IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Muzammel Hossain, Chief Justice

Mr. Justice Surendra Kumar Sinha

Mr. Justice Md. Abdul Wahhab Miah

Mr. Justice Hasan Foez Siddique

Mr. Justice A.H.M. Shamsuddin Choudhury

CRIMINAL APPEAL NOS.39-40 OF 2013.
(From the judgment and order dated 28th February, 2013 passed by the International Crimes Tribunal No.1, Dhaka in ICT-BD Case No.01 of 2011.)

Allama Delwar Hossain Sayedee: Appellant.
(In Crl. A. No.39 of 2013)

The Government of the People's Republic of Bangladesh, represented by the Chief prosecutor, International Crimes Tribunal, Dhaka, Bangladesh: Appellant.
(In Crl. A. No.40 of 2013)

=Versus=

The Government of the People's Republic of Bangladesh, represented by the Chief prosecutor, International Crimes Tribunal, Dhaka, Bangladesh: Respondent.
(In Crl.A.No.39 of 2013)

Delwar Hossain Sayeedi @ Delu: Respondent.
(In Crl.A.No.40 of 2013)

For the Appellant: (In Crl. A. No.39 of 2013) — Mr. S.M. Shahjahan, Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.

For the Appellant: (In Crl. A. No.40 of 2013) — Mr. Mahbubey Alam, Attorney General, instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.

For the Respondent: (In Crl. A. No.39 of 2013) — Mr. Mahbubey Alam, Attorney General, instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.

For the Respondent: (In Crl. A. No.40 of 2013) — Mr. S.M. Shahjahan, Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.

Date of hearing: 24th, 25th, 26th, 29th, 30th September, 2013, 1st, 2nd, 3rd, 6th, 7th, 8th October, 2013, 14th, 18th, 19th, 20th, 24th, 25th November, 2013, 13th, 14th, 16th, 19th, 20th, 21st, 28th, 29th, 30th January, 2014, 2nd, 5th, 10th, 11th, 13th, 23rd, 24th, 25th, 26th, 27th February, 2014, 5th, 6th, 9th, 10th, 11th March, 2014, 1st, 10th, 13th, 15th and 16th April, 2014.

Date of Judgment: 17th September, 2014.

J U D G M E N T

Md. Muzammel Hossain, CJ: I have gone through the judgments prepared by my learned brothers Surendra Kumar Sinha and Md. Abdul Wahhab Miah, JJ. I agree with the judgment prepared by my learned brother Surendra Kumar Sinha, J.

CJ.

Surendra Kumar Sinha,J: These appeals, one at the instance of the convict Allama Delwar Hossain Sayedee (Criminal Appeal No.39 of 2013), is against his conviction and sentence and the other, at the instance of the State (Criminal Appeal No.40 of 2013) is against non-awarding of sentence in respect of charge Nos.6, 7, 11, 14, 16 and 19 despite finding him guilty on those counts. Upon hearing the above appeals this Division allowed both the appeals in part by majority. The operating part of the short order is as follows:

> "The Criminal Appeal No.39 of 2013 is allowed in part by majority. The Criminal Appeal No.40 of 2013 is allowed in part by majority.
>
> Appellant-Allama Delwar Hossain Sayedee (in Crl. A. No.39 of 2013) is acquitted of charge

Nos.6, 11 and 14 and part of charge No.8 by majority. Appellant-Allama Delwar Hossain Sayedee is sentenced to 10(ten) years rigorous imprisonment by majority in respect of charge No.7. Appellant-Allama Delwar Hossain Sayedee's sentence in respect of charge No.8 is altered to 12(twelve) years rigorous imprisonment by majority. Appellant-Allama Delwar Hossain Sayedee's sentence in respect of charge No.10 is commuted to imprisonment for life i.e. rest of his natural life by majority. Appellant-Allama Delwar Hossain Sayedee is sentenced to imprisonment for life i.e. rest of his natural life in respect of charge Nos.16 and 19 by majority.

The judgment in detail would follow."

The appellant was put on trial before the International Crimes Tribunal No.1, Dhaka, (the Tribunal) to face 20 count of charges, of them, the Tribunal found the appellant guilty of offences in respect of charge Nos.6, 7, 8, 10, 11, 14, 16 and 19 and gave him the benefit of doubt in respect of charge Nos.1-5, 9, 12, 13,

15, 17, 18 and 20 and acquitted him of the said charges. Though it found the appellant guilty of eight counts of murder, abduction, torture, rape, persecution, forcible religious conversion, awarded him sentence in respect of charge Nos.8 and 10 only and refrained from passing any separate sentence in respect of charge Nos.6, 7, 11, 14, 16 and 19 on the reasoning that no fruitful purpose would be served to award him lesser sentence since death sentence has been awarded in two counts.

In support of the charges, the prosecution has examined 28 witnesses and the defence has examined 17 witnesses. Both the parties have also relied upon documentary evidence in support of their respective case. The defence has admitted the perpetration of almost all the offences of Crimes against Humanity, which are punishable under section 3(2)(a) of the International Crimes (Tribunals) Act, 1973 (Act of 1973) by giving suggestions to the prosecution witnesses and also by examining witnesses at different places of Pirojpur, but it takes a plea of alibi of the appellant's complicity in those crimes. The substance of defence version is that though all those atrocities stated by the prosecution had

been perpetrated at Parerhat, Baduria, Chitholia, Nolbunia, Umedpur, Hoglabunia, Indur Kani villages under the then Pirojpur Sub-Division from 7th May, 1971, to June 1971, the appellant was not present at the crime site during the relevant time, and as he was staying at New Town, Jessore, and then he took shelter to villages Sheikhhati, Dhanghata, Mohiron under Bagharpara thana, Jessore district, he was not involved in the commission of those crimes. His claim is that after the commission of those crimes, he returned to Parerhat sometimes in mid July, 1971, and that those crimes were perpetrated by the Pakistani force in collaboration with the local Peace Committee members and Razakars. Since no appeal was preferred by the State against the order of acquittal in respect of count Nos.1, 2, 3, 4, 5, 9, 12, 13, 15, 17, 18 and 20, I shall confine my decision in respect of count Nos.6, 7, 8, 10, 11, 14, 16 and 19.

The pertinent question is whether the appellant was present during the relevant time at Parerhat or that he was staying elsewhere. If it is found that he was not present at or near the place of occurrence at the time of the commission of atrocities, it would rather be a futile

attempt to discuss the prosecution evidence in support of those charges, despite finding him guilty. To substantiate his claim of temporary absence from the crime site where the offences of Crimes against Humanity were perpetrated, the appellant has examined five witnesses, such as, Md. Abul Hossain (D.W.4), Roushan Ali (D.W.6), Md. Kobad Ali (D.W.8), Md. Hafizul Huq (D.W.12) and Md. Enam Hossain (D.W.14). Besides, he has also exhibited some documents showing that he was not involved in the perpetration of the crimes. The other witnesses examined on his behalf deposed that those incidents were perpetrated by the Pakistani army with the help of local auxiliary forces in different manner and not in the manner as stated by the prosecution. On the other hand, the prosecution witnesses stated that the appellant was physically present from the very beginning of the liberatioin struggle at Pirojpur, took active part in the formation of Razakars Bahini and Shanti Committee at Parerhat area, received the Pakistani army while they were entering into Pirojpur, as he was the one who had proficiency in Urdu speaking and that he had actively participated in all the atrocities committed at Parerhat, Pirojpur.

The Tribunal after sifting the evidence on record disbelieved the plea of alibi. It observed that the accused was a prominent member of Razakars Bahini of Parerhat area during the liberation struggle of Bangladesh and that he had actively participated in different atrocious activities by forming Razakars Bahibi as auxiliary force of Pakistani occupation force. It has considered exhibit 151, the nomination paper of the appellant Delwar Hossain Sayedee and the suggestions given to the prosecution witnesses Mahabubul Alam Howlader (P.W.1), Ruhul Amin Nabi (P.W.2), Sultan Ahmed Howlader (P.W.4), Mahatab Uddin Howlader (P.W.5), Manik Posari (P.W.6), Mustafa Howlader (P.W.8), Altaf Hossain Howlader (P.W.9), Basudev Mistri (P.W.10), A.K.M. Awal (P.W.12) and Gouranga Chandra Saha (P.W.13). The Tribunal held that exhibit 151, the nomination paper submitted by the appellant showed that he had four sons, of them, his eldest son Rafiq Bin Sayedee was alone born in 1970 but DWs 4 and 6 stted in cross-examination that Sayedee had two sons when he resided in Jessore town; that the defence suggested to P.Ws.1, 2, 4, 5, 6, 8, 9, 10, 12 and 13 that Sayedee was in Jessore since before the war of liberation

till mid July, 1971, but these witnesses denied the suggestions; that these witnesses and Sayedee hail from the same locality and these witnesses categorically stated that Sayedee was involved in the atrocities committed at Parerhat since May, 1971; that P.W.2, a commander of the freedom fighters categorically stated that he tried to arrest Delwar Hossain Sayedee in December, 1971 but failed to apprehend him as he fled away from the locality; that the evidence revealed that Delwar Hossain Sayedee went into hiding and took shelter to Jessore in the houses of Abul Hossain (D.W.4) and Rawshan Ali (D.W.6).

The Tribunal did not discuss elaborately or consider the evidence of Md. Abul Hossain (D.W.4), Roushan Ali (D.W.6), Md. Kobad Ali (D.W.8), Md. Hafizul Huq (D.W.12) and Md. Emran Hossain (D.W.14) in arriving at such conclusion. Though I agree with the penultimate decision of the Tribunal, I am of the view that it ought to have considered the defence evidence while arriving at such conclusion. If we consider the oral evidence of D.Ws.4, 6, 8, 12 and 14, the documentary evidence and those of the prosecution, it will be evident that the defence plea is false and concocted. These defence witnesses have been set

up with a view to create confusion as to the accused's involvement in those crimes. On a close scrutiney of their testimonies it would not be difficult to arrive at the conclusion that these witnesses were procured and tutored witnesses, and that the prosecution version narrated by P.Ws.1, 2, 4, 5, 6, 8, 9, 10, 12, 13 and Ashish Kumar MOndal, (ext.254), Sumoti Rani Mondal, (ext 255), Samar Mistri, (ext 256), Suresh Chandra Mondal, (ext 257), Abdul Latif Howlader, (ext 258), Anil Chandra Mondal, (ext 259), Sukha Ranjan Bali, (ext 260), Shahidul Islam Khan, (ext 261), Md. Ayub Ali Howlader, (ext 262), Ajit Kumar Shil, (ext 264), Rani Begum, (ext 265), Sitara Begum (ext 266), Md. Mostafa, (ext 267), Ganesh Chandra Saha, (ext 268), Mukunda Chakrabarty, (ext.269) that Delwar Hossain Sayedee was physically present at Perojpur during the entire period of war of liberation and that he was the ring leader, who raised and organized the local militia groups like Razakars, Peace Committee and collaborated the Pak occupation army in the perpetration of those inhuman crimes was true to the knowledge of the accused.

The theory of a plea of alibi is such that the fact of presence of the accused at the scene of the crime and

the time alleged is essentially inconsistent and therefore, his personal participation as an offender in the act is false. Will's Circumstantial Evidence at page 279-80 stated, it is obviously essential to prove an alibi that it should cover an account for whole of the time of the transaction in question, or at least for so much of it as to render it impossible that the offender could have committed the imputed act-it is not enough that it render his guilt improbable merely, and if the time is not exactly fixed and the place of which the offender is alleged by the defence to have been is not far off, the question then becomes one of opposing probabilities. While it is the burden of the prosecution to prove beyond reasonable doubt that the accused was present at the scene of the crime at the time of its commission, the burden of going forward with the evidence in regard to a fact which is specially within his knowledge, the accused has to show that he was elsewhere at the moment of the crime and that he remained there for such a period of time as will reasonably exclude the probability that he was in the place of the crime when it was committed.

It is now well settled law that, in regard to this burden of going forward with the evidence is to be discharged by the accused, if he raises a reasonable doubt of his presence at the scene of the crime at the time that it was committed, it is not incumbent upon the accused to prove his alibi beyond a reasonable doubt. Accused took the plea of alibi only to show that during the relevant time of crimes, he was not at Parerhat, Pirojpur. It should be kept in mind that whenever a defence plea of alibi is set up and the defence utterly break down, it is a strong inference that if the offender was not in fact where he says he was, then in all probability, he was where the prosecution says he was. Though the onus of establishing the plea of alibi set up by the accused is upon him, no presumption of his complicity in the crimes arise from his failure to establish the plea. The witnesses' falsity of an alibi is not a sufficient ground for holding that the case for the prosecution is thereby proved.

D.W.4 is a resident of Jessore. He stated that his parents were residing at House No.A/185, Jessore New Town, during the early part of 1971; that adjacent to their

house was house No.184, where Shahidul Islam, a primary teacher had resided and contiguous to that house was the house No.183, where another school teacher had resided and next to that one was the house No.182, where Delwar Hossain Sayedee with his family had resided till the last part of March, 1971; that after the Pakistani occupation army pounded on the civilians and started shelling from Jessore Cantonment towards the town, many families started leaving Jessore town for safety; that at that time the above four families left Jessore on 3rd or 4th April to Sheikhhati; that they stayed one night there and from there they moved to Dhanghata village in the maternal uncle's house of Abul Khayer where they stayed 7/8 days, and thereafter, it was decided after discussions that his family and the family of Shahidul Islam would take shelter to India and the resident of house No.183 Abul Khayer would stay with his maternal uncle's house and that Sayedee would stay in the house of Pir of Mohiron village.

In course of cross-examination, he expressed his ignorance about Sayedee's village home. This statement raised suspicion about his claim that he was a neighbour of Delwar Hossain Sayedee and resided at New town,

Jessore, and also that after the Pak army started shelling towards the town, his family left Jessore Town with Sayedee's family to take shelter at Sheikhhti. According to him, he was so close with Sayedee that during the crucial period of the liberation struggle his family chose to move at a safe place with Delwar Hossain Sayedee's family and stayed with them jointly at Dhanghata village for 7/8 days in the same house. It was natural under such circumstances to come to the conclusion that he knew about Sayedee's village home if had really moved from one place to the other place for safety and before that he was a neighbour of Sayedee, and also knew about his profession as well. It is pertinent to note that according to him, his family and the family of Shahidul Islam left India for safety as they felt insecurity at the remote villages of Jessore but Sayedee chose to stay at his Pir's house, which raised suspicion about the defence plea, inasmuch as, if Delwar Hossain Sayedee had realized that the atmosphere then prevailing at Jessore town was not congenial because of shelling by Pak army, it was natural that he would have returned to his own house instead of taking shelter to other places, because according to this

witness, accused Delwar Hossain Sayedee was not apprehensive of the Pakitani army's brutality, he was apprehensive of army's shelling. More so, according to him, he was the third child of his parents and that he appeared the SSC examination in 1972. So he was barely a boy around 14/15 years old at that time. It was not at all believable story that he would know details about the decisions taken by the four family elders to move at a safe place. In course of cross-examination he stated that Sayedee with two children, wife and domestic help resided as neighbour and that he was then performing Wajmahafils. It is totally unbelievable story that he would know about his profession of Sayedee at such age, but he had no idea regarding Saidee's village home. So, the story introduced by this witness apparently appears to me ridiculous.

D.W.6 is a resident of Bagharpara, Jessore. He stated that during the period between 1969 and 1970, Sayedee was delivering religious speeches at village Dohakola under Bhagarpara police station; that in 1971, he was nursing garden and looking after his cultivation; that he was acquainted with Sayedee through religious congregations; that Sayedee was staying at Jessore town by renting a

house and in the later part of March, 1971, when the people were leaving Jessore town for safety and security, Sayedee with his family took shelter in the house of Pir Sadar Uddin of Mohiron village towards mid April; that he stayed there for two weeks and thereafter, Sayedee went to his house as the Pir Hujur requested him to take Sayedee on the plea that besides being a big family, some relations of the Pir also took shelter in his house for which it was difficult on the part of Pir Hujur to accommodate Sayedee; that Delwar Hossain Sayedee stayed with him about two and half months, and towards the mid July, Sayedee left for his village home with his family. In course of cross-examination, he admitted that Sayedee was arrested after the liberation war and before 15th August, 1975, but he could not say for what reason he was arrested; that he studied at Kowmi Madrasha up to Behesti Jeor; that he knew from the print media that cases relating to arson, rape, killing of innocent persons were pending against Sayedee; that he heard from before the filing of the present case that Sayedee was involved in similar nature of offences and that during the period of war of liberation anti-liberation elements were residing

at his locality. He denied the defence suggestion that after the war of liberation Sayedee took shelter at his house and that as he was an activist of Jamat-e-Islami, he was deposing falsely to save Sayedee. We noticed from his statement that he made contradictory statement with P.W.4.

D.W.8 is a resident of Mohiran, Jessore, who stated that Sayedee was residing at New Town, Jessore in 1969-70 by hiring a house and he was then attending Wajmahafils; that when the army started shelling towards the Jessore town in 1971, Sayedee left the town and took shelter at the house of Sadaruddin of Mohiron village in mid April, 1971; that after staying 15 days in that house, as per request of Pir Hujur P.W.6 Rawshan took him at his house in the early part of May where he stayed two and half months and that towards the mid July he left his home. He admitted that he is a supporter of Jamat-e-Islami.

D.W.12 is a resident of Bamonpara, Jessore. He stated that in 1971, he was 11 years old and he is the son of Md. Shahidul Islam, who was a resident of house No.184, Jessore New Town; that Sayedee used to give religious speeches at Jessore, who was then residing at house No.182 as tenant; that after 25th March, as there was shelling

mortars from Jessore Cantonment towards Jessore town, his father and other neighbours including Sayedee had discussions to leave Jessore town and then they jointly left for Sheikhhati village on 4th April and stayed the night at Joynul Abedin's house and on the following day, they shifted to Abul Khayer's maternal uncle's house at Dhanghata village where they stayed 7/8 days; that then they decided to shift to other places when Delwar Hossain Sayedee told that he would move to Mohiron Pir's house, and that his father and Hazrat Ali left for India.

In course of cross-examination, he made inconsistent statements as regards his claim that his father purchased the house in which they stayed at Jessore town as neighbour of Sayedee. He admitted that Sayedee was a resident of Pirojpur which he knew. He stated that he heard about the case pending against Sayedee for committing offences of Crimes against Humanity, but according to him before 2000, he did not hear any such allegation and that those allegations were untrue. He denied the defence suggestion that he being an activist of Jamat-e-Islami was deposing falsely. He being barely a boy of 11 years old at that time as per his admission, it was

not at all believable story that he would know meticulously about the discussions, the decision taken by the elders of alleged four families to move to a safe place unless he was tutored in that regard.

D.W.14, a resident of Mohiran, Bagharpara stated that Delwar Hossain Sayedee was staying at Newtown, Jessore in 1970-71 by hiring a house; that at that time he was involved in delivering speeches at religious congregations; that when there were shelling from Jessore Cantonment, Sayedee took shelter at Sadaruddin's house with his family towards mid May, 1971, that Delwar Hossain Sayedee thereafter took shelter to the house of Roushan Ali as directed by Pir Shaheb; that Delwar Hossain Sayedee stayed at Roushan Ali's house for two and half months, and then his brother took him to his village home. In cross-examination, he stated that he was then studying at Paddabila Union Aliya Madrasha and that during the period of war of liberation, his Madrasha was completely closed. In reply to an another question he stated that he did not hear that Pak-occupation army, Al-Badr, Razakars and Peace Committee members committed mass killing, rape, looting, arson in 1971; that he had no idea about those atrocities;

that when the trial before the Tribunal was proceeding, Delwar Hossain Sayedee's elder son came to the Pir Saheb's house and assembled the people of the locality and told them that during the war of liberation his father (Sayedee) was staying in that locality and that as per his (Sayedee's son's) version, he was deposing before the Tribunal. So, the evidence of this witness revealed the true picture as regards the plea of alibi taken by the defence to disprove the appellant's presence at the crime site. He admitted that on the request of Sayedee's son that Sayedee was staying at his village, he was requested to depose that fact. He was barely a student of Madrasha but he knew that Delwar Hossain Sayedee was then delivering speeches to Wazmahafils in Jessore which is totally absurd. More so, how he could know that Sayedee was staying in Jessore town unless he was tutored to say this story.

According to D.W.14, Sayedee went directly from Jessore town to Pir Sadaruddin's house in the month of May, which statement is inconsistent with those of D.W.4, 6, 8 and 12. D.W.4 stated that Delwar Hossain Sayedee left Jessore town on 3rd or 4th April and stayed one night at

Sheikhhati village and then he stayed 7/8 days in the maternal uncle’s house of Abdul Khayer at village Dhanghata. D.W.6 stated that Sayedee took shelter at Morihon village in mid April whereas D.W.12 stated that on 4th April Delwar Hossain Sayedee took shelter in the house of Joynul Abedin. D.W.6 stated that after the Pak occupation army started shelling, Sayedee took shelter at Pir Sadar Uddin's house of Mohiron towards mid April. We find from the above analysis of the evidence that the witnesses stated four versions. Apart from the above, there are other infirmities in its version.

D.W.12 was a boy of 11 years old and it was not believable story that he would be able to know in detail about the discussions of the elders of four families. Though D.W.4 claimed that he was a neighbour of Sayedee, he had no idea about Sayedee's village home which proved that he was making tutured story. D.W.12 made totally a different story contradicting D.Ws.6 and 8 as regards the house at which they stayed after they left Jessore. He stated that they stayed one night in the house of Joynul Abedin and on the following day they moved to the maternal uncle’s house of Abul Khair at Dhanghata, and stayed there

7/8 nights, whereas D.W.4 stated that they stayed Sheikhhati one night. D.W.6 stated that Sayedee with his family took shelter in the house of Pir Sadar Uddin after coming from Jessore and then he shifted to the house of Roushan Ali. D.W.8 stated that Sayedee stayed at Sadar Uddin’s house till mid April and then he shifted to Roushan Ali's house in the first part of May, 1971.

According to D.W.4, Sayedee stayed at Dhanghata till 12th April, 1971 and then he went to Pir’s house on the same day where he stayed for 8/9 days i.e. till 20th April, 1971 whereas, according to D.W.6, Sayedee went to Pir’s house on 15th April and if he stayed two weeks in that house, he stayed there till 30th April and then he shifted to P.W.6’s house. According to D.W.8, Delwar Sayedee took shelter in Pir’s house after coming from Jessore town and he did not stay at any other houses in the intervening period. According to D.W.12, Delwar Sayedee stayed first night at Sheikhhati village on 4th April at Jainul Abedin’s house and on the following day on 5th April, he shifted to Abul Khair’s maternal uncle’s house where he stayed for 7/8 days i.e. he stayed there till 12th or 13th and then he went to Pir’s house. He did

not say that Delwar Sayedee took shelter in the house of D.W.6, but if we believe D.Ws.6 and 8, Sayedee stayed in that house till 28th April, whereas D.W.14 stated that Sayedee went to Pir's house in mid 28th April. D.W.14 stated that Sayedee went to Pir's house in mid May, 1971 and if he stayed there for 15 days, then Delwar Sayedee moved to D.W.6's house on 1st June, 1971 and then if he stayed two and half months there, he stayed there till 15th august, 1971. If that being the position, how he went to Pirojpur in mid July, 1971?

D.Ws.4, 6, 8 and 12 did not state that Delwar left for Pirojpur with his bother, but P.W.14 made a different story. This witness did not hear any sort of atrocities like rape, mass killing, looting and arson were perpetrated by Pakistani occupation army in collaboration with Al-Badr and Razakars. This shows the nature of the witnesses the defence is relying upon to prove a plea of alibi for disbelieving the direct evidence adduced by the prosecution. It is only those witnesses who supported the Pakistani occupation army believed that no such atrocities were committed during the liberation struggle period in 1971. The story disclosed by D.W.14 is that it was only

when Delwar Hossain Sayedee's elder son went to Pir Saheb's house and requested the local people to depose in favour of his father, he deposed in support of Sayedee. Therefore, there is no gainsaying that the defence witnesses made tutored statements on the request of the elder son of Delwar Hossain Sayedee. These five witnesses made inconsistent statements as regards the date of leaving Jessore town and the places of taking shelter thereafter.

The above evidence nakedly focus about the quality of the witnesses the defence has relied upon to prove the alibi plea. One witness did not even know about Delwar Hossain Sayedee's home although he claimed that he was living as neighbour of Sayedee for about two years. He was a minor boy during that time. Another witness was barely a boy of 11 years old. He claimed that he knew about the discussions and the decisions taken by the family elders for taking shelter in a safe place in 1971. A witness who does not believe in the atrocities perpetrated by the Pakistani army with the help of auxiliary forces in 1971 and holds the view that no such atrocities were committed, can only be taken as the one who still does not believe in

our independence and sovereignty of the country. In fact he has insulted the sacrifices of the brave martyrs without their self-abnegation we would not have achieved the taste of liberation, a map, a flag and the sovereignty of the country. The Palestinians could not achieve their dream even after sacrificing millions of lives for the last 66 years but we have achieved within 9 months due to their sacrifices. If these witnesses are to be believed, the history of our liberation struggle would have to be re-written. There is no doubt that these witnesses believe in the ideology of what Delwar Hossain Sayedee does.

According to the defence as revealed from the testimony of Nurul Haque Howlader (D.W.3) that Sekandar Sikder, Danesh Molla, Moslem Moulana, Hazi Abdul Gani Gazi, Shafiz Uddin Moulavi and Asmat Ali Munshi who were the members of the Peace Committee were involved in these incidents. He consciously excluded the name of the appellant but the defence has failed to consider one vital aspect which goes against it. This witness has impliedly admitted the prosecution version of Delwar Hossain's Sayedee's complicity, inasmuch as, according to the prosecution, these persons are the accomplices of Sayedee.

It did not deny the positive case of the prosecution that they are the accomplices of Sayedee. This witness also admitted that Gouranga Saha complained to him that the appellant Delwar Hossain Sayedee raped Bhanu Saha, daughter of Bipad Saha at the army camp (charge No.17). From this statement we may infer that the accused Sayedee was present at the crime site from March, 26 to the entire period of the liberation struggle. Similarly D.W.15 also admitted the said incident. He, however, has imputed the responsibility upon Pak Army, who in collaboration with Danesh Molla, Sekandar Sikder, Moslem Moulana, Gani Gazi, Asmat Ali Munshi, Malek Shikder committed the incidents. These persons are the accomplices of Sayedee. Sayedee raised Shanti Committee and Razakars Bahini with them. So, by this admission, the defence has practically admitted the accused's presence at the crime site. There is consistent evidence of the prosecution in this regard. These defence witnesses intentionally absolved the responsibility of the appellant, who was the ring leader of those persons as would be evident from the discussions of the prosecution evidence in support of the charges.

The defence stressed upon ext 'AJ', a book 'পিরোজপুর জেলার ইতিহাস' in which the appellant's name was not included in the list 'Razakars' and 'Peace Committee', which according to the defence support the defence plea of alibi. This ext 'AJ' was published in July 2007 and before that, there was political polarisation of the country after the killing of Sheikh Mujibur Rahman in 1975. This court can take judicial notice that after the killing of Sheikh Mujibur Rahman, Jamat-e-Islami, a right wing religious minded political party which was banned after the liberation of the country was allowed to activate its political activities. The anti-liberation elements joined the hands with the autocrat and shared power. Delwar Hossain Sayedee became a Member of Parliament from Pirojpur twice. Ext 'AK', another book which was published in 1984 after the killing of Sheikh Mujibur Rahman. The accused and those who supported the Pak occupation army started the process of distorting the legal evidence in a concerted manner so that the perpetrators cannot be put to justice in future and this process continued till 1996. In this connection Muntasir Mamun, a columnist and a writer in his book 'ইতিহাস

দখলের ইতিহাস' has pointed out the concerted efforts made by some writers, who intentionally distorted our history of liberation, the declaration of independence and some related facts in the text books of schools and colleges. He has given the comparison of the previous issues and subsequent issues of some text books relating to historical facts and even on the point of delaration of independence. The law relating to the trial of collaborators, (The Collaborators (Spl. Tribunals) Order, 1972 (P.O.8 of 1972)) was repealed after the promulgation of Martial Law in 1975. All accused who were convicted under P.O.8 of 1972 and who were under trial were pardoned. The court may take judicial notice of those facts under sub-section (3) of section 19 of Act of 1973.

On the other hand, Mahbubul Alam Howlader (P.W.1), Ruhul Amin Nabi (P.W.2), a freedom fighter, Sultan Alam Howlader (P.W.4), an eye witness of the incident at Parerhat, Mahatab Uddin Howlader (P.W.5), another eye witness, Manik Posari (P.W.6), a victim and an eye witness, Mostafa Howlader (P.W.8), another eye witness, Altaf Hossain Howlader (P.W.9), another eye witness, Basudev Mistri (P.W.10), another eye witness, Al-haj

A.K.M. Awal (P.W.12), a person of the locality and a freedom fighter, and Gouranga Chandra Shaha (P.W.13), another eye witness have vividly narrated about the incidents of atrocities committed by the Pak army with direct participation and collaboration of accused Delwar Hossain Sayedee. They stated that accused Delwar Hossain Sayedee not only took active role in all the atrocities committed at Pirojpur, he was the one, who with his Urdu Speaking proficiency was popular to the Urdu Speaking Pak army and that due to his extra quality, the Pak army took his advice and guidance to implement their objects.

P.W.1 is a freedom fighter and a resident of the same locality of Delwar Hossain Sayedee. He has narrated the vivid picture that prompted the people of this country to take arms in their hands against the military junta after 26th March, 1971. He has also narrated the role of Delwar Hossain Sayedee. He stated that Sayedee raised the Peace Committee at Parerhat with the Jamat-e-Islami leaders such as, Sekendar Ali Shikder, Danesh Ali Molla, Moulana Mosleh Uddin, Delwar Hossain Shikder renamed Delwar Hossain Sayedee; that though Sekandar Ali Shikder, Danesh Molla and Moulana Moslem Uddin were in charge of the Peace

Committee, Delwar Hossain Sayedee having the proficiency in Urdu language developed cordial relationship with Pak occupation army. Besides, P.Ws.4, 5, 6, 8, 9, 10, 12, 13, Abdul Latif Howlader, Anil Chandra Mondal, Shahidul Islam Khan Selim, Ayub Ali Howlader, Usha Rani Malaker, Ajit Kumar Shil, Rani Begum, Sitera Begum, Md. Mostafa, Ganesh Chandra Saha, all of them hail from the same locality corroborated P.W.1 about the active part played by Delwar Hossain Sayedee as the architect of the anti-liberation element of Parerhat. Their positive statements are that Sayedee was at the crime site all along and took active role in organizing and raising the auxiliary forces at Perojpur and participated almost all inhuman acts committed there. The documentary evidence, exts 8,11, 15-22, 28, 29, 47, 48, 49 series, 50-63, 92-94, 122-150 also corroborated them. The oral statements of the neighbours of Delwar Hossain Sayedee being corroborated by documentary evidence cannot be nagated by the evidence of 5 outsider witnesses and believers of the same political idiology of Sayedee. Moreso, they made inconsistent versions.

Ext 8 is an issue of the Daily Janakantha dated 5th March, 2001. In this news paper a news item under the caption 'রাজাকার দিইল্লা' এখন মওলানা সাঈদী', it was reported that in 1971 during the liberation struggle period the misdeeds of Delwar Hossain Sayedee were not known to the new generation, but the people of Parerhat will never forget. Similar reportings were made in the Bhorer Kagoj issue of 4th November, 2001, ext-11 and the issue of Samakal dated 10th February, 2007, ext-34. These are amongst series of reports published in the news papers stating that Delwar Hossain Sayedee was a Razaker of Perojpur during the period of the liberation struggle; that he had actively participated in all atrocities of Parerhat as a member of anxiliary force of Pak army and that after the liberation he has changed his name in order to conceal his identity.

There is no doubt that some right minded religious people of this country supported the Pak occupation army from the very beginning of the declaration of independence and after the declaration of independence they involved in atrocities. The defence admitted that towards the mid July, 1971, Delwar Hossain Sayedee went to his own home while other three families left for India. If Delwar

Hossain Sayedee did not feel safety and security in Jessore town because of the alleged shelling by Pak force, it was natural that he would have returned to his own home at Pirojpur, because he was fearful of the shelling of Pak army and not at all fearful of Pak army's atrocities. He returned to his village home in the midst of liberation struggle while other families opted to leave the country. So, the claim of the defence that he took shelter in other places i.e. Sheikhhati, Dhanghata and Mohiron villages instead of returning to his own home is totally absurd story. More so, for giving religious speeches at Duhakula and other villages of Jessore, it is unbelievable story that he would stay at Jessore town by hiring a house, instead of staying at Pirojpur at his own house, which is located nearer to Jessore having communication links. It is not his case that he was teaching at a Madrasha of Jessore for which, it was not possible for him to move every day from Parerhat to Jessore town. It is also our common knowldege from which we may take judicial notice that Wajmahafils are being held at different parts of our country during a particular season, say, during antuma and winter seasons, and not in summer or in the rainy season,

and for this purpose one need not stay at a different district by renting a house.

When a Wajmahafil is arranged at a particular Madrasha, Moqtob, Mosque or other religious places, the preachers who are specialized in religion are invited from every corner of the country to deliver a speech. Even in some Wajmahafils, speakers from abroad are invited. But for preaching Wajmahafils one would stay at a different district town by hiring a house is not at all a believable story becuase, as stated above, Wajmahafils are being arranged in a particular season. It was not also a believable story that the accused would take refuge to some remote villages of Jessore for fear of Pak army's shelling towards Jessore town instead of returning to his village home because his idiology and line of thinking and those of Pakistani rullers were identical. Pakistan was created solely on politics of religion, the basis of which was on Lahore Resolution made on March, 1940. It was stated 'that geographically continuous units' are demarcated into regions which should be so constituted, with such territorial adjustments as may be necessary, that the areas in which the Muslims are in a majority, as

in north-west and eastern zones of India, should be grouped to constitute independent states in which the constituent units shall be autonomous and sovereign'.

Accused Delwar Sayedee did not explain his role in 1971, whether he supported Pakistan's ruller or he was neutral or that he supported the war of liberation. What he claimed was that till March, 1971, Wazmahafils were his only source of income and that he was delivering speeches in the Wajmahfils at different places of Jessore. If it was his profession, why not he delivered such speeches in other districts particularly in his own district Pirojpur. If he was a religious preacher, in view of his educational background, he ought to have delivered such speeches to other places outside Jessore district. This was natural, but if we accept his plea, it was not possible on his part to deliver such speeches to other districts. Secondly, if he could move to his village home without harbouring any fear of Pak army in July, 1971 he could return to his home. So, the defence plea that he stayed elsewhere at the time of commission of atrocities at Parerhat, Pirojpur for fear of Pak occupation army is totally a concocted story. His admission that after two and half months he returned

to his home at Pirojpur is sufficient to come to the conclusion that he never took shelter in villages Sheikhhati, Dhanghata, Mohiron from New Town Road, Jessore, for safety and security, and that he was all along present at Parerhat, Perojpur and raised the forces of Peace Committee and Razakars etc. at Parerhat. The story of alibi introduced by Delwar Hossain Sayedee was totally false, concocted and imaginary.

On an analysis of the above evidence we are satisfied that the defence witnesses are politically motivated witnesses and that the defence plea is not only plagued by absurdities but also unreliable and false. On consideration of the evidence in totality in support of the plea of alibi, we may arrive at the conclusion that the defence has set up an absurd story that Sayedee was staying at different villages of Jessore during the relevant time. It is also absurd story that Sayedee being a right minded preacher of religion would take refuge to village Sheikhhati or Dhanghata for safety of his life from the onslaught of Pak occupation army despite that he has his home at Pirojpur. More so, as observed above, the

defence has impliedly admitted the presence of accused at the crime site.

It is on record that due to pressure of Pak Junta, all schools, Madrahas, colleges and universities resumed academic education in May, 1971 and also compelled the institutions to hold examinations to show to the world community about the restoration of normalcy in the country, but D.W.14 stated that his Madrasha was closed during the whole period of war of liberation. Lt. General Kamal Matinuddin (Rtd.) of Pakistan army in his book 'Tragedy of Errors-East Pakistan Crisis 1968-1971' at page 255 stated 'By middle of May the Government had restored normalcy over almost all of East Pakistan. Shops were opened, factories started running, schools and colleges begun functioning, offices shorted normal attendance, TV and radio stations were under the control of administration'. If that being the position and the condition of the country which has been expressed by none other than a military general of Pak army but, a witness for the defence claimed that his Madrasha was closed. It is thus difficult to rely upon these witnesses and believe the defence plea that Delwar Hossain Sayedee was at remote

villages of Jessore till mid July, 1971. More so, these witnesses also made inconsistent statements regarding Sayedee's number of issues in 1971 as noticed from the evidence by the Tribunal from which it may be concluded that Sayedee never stayed at Jessore in 1970-1971 by renting a house. Therefore, there is no truth to the claim of the defence version. All these witnesses made tutored and contradictory versions.

Admittedly, during the liberation struggle period the Pak occupation army with the active collaboration of local Razakars, Al-Badr, al-shams and Peace Committee members killed millions of people, raped women, set ablaze of the houses of minority community and supporters of Awami League, compelled the minority community to convert to Islam and those barbarous acts could only be compared with those of Genghis Khan. It was not possible on the part of Pak army to commit such barbarous and inhuman crimes without the collaboration of these aberrated right-minded religious people like Delwar Hossain Sayedee. During that time some reporters including The New Delhi correspondent of 'The New York Times' were expelled from East Pakistan only because they published news in the medias disclosing

the true picture of atrocities committed by the Pak army. The role of the local right-wing religious people during the relevant time was reported by the New York Times issue of June, 30 as under:

> "Throughout East Pakistan the army is training now para-military home guards or simply arming 'loyal' civilians, some of whom are formed into peace committees. Besides Biharis and other non-Bengali, Urdu-speaking Moslems, the recruits include the small minority of Bengali Moslems who have long supported the army-adherents of the right-wing religious parties such as the Moslem League and Jamat-e-Islami' (Bangladesh Documents, Volume one, page 414).

About the commission of atrocities and massacres of the innocent people, Anthony Mascarenhas, a Pakistani journalist termed the acts of Pak army as 'Genocide'. 'The Guardian' London in its May, 27, 1971 issue wrote:

> 'There are scores of survivors of firing-squad line-ups. Hundreds of witnesses to the

machine-gunning of political leaders, professors, doctors, teachers and students.

'Villages have been surrounded, at any time of day or might, and the frightened villagers have fled where they could, or been slaughtered where they have been found, or enticed out to the fields and mown down in heaps. Women have been raped, girls carried off to barracks, unarmed peasants battered or bayoneted by the thousands.

'The pattern, after seven weeks, is still the same. Even the least credible stories, of babies thrown up to be caught on bayonets, of women stripped and bayoneted vertically, or of children sliced up like meat, are credible not only because they are told by so many people, but because they are told by people without sufficient sophistication to make up such stories for political motives.

'We saw amputation of a mother's arm and a child's foot. These were too far from the boarder, and gangrene developed from their

bullet-wounds. Many saw their daughters raped and the heads of their children smashed in. Some watched their husbands, sons, and grandsons tied up at the wrists and shot in more selective male elimination.

'No sedative will calm a girl now in Bongaon Hospital-she is in a permanent delirium crying, "They will kill us all, they will kill us all". Next to her is a girl still trembling from day-long raping and a vaginal bayonet wound'.

'About 400 were killed at Chuadanga while on their way to India, surrounded and massacred. Why? Lest they take tales to India? or because choosing a certain democratic system under Sheikh Mujib means forfeiting the right to live in any country.'

(Bangladesh Documents, Vol-one, Page 403-04)

Admittedly Delwar Hossain Sayedee got his education in Madrasha and he has been involved in Jamat-e-Islami politics from his early life. He was closely associated with Golam Azam, the founder of East Pakistan Jamat-e-Islami, which is a right-wing religious political party.

From this background if the people like him did not join the hands of the butchers or collaborate them by forming Peace Committee, Razakars Bahini etc. as auxiliary forces, the history of our liberation struggle would have been otherwise. It was not at all practicable on the part of Pak occupation army to commit atrocities after taking control of the country without the active collaboration of the right minded religious people like Sayedee. It was not at all possible for them to perpetrate those barbarous activities like killing of unarmed innocent three million people, rape of women and girls, maiming, conversion and committing massacres by destruction of houses by fire. The international medias including 'The Guardian' and the 'New York Times' supported the prosecution claim of the formation of Peace Committee and raising Razakars force with the right minded religions leaders and supporters. The war lingered for nine months only because the right-wing religious minded people like Delwar Hossain Sayedee supported them and attempted to divert the minds of illiterate religious minded people towards Pakistan by using the trumpcard of Islam, and exterminated the minority community and pro-liberation minded people. The

reports in ‘New York Times’ and ‘The Guardian’ were not disputed by any one else till now.

The oral and the historical documents are sufficient to hold the view that the accused not only was physically present at the crime site during the relevant times, he also raised the Razakars Bahini at Parerhat and Pirojpur as auxiliary force of Pakistani army as defined in section 2(a) of the Act of 1973 and with his proficiency in Urdu, he became a close associate of the army. The accused was rightly prosecuted as a member of auxiliary force under section 3(1) of the Act of 1973 for committing the offences specified in section 3(2) of the Act. The above relevant facts have proved that at the time of commission of horrific crimes at Parerhat, the status of the accused was a potential leader of Peace Committee and Razakars Bahini and a close accomplice of Pakistani occupation army. The Tribunal, in the premises, was perfectly justified in its view that the prosecution witnesses proved beyond all shadow of doubt that Delwar Hossain Sayedee was present at Parerhat at the time of commission of atrocious acts.

Accused's plea of staying at Jessore town for delivering religious speeches of Wajmahafils at different places of Jessore is not borne out by reliable evidence because his village home is also situated nearer to Jessore. If he could move to the villages of Jessore from the town, it was also probable on his part to move those areas from Pirojpur because Wajmahafils are not arranged every day.

Despite a plea of alibi being taken and not proved, the burden is upon the prosecution to prove the charges against the accused. While it is the burden of the prosecution to prove beyond reasonable doubt that the accused was present at the scene of the crime at the time of its commission, the burden of going forward with the evidence in regard to a fact which is specially within his knowledge, the accused has to show that he was elsewhere at the moment of the crime. If the burden of going forward with the evidence to be discharged by the accused raised a reasonable doubt of his presence at the scene of the crime at the time that it was committed, it is not incumbent upon him to prove his alibi beyond a reasonable doubt or by a preponderance of evidence. In view of the statement

of law discussed above, let us now consider whether the Tribunal was justified in finding the accused guilty of the charges.

There is no gainsaying that the offences of Crime against Humanity, War Crimes, Genocide etc. are perpetrated by autocrats or authoritarians, their forces and auxiliary forces. When international organizations, human rights organizations and activists raised voice against such atrocious activities, it is seen that the autocrats tried to suppress those facts, caused disappearance of evidence and sometimes constitute commissions for ascertaining the excesses as an eye wash. The Pakistani ruller also constituted a commission headed by Hamoodur Rahman,J. In most cases, the perpetrators destroy and/or disappear the legal evidence of their atrocious acts. Normally the investigation, the prosecution and the adjudication of those crimes often take place years or even decades after their actual commission. In Bangladesh this has caused because of fragile political environment and the apathy of the succeeding government. In case of Bangladesh the process has started after 40 years. After the killing of Sheikh

Mujibur Rahman by some aberrated army officers, the killers were rewarded instead of putting them to justice and the perpetrators of those inhuman crimes in 1971 were repatriated, and the cases then pending against them were dropped, and the convicted persons were pardoned. This delayed prosecution is nevertheless supported by various international legal actors.

