971 accused Abdul Momin Talukder was



17/18 years old. P.W.06 however denied the defence suggestions that the accused was not a Razakar; that he was not present at the site when the event happened and that what he testified was untrue and tutored.

**230. P.W.07 Md. Afjal Hossain Aakand (76)** has been tendered with P.W.05 and P.W.06. Defence adopted cross-examination done to P.W.05 and P.W.06

**231. P.W.14 Md. Abir Uddin Khan (68)** is a resident of village-Rampura under police station-Adamdighi of District Bogura. He is a freedom fighter. In 1971 he was a BSc examinee in Bogura Azizul Haque College. He heard the event arraigned in charge no.02. In addition to narrative he made on this event P.W.14 stated facts relating to the status and stance the accused and his father had in 1971.

232. P.W.14 stated that on 22 April 1971 at about 10:00 A.M Pakistani troops arrived at Santahar rail-station when they were welcomed and received by Adamdighi Muslim League leader Abdul Mazid Talukder (now dead), his son the accused Abdul Momin Talukder and some anti-liberation people. Later on, he (P.W.14) heard that on guidance and leadership of Abdul

Mazid Talukder(now dead) and his son Abdul Momin Talukder the anti-liberation people along with the Pakistani army men had carried out attacks at many houses, looted and set the houses on fire and also killed civilians.

233. In respect of the event arraigned in charge no.02 P.W.14 stated that on 08 December 1971 he along with 20 trained freedom- fighters entered inside Bangladesh. He learnt from his co-freedom-fighters that on 24 October 1971 at 10:00 A.M Razakar Abdul Momin Talukder , his armed accomplices and army men by launching attack at village- Kashimala killed two civilians and took away three civilians to Adamdighi railway station camp, on forcible capture. He also learnt that on 27 October 1971(03 days later) the three detained civilians were shot to death taking them near the Sudin Bridge and their bodies were made dumped there.

234. In cross-examination, P.W.14 denied the defence suggestions that civilians died in battle with the Pakistani army men; that he did not learn the event he testified; that the event alleged did not happen; that the accused was not involved with the alleged event and that what he testified implicating the accused was untrue and out of rivalry.

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

**235. Mr. Sultan Mahmud**, the learned prosecutor in placing summing up submits that P.W.05 and P.W.06 are the key witnesses in support of this charge. Considering prevailing context it was not possible of seeing all the activities conducted by the gang. But both of them had opportunity of seeing some crucial facts chained to the first phase of attack which resulted in devastating activities, beating and forcible capture of victims one of whom was the husband of P.W.05 and another was the father of P.W.06. The event of first phase of attack alleged has been rather admitted in cross-examination. Defence case that the victims were killed by the group formed of Pakistani army men is simply a futile effort to negate prosecution case and such defence case is devoid of any degree of reliability.

236. It has been proved that the gang of attackers was formed of accused Abdul Momin Talukder, his armed accomplice Razakars and Pakistani army men. Without coordinated guidance and active participation of the accused the army men would not have scope of locating the pro-liberation civilians and the locality to be attacked. Thus, the accused being part of the gang and in exercise of his potential position in locally

formed Razakar Bahini incurred liability for the offences of which he has been charged with, the learned prosecutor added.

237. The learned prosecutor further argued that the three civilians captured forcibly during first phase of attack were kept in captivity at the camp for three days. Naturally, none had opportunity of seeing how the detainees were treated in captivity. But presumably they were subjected to torture. Since the accused was an active part of the criminal enterprise in getting the victims captured he cannot evade liability even of killing the detainees, three days later. Defence could not impeach the crucial fact of keeping the three victims detained in captivity at camp. There is no reason to disbelieve P.W.05 and P.W.06.

238. It has also been submitted by the learned prosecutor that P.W.14 is a freedom-fighter who on coming back in Bangladesh heard the event from his co-freedom-fighters. It was quite practicable of knowing the atrocious activities carried out by the army men and their collaborators belonging to Razakar Bahini. Thus, his hearsay evidence carries probative

value. Besides, it gets corroboration from uncontroverted ocular testimony of P.W.05 and P.W.06

**239. Mr. Abul Hassan** the learned state defence counsel argued that the arraignment brought against the accused could not be proved. Two alleged eye witnesses P.W.05 and P.W.06 admitted that they could not recognise the accused when the attack was carried out. P.W.06 was a minor boy in 1971 and thus it is not possible to recall any event allegedly happened about five decades back.

240. It has been also argued that hearsay evidence of P.W.14 does not carry any value. Mere failure to prove any defence case does not make the prosecution case proved or believable. Prosecution is to stand on its own leg, based on credible evidence, the learned state defence counsel added. But prosecution could not prove its own case beyond reasonable doubt.

241. The learned state defence counsel also argued that there is no evidence to show that the accused was involved with the alleged act of killing three detainees. Thus, in no way he can be

held liable for the crimes arraigned. The accused has been implicated in this charge merely out of political rivalry. The witnesses are interested and their testimony suffers from falsity. Thus, the accused deserves acquittal.

242. Let us have a look to the charge framed. This charge involves arraignment of taking away five unarmed pro-liberation civilians on forcible capture of whom two were shot to death on the way back of the gang. And three other detainees were gunned down to death three days later after torturing them in captivity at Razakar camp, the charge framed alleges. The group of attackers was allegedly formed of accused Abdul Momin Talukder @ Khoka, his accomplice Razakars and Pakistani army men.

243. Thus now, the prosecution requires proving that –

- (1) The systematic attack was conducted as arraigned by the group, of which the accused was an active part,
- (2) Five detainees were annihilated;
- (3) Devastating activities were carried out in course of first phase of attack;

(4) The accused actively and knowingly got engaged with the criminal enterprise sharing common purpose and intent.

244. It transpires that the event of attack and killing five detained pro-liberation civilians remained uncontroverted. Defence simply contends that the accused was not with the group of attackers and the witnesses could not recognize him. P.W.05 and P.W.06 are direct witnesses to facts chained to the attack. According to their version they later on heard that accused Abdul Momin Talukder was with the gang of attackers. Thus, we require evaluating the hearsay version of P.W.05 and P.W.06 so far as it relates to presence of accused with the gang at the site attacked.

245. Defence also contends by putting mere suggestion to the prosecution witnesses that the alleged civilians died in battle with the Pakistani army men. But there is no indication in support of such defence plea. It is a mere futile effort to keep the wicked deed of the accused out of view.

246. It stands proved from unimpeached testimony of P.W.05 Most. Asiran Begum, the wife of one victim that the attack launched at their house resulted in forcible capture of her

husband by the gang accompanied by the accused and his accomplice Razakars.

247. It was not practicable to see the ending phase of attack which resulted in killing her (P.W.05) detained husband and two other detainees. But she (P.W.05) later on learnt that on 06<sup>th</sup> Ramadan i.e. three days later her husband and two other detainees were shot to death taking them beside the rail bridge of village-Sudin by the Razakars she named and their dead bodies were dumped.

248. The designed attack and killing rather has been admitted in cross-examination of P.W.05 as defence suggested that the attack leading to killing was conducted by the group of army men and the accused was not involved with the attack arraigned. Now, we are to see whether the accused was with the gang of attackers, at the time of conducting first phase of attack.

249. P.W.05 stated that she could not identify the accused Abdul Momin Talukder at the time of event of attack carried out. She however later on heard that the accused Abdul Momin Talukder was with the group of attackers. This candid version



indicates what the P.W.05 testified is true and carries much value. Now, accused's participation and act in committing the crimes arraigned we are to eye on evidence of other direct witness.

250. Naturally, the witnesses had occasion of seeing the criminal activities carried out in course of first phase of attack which resulted in taking away civilians on forcible capture. But it was not practicable actually how the detainees were treated in captivity at Razakar camp. Presumably, it was quite obvious that the event of systematic attack eventually ended in killing of civilians detained forcibly. Besides, it has not been questioned by the defence that killing of three detainees was the outcome of their forcible capture by launching first phase of attack.

251. Thus, the facts unveiled suggest deducing that the first phase of attack was chained to the phase of accomplishing killing the three detainees. At the same time the accused, being active part of the gang which materialized the forcible capture and grave devastating activities was obviously concerned even with the act of killing, we may deduce it safely.

252. It transpires that P.W.06, the son of one victim Jasim Uddin remaining in hiding place saw their house ablaze and afterward he heard screaming of his father. With this he moved to his father and coming home he saw army men and Razakars beating his father. At that time on hearing screaming of his grand-father he (P.W.06) moved to him and found his body burnt with fire. What a brutality! The army men and Razakars started taking away his (P.W.06) father tying his hands up. P.W.06 had natural occasion of witnessing 15/16 houses ablaze as well. Perpetrators did not spare even an elderly man to whom they caused barbaric harm as well.

253. It appears that P.W.06 later on heard from his grand-father that the accused Abdul Momin Talukder was with the group of attackers. This truthful version of P.W.06 rather makes his testimony more credible. He could say that he recognized the accused accompanying the group, at the time of the attack conducted. But he did not say it. Rather, he stated that he heard later on from his injured grand-father that Abdul Momin Talukder was with the gang of attackers which is quite believable and hearsay evidence of P.W.06 on this matter carries probative value.

254. Presumably, being an elder resident of the locality the grand-father of P.W.06 could naturally recognize the accused Abdul Momin Talukder participating to the commission of prohibited acts, by accompanying the gang. Be that as it may, knowing the identity of the accused from grand-father as claimed by P.W.06 is quite natural and credible.

255. P.W.05 is the wife of one victim Momtaj Shakhidar and P.W.06 is the son of another victim Jasim Uddin. In 1971 P.W.06 was a minor boy, true. Their evidence demonstrates that none of them could readily recognize the accused accompanying the group of attackers. P.W.05 and P.W.06 later on heard in respect of presence and participation of accused in conducting the attack. Source of such hearing was quite natural.

256. Tribunal notes that one rural woman and a minor boy might not have had acquaintance of the accused and thus they naturally could not recognize the accused at the time of event of attack conducted. However, they later on i.e. after the attack happened heard that accused Abdul Momin Talukder was with the gang at the crime site in conducting attack. It is to be noted

too that hearsay evidence is not inadmissible *per se*, if it gets assurance from facts and circumstances.

257. It already stands proved that before being enrolled in local Razakar Bahini the accused in exercise of his close affiliation with local peace committee actively participated and collaborated with the Pakistani troops in conducting genocide (event happened on 22.04.1971 as arraigned in charge no.01).

258. Thus, it is hard to disbelieve that the accused despite being in potential position of local Razakar Bahini kept him distanced from participating the attack (as arraigned in this charge no.02) or the event happened beyond his knowledge and without his participation and facilitation. Obviously, accused Abdul Momin Talukder @ Khoka participated in accomplishing the attack being part of the group formed of Razakars and Pakistani army men, as arraigned in charge no.02, facts and circumstances impel to deduce it.

259. Mere version of P.W.05 and P.W.06 that they readily could not recognize the accused at the crime scene does not negate his presence with the gang and participation in the first

phase of attack which resulted in forcible capture of unarmed civilians. Be that as it may, hearsay version of P.W.05 and P.W.06 in respect of accused's presence and participation in course of first phase of attack carries value. Thus, presence of accused Abdul Momin Talukder @ Khoka at the crime scene, in course of first phase of attack as testified by P.W.05 and P.W.06 stands well proved.

**260.** Defence could not impeach it that P.W.06 Md Mozammel Haque son of one victim Jasim Uddin, in conjunction with the attack had been at their house and on hearing screaming of his grand-father he (P.W.06) moved to him and found his body burnt with fire.

261. Such act of causing grave bodily harm constituted the offence of 'torture'. Besides, such prohibited acts including arson caused serious mental harm to P.W.06 and inmates of the detained victim. All these indeed collectively constituted the act of 'torture'. P.W.06 also saw the army men and Razakars taking away his (P.W.06) father tying his hands up. These criminal acts together demonstrate the pattern of ghastrliness of the attack. At the same time hearing from wounded grand-father the presence and participation of accused in

accomplishing the crimes as testified by P.W.06 inspires credence.

262. It is to be noted that hearsay evidence is to be weighed in context of its credibility, relevance and circumstances unveiled. Keeping this settled legal position we require weighing the probative value of hearsay evidence tendered in relation to a certain fact. We reiterate that hearsay evidence is admissible and the Tribunal can safely act on it in arriving at decision on fact in issue, provided it carries reasonable probative value [Rule 56(2) of the ROP]. This view finds support from the principle enunciated in the case of *Muvunyi* which is as below:

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

263. P.W.14 is a freedom- fighter. On entering inside Bangladesh on 08 December, 1971 he learnt from his co-

freedom-fighters that Razakar Abdul Momin Talukder, his armed cohorts and army men by launching attack at village-Kashimala killed two civilians and took away three civilians to camp set up at Adamdighi railway station, on forcible capture. P.W.14 also learnt that 03 days later the three detained civilians too were shot to death taking them near the Sudin Bridge and their bodies were dumped there.

264. The above hearsay evidence of P.W.14 gets corroboration from P.W.05 and P.W.06, two ocular witnesses and near relatives of victims. It was quite natural for freedom-fighters of knowing the atrocities carried out around their localities in 1971. Besides, there lies no reason to deduce that their hearsay version was untrue.

265. Naturally, the P.W.05 and P.W.06 had occasion of seeing the criminal activities carried out in course of first phase of attack which resulted in taking away five civilians on forcible capture and first on their way back two detainees Farej Ali and Harmuj Ali were shot to death. Killing of these two detained civilians remained undisputed. It was not practicable actually how the three other detainees Jasim Uddin (father of P.W.06), Khayebur Pramanik and Momtaz Shakidar were treated in

captivity at Razakar camp. Keeping these three civilians in captivity at the camp could not be controverted. It may be justifiably inferred based on totality of facts that the event of systematic attack eventually resulted in killing of these three civilians as well after keeping them in captivity for days together.

266. Thus, the first phase of attack causing forcible capture of victims was chained to the phase of accomplishing their annihilation, after keeping them in protracted captivity. At the same time the accused Abdul Momin Talukder @ Khoka who being active part of the gang of attackers in materializing the forcible capture and devastating activities conducted was obviously 'concerned' even with the act of killing, we may deduce it quite safely. Accused's potential position in locally formed Razakar Bahini leads to conclude that he was concerned with the plan of the launching systematic attack directing civilian population which ended in extinction of rest three detainees, after keeping them in protracted captivity at Razakar camp.

267. Tribunal restates that in 1971 it was not likely for the gang chiefly formed of Pakistani troops to identify and locate



the civilians to be targeted without the assistance and facilitation of local collaborators belonging to Razakar Bahini, an auxiliary force. This unmistakable inference makes the fact strengthen too that accused Abdul Momin Talukder @ Khoka who was in commanding position of local Razakar Bahini by accompanying the Pakistani army men enabled them to identify the target of atrocities to be committed, sharing intent of the criminal mission. And thus the act of accompanying the criminal enterprise by the accused is considered to have had 'substantial contribution' and 'assistance' to the actual commission of the crimes, in course of first phase of the attack directed against the civilian population.

268. Accused Abdul Momin Talukder @ Khoka was a person having position of potential authority in local Razakar Bahini, it stands proved. His presence with the gang at the crime scene in conducting the first phase of attack as found proved conveyed his explicit approval and encouragement in committing crimes including devastating acts, abduction leading to confinement and killing of numerous civilians. Accused, in this way consciously provided aid and contribution in committing the crimes proved. This mode of his 'participation' is sufficient for holding him accountable for the

crimes committed. In this regard The ICTR Trial Chamber has observed in the case of **Ndindabahizi** that--

“The presence of a person in a position of authority at a place where a crime is being committed, or at which crimes are notoriously committed, may convey approval for those crimes which amounts to aiding and abetting. [**Ndindabahizi, (Trial Chamber), July 15, 2004, para. 457]**”

269. Defence argued that P.W.06 was a minor boy and thus it is now not practicable of memorizing the alleged event, particularly about long five decades after the alleged event happened. His testimony thus cannot be relied upon.

270. We are not agreed with the argument agitated in this regard on part of defence. Testimony of a minor boy cannot be kept aside merely questioning the possibility of recalling the atrocious facts happened almost five decades back. It has been depicted that P.W.06, the son of one victim saw the gang carrying out atrocious activities including setting house on fire, beating and capturing his father. Obviously, P.W.06 sustained immense trauma. And such untold traumatic experience is never erased from human memory.

271. Besides, the narrative P.W.06 made seems to have been consistently corroborated by P.W.05, another direct witness who saw how the perpetrators conducted first phase of attack and took away her husband to their camp, on forcible capture.

272. It appears that there is no direct evidence that the accused Abdul Momin Talukder @ Khoka had physically participated in causing killing of the detainees. But it stands proved that the accused was with the gang of attackers, in course of first phase of attack and indubitably on his approval and participation attack was conducted directing civilian population. Based on facts and circumstances divulged we may justifiably infer that knowing consequence and sharing intent of the enterprise he opted to accompany the gang in conducting the attack. In this way the accused was part of the criminal enterprise and thus liable for the acts of the group formed of multiple persons.

273. Murder as a 'crime against humanity' does not require the prosecution to establish that the accused personally committed the killing. Personal commission is only one of the modes of responsibility. Accused can also be found liable of a crime committed even on the basis of his potential position and close affiliation with the local Razakar Bahini. The well settled

proposition is that an accused can be considered to have participated in the commission of a crime if he is found to be 'concerned with the killing.'

274. In view of totality of facts proved there can be no room to deduce that the accused Abdul Momin Talukder @ Khoka did not have contribution or any mode of participation in committing offence of killing the detained civilians in any manner and thus he deserves to walk free.

275. True that none had occasion of seeing who and how physically participated to the actual perpetration of the substantial crime of killing the detainees. But the Tribunal reiterates that even a single or limited number of acts on the accused's part, prior or amid to perpetration of killing, would qualify as a crime against humanity, unless those acts may be said to be isolated or random. It already stands proved that the accused had acted consciously being part of the criminal enterprise and participated in conducting attack in getting the five civilians forcibly captured, by launching 'systematic attack'.

276. The context prevailing in 1971 did not permit anybody to see the outcome of the attack. Besides, physical presence or participation to the actual commission of the principal offence, the killing is not indispensable to incur culpable responsibility.

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

277. Since it is found well established that the accused Abdul Momin Talukder @ Khoka, in exercise of his potential position in local Razakar Bahini, accompanied the group in unlawfully taking away the victims to the camp, on forcible capture he should be viewed as ‘participating’ even in committing next criminal acts of confinement followed by torture and murder of detainees. Therefore, the accused Abdul Momin Talukder @ Khoka is considered to have had ‘participation’ even in the commission of the principal offence, the killing of detainees.

278. In view of above proved act of participation in effecting forcible capture of a number of unarmed civilians made the

accused Abdul Momin Talukder @ Khoka inevitably linked and 'concerned' even with the ending phase of attack that happened after taking away the detainees to the camp. Such act of accused amply signifies his conscious 'participation' even in materializing the object of the criminal mission which eventually ended in wiping out the detained civilians, by sharing common intent. Accordingly, he incurred liability for the crimes committed pursuant to such systematic attack.

279. It is now well settled proposition that 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]. In the case in hand, the accused thus incurred liability, being part of JCE for the perpetration of the killing, the upshot of the attack.

280. Further, obviously the accused accompanying the criminal gang of attackers was aware of predictable consequence of his criminal acts that eventually resulted in unlawful confinement and killing of the victims and thus none of the group including

the accused can evade the responsibility of murder of brutal killing of detained civilians. This view finds support from the principle enunciated in the case of **Tadic** [ICTY Appeal Chamber] which is as below:

“.....Criminal responsibility may be imputed to all participants within the common enterprise where the risk of death occurring was both a predictable consequence of the execution of the common design and the accused was either reckless or indifferent to that risk.”[**Prosecutor v. Tadic, ICTY Appeal Chamber Case No.: IT-94-1-A15 July 1999, para, 204**]

281. Liability mode contained in section 4(1) of the Act of 1973 refers to ‘common plan of collective criminality’ which corresponds to JCE’. Therefore, based on entirety of facts revealed we are forced to conclude that accused Abdul Momin Talukder @ Khoka, as a ‘participant’, was actively and consciously involved in ‘committing’ the crimes directing civilian population, in conjunction with the beginning phase of the designed systematic attack and thereby aided, facilitated and thereby substantially contributed to the accomplishment of the act of killing of numerous detained civilians as well, sharing common intent.

282. In light of the above proposition it may thus be lawfully deduced that the act of the accused Abdul Momin Talukder @ Khoka who consciously accompanied the criminal gang, in exercise of his leading position in local Razakar Bahini in abducting the victims and keeping them confined at the camp was indeed an act of tacit 'contribution' and 'encouragement' even to the perpetration of 'killing' detained civilians.

283. The entire event as depicted from the chronology of chained criminal acts was the culpable portrayal of a planned 'systematic attack' in orchestrating which accused Abdul Momin Talukder @ Khoka was an active part, knowing the consequence and sharing the intent. Prosecution has been able to prove it beyond reasonable doubt.

284. Finally, on totality of evidence presented we arrive at unanimous decision that accused Abdul Momin Talukder @ Khoka is found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, facilitating and contributing the actual commission of abduction, confinement of unarmed civilians leading to their brutal killing forming part of systematic attack against the civilian population constituting the offence of '**abduction , confinement and 'murder'** as



**crime against humanity** as specified in section 3(2) (a) (g)(h) of the Act which are punishable under section 20(2) read with section 4(1) of the Act.