Naturally these trials are based on the old evidence. One of the challenges associated with the delayed criminal justice for such crimes is the location, treatment and assessment of old evidence. Evidence collection and interpretation in atrocity cases is complicated by the instability of post-atrocity environments which results in much evidence being lost or inadequately preserved and the apathy of the witnesses to disclose the real story after such long delay under the changed circumstances. In this connection Alphons M.M. Orie, a Judge of International Criminal Tribunal for the former Yogoslavia (ICTY) in the Hague, in an article namely 'Adjudicating Core International Crimes cases in which Old Evidence is Introduced' on "The limits of the Legal Approach to Old Evidence" observed 'It might therefore be that the legal

approach does not produce a fully satisfactory answer to the challenges encountered when dealing with 'Old Evidence' about events that have long since passed'. On the question of probative value of witness evidence, Judge Alphons M.M. Orie was of the view that even if the evidence of a witness was recorded at a point of time closer to the occurrence, it may enable the comparison of a witness statement given almost immediately after the event, with the evidence of the same witness given in 40/50 years later. Even if the statement is unreliable, it does not mean that the witness lied but rather that this needs to be further explored so as to discover the exact explanation for its shortcoming. So if, on the basis of an early recording, discrepancies are formed, this does not automatically mean that old evidence is bad.

Martin Witteveen, an Investigation Judge for International Crimes in the District Court in The Hague, the Netherlands, in an article on 'Dealing with Old Evidence' on the question of 'Increased appreciation of Evidential Difficulties in the Investigation and Prosecution of International Crimes' observed 'The crimes are perpetrated by accused persons acting in groups,

rather than as individuals. Sometimes the structures of the groups are quite loose and badly documented. Sometimes the perpetrators are senior figures in an army or a paramilitary group with a well-defined structure and meticulous documentation. Tribunals, as a policy, aim their efforts at prosecuting the most responsible for the crimes under investigation, most likely the leaders of these military or paramilitary groups. ... More often these most responsible persons or leaders were not involved in the crimes directly in the sense that they personally killed or mutilated victims. They may have ordered or otherwise investigated the killers and attackers, but often they are military commanders or political leaders, who may have a more indirect criminal responsibility for the crimes'.

The perpetrators of the crimes of the nature are never been exempted from prosecution because they committed the offences against humanity. Even the perpetrators of crimes or their supporters of the Second World War are still being hounded in Germany after 70 years and being tried there. Since Einsatzgruppen trials in 1958 relating to crimes committed in world war 11 and,

the beginning of the Auschwitzprozesse in Frankfurt in the early 1960s, the German courts in particular have increasingly faced difficulties concerning both the credible identification of accused persons, especially because they were for the most part relatively low level perpetrators, and also the connection of individual accused to specific criminal acts. 'Falsification or substitution of identity documents, together with the difficulty of witnesses in identifying a person after they saw them in a Wehrmacht or SS uniform in a camp or killing site, proved to be stumbling blocks in a number of cases'. (David Cohen on 'The Passage of time, the Vagaries of Memory, and Reaching Judgment in Mass Atrocity cases).

John Demjanjuk was taken as a prisoner of war by German forces in the Ukraine in 1942 on the allegation that he was posted to the extermination centre at Sobibor in 1943. He emigrated to USA but in 1977, his citizenship revocation proceeding begun on the ground that he was an accused of war crimes. He was stripped of his USA citizenship and in an extradition proceeding, he was ultimately deported to stand trial in Isreal. Demjanjuk's defence was that he had been inaccurately identified as

'Ivan the Terrible'. His defence proved in vain and was convicted in 1988 but the Israeli Supreme Court overturned his conviction on the reasoning that he had been wrongly identified by the witnesses. He returned to USA but in 2001, he was again made accused in USA of having served as a guard at the Sobibor and Flossenburg Camps. In 2009, he was deported to German in a deportation proceeding and this time he was charged as an accessory to the murder of 20,000 persons at Sobibor. Though the prosecution could not connect him to specific crimes, rather to his role at Sobibor by working as a guard at a death camp, he was a participant in killings that took place there. He was convicted by the German Court in May, 2011. (The passage of Time (ibid) (BBC, 12 May 2011))

One of the striking things about Demjanjuk's trial was that there were no longer any living witnesses brought to court to identify him and testify against him. With the passage of so many decades, witnesses had died or were no longer in a position to testify. The prosecution, deprived of witness identification in court that in any event would have been highly contested, relied instead upon documentary evidence. The defence claimed that in the

absence of corroborative witness identification, the documentary evidence was insufficient because his SSID was part of forgery campaign by KGB. The court found that Demjanjuk was guilty. (The passage of Time (ibid)). The German court relied on documentary evidence even after 69 years of committing crime by Demjanjuk, because the historical documents were kept and preserved intact, but in our country, it is our tragedy that almost all historical documents were distorted within 5 years of the independence. We do not feel shy to support the perpetrators of those crimes. This is totally an insult to the martyrs. We forget out past history. The past becomes something that leads up to the present, the moment of action, the future something that flows from it, and all three are inextricably intertwined and interrelated.

In a number of cases in various Tribunals, witnesses testify as if they had actually seen an event when in fact they had only heard about it. In The Prosecutor V. Akayesu, ICTR-96-4-T, para 55, the International Criminal Tribunal for Rwanda (ICTR) was confronted with the problem of whether witnesses were systematically lying and collecting evidence to ensure conviction, as the defence

claimed, or whether other factors were at work. The court responded, however, by pointing out other factors that could produce the kind of inconsistencies noted by the defence. It was noted that such discrepencies could be due to the fallibility of perception and memory and the operation of the passage to time. It was observed:

> "The majority of the witnesses who appeared before the Chamber were eye-witnesses, whose testimonies were based on events they had seen or heard in relation to the acts alleged in the Indictment. The Chamber noted that during the trial, for a number of these witnesses, there appeared to be contradictions or inaccuracies between, on the one hand, the content of their testimonies under solemn declaration to the Chamber, and on the other, their earlier statements to the Prosecutor and the Defence. This alone is not a ground for believing that the witnesses gave false testimony [...]. Moreover, inaccuracies and contradictions between the said statements and the testimony given before the Court are also the result of

> the time lapse between the two. Memory over time naturally degenerates, hence it would be wrong and unjust for the Chamber to treat forgetfulness as being synonymous with giving false testimony."

In Prosecution V. Kunarac *et al*, IT-96-23-T, para 564, the International Criminal Court for the former Yugoslavia (ICTY) considered the issue of assessing credibility; memory loss, passage of time and trauma as impacting witness testimony. It many cases the trial chamber concluded that despite various inconsistencies the prosecution's burden had been met. In regard to rape of one witness by Kunarac, the judgment concludes:

> "The Trial Chamber regards this lapse of memory as being an insignificant inconsistency as far as the act of rape committed by the accused Kunarac is concerned. In particular, the Trial Chamber is satisfied of the truthfulness and completeness of the testimony of FWS-95 as to the rape by Kunarac because, apart from all noted minor inconsistencies, FWS-95 always testified clearly and without any hesitation

> that she had been raped by the accused Kunarac [...]. As already elaborated above, the Trial Chamber recognises the difficulties which survivors of such traumatic events have in remembering every particular detail and precise minutiae of these events and does not regard their existence as necessarily destroying the credibility of other evidence as to the essence of the events themselves.”

Keeping in view of the above opinions, let us consider whether the prosecution has been able to prove the charges against the accused.

Charge No.6 is as under:

‘That on 7th May, 1971 accused Delwar Hossain Sayedee led a team of Peace (Shanti) Committee to receive Pakistani Army at Parerhat Bazar under Pirojpur Sadar Police Station, then the accused identified the houses and shops of the people belonging to Awami League, Hindu Community and supporters of the Liberation War. The accused as one of the perpetrators raided those shops and houses and looted away valuable including 22 seers of gold and silver from the shop of Makhanlal Saha. These acts are

considered as crime of persecution on political and religious grounds as crimes against humanity'.

In support of the charge the prosecution has examined P.Ws.1, 2, 4, 5, 6, 8, 9, 10, 12, 13 and Mizanur Rahman Talukder (P.W.3). The Tribunal after analysing the evidence held that 'all the attacks including looting of valuables made by Pakistani Army coupled with local members of Peace Committee and Razakars bahini were directed against unarmed civilian population specially targeting Hindu Community and liberation loving people. All the aforesaid 8 prosecution witnesses have categorically testified that on 7th May, 1971, accused Delwar Hossain Sayedee was very much present at Parerhat and took active part in all occurrences of looting of goods from 25/30 shops and houses of Hindus and Awami Leagues situated at Parerhat area under Pirojpur Sub-Division. Aforesaid P.Ws. have succinctly stated that accused Delwar Hossain Sayedee, could speak in Urdu, so he used to accompany the Pakistani forces to the place of occurrences and identified shops and houses of pro-liberation people and Hindu community for committing crimes such as looting of goods, setting fire on houses of

civilians, etc. The evidence discussed above appears to be unshaken. It sufficiently indicates that the accused substantially contributed and facilitated to the Crimes against Humanity with full knowledge'.

It was argued on behalf of the defence that the Tribunal erred in law in relying upon the evidence of P.Ws.1, 2, 3, 4, 8, 9, 12, 14 and finding the appellant guilty of the charge in failing to consider that the prosecution did not examine the victims whose shops were looted. It was further urged that the Tribunal erred in law in holding that D.Ws.1, 3, 13, 14, 16 support the charge and that it failed to consider that ext 'V' and 'AJ' which negated the charge.

It may be pointed out here that the incident in respect of this charge has admittedly been committed in the manner stated by the prosecution, inasmuch as, the defence has not disputed the incident. It has only disputed the complicity of the accused. This charge relates to the looting of valuables including 22 sears of gold and silver from the shop of Makhan Lal Saha and also from other shops and houses by the appellant and his accomplices. P.W.1 has narrated the formation of Peace

Committee at Parerhat during the initial period of the liberation struggle with the anti-liberation actvists including the appellant. He also narrated the manner of arrival of Pak army at Parerhat on 7th May. He stated that Delwar Hossain Sayedee received them and spoke with captain Ejaj and took them towards Parerhat bazar; that Delwar Hossain Sayedee showed the houses and shops of Hindus and Awami League supporters by pointing fingers to captain Ejaj, who had directed to loot those shops; that thereafter, he came to know that Sayedee distributed the booty among themselves and that captain Ejaj took 22 seers of gold and silver, which were looted from the chest of Makhan Saha. P.W.2 corroborated him in material particulars only with the deviation that the Pak army took 22 seers of gold and silver. P.W.3 made omnibus statement regarding the looting. P.W.4 made statements in corroboration with P.W.1. P.W.5 also made omnibus statement in support of the charge. P.W.6 did not corroborate them. P.W.7 while corroborating P.Ws.1, 2, 4 regarding the raising of Shanti Committee and the manner of arrival of Pak army, made omnibus statement on the question of looting and the participation of the

appellant. Similar are the statements with regard to P.Ws.9, 10, 12 and 13.

Abdul Latif Howlader, Md. Ayub Ali Howlader and Ajit Kumar Shil made superficial statements in support of the charge. We noticed from their statements that some of the witnesses simply stated that the members of the Peace Committee with the help of Pak army were involved in the looting of shops and houses of Hindu community and Amami League supporters. Except Makhan Saha's shop, they did not mention specifically whose shops and houses were looted by the accused and other persons. On consideration of the nature of evidence adduced by the prosecution, it is difficult to come to the conclusion that the act of looting attracts an offence of 'other inhumane acts' used in clause (a) of sub-section (2) of section 3. Or in the alternative, it is too remote to come to the conclusion that the act of looting in the manner narrated by P.Ws.1, 2, 4 and other witnesses attracts an offence of Crimes against Humanity.

The expression 'inhumane act' has nexus with cruelty, that is to say, there must be presence of mental violence or undermining the dignity of a person or an act which is

inhumane in nature. Word 'inhumane', according to Concise Oxford English Dictionary, is without compassion for misery or suffering. According to 'The Chambers Dictionary' New Edition, 'inhumane' means lacking humane feelings, cruel. In Prosecutor V. Galic (ICTY, IT-98-29), it was observed that the Crime of inhuman acts is a residual clause for serious acts, such as 'the act or omission caused serious mental or physical suffering or constituted a serious attack on human dignity'.

The elements of 'inhumane acts' mentioned in Article 7(1)(K) of the Rome Statute are as under:

"1. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.

2. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.

3. The perpetrator was aware of the factual circumstances that established the character of the act.

4. The conduct was committed as part of a widespread of systematic attack direted against a civilian population.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."

The 'other inhuman acts' defined in the Rome Statute are not applicable to our Act of 1973 but in the absence of any definition or explanation as to the constituents of 'other inhuman acts' in our Act, there is no legal bar to take in aid of other Statute on the subject and the opinions of legal luminaries on the field for guidance. Prof. Darryl Robinson at the Rome Conference (AJIL Vol 93, No.1 (Jan 1999) said about 'other inhuman acts' as under:

"As the final heading, 'other inhumane acts' appeared in the major precedents (including the Nuremberg Charter, the Tokyo Charter, Control Council Law No.10 and the ICTY and ICTR Statutes), many delegations raised grave concerns about its imprecise and open-ended nature ... The solution was to agree to include

> this final heading but to provide a clarifying threshold, specifying that the acts must be of a character similar to that of the other enumerated acts and must intentionally cause great suffering or serious injury to mental or physical health. Unlawful human experimentation and particularly violent assaults were two possibilities considered likely to fall within this heading."

Taking consideration of the evidence, and looking at the constituents of 'other inhumane acts' of the Rome Statute, and the opinions of the legal luminaries of international standard, it is my considered view that the act of the offender must be directed against a civilian population, that and secondly, the act may be intended to imply the presence of violence with cruelty; or persecution of civilian population or human dignity, a crime of a collective nature excluding single or isolated act, that is to say, the critical feature of the requirement is that 'other inhumane acts' should be, by their nature and the gravity of their consequences of comparable character to the other enumerated crimes.

To assess the seriousness of an act, consideration must be given to all the factual circumstances of the case. It may include the nature of the act, the context in which it has occurred, the personal circumstances of the victim including the age, sex, health and the physical, mental, and moral affects of the act upon the victim. The violence may lead to serious consequences other than bodily injury such as, 'great suffering' or injury to health, mental, dignity or physical. In this case in support of the charge, the witnesses made general statements as regards the manner in which such incidents were perpetrated as if it were perpetrated in normal condition of the country. The evidence on record does not show that the act of looting has affected great suffering or caused injury to health, mental or physical to the victims. Thus I hold that the prosecution has failed to prove the charge by adducing legal evidence against the accused and therefore, the accused is entitled to get the benefit of doubt in respect of the charge. The Tribunal has not at all applied its judicial mind in finding the accused guilty of the charge.

Charge No.7 is as under:

'That on 8th May, 1971 at about 1.30 p.m. accused Delwar Hossain Sayedee led a team of armed accomplices accompanied with Pakistani Army raided the house of Shahidul Islam Salim, son of Nurul Islam Khan of village Baduria under Pirojpur Sadar Police Station and he identified Nurul Islam Khan as an Awami League leader and his son Shahidul Islam Salim, a freedom fighter, then the accused detained Nurul Islam Khan and handed over him to Pakistani Army who tortured him and after looting away goods from his house, the accused destroyed that house by setting fire. The act of destruction of the house by fire is considered as crime of persecution as Crimes against Humanity on political ground and the accused also abetted in the torture of Nurul Islam Khan by the Pakistani Army'.

In support of the charge the prosecution has examined P.Ws.1, 4, 8, 9 and 12 and relied upon the statements of Abdul Latif Howlader, exhibit 258, Shahidul Islam Khan Salim, exhibit 261 and Ayub Ali Howlader, exhibit 262. The Tribunal upon analyzing the evidence particularly the evidence of P.Ws.1, 8 and 12 held that on 8th May, 1971, the Pak Army alongwith 30/35 Razakars headed by Delwar Hossain Sayedee went to village Baduria where the latter

identified the house of Shahidul Islam Selim, a freedom fighter, set ablaze of his house which was witnessed by P.W.8, which according to it is a crime of persecution; that this attack was directed against civilian population with an intent to destroy a political group; that D.Ws.3, 7 and 15 corroborated the prosecution case to the extent that on the fateful day the Pak Army along with some Razakars went to the village Baduria and destroyed the house of Nurul Islam Khan by setting fire; that the evidence of both the parties if considered conjointly indicated that the Pak Army with intent to make systematic attack on large scale destroyed the houses of two villages of Baduria and Chitholia with the assistance of local Razakars and that accused Delwar Hossain Sayedee substantially contributed and facilitated the commission of Crimes against Humanity with full knowledge as he was present at the time of commission of those crime sites.

It is contended on behalf of the appellant that the Tribunal erred in finding the appellant guilty of the charge relying upon the evidence of P.Ws.1, 8 and 12 in failing to consider that these witnesses made inconsistent statements in material particulars. It is further

contended that these witnesses did not state material facts to the investigation officer; that D.Ws.3, 7 and 15 who are neutral witnesses proved that the appellant was not involved in the said incident. In this connection the learned counsel has drawn our attention to the relevant portion of the evidence of P.Ws.1, 8 and 12 and D.Ws.3, 7 and 15 and submits that their evidence sufficiently prove that the prosecution has miserably failed to prove the participation of the appellant in the said crime and therefore, the appellant is entitled to get the benefit of doubt. On the other hand, learned Attorney General has drawn our attention to the incriminating portion of the evidence of P.Ws.1, 4, 8, 9 and 12 and the statements of Abdul Latif Howlader, Shahidul Islam Khan Selim and Ayub Howlader and submits that the prosecution has proved the charge beyond shadow of doubt and that the Tribunal is justified in convicting the accused of the charge.

P.W.1 Md. Mahbub Alam Howlader stated that after the crack down by the Pak occupation army on the night following 25th March, 1971, as per direction of Sheikh Muzibur Rahman the people organized Mukti Bahini for fighting against the tyrant regime and started guerrilla

fighting and sometimes thereafter, the anti-liberation forces like Sekandar Ali Sikder, Danesh Ali Molla, Moslem Uddin Moulana, Azahar Ali Talukder, Delwar Hossain Sayedee, Mohsin, A. Karim, Habibur Rahman Munshi, Sobhan Moulana, Hakim Kari and others formed Shanti Committee at Parerhat. Besides them, Madrasha students, the anti-liberation activists formed Razakars force and they started working as collaborators of Pak army. In the first part of May, 1971, Pak army came to Pirojpur and as Delwar Hossain Sayedee could speak Urdu fluently worked as interpreter of captain Ejaz and entered to Parerhat with the Pak occupation army. He stated that after looting the shops of Makhon Lal Saha, Modan Saha, they came to Baduria and Chitolia villages and looted the houses of Manik Posari and others and destroyed their houses by fire and that though Sekandar Ali and Danesh Ali Molla took leading part, Delwar Hossain Sayedee having proficiency in Urdu speaking developed closeness with captain Ezaj and actively participated in those atrocities. In course of cross-examination, he reaffirmed his claim made in chief and stated that Delwar Hossain Sayedee was present at Parerhat and denied the defence suggestion that Sayedee

was not involved in the looting and arson of the houses of Manik Posari. The defence could not bring anything by cross-examining him to discredit his testimony.

Sultan Ahmed Howlader (P.W.4) corroborated P.W.1 as regards the raising of Peace Committee at Parerhat area with Delwar Hossain Sayedee. This witness claimed that he saw the atrocious acts perpetrated to the houses of Manik Posari and Nurul Islam Khan and stated that the appellant Delwar Hossain Sayedee along with Sekandar Ali Shikder, Danesh Molla, Moslem Moulana and other Razakars were involved in the said incidents. The defence thoroughly cross-examined him but failed to discredit his testimony in any manner.

Md. Mostafa Howlader (P.W.8) corroborated P.Ws.1 and 4 as regards the formation of Peace Committee with the appellant in Parerhat area. He also stated regarding the incident of destruction caused to the houses of Nuru Khan by the local Razakars with the help of Ayub. By pointing fingers at Delwar Hossain Sayedee he stated that Sayedee identified the house of Nuru Khan. In course of cross-examination, he reaffirmed his statement in chief stating that before 8th May, 1971, none damaged Saiz Uddin

Posari's houses. This suggestion indicated that the defence has also admitted the destroy of the houses of Saiz Uddin Posari by fire but according to the defence, the houses were damaged before 8th May, 1971. The defence failed to bring anything to show that the houses were destroyed before 8th May, 1971. It did not adduce any evidence that the incident took place prior to 8th May. He reaffirmed his statement in a reply to another query that he saw the incidents of setting fire from a distance of about 200/300 yards. He specifically mentioned the distance between the place where he was standing and the incident houses, which according to him was the bank of the canal. He denied the defence suggestion that Delwar Hossain Sayedee was not present at Parerhat on 4th or 5th May. He was thoroughly cross-examined by the defence but failed to shake his testimony in any manner. The inconsistencies which defence tried to establish were trifling in nature.

Md. Altaf Hosain (P.W.9) also corroborated the statements of the aforesaid witnesses in respect of the raising of the Peace Committee and Razakars force under the leadership of Sekandar Sikder and that the accused

Delwar Hossain Sayedee was one of them. He also stated in respect of the atrocities committed by the Razakars force and Shanti Committee members at Parerhat and stated that all the incidents of Parerhat were perpetrated by the active participation of Delwar Hossain Sayedee. He denied the defence suggestion that Delwar Hossain Sayedee was not present at Parerhat from the beginning of the liberation war till mid July. He was thoroughly cross-examined by the defence but it failed to shake his testimony in any manner.

Shahidul Islam Khan in his statement (ext-261) stated that on getting the information that Pak occupation army would enter into his village on 8th May, 1971, all the members took shelter at the nearby jungle and observed the movements of Pak Army. At noon Sekandar Shikder, Danesh Molla, Delwar Hossain with 8/10 Razakars entered into his house with Pak Army. They detained his father and tortured him. They looted away valuable goods from the house and set ablaze of the house. Ayub Ali Howlader (ext-262) in his statement made similar statement in corroboration with Abdul Latif Howlader. Similar is the statement of Abdul

Latif Howlader (ext-258). In order to avoid repetition, I have refrained from reiterating his statement.

Their statements were recorded by the investigation officer Md. Helal Uddin (P.W.28). This witness stated that after the examination of some witnesses, the production of the remaining witnesses before the Tribunal was not possible due to time restraint and threat given to them. In this connection he stated that he submitted a detailed report to the Chief Prosecutor stating that in course of investigation he recorded the statement of Asish Kumar Mondal, exhibit 254; Sumati Rani Mondal, exhibit 255; Soman Mistri, exhibit 256; Suresh Chandra Mondal, exhibit 257; Abdul Latif Howlader, exhibit 258; Anil Chandra Mondal, exhibit 259; Sukh Ranjan Bali, exhibit 260; Shahidul Islam Khan Selim, exhibit 261; Md. Ayub Ali Howlader, exhibit 262; Usha Rani Malaker, exhibit 263; Ajit Kumar Shil, exhibit 264; Rani Begum, exhibit 265; Sitara Begum, exhibit 266; Md. Mustafa, exhibit 267 and Gonesh Chandra Saha, exhibit 268. He proved their signatures and contents of their statements.

The defence cross-examined him days together. He stated that he was informed by Manik Posari that the

accused persons threatened him, which he knew firstly on 18th May, 2001, and accordingly, he instructed him to move cautiously. Subsequently, the Officer-in-Charge, Pirojpur recorded G.D. Entry Nos.673 dated 15.5.2010 and 1367 dated 29.5.2010 over the threats. Subsequently Abdul Hannan Khan, his superior officer wanted a report regarding those two G.D. entries along with five other G.D. Entries in respect of the threats given to Ayub Ali Howlader, Shahidul Islam Khan, Abdul Latif Howlader and others earlier. He further stated that the last G.D. Entry No.337 dated 14.1.2011 was made with Indur Kani police station by Mostafa Khalifa. The defence thoroughly cross-examined him but nothing could be elicitated which made his explanation unreliable. He stated that when he went to the house Shahidul Islam Khan with the process, he could not find any body else; that he found one neighbour namely Dhalim; that he met his daughter later on and noticed that Selim's wife was inside the house; that after she came to know about his identity, Selim's daughter became furious and queried him as to why he came to take her father for giving evidence in the case; that she stated that her father was manhandled by the supporters of the accused for

making statement; that her father instituted a case and her educational career was about to be closed due to such threat and that her father would not depose unless the dacoits were apprehended. On further query as to when and who had threatened to Shahidul Islam, his daughter told him that two persons came to their house and threatened her father. Pursuant to that threat, he stated that he inquired into the matter and submitted a report. He further stated that he sent other officers on three occasions to bring the witness but they failed to trace his whereabouts.

In respect of Abdul Latif Howlader, P.W.28 stated that when he went to the house, Mahbubul Alam Howlader was with him; that he found his wife in the house and talked with her from outside; that he stayed there for half an hour and asked his neighbours to inform him about his whereabouts, but none could furnish any information; that they intimated him that occasionally the witness comes to his house; that he directed the local police to trace out his location but they could not furnish any tantative information and that he went twice for bringing Abdul Latif Howlader. In respect of Ayub Ali Howlader, this

witness stated that he went to his house with the process but he could not find him at home; that it was told that the witness was also threatened and his daughter requested him not to produce her father to depose in the case. So prosecution has explained sufficiently why it did not examine those three witnesses.

The Tribunal enjoins the discretionary power under sub-section (2) of section 19 of the Act of 1973 to receive in evidence any statement recorded by an investigation officer if it is satisfied that the attendance of such witness cannot be procured without any amount of delay. The Tribunal, in the premises, has rightly exercised its discretionary powers in the facts of the given case and legally admitted their statements as evidence as per Rules. As observed above, Abdus Salam Howlader (D.W.15) also admitted the incident of looting and setting ablaze of the houses of Shahidul Islam Khan Selim only because he was involved in Awami League politics. He stated that he saw the incident from the northern side of the bridge when the Pak army with Peace Committee members were approaching towards Parerhat Bazar. He narrated the incident of entering of the Pak army with

the help of Peace Committee members to Parerhat Bazar in the similar language of P.W.8 with the exception that according to him, Dewlar Hossain Sayedee was not with them.

P.Ws.2, 4, 8 and 9 corroborated each other regarding Delwar Hossain Sayedee's participation in the incident and witnesses Shahidul Islam Khan, Ayub Ali Howlader and Abdul Latif Howlader also corroborated them in material particulars. The defence has also admitted the incident. So, there is no denial of the fact that there was no dispute about the incident and that the said incident was witnessed by the local people. D.W.15 also admitted that the members of the Peace Committee showed the houses to the Pak Army and that they set fire of the houses. On an evaluation of the evidence, it is found that Delwar Hossain Sayedee was a member of Peace Committee as well as a Razakar of Parerhat area. The plea of alibi taken by the appellant Delwar Hossain Sayedee has not been proved by adducing reliable evidence, rather the defence has admitted his presence at the crime site. It is evident from the evidence on record that Delwar Hossain Sayedee was present at Parerhat during the whole period of

liberation struggle and that he was acting as bridge between the Pak army and the Peace Committee members in respect of all incidents of crimes committed at Parerhat as he was the one who has proficiency in Urdu speaking. It was also proved by the prosecution that Delwar Hossain Sayedee was a member of Peace Committee as well as Razakar, who took active role in organizing and perpetrating all Crimes against Humanity at Parerhat. The appellant was not only involved in the act of looting, it was perpetrated against civilian population for political and racial grounds, and the perpetration was committed with cruelty is evident from the nature of the acts. In view of the above, the Tribunal was perfectly justified in finding the appellant guilty of the charge but acted illegally in not awarding him a separate sentence of the said charge. Considering the nature of the offence and the role of the appellant in perpetrating the crime and also considering the said charge being an independent one, it ought to have awarded a separate sentence.

Charge No.8 is as under:

'That on 8th May, 1971 at about 3.00 p.m. under the leadership of accused Delwar Hossain Saeydee and his

accomplices accompanied with Pakistani Army raided the house of Manik Posari of village Chitholia under Pirojpur Sadar police station and caught his brother Mofizuddin and one Ibrahim @ Kutti therefrom. At his instance other accomplices after pouring kerosene oil of five houses, those were burnt to ashes causing a great havoc. On the way to Army Camp, the accused instigated Pakistani Army who killed Ibrahim @ Kutti by gun-shot and the dead body was dumped near a bridge, then Mofiz was taken to Army Camp and was tortured. Thereafter, the accused and others set fire on the houses of Hindu Community at Parerhat Bandar causing huge devastations. The acts of looting goods and setting fire on dwelling houses are considered as persecution as Crimes against Humanity on religious ground. The accused directly participated in the occurrences of abduction, murder and persecution which are identified as Crimes against Humanity'.

This charge contains two parts, the first part is that the appellant and his accomplices with the assistance of Pak Army raided the houses of Maink Posari, caught Mofizuddin and Ibrahim Kutti and subsequently Ibrahim Kutti was done to death and the second part of the charge

is that the appellant and others set fire of the houses of Hindu Community of Parerhat Bandar which is a persecution on religious community and thereby the accused has committed Crimes against Humanity. In support of this charge, the prosecution has examined Mahabubul Alam Howlader (P.W.1), Ruhul Amin Nabin (P.W.2), Manik Posari (P.W.6), Mofiz Udddin Posari (P.W.7), Mostafa Howlader (P.W.8), Basu Dev Mistri (P.W.10), Abdul Jalil Sheikh (P.W.11), Abdul Awal (P.W.12) and also relied upon the statements of Abdul Latif Howlader (ext-258), Shahidul Islam Selim (ext-261), Ayub Ali Howlader (ext-262), Rani Begum (ext-265), Sitara Begum (ext-266) and Mohammad Mostafa (ext-267). The defence has also admitted the incident of destroying the houses of Manik Posari by fire and killing of Ibrahim Kutti by its witnesses Abdur Razzak Akond (D.W.2), Jamal Hossain Fakir (D.W.7) and Golam Mustafa (D.W.11), but according to them, the accused was not involved in those incidents, and secondly, Ibrahim Kutti was killed elsewhere and not in the manner as alleged by the prosecution.

The Tribunal after evaluating the evidence held that on the day of occurrence the Pak Army with a good number

of Razakars including Delwar Hossain Sayedee came to the house of Manik Posari, detained Ibrahim @ Kutti and Mofiz Uddin Posari, looted away valuables by the local Razakars, set fire on the houses of Rais Uddin, Helal Uddin, Sayed Uddin, Manik Posari, Nurul Islam Khan; that when those two victims were trying to flee away the Razakars caught them hold, fastened their hands by rope, drag them towards Parerhat Razakar Camp and killed Ibrahim Kutti near the bridge by Pak Army; that they took Mofizuddin to the camp and tortured him there, who somehow managed to escape therefrom. It was further observed that Mofizuddin Posari is an eye witness of the killing of Ibrahim Kutti and that the prosecution has been able to prove the charge beyond shadow of doubt.

On behalf of the appellant it was argued that the Tribunal erred in law in believing P.W.2 despite that he made inconsistent statements; that P.W.4 is not a reliable witness; that the claim of P.W.6 that he witnessed the incident was improbable, inasmuch as, he contradicted with P.W.10 in material particulars; that P.W.7 is an unreliable witness as he made totally different version and also made contradictory statements; that P.W.9 made

omnibus statements; that the other witnesses also made inconsistent statements and that their presence at the scene of crime was also doubtful. Learned counsel has also submitted that the complicity of the appellant in the killing of Ibrahim Kutti is not borne out by the FIR lodged by Momtaz Begum, exhibit-A and that the other documentary evidence sufficiently suggested that the appellant was not in any way involved in the incident of killing.

P.W.1 is a freedom fighter and he made positive statements that accused Delwar Hossain Sayedee was present during the during the period of war of liberation at Parerhat; that with the help of Madrasha students and anti-liberation forces, Delwar Hossain Sayedee raised Razakars Bahini as auxiliary force of Pak occupation army and that in the first part of May, 1971, the Pak army came to Pirojpur. He then narrated the atrocities committed by the Pak army in collaboration with Razakars and Shanti Committee members. In course of cross-examination, the defence failed to shake his testimony on the question of accused Delwar Hossain Sayedee’s role during the liberation struggle period at Pirojpur. P.W.2 corroborated

the evidence of P.W.1 in material particulars. He also deposed about the role of Delwar Hossain Sayedee at Pirojpur by raising the Peace Committee and Razakars Bahini at Parerhat including the incident of 8th May, 1971. He stated that on the day, the members of Peace Committee and Razakars looted the houses of Roisuddin Posari, Helal Uddin Posari, Soijuddin Posari, Manik Posari with the help of Pak army and after looting they set ablaze of their houses. He was also thoroughly cross-examined by the defence but it failed to bring anything to make his statement unworthy of credit.

P.W.6 also corroborated P.Ws.1 and 2 as regards Delwar Hossain Sayedee's role of raising the Razakars force and Shanti Committee and also stated in support of charge No.8. He is an eye witness. According to him, on 8th May, 1971, the Pak army being accompanied by the appellant and other Razakars entered into his house from Parerhat Bandar; that on seeing their movement he along with his brothers ambushed in the jungle situated towards the eastern side of their houses and observed their acts of looting and damaging the houses; that on seeing them Mofizuddin (P.W.7) wanted to flee away but they caught him

hold with Ibrahim Kutti and fastened both of them with the same rope; that thereafter they looted away valuables from their houses; that after looting as per direction of Delwar Hossain Sayedee, the Razakars poured kerosine oil and then set fire on the houses by Delwar Hossain Sayedee; that he produced the burnt bamboo pillars of the houses to the investigation officer; that thereafter they took them towards Parerhat camp; that he followed them and saw that Delwar Hossain Sayedee and Danesh had consultation with Pak army; that they untied Ibrahim Kutti and kept him standing on the middle of Parerhat bridge and that thereafter, he was taken towards the western part of the bridge and after discussions with Delwar Sayedee and Sekandar Sikder, the Pak army shot Kutti to death, and then they threw the dead body into the river. P.W.8 made similar statements.

P.W.7 is also an eye witness who narrated the incident of taking Ibrahim Kutti and Mofizuddin Posari, and lateron, he stated, Ibrahim Kutti was done to death near the Parerhat bazar bridge. He corroborated P.W.6 in material particulars. The defence failed to shake his testimony in any manner and we find no cogent ground to

discard his evidence. P.Ws.10, 11 and 12 narrated the incident in corroboration with the above witnesses, of them, P.W.12 vividly narrated the role of Delwar Hossain Sayedee during the relevant time. P.Ws.10-12 were also cross-examined extensively by the defence but their statements remained unshaken. I will discuss P.W.12's evidence while considering other charges. He not only corroborated P.Ws.6-8 but also corroborated P.Ws.1 and 2 as regards raising of the Peace Committee and Razakars Bahini at Parerhat by Delwar Hossain Sayedee. Besides them, Ayub Ali Howlader in his statement (ext 262) made similar statement in corroboration with P.W.7. Rani Begum (ext.266), Md. Mostafa (ext 267), Sahidul Islam Khan Selim (ext 261) made similar statements.

P.W.28 stated that on behalf of the accused person these witnesses were threatened and over the said threats G.D. Entries were made; that he made repeated attempts to produce them before the Tribunal for recording their evidence and went to their houses with the processes but he could not trace them out; that most of their family members made furious remarks on seeing him and requested him not to examine them before the Tribunal for safety

reasons. P.W.28 explained the reasons for non-production of Abdul Latif Howlader, Shahidul Islam Selim, Ayub Ali Howlader, Rani Begum, Sitara Begum, Md. Mostafa and exhibited their statements. The reasons explained by P.W.28 were satisfactory and in view of such explanation, the Tribunal legally admitted their statements in evidence. As observed above, the defence has also admitted the killing of Ibrahim Kutti by Pak Army in collaboration with the members of Shanti Committee.

Now the question is whether the defence version of killing Ibrahim Kutti in the manner as stated by D.Ws.2, 7 and 11 is believable or not. D.W.2 in this connection stated that in mid Aswin, he heard a sound at late hours of the night and on coming out of his house he noticed that the Fazar time was nearing, that is to say, it was about dawn; that he said his Fazar prayer and thereafter went towards north to see about what happened elsewhere and saw that one boat was plying through the canal from the northern side in which Ibrahim Kutti’s deadbody was lying; that he saw Kalam Chowkidar, Ayub Ali Chowkidar, Hakim Munshi, Danesh Molla, Sekandar Shikder, Moslem Moulana, Ruhul Amin and Momen Razaker in the boat; that

they were also taking Aju Howlader's wife and his son Saheb Ali in the boat and thereafter, the Pak Army killed Saheb Ali. He did not explain wherefrom Pak army came because he did not state that Pak army accompanied them in the boat. It is totally absurd story to believe that the Razakars after killing Ibrahim Kutti would carry the deadbody to disclose their identity. During the relevant time the Pak Army perpetrated mass killing. In some cases they killed people on broad day light and threw the deadbodies, and in some cases the victims were abducted with the help of auxiliary forces and after killing them secretly, threw their deadbodies at deserted places. More so, Delwar Hossain Sayedee was in the company of Danesh Molla, Sekandar Shikder, Moslem Moulana etc. as evident from the prosecution evidence. He was a member of local Peace Committee and a Razakar, and also involved in all atrocities perpetrated at the Parerhat area. If his accomplices were involved in the killing of Ibrahim Kutti, he could not avoid his complicity as he was all along with them and participated in a group in the commission of Crimes against Humanity in the locality.

D.W.7 stated that he saw while Ibrahim Kutti's deadbody was carrying through the canal by Ayub Ali Chowkidar, Kalam Chowkidar, Hakim Munshi, Mannan, Ashraf, in a boat, and in another boat, Danesh Molla, Sekandar Shikder, Moslem Moulana, Ruhul Amin and Saheb Ali were also taking Saheb Ali and his mother by folding their hands back side towards Parerhat; that after approaching a bit he saw the deadbody of Ibrahim Kutti whose deadbody was also taken towards Parerhat; that on asking to Ibrahim Kutti's wife Momtaz Begum about the blood in her hands, the latter replied that she had sustained the bullet injury while her husband was shot and that Rani Begum was bandaging Momtaz's hands.

The story introduced by this witness as to the manner of taking the dead body of Ibrahim Kutti after killing is apparently a concocted one, inasmuch as, after killing a person the killers would not carry the deadbody to disclose their identity, which is against human conduct. He was also disclosing a different story. It is not his statement that he saw those persons when they were throwing Ibrahim Kutti's deadbody into the canal. One may arrive at the conclusion on reading of his (D.W.7)

testimony that he was making a tutored statement. D.W.11 made a bit different story. He stated that from the northern side Danesh Ali Molla, Molsem Moulana, Sikandar Shikder, Ruhul Amin and Momen were taking Saheb Ali Howlader towards Parerhat and 5/7 minutes thereafter, Ayub Ali Chowkidar, Kalam Chowkidar, Abdul Hakim Munshi, Abdul Mannan and Ashraff Ali were carrying the deadbody of Ibrahim Kutti towards Parerhat by two boats. So this witness saw two boats, in one boat some persons were taking Saheb Ali Howlader and in another some others were taking Ibrahim Kutti's deadbody and the gap of time of passing these two boats is 5/7 minutes. So, these two witnesses of the defence made conflicting versions. As observed above, it was against human conduct to carry a deadbody by the killers with a view to disclose their identity.

On behalf of the defence, Masud Sayedee (D.W.13) filed all documents except ext-A, such as, exhibits B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W series and X, Y, AA, AB, AC, AD, AE, AF, AH & AI, which shrounded in mystery. Exhibit-A, is an FIR allegedly made by Momtaz Begum wife of Ibrahim Kutti which was exhibited

by D.W.11. D.W.13 could not give any plausible explanation why he did not produce ext A. It appears from ext-A that Momtaz Begum allegedly lodged the FIR on 16th July, 1972, over the killing of her husband against 13 persons excluding the name of the appellant Delwar Hossain Sayedee. It is alleged that the accused persons by forming an unlawful assembly attacked Kutti's house at dawn and gunned down her husband. Normally this type of incident of murder by forming unlawful assembly is being perpetrated during normal situation of the country out of dispute over village rivalry or landed property. During the abnormal condition of the country in 1971 millions of innocent people were killed by Pak army and their collaborators but not in the manner narrated in the FIR. It is for the first time, we have noticed that the army personnel with some Razakars by forming an unlawful assembly attacked the house of the Ibrahim Kutti and gunned down him. It is to be noted that Ibrahim Kutti was not an intellectual or a leader of the Awami League who might be targeted by the Army or the Razakars in the manner other intellectuals were targetted and killed. He was the domestic help of Manik Posari and it was not a believable story that he

would be killed in the manner as disclosed. So, the defence came out with an imaginary story by concocting a document which is apparent. The nature of the allegation itself shows that this FIR was created by introducing a manufactured story with a view to create confusion regarding Delwar Hossain Sayedee's complicity in the incident of murder.

On behalf of the defence a photostat copy of the certified copy of the said FIR was produced at the hearing stage. On perusal of the same we noticed that the copy was obtained in 1972 and it was produced in court on 9th October, 2011. We also noticed interpolation on the dates and on some pages. In course of cross-examination, D.W.11 expressed his ignorance as to whether the certified copy filed by him and the photo copy filed at the hearing were identical or not. He could not say the source wherefrom it was collected. He admitted that in the first page of the certified copy two words are found cut and there was no counter signature against those cut marks. He also expressed his ignorance as to who obtained the said certified and when it was obtained by whom. He also admitted that before he filed the certified copy, it was

in the custody of Masud Sayedee (D.W.13) and that it was Masud Sayedee who could give proper explanation about it. This explanation speaks volume about the genuineness of the certified copy and the purpose for filing it through P.W.11 despite that it was handed over by P.W.13 who, produced all documents for the defence except ext-A without giving any explanation.

Section 19(1) empowers the Tribunal to admit any evidence including reports and photographs published in the news papers, periodicals and magazines, films and tape record and other materials as may be tendered before it, which have probative value and in admitting the same, it is not bound by any technical rules. Though in sub-section (1), documents specified therein may be admitted in evidence, in view of use of the words 'other materials', a certified copy of an FIR may be included in the category if it has probative value. The Tribunal shall keep in mind that a certified copy of any proceedings can only be tendered by the defence for evidence if it files the same at the commencement of the proceedings i.e. before the framing of the charge in view of section 9(5) read with sub-rule (2) of rule 51. Sub-rule (2) of rule 51 of the

Rules empowers the defence to prove documents and materials in support of the defence case.

The scheme of the law is that the trial of offences under Act of 1973 shall be held expeditiously. The object of providing this provision is obvious-if any document is filed by the defence at the preliminary stage of the trial, the prosecution or the investigating agency will be in a position to ascertain the genuiness of the said document upon inquiry and the trial of the case will not be interrupted in that case, and if the prosecution after collecting materials is satisfied that the document is forged, it may intimate the Tribunal regarding the forgery. Under such circumstances, it will afford the defence an opportunity to prove the genuiness of its document by providing other corroborative evidence. Once a document is exhibited, as per Rules, the contents of the said document is admissible. Therefore, the Tribunal shall guard while admitting a documentary evidence on behalf of the defence as to whether the document is genuine or not, whether it has any probative value, and whether it has been filed at the time of commencement of the proceedings. Sub-section (2) of section 19 provides that the statement

of any person which has been recorded by a Magistrate or an Officer in course of investigation which has probative value and whose attendance cannot be procured without delay may be admitted in evidence.

For proving a document on behalf of the prosecution, rule 54 provides that it may prove a document by a person who was the author or knows the handwriting or signature of such author and in case of death of such person, the person from whom it was collected of such document. Rule 44 of the Rules, however, authorizes the Tribunal to admit those documents as mentioned above but by the same time, it is provided that the Tribunal has power to exclude any evidence which does not inspire any confidence in it and admission or non-admission of any evidence is the exclusive discretionary power of the Tribunal. Once a document is marked as exhibit, it is said in rule 55 that the contents of such document shall be admissible. Rule 57, however, caution the Tribunal that while applying the rules of evidence, it shall be alive to the matter in issue and admissibility of an evidence as per Rules whether it is primary or secondary, oral or documentary, hearsay or non-hearsay, and direct or circumstantial, must

be in consonance with the spirit of the Act. A combined reading of these provisions will manifest that it is the Tribunal which shall have the full discretionary power to admit or reject the evidence to be adduced by the parties, and the basic consideration for it is to see whether the evidence proposed to be adduced have any probative value.

In course of hearing of the appeal, an application on behalf of the prosecution has been filed for not considering exhibit-A in support of the defence. It was stated in the application that for ascertaining the genuineness of exhibit-A, the learned Attorney General along with his friend Mr. Bashir Ahmed, Assistant Attorney General went to Pirojpur on 22nd September, 2014, and inquired into the Pirojpur police station about the said FIR; that the Officer-in-Charge tried to trace out the record of the case but could not trace it out; that thereafter, learned Attorney-General and his friend went to Barisal presumably, it was stated that as Pirojpur was under Barisal district, the copy might be available in the record room, for collecting a copy of the FIR; that the Record Keeper intimated the learned Attorney General that unless the Special Tribunal case number was given, he

could not find out the record; that thereafter, the learned Attorney General returned back to Dhaka; and again he along with Mr. Biswajit Devnath, learned Deputy Attorney General went to the Barisal Nazarat on 1st April, 2014 and inquired about the existence of the record for two days, but he could not trace out the record of the case out of which Pirojpur P.S. Case No.9 dated 16.7.1972 arose; that the learned Attorney General also inspected the Special Tribunal Case Register and noticed that the registration of Special Case Nos.2 of 1974 to 8 of 1976, but he could not find the corresponding Pirojpur P.S. Case No.9 dated 16.7.1972 in those cases. In the application the list of the cases with the concerned accused persons involved in those cases were reproduced in paragraph 9, 10, 11, 12 and 13.

It is stated that none of the accused persons mentioned in the said FIR were shown as accused in those cases entried in the case register which was consulted by the Attorney General. It is further stated that if any FIR was lodged by Momtaz Begum regarding the killing of her husband, the offence being triable under P.O.8 of 1972, the case would have been sent to Barisal for trial, and in

the corresponding column of the register, the names of accused mentioned in ext 'A' would have been entried as accused if any such case was filed and sent to Barisal for trial. Under such circumstances, it is stated that this exhibit-A is a forged document created by the appellant's son (P.W.13) with a view to create confusion about the complicity of Delwar Hossain Sayedee in the killing of Ibrahim Kutti. On a close scrutiny of the copy of exhibit-A produced for our inspection, we found interpolations and D.W.11 also admitted the same. We fail to understand why the prosecution has not taken any step for expunging this exhibit from the evidence on the ground that it was a forged document.

This exhibit-A is a forged one is also apparent from the statements of D.W.13, who stated in course of cross-examination that he got exhibit-A from his elder brother; that he had no talk with his brother about it before his death; that his brother might have talked with Sitara Begum. He then said, Momtaz, the informant of that case might have been taken the copy from her mother and handed it over to his brother. He, however, could not say how long it was with Sitara Begum. He could not say who

obtained the certified copy. He further stated that in exhibit-A, the names of Saheb Ali or Sahab Uddin was not mentioned but Seraj Ali's name was written. He admitted that at the back side of the pages of exhibit-A no initial, no seal or the signature of the Sub-Divisional Magistrate, Pirojpur was given and that only a round seal of the Sub-Divisional Magistrate was engrafted. From the above statements of this witness it is proved beyond doubt that this ext A is a forged one and that this is why P.W.13 did not exhibit ext-A in the Tribunal.

It is the responsibility of the prosecuting team and the investigating agency to ascertain whether or not the FIR filed on behalf of the accused was genuine and also whether there was existence of such FIR with the record. Learned Attorney General doubted about the genuineness of ext 'A' and after seeking adjournment of the hearing, took the pains to visiting Pirojpur on 29th March, 2014 and Barisal on 13th March, 2014, 1st April, 2014 and 2nd April, 2014 for tracing out the copy of the FIR, if there be any, in respect of Pirojpur, P.S. Case No.9 dated 16th July, 1972. This shows the devotion and bonafide in conducting a case by a law officer entrusted with the case. If the

Chief Law Officer of State could take the trouble of visiting personally to Pirojpur and Barisal for collecting materials, what prevented the prosecuting team to sit over the matter and allow a forged document to remain as evidence with the record is not clear to us. The investigation officer or the prosecutor endeavoured no effort in this regard. If these informations regarding ext 'A' could be filed at the trial stage, it would have been easier for the Tribunal to ask the defence to prove the genuineness of ext 'A' and if it failed to furnish any authentic copy, it could have taken appropriate action against the person concerned for using a forged document. The prosecution did not take any step by filing any application in accordance with rule 44 of the Rules for expunging and/or excluding from consideration of exhibit-A after collecting necessary materials.

Admittedly Ibrahim Kutti was killed by Pak army with the help of local Razakars. Now it is to be seen whether the incident took place in manner stated by the witnesses or in the manner as suggested by the defence. P.Ws.2, 6, 7, 8, 10, 11, 12 have narrated the incident of killing vividly and they have been corroborated by Abdul Latif

Hawlader, Shahidul Islam Salim and Ayub Ali Howlader. They proved that after the apprehension for Ibrahim Kutti, the latter was taken to the bridge of Parerhat Bazar and he was shot to death by Pak army and that local Razakars collaborated in the killing. It is also found that Delwar Hossain Sayedee was a commander of local Razakars and he was all along with Pak army because of his extra quality of exchanging views with Pak army in Urdu. The defence did not at all challenge the positive assertion of the prosecution evidence that Delwar Hossain Sayedee having the proficiency of Urdu speaking was the one who was all along with the Pak army during the relevant time and participated in all the incidents.

At any event, since the prosecution failed to produce relevant record at the trial stage to show that ext 'A' was a forged one and since the Tribunal has admitted ext A in evidence, although we find ext-A is apparently a forged FIR, we have no option other than to give the accused the benefit of doubt. It is not because that the accused was not involved in the said crime but because the provisions of the Act and the Rules which provide that it is responsibility of the prosecution to prove the charge

against the accused beyond reasonable doubt. If a slightest doubt creates in the mind of the Tribunal the benefit would go in favour of the accused. The evidence on record sufficiently indicated that the accused was very much involved in all the atrocities perpetrated at Parerhat, but because of the established norms, which is being followed in this region over a century, the accused in entitled to get the benefit of doubt in respect of the charge of killing Ibrahim Kutti. However, in view of the consistent evidence of looting and setting fire of the houses of Posari brothers and the defence having not disputed the incidents, and as we found Sayedee who was involved in all inhuman acts at Parerhat, his act attracts 'other inhumane acts' committed against civilian population on political grounds and therefore, the Tribunal is justified in finding him guilty of the accused in respect of second part of the charge.

Charge No.10 is as under:

'That on the same day i.e. 02.06.1971 at about 10 a.m. under the leadership of accused Delwar Hossain Sayedee with his armed associates accompanied with Pakistani Army raided the Hindu Para of village-Umedpur

under Indurkani police station, the accused burnt 25 houses including houses of Chitta Ranjan Talukder, Jahar Talukder, Horen Thagore, Anil Mondol, Bisabali, Sukabali, Satish Bala and others. At one stage Bisabali was tied to a coconut tree and at his insistence Bisabali was shot to dead by his accomplice. The act of burning dwelling houses of unarmed civilians is considered as persecution. The accused directly participated in he acts of burning houses and killing of Bisab Ali which is persecution and murder within the purview of Crimes against Humanity'.

In support of the charge, the prosecution has examined P.Ws.1, 4, 5, 9, 12 and 14 and relied upon the statements of Md. Abdul Latif Howlader, (ext 258), Sukha Ranjan Bali, (ext 260) and Mukunda Chakravarty, (ext 269). The Tribunal after sifting the evidence has arrived at the findings that "on 2nd June, 1971, Pakistani troops accompanied by the members of local Peace Committee and Razakars including accused Delwar Hossain Sayedee raided Hindu Para at about 10 a.m. to execute a part of plan, then at about 12 noon they raided the house of Mahbubul Alam Howlader (P.W.1), freedom-fighter, but they failed to hold him, then they tortured Abdul Mazid who is the

brother of P.W.1 and looted away cash money, jewellary and other valuables from the house of Mahbubul Alam. The defence cross-examined P.Ws.1 and 5 elaborately but the version as to presence of accused Delwar Hossain Sayedee at crime site remains unshakened. Having considered the evidence on record, we find that accused Delwar Hossain Sayedee knowingly contributed and facilitated in the commission of looting valuables from the house of civilian population which is considered as persecution within the purview of crimes against Humanity'.

On behalf of the defence it is argued that the prosecution has failed to prove the place of killing of Bisabali and this is evident from the evidence of P.Ws.28 and D.W.9. It is further contended that the Tribunal acted illegally in believing P.W.1 who was barely a minor boy during the relevant time. It is further contended that D.W.9 being an eye witness as regards abduction of Bisabali and the killing who having stated that Bisabali was not killed in the manner stated by the prosecution, the Tribunal acted illegally in convicting the appellant without discarding the claim of D.W.9. It is further contended that the Tribunal acted illegally in believing

P.W.5 in failing to consider that this witness is a biased witness and that he was a minor boy during the relevant time. It is further contended that P.W.9 is a chance as well as politically biased witness and the Tribunal was wrong in relying upon him. It is also contended that the Tribunal illegally took exhibits-258, 260 and 269, material exhibits-XI and XII into consideration in support of the charge. It is finally contended that the Tribunal acted illegally in not affording time to the defence to cross-examine P.W.28 in respect of the contents in exhibits-54-59, 62-84, 86-127, 129-150, 158-165 and 167-258.

P.Ws.1, 5 and 9 are eye witnesses and P.Ws.4, 12 and 14 made omnibus statements in support of the charge. It is to be noted that the defence has admitted the killing of Bisabali but according to it, Bisabali was killed not in the manner and at the place as alleged by the prosecution-it failed to substantiate its claim by corroborative evidence. P.W.1 stated that on 2nd June, 1971, he was at home; that one Khalilur Rahman secretly informed him at dawn that the leaders and workers of Awami League and Mukti Bahini who were then staying at his home under his

shelter had been listed by the Shanti Committee and Razakar Delwar Hossain Sayedee's people; that on getting the information, he removed the freedom fighters and Awami League leaders and workers at a safe place; that at about 10 a.m., the members of Shanti Committee and Razakars headed by Danesh Ali Molla, Sekandar Shikder, Delwar Hossain Sayedee attacked the houses of Hindus of Umedpur village; that they torched and looted 25/30 houses including the houses of Chitta Ranjan Talukder, Johor Talukder, Bishabali, Sukur Ali, Anil Mondal and others; that as Bishabali was sick, he could not retreat and he was apprehended and fastened with a coconut tree; that as per order of Delwar Hossain Sayedee to kill him, one Razakar shot him to death. In course of cross-examination this witness reaffirmed his statements in chief and denied the defence suggestion that Bishabali was not killed in the manner as stated by him. The defence thoroughly cross-examined him but failed to elicit any inconsistency about the day and the manner of killing Bishabali as per order of Delwar Hossain Sayedee. He is a freedom fighter and used to supply information at the Sundarban Camp, where a freedom fighters' camp was established. He denied the

defence suggestion that Delwar Hossain Sayedee was not present at Parerhat during the relevant time. There is no reason to discard his testimony unless his testimony is tainted by falsehood.

P.W.4 made simple statements that Delwar Hossain Sayedee and his co-horts looted the houses of Hindus, Muktijuddahs and the Awami League leaders. P.W.5 is an eye witness of the incidents. He was present at Umedpur and saw the incidents by concealing himself in a nearlby jungle when the incidents of looting and arson were perpetrated on 2nd June at Parerhat, Umedpur village. He saw Delwar Hossain Sayedee and his co-horts while committing those atrocities. He stated that at Umedpur the Razakars torched 20/22 houses and Bishabali was tortured after being fastened with a coconut tree; that Delwar Hossain Sayedee uttered some words and then one Razakar shot him to death and thereafter, they left towards west. The defence evasively suggested him that no such incidents took place in the manner stated by him. He denied the defence suggestion that on 2nd June, 1971, Delwar Hossain Sayedee with other members of Shanti Committee and Pak Army did not enter into Umedpur village or loot away the

houses of Anil Mondal, Lalita Bali, Surendra Nath Chakraborti, Mukesh Chakraborti, Satish Bala, Chitta Ranjan and others. He was thoroughly cross-examined but the defence failed to discredit his testimony in any manner. So he corroborated P.W.1 in material particulars.

P.W.9 is also an eye witness of the occurrence. Corroborating the statements of the earlier witnesses, this witness stated that on 2nd June, 1971, at about 10.30 a.m. Delwar Hossain Sayedee with his accomplices and Pak Army entered into Umedpur Hindu Para which he witnessed by concealing himself inside the jungle situated by the side of the road; that Delwar Hossain Sayedee and other Razakars including the Pak army looted the houses of Hindus, set ablaze of 18/20 houses, caught Bishabali, fastened him with a coconut tree, and the Razakars assaulted him; that in the mean time Delwar Hossain Sayedee talked with the Pak Army and then he ordered his co-horts to kill Bishabali; that on hearing the order, one Razakar shot Bishabali who died instantaneously. He denied the defence suggestion that no such incident took place in the manner stated by him, rather he reaffirmed his statement. His statements are consistent with his earlier

statements and the defence failed to discredit his veracity in any manner.

P.W.14 narrated the incidents in the similar manner. He is also an eye witness of the occurrence. He also identified Delwar Hossain Sayedee as one of the perpetrators of the incidents. He identified Delwar Hossain Sayedee in the dock although he did not narrate the incident of killing Bisabali; but vividly narrated the other incident. Abdul Latif Howlader, Sukha Ranjan Bali and Mukanda Chakraborty, corroborated P.Ws.1, 5 and 9 in toto as regards killing of Bishabali as per order of Delwar Hossain Sayedee, and looting and torching the houses. In order to avoid repetition, I refrain from reiterating their statements.

P.W.28 Md. Helal Uddin proved their statements and explained the reasons why he could not produce those witnesses in the Tribunal. He stated that he could not trace out their whereabouts; that he submitted a report to the Chief Prosecutor for producing these witnesses but they could not be produced within the time specified by the Tribunal; that he recorded their statements in course of investigation of the case. In course of cross-

examination, he stated that he tried to locate the whereabouts Latif Howlader but the neighbours failed to give him any information and told him that he was not seen regularly in the locality. He further stated that he directed the local police to trace out his whereabouts and that the local police also intimated him that they could not collect his whereabouts. He further stated that he went to his house twice but could not find him.

In respect of Sukha Ranjan Bali, he stated that he recorded his statement after following the formalities; that he went to his village home with the process with Mizanur Rahman Talukder (P.W.3) but he could not find him there; that he asked Sukha Ranjan's wife and daughter about Sukha Ranjan's whereabouts but they did not give him any information; that he stayed there about one and half hours; that thereafter he entrusted the Officer-in-Charge of Indur Kani police station to produce Sukha Ranjan and also instructed Sukha Ranjan's daughter to make a G.D. Entry with the local police about the threat given to Sukha Ranjan Bali; that thereafter Indur Kani G.D. Entry No.773 dated 25.2.2012 was made. In respect of Mukundra Chakraborti, he stated that in course of investigation he

examined Mukunda Chakraborti, who died in the mean time. He denied the defence suggestion that he did not try to produce him as witness before the Tribunal. The defence has practically admitted the death of Mukendra Chakraborti by giving this suggestion to P.W.28. In view of the explanation given by P.W.28, I find that the Tribunal has legally accepted the statements of Abdul Latif Howlader, Sukha Ranjan Bali and Mukunda Chakraborti in evidence.

Hemayet Uddin (D.W.9) stated that towards the mid part, of the liberation struggle i.e. mid Jaistha or later part his auntie was standard in the house of her father at Umedpur village due to sickness and on getting the news he went to see her; that on the following day at about 9.30 a.m. the people were screaming saying that the Pak army was approaching; that he along with Afzal, Latif, Nurul Islam and others stood on the eastern garden and saw that 15/16 Pak army with Moslem Moulana, Danesh Molla, Sekandor Shikder, Asmot Ali Munshi and others entered into Hindu para; that sometimes thereafter they saw flames of fire from those houses; that the army and their collaborators were taking a person towards west; that Afzal told him that Bishabali was taken by them towards northern side of

the field at Huglabunia Hindu para; that sometimes thereafter they torched the houses of Hindus; that he heard that Bishabli and 4/5 Hindus were taken from Huglabunia by them and that on the following afternoon he heard that all of them were killed on the bank of Baleswar river.

In course of cross-examination he admitted that he is an activist of BNP. He stated that he heard the news of visitaion of the investigating team at Parerhat but he did not show any interest over the investigation and that he could not say how many persons had fled away or the number of houses were damaged by fire. The above statements of this witness need no further explanation regarding his biasness. There is no doubt that he is a politically motivated witness. It is our common knowledge to which we may take judicial notice that Jamat-e-Islami has political alliance with BNP; that the said alliance formed the government twice, and still the said alliance is in existence and that Delwar Hossain Sayedee became a Member of Parliament from Pirojpur constituency as a candidate of the alliance. Apart from the above, his claim of witnessing while Bishabali was taken away is apparently a

concocted story. Admittedly he is not a resident of Umedpur village. He did not mention the name of the father of his auntie at whose house he allegedly stayed one night to witness the incident of taking away Bishabali. Secondly, he has impliedly supported the prosecution version of Bishabali's sickness for which the latter couldn't flee away despite knowing that the Pak army with their collaborators were approaching towards Umedpur village. The army and Razakars attacked the Hindu para, looted the houses, damaged them by fire which facts were admitted by D.W.9. There were other Hindu community people in the village but they managed to flee away before the arrival of Hyaenas like Pak army and their accomplices. Bishabali couldn't flee away with others because he was sick which is apparent from the evidence on record. More so, this witness admitted that the Razakars like Moslem Moulana, Danesh Molla etc. participated in the atrocities and if that being so, Delwar Hossain Sayedee, as found on assessment of the evidence was all along with them. So he was also involved in the incident and there is no doubt about that. More so, the story introduced by this witness has not been corroborated by any other witness of Umedpur

village, whereas, 6 witnesses on behalf of the prosecution have corroborated each other regarding the Delwar Hossain's complicity.

P.Ws.1, 5, 9 and Abdul Latif Howlader, Sukha Ranjan Bali, Mukunda Chakravarty have proved the occurrence of burning the dwelling houses of unarmed civilians of Hindu Para as well as the killing of Bishabali at the instance of the accused beyond reasonable doubt. They are the eye witnesses of the occurrence. They have narrated the manner of setting fire on the houses of unarmed civilians which gives sufficient indication that the perpetrators in a planned manner have burnt the houses of Hindu Para with intent to cause large scale devastation. It is also evident that the accused participated and facilitated in the commission of killing of Bishabali and the act of burning huge number of dwelling houses. It is well proved that the accused was involved in the commission of murder and persecution on religious grounds within the mischief of Crimes against Humanity.

The Tribunal afforded the defence a marathon cross-examination of P.W.28. He was cross-examined on 25.04.2012, 26.04.2012, 07.05.2012, 08.05.2012,

09.05.2012, 10.05.2012, 13.05.2012, 15.05.2012, 20.5.2012, 21.05.2012, 27.05.2012, 28.05.2012, 29.05.2012, 30.5.2012, 31.05.2012, 03.06.2012, 04.06.2012, 05.06.2012, 12.06.2012, 13.06.2012, 20.06.2012, 24.06.2012, 25.06.2012, 26.6.2012, 27.06.2012, 02.07.2012, 08.07.2012, 12.07.2012, 15.07.2012, 17.07.2012, 18.07.2012, 19.07.2012, 22.07.2012, 23.07.2012, 25.7.2012, 27.07.2012, 29.07.2012, 30.07.2012, 31.07.2012, 01.08.2012, 02.08.2012, 05.08.2012, 06.08.2012, 07.08.2012, 08.08.2012 and 12.08.2012. So the defence cross-examined this witness on 47 working days. It cannot therefore be said that the Tribunal has not afford sufficient opportunity to cross-examine P.W.28. On perusal of the evidence we have noticed that the defence has cross-examined this witness on irrelevant facts and unnecessarily wasted valuable times of the Tribunal. The Tribunal has thoroughly assessed the evidence on record and rightly believed the charge levelled against the accused. The inconsistencies drawn by the learned counsel are not at all material which make the evidence of those witnesses unreliable. As pointed out, Hemayet Uddin (D.W.9) has also admitted the killing of Bishabali. In the premises, the Tribunal is perfectly

justified in finding the appellant Delwar Hossain Sayedee guilty of the charge.

Charge No.11 is as under:

'On the same day i.e. on 02.06.1971, accused Delwar Hossain Sayeedi led a team of Peace (Shanti) Committee members accompanied with Pakistani occupied forces raided the houses of Mahbubul Alam Howlader (freedom-fighter) of village-Tengra Khali under Indurkani Police Station and the accused detained his elder brother Abdul Mazid Howlader and tortured him. Thereafter, the accused looted cash money, jewellery and other valuables from their houses and damaged the same. The accused directly participated in the acts of looting valuables and destroying houses which are considered as persecution on political grounds, and also tortured".

In support of the charge the prosecution has examined P.Ws.1, 5 and 17 and relied upon exhibit-11, the issue of Vhorer Kagaj dated 4th November, 2007 and some other documentary evidence. The Tribunal after assessing the evidence held that the defence failed to dislodge the veracity of P.Ws.1 and 5 on cross-examination about the presence of Delwar Hossain Sayedee at the crime site. It

is evident from the evidence that the accused consciously contributed and facilitated in the commission of looting of the houses of civilian population. In this charge the allegation is that the accused along with others raided the house of Mahbubul Alam Howlader, detained his elder brother Abdul Majid Howlader and that they looted away cash and valuables from the house.

P.W.1 did not specifically mention about the raiding of his house by the accused with his accomplices and detaining his brother Abdul Majid. He stated that the accused with his accomplices went to his house and pressurized his brother Abdul Majid to produce him (P.W.1), the freedom fighters and Awami Leaguers; that on his refusal they tortured Abdul Majid and that they looted away valuables from the house. In course of cross-examination, he admitted that he was not present at home at the time of commission of the offence.

P.W.5 stated that he heard that the Razakars looted the house of Mahbubul Alam. He, however, did not corroborate P.W.1 as regards his claim of detaining Abdul Majid and torture for not giving information about his brother and other Muktijoddahs. P.W.17 was the cataloguer

of the Press Institute of Bangladesh. He proved the seizure of an issue of Dainik Janakantha, ext 5, in which, an article under the caption "৭১ এর রাজাকার দিইল্লা এখন মওলানা সাঈদী". was published reporting that Sayedee Razakar becomes Moulana Sayedee. There is no dispute about Sayedee's role in 1971 but this does not prove that he has detained Abdul Mazid and tortured him. On the question of torture only witness examined by the prosecution is P.W.1 and this witness is not also an eyewitness. He has not been corroborated by any other witness. Thus we find that there is solitary statement of P.W.1 in support of the charge and the prosecution has not explained for non-examination of other witnesses. A conviction of the accused person cannot be given relying upon stray statements of a witness. It is true that the Tribunal is not concerned with the quantity of the evidence – it is concerned with the quality but when the Tribunal will act upon a solitary witness, the witness must be wholly reliable. There is no doubt about P.W.1's reliability but he has narrated a fact which he has not seen. He has not disclosed the name of the person from whom he has heard. In view of the above, it is difficult to convict the accused in respect of the

charge relying upon him. The prosecution failed to adduce corroborative evidence in support of the charge and examined only two witnesses, of them, one does not corroborate the other. This has caused due to improper conducting of the case on behalf of the prosecution. The Tribunal has not applied its judicial mind in finding the accused guilty of the charge. On assessment of the evidence, we are satisfied that the prosecution has failed to prove the charge beyond doubt and thus, the Tribunal has acted illegally in finding the accused guilty of the charge.

Charge No.14 is as under:

"That during the last part of the Liberation War, accused Delwar Hossain Sayeedi led a team of Razakar Bahini consisting of 50 to 60, in the morning of the occurrence in a planned way they attacked Hindu Para of Hoglabunia under Indurkani police station. On seeing them Hindu people managed to flee away, but Shefali Ghaarami, the wife of Modhu Sudhan Gharami could not flee away, then some members of Razakar Bahini entering into her room raped Shefali Gharami. Being the leader of the team the accused did not prevent them in committing rape upon her.

Thereafter, the accused and members of his team set fire on the dwelling houses of the Hindu Para of village Hoglabunia resulting complete destruction of houses of the Hindu civilians. The act of destruction of houses in the Hindu Para by burning in large scale is considered crime of persecution on religious ground and the act of raping both as crimes against Humanity".

In support of this charge the prosecution has examined P.Ws.1, 3, 4 and 23. The Tribunal after discussing the evidence held that accused Delwar Hossain Sayedee was a member of Shanti Committee and a Razakar; that he used to take part in perpetrating rape, looting, torture, arson and killing of the members of Hindu Community at Parerhat area, that P.W.23 is a vital witness, who has proved that the accused raped his wife, and in consequence of such rape his wife gave birth to a child 'Sandha'; that in order to avoid social strictures, his wife left for India and that the accused has substantially contributed and facilitated to the commission of the said crimes.

On an evaluation of the prosecution evidence in support of the charge, I noticed that P.W.1 made general

statements without specifically stating anything in support of the charge. P.W.3 also made similar statements. P.Ws.4 and 23 also made general statements about the role of the members of Shanti Committee and Razakars, of course, Delwar Hossain Sayedee was an active member of those auxiliary forces. P.W.23 stated that on the previous occasion the members of the Peace Committee entered into his village-looted away valuables, torched the houses and took 9 persons who did not return; that after 3/4 days of the said incident at about 4/4.30 p.m., the Razakars came to his house and at that time he was not present; that his wife later on told him that the persons who compelled him to convert was coming and advised him to flee away; that his wife told that she was ravished; that she was with severe pains which she could not tolerate; that she advised him not to worry for her; that after 4/5 months of rape his wife gave birth to a child and that as the people were making adverse remarks against her, he sent his wife to India with a view to avoid criticism. This witness did not specifically mention the name of the accused.

However, we may guess from the statement of P.W.23 that he was making statement against accused Sayedee. He

made superficial statement about the date and time of rape. There is no other corroborative evidence. The prosecution has led similar nature of evidence in respect of charge No.11 and I have given the accused the benefit of doubt. On consideration of the nature of evidence adduced on behalf of the prosecution, I cannot take any different view in respect of this charge as well. In order to maintain the conviction of a charge, the witnesses must make positive statement in support of the charge but on the basis of such superficial statements, an accused person cannot be convicted. The Tribunal has convicted the accused relying upon the evidence of P.W.23 but as observed above, this witness also made superficial statement. He has not been corroborated by the other witnesses. There is scanty evidence adduced by the prosecution in support of the charge. A conviction cannot be based on the basis of such evidence. Thus, the Tribunal is not justified in finding the accused guilty of the charge.

Charge No.16 is as under:

"That during the time of Liberation War in 1971, accused Delwar Hossain Sayeedi led a group of 10/12 armed

Razakars and Peace Committee members and surrounded the houses of Gauranga Saha of Parerhat Bandor under Indurkani police station, subsequently the accused and other abducted (i) Mohamaya, (ii) Anyo Rani and (iii) Komol Rani, the sisters of Gauranga Saha and handed over them to Pakistani Army Camp at Pirojpur where they were confined and raped for three days before release. The accused was directly involved in abetting the offences of abduction, confinement and rape as Crimes against Humanity'.

In support of the charge the prosecution has examined P.Ws.1, 3, 4, 5 and 13, and the statement of Azit Kumar Shil (exhibit-264). The Tribunal after analyzing the evidence observed that P.Ws.3-5 have proved that accused Delwar Hossain Sayedee was a member of Peace Committee of Parerhat and a Razakar during the relevant time who took active part in the attacks directed against unarmed civilians causing murder, looting, torture, conversion abduction of girls and handing them over to Pak army for rape; that P.W.13 proved the abduction of his three sisters and handing them over to Pakistani Army by Delwar Hossain Sayedee with his co-horts; that the victims have been raped by Pak army; that his evidence has been

corroborated by Azit Kumar Shil; that Delwar Hossain Sayedee knowingly contributed and facilitated the commission of abduction of 3 girls paving the way to cause sexual violence upon them, which acts were directed against civilian population and that this acts clearly fall within the purview of Crimes against Humanity.

On behalf of the defence it was argued that the Tribunal was wrong in finding the accused guilty of the charge in failing to consider that it was not at all probable on the part of the Pak Army to commit rape of the victims, inasmuch as, during the relevant time P.W.13 was barely eight years old and since the victims were younger to him, they were 5-7 years old at that time. It was further contended that there is inconsistent version about the date of abduction of the victims and in this connection, learned counsel has referred to exhibit-R. It is further contended that the evidence of P.W.13 sufficiently indicated that he was deposing against Delwar Hossain Sayedee for deriving unfair benefit from the government and that no such incident at all took place and this would be evident from the fact that the whereabouts

of the victims, the three sisters of Gouranga Saha could not have been traced out.

P.W.13 Gouranga Chandra Saha stated that he was 27 years old in 1971; that Delwar Hossain Sayedee came to his house with some Razakars and looted away valuable goods and thereafter, abducted his three sisters Mohamaya, Anyo Rani and Komol Rani and handed them over to Pak Army in the Camp; that they were sexually assaulted for three days in the camp and that thereafter they were sent back. In course of cross-examination, he stated that in 1971 his sisters were unmarried and that they along with another sister left for India. The defence fails to discredit his testimony in any manner and there is no cogent ground to disbelieve him. P.W.13, however, said that he could not say the whereabouts of his sisters. This cannot be a ground for disbelieving a witness particularly in respect of a Hindu conservative family, inasmuch as, it is seen in most cases of rape in 1971, the family members disserted the victims for avoiding social wrath or strictures or for fear of isolation. Many of those women and girls were taken to safe houses and some of them were taken by NGOs.

As regards the age of the victims, before 1971 there was no system for maintaining birth and death registers of the citizens. There was no compulsion even. Even now, no standard birth and death registers are being maintained. Whenever occasion arises someone collects a birth certificate from the local Union or Pourashava office by giving a date which is favourable to him or her. Sometimes offices issue certificates giving imaginary dates as desired by the party. P.W.13 asserted that in his national identity card the date of birth was wrongly mentioned as 8th July, 1963. In his testimony, he asserted that his age was 27 years in 1971. The defence did not at all challenge his statement. So, his statement remained uncontroverted. On query to the learned counsel about non-controversion of positive assertion made by him about his age, learned counsel pretended not to follow the query and repeatedly tried to persuade us to consider his date of birth being 8th July, 1963, as mentioned in his national identity card, his sisters were mere babies at that time. When there was no rational basis particularly in 1971 for maintaining the birth and death of citizens, it is difficult to assume that the date mentioned in the

national identity card is correct. What's more, there is uncontroverted evidence of P.W.13 that he was 27 years old in 1971 and therefore, his younger sisters were above the age of 15 years during the relevant time. Even assuming that they were below 10 years old that itself is not a ground for disbelieving the fact of rape of the victims. For committing sexual assault to a girl, the age is not a factor. Sexual assault can be attributed to a girl of 5 years old and this has been happening in this country all the time.

The word 'rape' literally means a forcible seizure and that element is a characteristic feature of offence. The offence is said to a 'rape' when a man has carnal intercourse with a girl against her will, or without her consent and these two clauses may not be apparent, but they are intended to cover to separate contingencies. If sexual intercourse was without the consent of the girl or against her will, her age is immaterial for the offence of rape. Although the evidence of rape is usually effected by violence, it is now settled that rape can be committed without the use of violence. However, the essential point being that the girl's free conscious permission is

necessary in the case of adults and in the case of girls below the age of 16 years, consent is no defence and resistance need not be looked for. The definition of rape provides in the Penal Code being entirely on the basis of common law, the law as to the meaning of 'sexual intercourse' and "penetration" have no difference from that in England. In some cases it has been held that to constitute penetration it must be proved that some part of the virile member of the accused was within the libia of the pudendum of the woman or girl, no matter how little.

Except the age of the victims, which also itself is not a ground to disbelieve the rape and the same having not been established, the defence practically failed to dislodge the positive claim of P.W.13 who has been corroborated by Ajit Kumar Shil. P.W.28 proved that he has recorded his statement in accordance with law. Ajit Kumar Shil stated that Delwar Hossain Sayedee and his co-hort Razakars abducted three sisters of Gouranga and handed over to Pak Army; that they were raped on three consecutive days by force; that the victims with their parents left for India and that they did not return. P.W.28 stated that Ajit Kumar Shil stated to him that his

family members pressurized him not to depose in the case; that his son told him that if Ajit Kumar Shil had deposed, he would be killed by Delwar Hossain's people and that he would lose his job. He further stated that the prosecutor handed over the summons to him for production of Ajit Kumar Shil and pursuant thereto, he went to Ajit Kumar Shil's house 2/3 times but he could not trace out him there; that he talked with his wife when the Indurkani police was with him; that on the second occasion he asked his wife and son about Ajit Kumar Shil's whereabouts but they did not disclose his whereabouts.

It is true that P.Ws.1, 3 and 4 made general statements about the rape of Hindu women by the army in collaboration with the local Razakars. It is, however, a historical fact that during the liberation struggle period the Pak Army being assisted by the Razakars tortured the women particularly Hindu women indiscriminately. Anthony Mascarenhas in the journal 'The Guardian' has reported the barbaric acts of violation to girls by the occupation forces as mentioned earlier. This fact has been admitted by D.Ws.3, 14 and 16. D.W.3 in his chief volunteered that Gouranga Saha complained that Sayedee took his sisters at

the army camp where they were ravished. He was deposing incident of 1971 as would appear from the statement that in 1971, Gouranga Saha told him that Delwar Hossain Sayedee was involved in abducting his sisters and handing them over to army who were then raped. Sub-section (3) of section 19 empowers the Tribunal to take judicial notice of facts of common knowledge.

Therefore, the Tribunal has legally admitted Ajit Kumar Shil's statement in evidence. He has corroborated the evidence of P.W.13. Besides their evidence, D.W.3 admitted that Gouranga Saha told him in 1971 that Delwar Hossain Sayedee took his sisters to Army Camp where the army raped them. This statement of D.W.3 itself proved that the accused Delwar Hossain Sayedee abducted the sisters of Gouranga Saha in 1971 and handed over them to Pak Army. So he has corroborated the statements of Gouranga Saha and Ajit Kumar Shil in all material particulars. Accused Delwar Hossain Sayedee abducted three sisters of Gouranga Saha and thereby he aided and helped the Pak Army to cause sexual assault and pursuant thereto, they were ravished by Pak Army for three days. In the

premises, the Tribunal was perfectly justified in finding the accused guilty of the charge.

Charge No.19 is as under:

'That during the period of Liberation War starting from 26.03.1971 to 16.12.1971 accused Delwar Hossain Saeedi being a member of Razakar Bahini, by exercising his influence over Hindu Community of the then Pirojpur Subdivision (now Pirojpur District) converted the following Hindus to Muslims by force namely, (1) Modhusudan Gharami, (2) Kisto Saha, (3) Dr. Gonesh Saha, (4) Azit Kumar Sil, (5) Binod Saha, (6) Narayan Saha, (7) Gowranga Pal, (8) Sunil Pal, (9) Narayan Pal, (10) Amuullya Hawlader, (11) Hari Roy, (12) Santi Roy Guran, (13) Fakir Das, (14) Tona Das, (15) Gourangaa Saha, (16) his father Hori Das, (17) his mother and three sisters, (18) Mahamaya, (19) Anyo Rani and (20) KomalRani and other 100/150 Hindus of village Parerhat and other villages under Indurkani police station and the accused also compelled them to go the mosque to say prayers. The act of compelling somebody to convert his own religious belief to another religion is considered as an inhuman act which is treated as Crimes against Humanity'.

In support of this charge, the prosecution has examined P.Ws.2, 3, 4, 13 and 23 and relied upon the statement of Ajit Kumar Shil, (exhibit-264). The Tribunal after analyzing their evidence held that Delwar Hossain Sayedee compelled a good number of Hindus to embrace Islam putting them to fear of death; that P.W.13 Gouranga Chandra Saha and P.W.23 Modhu Sudan Ghoranmi are the victims of conversion, who vividly narrated under what compelling circumstances they converted their religion; that P.W.23 testified that the accused took him along with members of his family to the local mosque and compelled them to convert as Muslims against their will; that P.W.13 also gave direct evidence asserting that the accused compelled all the members of his family to embrace Islam by threat and that they were also compelled to go to mosque regularly to say prayers.

It is contended that P.Ws.2, 3, 4 and 13 made inconsistent statements with their earlier statements made before the investigation officer. It is further contended that in the absence of examination of Imams, Muazzins and Musallis of the relevant Mosques where the victims were allegedly converted to Islam, the Tribunal acted illegally

in finding the accused guilty of the charge. It is further contended that in view of the admission of P.W.11 that Fakir Das and Jana Das left Parerhat before arrival of Pak Army at Parerhat, the story of conversion is apparently a false one.

P.W.2 stated that the Peace Committee members not only confined to the commission of looting and rape, they forcefully compelled the Hindu Community people namely Noni Saha, Makhan Saha, Dr. Gonesh Chandra Roy, Dr. Satish Chandra Roy, Sudhir Chandra Roy, Gouranga and 50/60 others to convert to Islam; that they compelled them to say five times Namaj in the Mosque and taught them 2/4 Arbi Surahs and supplied them Jainamaj, Tasbi and caps; that some of them fled away to India and that in the same manner the local Shanti Committee and Razakar members committed Crimes against Humanity in the locality. He was thoroughly cross-examined for days together but the defence failed to discredit his testimony.

P.W.3 stated that Delwar Hossain Sayedee detained profound devoted Hindus and forcefully converted them to Muslims and directed them to follow Islam by compelling to wear caps and saying five time namaj in the local Mosque;

that those victims used to say Namaj in the local Mosque and were renamed with muslim names and that after the liberation, those converted persons reverted back to their own religion. He was thoroughly cross-examined by the defence but it failed to discredit his testimony rather, he reaffirmed his earlier statements.

P.W.4 stated that Delwar Hossain Sayedee not only raped Vhanu Saha, he also compelled to convert her father and brother to Islam by force and compelled them to say Namaj in the local Mosque. This witness reaffirmed his statement in course of cross-examination and the defence failed to elicitate anything adverse to his previous statement by cross-examination. P.W.13 is a victim, who stated that Delwar Hossain Sayedee compelled him, his parents, brothers and sisters by reciting Kalema to Islam and also compelled them to say Namaj in the Mosque; that his parents, brothers and sister left for India; that he alone stays in Bangladesh; that he (Sayedee) compelled other 100/150 Hindus to convert to Islam; that Delwar Hossain Sayedee gave his name as A. Goni and also gave him a cap and tasbi; that after liberation he reverted back to his religion; that out of those 100/150 persons, Narayan

Saha, Nikhil Pal, Gauranga Pal, Sunil Pal, Haran Bhowmik were among them and that most of them died thereafter. He was also thoroughly cross-examined on the point of conversion but failed to bring out anything which made him as unreliable witness. The statement is so natural and so accurate that on a plain reading of his testimony, no one can harbor any doubt about the truthfulness of his statement.

P.W.23 is another victim. He stated that his wife told him on one occasion that the person who compelled him to convert as muslim was coming and advised him to flee away; that he along with Krishna Saha, Gonesh doctor was converted to Islam on one day at the Bazar Mosque; that 2/3 days thereafter, despite being converted as Muslim, Krishna Saha could not save his life; that he was named as Ali Ashraf and Krishna Saha's name was Ali Akbar; that Delwar Sayedee compelled him to become a Muslim and told him that he would be alive if he were to convert as Muslim; that after the liberation war, he reverted back to his own religion and other two persons died and one left for India who was Gonesh Saha. In course of cross-examination, he stated that the Imam who conducted his

conversion died long ago and that he could not remember his name. He was thoroughly cross-examined by the defence but the defence failed to discredit his testimony.

Ajit Kumar Shil stated that towards late June, the Razakars came to his house and Delwar Hossain Sayedee pressurized his family members to covert their religion to Islam and compelled them to go to Parerhat Bandor Mosque and on the threat of death by reciting Kolema they were converted as Muslims; that he was compelled to wear a cap, and he was given one piece of lungi and tasbi; that the Razakars of Parerhat compelled Binode Saha, Narayan Saha, Gouranga Pal, Sunil Pal, Narayan Pal, Amullya Hawlader, Hari Roy, Shanti Roy, Guran, Fakir Das, Tona Das with 100/150 Hindus to convert as Muslims; that out of fear they were compelled to become Muslims; that Delwar Hossain Sayedee administered the namaj in the Mosque and that he was renamed as Sultan. As regards non-examination of this witness, P.W.28 explained the reasons for his inability to produce him as witness and the Tribunal on consideration of the evidence and circumstances, admitted his statement in evidence and marked his statement as exhibit-264.

On a thorough analysis of the evidence, it is proved that during the period of War of Liberation, the accused Delwar Hossain Sayedee by means of coercion and threat compelled a good number of Hindu Community people including P.Ws.2, 23 and Ajit Kumar Shil to convert their religious belief, which is an inhuman act, mental torture, human dignity and persecution on racial grounds, which fall within the purview of Crimes against Humanity and that this act of forceful conversion does not recognize any religion of the globe. Islam teaches not to impose any sort of pressure upon the followers of other religion, because Islam was preached only by rational appeal and not by coercion or threat. The submission as regards P.W.11 is devoid of substance in that this witness deposed in support of charge no.8. The prosecution has proved the charge beyond doubt and the Tribunal is justified in finding the accused guilty of the charge.

D.W.13 exhibited series of documents only to show that accused Delwar Hossain Sayedee was not in any way involved in any the incidents of crimes and also to discard the veracity of the prosecution witnesses. He stated that a diplomatic passport was issued in favour of

his father on 26th October, 1999; that in the 'বাংলাদেশ স্বাধীনত যুদ্ধ দলিলপত্র' written by Hasan Hafizur Razman, Vol-8, nothing was mentioned about Delwar Hossain Sayedee's complicity in respect of the atrocities committed at Parerhat; that his father attended the annual meeting of Dawatul Islam, UK and Ireland in June, 1985 and that he again attended the annual meeting of the said organization in June, 1988.