### **Adjudication of Charge 03:**

**[Offences of abduction, confinement, torture, other inhumane acts and murder of 04[four] civilians on forcible capture from the village-Talshan under Police Station-Adamdighi of District-Bogura]**

285. Charge: That on 25.10.1971 at about 12:00 A.M the accused Abdul Momin Talukder alias Khoka along with 6/7 unknown armed Razakars and 15/20 Pakistani occupation army by launching systematic attack at village-Talshan under Police Station-Adamdighi of District-Bogura forcibly captured non-combatant freedom fighter Md. Selim Uddin Khandakar and his uncle Abdur Rahman Khandakar and started causing inhumane torture to them. Accused and his accomplices then took Md. Selim Uddin Khandakar away to the Adamdighi railway station army and Razakar camp where he was again subjected to inhumane torture and subsequently he was kept confined at the Adamdighi police station hajat[custody] along with seven other detained civilians[names have been mentioned in the formal charge]. The detainees were subjected to torture in captivity.

On 10.11.1971 at about 11:00 A.M the accused Abdul Momin Talukder alias Khoka along with 6/7 unknown armed Razakars and 14/15 Pakistani occupation army unlawfully detained non-combatant freedom fighters Altaf Hossain and Abdul Jalil Akanda when they were on the way to their houses from Joypurhat and kept them confined at the Adamdighi police station hajot [custody] where they were subjected to recurrent inhumane torture.

On 11.11.1971 the accused Abdul Momin Talukder alias Khoka along with 6/7 armed Razakars and 14/15 Pakistani occupation army unlawfully captured non-combatant freedom-fighter Mansurul Haque Tulu and Abdus Sattar from the place near the Jinor Bridge under Adamdighi Police Station when they being unarmed were moving towards their home. Another freedom fighter Subed Ali Sarder managed to escape. The detained freedom-fighters were subjected to torture in captivity at the Adamdighi police station hajot[custody].

On 13.11.1971 at about 8.00 A.M Pakistani occupation army and armed Razakars took all the 12 confined civilians away from the Adamdighi Thana hajot [custody] to the adjacent field of Adamdighi Union Council. After a while Pakistani

occupation army, the accused Razakar commander Abdul Momin Talukder alias Khoka and his father, peace committee chairman Abdul Mazid Talukder arrived there and at about 9.00 A.M taking the 12 detainees to the place, about 200/300 yards west of the said field , the accused Abdul Momin Talukder alias Khoka gunned down the detained freedom fighter Altaf Hossain, Abdul Jalil Akanda, Monsurul Haque Tulu and Abdus Sattar to death. The rest 8 detainees were then taken to Adamdighi Police Station hajot [custody] where they were kept confined. Later on, the accused Abdul Momin Talukder alias Khoka released Md. Selim Uddin Khandakar and Abdur Rahman after taking bond from them. Thereafter, Pakistani occupation army had left Adamdighi Police Station before 16<sup>th</sup> December 1971 and the rest detainees got release.

Therefore, the accused Abdul Momin Talukder alias Khoka by such criminal acts forming part of systematic attack directing non combatant civilian population, to further policy and plan of the Pakistani occupation army participated, facilitated, abetted, aided and substantially contributed to the commission of the offences of ‘abduction’, ‘confinement’, ‘torture’, ‘other inhumane acts’ and ‘murder’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) read with

section 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act of 1973.

## **Evidence of Witnesses presented**

286. This charge involves the event of forcible capture of numerous civilians, unarmed freedom fighters, causing torture to them in protracted captivity leading to killing four unarmed freedom-fighters, by conducting systematic and organised attack. The accused Abdul Momin Talukder @ Khoka is alleged to have had active participation in atrocious activities at all phases of the attack leading to killing. The charge arraigns. Prosecution relied upon 04 witnesses, namely P.W.08, P.W.09, P.W.11 and P.W.12, to prove the arraignment. Before weighing the account they made first let us see what they have testified before Tribunal, in relation to the event.

**287. P.W.08 Md. Slim Uddin Kandahar (68)** of village-Talshan under police station-Adamdighi of District Bogura himself is a survived victim of the event arraigned. He saw the atrocious activities carried out in course of phases of attack conducted.

288. Before narrating the facts relating to the event of attack arraigned in this charge P.W.08 stated that in the month of April in 1971 Pakistani occupation army got stationed at Santahar railway station, Adamdighi railway station and Adamdighi police station, by setting up camps. Abdul Mazid Talukder, Muslim League leader of Adamdighi formed peace committee and started collaborating with the Pakistani army. Afterward, he formed local Razakar Bahini and his son Abdul Momin Talukder @ Khoka (accused) was assigned as its commander.

289. In respect of the event arraigned P.W.08 stated that at the end of October in 1971 at 01:00 A.M a group formed of accused Abdul Momin Talukder, his accomplice armed Razakars and 15/20 army men besieged their house and started knocking door. With this his (P.W.08) father opened the door when they captured him (P.W.08) and his father. His uncle Abdur Rahman (now dead) staying inside another room was also subjected to beating. Then the perpetrators took him (P.W.08) away to the camp at Adamdighi railway station where he was subjected to pounding. In early morning he was shifted to Adamdighi Thana hajat where he found Kaiser (now

dead), Samu Kazi (now dead), Mukhlesur Rahman (now dead), Muslim Uddin (now dead), Abdur Rahman (now dead) and Abdur Rahman Mondol detained there, on causing torture to them.

290. P.W.08 next stated that on 10 November , 1971 Abdul Momin Talukder, his accomplices and army men brought two freedom fighters Altaf Hossain and Abdul Jalil to Adamdighi Thana hajot, on forcible capture from the paddy field of village-Akhira. On the following day the same gang also brought two other freedom fighters Mansurul Haque Tulu and Abdus Sattar to Adamdighi Thana hajot, on getting them captured from village-Jinoir. The detained freedom- fighters were subjected to torture in captivity.

291. P.W.08 next stated that on 13 November, 1971 at about 08:00 A.M Razakar commander Abdul Momin Talukder, his accomplice Razakars and the Pakistani army men took out all the detainees, tying them up to the nearer field of Adamdighi Union Parishad where they made them seated under a tree. There Abdul Momin Talukder @ Khoka, peace committee chairman Abdul Mazid Talukder (now dead) and Pakistani army men on having consultation decided to annihilate them.

Then the detainees were taken to the place alongside Adamdighi Thana Kharir bridge and there from four detained unarmed freedom-fighters were made separated and were taken to crematory by accused Abdul Momin Talukder where they were gunned down to death.

292. P.W.08, a survived victim also stated that next the Razakar Commander Abdul Momin Talukder told them, the other detainees that they would be shot to death too if they failed to act upon their directive. Then they the rest detainees were again taken to Adamdighi Thana Hajot. Finally, at the end of month of Ramadan his villagers by obtaining undertaking made him and Abdur Rahman released from captivity. And the rest detainees could be recovered from Adamdighi Thana hajot, after independence.

293. Finally, P.W.08 stated that Razakar commander Abdul Momin Talukder was a resident from their neighbouring village and he (P.W.08) and the accused studied at the same school and thus he knew him beforehand.

294. In cross-examination P.W.08 stated in reply to defence question that he could not say whether any case was initiated against the accused and his father under the Collaborators Order, 1972, after independence. P.W.08 denied the defence suggestions that what he testified implicating the accused was out of political rivalry and tutored and that the accused was not a Razakar and was not involved with the event he narrated.

**295. P.W.09 Kina Pramanik (67)** of village-Santahar under police station-Adamdighi of District Bogura is a direct witness to the event of killing. Before recalling the event he experienced, P.W.09 stated that in 1971, after the war of liberation ensued, at the end of last part of Bangla month Boishakh Pakistani occupation army got stationed at Santahar rail station and Adamdighi Thana by setting up camps. Muslim League leader of their locality Abdul Mazid Talukder formed peace committee, being its chairman. Later on, he formed local Razakar Bahini entrusting his son Abdul Momin Talukder as its commander.

296. In respect of the event of killing arraigned P.W.09 stated that on 26 day of Bangla month Kartik in 1971 at about 07:30



A.M he went to Adamdighi Bazaar for selling fish where he heard from people that 10/12 civilians including some freedom-fighters were kept detained at Adamdighi Thana Hajot.

297. P.W.09 also stated that on the same day at about 08:30/09:00 A.M he saw the gang formed of accused Razakar commander Abdul Momin Talukder, his armed accomplice Razakars and 15/20 army men moving toward the crematory near the Kharir bridge taking 10/12 detained civilians with them, tying them up. Seeing this he and some others started following them secretly and finally remaining in hiding inside a bush, about 20/25 yard far from the crematory, he saw accused Abdul Momin Talukder, making the four detained freedom-fighters segregated, gunned them down to death. He (P.W.09) knew one victim freedom fighter Abdul Jalil beforehand. Later on, he heard from people that three other victim freedom-fighters who were shot to death were Abdus Sattar, Altaf and Mansurul Haque Tulu.

298. Finally, P.W.09 stated that Razakar commander Abdul Momin Talukder was a resident of their locality and thus he

knew him beforehand and he used to stay at their residence at Santahar bazaar.

299. In cross-examination P.W.09 stated in reply to defence question put to him that Kharir bridge crematory (killing site) was about quarter mile far from Adamdighi Thana; that he learnt the fact of detaining civilians and freedom-fighters from the people at Haat (market). P.W.09 denied defence suggestions that the accused was not a Razakar; that he was not involved with the event he testified and that what he testified implicating the accused was untrue and out of political rivalry.

300. **P.W.10 Md. Jafer Ali Pramanik (77)** has been tendered by prosecution, with the examination-in-chief of P.W.09. Defence adopted cross-examination done to P.W.09.

301. **P.W.11 Md. Subed Ali Sarder (80)** is a resident of village-Kaetpara under police station-Adamdighi of District Bogura. He is a valiant freedom-fighter. He is ocular witness to the event of effecting forcible capture of unarmed freedom-fighters who were with him, at the relevant time.

302. Before recalling the event arraigned, P.W.11 stated that in the Bangla month of Boishakh in 1971 Pakistani army got stationed in Adamdighi Thana. Local Muslim League leader Abdul Mazid Talukder, his son Abdul Momin Talukder on having communication with the army men formed peace committee in Adamdighi Thana and Abdul Mazid Talukder was its chairman. He said that later on peace committee formed Razakar Bahini in Adamdighi Thana by entrusting Abdul Momin Talukder as its commander. Then the peace committee and Razakar Bahini started carrying out atrocious acts of looting, arson and torture directing the innocent civilians.

303. P.W.11 next stated that in the Bangla month of Sravan in 1971 he along with Abdur Rashid, Akkas Ali went to India to join the war of liberation and received training of 28 days at Panighata camp at Siliguri. On completion of training they the 200 freedom-fighters being equipped with fire arms returned back inside Bangladesh. They coming in the locality under police station Adamdighi started staying at different villages being armed, by being divided in groups, each formed of 8/10 freedom-fighters.