It was feeably argued by the learned counsel for the defence that the Tribunal acted illegally in finding the accused guilty in respect of charge Nos.7, inasmuch as, while finding the accused guilty of the charge, it did not make any finding that the accused had discriminatory intent to commit the crime. In respect of charge No.8, it was contended that in ext-'AJ', the history of Pirojpur district, the lists of members of Peace Committee and Razakar Bahini of Pirojpur were given but the accused's name having not been mentioned as a member of Peace Committee or Razakar, the Tribunal acted illegally in believing the prosecution version of his complicity in those csrimes. It was also contended that in the book written by Major Ziauddin (Rtd.) 'মুক্তিযুদ্ধের সুন্দরবনের সেই উম্মাতাল

দিনগুলো' the author also did not say anything that the accused was a member of Peace Committee or a Razakar. It was further contended that there was no evidence in favour of the incident of damaging the houses of Hindus by setting fire and looting of goods at Parerhat. It was further contended in respect of charge No.10 that though many victims of the said incident are alive, the prosecution has withheld those witnesses of Umedpur village intentionally with a view to suppress the real incident. Learned counsel has also drawn our attention to the inconsistent statements of the witnesses examined in support of all counts and submits that in view of the inconsistency, the tribunal was wrong in convicting the accused relying upon. It was also contended that the Tribunal acted illegally in admitting the statements of Ajit Kumar Shil, Abdul Latif Howlader, Sukha Ranjan Bali, Mukunda Chakravarty without following the procedures.

A statement of a person recorded by an investigation officer in course of investigation of the offences under the Act of 1973 can be used as evidence under two eventualities only-in case of death of the person whose statement has been recorded and secondly, his attendance

cannot be procured even after taking necessary measures therefor and that the Tribunal is of the opinion that the delay is unreasonable. P.W.28 has explained the reasons for not producing those witnesses and in support of threats given to them he has proved some G.D. Entries. The Tribunal on consideration of the explanation being satisfied rightly taken their statements in evidence. The expression 'common knowledge' used in sub-section (3) of section 19 of the Act of 1973 denotes facts that are commonly accepted or universally known, such as general facts of history or geography or the laws of the nature. When there is no direct evidence to connect the accused with a particular incident even though the common knowledge pointing fingers towards the accused, the Tribunal is given liberty to accept secondary sources, such as the reports, articles, books, video interviews treating them as corroborating evidence without attempting to collect primary sources of evidence because the lapse of time impacts on the quality of evidence. Most of the witnesses are not alive and some of them are too old to depose. Some of them are not willing to depose because of lapse of time and for political reasons. Some of them

refused to depose because of threats. The accused is a powerful central leader of Jamat-e-Islami, one of the largest political party of the country. This party has influence over a section of people of Perojpur because he was elected twice from the said constituency as a member of Parliament. Naturally, an apprehension of reprisal works in the mind of the people in the hands of Jamat-e-Islami workers if the said political party comes to power. So naturally, the witnesses remained traumatised all the time. The investigating agency has faced these obstacles in collecting witnesses, recording the statements of witnesses and producing them in court.

As regards the contradiction as to the statements of a witness with his earlier statement or if the statements of a witness does not corroborate with earlier statemnts as argued by the learned counsel, I find no substance in his contention. Under the Act of 1973, the statements of the witnesses were recorded by the investigation officer in the most haphazard manner after 40 years of the incident. The initial task of the investigation officer was to collect witnesses and under the changed circumstances it was a difficult task. An Officer

conducting the investigation not unnaturally record what seems in his opinion material to the case at that stage and omit many matters equally material and, it may be, of supreme importance as the case develops. A witness may not say a fact to the investigation officer as he has not been asked by him and if the witness discloses that fact in Tribunal at the trial on the query of the prosecutor, it cannot be said that this statement contradicts earlier statement. In most cases the investigating officers being not expert of what is and what is not evidence, they record the statements according to their volition without caring to the consequences. There is no guarantee that they do not contain much more or much less than what the witness has said. Normally during investigation, it is the question posed to the witness that triggers the witnes's mind and memory. The witness hardly ever produces information spontaneously. The witness disclosed about what he was asked pinpointing a particular fact. Obviously further questioning is necessary to reticence all information from him. So leading questions which have not been barred at Tribunal are not only suggestive because

the answer is included in it-the witness will then narrate by memorizing the old facts.

This Division in the case of Abdul Quader Mollah held since the provisions of Code of Criminal Procedure are not applicable to the trials before the Tribunal constituted under Act of 1973, the examination of a witness by the investigation officer in course of investigation may be either orally or in writing. As there is nothing in the Rules guiding the procedure and the manner of use of earlier statement of a witness in the trial, in view of sub-rule (ii) of Rule 53, the contradiction can only be drawn from the statements made by a witness in his examination-in-chief and not with respect to a statement made to the investigation officer. In the absence of any Rules guiding the procedure for recording statement of a witness, normally the investigating officers examine the witnesses sometimes in a slip shod manner and sometimes at his whims. Therefore, the defence is not legally entitled to take contradiction of the statement of a witness with his earlier statement made to the investigation officer in accordance with section 145 of the Evidence Act.

Reading section 19(2) and rule 53(ii) of the Rules together, one may come to a conclusion that can be arrived that a statement of a witness recorded by an investigation officer can be admitted in evidence if his presence before the Tribunal cannot be procured or that he is not alive, otherwise not. Contradicting the statement of a witness can be drawn subject to the condition that it must be strictly limited to the subject-matter of the examination-in-chief only. Even without taking contradiction, the veracity of a witness can be impeached by extracting his knowledge about the subject on which he has deposed, his motives to depose in the case, his interest, his inclination, his means of obtaining a correct facts to which he deposes, the manner in which he has used those means, his powers of discerning facts in the first instance, his capacity for retaining and describing them etc. The witness may also be cross-examined for the discovery of truth for the purpose of ascertaining his credibility.

It is to be remembered that the object of cross-examination is to bring out desirable facts of the case modifying the examination-in-chief and to impeach the

credit of the witness. The other object of cross-examination is to bring out facts which go to diminish or impeach the trustworthiness of the witness. In examination-in-chief a witness discloses only a part of the necessary facts, not discloses a part of the necessary facts, not merely because the witness is a partisan of the party calling him but also his evidence is given only by way of answers to specific questions, and the prosecuting counsel producing him usually calls for nothing but the facts favourable to his party. Cross-examination, then has for its utility, the extraction of the remaining qualifying circumstances of the testimony given by the witness in his examination-in-chief. Learned Attorney General argued that the expressions "the party shall be at liberty to cross-examine such witness on his credibility" used in sub-rule (ii) of Rule 53 are sufficient to infer that the Rules have debarred the Tribunal to take into consideration the inconsistent statements of any witness made in course of investigation to the investigation officer. Therefore, there is no scope under the rules of evidence to infer contradiction of the statements of the witnesses with what they have stated to the investigation

officer. The basic principles of interpretation of statutes is that laws should be construed to carry out the intention of the legislature. The function of the court is to interpete a statute according to its intent.

If there is any matter against a witness, no adverse inference can be drawn against him unless he has been given an opportunity to explain it. But in respect of crimes committed under the Act of 1973, because of time, most of the eye witnesses are not available. It is on record that most of the incidents have been admitted by the defence with the exception that the defence has disputed the manner of occurrence and the participation of the accused in those incidents. Apart from the above, there are some uncontroverted incriminating and circumstantial evidence to connect the appellant in those crimes. There are positive evidence about direct participation and commission of crime by the accused in respect of charge Nos.16 and 19, and in respect of charge Nos.7, 8 and 10, the prosecution has been able to prove the presence of the accused at the crime site but that he participated in those crimes conjointly with other offenders.

The trial of the offences of Crimes against Humanity are held after 40 years and in the intervening period there was political change in the country-two Martial Laws were in force-the system of Government was changed twice. New political parties were formed and the right-wing minded people like Sayedee were allowed to activate politics on religion by restoring Jamat-e-Islami and ultimately, this political party came to power by forming an alliance with another political party. This political polarization has adversely affected in the process of collecting evidence against the accused who became Member of Parliament twice. The history of our national liberation struggle was distorted, the basic pillars enshrined in the Constitution were also changed. Under such scenario it will be a difficult task to collect a true and correct history of the liberation struggle of a particular district or the names of the Razakars of that district. Some persons wrote books touching to the liberation struggle by distorting facts. It cannot be exaggerated if it can be said that the accused has been able to make his name excluded from the list of Razakars by using his political influence.

Apart from the oral evidence, P.W.28 proved documentary evidence to corroborate the oral evidence about Delwar Hossain Sayedee's complicity and involvement in the offences of Crimes against Humanity. He stated that the war crimes facts finding committee detected 12 graveyards at Pirojpur and prepared a map showing those graveyards; that on searching website www.genocidebangladesh.org, it was ascertained that about 60% houses in Pirojpur were damaged, 3400 women of larger Barisal district were ravished; that 2500 skeletons were found and 6500 people were killed; that in the list of Razakars, Al-Badr and Al-shams of Pirojpur who perpetrated 'Crimes against Humanity' as auxiliary forces of Pak army, out of 18 Razakars, the name of Delwar Hossain Sayedee appears in serial No.16; that in the Razakar list, ext-35, Sayedee's name appears at page 3524; that a list 957 Razakars as auxiliary force of Pakistani army prepared by Shamsul Arefin which is available in the website hltp://warcriminalsbd.org/list/Razakars-o-dhaka-division, in which 'Razakar Dilya' is renamed as Moulana Sayedee; that he has furnished a list of offences in which Delwar Hossain Sayedee was involved; that he has also recovered

some alamats of brunt C.I. sheets from the house of Alamgier Posari, as material exts-III and III(1), IV, IV(1), V, V(1); that he has also seized issues of Dainik Bhorer Kagaj, ext-9, in which Sayedee's complicity in the killing, rape and looting were mentioned and that in the issue of Dainik Samakal, ext-12, Delwar Hossain Sayedee's involvement in the Crimes in 1971 were clearly mentioned.

He has also produced series of documents such as, exts-15, 16, 17, 18, 19, 21, 22, 20, 24, 28, 29, 47, 48, 49 series 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 92, 93, 94, 122, 123, 124-150 in which Delwar Hossain Sayedee's role as Razakar in 1971 in Pirojpur was mentioned. He stated that in all those news papers reportings, journals and books, the involvement of Delwar Hossain Sayedee in the crimes committed in 1971 were published in detail. These documentary evidence corroborate the oral evidence.

Now I would like to make some observation about the investigation officer and the prosecutor who had conducted this case. We have noticed neglects and laches on the part of investigation officer in collecting legal evidence to prove the charge Nos.6, 11, 14 and part of charge No.8.

The investigation officer did not take any endeavor to ascertain whether or not Momtaz Begum lodged any FIR over the killing of Ibrahim Kutti, and whether ext 'A' is the true copy of the same. Similarly the prosecutor also did not take any step in this regard. He did not make any inquiry for ascertaining whether ext 'A' was genuine or forged; that he remained silent despite finding interpolations in it which can be detected with bare naked eyes. It should be kept in mind that the State is spending huge amount of money from the public exchequer for putting the offenders of Crimes against Humanity to justice with the aim of unveiling the mask of perpetrators to our next generation and also to rewrite the real stroy of our liberation struggle. It appears to us that the prosecuting team performed its responsibility by tendering witnesses without bothering as to whether they made statements in support of the charges or not. Possibly they thought that tendering one or two witnesses in support of a charge is their responsibility whatever might be the consequence.

Similarly, in our view the prosecutor appears to be a novice law officer, who has no elementary knowledge in conducting a case on behalf of the prosecution and also

the method of examination-in-chief of a witness. There are serious loopholes in the way the case has been conducted and he has not endeavoured to rectify those defects. Either intentionally or due to lack of adequate knowledge, he has treated the case callously. If he has no elementary knowledge to conduct such a serious case, he should not have taken the responsibility of the case. The Chief Prosecutor also cannot avoid the responsibility in this regard. If he cannot supervise the cases there is no reason for him to occupy the office. The prosecution team should not gamble with the blood of martyrs. It is the duty of the prosecuting counsel to ask a witness questions carefully. He should keep in mind that a witness should not be questioned without an object or without being able to connect that object with the case. We are shocked by the manner in which the cases like this one are handled by them.

It should be remembered that the persons involved in the process of trial of the offenders of Act of 1973 are getting extra financial and related benefits than the ones who are involved in normal trials. It is because the perpetrators of the offences under Act of 1973 have to be

detected. They should not be allowed to hold any public office in future. No where in the world history have such perpetrators been allowed to mix with the citizens in public affairs. Taking consideration of the public sentiments the government took the risk of holding their trials and gave the officers and others who are involved in the process risk benefits. It was the responsibility of the prosecution agency to collect legal evidence and discard those which are not relevant to prove a charge. The prosecutor has examined almost all the witnesses without comprehending which facts to be disclosed from their lips. The prosecution ought to have filed application for expunging ext A but in this case, we have noticed that the prosecutor took no positive step in this regard and allowed a forged document to remain with the record as evidence. Apart from the above, the investigating agency failed to give protection and security to important witnesses.

Such incompetent persons should not be entrusted with the task of investigation and prosecution of the cases involving offences of Crimes and Humanity and trials of such serious nature and they should be dropped immediately

with a view to prevent similar type of damages to other cases. Otherwise, the offenders of heinous crimes like Crimes against Humanity, Genocide, War Crimes etc. would get the benefit for the misconducts and incompetency of such irresponsible investigators/prosecutors despite committing offences. There are no words to express our anguish and condemn the conduct adopted by the prosecution agency. More so, taking so much benefits from the State exchequer, they must have some sense of responsibility and should have been aware of the minimum requirements of law required prove a charge and to discard a forged document, and even if they have no knowledge, they could have consulted with any senior lawyers or senior law officers of the State.

In view of the above discussions, the Tribunal is perfectly justified in finding the accused Delwar Hossain Sayedee guilty in respect of the charge Nos.7, 10, 16, 19 and part of charge No.8. However, on consideration of the evidence we convert the conviction of the accused in respect of charge Nos.7, 8 and 10 to one under section 3(2)(a) and (g) read with section 4(1) of the Act of 1973. We, however, maintain his conviction in respect of charge

Nos.16 and 19. In regard to the sentence, the Tribunal awarded sentence of death to accused Delwar Hossain Sayedee in respect of charge Nos.8 and 10. In respect of the second part of charge No.8, Delwar Hossain Sayedee is found guilty for commission of looting the houses of Manik Posari brothers and torching those houses after looting. In respect of charge No.10, it is found that Delwar Hossain Sayedee being a member of Shanti Committee and a Razakar came to Umedpur village, looted 25/30 Hindu houses and thereafter, set ablaze of their houses and then as per his order, one Razakar shot Bishabali to death. Though he actively participated in some of those crimes, the killing of Bishabali was perpetrated by another Razakar as per his order. So he was an abettor of the offence of murder. The principal offender was another Razakar but the prosecution could not bring him to justice with accused Sayedee and also could not detect his name. It is true that both the offences are heinous in nature, but in the absence of the principal offender, the abettor cannot be sentenced to death. More so, while awarding a sentence of death, it is to be seen whether the accused's act was brutal or diabolical. Section 20(2) provides that while convicting a

person the Tribunal shall award sentence of death or such other punishment proportionate to the gravity of the crime as will appear to the Tribunal to be just and proper.

We have not as yet promulgated any textbook or Rules on sentencing and by the same time, we have not developed a uniform sentencing principles or criteria to assist in promoting the equitable administration of criminal laws. In U.K., the Streatfeild Committee's (1961) recommendation has been accepted by the government. This Committee has termed a 'tariff system', i.e. giving a sentence proportionate to the offender's culpability. In the words of the Committee: 'The courts have always had in mind the need to protect society from the persistent offender, to deter potential offenders and to deter or reform the individual offender.' But in general, it was thought that the 'tariff system' took these other objectives in its stride. Over the last few decades, the other objectives have received increased attention.

In judging the adequacy of a sentence, the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individuals or to society, the effect of the punishment on the offender, and

eye to the correction and reformation of the offender are some factors amongst many other factors which would ordinarily be taken into consideration by courts. Of the said factors, the last one is not applicable to the accused since he was involved in Crimes against Humanity, the worst type of crimes ever committed on the soil of this country and it was at a time when the people were fighting for their self determination, both for political and economical liberation, against the tyranny of a military ruler, his force, and auxiliary force like the one Delwar Hossain Sayedee acted with. He committed Crimes against Humanity. There was no limit to the brutality of the Pak military dictators. The military junta perpetrated awful genocide which was deliberately planned and executed ruthlessly with the direct help and collaboration of persons like Delwar Hossain Sayedee. However, in awarding the sentence, the language used in sub-section (2) of section 20 is that 'the Tribunal shall award sentence of death or such other punishment proportionate to the gravity of the crime as appears to the Tribunal to be just and proper' which is in *pari materia* to the expressions 'a

sentence proportionate to the offender's culpability' used by Streatfield Committee.

In second part of charge No.8, the complicity of the accused Delwar Hossain Sayedee is that he set fire on the houses of the Hindu Commumity at Parerhat Bandar causing huge devastations. The acts of looting of goods and setting fire on dwelling houses are considered persecutions on religions grounds which are also Crimes against Humanity. In respect of charge No.10, Delwar Hossain Sayedee and his associates accompanied by Pakistani Army, raided the Hindu houses of Umedpur village, burnt 25 houses and at one stage, as per his order one Razakar shot to death of Bishabali. So, in one count he actively participated in the looting and setting fire and in another, he abetted the murder of Bishabali. Considering the nature of the offences perpetrated by the accused and his culpability in those crimes, the sentence of death awarded to him is not in conformity with sub-section (2) of section 20 of the Act. A sentence of imprisonment for rest of his natural life would be proportionate to the gravity of the crimes. In respect of charge No.7, Delwar Hossain Sayedee is sentenced to

10(ten) years rigorous imprisonment and in respect of 8, his sentence is altered to 12(twelve) years rigorous imprisonment, and in respect of charge Nos.16 and 19, he is sentenced to imprisonment of life i.e. rest of his natural life.

J.

Md. Abdul Wahhab Miah, J: These 2(two) statutory appeals have been filed by the convict-appellant, Allama Delowar Hossain Sayeedi (hereinafter referred to as the accused) and the Government of Bangladesh represented by the Chief Prosecutor, International Crimes Tribunal-1, respectively against the judgment and order dated the 28th day of February, 2013 passed by the International Crimes Tribunal No.1 (hereinafter referred to as the Tribunal). Criminal Appeal No.39 of 2013 has been filed by the accused against the order finding him guilty of charge Nos.6, 7, 8, 10, 11, 14, 16 and 19 and sentencing him to death in respect of charge Nos.8 and 10. The Tribunal did not award any sentence in respect of charge Nos.6, 7, 11, 14, 16 and 19. The Government has filed Criminal Appeal No.40 of 2013 against the non-awarding sentence in charge Nos.6, 7, 11, 14, 16 and 19.

I have had the privilege of going through the draft judgments prepared by my learned brothers, Surendra Kumar Sinha and A.H.M. Shamsuddin Choudhury, JJ on behalf of the majority. I could not persuade myself to agree with the reasoning and the findings given by them in respect of charge Nos.7, 8, 10, 16 and 19. Therefore, I find no other alternative but to give my own views in

respect of the finding of guilt and the sentences awarded by the Tribunal against the accused in respect of those charges.

Charges were brought against the accused on 20 (twenty) heads. In order to substantiate the charges (charges will be discussed later on) levelled against the accused, the prosecution adduced 28 witnesses and of them, prosecution witnesses, namely: PWs18, 19, 20, 22 and 24 were tendered and the defence declined to cross-examine them. The accused pleaded not guilty of all the charges levelled against him and took the plea of *alibi*. The further defence taken by the accused was that he was involved in the case falsely out of political vengeance. The alleged crimes were committed by the *Razakars* including Delwar Hossain Mollick and Delwar Shikder, son of Rasul Shikder and the members of the Peace Committee with the Pakistani army. The accused was neither a *Razakar* nor a member of the Peace Committee. The specific case of the defence was that at the relevant time of the occurrences as alleged in the charges (including the charges of which he has been acquitted), he was not present, at all, at the places, namely: Parer Hat, Baduria, Chitholia, Nalbunia, Umedpur, Huglabunia, Indorkani under District-Pirojpur (in 1971, Pirojpur was a Sub-Division) till the middle of July 1971 where the alleged crimes against humanity were committed. During the relevant time, the accused was at New Town Jessore, at villages-Sheikh Hati, Dhan Ghata, Mohiron and Dohakhola under Police Station-Bagharpara, District-Jessore. The accused further claimed that he went to Parer Hat in the middle of July, 1971.

As already stated earlier, charges were levelled against the accused on 20(twenty) heads, of which the Tribunal found him guilty of the charges under 8(eight) heads, i.e. Nos.6, 7, 8, 10, 11, 14, 16 and 19 and he was acquitted of the

charges being Nos.1-5, 9, 12, 13, 15, 17, 18, and 20. So, I do not consider it necessary to deal with those aquitted charges. Charge Nos.6, 7, 8, 10, 11, 14, 16 and 19 are as under:

> "**Charge No.6:-** That on 7th May, 1971 you led a team of Peace (Santi) Committee to receive Pakistani Army at Parerhat Bazaar under Pirozpur Sadar Police Station, then you identified the houses and shops of the people belonging to Awami League, Hindu Community and supporters of the Liberation War, You as one of the perpetrators raided those shops and houses and looted away valuable including 22 seers of gold and silver from the shop Makhanlal Shaha. These acts are considered as crime of persecution on Political and religious grounds as crimes against humanity.
> Thus, you have committed the said crimes of persecution punishable under section 3(2)(a) of the Act.
>
> **Charge No.7:-** That on 8th May, 1971 at about 1.30 p.m. you led a team of armed accomplices accompanied with Pakistani Army raided the house of Shahidul Islam Selim, son of Nurul Islam Khan of village Baduria under Pirozpur Sadar Police Station and you identified Nurul Islam Khan as an Awami League leader and his son Shahidul Islam Selim a freedom-fighter, they you detained Nurul Islam Khan and handed over him to Pakistani Army who tortured him and after looting away goods from his house, you destroyed that house by setting fire. The act destruction of the house by fire is considered as crime of prosecution as crimes against humanity on political ground and you also abetted in the torture of Nurul Islam Khan by the Pakistani Army.
> Thus, you have committed the said crimes punishable under section 3(2)(a) and 3(2)(g) of the Act.
>
> **Charge No.8:-** That on 8th May, 1971 at about 3.00 p.m. under your leadership you and your accomplices accompanied with Pakistani Army raided the house of Manik Posari of village- Chitholia under Pirozpur Sadar Police Station and caught his brother Mofizuddin and one Ibrahim @ Kutti therefrom. At your instance other accomplices after pouring kerosene oil on five houses, those were burnt to ashes causing a great

havoc. On the way to Army Camp, you instigated Pakistani Army who killed Ibrahim @ Kutti by gun-shot and the dead body was dumped near a bridge, then Mofiz was taken to army Camp and was tortured. Thereafter, you and others set fire on the houses of Hindu community at Parer Hat Bandar causing huge devastations. The acts of looting goods and setting fire on dwelling houses are considered as persecution as crimes against humanity on religious ground you directly participated in the occurrences of abduction murder and persecution which and identified as crimes against humanity.

Thus, you have committed the said crimes punishable under section 3(2)(a) of the Act.

Charge No.10:- That on the same day i.e. 02.06.1971 at about 10.00 a.m. under your leadership with your armed associates accompanied with Pakistani Army raided the Hindu Para of village- Umedpur under Indurkani Police Station you burnt 25 houses including houses of Chitta Ranjan Talukder, Jahar Talukder, Horen Tagore Anil, Mondol, Bisabali, Sukabali, Satish Bala and others. At one stage Bisabali was tied to a coconut tree and at your insistence Bisabali was shot to dead by your accomplice. The act of burning dwelling houses of unarmed civilians is considered as persecution. You directly participated in the act of burning houses and killing of Bisabali which is persecution and murder within the purview of crimes against humanity.

Thus, you have committed the said crimes punishable under section 3(2)(a) of the Act.

Charge No.11:- That on the same day i.e. on 02.06.1971, you led a team of Peace (shanti) Committee members accompanied with Pakistani occupied forces raided the houses of Mahbubul Alam Haulader (freedom-fighter) of village- Tengra Khali under Indurkani Police Station and you detained his elder brother Abdul Mazid Haulader and tortured him. Thereafter, you looted cash money, jewellery and other valuables from their houses and damaged the same. You directly participated in the acts of looting valuables and destroying houses which are considered as persecution on political grounds, and also torture.

Thus, you have committed the said crimes of torture and persecution punishable under sections 3(2)(a) of the Act.

Charge No.14:- That during the last part of the Liberation War, you led a team of *Razakar* Bahini consisting of 50 to 60, in the morning of the day of occurrence in a planned way you attacked Hindu Para of Hoglabunia under Pirojpur Sadar Police Station. On seeing them Hindu people managed to flee away but Shefali Gharami the wife of Modhu Sudhan Gharami could not flee away, then some members of Razakar Bahini entering in to her room raped Shefali Gharami. Being the leader of the team you did not prevent them in committing rape upon her. Thereafter, you and members of your team set-fire on the dwelling houses of the Hindu Para of village- Hoglabunia resulting complete destruction of houses of the Hindu civilians. The act of destruction of houses in the Hindu Para by burning in a large scale is considered a crime of persecution on religious ground and the act of raping both as crimes against humanity.

Thus, you have committed the said crimes punishable under sections 3(2)(a) and 3(2)(h)of the Act.

Charge No.16:- That during the time of liberation war in 1971, you led a group of 10/12 armed *Razakar*s and Peace Committee members and surrounded the house of Gowranga Shaha of Parer Hat Bandor under Pirojpur Sadar Police Station Subsequently you and others abducted (i) Mohamaya (ii) Anno Rani (iii) Komol Rani the sister of Gowranga Shaha and handed over them to Pakistani Army Camp at Pirojpur where they were confined and raped for three days before release. You are directly involved in abetting the offence of abduction, confinement and rape as crimes against humanity.

Thus, you have committed an offence of abduction, confinement and rape which are punishable under section 3(2)(a) and 3(2)(g) of the Act.

Charge No.19:- That during the period of Liberation War starting 26.03.1971 to 16.12.1971 you being a member of *Razakar* Bahini, by exercising your influence over Hindu community of the then Pirozpur Subdivision (now Pirozpur District) converted the following Hindus to

Muslims by force namely (1) Modhusudan Gharami, (2) Kristo Shaha, (3) Dr. Gonesh Shaha, (4) Azit Kumar Sil, (5) Bipod Shaha, (6) Narayan Shaha, (7) Gowranga Pal, (8) Sunil Pal, (9) Narayan Pal, (10) Amullya Haulader , (11) Hari Roy, (12) Santi Roy Guran, (13) Fakir Das and (14) Tona Das, (15) Gouranga Shaha, (16) his father Haridas, (17) his mother and three sisters, (18) Mahayamaya, (19) Annorani and (20) Kamalrani and other 100/150 Hindus of village- Parer Hat and other villages and under Pirojpur Sadar Police Station and you also compelled them to go the mosque to say prayers. The act of compelling somebody to convert his own religious belief to another religion is considered as an inhuman act which are treated as crimes against humanity.

Thus, you have committed the said crimes punishable under sections 3(2)(a) of the Act."

From the charges as quoted hereinbefore, it is clear that the crimes against humanity under the provisions of the International Crimes (Tribunals) Act, 1973 (the Act, 1973) were allegedly committed by the accused on 07.05.1971, 08.05.1971, 02.06.1971, in the last part of the liberation war (no date mentioned) and during the liberation war starting from 26.03.1971 to 16.12.1971 (no particular date mentioned) and the places where the crimes were committed were at Parer Hat Bazaar, villages-Baduria, Chitholia all under Pirojpur Sadar Police Station, Hindupara of villages-Umedpur, Tengrakhali, both under Police Station Indurkani, Hindupara of village Hugla Bunia, Parer Hat Bondar and Parer Hat under Police Station Pirojpur Sadar. As stated earlier, the accused took the plea of *alibi* stating specifically that he was not present at those places at the relevant time and he was at New Town, Jessore, Sheikh Hati, Dhan Ghata and Mohiron under Bagharpara Police Station, District-Jessore. And the plea of *alibi* has specifically been dealt with in rule 51 (1) of the International Crimes

(Tribunal-1) Rules of Procedure, 2010, shortly, the Rules of Procedure. The rule reads as follows:

> "51 (1) The onus of proof as to the plea of 'alibi' or to any particular fact or information which is in the possession or knowledge of the defence shall be upon the defence.
> (2) The defence shall also prove the documents and materials to be produced by them in accordance with the provisions of section 9(5) of the Act.
> (3) Mere failure to prove the plea of alibi and or the documents and materials by the defence shall not render the accused guilty."

In the context, it may be stated that the Act, 1973 and the rules framed thereunder have not made any departure from the well recognized legal principle in all criminal justice delivery system, be it under the domestic law or the international law that the burden of proving the charge levelled against an accused shall lie upon the prosecution beyond reasonable doubt. Although, in a criminal appeal, it is the normal practice that the prosecution witnesses are considered and sifted first to see whether the prosecution could substantiate the charges levelled against the accused and then to consider the defence plea, if any, sometimes both are considered side by side or simultaneously. I am in full agreement with the view expressed by my learned brother Surendra Kumar Sinha, J that *"The pertinent question is whether the appellant was present during the relevant time at Parer Hat or that he was staying elsewhere. If it is found that he was not present at or near, the place of occurrence at the time of the commission of atrocities, it would rather be a futile attempt to discuss the prosecution evidence in support of those charges, despite finding him guilty."* And in fact, Surendra Kumar Sinha, J discussed and considered the evidence of the DWs first and then on disbelieving the defence plea of *alibi* discussed and

sifted the evidence of the prosecution witnesses and maintained the order of conviction passed by the Tribunal in respect of charge Nos.7, 10, 16, 19 and partly of charge No.8 with modification of sentences as stated in the majority view and also awarding sentences in respect of charge Nos.16 and 19, so I shall discuss and sift the evidence of the defence witness (DW) first.

I would not also like to discuss the principle that governs the field of the plea of *alibi* as that has been correctly stated by Surendra Kumar Sinha J and if I do so, that would be sheer repetition.

In the context, I make it very clear that though I am in agreement with the conclusion arrived at in the majority judgment in respect of the innocence of the accused of charge Nos.6, 11, and 14 and acquitting him of those charges, I find it difficult to agree with the reasoning and the findings of the majority view concerning those charges. Be that as it may, I do not consider it necessary to deal with those 3(three) charges and part of charge No.8 (of which the accused has been acquitted) as if I do so that will add to the volume of the judgment. However, the findings and the reasoning in respect of the other charges, namely, charge Nos.7, 8, 10, 16 and 19 given by me, shall be treated as mine in respect of those 4(four) charges (charge Nos.6, 8, 11 and 14). In order to see whether the accused could prove the plea of *alibi,* I find no other alternative but to reproduce the evidence of the DWs. It is all the more necessary as the Tribunal did not at all discuss and consider the evidence of the DWs in considering the defence plea of *alibi* (this has also been found in the majority view).

DW1-Md. Shamsul Alam Talukder, aged about 58 years, stated in his examination-in-chief that his village home was at Ikri under Police Station-Vandaria, District-Pirojpur and also village-Khuntakata under Police Station-

Shwaronkhola, District-Bagerhat. He studied upto class-IV from the Primary School of village-Ikri and subsequently, he passed class-V and class-VI from Shwannasi School under Police Station-Moralganj, District-Bagerhat and then passed VIIth, VIIIth and IXth classes from Town School Bagerhat. He passed his matriculation examination from Dighirjan High School of P.S. Nazirpur, District-Pirojpur. He passed his intermediate examination in 1963 from P.C. College, Bagerhat and he passed degree from the same college in 1976. In November, 1963, he was elected as the General Secretary of the Students Union of P.C. College. In 1964, he was elected as the organising Secretary of Khulna District Committee of Chhatra Union, Khulna. In 1965, he was elected as the General Secretary of Khulna District Chhatra Union. In 1967, he was elected as the member of the Central Committee of Chhatra Union. In 1968, he was elected as the Vice President of East Pakistan Chhatra Union. He joined National Awami Party of Maulana Bhasani in 1969 and was elected as the president of Thana Committee of Shwaronkhola. He suffered imprisonment twice for his movement against the Education Report of Hamoodur Rahman and for the democratic movement during his studentship. He filed nomination paper for provincial parliamentary election in 1970, but he refrained from contesting the election in order to help the persons affected due to the devastating flood that occurred in the southern part of the then East Pakistan and also for burying the dead bodies. He was involved with social activities from his student's life. He established Khuntakata High School at his village in 1962. He and his family gave lands for establishing the School. In 1979, he established a Junior Girls' School under the name: B.K. School by the side of that High School which is presently known as B.K. Girls' High School and he also donated 1(one) acre

land for the said Girls' School. He laid the foundation of Tafalbari High School on the 26th day of March, 1963 and established the school by giving donation and with the help of others. In 1978, he established Shwaronkhola College and donated 14 (fourteen) kuras land (one Kura is equivalent to 66 decimals land). In 1962, he along with the students of Shwaronkhola and Moralganj proposed to establish a College at Moralganj and subsequently, a College was established and first donation was given by him. That College is now known as S.M. College. In 1973, he established Rajapur High School at Shwaronkhola Police Station in co-operation with others. In 1974, he established Janata High School at Shwaronkhola Police Station, he was its pioneer. He established Bhasani Kindergarten in thana town of Shwaronkhola in co-operation with others. He established Bagerhat Khan Jahan Ali College in co-operation with others in 1978 and he was also a member of the Executive Committee of the College. He played the principal role in establishing Bagerhat Adarsha School in 1978 and he was the member of the Managing Committee of the School. In 1970, he along with others created Bagerhat foundation with the co-operation of Mostafizur Rahman to help the poor students, presently the foundation has a cash capital of taka 03(three) crore. He was a member of the executive committee of the said foundation. In 1986, he established a Madrasa at Vandaria, his own village, in the name of his elder brother-Abdus Sobhan and 10 kuras land was given by their family for the Madrasa and he had active role with many other institutions. From the incidents which occured after the speech of Banga Bandhu on 7 March, 1971, they could understand that no fruitful result would come out through the discussions, they organised the youths of the area and started preparation for *Muktijoddha* and towards the end of May, 1971, they collected

some rice, pulse and other food items and arranged a place for shelter inside the Sundarbon area near Shwaronkhola so that they could utilise those food items for the *Muktijoddha*s in case of their need. The *Razakars* first came to village-Moralganj towards end of May in 1971. He along with some ex-Bangali army officers and other army personnel including Kabir Ahmed Modhu and the other local *Muktijoddha*s attacked the *Razakar* camp at the Union office of Moralganj at about 11 pm. During the attack, a boy named Abu faced martyrdom and 3(three) *Razakar*s were killed. The *Razakars* fled away from Moralganj at the very early in the morning. Subsequently, the *Muktijoddha*s assembled at the house of Radha Govinda, 2 (two) miles away from Moralganj and chalked out the subsequent programme and they established a camp at the house of Radha Govinda with the then leaders of the Chhatra Union, Chhatra League and Juba League.

They had information that Major Ziauddin was staying at a house (no mention of any place), they formed a team and sent them to him to bring him with honour. Major Ziauddin was brought in the evening. Major Ziauddin heard everything from them and then more people were brought together and a meeting was held. In that meeting, Major Ziauddin was made as commander of the area and he (the DW) was appointed as "টু, আই, সি," then said, about 1500/2000 freedom fighters were present in the meeting. The Pakistani Army attacked Moralganj after two days. The DW and the others along with the *Muktijoddha*s entered into Sundorban. After entering Sundorban, they brought some changes in the war strategy and sent Major Ziauddin to India by boat for bringing arms from India and they set up small platform on the trees inside the small canal, each platform could accommodate 20/30 *Muktijoddha*s.

Subsequently, they formed two groups: (i) comprising of students of the college or elder to them and (ii) School students or of the boys younger to them and by entering into the village, they started giving training to every one. In the result, a big Mukti Bahini was formed and for their training, they created plain land like parade ground by cutting trees. There were women *Muktijoddha*s as well and a separate group was formed with them. They did not go for any major operation till the return of Major Ziauddin. In the camp, the wife of the DW, Sarder Rashid of Patuakhali and his 2 (two) sisters named Anu and Monu and many others were there and they were trained. They used to do many other works in the camp.

The DW further stated that they established a small cantonment there. In the meantime, Major Ziauddin returned back to Sundorban with arms by 11 boats.

The area was under South Khali Union and no *Razakar* could enter into that area and all the time, the area was under their control and they had free excess in the area. After the return of Major Ziauddin, it was decided that they would attack Moralganj Police Station. At that time, Metric examination was going on. There were as many as 5 *Razakar*'s camps at Moralganj. They formed 6(six) groups. Subedar Aziz, the present *Muktijoddha* Commander of Bhandaria Police Station, was given the charge of attacking the Police Station. Kabir Ahmed Madhu was given the charge of attacking the *Razakar* camp at Rayer Bazaar. Subedar Gaffar was given the charge of attacking Kutibari *Razakar* camp. Kabir Mukul was given the charge of attacking the *Razakar* camp at K.C. High School, Moralganj. Major Ziauddin himself took the charge of attacking the *Razakar* camp at Moralganj College and he kept the DW with him. They

attacked the School keeping the College behind. Major Ziauddin charged a grenade through the ventilator of the School. The *Razakar*s were killed and wounded and 14/15 *Razakar*s were detained, two of the *Muktijoddha*s was seriously wounded and succumbed to their injuries while they were being taken to Sundorban. The *Razakar*s who were detained were killed. Subsequently, they held a meeting at the parade ground and deliberated as to how the *Muktijoddhas* would carry out the *Muktijuddho*. At that time, many joined *Muktijoddho.* Then stated that they deliberated as to how *Muktijoddho* would be carried out in the entire area, i.e. in the different thanas of Bagerhat and Pirojpur District under the leadership of Major Ziauddin. They also contacted Shahjahan Omar of Jhalakathi and Mehedi Saheb of Patuakhali. Thousands of refugees were coming and they also made arrangement to send them to India. Subsequently, Major Ziauddin was again sent to India and he returned back after 15 (fifteen) days with heavy arms and with other trained *Muktijoddha*s. They changed the war policy and again started attacking the Police Stations. First they attacked Tushkhali Bondor and brought 6(six) thousand mounds rice, 150 *Razakar*s and the police to the camp. Two thousand mounds rice was sent to India for the *Muktijoddha*s. After the said attack, their camp was attacked from Biman and Gunboat, but they could not do any harm to them. Thereafter, they attacked Kawkhali Police Station of Pirojpur and from there, they brought some police including two Punjabis and arms to the camp, then they attacked Vandaria Police Station. The Officer-in-charge of that Police Station along with the arms and the police came to the camp and subsequently, they participated in the *Muktijuddho*. Thereafter, they sent naval party to Mongla Port, who destroyed three ships and came back to the camp. At that time, attack used to be carried on

them from the gunboat. They deployed 5/7 *Muktijoddha*s at a particular place with the instruction to fire at the sight of the gunboat so that they would think that there was a camp of freedom fighters. Subsequently, they (the Pakistani Army) used to attack the said place again and again and after firing for sometime used to leave the place for which they could not do any harm to the actual camp of the *Muktijoddha*s. Subsequently, they (the DW and the *Muktijuddhas*) attacked most of the Police Stations at Pirojpur and Bagerhat area. Then said before their attack, many police and *Razakar*s of those Police Stations came to their camp and surrendered. Suddenly war broke out when Indira Gandhi, the Prime Minister of India, recognized Bangladesh and gradually all started surrendering. After liberation of the country, they sent the *Muktijoddha*s to the various Police Stations giving them the responsibility of arresting the offenders and handing them over to the police. The *Muktijoddhas* were instructed not to take law in their own hands as law would take its own course. In their camp, at Sundarban, there were about 3/4 thousand *Muktijoddha*s and they were instructed not to surrender any arms or other things to anybody without their instructions. They had communications with Brigadier Salek of Indian Army and they used to carry on their operation as per his instruction. In that situation, on the 8th day of December, they went to Parer Hat under Pirojpur with Major Ziauddin. Major Ziauddin remained at Parer Hat for 10/15 minutes. Major Ziauddin instructed the DW to go to Pirojpur after 2/3 hours having been apprised the entire circumstances. Commander Khasru, Mukarram, Liakat Ali Badsha, Baten, Munam, Shanu Khandokar, many other *Muktijoddha*s and general public narrated their position. He visited the *Muktijoddha* and the *Razakar* camps. They narrated the torture perpetrated upon

them by Muslem Maulana, Danesh Mollah, Sekandar Shikder, Razzaque, two Chowkiders and some others. At that time, none said anything about the accused. On that date, they spent the night at Pirojpur. Subsequently, they surrendered all the arms. He further stated that Masud Sayeedi, son of the accused, requested him to tell the truth which he knew. Then said he (Masud Sayeedi) requested him to depose before the Tribunal. He did not tell a lie in his deposition. Had the accused done any thing illegal, the commanders and the people would have told him. He (the DW) was the Joint Secretary General of Central *Muktijoddha* Command Council from 2002 to 2007.

In cross-examination by the prosecution, the DW stated that he joined Bhasani Nap in 1969. (The Tribunal has noted that in the 2nd half when it sat in Court the DW of his own stated that by mistake, he stated that he graduated in 1976, in fact, it would be in 1973). He took part in a number of battles against the *Razakar*s, but he could not tell the numbers at that moment. The political parties which opposed the *Muktijuddho* were Muslim League, Jamaat-e-Islami and other parties as well. After *Muktijuddho,* he was in Bhasani Nap. During the regime of Ziaur Rahman, Bhasani Nap had a meeting with him and after suspending the party, they joined him and formed the Jatiotabadi front. When they joined the front Moshiur Rahman Jadu Miah was the Chairman of the party. During *Muktijuddho,* Maulana Bhasani was the chief of the party and Jadu Mia was its Secretary. Those who were under the leadership of Jadu Mia joined Jatiotabdi front and some persons of Bhasani Nap did not join the front and joined the left parties and formed U.P.P. After liberation, Moshiur Rahman Jadu Mia was confined in jail, but he could not say the reason for his confinement. After the Jatiotabadi front, the DW joined B.N.P in 1979. He became the

Secretary of Bagerhat District B.N.P. and also a member of the Central Committee. As he is not physically well, he is silent in politics now. While he was in B.N.P, he filed case against Khaleda Zia, the Chairperson of B.N.P for organisational reason and he also held press conference. He appeared in the matriculation examination as a regular student. During *Muktijuddho,* he did not go to India. He further stated that the *Muktijoddha*s used to be recruited centrally as well as locally. He has two wives. His 2nd wife had filed a case against him concerning land and that was settled at the intervention of the local respectable people. His 2nd wife also filed a case against him being Bagherhat Police Station Case No.27 dated 17.07.2009 corresponding to G.R. No.338 of 2009 and Nari-0-Shishu Nirjatan Case No.19 of 2010 under section 11(Ga) of the Nari-0-Shishu Nirjatan Daman Ain. The name of his said wife is Rehana Talukder and still she is his wife and they live together in the same house. Most of the time, he lived at Bagerhat and sometimes at Vandaria and in Dhaka. He admitted that the cases were filed against him alleging extortion, fish looting and *gher* looting. Mrs. Nasima was his first wife, he divorced her. At Bagerhat, first they used to live at a rented house and then in 1969, his mother erected a house at Bahergat. After living at a rented house for three years, they started to live in their said house. After the death of his father, his brothers became separated. He himself defrayed the expenses of his education; in case of need his brothers also helped him. He knew that Major Ziauddin wrote a book on *Muktijuddho*. He further stated that the incidents stated by him in his examination-in-chief while he accompanied Major Ziauddin at Parer Hat, might not have been stated in the same manner in the book written by Major Ziauddin. In the Bhasani Nap, there were two groups during *Muktijuddho*, one in favour of the *Muktijuddho* and the

other against the *Muktijuddho*. Moshiur Rahman Jadu Mia was the leader of the persons who were against the *Muktijuddho*. He (Jadu Mia) had gone to India, but came back out of fear of life. Since 2001 till date, Jamaat-e-Islami and B.N.P are politically united and they were in the same Government. On 8 December 1971, when he (the DW) went to Parer Hat, 1000/1300 people were present. The *Muktijoddha* camp which they visited was the camp of the *Razakars* before the liberation. There was also a military camp, but that was at Rajlaxmi School. The *Razakar*s of the area had fled away before the said date. He denied the prosecution suggestion that it was not a fact that he and Moshiur Rahman Jadu Mia were not with the main stream of the pro *Muktijoddhas* from the very beginning. He also denied the prosecution suggestion that it was not a fact that he and Jadu Mia had much contribution for rehabilitation of the parties and the persons who were against *Muktijuddho* after the killing of Banga Bandhu. He denied the prosecution suggestion that it was not a fact that as B.N.P and Jamaat-e-Islami are in a Jote, he deposed falsely in favour of the accused, he (the accused) being a leader of Jamaat-e-Islami by suppressing facts, although he (the accused) was involved with the *anti-Muktijuddho* activities. He denied the prosecution suggestion that it was not a fact that the statements made by him in his examination-in-chief that at that time, none told him about the accused, were tutored by the son of the accused.

DW2-Abdur Razzaque Akond, aged about 65 years, village-Nalbunia, Police Station-Zianagar, District-Pirojpur, stated in his examination-in-chief that he was a cultivator. They were 8(eight) brothers and sisters in number, amongst them, Sufia was the eldest who was married at a neighboring house of the same village. His said sister had 3(three) sons named Abdul Halim Babul, Abdus

Salam Bahadur and Abdul Karim Madhu. He came before the Tribunal to tell the truth in favour of the accused. In 1971, during the liberation war, no Pak Army, *Razakar* went to the house of his nephew Abdul Halim Babul and there was no looting and none set fire on his house and no such occurrence took place in that house. Abdul Halim Babul deposed falsely before the Tribunal against the accused. During liberation war, Abdul Halim Babul was aged about 8/9 years. One year before, it was heard that Abdul Halim Babul would depose against the accused falsely. On hearing the said fact, his (Abdul Halim Babul) mother told him not to depose against such a good man. His (Abdul Halim Babul) brothers Modhu and Bahadur also told Abdul Halim not to depose, but Halim told that he would depose. On hearing the said utterances of Abdul Halim, his mother out of anger went out of his (Abdul Halim Babul) residence and went to the house of his brother-Bahadur in Dhaka. His mother told the DW that if she had been in good health, she would have come to the Tribunal and deposed actually in favour of the accused. His sister further told him that since he (the DW) knew everything, he should have deposed before the Tribunal. The DW further stated that only one incident took place at Nalbunia during liberation war, in 1971. In the middle of Ashwin, one day, in the last part of the night, there was a sound, he thought that it was the sound of the fire. It was the time of Fazr prayer. He pronounced Azan and then offered his prayer. After offering prayer, he went to the northern side of the road to know what happened at whereabouts. He saw that the dead body of Ibrahim Kutti was being brought by a boat towards Parer Hat from the northern side through the canal. He saw Kalam Chowkider, Ayub Ali Chowkider and Hakim Munshi in the boat. He also saw some other persons coming from the north by the side of the canal. The

people all included Danesh Molla, Sekandar Shikder, Muslem Maulana, Ruhul Amin and Mumin, who were coming, were the *Razakar*s. He also saw those people bringing the wife of Arju Haulader and his son, Saheb Ali, folding and they took them towards Parer Hat. On the next day, he heard that the wife of Arju Haulader came back home, but Saheb Ali was taken to Pirojpur and was shot dead there by the *Razakar*. A few days after liberation, he (the DW) heard that the wife of Ibrahim Kutti had filed a case.

It appears that at the beginning of the cross-examination of this DW, objection was taken by the prosecution that Abdur Razzaque, who was listed as a defence witness, was not produced before the Tribunal and Abdur Razzauqe produced before the Tribunal was Abdur Razzaque Akand, a different person. But the defence Councel, Mr. Abdur Razzaque, asserted that Abdur Razzaque Akand who was produced before the Tribunal was the Razzaque cited in the list of the witnesses of the defence. Then the prosecution proceeded with the cross-examination of the DW and no suggestion was given to him to the above effect.

In cross-examination, the DW stated that the age of his eldest sister, mother of Babul, might be above 85. Amongst the 3 brothers, he (the DW) was the 3rd and they were 6(six) brothers. He could not say in which year his eldest sister was given marriage, then said his father gave the marriage. He could not say his age when his said sister was married. Amongst the three brothers, Babul was the eldest. Before Babul, 4(four) others were born and they all died. He could not say the year in which Babul was born. He could not remember in which year the said 4(four) died. His (the DW) brother-in-law (Babul's father) died after liberation of the country. He could not say his age when he died. The house of witness-Babul was towards the north of the village. The house of

Mokbul Master was situated on the south outskirts of the village. During the liberation war, he (Mokbul Master) was a teacher. During *Muktijuddho,* the DW used to go to the Haat Bazaar. During the liberation war, he had gone to Parer Hat Bazaar only once and that was in the month of Ashwin and that was a haat day. Then said besides the month of Ashwin, he went to Parer Hat Bazaar before and after the month of Ashwin. But during the liberation war, he went to the haat seldom. Then said he went to Parer Hat Bazaar seldom out of fear of the Pakistani Bahini and the *Razakars*. The *Razakars* used to loot at that time. He heard that the *Razakars* set fire at village Hugla Bunia. The *Razakar*s used to set fire at the houses of the Hindu Community. He also heard that the *Razakar*s set fire on the houses of the Muslims and the *Muktijoddha*s. The *Razakar*s also set fire at the house of *Muktijoddha* Khasru of village Shankor Pasha on the other side of the canal. The *Razakar*s also set fire on another house by the side of the house of Khasru, but he could not remember the name of the owner of the house. There was a *Muktijoddha* at his (the DW) house named Mobarok, he was his cousin. His brother-in-law, i.e. the father of Babul was a dire hard Awamileaguer and was a Mohorar by profession and once was elected as the member of the Union Parishad. During *Muktijuddho,* in 1971, in the month of Joistho/Ashar, he along with his brother-in-law, i.e. Babul's father used to flee away in different houses in their village as well as in other villages. Then said Babul's father was a local Awami League leader. During *Muktijoddha,* he (the DW) never went to any *Razakar*'s camp. No *Razakar* came to their village and further asserted that there was no *Razakar* in their village, but there were *Muktijoddhas* in their village. There was a *Muktijoddha* named Sattar on the north of their village. The house of *Muktijoddha* Khashru was 300/400 yards

away from his house. During *Muktijuddho,* he never went to the army camp. There was a *Razakar* camp at Parer Hat and the Pak Army used to come there. Presently, there are 5(five) rooms at the house of Babul, during *Muktijuddho,* there were 4(four) rooms. He (the DW) did flee away neither in the day nor in the night as there was no pressure from the *Razakar*s. He married in the first part of 1972. He came to Dhaka yesterday. Then said Nanna, brother-in-law of the accused, brought him to Dhaka. Babul's mother was not fully cured, somehow she could move, she stayed in Dhaka most of the time, now she was at his (the DW) house. In Dhaka, she lived at the house of her son at Dhanmondi.

Putting the statements made by the DW in his examination-in-chief right from one year before, it was heard that Abdul Halim Babul would depose falsely against the accused up to the statements that Babul's mother requested him to depose, suggestion was given to him that those statements made by him were untrue which he denied.

The DW further stated that he was acquainted with the accused $1\frac{1}{2}$/2 years before liberation. Nanna Miah who brought him to depose was known to him for the last 15/20 years. He (the DW) had no visiting term to the house of the accused and the accused also did not visit his house. Younus Munshi, father of Nanna Mia, had a piece cloth shop at Parer Hat Bazaar and they (the DW) used to stitch their clothes in that shop, thus he was acquainted with him. Before the beginning of the *Muktijuddho,* the accused used to hold *Mahfil*. He (the DW) attended a *Mahfil* held by the accused at the field of Dighir Par in their village and that was before the liberation war. The accused also held *Mahfil* one year after the liberation. He did not hear about the arrest of the accused before. He

asserted that after *Muktijuddho,* no allegation was made against the accused. He does not know about the properties owned by the accused. He did not also know about the educational qualification of the sons of the accused. He did not see who had lifted the dead body of Kutti in the boat. Parer Hat Bazaar was on the south from his house. He denied the prosecution suggestion that it was not a fact that he did not know anything about the accused. He denied the prosecution suggestion that it was not a fact that the statements made by him in his examination-in-chief about his seeing in bringing the dead body of Ibrahim kutti by a boat from the north through the canal up to the filing of the case by the wife of Ibrahim Kutti were untrue. He denied the further prosecution suggestion that it was not a fact that during liberation war, in 1971, no Pak sena and the *Razakars* had gone to the house of Babul and did not loot his house and set ablaze his house and nothing like that happened. He denied the prosecution suggestion that it was not a fact that he knew that the day on which the *Razakar*s set ablaze the house of Khasru Mia and Amir Kha also set ablaze the house of Babul and knowing fully well those facts, he deposed falsely by suppressing facts. He denied the last prosecution suggestion that it was not a fact that he deposed falsely being influenced by the relation of the accused to save him.

DW3, Nurul Haque Haulader, aged about 60 years (his address has not been mentioned in the deposition sheet), stated in his examination-in-chief that he nursed at his banana field and looked after the agricultural land. He came before the Tribunal to tell the truth in favour of the accused. In 1969, he used to live at his own residence at Parer Hat Bondor. The Peace Committee set up their office at the building of Fakir Das in the first part of liberation war, in 1971. That office was 100/150 yards away from his residence. He saw all the time

Sekandar Shikder, Danesh Molla, Muslem Maulana, Hazi Abdul Gani Gazi, Shafiz Uddin Moulovi and Asmat Ali Munshi in the said office and he never saw the accused in that office. A *Razakar* camp was established at the first floor of Rajlaxmi High School at Parer Hat either in the middle of Joistho or at the last part of the month, in 1971. In that *Razakar*s' camp, he saw *Razakar*s Abdul Halim, Razzaque, Momin, Mohshin, Ruhul Amin, Bazlur Rahman, Habibur Rahman Mridha, Abdur Rashid, Moshiur Rahman, Sultan, Isahaque and Solaiman. He never saw the accused in the *Razakars'* camp. In the last part of Boishakh, 1971, the Pak Army came at Parer Hat and looted 5/6 shops. The owners of those looted shops were Makhon Shaha, Modon Shaha, Narayan Shaha, Bijoy Master and Gouranga Paul. After looting, they went to Pirojpur. Sekander Shikder, Danesh Molla, Muslem Maulana, Haji Gani Gazi, and Asmat Ali Munshi were with them. He did not see the accused any where. On the next day, he heard hue and cry sitting at his residence. He saw many people including the Army through the window. The people who were there earlier also accompanied the Pak Army, when they (the Pak Army and those named people) proceeded towards the south by crossing his residence, he followed them and saw them going to village-Baduria by crossing Parer Hat Bridge. The DW hid himself by the side of a shop at the bridge, he saw them entering into the house of Nuru Kha, the leader of Awami League. After a little while, he saw the flame of fire. He also saw those people going towards the South after coming out from the house of Nuru Kha. After half an hour, he saw black smoke in the sky. After an hour, those people went to Pirojpur by crossing the bridge. Mahbub Alam Haulader of Tengrakhali was the nephew of his (the DW) brother-in-law. Mahbub Alam Haulader was also the first cousin of the *Fufato Bhai* of the DW

and through that relationship, he (Mahbub Alam Haulader) was his (the DW) cousin. The room of his *fufato Bhai* and that of Mahbub Alam Haulader was situated side by side. He (the DW) used to visit that house from his boyhood. For the last 40(forty) years, he never heard that their house was looted. He heard that a case was filed against the accused. After the filing of the case against the accused when the DW told the said fact to his (Mahbub Alam Haulader) elder brother, Baten Haulader, he (Baten Haulader) replied not to say anything and he felt ashamed and further told that had their house been looted, he (the PW) could have known the said fact. Baten Haulader further told that no *Razakar* or Pak Army had ever come to Tengrakhali village not speak of looting their house,. Then when the DW asked his *fufato Bhai* Abdus Salam Haulader, he replied that in 1971, Mahbub Alam Haulader was aged about 10/11 years and he was a student of Primary School and he (Mahbub Alam Haulader) might have filed the case against the accused for any big interest. He (Abdus Salam Haulader) further told that as no witness would be available from their house as well as from the neighbouring houses, the witnesses of far off places were cited. The father of Mahbub Alam had 4/5 bighas land in total and Mahbub Alam got $1/1\frac{1}{2}$ bighas in his share which he had already sold. Mahbub Alam Haulader had also sold the property of his wife. But after filing the case against the accused, he had been constructing a two storied building. Mizanur Rahman Talukder was the brother-in-law of the maternal cousin of the DW, so he was his (the DW) brother-in-law and his house (Mizanur Rahman Talukder) was adjacent to the house of the DW and one could hear the call if made loudly from that house. He (Mizanur Rahman Talukder) lodged a complaint with the Tribunal against the accused

alleging that his elder brother Mannan Talukder was taken at the *Razakar* camp at Parer Hat and was tortured there. After looting, the *Razakars* deposited the goods at the house of Mizanur Rahman Talukder and those goods were returned to the owners by beating drum. He never heard those things within the last 40 years. He (the DW) had close relationship with Mannan Talukder who was the President of Togra Kamil Madrasa and Orphanage. He (the DW) was the Vice President of the said Madrasa for 8/9 years. Mannan Talukder used to talk to him about his family. But he never told him that he was tortured. He did not also hear from anybody about the torture at *Razakar* camp at Parer Hat for the last 40 years. Gouranga Saha complained that the accused took his sister to Pak Army camp and got her raped there (in the deposition sheet, in Bangla, it has been recorded as "গৌরাঙ্গ সাহা অভিযোগ করেছে যে, তার বোনকে সাঈদী সাহেব পাক আর্মি ক্যাম্পে নিয়ে ধর্ষন করিয়েছে"). At that time, Gouranga Saha was aged about 10/11 years. His (Gouranga Saha) sisters were younger to him. The eldest one was aged about 6/7 years. He further stated that no woman of Parer Hat Union was raped and during the last 40 years, none told that the sister of Gouranga Saha was raped though he went to the Bazaar for long. The Hindus in order to save their lives voluntarily had gone to the Khanka of Yeasin Maulana Saheb and embraced Islam.

On a question put by the Tribunal as to whether he (the DW) was present when the Hindus embraced Islam, he replied in the negative. Then in reply to another question to the effect as to how he knew that the Hindus embraced Islam voluntarily, he replied that he had heard so. Those occurrences took place in 1971, after liberation of the country, the Hindus went back to their own religion. Complaint had been made that Bhanu Saha, daughter of Bipod Saha was raped

by the accused, that complaint was false. Moslem Maulana used to live at that house all the time in 1971. It was publicized that Moslem Maulana married Bhanu Saha. The accused was neither a *Razakar* nor was anti-liberationist and he never resorted to any acts against humanity. The accused was totally innocent in respect of those allegations. The accused contested in the M.P election thrice and his opponents never made any allegation against him complaining the commission of any crime against humanity; had he committed those offences, his opponents would have surely made those allegations during their election campaign. He further stated that before 1971, the accused was at Satkhira-Jessore and he came to Parer Hat in the month of Ashar-Shrabon, 1971.

In cross-examination, the DW stated that the house, where he used to live at Parer Hat Bazaar in 1969, was his own. His father purchased the house in their names by a kabala. At that time, they were infants. The house was purchased from the Hindus. He had 3(three) daughters and a son, two daughters were already married. The son and the other daughter were studying. He did not invite the accused at the wedding of his daughters and the accused did not also attend their wedding. He (the DW) had acquaintance with the accused since before 1969. He did not visit the village home of the accused regularly. He did not also visit the house of his father in law. But he had acquaintance with the inmates of the house of the father-in-law of the accused. He himself came to Dhaka by bus to depose before the Tribunal. Then said Nanna, brother-in-law of the accused, brought him from Saydabad. Then said Masud Sayeedi brought him to the Tribunal from the place where he was staying. He came to Dhaka having a phone call from Masud Sayeedi. He came to know about one year before that he had to depose. At that time, Rafique Bin Sayeedi in front of their Madrasa and in

presence of many people told whether they (the DW and the persons present there) had any idea about the case filed against the accused, the people told that the case was totally false. Then Rafique Bin Sayeedi told whether they would go to Court and say so. Then he (the DW) and many others agreed to depose in Court (in the deposition sheet, in Bangla, it has been recorded as ‘‘প্রায় এক বৎসর আগে আমি সাক্ষ্য প্রদানের কথা জেনেছি। ঐ সময় রফিক বিন সাঈদী সাহেব আমাদের মাদ্রাসার সামনে গিয়ে অনেক লোকজনের সামনে আমাদেরকে বলেন সাঈদী সাহেবের বিরুদ্ধে যে মামলা আছে তার সম্পর্কে আমাদের কোন ধারণা আছে কিনা, তখন আমরা বলি ধারণা আছে, মামলা সম্পূর্ণ অসত্য । তখন তিনি বলেন তাহলে কোর্টে গিয়ে আপনারা একথা বলবেন কিনা? তখন আমি সহ অনেকেই কোর্টে এসে সাক্ষ্য দিতে রাজি হই)’’ The present then M.P. was the president of the said Madrasa, but he could not remember who was its Secretary. The principal of the Madrasa was Maulana Delowar Hossain (not the accused), the principal was alive, the other teachers of the Madrasa were not present at that time. Rafique Bin Sayeedi was the son of the accused. He could not remember whether investigation of the case was going on when he heard about the case from Rafique Bin Sayeedi. He read the newspapers after he had met Rafique Bin Sayeedi. Then said on reading the newspapers he could understand that investigation was going on. He (the DW) had never come to the *Todonto Sangstha,* he never communicated with the investigation officer of the case or communicated with their office. The DW asserted that from the first day of May, 1971 up to the 16th day December, 1971, he was at Parer Hat Bazaar. The people who used to live at Parer Hat Bazaar amongst them the Hindus fled away, he could not remember whether any Muslim fled away. He never went to the *Razakars’* camp and the office of Peace Committee. He could not say what acts used to be done in those two offices and what deliberation held there. He never accompanied the *Razakar*s and the

members of the Peace Committee whereever they used to move. He asserted that he was not a *Razakar* and he never went into any operation with the *Razakar*s. Village Togra was divided by a road, there were houses on both the side of the road, the house of the DW was on the east of the road. There were houses of some *Razakar*s on the east of the road, then said there were houses of 5/6 *Razakar*s named Habibur Rahman Mridha, Bazlur Rahman Haulader, Moshiur Rahman, Abdur Rashid Haulader, Solaiman Sultana and Isahaque. On the west side of the road, there was a house of a *Muktijoddha* named Mizanur Rahman Talukder. He could not say what the title of the family of Moshiur Rahman was. The house of Moshiur Rahman was half a mile away from his (the DW) house. The house in which Mahbub Alam Haulader resides was at village Tengrakhali. He (Mahbub Alam Haulader) had also sold the house of his father and presently he lived at the property of the same village which he inherited from his maternal grand father. His (Mahbub Alam Haulader) present house was 100/150 yards away from the house of his father. During *Muktijoddha,* he (the DW) had gone many times to the house of his paternal aunt; the house of his paternal aunt was towards the West from Parer Hat Bazaar. Mahbubul Alam Haulader first married his cousin (paternal uncle's daughter). His (the DW) paternal uncle and the father-in-law of Mahbub Alam Haulader were cousins. The DW denied the prosecution suggestion that it was not a fact that he always used to act against Mahbub Alam Haulader in the case filed by his first wife. Then said Mahbub Alam Haulader has no marital relationship with his first wife. The present house of Mahbub Alam Haulader was a tin shed building and presently the work of first floor was going on. He denied the prosecution suggestion that it was not a fact that the work of first floor was not going on. He further stated that he never

went inside Rajlaxmi High School at Parer Hat. The School was situated by the side of the road near his house. He (the DW) was never disturbed by any Military or the *Razakar*. No Pakistani Army or *Razakar* had ever gone to his village home or his residence at Parer Hat.

One day Parer Hat Bazaar was looted. On the next day, fire was set at Baduria and Chitholia villages situated on the other side of the canal, no fire was set at Parer Hat Bazaar. On the date of looting of Parer Hat Bazaar, he was present at the Bazaar and after looting he went to his house. Then said 5/6 shops of the Hindus at Parer Hat Bazaar were looted, such as, Makhon Saha, Modon Saha, Narayan Saha, Bijoy Master and Gourango Paul, they had their houses adjacent to their shop. Gourango Paul died. The persons, who converted themselves from Hindu to Muslim, would have been killed, had they not embraced Islam. They embraced Islam out of fear as they saw that Pakistani Military were killing the Hindus. Though the Pakistani Army did not know who Hindus were and who were Muslims, the members of the Peace Committee used to identify them. During *Muktijoddha,* he met the persons at Parer Hat Bazaar who embraced Islam. He further stated that he used to live at Parer Hat and sometimes used to go to his village home at Togra. After the *Muktijuddho,* the *Muktijoddha*s returned to their home. He saw *Muktijoddha* Mizanur Rahman Talukder after one month. After liberation, the *Muktijoddha*s used to stay at the office of the Peace Committee and the *Razakar*s' camp. The public provided them with food. Mannan Talukder Saheb used to serve in a bank at Pirojpur and he used to attend the office from his house. He denied the prosecution suggestion that it was not a fact that Mannan Talukder never told him about the torture perpetrated on him. He denied the prosecution suggestion that it was not

a fact that the *Razakar*s used to deposit the looted goods at the house of Mizanur Rahman and he returned those goods to its owners by beating drum and that he did not hear those facts within 40(forty) years. He denied the prosecution suggestion that it was not a fact that he was not in the Manging Committe of Togra Kamil Madrasa and Orphanage with Mannan Talukder Saheb. The house of Gouranga Saha was 100/150 yards away from his house. During *Muktijuddho,* there were 20/25 houses in between his house and the house of Gouranga Saha, and of those houses, 7/8 were of the Hindus. There were 10/15 houses in between the house of the DW and the *Razakar* camp. The house of Satindra doctor was by the side of the house of Gouranga Saha. Now there was no existence of the said two houses as those were engulfed into the river. He denied the prosecution suggestion that it was not a fact that in 1971, Gouranga Saha was aged about 10/11 years and his sisters were younger to him and the age of his eldest sister was 6/7 years and that no woman in Parer Hat Union was raped and for the last 40(forty) years, the people did not say that the sister of Gouranga was raped. He did not know at present how many wives Moslem Maulana had. He did not know how many times, he (Muslem Maulana) married. He denied the prosecution suggestion that it was not a fact that there was publicity that Moslem Maulana married Bhanu Saha. He denied the prosecution suggestion that it was not a fact that the accused was neither a *Razakar* nor an anti-liberationist and he did not indulge in any activity against humanity and that he was totally innocent. During the election, he (the DW) attended meetings of the political parties. He read newspapers sometimes. He read about the complaint against the accused in respect of the commission of offence against humanity in the newspapers, namely, the Dainik Janakantha, the Jugantar and

other newspapers as well. He denied the prosecution suggestion that it was not a fact that though the accused participated in the parliamentary election 'thrice', his opponents did not make any allegation in their election campaign against him alleging commission of any crimes against humanity; had he committed any crime against humanity, his opponents would have brought those allegations in their election campaign. He denied the prosecution suggestion that it was not a fact that the accused came to Parer Hat in the month of Ashar, Shrabon 1971. He denied the prosecution suggestion that it was not a fact that his nephew was a *Razakar* and his entire family actively opposed *Muktijuddho*. He denied the prosecution suggestion that it was not a fact that presently he was a Jamaat-e-Islami and in-charge of Jamaat-e-Islam of Parer Hat. He denied the prosecution suggestion that as he was actively associated with Jamaat-e-Islami politics, so he deposed falsely by suppressing facts in favour of the accused, a Jamaat leader. He also denied the prosecution suggestion that it was not a fact that his father was a member of the Peace Committee.

DW4, Md. Abul Hossain, aged about 56 years, stated in his examination-in-chief that he served in a private firm. He had been living at block A/185 at New Town, Jessore since 1968. In the black night of 25th March 1971, the Pak Army attacked the un-armed Bangalis and started firing from Jessore Cantonment. Firing continued from 26 to 28 March, Shahidul Islam Saheb used to live at house No.184 adjacent to his house. He (Shahidul Islam) was the Headmaster of Sheikh Hati Government Primary School. The Assistant Headmaster of the said School used to live at house No.183, the adjacent house to Shahidul Islam. The accused used to live at house No.182. Many families were fleeing away Jessore town out of fear to take shelter at safe place. In the

circumstances, the guardians of the 4(four) families discussed the matter amongst themselves and took decision that it was not safe to live at Jessore Town. On 3 or 4 April, 1971, they went to Sheikh Hati from Jessore and stayed there in the night, in the morning, they went to village Dhan Ghata which was a bit inside towards the East. There (Dhan Ghata) they stayed at the house of the maternal uncle of the inhabitant of house No.183. After staying for about 7/8 days in that house, it was decided after discussion that the families of the DW and the families of Shahidul Islam would go to India. Abul Khair, the inhabitant of house No.183, would stay back at the house of his maternal uncle, i.e. at Dhan Ghata. The accused went to the house of his peer at Mohiron, a village under Police station Bagharpara, District-Jessore, 8/9 miles away from Dhan Ghata. He further stated that his family and the family of Shahidul Islam went to India. And thereafter he had no communication with the accused.

In cross-examination, the DW stated that he had his national I.D. card, but he did not bring the same with him. Then said he did not bring the national I.D. card from Jessore to Dhaka. He had been serving the private firm for the last 10/12 years. The name of the firm was Square Electric, Mike Potti, Jessore. He did not bring any paper to the Tribunal to show that he worked in the firm. He did not also bring any paper from the local Chairman, Member in support of his claim that he lived in that place. He further stated that he worked as a Manager of the said shop. Besides him, 4/5 persons also worked in the shop. The name of the owner of the shop was Md. Shahidul Islam aged about 36/37 years. Before joining the shop, he used to serve in a Kindergarten. He was a singer and he was a music teacher. He studied at Jessore, he did not bring any paper concerning his education. In March, 1971, his father was the guardian of his family. His father

died in 1985. He (the father of the DW) was the Head Assistant at Jessore Police office. He (the DW) passed S.S.C examination in 1972 and thereafter he did not continue his study. After going to India, they took a room by the side of the Madrasa camp and all the members of the family lived there. The house of his grand father was under Bashirhat Sub-division under District 24, Pargana, West Bengal. The possession of house No.185 at Jessore town was purchased from the Government allottee. Similarly house Nos.182, 183 and 184 were also Government allotted house. Those houses were built for the people who came from India. He returned back from India after one month of the liberation of the country. His father came from India with his family after the partition in 1947 and he used to live at the same residence. He further stated that he was not an artist of Akhra and he sang Ravindra Shangeet, Nazrul Geeti and folk song. He sang in Bangladesh Television in 1978. At that time, the accused had two children and a wife. The accused used to live there with his two children, a wife and a maid servant. At that time, the accused used to hold *Waz Mahfil*. He denied the prosecution suggestion that it was not a fact that the accused lived at house No.182 with his wife, two children and a maid servant. He (the DW) deposed in many cases, but those cases were of the establishment's where he used to serve, but he deposed for the first time in a case of the instant nature. He had to depose in various Courts in every month. They had left for India from Dhan Ghata first and thereafter the accused left the place on the same date. He denied the prosecution suggestion that it was not a fact that the accused went to his Peer Saheb at Mohiron under Police Station Bagharpara, 8/9 miles away from that place. He did not know the village home of the accused. He denied the prosecution suggestion that it was not a fact that he had acquaintance with the

accused since before the *Muktijuddho* in 1971 and lived with him side by side and that he had fled away with him. He denied the further prosecution suggestion that it was not a fact that they on 3 or 4 April, 1971, went to Sheikh Hati and after staying there in the night, they all in the morning went inside towards the East at village Dhan Ghata and there they stayed at the house of the maternal uncle of the inhabitant of house No.183 and after staying in that house for 7/8 days, it was decided that the families of the DW and Shahidul Islam would go to India and Abul Khair, the inhabitant of house No.183, would stay back at the house of his maternal uncle at Dhan Ghata and the accused went to the house of his Peer Saheb at Mohiron under Bagharpara Police Station. He further stated that Nanna, brother-in-law of the accused, told him one year before to depose before the Tribunal. After having gone to their house, he (Nanna) looked for his (the DW) father and came to know that he had died, he requested the DW to depose in the case. He came to Dhaka from Jessore alone. He denied the prosecution suggestion that it was not a fact that he was a professional witness and he deposed falsely in the case.

DW5, Md. Khosrul Alam, aged about 62 years (no address has been mentioned in the deposition sheet), stated in his examination-in-chief that in 1971, he was a student of I. Com. of S.M. College at Moralganj and he was a member of Chhatro League of Moralganj College. He along with the then V. P. of Moralganj College, Liakat Ali Khan and former V.P. Mosharrof Hossain Khan, under the leadership of ex-Subedar S.M. Kabir Ahmed Modhu, assembled together to organise *Muktijuddho* and under the leadership of Kabir Ahmed Modhu, they took training on rifle handling. Thereafter, they along with Subedar Modhu took part in operation at various places. He got the information that

Razakar Mohsin, son of Moulovi Shafizuddin, member of Parer Hat Peace Committee, accompanied by some Punjabis went to their house at Shankar Pasha and set ablaze the house as he was a Chhatro League and took part in the *Muktijuddho*. His mother aged more than 60 years was physically violated by the Pakistani Army. He got the said news at the last part of May. Subsequently, on hearing the said news, at the direction of Sundarbon, Sub-sector Commander Captain Ziauddin, Liaquat Ali Khan, students' camp was formed under the leadership of Liaquat Ali Khan, V.P. of Morolganj College, Shamsul Alam Talukder, 'টু. আই. সি' to Captain Zia was with him. After formation of the students' camp, many students joined the camp. Thereafter, Captain Ziauddin appointed one Poritosh as the instructor to train them and after training, they carried out operation at various places. On 7 December 1971, Captain Zia sent about 250 *Muktijoddha*s under the leadership of Liakot Ali Sheikh to Pirojpur to capture it and from there, they reached at Parer Hat at about $1/1\frac{1}{2}$ am**.** Liakot Ali Sheikh Badsha stayed there for sometime and visited various places of Parer Hat with the local *Muktijoddha*s. On getting information about the arrival of the DW and the other *Muktijoddha*s, the *Razakar*s had fled away abandoning their camp. The camp was at the building of Fakir Das at Parer Hat. Liakat Ali Badsha kept the DW there to look after the camp. Mokarrom Hossain Kabir and Abdul Goni Poshari were in the camp along with the DW. Subsequently, Captain Zia along with his 'টু. আই. সি' and some *Muktijoddha*s came at Parer Hat. Many people gathered at the camp to receive them. Major Zia stayed there for 5/10 minutes and after delivering a short speech went to Pirojpur, but Shamsul Alam Talukder stayed at Parer Hat for 2/3 hours. Commander Liakat Ali Sheikh and Shamsul

Alam Talukder jointly visited various places including Parer Hat High School where there was a camp of the *Razakar*s where sometime Pak Army also used to stay. The local people informed Captain Ziauddin about the activities of the *Razakar*s. The *Razakars* mentioned by the local people amongst others were Sekandar Ali Shikder, Chairman of the Peace Committee and other members, namely, Danesh Ali Molla, Shafizuddin Moulovi, Abdul Goni Haji and along with them, there were other notorious *Razakar*s named Toiyab Ali Mistri, Abdul Karim, a son-in-law of Shafizuddin Moulovi and many others had fled away, but none of them told Captain Zia that the accused was a *Razakar.* Maulana Muslemuddin was a notorious *Razakar*. He lived long 8(eight) months in the house of Bipod Saha with his daughter, Bhanu Saha. Captain Zia, while leaving, gave them (the DW and the other *Muktijoddhas*) the responsibility and accordingly they by beating drum through Nishikando Bhui Mali intimated all that whatever they would like to tell, they would be able to tell them, if any one was shy to tell in presence of others, he/she could tell them secretly and none would give shelter to the *Razakar*s.

He further stated that he knew the accused after marriage. He (the accused) used to come to his father-in-law's house, so he (the DW) introduced him (the accused). Bipod Saha by placing hand on his shoulder cried out and told that he could not say what kind of damage was caused to him by Moslem Maulana. No woman in Parer Hat Union and Shankar Pasha was raped and if any one said so, it was a lie. Sekander Ali Shikder, Shafizuddin Moulovi were detained by them. They raided the houses of Danesh Mollah, Moslem Maulana and the other notorious *Razakar*s many times to hold them (in the deposition sheet, in Bangla, it has been recorded as "ধরবার জন্য"). 2/3 days after, his (the

DW) elder brother came to the camp, he did not also tell him that the accused was a *Razakar* or he (the accused) resorted to any anti-state activities. After liberation, when he (the DW) was staying at the camp, he saw the accused at the camp once or twice. He identified the accused in the dock. The accused was in the same dress in which he saw him at that time.

In cross-examination, the DW stated that he could not say how many *Razakar*s were there in village Togra. They listed the name of the *Razakar*s who were notorious. So far he knew there were more than 30(thirty) *Razakar*s at Parer Hat area. The occurrence took place 41(forty one) years before, so he could not remember every bit of it. But he could remember those occurrences which he heard and which he saw which were necessary. He had gone to the house of Moslem Maulana at Baduria, to the house of his father-in-law and also his maternal grand father-in-law, but he was not found before the general amnesty. There were *Muktijoddha*s in village Togra and of them Mizanur Rahman was prominent. Mizanur Rahman joined their camp subsequently. A good number of *Muktijoddha*s of Parer Hat area joined their camp. At that time, 14/16 local *Muktijoddha*s were in their camp. The *Muktijoddha*s used to stay in the camp and none used to stay in the house. He (the DW) was in the camp upto 15/20 February. The camp remained open thereafter as well, but he went to S.M. College at Moralganj. So long Captain Ziauddin had been at Parer Hat, he delivered speeches and before he had left, he told not to give shelter to the *Razakar*s. He (Ziauddin) further told to lodge complaint with the *Muktijoddha*s of the camp if there was any complaint against anyone, besides that, he did not hear anybody. When Shamsul Alam Talukder heard the people (in the deposition sheet, in Bangla, it has been recorded as ‘‘শামছুল আলম তালুকদার যখন কথা

শুনেন তখন সেখানে ১০০০/১২০০ লোক উপস্থিত ছিল"), 1000/1200 people were present. All did not talk, some people talked, but he could not say, at that moment, how many people talked. They (the DW's) were 3(three) brothers in number. The other two brothers were elder to him, the first one died. The second one used to do family works, presently he was sick. The brother who died was a Primary School teacher and he was a worker of Awami League. During *Muktijuddho,* he (the eldest brother of the DW) was married and he had his children. The DW got involved with Chhatro League from 1966/1967. To get membership of Chhatro League, he put his signature on the *wadapatra*. He could not remember at the moment what was written in the *wadapatra*. While in School, he was a supporter of Chhatro League, but while in College, he became the member of the Chhatro League. He denied the prosecution suggestion that it was not a fact that he never did Chhatro League and Chhatro League had *wada patra*. He appeared in B.Com examination from Moralganj College. He had gone to Saudi Arabia on 5 May, 1985 and came back in 2004. He denied the prosecution suggestion that it was not a fact that after liberation, he had fled away to Saudi Arabia, as an accused in an arms case disclosed his name. In Saudi Arabia, he served in a Civil Project of Air Defence. He did not know whether, after liberation, Jamaat-e-Islami formed a *Muktijoddha* Command.

He married in 1978. His father-in-law used to live at Pirojpur, he (the father-in-law) had a jewelery shop. His father-in-law came from Hugli, West Bengal. He denied the prosecution suggestion that he (his father-in-law) was not a Bangla speaking person. The DW asserted that he (father-in-law) was out and out a Bangla speaking person. He denied the prosecution suggestion that it was not a fact that the members of the family of his father-in-law were the supporters

of Pakistan during *Muktijuddho*. He further stated that during *Muktijuddho,* Shamsul Alam Talukder was the man of Chhatro Union and he belonged to Bhasani group. During *Muktijuddho,* he (the DW) had good relationship with Talukder Saheb. He denied the prosecution suggestion that it was not a fact that Shamsul Alam Talukder was the supporter of anti *Muktijuddho* group of Bhasani Nap. Then he asserted that Shamsul Alam Talukder Saheb was the member of the group which supported the *Muktijuddho*. He knew one Ayub Ali of Shankar Pasha and he heard that he (Ayub Ali) was arrested with a bayonet immediately after liberation. He denied the prosecution suggestion that it was not a fact that after the arrest of Ayub Ali, he (the DW) came to Dhaka. He asserted that after the arrest of Ayub Ali, he (the DW) was at Moralganj and he came to Dhaka on the 30th day of June, 1977 for doing a job. He denied the prosecution suggestion that it was not a fact that he came to Dhaka for hiding and not for doing any job. He (the DW) along with Mokarrom Hossain Kabir, Abdul Goni Poshari, Selim Khan, Abdus Salam Poshari, Abdus Sobhan, Mizanur Rahman Talukder and Shah Alam was in the *Muktijuddho* camp. Long after Ruhul Amin Nobin came. Bipod Saha did not say that he suffered any financial loss, but he stated that he suffered mentally and socially, because Moslem Maulana of Peace Committee used to live at his house with his daughter. Till February while he was in charge of the *Muktijoddha* camp, Moslem Maulana could not be found out as he was hiding. It was not within his knowledge whether, after liberation of the country till 15 August, 1975, there was any complaint against the accused and whether he was arrested. He did not know where the sons of the accused received their education. He did not also know about the wealth of the accused in Bangladesh (in the deposition sheet, in

Bangla, it has been recorded as "উনার বাংলাদেশের কোথায়, কি সম্পদ আছে তা আমার জানা নাই"). Before *Muktijuddho,* he (the accused) had some property which he inherited from his father. During *Muktijuddho,* possibly the accused had two sons. While his (the DW) house was set ablaze, one *Razakar* named Mohsin along with the Punjabi Army went there. He denied the prosecution suggestion that it was not a fact that he was not a *Muktijoddha*. He denied the prosecution suggestion that it was not a fact that his *sonad* as a *Muktijoddha* was cancelled after verification and his name was deleted from the list of *Muktijoddha*. He denied the prosecution suggestion that his statements that none of Parer Hat and Shankar Pasha was raped and if any one said so, it was false and that none told Captain Ziauddin that the accused was a *Razakar,* were untrue. He denied the prosecution suggestion that it was not a fact that 2/3 days after, his elder brother came to the camp and he did not also say that the accused was a *Razakar* or indulged in any anti-state activities, were untrue. He denied the prosecution suggestion that it was not a fact that after liberation, while he was in the camp, he met the accused once or twice, was untrue. He also denied the prosecution suggestion that it was not a fact that presently, he was involved with Jamaat-e-Islami politics. He denied the prosecution suggestion that it was not a fact that he deposed falsely in favour of the accused, a leader of Jamaat-e-Islami as he had gone to Saudi Arabia being sponsored and co-operated by Jamaat-e-Islami or he earned his livelihood with their assistance.

DW6, Rowshan Ali, aged about 61/62 years, of village-Doha Khola, Police Station-Bagharpara, District-Jessore, stated in his examination-in-chief that presently he looked after the garden and the agricultural land. In 1971, he

also used to do the same work. In 1969/1970, the accused held many religious meetings and he was acquainted with him through those religious meetings. At that time, he (the accused) used to live at Jessore New Town in a rented house. In the last part of March, 1971, when the Pakistan Army started firing, the inhabitants of the town started taking shelter in villages. In the middle of April, the accused along with his family took shelter at the house of Peer Sadaruddin Saheb of village Mohiron under Police Station Bagharpara. After his stay there for two weeks, Peer Saheb Hujur called him (the DW) to his house and accordingly he went to the Peer Saheb. Peer Saheb told him (the DW) that he had a big family and some relatives also came to his house from the town and he requested him (the DW) to take his guest, the accused along with his family to his (the DW) house. Accordingly, he (the DW) took the accused along with his family to his house in the first part of May. The accused lived at his house for more than $2\frac{1}{2}$ months and in the middle of July, he with his family went to his village home. The accused was identified in the dock.

In cross-examination, the DW stated that at that time, (May, 1971), the accused had two sons, a wife and a maid servant. When the accused took shelter at his house except his own family, the family of his maternal aunt was also at his house. At that time, the younger son of the accused was breast feeding. He further stated that except that day (the date of his examination-in-chief before the Tribunal), he never testified in any case. The accused is not his relative. He never went to the house of the accused at Barisal, but he went to his house at Khulna in 1973. Up to 1980, he (the DW) visited his (the accused) house at Khulna for several times. He heard that after *Muktijuddho* and before 15 August,

1975, once the accused was arrested, but he could not say the reason for his arrest. He knew that the accused had four sons and no daughter. He did not know about the properties owned by the accused at Pirojpur. He did not know the educational qualification of the accused. Sadaruddin Peer Saheb was not alive, but he had his sons and daughters. The age of the eldest son of Sadaruddin Peer Saheb would be about 45 years. In 1971, Peer Saheb was married, but he could not say what his (Peer Saheb) age was, but he (Peer Saheb) was elder to him (the DW). The people who had houses around the house of the Peer Saheb were: Kobad Ali, Golam Rasul, Ashraf Ali, Moulovi Imran and others. The house of Peer Saheb was two kilometers away from his (the DW) house. Peer Saheb was not his relative and he (the DW) was not also his disciple. He knew about the case one year before. Rafique Bin Sayeedi informed him about the case over telephone 2/3 months before, his knowledge about the case was from Rafique Bin Sayeedi, he was contacted from the Tribunal about the case. The officer-in-charge of Bagharpara Police Station and the local respectable persons, 40(forty) in number, went to him and they wanted to know from him about his acquaintance with the accused. They also wanted to know when the accused had come to his house and when he left his (the DW) house. Amongst the respectable persons, Vice Chairman Abdur Rouf, *Muktijoddha* Commander Khandaker Shahidullah, Professor Abdur Rouf of Bagharpara Mohila College were there. The persons who went to him for investigation did not tell him what the complaint was against the accused. By reading the newspapers, he came to know that the case filed against the accused was in relation to the commission of war crimes. The war crimes include setting fire on the house and rape. Then said by reading the newspapers, he came to know that the case was filed against the

accused alleging the offences of setting fire, committing rape of women and killing people. Then said he did not read newspapers regularly. He further stated that such allegations might have been reported in the newspapers earlier, but he did not read those. He did not go to Pirojpur when the accused contested the election. He could not remember in which month the investigation officers visited his house. He did not inquire from which office they came, but the *Muktijoddha* Commander told that they had come from the Tribunal. He did not try to contact any officer of the Tribunal. He came to Dhaka $1\frac{1}{2}$/2 weeks before. Yesterday Shamim Sayeedi took him to his (Shameem Sayeedi) house from the house of his (the DW) brother-in-law and today Masud Sayeedi brought him to the Tribunal. He met Shamim Sayeedi for the first time yesterday and before that he had talk with him over telephone. The persons who had gone to his house for investigation, except examining him, did nothing (in the deposition sheet, in Bangla, it has been recorded as "যারা তদন্ত করতে আমার বাড়িতে গিয়েছিল তারা আমাকে জিজ্ঞাসাবাদ করা ছাড়া আর কিছু করে নাই"). During the election, in 1970, he (the DW) was a voter. After the *Muktijuddho,* Peer Saheb was at his house and he (the DW) met him. He (the DW) had acquaintance with all who went to their area for holding religious meeting. He went to the residence of the accused at Jessore twice to invite him. In 2006, the accused went to the house of the DW and attended the religious meeting on the last date of 4(four) days' *Siratunnabi Mahfil*. During *Muktijoddha,* there were people in their area who were against liberation and amongst them Jobed Ali, Alek Molla, Rahatullah Molla and Yousuf Ali were prominent. Rafique Sayeedi telephoned him in the month of Ramadan in 2011. He could not say without counting (in the deposition sheet, in

Bangla, it has been recorded as "হিসাব না করে বলতে পারব না") which was the corresponding English month to Ramadan. In 1969/70, the accused held many religious meetings in their area and through those religious meeting, he was acquainted with him. He denied the prosecution suggestion that it was not a fact that at that time, the accused did not live at a rented house at New Town, Jessore. He denied the prosecution suggestion that it was not a fact that the accused took shelter at the house of Peer Sadaruddin at village Mohiron under Police Station Bagharpara and after he lived there for two weeks, Peer Saheb Hujur called him and accordingly he went to Peer Saheb Hujur who requested him to take him (the accused) in his (the DW) house telling that he had a big family and some relatives from the town also came to his house and then he (the DW) took the accused to his house in the first part of May and the accused lived at his house with family for $2\frac{1}{2}$ months and then in the middle of July, he went to his village home with his family.