304. P.W.11 in narrating the event stated that few days after their return from India he and his two co-freedom-fighters Mansurul Haque Tulu and Abdus Sattar on having consent of their commander started moving to their own village home, being unarmed. In afternoon, when they arrived near the bridge at village-Jinor under Adamdighi police station, peace committee chairman Abdul Mazid Talukder (now dead) , his son Abdul Momin Talukder @ Khoka and their 12/14 army men and 6/7 armed Razakars besieged them. He (P.W.11) then managed to go into hiding inside a paddy field stepping down from the road. He saw there from (hiding place) that his two co-freedom-fighters were talking away tying them up toward Adamdighi Thana. He then came out of the paddy field and moved to his own home.

305. What happened next? P.W.11 stated that on the following morning he moved to village-Kanchanpur and informed Tabibur Rahman, the father of victim Mansurul Haque about his son's forcible capture. On the way of returning back he learnt from people that his (P.W.11) other unarmed co-freedom-fighters Altaf Hossain and Abdul Jalil of village-Kumarpur were also forcibly captured from paddy field by Razakar Abdul Momin Talukder.

306. P.W.11 continued stating that on the following day he learnt from people that accused Abdul Momin Talukder with the assistance of his accomplices and Pakistani army men gunned down detained Altaf Hossain, Abdul Jalil, Mansurul Haque Tulu and Abdus Sattar to death, taking them at the crematory near Kharir Bridge. Later on, dead bodies of martyrs were buried by their relatives.

307. In cross-examination P.W.11 stated in reply to defence question that in 1971 he was 33/34 years old; that no non-Bengali people used to reside at Adamdighi locality. P.W.11 denied the defence suggestions that the accused was a minor boy in 1971; that the accused was not a Razakar; that no event he testified happened and that the accused was not involved with the event alleged.

**308. P.W. 12 Md. Majibur Rahman (68)** of village-Dahorpur (Kasaipara) under police station-Adamdighi of District Bogura is a valiant freedom-fighter. He in addition to describing the event of killing also narrated the status and stance the accused and his father had in 1971.

309. P.W.12 stated that in 1971 he was 20 years old. At the end of April, 1971 Pakistani army got stationed at Santahar under police station-Adamdighi, Adamdighi railway station and Adamdighi Thana by setting up camps there.

310. P.W.12 also stated that Adamdighi Thana peace committee was formed by Abdul Mazid Talukder, the Muslim League leader of Adamdighi. Later on, he formed Razakar Bahini in Adamdighi. His son Abdul Momin Talukder joined Razakar Bahini as its commander.

311. Next, P.W.12 stated that at the end of May in 1971 he along with Abdul Alim and Abdus Sattar went to India crossing Hili border and joined at freedom-fighters camp at Kamarpara where they received seven days training. Then they received higher training for 29 days at Siliguri freedom-fighters camp. On completion of training they being divided in groups, each of 20 freedom-fighters, entered Bangladesh, seven days before Shab-e-Barat and started staying at different houses at village-Sujaldighi of Akkelpur, Joypurhat. And they very often got engaged in battle with Pakistani occupation army and Razakars.

312. P.W.12 continued stating that on 12 November 1971 he and his co-freedom-fighters Abdul Alim and Abdus Sattar moved toward their home being unarmed and on taking leave from their commander and arrived at home at 09:00 P.M. On the following day at 08:00 A.M he learnt from people that detained freedom-fighters would be killed at Adamdighi crematory. Then they being unarmed moved toward the crematory where they saw many people assembled near the crematory.

313. P.W.12 further stated that he also saw Abdul Momin Talukder, his father Abdul Mazid Talukder (now dead) being accompanied by 15/20 army men and armed Razakars bringing 10/12 detained civilians tying them up near the crematory at Kharir bridge. At about 09:00 A.M the four detainees were made segregated from other detainees and Razakar Commander Abdul Momin Talukder shot them to death. On seeing it he returned back home and then moved back to freedom-fighters camp.

314. P.W.12 finally stated that later on he learnt that the four detainees who were annihilated were freedom-fighters Altaf

Hossain, Abdul Jalil Akanda, Abdus Sattar Pramanik and Mansurul Haque Tulu. Abdul Mazid Talukder the father of Abdul Momin Talukder was local Muslim League leader and his son Abdul Momin Talukder was engaged in politics of Chatra Sangha (student wing of Jamat E Islami) since prior to 1971 and thus he knew him beforehand.

315. In cross-examination, in reply to defence question put to him P.W.12 stated that his house was about two miles far from that of Abdul Momin Talukder; that he heard that in 1972 Abdul Mazid Talukder and his son Abdul Momin Talukder were prosecuted under the Collaborators Order, but he could not say as to the fate of that case. P.W.12 denied the defence suggestion that what he testified was untrue and tutored.

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

**316. Mr. Sultan Mahmud** the learned prosecutor drawing attention to the testimony of witnesses submits that the accused Abdul Momin Talukder @ Khoka, in exercise of his notorious and potential affiliation with the local Razakar Bahini and Pakistani occupation army stationed at Adamdighi knowingly and actively participated in all phases of systematic attack carried out directing civilian population. Crucial facts emerged



in evidence of witnesses have proved it. P.W.08, one survived victim is the key witness whose testimony impels that he including the victims and other detainees were subjected to torture in captivity. P.W.08 had natural occasion of seeing the act of killing, the ending phase of the attack. It could not be controverted by defence in any manner that the accused himself actively participated in accomplishing the act of brutal killing of four unarmed freedom-fighters Altaf Hossain, Abdul Jalil Akanda, Abdus Sattar Pramanik and Mansurul Haque Tulu.

317. The learned prosecutor further submits that the victims were non-combatant, at the time of causing their forcible capture when they were on the way to their own home. One survived victim P.W.08 testified how they and other detainees including the four victims were subjected to torture in captivity at the camp. It has also been proved that the accused actively contributed and participated in perpetrating the killing of four detained unarmed freedom-fighters. Defence could not refute the fact of carrying out the attack leading to killing four detained civilians. The acts of abduction, confinement, torture and murder constituted the offence of crimes against humanity, the learned prosecutor added.

**318. Mr. Abul Hassan** the learned state defence counsel submits that the accused was not a Razakar; that he was not involved with the alleged event the witnesses testified and that what the witnesses testified implicating the accused was untrue and out of political rivalry. Testimony of witnesses does not seem to be credible. Hearsay evidence tendered in respect of some alleged facts does not inspire any degree of credence. The instant charge is barred by the doctrine of double jeopardy as the accused was prosecuted under the Collaborators Order, 1972 over the alleged event and eventually he was discharged there from. Prosecution could not prove the arraignment and thus accused cannot be found guilty of this charge and he deserves acquittal thereof.

319. According to prosecution, this charge rests upon testimony of four witnesses i.e. P.W.08, P.W.09, P.W.11 and P.W.12. Of them P.W.08 is a survived victim who claims to have had occasion of experiencing the criminals acts conducted at the camp and also at the time of accomplishing the killing of four detained unarmed freedom-fighters. Other witnesses testified crucial facts chained to the alleged event of attack

leading to confinement, torture and killing arraigned. One witness P.W.10 Md. Jafer Ali Pramanik has been tendered.

320. Now, prosecution requires proving that—

- a. Attack was launched at the house of P.W.08 at village-Talshan under Police Station-Adamdighi of District-Bogura and non-combatant Md. Selim Uddin Khandakar and his uncle Abdur Rahman Khandakar were forcibly captured and kept detained at Adamdighi Thana Hajot;
- b. That the accused actively participated in conducting this phase of attack;
- c. That many other civilians including four unarmed freedom-fighters too were forcibly captured and were kept detained at Adamdighi Thana Hajot by the gang formed of accused and his cohorts and army men;
- d. That the Adamdighi Thana Hajot was rather a concentration camp to which the accused had culpable and explicit affiliation;
- e. That finally the detainees were taken out of the Thana Hajot and segregating four detained unarmed freedom-fighters they were taken near the crematory where they

were gunned down to death , on participation and endorsement of the accused;

f. That the criminal acts of abduction, confinement, torture and killing four unarmed freedom-fighters constituted the offences of crimes against humanity;

g. That the accused Abdul Momin Talukder @! Khoka was liable for the criminal acts forming part of attack which was systematic, to further policy and plan of Pakistani occupation army.

321. Due to context prevailing in 1971 naturally the witnesses might not have opportunity of seeing all phases of attack arraigned which ended in killing four detained unarmed freedom-fighters. It stands proved that P.W.08 was a victim of first phase of attack. He was allegedly forcibly captured and kept detained at Adamdighi Thana Hajot, along with the detained unarmed freedom-fighters and other detainees.

322. On eyeing on evidence adduced it appears that only P.W.08 had occasion of seeing the act of keeping other civilians including four unarmed freedom-fighters detained at the camp. He also saw how the four detained freedom-fighters

were annihilated. The fact of detaining P.W.08 in protracted captivity could not be impeached. Thus, he had natural opportunity of experiencing the prohibited acts carried out by the perpetrators. P.W.11 witnessed how and when his two co-freedom-fighters Mansurul Haque Tulu and Abdus Sattar were taken away, on forcible capture when they together were on the way to their own home, being unarmed. The other witnesses seem to have heard the event in part in relation to detaining unarmed freedom-fighters. And they also saw the event of killing perpetrated at the ending phase of the attack.

323. It stands proved that P.W.08 Md. Selim Uddin Kandahar (68) was taken away from their house on forcible capture, by launching attack and accused Abdul Momin Talukder @ Khoka was with the gang of attackers. He was kept confined at the Thana hajot camp. All these could not be refuted. Be that is it may, P.W.08 naturally had occasion of seeing the perpetrators bringing unarmed freedom-fighters at the same Thana hajot camp which was rather a concentration camp. As a result, the accused was explicitly accountable for the prohibited acts leading to forcible capture and detention of P.W.08.

324. Unimpeached testimony of P.W.08 demonstrates that four unarmed freedom-fighters too later on were brought to the Adamdighi Thana hajot and were kept detained there along with the P.W.08 who witnessed that they were subjected to brutal torture. What happened next? What fate the detained unarmed freedom-fighters had to face?

325. It appears that after protracted detention at Adamdighi Thana Hajot P.W.08 and one detainee Abdur Rahman however got release on initiative of villagers, by giving undertaking, after accomplishing the killing of four unarmed detained freedom-fighters. Such release of P.W.08 and other detainees from the camp stood unimpeached.

326. Testimony of P.W.08 also demonstrates that on the day the killing happened he along with the four unarmed freedom-fighters and other detainees were taken to Adamdighi Thana Kharir bridge and there from finally four detained unarmed freedom-fighters were made separated and were taken to crematory by accused Abdul Momin Talukder where they were gunned down to death. Testimony of P.W.08 in relation to this crucial ending part of the attack remained uncontroverted.

327. It has been found that the P.W.08 and the accused studied at the same school. It could not be impeached. Thus, P.W.08 naturally could recognize the accused Abdul Momin Talukder @ Khoka participating in effecting the brutal killing of four detained unarmed freedom-fighters. This crucial fact gets corroboration from P.W.09 who himself too saw the accused gunning down the four unarmed detained freedom-fighters at the crematory, the killing site.