The DW denied the prosecution suggestion that it was not a fact that during *Muktijuddho,* he (the DW) worked against the liberation of the country. He denied prosecution suggestion that it was not a fact that even before *Muktijuddho,* he worked against the pro-liberation forces. The DW asserted that during *Muktijuddho,* he had been at his house and he never went to any other place. He denied the prosecution suggestion that it was not a fact that presently, he was involved with Jamaat-e-Islam. He denied the prosecution suggestion that it was not a fact that during the *Muktijuddho,* the accused never lived at his house. He denied the prosecution suggestion that it was not a fact that after *Muktijuddho,* the accused fled away from Pirojpur and stayed at his house for

some days. He denied the prosecution suggestion that it was not a fact that as he was involved with Jamaat-e-Islam, he deposed falsely by suppressing facts in favour of its leader.

DW7, Jamal Hossain Fakir, aged about 60 years of village-Nalbunia, District-Pirojpur (no Police Station mentioned in the deposition sheet), stated in his examination that he was a cultivator and sometimes he also used to catch fish (in the deposition sheet, in Bangla, it has been recorded as "আমি জমাজমি চাষাবাদ করি এবং মাঝে মধ্যে মাছ ধরি"). In 1971, during the *Muktijuddho,* he also did the same work. In their area, in the month of Ashwin, the canals and the beels became full to the brim (in the deposition sheet, in Bangla, it has been recorded as"খালে বিলে প্রচুর পানি হয়"). During the *Muktijuddho,* in the middle of Ashwin, 1971, in the first part of the night, he went to the beel and came back by setting hooks (in the deposition sheet, in Bangla, it has been recorded as "বড়শি পেতে আসি"). In the last part of the night, after lifting the hooks when he came near his house by a boat, he heard a big sound. On hearing the sound, he became alert and heard the crying from the house of Azahar Ali Haulader, his adjacent house. He went to his room, his father told that he had heard a big sound from Azahar uncle's house and there was also sound of crying and he proposed to go to that house to see what happened there. Then he went to the house of Azahar Ali from the eastern side of his (the DW) house and after standing by the side of a tree situated in the middle of the Courtyard of Azahar Ali's house, he saw Ayub Ali Chowkider, Kalam Chowkider, Hakim Munshi Mannan and Ashraf Ali dragging the dead body of Ibrahim Kutti towards the canal and behind them Danesh Molla, Sekandar Shikder, Muslem Maulana, Ruhul Amin and Momin Saheb

taking Saheb Ali by folding him from behind along with his mother towards Parer Hat. He on going a bit forward saw taking the dead body by the boat and then going towards Parer Hat. Thereafter, he went to the room of Saheb Ali and saw Momtaz Begum, wife of Ibrahim Kutti crying on roll and blood was oozing from her hand and her sister Rani Begum was bandaging her hand. Then he (the DW) asked Momtaz Begum what happened to her, she replied that the bullet which killed Ibrahim Kutti also struck her hand. She further stated that her father was also hit by a lathi. Many people including the neighbourers gathered there then they (the DW and his father) went back to their house. In the evening, he heard that Saheb Ali and his mother were taken to Pirojpur and the dead body of Ibrahim Kutti was kept tied in a boat with the Badura bridge at Parer Hat (in the deposition sheet, in Bangla, it has been recorded as "বাদুরা পোলের সাথে নৌকায় বেঁধে রেখেছে"). On the next day, at about 11:00 am, hearing that mother of Saheb Ali returned home, they went to her house and asked her about the whereabouts of Saheb Ali, she replied that Saheb Ali was taken to Pirojpur where he was killed by the Military. Some days thereafter, the country was liberated. 5/6 months after the liberation of the country, Momtaz Begum filed a case for the killing of her brother and husband.

In cross-examination, the DW stated that to collect fish from the hooks, he used to go out before dawn. Nurul Islam and Kutti were of the same age. He heard about giving deposition in the case one year and 2/3 months before. He himself gave his name as well his father. He knew Atahar Ali Haulader. During *Muktijuddho,* he was at his house. He was in favour of *Muktijoddha*. Then said he (Atahar Ali) might be a member of the Peace Committee. He did not see

Atahar Ali Haulader on the date about which he narrated the incident. Azahar Ali Haulader and Atahar Ali Haulader reside in the same house. He asserted that he saw Saheb Ali and his mother being taken away after the Fazar prayer when the sun rose. On the date of occurrence, no Army came to the house of Saheb Ali, only the *Razakar*s came. Those who took Saheb Ali and his mother were the *Razakar*s. He did not know all the *Razakar*s of Parer Hat, he knew only 2/4. He did not get the incidents narrated by him recorded as every body knew about the incident. Rani Begum was his *Fufu* and she was elder to him. He did not know whether Mostafa was younger to him, Sitara Begum was his grand mother. Sitara Begum, Rani Begum and Mostafa might have given statements to the Investigation Officer, but he did not know. During Pakistan time, there were 2(two) big businessmen at village Chitholia named Roizuddin and Soizuddin Poshari. He heard that the *Razakar*s and the Pakistani Army set on fire the houses at villages Chitholia and Baduria. Roizuddin Poshari and Soizuddin Poshari were *pro-Muktijoddha*.

After putting the statements, which the DW made in his examination-in-chief, right from the incident that happened in the middle of Ashwin, 1971, up to the fact of keeping the dead body of Ibrahim Kutti tied with the bridge of Baduria at Parer Hat, suggestion was given to him that those were untrue which he denied. He further stated that he was not a witness in the case filed by Momtaz and he could not say what was written by Momtaz in her Ejahar. He denied the prosecution suggestion that it was not a fact that the dead body of Ibrahim Kutti was never taken to village-Nalbunia and he did not see his dead body in the manner, at the place and on the date as stated by him. He denied the prosecution suggestion that it was not a fact that the age mentioned by him in his

examination-in-chief was not his actual age and during *Muktijuddho,* he was minor.

In reply to a question put by the Tribunal, he stated that he could not remember in which year he got him admitted in the Primary School. In the deposition sheet, it had been noted that the learned prosecutor drew the attention of the Tribunal as to the age and face of the PW, but the Tribunal did not make any remark either in the deposition sheet or in the judgment in that regard. He further stated that it was the month of Ashar, 2(two) months after the *Muktijuddho* had been started. Then on a specific question put by the Tribunal as to whether 2/3 months after the beginning of the *Muktijuddho*, Saheb Ali and his mother were held and taken away by the Pakistani Army and the *Razakar*s, he replied that they were the *Razakar*s, not the Army who took them away and in the month of Ashwin. He denied the prosecution suggestion that it was not a fact that 5/6 months after the liberation of the country, Momtaj Begum filed a case for killing her brother and husband.

DW8, Md. Kubad Ali, aged about 69 years of village-Mohiron, Police Station-Bagharpara, District-Jessore, stated in his examination-in-chief that he was a cultivator. In 1971, he also used to do the same work. In 1969/70, the accused used to live at a rented house at Jessore New Town and he used to hold *Mahfil* at various places of Jessore District. On 26 March, 1971, the Pak Sena started shelling at Jessore Town from Jessore Cantonment. Then the people of the town took shelter at villages out of fear. The accused also took shelter at the house of late Sadaruddin Saheb at their village (Mohiron) in the middle of the month of April. After his stay in that house for 15 days, at the request of Peer Saheb Hujur, Rowshan Ali of Doha Khola took the accused to his house at the

beginning of May with pleasant mind. After living at the house of Rowshan Ali for about $2\frac{1}{2}$ months, the accused went to his village in the middle of July. He identified the accused in the dock.

In cross-examination, the DW stated that the accused had visited their area many times, but he could not say the number of his visit. He used to accompany the accused whenever he (the accused) visited their area, but he (the DW) did not accompany him if he visited a far off place. He (the DW) used to visit the house of Sadaruddin Saheb as a neighbourer, he was not his (the DW) relative. He did not go to the house of the accused at Jessore. He did not also go to the village home of the accused. He also used to accompany the other persons who used to go to deliver *Waz,* if they were known to him, but he did not accompany those who were not known to him. The persons whom he knew, Maulana Golam Rasul, Md. Golam Mostafa and Abu Sayeed, were prominent. The houses of those persons were 2/4 miles away from their area. By putting to the DW whatever he stated in his examination-in-chief about taking shelter by the accused at the house of late Sadaruddin Peer Saheb in the middle of April and up to his (the accused) leaving the house of Raushan Saheb of Doha Khola for his village home in the middle of July, suggestion was given to him that those were untrue which he denied. He denied the prosecution suggestion that he deposed falsely as tutored in favour of the accused, a Jamaat leader, he being a supporter of Jamaat-e-Islami and also for pecuniary benefit.

DW9, Md. Hemayet Uddin, aged about 64 years of village-Tengrakhali, Police Station-Zianagarj, District-Pirojpur, stated in his examination-in-chief that he ran a grocery shop. In 1971, he also used to run a grocery shop. His

mother died 11 (eleven) years before the *Muktijoddha,* in 1971. At that time, he was 12(twelve) years old. On the next day of his mother's death, his sister aged about 10(ten) years died. Mother left behind a younger brother aged about 3/4 months. They were brought up by a paternal aunt. Either in the middle of Joistho or in its later part after the *Muktijuddho* was started, his said paternal aunt had gone to the house of her father at village Umedpur. His paternal aunt fell sick there. On receiving the said information, he (DW) went to see his paternal aunt one day evening, but she did not allow him to come back. On the next day, at about 9:30 am or 9:45 am, people were clamouring saying that Pakistani Army were coming (in the deposition sheet, in Bangla, it has been recorded as ''মানুষ চেচামেচি করতেছে পাক সেনারা আসতেছে পাক সেনারা আসতেছে''). He went out of the room along with Afzal, Latif, Nurul Islam and some others and went to the garden by the side of the house and remained standing there, then saw 15/16 Pak Armies along with Moslem Maulana, Danesh Molla, Sekandar Shikder, Asmot Ali Munshi, Goni Gazi, Razzaque, Mohsin, Momin entering into the Hindu Para of Umedpur. Sometimes thereafter, he saw fire from that house. 15/16 minutes after he saw the Pak Army and their companions coming out by the western side of the house with a man. Afzal told that Bishabali was taken away. They (the Pak Army and their companions) along with Bishabali went to Hindu Para of Huglabunia towards the northern side of the field. Sometimes thereafter, he saw fire in the Hindu Para. After standing there for sometime, he returned back to his house. In the evening, when he went to the shop, he heard that 10/12 houses had been burnt. 4/5 Hindus from village Huglabunia along with Bishabali were also taken away. In the evening of the next day, while he was sitting in the shop, he

heard that 4/5 persons who had been taken away from village Huglabunia, were killed at the bank of river-Boleshwar at Pirojpur. In 1971, during the liberation war, no looting and torture took place in village Tengrakhali. The Pak Senas and the *Razakar*s did not go to their village and there was no *Razakar* in their village.

In cross-examination, the DW stated that his house was situated in Ward No.9 of Parer Hat Union. During *Muktijuddho,* his grocery shop was at Boudubi Bazaar. During *Muktijuddho,* sometimes he used to go outside the village for visiting. He completed his study before *Muktijuddho* and he read up to class-VIII. He was not involved in politics, but ran a shop. He might be a member of Ward No.9 of B.N.P, but he did not hold any important post of Ward B.N.P. He knew about the investigation of the case one year before. He heard that an investigation team had come to Parer Hat for investigation, but he could not say when they came. Then said he did not try to know about the same, because it was not necessary for him. He did not record the incidents time wise, but he could remember the incidents as he saw with his own eyes. He stated that the *Razakar*s and the Pak Army were together and he counted the number of the *Razakar*s. He did not see how many people fled away and he did not also count how many houses were burnt. Then said there were about 45/50 houses, but he did not count them. He did not count how many people were there in village-Umedpur when Pak Army and the *Razakar*s entered into the village. Village-Tengrakhali was towards the West of village-Umedpur. Pakistani Army went to Umedpur from Parer Hat on foot. The eldest son of the accused told him at Boudubi Bazaar one year before that he would have to depose in the case. Thereafter, Nanna Mia, brother-in-law of the accused, kept contact with him and

because of that contact, he came to depose. On behalf of the prosecution after putting the statements made by the DW in his examination-in-chief right from going to the house of his paternal aunt at village Umedpur in the middle or in last part of Joistho after the beginning of liberation war upto his statement that there was no *Razakar* in their village, suggestion was given to him that those were untrue which he denied. He further stated that he did not know Mostafa Haulader, son of Foizuddin Haulader of village Tengrakhali. He could not remember whether he knew Ashraf Ali, son of late Asmot Ali of village-Tengrakhali. He denied the prosecution suggestion that it was not a fact that those two persons were from their village and they were the *Razakar*s. He denied the prosecution suggestion that it was not a fact that the statements made by him in his examination-in-chief were untrue. He denied the further prosecution suggestion that as there was political alliance between B.N.P and Jamaat-e-Islami, so he deposed falsely as well as for pecuniary gain.

DW10, Md. Anowar Hossain, aged about 57 years of village-Kadamtola, Police Station-Pirojpur, District-Pirojpur, stated in his examination-in-chief that presently he was a businessman. In 1971, he was a student of class-IX, he was a *Muktijoddha*. On hearing the news, in the morning of 26 March, 1971 about the killing of thousands of un-armed Bangalis by the Pak Army in the black night of 25 March, 1971 in Dhaka and other places of Bangladesh and also the arrest of Banga Bandhu, he along with 6/7 others went to Advocate Enayet Hossain Khan Saheb, the then M.N.A. At that time, he (Advocate Enayet Hossain Khan) was delivering speech in a public meeting. At one stage of his speech, the agitated public told that they had come not to hear speeches and they demanded arms. At the spur of the moment, Enayet Hossain Khan along with the agitated people

went to the treasury and after taking the arms and the ammunition from there without any resistance went to the field of the Government School and he keeping the arms under his custody told the persons who wanted to join *Muktijoddha* to come on the next day before 8 am at the same place with a plate, a pillow and a bed sheet. Accordingly, in the morning on 27 March, he and 21 others assembled at the School field and their names were enlisted. Total number in their group was 30 and two instructors were appointed. The instructors were Barkat and Golam Sarwar, both were Habilder of Army. During the course of training, a group of *Muktijoddha*s looted away the money from Pirojpur treasury and over this looted money, there was difference amongst the *Muktijoddhas* and they became scattered. That incident took place on the 3rd day of May and this led a vacuum in the leadership and then he went home on that very date. On the next day, i.e. 4 May, his elder paternal aunt told him to go to Pirojpur with his brother-Wadud to bring his sister as she heard that a very big chaos would take place. The name of his sister was Anowara Begum and the name of her husband was Abdus Sattar. Previously Abdus Sattar used to serve in the S.D.O's office Pirojpur for 10/12 years and in 1970, he was transferred to Bhola, again in the middle of February, he was transferred to Pirojpur and joined the S.D.O's office as the Head Clerk and started living at a rented house at Dhopa Bari, Pirojpur. When he (the DW) along with his brother-Wadud reached the residence of his sister, it was 10:00 (no hour either a.m. or p.m is mentioned). When she (the sister of the DW) was told that they had gone to bring her, she started arranging the articles. After about 8/10 minutes, his brother-in-law, having seen that the people outside his house started running, went out and coming back after a while told that Military was coming to

Pirojpur from Hularhat and then he closed the windows and the doors of the room and also forbade the DW not to go out. After 10/15 minutes, they heard the sound of boots and by peeping through the space of wooden fence saw many militaries going towards the South in front of their house, there were 4(four) Bangalis in front of the Army and they were known to the DW. The Bangalis were Ashraf Chairman of Hularhat, Delowar Shikder of Chilla, son of Rasul Shikder, Manik Khondoker and Sattar Mukter. His brother-in-law also knew those four persons. Just 5/6 minutes thereafter, he heard a big sound of firing from the East-South corner of their house and then by peeping through the space of the wooden fence saw the flame of fire. 8/10 minutes thereafter again, he heard a big sound near their house. Immediately thereafter, the military went towards the north in front of their house and at the time, he also saw those four Bangalis aheading the Army. After half an hour, the situation came a bit cool and 2/1 persons started moving on the road and then his brother-in-law went out of his house and coming back after an hour, told that 10/12 persons were killed at Mondol Para and 4/5 persons were killed at Dhopabari and the military set up their camp at the Government School situated inside the town. Immediate after the sun set, the DW reached safely at their house with his sister, nephew and nieces.

Subsequently they again started organising to participate in the *Muktijoddha*. In the middle of Ashar, he and 21 others went India and they stayed at Thuba youth camp. After listing their names, preparation was going on to send them to various places for training. After about 15 days, i.e. in the first part of Shrabon, instructor-Golam Sarwar, who was known to the DW from before, came to their camp and asked who else had come to the camp and also

asked them to come to Bangladesh with the arms. He (Golam Sarwar) further told that he had collected huge arms and ammunition from the Government of India. When the DW told him (Golam Sarwar) about his preparation for training at Bihar, he (Golam Sarwar) told that he (the DW) had already rifle training and he would give training regarding the new arms in Bangladesh. Out of 22, he (Golam Sarwar) selected 15 and then he along with 15 others of his companions, came to Bangladesh and set up camp at Binary Kumarkhali under Nazirpur Police Station. He took training of the new arms brought from India. In the middle of Shrabon, at about 10 pm., they attacked the camp of the *Razakars* at Nazirpur. A bullet shot by the *Razakar* hit at the forehead of their commander-Golam Sarwar and he faced martyrdom, his dead body was handed over to his men. On that very night, they with their entire team moved to Kadamtola and they set up 2(two) camps, one at Jujkhola and another at Kadamtola. A few days after, they came to know that a woman named Bhagirothi used to visit the Pakistani Army camp regularly and she was from village-Bagmara of their Union. After the killing of Golam Sarwar, Sarder Motiur Rahman, the present Upazilla Chairman of Pirojpur Sadar, was made their Commander. Sarder Motiur Rahman chalked out a plan with Bhagirothi and stationed 3(three) groups at 3(three) different places at Bagmara and told that through Bhagirothi he came to know that the Pakistani Army would come to hold them. They were also waiting for the arrival of the Pakistani Army. In the evening of that day, after Asar prayer, when the Pakistani Army had come within their encirclement, they attacked them fiercely. On being attacked, the Pakistani Army became puzzled and fled away and 10/12 Pakistani Armies were killed. They (the DW and the other *Muktijoddhas*) found 10(ten) rifles, 3(three) helmets left by

Pakistani Army and saw profuse blood on the road. On that day when they came to know about the whereabouts of Bhagirothi, their Commander told that she did not come home. Bhagirothi used to come back home regularly from Pirojpur. Commander Motiur Rahman sent the DW and Co-*Muktijoddha*, Abdul Malek in disguide to Pirojpur to know the whereabouts of Bhagirothi and when they went near the National Bank at Pirojpur, they heard sound of a vehicle coming from the West and seeing the other people standing by the side of the bank, they also stood there by their side and 2/1 minutes after, they saw a woman in naked and injured condition being dragged by tying her legs behind that vehicle. In the vehicle, there were 4(four) Pakistani Armies and a driver and all were in *Khaki* dress. After the vehicle had passed, they came back to their camp and informed the Commander that Bhagirothi was killed by the Pakistani Army being dragged. The Pakistani Army used to come to Kadamtola and Jujkhola every day to take revenge for which they considered those two places unsafe for them and accordingly, they went to *Muktijuddho* bogi camp at Sundorbon and they were kept in camp No.1 inside Taltola Khal. Shafijuddin Ahmed, a Habilder of British period, was appointed as their Commander and under the leadership of the new Commander, they carried out an operation at the *Razakar* camp at Tafalbari, but the *Razakar*s had left the place having sensed of their arrival. However, they held 4(four) *Razakar*s and killed them. On 7 December, the Commander ordered to board a boat with arms and ammunitions. Accordingly, they boarded a boat and by the boat reached at Moralganj. Many other *Muktijoddhas* also reached at Moralganj by boat. In the morning of 8 December, the Commander asked them to proceed towards Pirojpur on foot and told that Pirojpur had to be attacked. Different groups moved on different routes and their

group reached on the other bank of river-Boleshwar on the West of Pirojpur through Moralganj at 7:30 pm. They heard the voice of joy of the people from all sides saying *Joybangla Joybangla*. Then they entered into the town by crossing *Kheya* and went to the Government School where there was Military camp and they set up their camp there. In the camp, many complaints were made to them about the *Razakar*s. After two days, Delowar Shikder, Manik Khondoker and Razzaque were killed by the agitated public and they dragged them to their camp by tying their legs with the rope. At the order of the Sub-sector Commander Major Ziauddin, they tried to find out the infamous *Razakars* Ashraf Chairman and Sattar Mukter, but did not find them though were searched vigorously. Thereafter, the DW was posted at Hularhat camp. Around March, he deposited the arms and devoted himself to study.

In cross-examination, the DW stated that he did not know whether his name appeared in the special Gazette of the *Muktijoddhas* published in the *Muktir Barta,* but he asserted that his name was in the national gazette. He further asserted that his name was there in the voter list of the *Muktijoddha*s. He could not say how many persons were there in the voter list of the *Muktijoddha*s of Pirojpur Sadar. He did not know whether in the voter list, the number of *Muktir Barta* was mentioned. During *Muktijuddho,* he was in India for 15/16 days. The incident of Bhagirothi which he stated in his examination-in-chief was stated in various newspapers and books. He could not say whether the camps mentioned by him in his examination-in-chief had been mentioned in the various books. He denied the prosecution suggestion that it was not a fact that in the last voter list of the *Muktijoddhas* of Pirojpur, his name had not been included. He

denied the prosecution suggestion that it was not a fact that the fact of his participation in the *Muktijuddho* was not supported by any document.

DW11, Md. Golam Mostofa, aged about 62 years of village- Nalbunia, Police Station-Zianagar, District-Pirojpur, a retired teacher, stated in his examination-in-chief that on the 1st day of October, 1971, during the *Mohan Muktijuddho,* an occurrence took place at the house of Azahar Ali Haulader of Nalbunia. On that day, immediate before the Azan of Fazr prayer, he woke up from sleep hearing a heavy sound. After he had woken, the Azan of Fazr prayer was pronounced and then he went to mosque for offering the prayer. After the prayer, the *musollis* started discussing about the place from where sound was heard. At one stage, they came out from the mosque and went to the road by the side of the canal, 100/150 hands away from the mosque and after a little while, they saw Danesh Ali Molla, Muslem Maulana, Sekander Shikder, Ruhul Amin, Momin taking Saheb Ali @ Shahabuddin, son of Azahar Ali with his mother towards Parer Hat. 5/7 minutes after, they saw Ayub Ali Chowkider, Kalam Choukider, Abdul Hakim Munshi, Abdul Mannan, Ashraf Ali taking the dead body of Ibrahim Kutti, son-in-law Azahar Ali, by a boat towards Parer Hat. Thereafter, a few of them went to the house of Azahar Ali Haulader and found the house full of people and heard sound of crying inside the room. The people present were saying that the son-in-law of Azahar Ali was killed and his son and wife were taken away by the *Razakar*s and Azahar Ali Haulader was also physically tortured. They also saw the right hand of Momtaz, wife of Ibrahim Kutti, bandaged. The people present further told that she received the bullet injury during the killing of Ibrahim Kutti and on being asked, Momtaj also told the same thing. Then they went away from the house of Azahar Ali Haulader

and in the evening, they heard that the *Razakars* had taken Saheb Ali and his mother to the Army camp at Pirojpur. On the next day, he heard that Setara Begum, mother of Saheb Ali, came back, but the Saheb Ali was shot dead by Pakistani Army at Pirojpur. Subsequently, he heard that after liberation of the country, Momtaz Begum filed a case before the S.D.O for the killing of her husband and brother. The petition of the case was sent to the Police Station and the same was treated as Ejahar. He saw the certified copy of the said Ejahar which was shown to him by Masud Sayeedi, son of the accused. He proved the certified copy of the said Ejahar and the same was marked as exhibit-'A' (with objection from the prosecution as noted in the deposition sheet within bracket). The DW further stated that the accused was neither involved with any activities against humanity nor liberation in 1971.

In cross-examination, the DW stated that on the date of the occurrence, 10/12 persons offered the prayer in mosque. At the Fazr prayer that was the average attendance, but because of weather the number increases or decreases by 2/1. He woke up from sleep on hearing the sound and hearing the *Azan*, he went to the mosque. He did not inquire about the sound before the prayer. After discussion when they came out from the mosque, the eastern sky was clear and the sun was about to rise, 40/45 minutes passed from hearing the sound up to the going to the bank of the canal. Many people had come at the house of Azahar Ali before they went there. He would not be able to say about the persons who had come and then left before they entered into the house, but he could say about the persons whom he saw. Though he could not say how many sons of Azahar Ali Haulader had, he knew 4/5. The house of Ibrahim Kutti was $1\frac{1}{2}$/2

kilometers away from his. He stated that a case was filed against his younger daughter-Tania, but she was acquitted from the case. He denied the prosecution suggestion that it was not a fact that the case was related to the allegation of militancy. He was involved with politics of Jamaat-e-Islami and was the president of Pirojpur Poursava Jamaat-e-Islami. He appeared in B.A. examination, but could not pass. He passed intermediate examination in 1973. After the instant case had been filed against the accused, he participated in one procession only in protest of his arrest and not in so many meetings and processions as suggested by the prosecution. He could not remember at that moment whether any statement was given against the case from Pouro Jamaat-e-Islami. From 1 January, 2010 till date, 4(four) cases were filed against him (the DW) and out of them, one was dismissed. Out of 3(three) other cases, two were lodged by the Police and of these two, one was for creating obstruction on the duties of the Police, the other one for clash with the Police. The 3rd one was for snatching away taka 50,000˙00 from the pocket of an Awamileaguer and the total number of the accused is 41. He joined Jamaat-e-Islami in 2009 and his town house is at Parer Hat road. He did not contribute any money for the election of the accused. He denied the prosecution suggestion that it was not a fact that he gave taka 10,000˙00 to the accused for his election in 2008. He denied the prosecution suggestion that it was not a fact that he was against *Muktijuddho*. At that time, Beni Madhob Saha of Parer Hat took shelter in their house along with his family. They took shelter in their house out of fear that the Army or the *Razakar*s might kill them. He could not say without going through exhibit-‘A’ whether it was written that some one named Saheb Ali Haulader @ Shahabudidn was held and taken away. He could not say whether the certified

copy proved by him and marked as exhibit-‘A’ and the photo copy thereof filed earlier by the accused, was not similar, because he did not know what was filed in Court. In the first page of the said certified copy, two words were penned through, but there was no initial. He was not a witness in the case as mentioned in exhibit-‘A’. He did not know the place where the petition of complaint of that case was written, who wrote and who narrated the story. He did not know who and when applied for the certified copy of exhibit-‘A’. Before he showed the certified copy, the same had been with Masud Sayeedi. He (the DW) had no idea when and from whom Masud Sayeedi got the same, it was known to him. He denied the prosecution suggestion that it was not a fact that the certified copy was created by resorting forgery for the sake of the case and then it was filed in Court. After putting the entire statements made by the DW in his examination-in-chief, suggestion was given to him that those statements were untrue, which he denied. The DW further denied the prosecution suggestion that he deposed falsely by suppressing facts just to save his party leader, the accused.

DW12, Md. Hafizul Haque, aged about 52 years of village-Khorki, Brahmonpara road, Police Station-Kotwali, District-Jessore, stated in his examination-in-chief that he dealt in grocery. In 1971, he was aged about 11/10 years and was a student of class-V. His father, Master Md. Shahidul Islam, purchased house No.184, block-A of Jessore New Town from an allottee in 1966 and since then they started residing there with family. Late Hazrat Ali purchased house No.185 situated on the west of their house from one allottee and thereafter the two families started living side by side. In 1969, Maulana Abul Khair started living at house No.183, the owner of which was Principal Anwar Saheb and at the same time, the accused also started living at house

No.182, the owner of which was also Professor Anwar Saheb. Master Md. Shahidul Islam, father of the DW, was the Headmaster of Sheikh Hati Government Primary School. Late Hazrat Ali Mia was the Head clerk at the office of Superintendent of Police, Jessore. Maulana Abul Khair Saheb was the Assistant Teacher of the School of which his (the DW) father was the Headmaster. The accused used to hold *Waz Mahfiil* at various places in the greater Jessore. Subsequently, he heard from his father about the fact of purchase of the house by him in 1966 and also the purchase of the house by Hazrat Ali Mia as he was a bit younger at that time. He saw those papers subsequently and presently those were with him. There was firing from Jessore Cantonment on Jessore town on 25 March, 1971. The firing continued for the next 2/3 days. Under the circumstances, the people from the town started taking shelter at the villages. His (the DW) father, Hazrat Ali, Abul Khair and the accused held a meeting amongst themselves and in the meeting, it was decided that they should have gone some where else. In the evening of the 4th April, they went to Sheikh Hati and passed the night there at the house of Late Joinul Abedin, the then president of the Managing Committee of the School of his father. On the next day, they went to the house of the maternal uncle of Abul Khair at Dhan Ghata and there, they stayed for 7/8 days. Since many families gathered at the same house, 4(four) *murubbis* took decision to go to some other place. The accused told that he would have gone to the house of Peer Saheb of Mohiron under Bagharpara, his (the DW) father and Hazrat Ali decided to go to India together. On the next day, the accused left for Mohiron. Hazrat Ali Saheb and they went India. Maulana Abul Khair stayed back in that house. The DW identified the accused.

In cross-examination, this DW stated that presently they lived in a different house. The house mentioned by him in his examination-in-chief was sold by his father in 1982. The person to whom his father sold the house was Electric Mistry and he was a man of Jessore. Hazrat Ali purchased house No.185 from an allotee who was a Bihari. House No.181 was purchased by Professor Anwar Saheb and he had 4(four) houses in the same block. He brought the papers with him about which he spoke. Then said he brought the paper about the purchase and sale of his father's house. He did not bring the papers of others. In the paper brought by him, there was a sale and settlement deed, in which the Administrator of Settlement and Housing Authority was the first party and as lessee in some places, it was written Altaf Hossain and in some places, it was written as Akter Hossain (with the objection of the defence as noted in the deposition sheet) and along with the deed, there was also an allotment letter dated 21.07.1966 wherein Sheikh Akter Hossain was written as 2nd party and there was no other paper. The deed was registered on 31.08.1966. There is no schedule to the allotment letter. He brought the papers as they were and in these papers, the name of his father, Master Md. Shahidul Islam, had been mentioned. He could not say who used to reside at holding No.179. In holding No.180, a Nayeb used to live who used to serve in a Tahshil office. Then said he (the DW) knew that he (the Nayeb) served at Jhikargachha. None used to live at holding No.181. In holding No.186, a Bihari used to live, who was a mechanic, and used to serve at Khulna stand at Jessore. He knew that the village home of the accused was at Pirojpur. He did not go to any *Waz Mahfil* with the accused. Then said, one day, he went with his father. At that time, the accused used to hold *Waz Mahfil* in greater Jessore and he (the DW) did not know whether the

accused used to hold *Waz Mahfil* outside. The accused was not a Peer, but he was a *Waejin*. The housing Estate was created for the Mohajer who had come from India. 13/14 months before Rafique Bin Sayeedi told him to depose in the case. He saw in the newspaper that the accused was being tried for the crimes against humanity. Then said he did not hear any complaint against the accused till 2000. And thereafter he saw about those complaints in the newspapers and all the complaints were false. He came to the Tribunal for the first time on the day (the date of deposition) to testify and before that he never visited any verandah of the Court. He had been running his shop since 1982. He did not pay income tax as he ran a small business. He denied the prosecution suggestion that it was not a fact that he was an unemployed person and he did not do anything. He asserted that he was not involved with any political party. He denied the prosecution suggestion that it was not a fact that as he was a supporter of Jamaat-e-Islami and got pecuniary benefit, so he came to depose before the Tribunal. He denied the prosecution suggestion that it was not a fact that the statements made by him about going of the accused along with them and then going to the house of Peer of Mohiron and his (the accused) living there as well as at Jessore town along with them in the housing Estate were untrue.

DW13-Masood Sayeedi, aged about 38 years, the 3rd son of the accused, stated in his examination-in-chief that he was a *tadbirkar* in the case on behalf of the accused. He came to the Tribunal to present the documents which were referred by the learned Counsel for the defence during the cross-examination of the prosecution witnesses and those filed by the defence as defence documents. He stated that the certified copy of the Ejahar lodged by Momtaz Begum in 1972 about the killing of Ibrahim Kutti with Saheb Ali @ Siraj @ Shahabuddin had

already been proved as exhibit-‘A’ through DW11, Golam Mostofa. He (the DW) supplied the said certified copy to him (DW11). He proved the photo copy of the certified copy of the judgment dated 12.08.2009 in Writ Petition No.5127 of 2009 and the same was marked as exhibit-‘B’. The accused, his father, was the petitioner of the writ petition. Against the judgment passed in the writ petition, leave to appeal (as in the deposition of the DW) was filed before the Appellate Division of the Supreme Court and the same was rejected on 24.08.2009. He proved the photostat copy of the certificate copy of the judgment passed in the leave petition which was marked as exhibit-‘C’. He proved the photo copy of the list of the persons who received the benefit under the *Prokolpo*, one house and one khamar of Pirojpur, wherein the name of Manik Poshari, PW6 and Abdul Jalil Sheikh, PW11 appeared at serial Nos.54 and 60 respectively and the same was marked as exhibit-‘D’. He proved the book under the title ‘‘জ্যোৎস্না ও জননীর গল্প’’ written by popular novelist Humayun Ahmed, son of the then SDPO of Pirojpur, Shahid Foyzur Rahman and the book was marked as exhibit-‘E’, the relevant pages of the book being pages 182, 183 and 350. He proved the photo copy of the Ejahar of G.R. No.93 of 2009 lodged by PW1, Mahbubul Alam Haulader, which was marked as exhibit-‘F’ (with objection from the prosecution as noted in the deposition sheet). He proved the photo copy of the passport issued in favour of the accused on 16.06.1975 being No.B110111 which was marked as exhibit-‘G’. He filed the photo copy of the passport issued in favour of the accused on 12.06.1980 being No.C443234 which was marked as exhibit-‘H’. He proved the photo copy of the release paper of the Hajees issued in favour of the accused on 28.08.1982 being No.4148 which was marked as exhibit-‘I’. He proved the photo copy of the passport issued in favour of the

accused on 25.09.1983 being No.E420233 as a duplicate one as the pages of the previous passport were exhausted which was marked as exhibit-'J'. He proved the photo copy of the passport issued in favour of the accused on 18.06.1985 being No.E918017 which was marked as exhibit-'K'. He filed the passport issued in favour of the accused on 09.09.1988 being No.E800043 (duplicate) which was marked as exhibit-'L'. He proved the photo copy of the passport issued in favour of the accused on 29.06.1992 being No.H864044 which was marked as exhibit-'M'. He proved the photo copy of the passport issued in favour of the accused on 17.06.1995 being No.L0242201 which was marked as exhibit-'N'. He proved the photo copy of the diplomatic passport issued in favour of the accused on 08.07.1996 being No.D04854 which was marked as exhibit-'O'. He proved the photo copy of the diplomatic passport issued in favour of the accused on 26.10.1999 being No.D06752 which was marked as exhibit-'P'. He proved the photo copy of the book written by Ayesha Foiz, an autobiographic book under the title ''জীবন যে রকম'' which was marked as exhibit-'Q', the relevant pages of the book being pages 52, 59, 79, 81 and 83. He proved the photo copy of the book written by Major Ziauddin (Rtd.), Sub-sector Commander of sector No.9 of the *Muktijoddha* under the head ''মুক্তিযুদ্ধে সুন্দরবনের সেই উম্মাতাল দিনগুলি'' which was marked as exhibit-'R'. He proved the photo copy of the speech delivered by the accused in the eleventh meeting of the 5th session of the 7th Parliament on 24 June, 1997 on the discussion of the budget for the financial year, 1997-1998 which was recorded at pages 150-155 of the proceedings of the Parliament which was marked as exhibit-'S'. He proved the photo copy of the receipt of registration for Intermediate Examination of Mahtabuddin, son of Mosharrof Hossain, which was marked as exhibit-'T' (with

objection from the prosecution as noted in the deposition sheet). He proved the photo copy of the receipt of registration of Intermediate Examination of Mahbubul Alam, son of Jamal Uddin Haulader, which was marked as exhibit-'U' (with objection from the prosecuion as noted in the deposition sheet). He proved the photo copy of the 8th volume of the book ''বাংলাদেশের স্বাধীনতা যুদ্ধ দলিলপত্র'' edited by Hasan Hafizur Rahman which was marked as exhibit-'V', relevant pages of the said book being page Nos.240-247, 249, 385, 386, 397 and 398. He proved the photo copy of the petition of complaint of Petition Case No.135 of 2009 of the Court of Chief Judicial Magistrate, Pirojpur filed by Manik Poshari, PW6 on 12.08.2009 which was marked as exhibit-'W'. The DW stated that the certified copy of the petition of complaint could not be filed as pursuant to the order of the Chief Judicial Magistrate, Pirojpur, the records of the case had already been sent to the Todanta Shansgstha of the International Crimes Tribunal (with objection from the prosecution) for which the certified copy thereof could not be obtained. He proved the certified copies of the statements of witnesses: Md. Aiyub Ali, son of Iman Ali, Mofizuddin, son of late Moizuddin, Md. Mostofa Haulader, son of Yousuf Ali Haulader, Basudeb Mistry, son of late Soshi Kumar Mistry, Mokles Poshari, son of Mominuddin Poshari and Horipodo Shikder, son of late Churamoni Shikder of the said case and those were marked as exhibit-'W1-W6'. There was mentioned that the certified copies were given as G.R. Case No.156 of 2009 (with objection from the prosecution as noted in the deposition sheet).

He proved the photo copy of pages 669-675 of the 7th volume of the book ''স্বাধীনতা যুদ্ধের দলিলপত্র'' edited by Hasan Hafizur Rahman which was marked as exhibit-'X'. He proved the down loaded print copy of the news under the head

‘‘কোন আইনজীবী আদালতে যুদ্ধাপরাধীদের পক্ষে বলেন তাদেরও দেখতে চাই’’ of the online edition of the daily Nayadiganta dated 4 April, 2010 which was marked as exhibit-‘Y’. He proved the photo copy of the agenda of the day of the International Sirat Conference held in 1978 arranged by Islami Mission in the United Kingdom which was marked as exhibit-‘Z’. In the 2nd item of the agenda dated 29 May, it was written Darse Quran by Maulana Delowar Hossain Sayeedi. He proved the request letter given by the Islamic Council of North America to give visa to the accused for allowing him to deliver speech at the congretion arranged by it which was marked as exhibit-‘AA’. He proved the photo copy of the request letter dated the 5th day of August, 1986 sent by Islamic Circle of North America to the Canadian Embassy in Dhaka to give visa to the accused which was marked as exhibit-‘AB’. He proved the photo copy of the request letter dated 7 May, 1987 sent by the Islamic Society of North America to the American Embassy, Dhaka to give visa to the accused for attending East Coast Conference arranged by them which was marked as exhibit-‘AC’. He proved the photo copy of the invitation letter dated 26 July, 1979 sent by Dawatul Islam, the United Kingdom and Ireland inviting the accused to address their annual meeting which was marked as exhibit-‘AD’. He proved the photo copy of the letter of thanks dated 10 May, 1978 given by the Islamic Mission, the United Kingdom to the accused for acceptance of the letter to join International Sirat Conference which was marked as exhibit-‘AE’. He proved the photo copy of the invitation letter dated 16 June, 1980 given to the accused by Jam-e-Mosjid and Islamic Centre for delivering speeches at the various *Mahfil* arranged by them which was marked as exhibit-‘AF’. He proved the invitation letter dated 28 June, 1985 given to the accused by Dawatul Islam, the United Kingdom and Ireland to join

their annual meeting which was marked as exhibit-'AG'. He proved the photo copy of the invitation letter dated 2 June, 1988 by the same organisation inviting the accused as speaker in their annual meeting which was marked as exhibit-'AH'. He proved the photo copy of the request letter dated 30 June, 1980 sent to the accused by the same organisation to give message in their annual meeting which was marked as exhibit-'AI'. He proved the photo copy of the book "পিরোজপুর জেলার ইতিহাস" edited by Pirojpur Zilla Barisal which was marked as exhibit-'AJ'. He proved the photocopies of pages 435-441 from 10th volume of the book "বাংলাদেশের স্বাধীনতা যুদ্ধ দলিলপত্র" edited by Hasan Hafizur Rahman wherein the interview given by Shamsul Alam Talukder 2nd in command of Sub-Sector Commander of Sector-9 of the *Muktijuddho* had been recorded which were marked as exhibit-'AK'. He proved the photo copy of the birth registration certificate and the relevant portion of the voter list of the prosecution witness, Khalilur Rahman where his name had been mentioned which were marked as exhibits-'AL' and 'AL1' respectively (with objection from the prosecution as noted in the deposition sheet). He proved the photo copy of the birth certificate of Matowara, daughter of Jamaluddin Jomir of village-Char Tengrakhali which was marked as exhibit-'AM' (with objection from the prosecution as noted in the deposition sheet). He proved the photo copy of the list of the VGD beneficiries of Zia Nagar Upazila of the District of Pirojpur where the name of Mosammat Rina Begum, wife of Mahbubul Alam, had been mentioned at serial No.226, which was marked as exhibit-'AN' (with objection from the prosecution as noted in the deposition sheet). He proved the photo copy of the news published on 1st and 11 pages' 4th column under the head "প্রকৃত মুক্তিযোদ্ধার সংখ্যা আজও চূড়ান্ত হয়নি" in the 'Daily Bangladesh Protidin' dated 11.12.2011 which

was marked as exhibit-‘AO’. He proved the photo copy of the voter list containing the name of Gouranga Chandra Saha at serial No.0036 which was marked as exhibit-‘AP’ (with objection from the prosecution as noted in the deposition sheet). He proved the photo copy of the temporary allotment letter dated 02.06.1998 issued by the Assistant Commissioner, Settlement of the office of Commissioner Settlement, Ministry of Works allotting a flat in Mohammadpur/Mirpur Housing Estate to Md. Mizanur Rahman Talukder which was marked as exhibit-‘AQ’ (with objection from the prosecution as noted in the deposition sheet). He proved the photo copy of the “Debarred List of the Degree (Hons) Examination of 1976 held in April, July and August 1978” wherein the name of Ruhul Amin, son of Alhaj Serajuddin Ahmed, had been mentioned which was marked as exhibit-‘AR’ (with objection from the prosecution as noted in the deposition sheet). He proved the photo copy of the certified copy of the petition of complaint filed by Abdul Jalil Haulader before the Upazila Magistrate, Pirojpur which was marked as exhibit-‘AS’. He proved the photo copy of the certified copy of the investigation report of the said complaint which was marked as exhibit-‘AS1’. He proved the photo copy of the certified copy of the order of the Upazila Magistrate passed in the said case which was marked as exhibit-‘AS2’. He proved the photo copy of the certified copy of the Ejahar, the order sheets and the charge sheet of G.R. No.120 of 1990, which arose out of the First Information Report lodged by Mossamat Motizan Bibi against Abdul Jalil Poshari and others, which were marked as exhibits-‘AT’, ‘AT1’ and ‘AT2’ respectively. He proved the photo copy of the tripartite agreement dated 09.04.1974 amongst India, Bangladesh and Pakistan as mentioned in the 4th volume of the Bangladesh documents, 1971 which was marked as exhibit-‘AU’.

He proved the photo copy of the book ‘‘মুক্তিযুদ্ধে যশোর’’ written by journalist Rokonuddoula which was marked as exhibit-‘AV’. He proved the photo copy of the news under the head ‘‘সাঈদীর মামলায় ট্রাইব্যুনালকে প্রসিকিউশনের ধোকা সেভ হাউজে উপস্থিত করা সাক্ষীদের বিষয়ে বলা হয়েছে সাক্ষীদের হাজির করা দুরুহ’’ published on the 1st page, 2nd column and at page No.13, 3rd column of the ‘Daily Amar Desh’ dated 12.04.2012 which was marked as exhibit-‘AW’ (with objection from the prosecution as noted in the deposition sheet). He proved the photo copy of the news published on the 1st page, 2nd column and 2nd page, 5th column of the ‘Daily Dainik Janata’ dated 24.04.2012 under the head ‘‘নিজেদের ব্যর্থতা ঢাকতে রাষ্ট্র পক্ষের আইনজীবীদের নয়া কৌশল’’ which was marked as exhibit-‘AX’ (with objection from the prosecution as noted in the deposition sheet). He proved the photo copies of the telephone bills of 3(three) telephones being Nos.7547807, 7547804 and 7547810 used in the Safe House of the Tadanta Shangstha at Golapbag which were marked as exhibits-‘AY’, ‘AY1’ and ‘AY2’ (with objection from the prosecution as noted in the deposition sheet). He proved the photo coy of the *Warishan Sanad* of late Binod Behari Chakravarti dated 15.04.2012 given by Md. Shah Alam Haulader, Chairman of No.1 Parer Hat Union Council which was marked as exhibit-‘Z’ (with objection from the prosecution as noted in the deposition sheet). He proved the photo copy of Diary No.1078 made by Manik Poshari, PW6 with Pirojpur Sadar Police Station alleging threat put to the witnesses, the prosecution report in Non G.R. No.5 of 2011 which arose out of the said diary, and the photostat copy of the order passed in the said Non G.R. case which were marked as exhibits-‘BA’, ‘BA1’ and ‘BA2’ (with objection from the prosecution as noted int he deposition sheet).

The DW proved General Diary No.1367 dated 29.05.2010 made by the same witness making similar allegation, the photo copy of the certified copy of the order sheets including the order dated 29.06.2011 in Non G.R. No.6 of 2011 arising out of the said diary discharging the adverse party from the case and PR No.07 of 2011 which were marked as exhibits-‘BB’, ‘BB1’ and ‘BB2’ (with objection from the prosecution as noted int he deposition sheet). He proved General Diary No.673 dated 15.04.2010 made by PW4, Sultan Ahmed, the photo copy of the certified copy of the order sheets including the order dated 29.06.2011 in Non G.R. No.07 of 2011 discharging the adverse party from the case and the corresponding PR No.08 of 2011 which were marked as exhibits-‘BC’, ‘BC1’ and ‘BC2’ (with objection from the prosecution as noted in the deposition sheet). He proved General Diary No.1012 dated 24.11.2010 made by Md. Abdul Kader with Pirojpur Sadar Police Station alleging threat put to the witness, the photocopy of the certified copy of the order sheets including the order dated 29.06.2011 in Non GR No.08 of 2011 and PR No.9 dated 28.01.2011 arising out the said general diary discharging the accused from the case which were marked as exhibits-‘BD’, ‘BD1’ and ‘BD2’(with objection from the prosecution as noted in the deposition sheet). He proved General Diary No.142 dated 05.10.2011 made by PW1, Mahbubul Alam Haulader with Indurkani Police Station, Pirojpur alleging threat put to the witness, the photocopy of the certified copy of the order sheets including the order dated 16.04.2012 in Non GR No.48/2011 (Indur) and PR No.28/2011 dated 05.11.2011 arising out of the said General Diary discharging the adverse party from the case, which were marked as exhibits-‘BE’, ‘BE1’ and ‘BE2’ (with objection from the prosecution as noted in the deposition sheet). He proved the

photo copy of the certified copy of the order dated 29.06.2011 passed by the Executive Magistrate, Pirojpur in Non GR Case No.12 of 2011 discharging the adverse party from the case which was marked as exhibit-‘BF’(with objection from the prosecution as noted in the deposition sheet). He proved the photocopy of the certified copies of the order dated 12.01.2012 and 27.05.2012 passed by Metropolitan Magistrate No.31 Dhaka in GR Case No.102 of 2010, the Ejahar and the charge sheet of the said case which were marked as exhibits-‘BG’, ‘BG1’ and ‘BG2’ (with objection from the prosecution as noted in the deposition sheet). He proved the photo copy of the certified copy of the statements of S. I. Kalachan Ghosh of the Tadanta Shangstha of the International Crimes Tribunal recorded in the said case on 12.01.2012 which was marked as exhibit-‘BG3’ (with objection from the prosecution as noted in the deposition sheet). He proved the photo copy of the letter dated 22.12.2008 written by the Election Commission to the chief of the A.T.N Banglar Barta which was marked as exhibit-‘BH’. A copy of the said letter was given also to the Secretary General of Bangladesh Jamaat-e-Islami. He proved the photo copies of General Diary Nos.491 and 492 both dated 08.12.2011 made by Police Inspector Md. Amjad Hossain a witness of the Todonto Sangstha, Golapbag, Jatrabari of the International Crimes Tribunal with Jatrabari Police Station which were marked as exhibits-‘BI’ and ‘BI1’ (with objection from the prosecution as noted in the deposition sheet).

There is a note by the Tribunal in the bracket that when the learned Counsel for the defence was reminded about their responsibility and as to the correctness of the photo copies of the said two GD entries, they told that they

took decision to file those G.D. entries after giving a thought about their responsibility and as to the correctness thereof.

The Tribunal put specific question to the DW to the effect who told him that the two documents submitted by him were the photo copies of the GD entries made with the Police Station ((in the deposition sheet, in Bangla, it has been recorded as ‘ট্রাইব্যুনালের প্রশ্নঃ আপনি যে দুইটি ডকুমেন্ট জমা দিয়েছেন তাহা থানার জি, ডি, এন্ট্রির ফটোকপি তাহা আপনাকে কে বলিয়াছে?’’). The DW answered that he, on seeing those documents, could understand that those were the photo copies of the GD entries (in the deposition sheet, in Bangla, it has been recorded as: ‘‘উত্তরঃ ডকুমেন্ট দুইটি দেখে আমি বুঝেছি যে, উহা জি, ডি, এন্ট্রির ফটোকপি’’). The Tribunal again put question to the DW how he knew that the said two GD entries were made with that Police Station (in the deposition sheet, in Bangla, it has been recorded as ‘ট্রাইব্যুনালের প্রশ্নঃ আপনি কিভাবে জানলেন উক্ত থানায় এই দুইটি জি, ডি, এন্ট্রি করা হয়েছে?’’). The DW replied that in the document of the Safe House, there was mention of these two GD entries and his elder brother late Rafique Bin Sayeedi collected the photo copies of those two GD entries from the Police Station (in the deposition sheet, in Bangla, it has been recorded as ‘‘উত্তরঃ সেফ হাউজের ডকুমেন্টে এই দুইটি জি,ডি, এন্ট্রির কথা লেখা আছে এবং আমার বড় ভাই রফিক বিন সাঈদী এই জি, ডি, এন্ট্রি দুইটির ফটোকপি থানা থেকে সংগ্রহ করেছিলেন’’). The Tribunal put another question to the DW to the effect whether he knew how and from whom his brother collected the photo copy of the said two GD entries (in the deposition sheet, in Bangla, it has been recorded as ‘ট্রাইব্যুনালের প্রশ্নঃ এই ফটোকপি দুইটি আপনার ভাই কাহার নিকট হইতে কিভাবে সংগ্রহ করেছিলেন তাহা আপনার জানা আছে কি না?’’). The DW replied that he had heard from his brother that he had collected the GD entries from the Munshi of the Police Station. He further stated that he

heard that photo copy could be collected if the number of the GD entry could be stated (in the deposition sheet, in Bangla, it has been recorded as "উত্তরঃ আমার ভাইয়ের নিকট শুনেছি তিনি থানার মুন্সীর নিকট থেকে এ কাগজ সংগ্রহ করেছিলেন। আরও শুনেছি যে, জি, ডি, এন্ট্রির নম্বর বলতে পারলে এভাবে ফটোকপি পাওয়া যায়"). He saw the Register Khata of the Safe House from 18.10.2011 to 20.03.2012 as to the coming, going and living the witness there, the General Diary book of the Safe House from 18.10.2011 to 30.03.2012 and the photo copy of the Food Register of the Safe House from 18.10.2011 to 30.03.2012 while the review application filed on 03.06.2012 on behalf of the accused for reviewing the order of the Tribunal accepting the statements of 15(fifteen) witnesses given to the Investigation Officer under section 19(2) of the Act 1973 was heard. In those registers, there were statements as to the coming of the prosecution witnesses and taking food by them including guests accompanying them, their mobile number and who stayed for how many days. The note worthy facts which were recorded in the Register were that witnesses: Ashish Kumar Mondol, her mother and another witness, Samar Mistry, stayed in the Safe House upto March, 2012. He proved the VDO of the speech given by Helaluddin, Investigation Officer of the case, to the local people during his investigation which was marked as material exhibit-'(i)'. He proved two CDs containing the interview of Usha Rani Malakar, Sukhranjan Bali, Ganesh Chandra Saha and Chan Mia Poshari broadcast by Diganta Television on 11.05.2012 and Islamic Television on 11.05.2012 and 15.05.2012 which were marked as material exhibits-'(ii)' and '(iii)'.

In cross-examination, the DW stated that he got exhibit-'A' one year before. Before that the copy was with Setara Begum. He did not know when the application was filed for the copy and when the same was obtained. They are

four brothers and have no sister. Amongst the four brothers, the eldest one died. His *Mejho Bhai* achieved his Masters from Jagannath University, but, at that moment, he could not say the year. He (the DW) achieved his graduation from Titumir College and subsequently he achieved his M.B.A from Lagudia, Newyork. His younger brother after having passed Intermediate Examination from the Government Biggan College completed his study in Economics in London, but, at that moment, he could not remember the name of the College. His Mejho Bhai and he were running business. His *Mejho Bhai* dealt in Travelling Agency and he dealt in Real Estate. The younger brother lived in London and he served in a Private Firm. The name of his grand father was Golam Rahman Sayeedi. He could not say the mouza where their village landed properties were, there might be a mouza named South Khali. The accused wrote 72 books and he was a writer by profession and except writing he had no other profession and in the past he had no other profession as well. He (the DW) did not meet Setara Begum and he got exhibit-'A' from his elder brother who died on 13 June, 2012. He had no talk with his elder brother about communication with Setara Begum. Then said possibly, Momtaj, the informant of that case, gave the said exhibit to his brother after collecting the same from his mother. He could not say how long the paper was with Setara Begum after collecting the same. He did not know as well how long that paper was with Momtaj Begum. He could not say who obtained the same and when. In exhibit-'A', it was not written Saheb Ali or Shahabuddin, but Siraj Ali was written. In exhibit-'A', Pakistani Army, Pirojpur camp was mentioned as accused No.1. At the back pages of exhibit-'A', there was no writing or signature, but there was a round seal where it was written Mahakuma Magistrate, Bakergonj, Pirojpur. He denied

the prosecution suggestion that it was not a fact that exhibit-‘A’ filed by him was created for the purpose of the case and there was no existence of the case mentioned therein. He further denied the prosecution suggestion that it was not a fact that his brother had good relationship with Setara Begum, Momtaz Begum and the family. Then said his brother had good relationship with Mostofa, son of Setara Begum. Setara Begum and Mostofa were the cited witnesses of the prosecution. He denied the prosecution suggestion that it was not a fact that because of them, they (Setara Begum, Momtaz Begum and Mostafa) did not come to depose. The DW asserted that they (Setara Begum and Mostafa) did not come as they did not agree to depose falsely. The judgment of the writ petition mentioned in exhibit-‘B’ was over the obstructions created to his father from going abroad. Exhibit-‘C’ was the judgment of the Appellate Division passed in the leave to appeal filed against the judgment vide exhibit-‘B’. When the judgment was passed in the appeal, the instant case was not filed, but within two hours of the pronouncement of the judgment, Manik Poshari filed the case against the accused. Exhibit-‘E’ ‘‘জ্যোৎস্না ও জননীর গল্প’’ is a history oriented book, but that has been written like a novel. He denied the prosecution suggestion that it was not a fact that the facts narrated in ‘‘জ্যোৎস্না ও জননীর গল্প’’ were not related to the occurrence of the case.

Exhibit-‘D’ is the list of the beneficiaries of one house and one khamar prokalpa. The prokalpa was for the whole of the country aimed at alleviation of poverty. There was other development project of similar nature in different name in the country. In the said list, there were names of 60 persons, except three, he could not say the identity of others. The first page of exhibit-‘F’ was obscure and there was note beyond the Ejahar and the exhibit was not the

certified copy, as there was no scope for them (the accused) to get the certified copy thereof. Exhibit-‘F’ was collected from Zia Nagar Police Station, Pirojpur. Then said possibly the case was filed before the Magistrate Court from where the same was sent to Zia Nagar Police Station. He could not say what other papers were sent from the Police Station along with the case records. He could not say what papers were given to their lawyer. He could not say from where the photo copy was made. He could not say who did the photo copy and who gave to have the photo copy and who was present on their behalf to do the photo copy. In exhibits-‘G’, ‘H’ and ‘J’, the passports, in the column profession, it was written business. In exhibits-‘K’, ‘L’ and ‘M’ the passports, in the column profession, it was written teaching. In the passports vide exhibits-‘G’ and ‘H’ at the place of the name of the accused and at the place of his (the accused) signature and at the end of his name and the last word of his signature, it was wirtten “Saidy”. In exhibits-‘J’, ‘K’, ‘L’, ‘M’, ‘N’, ‘O’, ‘P’ the passports at the place of the name of the accused, at the end of his signature, it was written “Sayedee”. In exhibit-‘1’, the release order of the Hazees at the end of the name of the accused, it was written “Saidee” and the signature of the accused was given in Bangla. In the passports vide exhibits-‘G’ and ‘H’, the first alphabet of the father’s name of the accused was ‘E’ and the last alphabet of Sayeedi is ‘Y’. But in the passports vide exhibits-‘J’ and ‘K’, the first alphabet of the father’s name of the accused was ‘Y’ and the last alphabet of the name of Sayeedi was ‘E’. In the passports vide exhibits-‘L’, ‘M’, ‘N’, the first alphabet of the name of the father of the accused was ‘E’ and the last alphabet of the word Sayeedi was ‘E’. In the passports vide exhibits ‘O’ and ‘P’, the first alphabet of the father’s name of the accused was ‘Y’ and the last alphabet of the word Sayeedi was ‘E’.

He knew about the correction of the certificate of his father. When his father contested the election in 2008, he submitted the photo copies of the certificates of his educational qualification along with the nomination paper. He filed the photo copies of the certificates of Dakhil and Alim examinations. In the Tribunal, the said certificates were supposed to be filed, but the papers submitted in volume-2, he could see only the certificate of Alim examination and that was the highest educational qualification of his father. The photo copies of the certificates of Alim and Dakhil examinations of his father are in exhibit-'151'. In the certificate of Alim, the name of his father "আবু নাঈম মোহাম্মদ" had been penned through at the end of the line, it was written "সাঈদী" and below of it there was initial. He did not know whether the words "হুসাইন" and "সাঈদী" were written by different hands. In the last line, the word "পনের" had been penned through and in that place, it had been written "উনিশ", there was initial below the penning through. The word "তিন" had been penned through and in that place, it had been written as "এক" and there was initial below the penning through and there was correction seal in the certificate. In the Alim certificate, the father's name of the accused had been written as "মাওলানা মোহাম্মদ ইউসুফ সাঈদী", but in the Dakhil certificate, the word "মোহাম্মদ" had not been written. In the Alim certificate, it was written "হুসাইন" and in the Dakhil certificate, it was written "হোসেন". The original of the two certificates were with them. He had some idea about getting "দ্বিন কল". His father got the "দ্বিন কল" certificate by filing application before the Parliament Election in 2008, but he could not remember the date on which the applciation was filed. He did not know whether his father got any other "দ্বিন কল" certificate before or after 10.11.2008. Both the original

certificates were lost. His father first came to know about the missing of the certificates in 2008, when those became necessary for filing nomination paper for the Parliament Election and before that those certificates were not looked for as his father did not do any job. He denied the prosecution suggestion that it was not a fact that two certificates of his father father were not correct.

In the book, marked as exhibit-'Q', there was no reference of any other book or any other reference, he read the book. In the book, there was discussion about the Peace Committee and the *Razakar*. There were some statements about the formation of *Razakar* Bahini at the last para of page 85 and at the beginning of pages 86 and 87 in the book vide exhibit-'R'. At page 95 of the book, there was mention that Roizuddin Naia helped the writer of the book during *Muktijuddho*. In the last para of that page of the book, it had been written that during Muktijoddha 1(one), crore people took shelter in India and it is a historical fact. At page 115 of the book, it was mentioned that "আমাদের খুব বেশী আশংকা ছিল যে, পাকিস্তানি হানাদার গোষ্ঠি এবং জামায়াত ইসলাম-মুসলিম লীগের মীর জাফররা এক পর্যায়ে আমাদের উপর নাপাম বোমার আক্রমন পরিচালনা করবে". In the first para at page 169 of the book, it was mentioned that all the *Razakar*s did not surrender, some of them fled away and some of them went into hiding. At page 154, in exhibit-'SA', it was mentioned that his father protested when, in the 11th meeting of the 5th Session of the 7th Parliament, he was addressed as *Razakar*. He did not know with whom the main receipts of exhibits-'T' and 'U' were lying. Md. Mahtabuddin and Md. Mahbubul Alam as mentioned in exhibits-'T' and 'U' were not his relatives. He did not know who filed the application for taking the copy thereof. He denied the prosecution suggestion that it was not a fact that exhibits-'T' and 'U' were created for the sake of the case. In exhibit-V, there

were description of killing immunerable men and women, rape and looting of Pirojpur by the Pakistan Army, the Shanti Committee and the *Razakar*s during *Muktijuddho* and at the same time, there was also mention of the names of some oppressors. At page 386 of the book, it was mentioned that "একদিন রাজাকারদের হাতে ধরা পড়লো ভাগিরথী". Exhibit-'W' was the photo copy of the petition of complaint of a case. He heard that the original copy thereof was sent to the Tribunal along with the main records. He could not say who made the photo copy and when it was made, he could not say as well where the photo copy was made from. It was not possible for him to compare the contents of the photo copy with those of the original copy. The statements vide exhibits-'W1' to 'W6' were recorded on 23.03.2010 and the certified copies thereof were supplied on 24.03.2010. He could not say whether the statements of the witnesses and the complaint petition were together with the record on 24.03.2010 or not, but those were supposed to be together. Nowhere in the statements of the witnesses, the case number was written. He denied the prosecution suggestion that it was not a fact that exhibits-'W1' to 'W6' were the created papers. At the last part at page 675 of 7th volume of the book: "বাংলাদেশের স্বাধীনতার যুদ্ধ", exhibit-'X', it was written "একজন রাজাকারের পরিচয়পত্র" and part of the same was recorded at page 676 and beneath the identity, it was written ''Sd/illegible INCHARGE *Razakar* & Muzahid Jamaat-e-Islami 91/92, Siddique Bazaar, Dacca.'' Exhibits-'Z', 'AA', 'AB', 'AC', 'AD', 'AE', 'AF', 'AG', 'AH' and 'AI' were the papers as to the participation of his father in various programme, but those were not the Government programme. These organisations were outside the country formed with the Bangladeshi living abroad and also with the foreigners. He knew surely that none of the inviting

organisations was militant organisation. In exhibit-'AJ', "পিরোজপুর জেলার ইতিহাস গ্রন্থে" which contain the history of Pirojpur District, there were descriptions of the incidents of the killing of the people, rape, looting and setting fire in Pirojpur District by the Pakistan Army, the Shanti Committee and the *Razakar* and the names of 46 prominent *Razakar*s were also mentioned. He could not say how many *Razakar*s were there at Pirojpur. In exhibit-'AK', 10 volume of "বাংলাদেশের স্বাধীনতা যুদ্ধ দলিলপত্র", the statements of DW1, Shamsul Alam Talukder, were recorded. Exhibits-'AL' and 'AM' were the photocopies of the birth certificates of Khalilur Rahman and Matowara respectively. Those birth certificates were collected by his elder brother late Rafique Bin Sayeedi. He did not know whether Khalilur Rahman and Matowara were present when those certificates were collected. He knew the person by name who issued the certificates, but he did not know him by face. In exhibit-'AM', the birth certificate, there was no signature of the U.P. Chairman who issued the same, but there was a seal. He denied the prosecution suggestion that the birth certificates were not correct and those were created for the sake of the case.

In exhibit-'AL1' there was neither seal and nor any signature. In this kind of paper, seal was not given at every page, the main book was with him. He denied the prosecution suggestion that it was not a fact that it was a created paper. Exhibit-'AN' was the part of the list of VGD project. In exhibit-'AP', there was no seal and signature, in this kind of paper, seal was not given at every page, the main book was with him. The papers vide exhibits-AQ, AR, AS, AS1, AS2, AT, AT1, AT2, AU, AV, AW, AX, AY, AY1, AY2, AZ, BA, BA1, BA2, BB, BB1, BB2, BC, BC1, BC2, BD, BD1, BD2, BE, BE1, BE2, BF, BG, BG1,

BG2, BG3, BH, BI, BI1 were given to the lawyers at different time and he could not say when those papers were filed by the lawyers. He could not say whether his lawyers filed those papers on 14.10.2011. The letter vide exhibit-'Q' was issued on 02.06.1998 and the original of the said exhibit was supposed to be with Mizanur Rahman Talukder. Possibly his (the DW) elder brother collected the photo copy thereof from the concerned office, but it was not written that it was an office copy. Exhibits-'AS', 'AS1' and 'AS2' were the photo copies of the certified copies. At the moment, the certified copies were not with him. In those cases, they were not parties. They were not also parties in exhibits-'AT', 'AT1' and 'AT2' and those were the photo copies of the certified copies. He denied the prosecution suggestion that it was not a fact that exhibit-'AV' was unnecessary document for the case. He denied the prosecution suggestion that it was not a fact that the reports published in the newspaper vide exhibits-'AW' and 'AX' were untrue. He asserted that the telephone bills vide exhibits-'AY', 'AY1' and 'AY2' were not their telephone bills, but the bills of the Safe House. He denied the prosecution suggestion it was not a fact that the *Todonto Sonstha* had no office under the name Safe House. He did know the hand writing of exhibit-'AZ'. The person against whom General Diary was lodged vide exhibit-'BA' was not an accused in the instant case. He did not know whether any paper of the case mentioned in the General Diary was filed in the instant case. The last order in exhibit-'BA2' was dated 26.06.2011, the last order in exhibit-'BB1' was dated 29.06.2011, the last order in exhibit-'BC1' was dated 29.06.2011, the last order in exhibit-'BD2' was dated 29.06.2011, the last order in exhibit-'BE1' was dated 16.04.2012 and the last order of exhibit-'F' was dated 29.06.2011. He could not say when the investigation report in the instant case was filed. He

denied the prosecution suggestion that it was not a fact that exhibit-‘BG’, the order sheet, exhibit-‘BG1’, the First Information Report, exhibit-‘BG2’ the Charge Sheet, exhibit-‘BG3’ the statements of the witnesses were not related to his case. In the case vide exhibit-‘BG’series, he was neither an informant nor an accused nor a witness. The certified copies thereof were obtained by a lawyer on his request. He denied the prosecution suggestion that it was not a fact that the hand writing of the first page of exhibit-‘B1’ did not tally with those of the 2nd page, then said that but hand writing of one page was a bit bigger and the other page was a bit smaller (in the deposition sheet, in Bangla, it has been recorded as “তবে দুই পৃষ্ঠার হাতের লেখা একটি ছোট একটি বড়”). There was a penning through at the place of the date and the year in exhibit-‘B1’, but the date was clear beneath the signature. On further cross-examination on exhibit-‘B1’, the DW stated that because of the photo copy, the hand writing of the 2 pages might be smaller or bigger (in the deposition sheet, in Bangla, it has been recorded as “তবে দুই পৃষ্ঠার হাতের লেখা ফটোকপির কারণে ছোট বড় হতে পারে”).

There was no memo number in the two GDs. He denied the prosecution suggestion that it was not a fact that the two GDs were created by resorting to forgery for the sake of the case. He could not say who took the photograph of material exhibit-‘(i)’ filed on behalf of the accused, but it was done by the journalist of TV media at Pirojpur and their logo was there. He could not say whether the video was edited. He could not say at that moment on which date the video was tapped. The persons figured in material exhibits-‘(ii)’ and ‘(iii)’ filed on behalf of the accused, namely: Usha Rani Malakar, Sukha Ranjan Bali, Ganesh Chandra Saha and Chan Mia Poshari were the cited witnesses of the prosecution. He could not say who, when and where took the interviews of those

witnesses, but the report was broadcast in the TV channels and name of the reporter was there. He could not say whether the two VDOs were edited or not. He could not say whether the material exhibits-‘(i)’, ‘(ii)’ and ‘(iii)’ filed on behalf of the accused were manipulated or not. He denied the prosecution suggestion that it was not a fact that there was no existence of any Safe House. He denied the prosecution suggestion that it was not a fact that there was no existence of any Register of the Safe House from 18.10.2011 to 20.03.2012 registering the fact of coming and going of the witnesses and their living there, General Diary book from 18.10.2011 to 30.03.2012 and the photo copy of the Food Register from 18.10.2011 to 30.03.2012. He denied the further prosecution suggestion that it was not a fact that the facts recorded in those Registers as to the coming of the prosecution witnesses, taking food by them, the description of the guests accompanying them, mobile numbers and who stayed for how many days were untrue. He denied the prosecution suggestion that it was not a fact that the poto copies of the so called Safe House which were filed were created by forgery. He denied the prosecuton suggestoin that it was not a fact that the noteworthy facts recorded in the said Register, such as, living of the witnesses: Ashis Kumar Mondol, his mother and another witness-Samar Mistry at the Safe House upto March, 2012, were untrue. He further stated that he collected material exhibit-‘(i)’ from the archieve of Desh TV at Pirojpur and material exhibits-‘(ii)’ and ‘(iii)’ from the media centre, Dhanmondi. He denied the prosecution suggestion that it was not a fact that they had kept witnesses: Sukhranjan Bali and Ganesh Saha hiding by putting threat to them (with objection from the defence). He denied the prosecution suggestion that it was not a fact that the papers filed in the case on behalf of the accused were created

and filed with motive. He also denied the prosecution suggestion that it was not a fact that he deposed falsely by suppressing facts.

This DW was recalled by the defence and in re-examination, he proved the photo copy of a news published in the 'Daily Ittefaq' on 29 December, 1974 about the speech delivered by the accused at a *Quran Tafsir Mahfil* at Motijheel, Dhaka under the head "পিএন্ড টি কলোনী মসজিদ পবিত্র কোরআন পাকের তফসীর উপলক্ষ্যে জলসা" and the same was marked as exhibit-'BJ'. He proved the photo copy of a news published in the 'Daily Jugantor' dated 13 August, 2009 in its 2nd edition on the first page, 5th column under the head "সাঈদীকে সম্ভাব্য যুদ্ধাপরাধী হিসেবে বিবেচনা করছে সরকার" which ended at page 15, 5th column and also another news item of the same date under the head ''সাঈদীর বিরুদ্ধে যুদ্ধাপরাধ মামলা'' at page 15, 2nd column which were marked as exhibits-'BK' and 'BK1' (The original copies of the news papers were shown to the Tribunal as noted in the deposition sheet). He further stated that the instant case was filed with total political motive which fact was also proved from the statements of the Investigation Officer vide material exhibit-'(i)' filed on behalf of the accused.

In cross-examination by the prosecution, the DW stated that in exhibit-'BJ', it was written Maulana Delowar Hossain Sayeedi (Khulna), because at that time, they used to live at Khulna. In the news, there was no mention who arranged the *Jalsha*. In exhibit-'BK', there was a news about a case in respect of the foreign tour of the accused. He denied the prosecution suggestion that it was not a fact that the news in exhibit-'BK1' was related to the instant case. He denied the prosecution suggestion that it was not a fact that the instant case was

not filed with political motive which was proved by the statement of the Investigation Officer vide material exhibit-'(i)'.

DW14, Md. Emran Hossain, aged about 59 years, of village-Mohiron, Police Station-Baghapara, District-Jessore, stated in his examination-in-chief that he was a teacher of Baghapara Pilot Girls' High School. In 1971, he was a student. In 1969-1970, the accused used to live at a rented house at Jessore town. At that time, he used to hold religious meeting. On 26 March, 1971, there was a shell attack at Jessore Town from Jessore Cantonment. The inhabitants of the town got frightened and started leaving the town for village. In the middle of May, the accused with his family took shelter at the house of late Sadaruddin Peer in their village. After his (the accused) stay in that house for 15 days, Peer Saheb called Raushan Ali of village Doha Khola and told him to take the accused at his house telling that due to the gathering of the people at his house, there was accommodation problem. Then Raushan Ali took the accused to his house. The accused stayed at the house of Raushan Ali for $2\frac{1}{2}$ months and then his (the accused) brother took him to his village home at Pirojpur. The DW identified the accused in the dock.

In cross-examination, the DW stated that his subject of teching was Islam Religion. The School where he teaches was established on 01.01.1975. The Peer Saheb about whom he talked, had sons and daughters and they were alive. He was introduced to the accused when he (the accused) for the first time went to the house of Peer Saheb. He did not go to the house of Raushan Ali with the accused. At that time, he (the DW) used to study at Padda Bila Senior Alia Madrasa. During the whole period of *Muktijuddho,* the Madrasa was closed. He

used to attend the Madrasa from his house. Besides Peer Saheb, there were other well to do people. He heard that many students of the Madrasa joined the *Razakar* and the Al-badar Bahinee. During *Muktijuddho,* he was at his house and did not go anywhere. During Muktijuddho, in 1971, Pakistani Bahini or the *Razakar*s did not do any harm in their village. He did not hear that in 1971, the Pakistani Bahini, the Al-badars, the *Razakar*s and the members of Shanti Committee used to kill people and resorted to looting, setting fire and rape in different parts of the country, but he heard later on. He could not say on what type of people, those torture used to be perpetrated. He saw in the newspaper that there were allegations against the accused that at that time, he set fire on the houses of the people and also killed them. He asserted that the time during which those occurrences had taken places as reported in the newspaper, the accused was in their area, so he came to depose to tell the truth (in the deposition sheet, in Bangla, it has been recorded as "যে সময়ের ঘটনার কথা পত্রিকায় উল্লেখ করা হয়েছে সেই সময়ে তিনি আমাদের এলাকায় ছিলেন এজন্য আমি সত্য কথা বলার জন্য সাক্ষ্য দিতে এসেছি"). He then said that he came to know about the allegations one year and few months before by reading the news papers. He used to read newspaper previously also but not regularly, casually. He did not see the said news when he used to read the newspapers one year and few months before. After putting the statements, what he stated in his examination-in-chief, right from the statement that the accused used to live at a rented house at Jessore town up to his (the accused) leaving the house of Raushan Ali for his village home at Pirojpur, suggestion was given to the DW that those statements were untrue which he denied. He denied the prosecution suggestion that it was not a fact that he was involved in the politics of Jamaat-e-Islami. He came to know from the eldest son

of the accused that he was to depose in the case. Then said one year before the eldest son of the accused had gone to the house of Peer Saheb and called many of the para and when they told him that the accused was in their area during the liberation war, he (the son of the accused) requested them to say so before the Tribunal. He denied the prosecution suggestion that it was not a fact that he deposed whenever requested. He asserted that he never deposed in any other case. He denied the prosecution suggestion that during *Muktijuddho,* he played a role against *Muktijuddho*. He denied the prosecution suggestion that it was not a fact that as he was involved with Jamaat-e-Islami politics and also for pecuniary benefit, he deposed falsely by suppressing the facts.

DW15, Abdus Salam Haulader, aged about 65 years, of village-Baduria, Police Station and District-Pirojpur, stated in his examination-in-chief that he did house hold works. In 1971, his father had a shop at Parer Hat Bazaar and sometime, he used to sit there. The liberation war was started on 26 March, 1971. The Pak Senas came to Parer Hat on 7 May. In collaboration with them, some people of Parer Hat, such as, Danesh Molla, Sekander Shikder, Muslem Maulana, Gani Gazi, Asmot Ali Munshi, Malek Shikder lotted 5/6 Hindu shops at Parer Hat. After looting, the Pak Senas again went towards Pirojpur. The persons, whose shops were looted, were: Makhon Saha, Narayon Saha, Modon Saha, Bijoy Master, Gourango Paul. The Pak Senas came to Parer Hat again on the next day of the looting and they with the help of those people, i.e. Danesh Molla, Sekander Shikder, Muslem Maulana, Gani Gazi, Asmat Ali Munshi and Malek Sikder by crossing the bridge, entered into the house of his uncle Nuru Khan situated on the Southern side. The members of the Peace Committee showed the said house to the Pak Senas and they set fire thereon. His uncle

(Nuru Khan) was an Awami League leader. At that time, his uncle Nuru Khan, his son-Selim Khan and the mother of Selim Kha were not at home, they fled away from their home before the beginning of the war. 15/20 minutes after setting fire in the house, the Pak Senas came out therefrom and went towards Chitholia village. Sometimes thereafter, they saw smoke. Many people on running were telling that fire was set on the houses of Soizuddin and Roizuddin of village Chitholia. After half an hour or forty five minutes, the Pak Senas along with the members of the Peace Committee again set forth towards Parer Hat Bazaar. At that time, he (the DW) was standing along with other people on the northern side of the bridge. He saw the Pak Senas along with those members of the Peace Committee coming towards Parer Hat by crossing the bridge on the river. He did not see the accused along with them (in the deposition sheet, in Bangla, it has been recorded as: "তাদের যাওয়ার সময় এবং আসবার সময় দেলোয়ার হোসেন সাঈদী সাহেবকে তাদের সঙ্গে দেখি নাই"). The Pak Senas after staying for sometimes at Parer Hat Bazaar set forth towards Pirojpur. 2/3 days thereafter, the Peace Committee was formed at Parer Hat with Sekander Shikder, Muslem Maulana, Danesh Molla, Shafijuddin Moulavi, Gani Gazi, Asmot Ali Munshi, Malek Shikder. The office of the Peace Committee was established by occupying the building of Fakir Das situated at the east row of Parer Hat Bazaar. The *Razakar* camp was established at the first floor of Parer Hat High School in the last part of Joistho. He knew Momin, Razzaque, Bazlu Kari, Hanif and Mohsin as the *Razakar*s and they used to come at Parer Hat Bazaar. He never saw the accused with them. The accused contested the Parliamentary election thrice from Pirojpur-1, twice with Babu Sudhanshu Shekhar Halder, a renowned lawyer and he never made any allegation of the commission of crime against the accused

and he did not also file any case against him. The 3rd time, the accused contested the election with A.K.M.A. Awal Saheb, who did not also make any allegation of commission of war crimes against the accused. The DW identified the accused in the dock.

In cross-examination, the DW stated that he did not know in which Court the case concerning the M.P. election was filed. While the house of Nuru Khan was set on fire, he was at his house. He came out of his house on hearing the news of arrival of the Pak Army. His house was 200/300 yards away from Rajlaxmi School. During *Muktijuddho,* he did not go to the said School. Now he does house hold works. When the fire was set on the house of Nuru Khan, the inmates of their house were hiding outside the room, but they did not go outside the house. The place, where he was standing, was out of view. He went to the place after the Pak Bahini and the members of the Peace Committee had left. He denied the prosecution suggestion that it was not a fact that his father was a member of the Peace Committee. Then said his father used to run a shop. The *Razakar*s named by him did not come to their house, they used to come to the Bazaar and stay at the camp at the Bazaar. The *Razakar*s named by him used to come to their shop and after taking goods used to say to keep record of those saying that they would pay later on (in the deposeition sheet, in Bangla, it has been recroded as: "আমাদের দোকানেও আসত এবং মালপত্র নিত, বলত লিখে রাখ পরে টাকা দিব"). He could say the number of the Peace Committee as he used to go there, but he could not say how many *Razakar*s were there. He further stated that he used to pass by the side of the office of the Peace Committee. He was not present in the meeting in which Peace Committee was formed and he did not see their khata. He did not keep any information of the persons who were in the Peace

Committee. He had heard the speeches of Sudhansu Babu at Parer Hat Bazaar when he contested the election, but he did not read all his leaflets and other papers. Then said he did not read the leaflets, but read the poster where it was written to vote for the symbol of boat. He denied the prosecution suggestion that it was not a fact that Sudhansu Babu did not make any allegation of the commission of war crime against the accused. He denied the prosecution suggestion that it was not a fact that Awal Saheb did not also make any allegation of the commission of war crimes against the accused. He further stated that when the Pakistan Bahini and the members of the Peace Committee entered into the house of Nuru Khan, they did not see him, but he (the DW) saw them. The name of his grand father was Alimuddin Haulader. He denied the prosecution suggestion that it was not a fact that he and his father were anti-liberationists and he having pecuniary gain deposed falsely by suppressing facts.

DW16, Abdul Halim Fakir, aged about 55 years, of village-Tengrakhali, Police Station-Zia Nagar, District-Pirojpur, stated in his examination-in-chief that presently he did house hold works as well as cultivation (in the deposition sheet, in Bangla, it has been recorded as: "আমি বর্তমানে সাংসারিক কৃষিকাজ করি"). In 1971, he was a student of class-IX. He passed S.S.C. examination. In 1971, during the great liberation war, no *Razakar,* no member of the Peace Committee and the Pak Army entered into their village-Tengrakhali and no house was looted and no one was tortured. In 1971, during the great liberation war, the accused was neither a *Razakar* nor a member of the Peace Committee nor anti-liberationist and he did not indulge in any activity against humanity. He identified the accused in the dock.

In cross-examination, the DW stated that the accused were two brothers, the accused and Mostafa Sayeedi. He could not say exactly how many *Razakar*s were there in Parer Hat Union. But he could say the name of all the members of the Peace Committee of the Union. He knew all the members of the Peace Committee as they were men of *Murubbi* class. During the war, he did not move with them. He was not present at the time of formation of the Shanti Committee, but he heard about the same. He never went to the office of Shanti Committee and he never saw the papers of the Shanti Committee. He passed SSC examination in 1973. He asserted that there was no *Razakar* or member of the Peace Committee in their village and there was no *Muktojoddha* as well. There were about 60/70 houses at village-Tengrakhali during the *Muktijoddha*. He denied the prosecution suggestion that it was not a fact that his family had liaison with the Peace Committee and familywise, they were anti-liberationists. He denied the prosecution suggestion that it was not a fact that during the great liberation war, in 1971, no *Razakar,* member of the Peace Committee and Pak Army entered in to their village-Tengrakhali and no house was lootted and no man was tortured. He denied the prosecution suggestion that it was not a fact that in 1971, the accused was neither a *Razakar nor a* member of the Peace Committee and not anti-liberationist and he did not indulge in any activities against humanity. He asserted that during liberation war, the members of the Peace Committee used to loot and with the help of the *Razakar*s used to hold Hindus and then hand them over to the Pak Army who used to kill them shooting. By misanthopic acts, he meant looting, setting fire, killing people and committing rape. These acts were against humanity and the public in general used talk and discuss in 1971. On the 10th instant, he could know that he was to

depose in the case. He denied the prosecution suggestion that it was not a fact that he was in the habit of testifying whenever asked. He asserted that he came to the Tribunal to depose for the first time in his life. Then said Nanna Mia the brother-in-law of the accused told him to depose before the Tribunal. He denied the prosecution suggestion that it was not a fact that they, being familywise anti-liberationists and presently being involved with the politics of Jamaat-e-Islami and also for pecuniary benefit, deposed falsely by suppresing facts to save the accused a Jamaat leader.

DW17, Gonesh Chandra Saha, aged about 51 years, stated in his examination-in-chief that his mother-Bhagirothi Saha, died in 1971. The *Muktijoddha*s used to live in their house and her mother used to work at the military camp. His mother used to pass information of the camp to the *Muktijoddha*s. Motiur Rahman Sarder, Kalu Molla, Jalil Molla, Hanif Khan were *Muktijoddha*s. Motiur Rahman Sarder presently is the Upazila Chairman of Pirojpur Sadar. Her mother used to come home in the night and used to go to the camp in the morning. After some days, Military came at Baghmara, there was an exchange of fire between the Mukti Bahini and the Military; 10(ten) Militaries were killed and they fled away to Pirojpur leaving their arms. On that day, his mother was at Pirojpur camp, she did not come home. Next day, he and his brother named Kartik Chandra Saha went out to look for their mother, Kartick now dead. At about 12 O'clock, they heard that one woman was taken away and she was their mother. They further heard that the Military dragged her near the river in a vehicle by tying her waist and legs with a rope. They went there and saw their mother with multiple injuries and 5(five) persons sitting in the vehicle, they were in khaki dress. After killing their mother, her body was thrown at the

bed of the river. Out of the five, four were armed and one was driver. He did not know those 5(five), he could not understand as well what they said. After a few while, they went away by their vehicle. He did not see any *Razakar* with them. He could not also identify any one of them. He came to know $1\frac{1}{2}$ year before that he was a witness in the case. Then said he came to know in the last part of Baishakh. The journalist and the people from the Court had gone to him concerning the death of his mother and they heard from him about the death of his mother. Then said he deposed for the first time on that date (the date of his examination-in-chief) about the death of his mother. He further stated that Rafique Bhai saw him in the last part of Baishakh about testifying in the case. He further stated that he (Rafique) inquired from him who killed his mother, he told that the Pakistani Military killed his mother. Then he (Rafique) said whether any other person killed her, he (DW) replied in the negative and said only the Pak Army killed her. Then he (Rafique) told him to say by God. He (the DW) said in the negative and told that there were drama and novel over the death of her mother and those were being staged every year and the people enjoyed those. He further stated that drama and novel were staged at Pirojpur, except those, none told him anything. Rafique further told him whether his father (the accused) killed his mother. He (the DW) asked him who his father was, he replied Sayeedi Saheb. Then he (DW) told that he did not kill his mother (in the deposition sheet, in Bangla, it has been recorded as: "রফিক ভাই আমাকে আবারো বলেন আমার বাবা কি আপনার মাকে মেরেছে। আমি তাকে জিজ্ঞাসা করি আপনার বাবা কে? উনি বলেন সাঈদী সাহেব। তখন আমি বলি, না উনি আমার মাকে মারেন নাই").