328. It also stands well proved that the accused, in exercise of his dominant affiliation in local Razakar Bahini had close and culpable alliance as well with the Pakistani army men stationed at Adamdighi. It is fair *indicia* of his participation in conducting the criminal acts forming part of systematic attack. Not only that, the accused was also aggressively concerned in keeping the pro-liberation civilians detained at the detention camp set up at Adamdighi Thana hajot.

329. We got it proved from unimpeached ocular version of P.W.08 that the Abdul Momin Talukder @ Khoka, peace committee chairman Abdul Mazid Talukder (now dead) and Pakistani army men, just before accomplishing the killing, got assembled and on taking decision the four detained freedom-

fighters were then taken to crematory by accused Abdul Momin Talukder@ Khoka where he himself gunned down them to death. How notorious and beastly the accused and his father were in 1971! It is hard to believe that they were human being.

330. Defence claimed that P.W.08 did not know the accused and thus his testimony implicating the accused does not carry value. We do not find any reason of such contention. Rather, it is already found undisputed that he (P.W.08) and Abdul Momin Talukder @ Khoka, a resident from their neighbouring village studied at the same school and thus he naturally knew him beforehand. Besides, notoriety of accused made him much more known to the locals of the vicinities under Adamdighi police station. Thus, the version as has been narrated by the P.W.08, one key witness to the event inspires credence and leads to the conclusion that the accused had played substantial and active culpable role in accomplishing the criminal acts which ended in killing of four detained unarmed freedom fighters.

331. P.W.09 heard the act of detaining four unarmed freedom fighters at Adamdighi Thana Hajot. It has been affirmed even



in his cross-examination. Besides, this piece of hearsay version gets corroboration from P.W.08, one survived detainee.

332. In respect of ending phase of the event involving brutal killing of four detainees P.W.09 stated that he saw the gang formed of accused Razakar commander Abdul Momin Talukder, his armed accomplice Razakars and 15/20 army men moving toward the crematory near the Kharir bridge taking 10/12 detained civilians with them, tying them up. P.W.09 remaining in hiding inside a bush, about 20/25 yards far from the crematory also saw accused Abdul Momin Talukder @ Khoka making the four detained unarmed freedom-fighters segregated and gunning them down to death. We find no reason whatsoever disbelieving this crucial version which relates to the perpetration of killing.

333. It stands proved that the phase of taking the detainees including four detained freedom-fighters at the site of killing happened in day time. P.W.09 had been at Santahar bazaar at the relevant time. Seeing the gang moving toward the killing site taking the detainees, P.W.09 secretly moved there, presumably out of curiosity, although he had no capacity of resisting the perpetrators. P.W.09 had been inside a nearer bush

wherefrom he saw the accused annihilating four detained unarmed freedom fighters by gun shot.

334. Defence could not impeach the horrific phase of the event of killing four civilians occurred at the crematory near the Kharir Bridge as narrated by P.W.09, in any manner. We do not find any reason to keep aside the ocular testimony of P.W.09 in relation to this crucial fact he witnessed. It transpires that P.W.09 knew one detained victim before hand and he later on heard the identity of three other victims who were shot to death.

335. On part of defence it has been argued that P.W.09 had no reason of knowing the accused beforehand and thus the narrative he made does not inspire credence. But it appears that as regard reason of knowing the accused, P.W.09 stated that he knew him beforehand as he was a resident of their locality. This piece of version could not be impeached. Admittedly, the father of the accused was a local potential political leader having affiliation with pro-Pakistan political party and therefore, naturally being his son the accused too was well known around the localities under Adamdighi police station.

336. P.W.11 Md. Subed Ali Sarder (80) is a valiant freedom-fighter. Narrative made by him goes to show that the four victims were his co-freedom fighters. They on receiving training at Panigha camp at Siliguri, India came back in the locality under police station- Adamdighi and started staying at different villages being armed, by making groups, each formed of 8/10 freedom-fighters.

337. It emerges from his testimony that few days later, P.W.11 and his two co-freedom-fighters Mansurul Haque Tulu and Abdus Sattar (two victims) on having consent of their commander started moving to their own village home, being unarmed. This unconverted account made by P.W.11 reveals that on their way to their village home being unarmed the gang attacked them. What happened in course of this phase of attack?

338. P.W.11 was with these two victims and however he managed to go into hiding at the time of attack launched. Naturally he had fair occasion of witnessing the attack. It has been divulged too from ocular testimony of P.W.11 that at a place nearer to the bridge at village-Jinor under Adamdighi

police station a group formed of peace committee chairman Abdul Mazid Talukder (now dead), his son accused Abdul Momin Talukder @ Khoka and their 12/14 army men and 6/7 armed Razakars besieged them when he (P.W.11) managed to go into hiding inside a paddy field stepping down from the road. From the hiding place he saw the gang taking away his two unarmed co-freedom-fighters tying them up toward Adamdighi Thana. He then came out of the paddy field and moved to his own home.

339. The above piece of crucial fact related to the event leads to the inference that the gang was aware of the movement of those unarmed freedom-fighters and being imbued by the policy and plan it got them forcibly captured, by launching attack.

340. It also transpires from unshaken version of P.W.11 that on the following morning he moved to village-Kanchanpur and informed Tabibur Rahman, the father of victim Mansurul Haque about his son's forcible capture. On the way of returning back there from P.W.11 learnt from people that his (P.W.11) two other unarmed co-freedom-fighters Altaf

Hossain and Abdul Jalil of village Kumarpur were also forcibly captured from paddy field by Razakar Abdul Momin Talukder.

341. The above piece of testimony depicts that two other unarmed freedom-fighters too were forcibly captured on participation of accused Abdul Momin Talukder @ Khoka. In this way the act of unlawfully detaining four unarmed freedom-fighters at Adamdighi Thana camp stands proved. P.W.08, one survived detainee's consistent ocular version has made it affirmed and corroborated too. Thus, the narrative made by P.W.11 in respect of forcible capture of four victims adds further assurance to what has been narrated by the eye witness P.W.08.

342. Defence suggested to P.W.11 in cross-examination that no event he testified happened and that the accused was not involved with the event alleged. P.W.11 denied all these unfounded assertion. Rather , it has been found that the account made by P.W.11 particularly relating to forcible capture of his two unarmed co-freedom-fighters and also his hearsay version as to detaining two other victims and accused's

participation in conducting the attack which ended in diabolical annihilation of four unarmed freedom-fighters remains uncontroverted .

343. In respect of the killing phase, P.W.11 is a hearsay witness. He learnt from people that accused Abdul Momin Talukder @ Khoka with the assistance of his accomplices and Pakistani army men gunned down detained Altaf Hossain, Abdul Jalil, Mansurul Haque Tulu and Abdus Sattar to death, taking them at the crematory near Kharir Bridge. Tribunal notes that hearsay evidence is admissible and does have probative value if it gets corroboration. It is seen that this piece of hearsay version gets consistent corroboration from P.W.08, one of survived detainees.

344. 'Attacks' leading to commission of offences enumerated in the Act of 1973 refer to acts of violence against the adversary. In view of context prevailing in 1971 notorious perpetrators of atrocities perceived the Bengali civilian population having spirit of the war of liberation as their adversary. It is the historical truth that in 1971, Pakistani occupation army and their local collaborators belonging to

auxiliary force[s] treated the unarmed pro-liberation civilians the object of their horrific attacks.

345. The Tribunal finds that there is sufficient and credible evidence to establish it beyond reasonable doubt that the accused, his cohorts and Pakistani army men collectively intended to terrorize the local civilian population by committing confinement, torture and murder of non-combatant civilians which constituted blatant denials of fundamental rights of the unarmed local civilian population.

346. Admittedly, the accused Abdul Momin Talukder along with his father (now dead) Abdul Mazid Talukder was prosecuted in 1972 for the criminal acts arraigned in this charge. Mr. Abul Hassan the learned state defence counsel drawing attention to the relevant document (**Exhibit-9**) relied upon by the prosecution in this respect submitted that the said earlier case was initiated in 1972 under the Collaborators Order and now the accused is facing trial for the 'same offence' which is barred by **Article 35(2) of the Constitution of Bangladesh.**

347. The learned State defence Counsel Mr. Abul Hassan also argued that the said case was initiated over the killing of two victims and not for killing of four victims and thus the event narrated by the witnesses claiming killing of four unarmed freedom-fighters is untrue. It has also been argued that prosecuting the accused for the arraignment indicted in this charge is barred by the doctrine of double jeopardy.

348. On contrary, it has been argued by the learned prosecutor Mr. Sultan Mahmud Simon that mere fact that the earlier case initiated in 1972 against the accused and his father was on accusation of killing two civilians does not make it untrue that the event arraigned eventually ended in annihilation of four detained civilians. Besides, such earlier prosecutions initiated under the Collaborators Order, 1972 does not create any bar to prosecute the accused under the Act of 1973.

349. Having considered the documents and facts proved we are not with the submission advanced by the learned state defence counsel. It appears that the said earlier case was initiated in 1972 by the relatives of two victims and it does not mean that two other detained victims were not killed, as arraigned in this charge. Initiation of the said case has rather made it affirmed



that the accused Abdul Momin Talukder @ Khoka was involved with the event. Next, it cannot be said that merely for the reason of earlier prosecution the accused cannot be prosecuted and tried again for the offences arraigned.

350. In reply to above submission agitated on part of defence the learned prosecutor Mr. Sultan Mahmud argued that the earlier case initiated in 1972 was not for the 'same offence'; that the said case was not ended in trial; that the said earlier case initiated in 1972 related to the offences enumerated in the Penal Code which were scheduled in the Collaborators Order, 1972 and thus now there can be no bar to prosecute and try the accused for the criminal acts constituting the offences as enumerated in the Act of 1973.

351. In resolving the contention agitated by the learned state defence counsel we express the unanimous view that the legal "principle" of 'Double Jeopardy' is that you can't be in jeopardy of punishment by the state twice for the 'same offence'. The legal principle of double jeopardy thus prevents an individual for being 'tried' for the 'same crime' twice, true.

352. But what we see in the case in hand? We see that the accused Abdul Momin Talukder @ Khoka and his father Abdul Mazid Talukder (now dead) were prosecuted under a different Act for the offences punishable under the Penal Code, and not for the crimes punishable under the ICTA 1973. Tribunal notes that ingredients of offences punishable under the Penal Code are not identical to those of offences punishable under the Act of 1973.

353. We have perused the document (**Exhibit-9**). It appears that in the case under the Collaborators Order initiated in 1972 the accused was not tried and punished as well as trial could not be ended for the reason of repealing the Collaborators Order of 1972 at the end of 1975. Thus, from this point of view too question of being jeopardized does not arise at all.

354. We reiterate too that Bangladesh Constitution contains a provision [Article 35(2)] that deals with the issue of ‘double jeopardy’ (also known as *ne bis in idem*). This principle essentially means that a person should not be tried or punished twice for the ‘same offence’. But there has been no ambiguity in Article 35(2) of the Constitution that for the reason of mere

prosecuting a person the principle of double jeopardy comes into play in prosecuting that person for 'another offence'.

355. In the said earlier criminal action the accused was neither convicted nor acquitted, through trial. It is admitted. Besides, the offence under the said Act was the offences enumerated in the Penal Code. Next, the accused is being now prosecuted for the 'crimes' as enumerated in the Act of 1973 which are 'crimes against humanity, 'genocide' etc. and not for the offences punishable under the Penal Code.

356. The offences punishable under the Penal Code were the scheduled offences of the Collaborators Order 1972. Admittedly, despite being prosecuted under the said Order the accused was not ultimately tried and found guilty of those offences. On this score as well the plea of bar in prosecuting for the 'same offence' goes on air. The offences enumerated in the Act of 1973 are quite distinct from those scheduled in the Order of 1972. The Tribunal, in determining the issue of 'double jeopardy', is concerned with offences or crimes as clearly refer to the Act of 1973 and not the Collaborators Order 1972.

357. This being the position, we are in unmistakable disposition that the accused Abdul Momin Talukder @ Khoka cannot have the shield of the principle of double jeopardy as enshrined in Article 35(2) of the Constitution. Therefore, we are disinclined to accept the proposition of the fact that the accused who was admittedly discharged from the prosecution initiated under the Collaborators Order 1972, solely for the reason of repealing the P.O. No. 8 of 1972 by the Ordinance No. LXIII of 1975 is entitled to be protected from being prosecuted under the Act of 1973.

358. The learned state defence counsel further submitted that the case initiated in 1972 over the same event against the accused and his father was related to killing of two victims. But in the case in hand the charge arraigns killing of 04 civilians which creates doubt as to alleged event of killing.

359. On contrary, it has been argued by the learned prosecutor that mere fact that the earlier case initiated in 1972 against the accused and his father was on accusation of killing two unarmed civilians does not make it untrue that the event arraigned eventually ended in annihilation of four detained civilians.

360. It transpires that two were shown victims of the event of killing in the case initiated in 1972. In the case in hand, arraignment brought in charge no.03 demonstrates that four detained unarmed freedom-fighters were liquidated. Does it make the arraignment brought untrue? The answer is 'NO'.

361. Presumably, the earlier case lodged in 1972 over the event was initiated by the relative of two victims. But simply this reason does not negate the fact of killing two other unarmed freedom-fighters which occurred in course of the same attack. Rather, initiation of such earlier prosecution under the Collaborators Order, 1972 over the event arraigned against the accused adds muscular assurance as to active and culpable involvement of the accused Abdul Momin Talukder @ Khoka in accomplishing the killing four freedom-fighters.

362. Tribunal finds that evidence of the witnesses provides consistent and detail account on the circumstances surrounding the event which ended in atrocious annihilation of four detained unarmed victims. It stands proved that all four of the identified victims were shot to death at the place nearer to the crematory, adjacent to the Thana Hajot camp.

363. On cumulative evaluation of evidence as made above it is quite transparent that the accused Abdul Momin Talukder @ Khoka was significantly responsible for unlawful detention, torture, and murder of four unarmed freedom-fighters. Victims were non combatant at the time of conducting attack against them. They were about to move to their own home, being non-combatant when they got unlawfully captured. Thus, their status at the relevant time was non-combatant by virtue of which they were subjected to protection, in light of international humanitarian law. In this regard we recall the view made by ICTY Trial Chamber in the case of **Ratko Mladic** which is as below:

“Protected victims include members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.”[ICTY **Trial Chamber, RATKO MLADIĆ 22 November 2017** para 3017]

364. It is now well settled history that the freedom-fighters and pro-liberation Bengali people were treated as ‘*miscreants*’ by the Pakistani occupation army and their local militia force and collaborators. Presumably, the objective of such announcement

was to wipe out the pro-liberation Bengali civilians to resist and defy the war of liberation which was the core policy of the Pakistani occupation armed forces and their collaborators.

365. Facts divulged certainly offer the unmistakable conclusion that the accused, in exercise of his potential position in local Razakar Bahini and his associates and Pakistani army men forming group got the unarmed freedom-fighters forcibly captured when they were on move to their home. The group accompanied by the accused carried out such attack intending to execute the plan and policy of combating the non-combatant freedom fighters. It may be safely inferred from totality of facts. Obviously the status of the victims when they were forcibly captured was 'non-combatant civilians'. Thus, the attack was in fact directed against civilians, violating norms of war and international humanitarian law, we deduce.

**366.** 'Directed against a civilian population', does not mean that the criminal acts within that attack must be committed against civilians only. It has been observed by the ICTY Appeal Chamber in the case of *Kordić and Čerkez* that—

A person placed *hors de combat*, for example by detention, may also be a victim

of an act amounting to a crime against humanity, provided that all the other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against a civilian population.

**[Kordić and Čerkez Appeal Judgment paras 421, 570-571, 580]**

367. Victims were freedom-fighters, true. But at the relevant time they were out of action, when they faced the attack as they being unarmed were on the way toward their homes. Due to leakage of their movement the accused and his accomplices carried out the systematic attack and got them captured, it may be unerringly inferred.

368. It stands proved too that after keeping the captured unarmed freedom-fighters in protracted captivity at the camp the act of killing was conducted. If the killing of a person placed *hors de combat* is not an isolated event, but rather committed as part of a widespread or systematic attack which the attacker is aware of, then it may also constitute the act of murder as a crime against humanity[ICTY Appeal Chamber : **Prosecutor vs. Milan Martić: Judgment 8 October 2008 para- 313**].



369. Thus, the settled and recognized proposition is that the killing, causing torture in captivity on capture of an adversary or opponent being placed *hors de combat* is a grave and patent violation of International humanitarian law.

370. The above proved facts lead to irresistible presumption that the perpetrators' object of such attack was to annihilate the unarmed freedom-fighters. The victims were not combatant and as such they were protected civilians. From this point of view the victims were non combatant civilians when they were subjected to detention, torture in captivity and when they were annihilated. On this crucial question it has been observed by the ICTY in the case of *Blagojevic and Jokic* that—

“The term ‘civilian’ refers to persons not taking part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds detention or any other cause. It is a principle of customary international law that these persons are protected in armed conflicts.”

**[Blagojevic and Jokic, (ICTY Trial Chamber), January 17, 2005, para. 544]**

371. The cornerstone of international humanitarian law is that the persons who are no longer taking part in hostilities cannot be attacked or harmed. The notion of being *hors de combat* thus plays a significant role in ensuring that all individuals who are unarmed and abstained from the fight must be protected.

372. A combatant is *hors de combat* if he is in the power of an adverse party and incapable of defending himself. The fundamental rule of international humanitarian law speaks that persons who are *hors de combat* must not be attacked and must be treated humanely. But what we see in the case in hand? It stands proved that the status of four freedom-fighters was non-combatant i.e. they were *hors de combat* when they got unlawfully captured by the perpetrators and they were subjected to inhumane torture in captivity and finally were annihilated. All these criminal acts were committed violating international humanitarian law.

373. Therefore, the non-combatant victims formed part of ‘civilian population’ and the systematic attack directed against them was not for any pious purpose or necessity but to exterminate them treating them ‘miscreants’ and thereby the perpetrators committed the offence of ‘murder’ as ‘crimes

against humanity’, to which the accused was an active and conscious part.

374. The four detainees who were gunned down to death were ‘freedom fighters’, true. One may argue that they were not ‘civilians’ as they were linked to a particular side of the conflict. In this regard it is to be seen what status the detainees had at the time of crimes committed. Tribunal also notes that capturing an armed freedom-fighter, even during a fight, and disarming him inevitably brings a change in his status. In the case in hand, the 04 detained freedom-fighters were no longer bearing arms at the time of causing their forcible capture.

375. We therefore, conclude it unerringly that the accused accompanied the gang consciously and by remaining present at the crime site he [accused] not only participated in committing the criminal acts, he rather provided substantial contribution and moral support and approval too, by virtue of his position of authority, to the commission of tragic killing of 04 unarmed civilians.

376. The entire event happened in the context prevailing in 1971 in the territory of Bangladesh. In 1971 during the war of

liberation it would not have been possible to have trace or location of freedom-fighters and to get the non-combatant freedom-fighters apprehended without active assistance, encouragement and contribution of notorious local collaborators or associates of the Pakistani occupation army. Facts and accused's nexus with the Pakistani occupation army men stationed in Adamdighi together indisputably lead to the assurance that the accused being a potential Razakar of the locality had acted culpably in assisting and collaborating with the criminal gang in perpetrating a series of prohibited acts.

377. What happened subsequent to the unlawful capture of victims? Evidence of one survived victim P.W.08 demonstrates that the non-combatant freedom-fighters were kept detained in Adamdighi Thana camp where they were subjected to untold torment in protracted captivity. Besides, we are convinced to believe that the detained freedom-fighters obviously were not humanly treated in captivity.

378. Next, it stands proved too that three days later the detained four freedom-fighters and other detainees were taken out of the camp and were made assembled at the place nearer to the camp and then four freedom-fighters were taken to the

place near the crematory at the Kharir Bridge where the accused himself gunned them to death. P.W.8, one survived victim noticed it.

379. The act of attack arraigned leading to unlawful detention of victims and their annihilation happened in context of the war of liberation. This 'context' itself is sufficient to prove the existence of a '*systematic attack*' on Bangladeshi self-determined population in 1971. Accordingly, we conclude that the attack was 'systematic' and the dreadful criminal acts committed by conducting such attack constituted the offence of crimes against humanity directing unarmed civilians.

380. The phrase 'attack' against civilian population refers to the perpetration against civilian population of a series of acts of violence or of the kind of grave mistreatment. Thus 'attack' denotes a course of conduct involving commission of multiple prohibited acts. On rational appraisal of evidence, the acts done on part of accused are not found to be isolated. These formed part of 'attack'. The Tribunal notes that it is likely to conclude that even a single act constituting the offence makes an accused culpable for the offence of crime against humanity

committed. In this regard the ICTY has observed in the case of *Deronjic that--*

“All other conditions being met, a single or limited number of acts on [the accused’s] part would qualify as a crime against humanity, unless those acts may be said to be isolated or random.”

[ *Deronjic*, (Appeals Chamber), July 20, 2005, para.109]

381. The attack arraigned in this charge started first by conducting violent mistreatment to the inmates of P.W.08, forcibly capturing two civilians including P.W.08. These detainees were kept in prolonged captivity with other detainees including four unarmed freedom-fighters at Adamdighi Thana Hajot, truly which was a concentration camp. With the course of all these prohibited conducts the accused had active participation, it stands proved.

382. From the above it is quite patent that the accused had a close and culpable affiliation with the camp set up at Adamdighi Thana Hajot. The accused in exercise of his potential position with locally formed Razakar Bahini

deliberately and consciously collaborated with the Pakistani Army consciously intending to get involved with such criminal acts, forming part of systematic attack; circumstances divulged impel to conclude it.

383. It is now undeniable and part of the history as well that policy of the Pakistani occupation army and their local collaborators was to target the self-determined pro-liberation civilians. Auxiliary forces were established in aiding and facilitating the implementation of the policy. History says that in 1971 during the war of liberation local collaborators belonging to auxiliary force knowingly and deliberately aided and participated in committing continuous brutal nature of atrocities against the targeted non combatant civilian population.

384. From the arraignment brought in this charge it transpires that the event consisted of phases. First, the victims were forcibly captured and taken away to Adamdighi Thana camp. Secondly, the victims were subjected to torture in captivity. Thirdly, the victims were gunned down to death taking them nearer to the crematory.

385. Prohibited criminal acts accomplished in all phases and active participation of accused therewith has been found proved from ocular testimony of one survived victim P.W.08 and other eye witnesses to crucial facts chained to the event. It is thus also clear that in fixing the fate of four non-combatant freedom-fighters detained it was the accused Abdul Momin Talukder who had played a substantial and decisive role and eventually liquidation of four detainees was accomplished.

386. Killing of four detained unarmed freedom-fighters was thus the upshot of the 'systematic attack' carried out in a designed and systematic way under the active guidance and participation of the accused Abdul Momin Talukder. All the criminal acts happened in context of war time situation, directing civilian population in a systematic manner. In such context killing even of a single civilian on discriminatory grounds constitutes the offence of 'crime against humanity'. The notion of 'attack' refers to acting purposefully to the detriment of the well being of a civilian population and the 'population' needs not be the entire population of any vicinity attacked. It is now well settled jurisprudence. ICTR Trial Chamber in the case of **Seromba observed 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]**

387. In addition to brutal annihilation of four non-combatant freedom-fighters all the perpetrators including the accused forming the criminal enterprise incurred liability for causing untold torture to them and one survived victim P.W.08 and other detainees who were eventually set at liberty. Long-lasting effect of cruel or inhuman treatment caused to the survived victims does not need to be determined to assess the seriousness of cruelty caused to victims. The act of detaining on forcible capture of civilians, as has been found proved, itself is an act sufficient to cause grave mental harm. Besides, it stands proved that the detainees were subjected to heartless beating after taking them in camp at Thana.

388. We reiterate that committing a ‘system crime’, in violation of international humanitarian law, may be done individually or jointly with others forming part of the criminal enterprise. In the case in hand, we find that the accused Abdul

Momin Talukder @ Khoka did not keep him distanced from any phase of the event. It has been emerged from facts and circumstances that he rather deliberately and knowingly participated, being active part of the gang in effecting forcible capture of victims, keeping them confined at the camp, causing torture to detainees and finally he participated, facilitated and endorsed the killing of four detainees. The accused had carried out the *actus reus* of the diabolical crimes arraigned and in this way he became the enemy of humankind. Despite being a Bengali the accused opted to make him engaged in liquidating civilians who were non-combatant freedom fighters.

389. Besides, it stands proved that the accused was present at the killing site. In exercise of what capacity he remained there present with the gang? His potential and explicit nexus with local Razakar Bahini and the camp together with such presence impels probative indication that the accused encouraged, supported and substantially contributed in perpetrating the killing four unarmed freedom-fighters.

390. Indubitably presence of accused at the killing scene as has been proved from ocular testimony of P.W.08 also had significant effect on the commission of the barbaric killing. In

this regard we may rely upon the observation of ICTY Trial rendered in the case of **Aleksovski** which is as below:

“Mere presence constitutes sufficient participation under some circumstances so long as it was proved that the presence had a significant effect on the commission of the crime by promoting it and that the person present had the required *mens rea*.”[**Aleksovski, (ICTY Trial Chamber), Judgment, June 25, 1999, para. 64**]

391. In view of above the accused incurred liability for the dreadful killing of four detained unarmed freedom-fighters, even, for the sake of argument, if his physical participation is kept aside from consideration. Although, we have got it well proved based on account made by ocular witnesses and circumstances unveiled that the accused himself had acted in gunning down the detained victims, taking them at the place nearer to the crematory.

392. Total evaluation of series of activities found proved from evidence goes to show unerringly that accused Abdul Momin Talukder @ Khoka being the ‘kingpin’ of collective

criminality was knowingly engaged in instigating, facilitating, tacitly aiding and participating to the perpetration or execution of the crimes committed, at all phases. The facts unveiled patently demonstrate that those violent criminal acts were of course consequence of part of a 'systematic' attack directed against the unarmed civilian population.

393. Aggressive activities, act and extreme antagonistic attitude of accused Abdul Momin Talukder @ Khoka, at all phases of attack and in accomplishing the annihilation of four captured unarmed freedom-fighters, impel an unmistakable conclusion that the accused, a potential Razakar of locality culpably and actively facilitated the Pakistani occupation army stationed at Adamdighi in targeting the pro-liberation people, unarmed freedom-fighters to liquidate them, on unlawful capture, in addition to participating in killing phase.

394. The basic form of joint criminal enterprise (JCE- I) attributes individual criminal liability when all perpetrators forming gang act pursuant to a common plan or design and possess the same criminal intent, even if each 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 of the

group to commit a certain crime. The term ‘committed’ includes participation in a JCE. Thus, the JCE-I resembles co-perpetration and as such can be considered as ‘commission’.

395. Tribunal retells that 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. Thus, it is irrelevant 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, the killing. However, in the case in hand, it has been proved that the accused being active part of collective criminality had played significantly culpable role in committing the killing. 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]**

396. Jurisprudentially settled proposition is that a person shall be criminally responsible and liable for crimes committed in violation of international humanitarian law if that person is found to have had concern in committing such a crime, whether as an individual, jointly with another or through another person or is found to have induced or incited the commission of such a crime, by act or conduct, which in fact occurred.

397. In the case in hand, crimes proved were rather ‘group crimes’ perpetrated jointly and thus each of the enterprise shall be liable as a perpetrator. From this point of view the accused Abdul Momin Talukder @ Khoka incurred liability as a perpetrator of crimes committed.

398. Proved facts linked to the phases of the event arraigned lead to infer that the accused Abdul Momin Talukder @ Khoka was aware that the actions of the group of which he was a member were likely to lead to killings of detained victims. The accused Abdul Momin Talukder @ Khoka therefore incurred

individual criminal liability. He was with the gang of attackers as its 'kingpin' when it caused forcible capture of victims and also eventually in accomplishing their killing.

399. The accused is also found to have had active association with the camp where the victims were kept detained and finally the accused is also found to have had substantial participation and contribution in accomplishing or committing the killing, the upshot of the attack. We reiterate that '**committing**' connotes an act of 'participation', physically or otherwise, directly or indirectly, in the material elements of the crime charged through positive acts, whether individually or jointly with others. It has been observed by the **ICTY Trial Chamber in the case of *Stakic*** that-

"[.....]a crime can be committed individually or jointly with others, that is, 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." [ **Case No. IT-97-24-T, Judgment: 31 July 2003, Para-528**]

400. Thus, it may be safely inferred that the accused with 'intent' to annihilate the victims, the non-combatant freedom-fighters knowingly got allied with the 'criminal mission'. We are thus constrained to deduce justifiably that the accused Abdul Momin Talukder @ Khoka incurred 'individual criminal responsibility' to activate the object of the joint criminal mission, being an active part thereof.

401. In light of above evaluation of evidence adduced and circumstances emerged we are persuaded to conclude that prosecution has been able to prove that the accused Abdul Momin Talukder @ Khoka, a potential member of local Razakar Bahini consciously and knowing consequence participated by acts of assistance, substantial contribution and approval, being part of the joint criminal enterprise in committing offences of '**abduction**', '**confinement**', '**torture**' and '**murder**' constituting the offences of crimes against directing unarmed civilians as enumerated in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused Abdul Momin Talukder @ Khoka incurred criminal liability under section 4(1) of the Act of 1973.

## **XII. Conclusion**



402. Bengali nation achieved its long cherished independence in exchange of untold and huge sacrifice. The appalling events of attacks directing non-combatant pro-liberation civilians and civilians belonging to Hindu community, as found proved is the split depiction of the blood-bathed history of the birth of our dear motherland—**Bangladesh**. Grotesque atrocities in Bangladesh began on the mid-night of 25 March, 1971 with the launch of ‘Operation Searchlight’ and it continued till the nation achieved its independence on 16 December 1971.

403. Infamous Razakar Bahini had acted as an ‘auxiliary force’ as defined in section 2 of the Act to collaborate with the Pakistani occupation army. In the case in hand, it has been proved that Razakar Bahini was formed in the locality of Adamdighi Police Station of District Bogura. Accused Abdul Momin Talukder @ Khoka, the son of Abdul Mazid Talukder, a mighty local pro-Pakistan political leader did not keep him abstained from collaborating with the Pakistani occupation army stationed in Adamdighi, in exercise of his affiliation with local peace committee and Razakar Bahini.

404. Accused has been indicted in three charges which have been found proved beyond reasonable doubt. The charges

involve gruesome and premeditated indiscriminate killing of unarmed civilians and people belonging to local Hindu community, constituting the offences of 'crimes against humanity' and 'genocide'. The crimes proved were 'group crimes' which are found to have been committed in 'systematic' manner and in context of war of liberation. The trauma the victims and relatives of victims sustained shall never erase.

405. The horrific crimes proved were committed in 1971, during the war of liberation in grave violation of internationally recognized human rights. Accused Abdul Momin Talukder @ Khoka, despite being a Bengali, had opted taking stance against the war of liberation. He notoriously participated in conducting horrendous mass atrocities directing non combatant civilians, on discriminatory grounds. He is found to have had acted as the 'linchpin' of the criminal enterprise.

406. It is found proved that the accused Abdul Momin Talukder @ Khoka knowing consequence made him actively and culpably engaged in perpetrating the crimes arraigned in all the three charges to further policy and plan of resisting the

war of liberation and crippling the pro-liberation Bengali civilians.

407. Trial of offences committed in 1971 during the war of liberation in the territory of Bangladesh is indeed a means of knowing the truth. The truth unveiled through trial before this Tribunal obviously shall make the nation and especially the new generation enthused to go with the spirit of the war of liberation. At the same time, it shall make space to the global community of knowing in exchange of what extent of sacrifice the Bengali nation achieved its long cherished independence and independent motherland—**Bangladesh.**

### **XIII. VERDICT ON CONVICTION**

408. The settled proposition is that burden of establishing the guilt of the accused indicted squarely lies upon the prosecution. In the case in hand, in proving each count of charges brought against the accused, this standard has been found to be met and the accused is found to have incurred liability for the crimes arraigned which have been proved beyond reasonable doubt.

409. Having careful appraisal of all the evidences adduced before us and arguments advanced by both parties and based upon the factual and legal findings set out in adjudicating all the charges, the Tribunal [ICT-1] **UNANIMOUSLY** finds the accused Abdul Momin Talukder @ Khoka--

**Charge No.01: GUILTY** of participating, abetting, assisting, substantially contributing to the accomplishment criminal activities directing pro-liberation civilian population and Hindu community constituting the offence of ‘**genocide**’ as enumerated in section 3(2) (c)(i)(ii)(iii) of the Act of 1973 which are punishable under section 20(2) read with 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, abetting, assisting, substantially contributing and also for complicity to the accomplishment criminal activities directing civilian population constituting the offence of ‘**torture**’, ‘**abduction**’ and ‘**murder**’ as crimes against humanity as enumerated in section 3(2) (a)(g)(h) of the Act of 1973 which are punishable under section 20(2)

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

**Charge No.03: GUILTY** of participating, abetting, assisting, substantially contributing and also for complicity to the accomplishment criminal activities directing civilian population constituting the offence of **‘torture’, ‘abduction’, ‘confinement’ and ‘murder’** as crimes against humanity as enumerated in section 3(2) (a)(g)(h) of the Act of 1973 which are punishable under section 20(2) read with 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 SENTENCE**

**410. Mr. Sultan Mahmud Simon**, the learned Prosecutor submitted that the accused Abdul Momin Talukder @ Khoka must face the highest sentence, being a sentence of death, as he is proved to have had active, conscious and premeditated participation to the commission of barbaric crimes proved. Accused’s dominant position and influence in locally formed Razakar Bahini together with the intrinsic gravity and

magnitude of criminal acts constituting the offence of 'genocide' and 'crimes against humanity', as arraigned in all the three charges deserves to be considered as 'aggravating factor' in awarding highest sentence.

411. On contrary, **Mr. Abul Hassan**, the learned state defence counsel simply submitted that the prosecution could not prove the arraignments brought by credible evidence and thus the accused deserves acquittal.

412. It is now well settled that the forms of punishment must reflect norms and values and aspirations of a particular society at a given time. Victims and their near ones may justifiably expect appropriate and highest sentence while the defence may demand acquittal, in a criminal trial.

413. Undeniably, the punishment to be awarded must reflect both the calls for justice from the victims and sufferers of the crimes, as well as respond to the call from the nation as a whole to end impunity for massive human rights violations and crimes committed during the war of liberation 1971.

414. It is well settled that “due weight” is to be given to some factors including magnitude and seriousness of crimes committed and mode of participation of the accused, in the determination of an appropriate punishment.

415. We reiterate that in awarding sentence, the Tribunal, must eye on the nature and magnitude of the offences committed, their scale, the role the convicted accused had played and mode of his participation to the perpetration of the crimes proved. The gravity of the offence may be regarded as ‘the litmus test’ in awarding an appropriate sentence.

416. The sentences to be awarded must mirror the inherent gravity or totality of the criminal conduct of the accused. In this regard the Appellate Division in the appeal of **Ali Ahsan Muhammad Mujahid** observed that-

“It is the duty of the Court to award proper sentence having regard to the nature of the offence and depending upon the degree of criminality, the manner in which it was committed and all attended circumstances.”

**[Criminal Appeal No.103 of 2013; Ali Ahsan Muhammad Mujahid; Judgment on: 16-06-2015; page 190]**

417. At the same time we need to keep in mind the trauma and harm sustained by the victims and their dear ones in assessing the gravity of offences. Penalty to be awarded must reflect the totality of the crimes committed by the convicted accused and it must be proportionate to both the seriousness of the crimes committed and the degree of participation of the accused convicted.

418. In adjudicating the charges arraigned we have taken due notice of the intrinsic magnitude of the offences proved which are predominantly shocking to the conscience of mankind. We have also cautiously considered the mode of participation of the accused to the commission of crimes proved and the proportionate to the gravity of offences.

419. In the case in hand, in view of facts proved in relation to all the three charges it stands established that the accused Abdul Momin Talukder @ Khoka had acted as a prominent local traitor, in exercise of his culpable affiliation with the locally formed auxiliary force, Razakar Bahini in committing the crimes arraigned, knowingly and with premeditation.



420. We got it proved based on evidence adduced that the accused Abdul Momin Talukder @ Khoka, in exercise of his culpable affiliation with local peace committee actively participated in committing the horrific indiscriminate killing of numerous civilians, sharing common intent of the Pakistani occupation army men who got stationed in the locality under police station-Adamdighi of District-Bogura (**as arraigned in charge no.01**). Killings arraigned in charge no.01 were accomplished by conducting successive attacks on the same day. The accused has also been found guilty of actively guiding the Pakistani occupation army men in carrying out atrocities which was a fragmented part of genocide committed in the territory of Bangladesh in 1971, during the war of liberation.

421. The proved charge no.01 involves the offence of 'genocide'. We recall that in 1946, it has been proclaimed by the General Assembly of the United Nation that the crime of genocide is "a denial of the right to existence of the entire human groups". Such denial indisputably shocks the conscience of mankind which results in great slaughter to humanity. It is found well proved that the accused played a prominent role and aggressively participated in accomplishing

the systematic attacks which resulted in barbaric killing of numerous unarmed civilians (**as listed in charge no.01**).

422. The convicted accused made him engaged in perpetrating such prohibited acts voluntarily, perceptively and with premeditation. His mode of participation in perpetrating such brutal killings constituting the offence of 'genocide' aggravates his liability which deserves to be considered in awarding sentence. Proved crime was plastered with extreme brutality which harmed humanity and civilization.

423. Participation and active involvement of accused Abdul Momin Talukder @ Khoka with the event of killing five non-combatant civilians as arraigned **in charge no.02** has been found proved. The accused Abdul Momin Talukder @ Khoka, in extremely brutal manner, in exercise of his potential position in locally formed Razakar Bahini had actively participated in perpetrating the systematic and designed attack, it stands proved. His aggression was against the pro-liberation civilians who took stance in providing support and assistance to the freedom-fighters. In fact the accused had acted against human race and mankind. We fail to understand how a brutal

perpetrator like the accused Abdul Momin Talukder @ Khoka got elected as a Member of Parliament in independent Bangladesh? It is a great shame indeed for the nation.

424. It has also been proved that the accused being part of the criminal enterprise got actively involved in getting pro-liberation civilians and non-combatant freedom-fighters captured. The detainees were kept in captivity at Adamdighi Thana camp and few days later four detained non-combatant freedom fighters were shot to death (**as arraigned in charge no.03**). It stands proved that the accused Abdul Momin Talukder @ Khoka being part of the criminal scheme actively participated in perpetrating the annihilation of four unarmed freedom-fighters. This event happened almost at the ending phase of the war of liberation.

425. Admittedly, a case was initiated under the Collaborators Order 1972 over this event (**as arraigned in charge no.03**) against the accused and his father, the local peace committee member. But eventually trial could not be concluded as the Collaborators Order 1972 was repealed and thus the accused got space to evade liability. In the case in hand, evidence

presented depicts how viciously the accused had acted to actuate the plan and purpose of the Pakistani occupation army.

426. The offences of ‘crimes against humanity’ proved (**as arraigned in charge no.03**) are currently considered to be particularly odious offenses because they constitute a serious attack on human dignity or a grave humiliation of one or more human beings.

427. The convicted accused Abdul Momin Talukder @ Khoka, being cognizant part of collective criminality, consciously participated, actively assisted and facilitated in committing the arbitrary killing of defenceless freedom-fighters(**as listed in charge no.03**) . Did it match to any political ideology and humanity? Proved facts of appalling mayhem, atrocities and murders lead to conclude that the accused Abdul Momin Talukder @ Khoka was indeed an enemy of humankind. The four victims who were *hors de combat* at the time of attack are the brave sons of the soil. They sacrificed their lives for the cause of achieving independent motherland. The nation must salute them. The incalculable trauma the relatives of victims sustained shall never erase.

428. In the appeal of Mir Quasem Ali the **Appellate Division** observed that –

“The offences of crimes against humanity or genocides are by nature serious and heinous type of offences because the perpetrators committed those offences against unarmed innocent civilians. These crimes cannot be compared with ordinary crimes. They are of incomparable scale and seriousness.

**[Criminal Appeal No.144 of 2014; Judgment: 8th March, 2016 ; page-242]**

429. The accused has been found guilty for the offences of ‘genocide’ [**arraigned in charge no.01**] and ‘crimes against humanity’ [**arraigned in charge nos. 2 and 3**], for his conscious and premeditated participation in the events arraigned that occurred in 1971, during the war of liberation.

430. Sentencing factors chiefly include the extent of the damage caused, the nature of the conduct, the accused’s degree of participation and intent, cruelty of the conduct, multiple victims and the discriminatory motive. The harm resulting from the crimes committed is not merely limited to the victims who lost their lives. It rather also includes the incalculable

consequence of the crimes upon the victims' families and their communities and the humankind.

431. The atrocious events proved were enormously appalling indeed. Mode of participation of the accused, as has been found proved, in accomplishing the killings and in causing untold harm deserves justifiable consideration, in awarding sentence. The accused has been found guilty not for committing any isolated offence as codified in normal penal law and as such the arraignments proved under the Act of 1973 itself portrays magnitude, gravity and diabolical nature of the crimes and in the event of success of prosecution in proving the charges.

432. In view of above discussion together with settled norm and considering the nature and proportion to the gravity of offences proved and also keeping the factors as discussed herein above into account we are of the **UNANIMOUS** view that justice would be met if the accused Abdul Momin Talukder @ Khoka who has been found guilty beyond reasonable doubt for the crimes proved (as arraigned in all the three charges) is **condemned and sentenced** as below, under the provision of section 20(2) of the Act of 1973:

Hence, it is

## **ORDERED**

That the accused Abdul Momin Talukder @ Khoka (**absconded**) son of late Abdul Mazid Talukder and late Rabeya Mazid of village-Kalaikuri, at present Shantahar Bazar (Kalaikuri College), Police Station-Adamdighi, District-Bogura is found **guilty** of the offence of '**genocide**' (**as listed in charge no.01**), as enumerated in section 3(2) (c)(i)(ii)(iii) of the International Crimes (Tribunals) Act, 1973 and of the offences of 'crimes against humanity' (**as listed in charge nos.02 and 03**) enumerated in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973.

Accordingly, accused Abdul Momin Talukder @ Khoka be convicted and condemned to the **sentence as below for these three charges**, under section 20(2) of the Act of 1973:

**'Sentence of death'** for the crimes as listed in **charge no.01** and he be hanged by the neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

**‘Sentence of death’** for the crimes as listed in **charge no.02** and he be hanged by the neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973;

**AND**

**‘Sentence of death’** for the crimes as listed in **charge no.03** and he be hanged by the neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973.

The **‘sentences of death’** as awarded above, in respect of **charge nos. 1, 2 and 3** will get merged.

Since the convicted accused has been absconding the **‘sentence of death’** as awarded above shall be executed after causing his arrest or when he surrenders before the Tribunal, whichever is earlier. 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.

Let conviction warrant be issued accordingly. Let a copy of the Judgment be transmitted together with the conviction warrant



to (1) the Secretary, Ministry of Home Affairs, (2) the Inspector General of Police, Bangladesh Police, Police Head Quarters, Dhaka and (3) the District Magistrate, Dhaka for information and necessary action and compliance.

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

**(Justice Md. Shahinur Islam, Chairman)**

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

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