In cross-examination, the DW stated that Rafique Bhai had gone to his house one day only and he saw him once. In the last part of Baishakh, he went to Pirojpur either for *Waj* or to hold a *Mahfil*. The month of Baishakh was 7(seven) months before from that date. He (the DW) did not go to listen *Waj*. When he had gone to their house, he (the DW) was in the field, he was called over cell phone. Another man also accompanied him (Rafique) in their house. He knows another gentleman named Nanna, may be he is the maternal uncle of Rafique Bhai. Except that day, none went to him. When he asked him (Rafique) why he (the DW) was being asked those questions, he (Rafique) replied that as he did not know who killed his (the DW) mother, so he came to know which was necessary for him. He further stated that he did not ask him (Rafique) why he came after such a gap. He (Refique) went to his house only and did not go to any other place. There was a *chattar* at Pirojpur in the name of his mothers as *Bhagirothi Chattar*. In the last Falgun, people from the Court had come to him and told him that they were from the Court and they came from Court to investigate. The persons who had come did not tell their names, but told that they came from Dhaka, he (the DW) did not also ask their name. After one week, they again came and he told them who killed his mother or what happened. During the liberation war, he did not see the *Razakars*. He heard about the *Razakar*s. In 1971, *Muktijuddho* meant the exchange of fire between the *Mukti Bahini* and the Military. He heard that the *Razakar*s used to hold people and collaborated to kill them and they also killed (in the deposeition sheet, in Bangla, it has been recroded as: "আমি শুনেছি যে, রাজাকাররা মানুষ জনকে ধরে ধরে নিয়ে হত্যার ব্যাপারে সহযোগিতা করতো এবং হত্যা করতো"). He further stated that Helal Saheb

might be the head of the persons who came to him from the Court for investigation.

The Tribunal noted in the deposition sheet that the prosecutor by pointing at Helal Uddin, the Investigation Officer of the case who was present before the Tribunal asked the DW whether he was the man of the Court, the DW replied in the affirmative. The DW further stated that the son of Sayeedi Saheb asked him (the DW) whether he filed any case against his father, he replied in the negative, then he (son of Sayeedi) asked him whether he would be able to say so in Court and he (the DW) replied in the affirmative and he came to Court to say all those facts. He denied the prosecutioon suggestion that it was not a fact that the accused had direct hand in the killing of his mother. He denied the prosecution suggestion that it was not a fact that Rafique Saheb, his maternal uncle and the men of Sayeedi brought him to the Tribunal not to say the said fact paying money and also by misleading him. He stated that Nanna Bhai brought him from Pirojpur and he stayed with him in a hotel and in the morning, he brought him to Court. He denied the prosecution suggestion that it was not a fact that he deserted the prosecution side for money. He denied the further prosecution suggestion that it was not a fact that knowing fully well that the accused had direct involvement in the killing of his mother, he deposed falsely by suppressing the facts.

These are all the oral evidence adduced on behalf of the defence in support of its defence case.

Before I proceed to consider and sift the evidence adduced by the defence in support of its defence case as stated at the beginning of the judgment and see whether the defence succeeded in proving its defence case and decide the

corrolary crucial fact whether the prosecution could succeed that the accused was a *Razakar* or a member of the Peace Committee and in that capacity committed the crimes as alleged in the respective charge. I would like to repeat what I said in the cases of Abdul Quader Molla and Muhammad Kamaruzzaman (I was one of the members of the Bench which heard and disposed of those two cases) that as a human being and as a son of the soil, I have reasons to be shocked and emotional as to the atrocities committed on the soil of Bangladesh by the Pakistan armed forces, its auxiliary forces and other persons, but I am oath bound to faithfully discharge the duties of my office according to law and do right to all manner of people according to law, without fear or favour, affection or ill-will.

Of the 17 witnesses examined by the defence, in fact, DWs4, 6, 8, 12 and 14 were examined in support of the of the plea of *alibi* that since before the beginning of the *Muktijoddha* till the middle of July, 1971, the accused was not at all present at the crime sites and he was at New Town, Jessore, at villages-Sheikh Hati, Dhan Ghata, Mohiron and Doha Khola under Police Station-Bagharpara and the other DWs were examined to substantiate the further defence case that the crimes alleged in the respective charge were committed by the local *Razakars* and the members of the Peace Committee along with the Pakistan Army. Let us now sift and analyse the evidence of the DWs.

DW4, Abul Hossain, categorically stated in his examination-in-chief that he had been living at block A/185, New Town, Jessore since 1968. The DW further stated that on the black night of 25 March, 1971, the Pak Army attacked the un-armed Bangalis and started firing from Jessore Cantonment which continued up to 28 March. Shahidul Islam Saheb who used to live at House

No.184 adjacent to his house, was the Headmaster of Sheikh Hati Government Primary School and the Assistant Headmaster of the said School used to live at House No.183, the adjacent house to Shahidul Islam, the accused used to live at House No.182. The guardians of these four families discussed the matter amongst themselves and took decision to leave Jessore Town as they considered it unsafe for living there and accordingly, they on 3 or 4 April, 1971 went to Sheikh Hati from Jessore and stayed there in the night and in the morning, they went to village-Dhan Ghata which was a bit inside towards the East. They stayed there at the house of the maternal uncle of the inhabitant of House No.183 for about 7/8 days and then it was decided after discussion that the families of the DW and that of Shahidul Islam would go to India; Abul Khair, the inhabitant of House No.183, would stay back at the house of his maternal uncle, i.e. at Dhan Ghata and the accused went to the house of his Peer at village-Mohiron under Police Station-Bagharpara, 8/9 miles away from Dhan Ghata and the families of the DW and that of Shahidul Islam went to India. These statements of DW4 remained unshaken and unimpeached during cross-examination by the prosecution.

In cross-examination, the DW stated that in March, 1971, his father was the guardian of his family, his father died in 1985. His father was the Head Assistant at Jessore Police Office, Jessore (possibly it would be the office of the Superintendent of Police; in the deposition sheet, in Bangla, it has been recorded as: "তিনি যশোহর পুলিশ অফিসের প্রধান সহকারী ছিলেন"). So in the absence of his father, he was quite competent to depose as to the fact of their living at Jessore Town in 1971 as well as about their neighbours. It is very pertinent to point out that although, in the examination-in-chief, this DW did not say what the accused

used to do at that time, in cross-examination, he clearly stated that the accused used to hold waj *Mahfil.* The prosecution gave suggestion to the DW that it was not a fact that the accused did not live at House No.182 with his wife, two children and a maid servant which he denied. No suggestion was given to the DW that he did not live at House No.A/185 at New Town in 1971 and presently, he did not also live there. Wild suggestion was given to the DW that he was a professional witness and he gave untrue statements before the Tribunal which he denied. The DW denied the prosecution suggestion that the statements made by him in his examination-in-chief as to the fact that the accused went to his Peer at Mohiron under Bagharpara Police Station, 8/9 miles away from Dhan Ghata, his acquaintance with him (the accused) and their leaving Jessore Town together on 3 or 4 April, 1971, their stay at Sheikh Hati and then at Dhan Ghata were untrue. However, the DW stated that he did not know the village home of the accused. Simply because he could not say the name of the village home of the accused, he could not be disbelieved when he withstood the test of cross-examination and sticked on the statements made by him in his examination-in-chief. It is not also always necessary for a neighbour of a town to know the village home of another neighbour. By cross-examining the DW, nothing could be drawn out to show that he (the DW) was in any how connected with the accused socially, politically and thus he was biased or he deposed with motivation in favour of the accused. The DW clearly stated in his examination-in-chief that he was 56 years old (he deposed on 12.09.2012), so in 1971, he was aged about 15 years. Therefore, he was quite competent to remember the events of 1971. It is very important to state that in cross-examination, the age of the DW was not challenged.

Therefore, I find no reason to disbelieve the testimony of this DW as jotted down hereinbefore.

DW6-Raushan Ali, a man of village-Doha Khola, categorically stated in his examination-in-chief that in 1969/70, the accused held many religious meetings and he was acquainted with him through those religious meetings. At that time, the accused used to live at a rented home at New Town, Jessore and in the middle of April, 1971, the accused along with his family took shelter at the house of Peer Sadaruddin Saheb of village-Mohiron and after staying there for 2(two) weeks, Peer Saheb Huzur called him (the DW) and on his request, he took the accused along with his family to his house in the first part of May and the accused lived in his house for more than $2\frac{1}{2}$ months and then went to his village home along with his family in the middle of July.

The DW was extensively cross-examined, but the fact that the accused was acquainted with him through the religious meetings and took shelter at the house of Peer Sadaruddin Saheb in the middle of April, 1971 and he (the DW) took the accused along with his family to his house at the request of the Peer Saheb in the first part of May and after staying at his house for about $2\frac{1}{2}$ months, the accused left the same in the middle of July along with his family for his village, could, in no way, be impeached. He categorically asserted that the accused was not his relative. In cross-examination, the DW further stated that the Peer Saheb was not alive, but he had sons and daughters. In 1971, Peer Saheb was married, but he (the DW) could not say his age. He further stated that the age of the eldest son of the Peer Saheb would be about 45 years, so it was not possible to examine any son or daughter of the Peer Saheb to prove the fact

of stay of the accused along with his family at their house. The DW further stated that the Officer-in-charge of Bagharpara Police Station and the local respectable persons, 40(forty) in number, went to him and they wanted to know from him about his acquaintance with the accused and they also wanted to know from him when the accused came to his house and when he left his house. The DW further stated that amongst the respectable persons, Vice Chairman-Abdur Rouf, *Muktijoddha* Commander Khondoker Shahidullah and Professor Abdur Rouf of Bagharpara Mohila College were there. The DW further stated that during 1970's election, he was a voter. Suggestion was given to the DW that the accused did not live at a rented house at New Town, Jessore which he denied. Suggestion was also given to the DW that the accused did not take shelter at the house of Peer Sadaruddin at village Mohiron and that after living there for 2(two) weeks on the request of the Peer Saheb, he did not take him along with his family to his house in the first part of May and that the accused did not live in his house for $2\frac{1}{2}$ months which he denied. A wild suggestion was given to the DW that during *Muktijoddho,* he worked against liberation of the country and that before *Muktijoddho,* he also worked against the pro-liberation forces which he denied. Suggestion was also given to the DW that presently he was involved with Jamaat-e-Islam which he denied as well. It appears to me that these suggestions were given to the DW only for the sake of suggestion as nothing could be drawn out from his mouth to show that really, he had the slightest link with Jamaat-e-Islam or he had any activity against the *Muktijoddho* or before that he was also against the pro-liberation forces. The DW was not against the *Muktijoddho* and before that he was not against pro-liberation forces as well is

apparent from the testimony of PW16, Zulfikar Ali who stated in his examination-in-chief that "তখন আমরা জানতে পারলাম আমাদের একজন বন্ধু রওশন আলী সাহেবের বাড়িতে একজন লোক আশ্রয় নিয়েছে" and in his cross-examination that "স্বাধীনতা যুদ্ধের সময় রওশন আলী সাহেবের স্বাধীনতা যুদ্ধের পক্ষে বা বিপক্ষে কোন ভূমিকা ছিল না।". The prosecution could not show any sort of biasness of the DW in favour of the accused to depose falsely making his testimony unreliable. The fact that the accused lived at the house of DW6, in fact, had been admitted by the prosecution when suggestion was given to him to the effect "মুক্তিযুদ্ধের পরে পিরোজপুর থেকে পালিয়ে এসে তিনি আমার বাড়িতে কিছুদিন ছিলেন, ইহা সত্য নহে" and examined PWs15 and 16 to prove that after the liberation of Bangladesh, the accused had fled away from Pirojpur and took shelter at the house of PW6, but it failed to prove so (I shall discuss the evidence of these two PWs later on). Considering the testimonies of the DW, it appears to me that he is a natural, disinterestered, truthful and a vital witness and he deposed truly. Therefore, I find no reason to disbelieve him.

DW8, Md. Kubad Ali, aged about 69 years, of village-Mohiron, in his examination-in-chief, categorically stated that in 1969/70, the accused used to live at a rented house at New Town, Jessore and he used to hold *Mahfil* at various places of Jessore District. On 26 March, 1971, the Pak Senas started shelling at Jessore Town from Jessore Cantonment. Then the people of the town took shelter at villages out of fear. The accused took shelter at the house Sadaruddin Peer Saheb in their village (Mohiron) in the middle of April and after staying there for 15 days, at the request of Peer Saheb Huzur, Raushan Ali (DW6) of Doha Khola took him (the accused) to his (the DW) house at the

beginning of May and after living there for about $2\frac{1}{2}$ months, the accused went to his village home in the middle of July, 1971.

In cross-examination, the DW withstood the test of cross-examination and the fact that the accused had taken shelter at the house of Sadaruddin Peer Saheb of Mohiron in the middle of April and after staying there for 15(fifteen) days, at the request of Peer Saheb, Raushan Ali of Doha Khola took the accused at his house where he lived for $2\frac{1}{2}$ months and then he left for his village home in the middle of July, could not be shaken and impeached. In this regard, it may be stated that the DW was a man of Mohiron and he was not supposed to know the first part of the story as stated by DW4 and DW12 that the accused had left Jessore Town on 3 or 4 April, 1971 and then after staying one night at Sheikh Hati went to village Dhan Ghata and then to the house of the Peer Saheb of Mohiron. I find nothing wrong with the straight statement of the DW that the accused took shelter at the house of Sadaruddin Peer Saheb in the middle of April. Except giving a wild and common suggestion as was given to the other DWs that he deposed falsely in favour of the accused, a Jamaat leader, he being a supporter of Jamaat-e-Islam and also for pecuniary gain which the DW denied; nothing could be drawn out from his mouth to discredit him as a natural and truthful witness and thus not to rely upon his testimony. By giving mere suggestion, the veracity or the truthfulness or the credibility of the testimonies of the DW in his examination-in-chief as noted down hereinbefore, in no way, was diminished and destroyed. I consider it better to quote the cross-examination of the DW in its entirety which is as follows:

"দেলওয়ার হোসেন সাঈদী সাহেব আমাদের এলাকায় অনেকবার গিয়েছেন, তবে কতবার তা বলতে পারব না। তিনি যতবার আমাদের এলাকায় গিয়েছেন তখন তার সংগে আমি যেতাম, তবে দূরে হলে যেতাম না। সদর উদ্দিন সাহেবের বাড়িতে আমি মাঝে মাঝে যাতায়াত করতাম। প্রতিবেশী হিসাবে তার বাড়িতে যেতাম, তিনি আমার আত্মীয় নহেন। আমি দেলওয়ার হোসেন সাঈদী সাহেবের যশোরের বাড়িতে যেতাম না। আমি সাঈদী সাহেবের গ্রামের বাড়িতে যাই নাই। অন্যান্য যারা ওয়াজ করতে যেতেন তাদের মধ্যে আমি যাদের চিনতাম তারা গেলে তাদের সংগেও আমি থাকতাম, যাদের চিনতাম না তাদের সংগে থাকতাম না। ওয়াজ করতে আসা যাদের চিনতাম তাদের মধ্যে মাওলানা গোলাম রসুল, মোঃ গোলাম মোস্তফা এবং আবু সাঈদ উল্লেখযোগ্য। উল্লেখিত ব্যক্তিগণের বাড়ি আমাদের এলাকায় দুই/চার মাইল দূরে অবস্থিত। মাওলানা দেলওয়ার হোসেন সাঈদী সাহেবও বাসা ছেড়ে আমাদের মহিরন গ্রামে মরহুম সদর উদ্দিন সাহেবের বাড়িতে এপ্রিল মাসের মাসের মাঝামাঝি সময়ে আশ্রয় নেন। ঐ বাড়িতে ১৫ দিন থাকার পর পীর সাহেব হুজুরের অনুরোধে দোহাখোলার রওশন সাহেব খুশী মনে উনাকে তার বাড়িতে নিয়ে যায়, মে মাসের শুরুতে। ওখানে আড়াই মাসের মত থাকার পরে দেলওয়ার হোসেন সাঈদী সাহেব জুলাই মাসের মাঝামাঝিতে দেশের বাড়ির দিকে চলে গেলেন, একথাগুলি অসত্য, ইহা সত্য নহে। আমি একজন জামায়াতে ইসলামীর সমর্থক, তাই জামায়াত নেতা মাওলানা দেলওয়ার হোসেন সাঈদী সাহেবের পক্ষে আর্থিক লাভবান হয়ে শিখানো মতে অত্র ট্রাইব্যুনালে অসত্য সাক্ষ্য দিলাম, ইহা সত্য নহে।".

From the above, it is clear that DW8 clearly corroborated the testimonies of DW4 and DW6 that the accused took shelter at the house of Sadaruddin Peer Saheb of Mohiron in the middle of April and then on his request, Raushan Ali (DW6) took the accused at his house in the first part of May where he lived for $2\frac{1}{2}$ months.

DW12, Md. Hafizul Haque, stated in his examination-in-chief that in 1971, he was 11 years old and was a student of Class-V. His father, Master Md. Shahidul Islam, purchased House No.184, Block-A of New Town, Jessore from an allottee in 1966 and since then they started residing there with family. Late Hazrat Ali purchased House No.185 situated to the West of their house from one allottee and thereafter, the 2(two) families started living side by side. In 1969, Maulana Abul Khair started living at House No.183, the owner of which was

Principal Anwar Saheb and at the same time, the accused also started living at House No.182, the owner of which was Professor Anwar Saheb as well. Master Md. Shahidul Islam, father of the DW, was the Headmaster of Sheikh Hati Government Primary School. Late Hazrat Ali Mia was the Head Clerk, S. P. office, Jessore. Maulana Abul Khair Saheb was the Assistant Teacher of the School of which his father was the Headmaster. The accused used to hold *Waz Mahfiil* at various places in greater Jessore. When there was firing from Jessore Cantonment on New Town, Jessore on the 25th day of March, 1971 and also on the next 2/3 days, people from the town started taking shelter at the villages. Then his father, Hazrat Ali, Abul Khair and the accused held a meeting amongst them and decided that they should have gone some whereelse. Accordingly, in the evening of 4 April, they went to Sheikh Hati and passed the night there at the house of late Zainul Abedin, the then president of the Managing Committee of the School and on the next day, they went to the house of the maternal uncle of Abul Khair at Dhan Ghata and they stayed there for 7/8 days. He further stated that as many families gathered at that house, the 4(four) *murubbis* took decision to go to some other place. The accused told that he would go to the house of Peer Saheb of Mohiron under Bagharpara, his father and Hazrat Ali decided to go to India together. On the next day, the accused left for Mohiron, Hazrat Ali Saheb and they went to India. Maulana Abul Khair stayed back in that house.

The DW was cross-examined extensively by the prosecution, but the fact that the accused along with the family of the DW and 2(two) other families lived together in the same area at Jessore New Town at the respective house mentioned by him in his examination-in-chief, could not be dislodged. The prosecution by cross-examining the DW also failed to draw any fact from his

mouth that the statements made by him in his examination-in-chief that his family along with the 3(three) other families including the accused, had left Jessore Town on 4 April, 1971 and firstly went to Sheikh Hati and after staying there one night at the house of Zainul Abedin, the then president of the Managing Committee of Sheikh Hati Primary School, went to Dhan Ghata and after staying there for 7/8 days at the house of the maternal uncle of Abul Khair, decided to go to some other place and the accused told that he would go to the house of Peer Saheb of Mohiron under Bagharpara and, in fact, the accused went to the house of Peer Saheb of Mohiron, could not in any way be shaken, impeached or assailed. The DW categorically stated that in 1971, he was aged about 11 years and was a student of Class-V and in cross-examination, the age of the DW was not at all challenged. Of course, in 1971, the DW was a child, but the age of 11 years was sufficient to remember the major and the memorable facts and events, and surely the fact of firing from Jessore Cantonment on Jessore Town, leaving Jessore Town for a safe place at village and then leaving for India in 1971 and staying there, were major and memorable events and those were not to be forgotten even from the memory of a child. Moreso, the testimonies of the DW were clearly corroborated by DWs 4, 6 and 8. Like the other DWs, a common and wild suggestion was put to the DW as well that he was a supporter of Jamaat-e-Islam and got pecuniary benefits, so he came to depose before the Tribunal which he denied. After denying the suggestion, he asserted that he was not involved with any political party. So, I find no reason to disbelieve the testimonies of the DW.

DW14, Md. Emran Hossain, aged about 59 years, was a resident of village-Mohiron. He stated in his examination-in-chief that in 1971, he was a

student. In 1969-1970, the accused used to live at a rented house at Jessore Town. At that time, he (the accused) used to hold religious meetings. On 26 March, 1971, there was a shell attack on Jessore Town from Jessore Cantonment. The inhabitants of the town were frightened and started leaving the town for village. In the middle of May, the accused with his family took shelter at the house of late Sadaruddin Peer Saheb in their village. After he had stayed there for 15(fifteen) days, at the request of Peer Saheb, the accused was taken by Raushan Ali (DW6) to his house where he stayed for $2\frac{1}{2}$ months and then his brother took him to his village home at Pirojpur.

In cross-examination, the DW stated that at that time, he used to study at Padda Bila Senior Alia Madrasa. During the whole period of *Muktijuddho,* the Madrasa was closed. He heard that many students of the Madrasa joined the *Razakar* and the Al-badar Bahini. During *Muktijuddho,* he was at his house and did not go any where. During *Muktijuddho,* in 1971, the Pakistani Bahini or the *Razakar*s did not do any harm in their village. He did not hear that in 1971, the Pakistani Bahini, the Al-badars, the *Razakar*s and the members of Shanti Committee used to kill people and resorted to looting, setting fire and rape in different parts of the country, but he heard later on. He could not say on what type of people those tortures used to be perpetrated. He saw in the newspaper that there were allegations against the accused that at that time, he set fire on the houses of the people and also killed them. He asserted that the time during which those crimes had taken place as reported in the newspaper, the accused was in their area, so he came to depose to tell the truth (in the deposition sheet,

in Bangla, it has been recorded as: "যে সময়ের ঘটনার কথা পত্রিকায় উল্লেখ করা হয়েছে সেই সময়ে তিনি আমাদের এলাকায় ছিলেন এজন্য আমি সত্য কথা বলার জন্য সাক্ষ্য দিতে এসেছি".

From the cross-examination of the DW, it appears that his testimony in his examination-in-chief that the accused along with his family took shelter at the house of Sadaruddin Peer Saheb in their village-Mohiron and after staying there for 15(fifteen) days on the request of the Peer Saheb, DW6-Raushan Ali took him to his house where he stayed for $2\frac{1}{2}$ months, remained unassailed and he re-asserted those facts. The testimonies of the DW as to the taking of shelter by the accused at the house of the Peer of Mohiron and then at the house of Raushan Ali of Doha Khola is quite consistent with those of DWs4, 6, 8 and 12, though he stated May in place of April as to the time of taking of shelter of the accused at the house of DW6. The DW being a man of Mohiron and student of a Madrasa in 1971 was not supposed to know the history of living together with the father of DWs4 and 12 and also the fact of his leaving Jessore Town on 3 or 4 April, 1971 and his stay at Sheikh Hati and then at Dhan Ghata. And had he said about those facts than his testimonies would have been definitely accepted with a grain of salt. He is a man of Mohiron, so he deposed what he saw at Mohiron and Doha Khola. In the context, it is necessary to state that villages-Doha Khola and Mohiron are situated side by side. It is true that the DW made statement to the effect that he did not hear that in 1971, the Pakistani Bahini, the Al-badars, the *Razakars* and the members of Shanti Committee used to kill people and resorted to looting, setting fire in different parts of the country, but he heard later on. It might so happened that he failed to comprehend or follow the question put by the learned Prosecutor about those events which occurred in

1971. But if we read the cross-examination of the DW as a whole, it would appear that, in fact, he did not deny the incidents which happened in 1971. And because of the said single sentence, his testimonies as to other facts cannot be brushed aside or disbelieved, because there is no bar to believe a part of the testimony of a witness and then to disbelieve the other part or the rest. The cross-examination of the DW shows that he admitted that he heard that in 1971, many students of the Madrasa joined the *Razakar* and the Al-badar Bahini and this shows that he told the truth. Suggestion was given to the DW that what he stated in his examination-in-chief right from the statement that in 1969-70, the accused used to stay at a rented house at Jessore Town up to the statement of his (the accused) leaving the house of Raushan Ali after staying there for about $2\frac{1}{2}$ months, were untrue which he denied. Though the common suggestion was given to the DW that he was involved in the politics of Jamaat-e-Islam, no fact could be drawn out from him that he was in any how involved with Jamaat-e-Islam or he was holding any post in it. The DW asserted that he came to know from the eldest son of the accused that he was to depose in the case. One year before, the eldest son of the accused had gone to the house of Peer Saheb and called many of the para and when they told him that the accused was in their area during the liberation war, he (the son of the accused) requested them to say so before the Tribunal. So, he came to depose before the Tribunal to tell the truth.

Suggestion was given to the DW that he was in the habit of deposing on request by anybody, which he denied and then he emphatically asserted that he never deposed in any other case. The prosecution failed to produce any

document to show that he ever deposed in any other case except the instant case. Suggestion was also given to the DW that during *Muktijuddho,* he had a role against *Muktijoddha* which he denied. Suggestion was also given to the DW that he deposed falsely by suppressing facts for pecuniary gain which he denied. It may be stated that this wild suggestion was given to the other DWs as well, but without any feed back. In the context, it may be stated that the prosecution did not at all challenge the veracity of the positive statement of the DW that during the whole period of the *Muktijoddho,* Padda Bila Madrasa (of which he was a student) was closed. Therefore, we cannot doubt his said statement by referring to any book of a writer or by making reference to other material which was not brought on record.

Having taken shelter of the accused at the house of Raushan Ali (DW6) was also admitted by the prosecution. But their case is that the accused took shelter at the house of Raushan Ali after liberation of the country having fled from Parer Hat and in support of that case, they examined PW15-Solaiman Hossain (no address has been mentioned in the deposition sheet), PW16-Zulfikar Ali (no address has been mentioned in the deposition sheet) and PW24-Hossen Ali (no address has been mentioned in the deposition sheet).

Let us see what these PWs stated in their testimonies.

PW15, Md. Solaiman Hossain, aged about 60 years, stated in his examination-in-chief that in the National Parliamentary election of 1970, an election meeting of Jamaat-e-Islam was held at the field of Doha Khola School by the side of their house. He could not remember the name of all the persons who were present in that meeting as the speakers, but Moshiul Azam, the Candidate of Jamaat-e-Islam, was present and the accused delivered speech in

the meeting. At one stage of the speech, while discussing about Awami League and Banga Bandhu, the accused uttered Jaga Bandhu in place of Banga Bandhu. He (the PW) was present by the side of the meeting. Some boys present at the meeting called the PW and discussed with him about the said speech of the accused and he told them that he had also heard so and for that reason, he knew the accused. The accused stayed at the house of Raushan Ali of Doha Khola after the end of the *Muktijoddho* in 1971. On inquiry about the reason for his (the accused) stay at the house of Raushan Ali after the *Muktijoddho,* they came to know that the accused took shelter at the house of Raushan Ali because of his anti-*Muktijoddha* activities during *Muktijuddho* at Pirojpur area. Thereafter in a speech in a religious meeting held at Bagharpara School within Doha Khola Mouza in 2005 or in 2006, the accused told that whether Raushan Bhai was present in the meeting who gave him shelter during his bad days. After the accused had said that Raushan Ali stood up and went to the dais, shook hands with the accused and sat by his side and after the meeting, they went to the house of Raushan Ali. He identified the accused in the dock. He further stated that he gave statements to the Investigation Officer, Helaluddin Saheb.

In cross-examination, the PW stated that in 1970, he was actively involved with politics and he was the president of Thana Chhatra League and subsequently, he discharged the functions of the General Secretary of Thana Awami League. The name of the present Secretary of Bagharpara Thana Awami League was Zulfikar Ali (PW16). Except attending the religious meeting of the accused at Doha Khola School field in 2005-2006, he did not attend any public meeting of Jamaat-e-Islam or any religious meeting from 2001-2006. He further stated that he himself did not attend the meeting of Jamaat-e-Islam held in 1970

at Doha Khola School field, but he heard the speech given in the meeting as the same was held by the side of his house. After that meeting, in 1970, he came to know that the accused was either a leader of Islami Chhatra Sangha or a Jamaat leader. He did not go to the house of Raushan Ali either in 1971 or in 1972. He did not know what the role of Raushan Ali and Khalilur Rahman (Khalilur Rahman is the brother of Raushan Ali) during the liberation war was. He did not know whether, in the religious meeting held in 2005-2006 at the School field of Doha Khola, the accused after saying that Raushan Ali gave him shelter as stated by him in his examination-in-chief, told that he was at the house of Raushan Ali during the killing of Kabuliwala, the killing of beharis at Jhumjhumpur and the non co-operation movement of late Sheikh Mujibur Rahman (in the deposition sheet, in Bangla, it has been recorded as "২০০৫-২০০৬ সালে দেলওয়ার হোসেন সাঈদী সাহেব যশোর জেলার বাঘার পাড়া থানাধীন দোহাকোলা স্কুলের মাঠে ধর্মীয় সভায় তিনি তাকে রওশন আলী শেল্টারে দিয়েছিল মর্মে আমি যে জবানবন্দী দিয়েছি দেলওয়ার হোসেন সাঈদী সাহেব ঐ কথাগুলি বলার পরে '১৯৭১ সালের কাবুলি ওয়ালা হত্যাকান্ড, ঝুমঝুমপুর বিহারী হত্যাকান্ড এবং মরহুম শেখ মুজিবুর রহমানের অসহযোগ আন্দোলনের সময় রওশন আলী সাহেবের বাড়িতে আমি ছিলাম। এই কথাগুলি বলেছিলেন কিনা তা আমার জানা নাই।"). He admitted that in 1971, the people used to live at New Market area, Jessore. He further admitted that in 1971, there was a Peer named Sadaruddin at village-Mohiron under Bagharpara Police Station, District-Jessore. He was also from village-Mohiron, villages-Doha Khola and Mohiron were situated side by side; Raushan's house was at village-Doha Khola. There was a road and a beel to the East of the house of Raushan Ali. There were houses of Chan Ali Bepari, Ibrahim Molla and Arzan Molla and to the further West, there were houses of Rustam Molla, Karim

Molla, Altaf Biswas, Abu Sayeed Biswas, Abu Taher Biswas (the present Upazilla Chairman). In the same area, the house of the Principal of Bagharpara Madrasa Haider Ali was there to the North of the house of Raushan Ali, then there was the house of Shuknal Kulu. To the South of the house of Raushan Ali, there were houses of Khaleque Molla, Irab Ali and Mojibur Molla. There was none from Pirojpur area from whom he enquired about the reason for staying of the accused at the house of Raushan Ali. He did not take any step to hand over the accused to the law. In 1992, a *Gana Adalat* was established in Dhaka for the trial of the war criminals which he saw in the newspapers, but he did not appear before the said *Gana Adalat* and deposed against the accused. He did not know whether any *Gana Tadanta* Commission was formed in 1994 with Begum Jahan Ara Imam, Poet Sufia Kamal and others to identify the war criminals. He did not know whether Doctor M. A. Hassan took any initiative to identify the war criminals. He did not give any statement against the accused before giving statements to the Investigation Officer, Helaluddin Saheb. He did not know whether, since long before 1971, the accused used to hold *Waz Mahfil* in Jessore area. He did not know whether the accused used to live at a rented house in Block-A, New Market, Jessore since before 1971. He did not know whether the accused along with his family took shelter at the house of Sadaruddin Peer Saheb of Mohiron after the Pakistan Army had started killing the Bangalis after the killing of Jhumjhumpur in 1971. He did not know whether, after staying for 10/15 days at the house of Sadaruddin Peer Saheb, the accused along with his family took shelter at the house of Raushan Ali and he stayed there upto the middle of July. He denied the defence suggestion that it was not a fact that he, being an Awami Leaguer, gave false statement in the false case brought against

the accused at the dictation and instigation of the Government to take political vengence for holding different political ideology.

PW16 stated in his examination-in-chief that during the *Muktijoddha*, in 1971, he was a student and at that time, he was at Bagharpara under Jessore District. He took part in *Muktijoddha* in sector-8 under Major Manjur Rashid. After liberation of the country, on 16 December, 1971 when the *Muktijoddhas* of Bagharpara were flocking together and started searching the *Razakars* of the different area, they came to know that a man took shelter in the house of one of their friends, Raushan Ali (DW6) and one day, he saw a man with Raushan Ali and then came to know from the various persons that he was hiding at the house of Raushan Saheb. Then Solaiman Saheb (now dead), the then *Muktijoddha* Commander of Bagharpara after discussion with all gave decision that the man had to be held from the house of Raushan Ali. Accordingly, they with some *Muktijoddhas gheraoed* the house of Raushan Ali, but they did not find that man, he had fled away. On being asked Raushan Ali Saheb told that the name of that man was Delowar Hossain Sayeedi. After Delowar Hossain Sayeedi (the accused) had fled away, they on inquiry could come to know that he had fled away towards Talbaria by a bullock cart in veil. And when they put pressure upon Raushan Ali and enquired from him (DW6), he told that the accused used to hold *Mahfil* with him (Raushan Ali), he stayed at his house. He (the PW) further heard from Raushan Saheb that the accused was from Pirojpur and he hid in his (Raushan Saheb) house as he was not in a position to stay at Pirojpur after liberation war (in the deposition sheet, in Bangla, it has been recorded as: "যুদ্ধের পরে পিরোজপুরে থাকতে পারতে ছিলেন না"). The PW further stated that he did not see, but

heard from the people that the accused perpetrated torture at Pirojpur during *Muktijoddha* for which he hid at the house of Raushan Ali. He saw the accused again in 2005/2006 when he came to hold meeting at Bagharpara Police Station. In that meeting, the accused told that he survived because of Raushan Ali Bhai and saying that the accused called Raushan Ali to the dias and accordingly, he (Raushan Ali) sat at the dais. He identified the accused.

In cross-examination, the PW has stated that he was the present Secretary of Bagharpara Thana Awami League. He did not hear the entire speech of the accused in that meeting, but heard partially. Then said he heard the speech up to "রওশন আলী ভাই না থাকলে আমি বাঁচতাম না এই কথা বলা থেকে রওশন আলী ভাইকে স্টেজে আনা পর্যন্ত আমি ঐ ভাষণ শুনেছিলাম." He further stated that he did not know whether, in that speech, the accused spoke about the killing of *Kabuliwala*, the killing of Jhumjhumpur and the atrocities that took place during the non co-operation movement of late Sheikh Mujibur Rahman (in the deposition sheet, in Bangla, it has been recorded as: "ঐ ভাষনে ১৯৭১ সালের ৭ই মার্চের পরে, কাবুলিওয়ালা হত্যাকান্ড, ঝুমঝুম পুরের হত্যাকান্ড এবং মরহুম শেখ মুজিবর রহমান সাহেবের অসহযোগ আন্দোলনের সময় যে বর্বরতা ঘটেছিলে তার বর্ণনা তিনি দিয়েছিলেন এবং ঐ সময়ে তিনি রওশন আলীর বাড়িতে থাকতেন মর্মে বলেছিলেন কিনা এটা আমার জানা নাই"). In the last part of January, 1972, they came to know about the fact of taking shelter of an unknown man at the house of Raushan Ali and they *gheraoed* the house of Raushan Ali on the very date of their such knowledge after discussion with the Commander. Village-Talbaria was 8/10 kilometers away to the West from Bagharpara and to go to village-Talbaria from Bagharpara, 8/10 villages had to be crossed (in the deposition sheet, in Bangla, it has been recorded as "বাঘারপাড়া হতে তালবাড়িয়া গ্রামে যেতে মাঝখানে আনুমানিক ৮/১০টি গ্রাম

পার হয়ে যেতে হয়") and from Raushan Ali, he came to know that the accused had gone to Talbaria. They did not send any one to Talbaria to hold the accused. He further stated that during liberation war, Raushan Ali Saheb had no role either in favour of the liberation war or against the liberation war. He further stated that he knew the accused since before 1972. He could not say whether the accused lived at the house of Raushan Ali with the wife and sons. The name of his village is Ramkantopur. After quoting the entire statements of the PW made in his examination-in-chief right from his joining *Muktijoddha* in sector-8 under Major Manjur Rashid upto the fact that the accused hid at the house of Raushan Ali; suggestion was given to the PW that he did not say all those facts to the Investigation Officer which he denied. Suggestion was also given to the PW that he did not tell to the Investigation Officer that he saw the accused again in 2005/06 when he came to Bagharpara Police Station area for holding a meeting and in that meeting, he told that he would not have survived, had there been no Raushan Bhai which he denied. The PW stated that, except deposing before the Tribunal on the day and giving statements to the Investigation Officer, he did not give any statement to any Government or non-Government organisation or writer against the accused after the liberation of the country till date. However, the PW *suo moto* stated that as none previously asked to give statements against the accused or there being no scope to give statement other than the Tribunal, he did not give his statements any where. Then said none forbade him to give statements against the accused from 16 December, 1971 to 15 August, 1975 and from 1996 to 2001 when the Awami League Government was in power. He denied the defence suggestion that it was not a fact that he built a luxurious building under Mohiron Poura area by availing benefits from the present

Government. He denied the further suggestion that it was not a fact that he had no profession and he, having benefits from the present Government, deposed falsely in the false case to cause harm to the accused, the political foe of the present Government.

PW15 did not claim that he was a *Muktijoddha*. He was not a *Muktijoddha* was clear from the testimonies of PW16. This PW (PW16) categorically stated that PW15 was a man of their area, but he did not take part in *Muktijoddha* along with him and then said, he might have participated in *Muktijoddha* in different way in different area. The PW (PW15) stated in his examination-in-chief that after the end of *Muktijuddho* in 1971, the accused stayed at the house of Raushan Ali of Doha Khola and on inquiry about the reason for his staying at the house of Raushan Ali after *Muktijoddho,* they came to know that he (the accused) took shelter at the house of Raushan Ali as he could not stay at Pirojpur due to anti-*muktijoddha* activities during the liberation war. But in cross-examination, he admitted that there was none from Pirojpur area from whom he inquired about the reason for staying of the accused at the house of Raushan Ali. He further stated that he did not know whether the accused along with his family took shelter at the house of Sadaruddin Peer Saheb of Mohiron after the Pakistan Army had started killing the Bangalis after the killing at Jhumjhumpur in 1971. He did not know whether, after staying for 10/15 days at the house of Sadaruddin Saheb, the accused along with his family took shelter at the house of Raushan Ali and he stayed there upto the middle of July, though he admitted that there was a Peer named Sadaruddin at village-Mohiron. He did not go to the house of Raushan Ali either in 1971 or in 1972. And those statements of the PW in his cross-examination show that, in fact, he

knew nothing about the stay of the accused at the house of Raushan Ali in 1971. So far as the acquaintance of the accused by the PW through an election meeting of Jamaat-e-Islam in 1970 in connection with the National Parliament election was concerned was also *prima facie* false for two reasons: (i) he admitted in his cross-examination that he himself did not attend the meeting of 1970, at the School field of Doha Khola, but he heard the speech given in the meeting as the same was held by the side of his house. I failed to understand how the PW could see the accused in the meeting when he admitted that he himself did not attend the meeting. In 1970, surely, the accused was not a prominent figure that the PW would recognise him by his name and voice, (ii) PW28, the Investigation Officer, categorically stated in his cross-examination in unambiguous term that "১৯৭১ সালে আসামী দেলওয়ার হোসেন সাঈদী সাহেব সরাসরি কোন রাজনৈতিক দলের নেতা ছিলেন না, তবে তথাকথিত মওলানা হিসাবে তিনি তার স্বাধীনতা বিরোধী তৎপরতা পরিচালনা করেছেন মর্মে দৈনিক ভোরের কাগজে উক্ত সংবাদ বর্ণনা করা আছে এবং আমি এ বিষয়াদি তদন্ত করেছি। ১৯৭১ সালে আসামী দেলওয়ার হোসেন সাঈদী সাহেব সরাসরি কোন রাজনৈতিক দলের নেতা ছিলেন না, তদন্তে ইহা সঠিক পেয়েছি," so the question of his (the accused) delivering speech in the election projection meeting in 1970 does not arise at all.

Admittedly the PW was the president of Thana Chhatra League in 1970 and subsequently, he discharged the functions of the General Secretary of Thana Awami League, so his biasness towards the prosecution could not be brushed aside. Moreso, though he claimed that the accused used to stay at the house of Raushan Ali of Doha Khola after the end of the *Muktijuddho* in 1971, but in cross-examination, he stated that he did not know whether the accused along with his family took shelter at the house of Sadaruddin Peer Saheb of Mohiron after the Pakistan Army had started killing of the Bangalis after the killing at

Jhumjhumpur in 1971. He did not know whether, after staying for long 10/15 days at the house of Sadaruddin Peer Saheb, the accused along with his family took shelter at the house of Raushan Ali and he stayed there upto the middle of July. These statements of the PW in his cross-examination show that he did not speak the truth in his examination-in-chief and he was made a witness just to counter the claim of the accused that during the liberation war, he along with his family took shelter at the house of Raushan Ali of Doha Khola in the first part of May from the house of Sadaruddin Peer Saheb of village-Mohiron.

So far as PW16 is concerned, he, in cross-examination, has stated that he is the sitting Secretary of Bagharpara Thana Awami League. He has further stated that before 2004, for 10(ten) years Solaiman Saheb (PW15) was the Secretary of Bagharpara Thana Awami League. He further stated that he was involved with Awami League politics since before the liberation war, so his political biasness to depose against the accused, having a completely different political ideology, could not be altogether ignored. The PW stated in his examination-in-chief that after liberation of the country on 16 December, 1971 when the *Muktijoddhas* of Bagharpara were flocking together and started searching the *Razakars* of the different areas, they came to know that a man took shelter at the house of one of their friends, Raushan Ali (DW6) and one day, he saw a man with Raushan Ali and then came to know from various persons that man was hiding at the house of Raushan Saheb. Then Solaiman Saheb since deceased (not PW15), the *Muktijoddha* Commander of Bagharpara, after discussion with all, gave decision that that man had to be held from the house of Raushan Ali. Accordingly, they with some *Muktijoddhas gheraoed* the house of Raushan Ali, but they did not find that man, he had fled away. On being asked,

Raushan Saheb told that the name of that man was Delowar Hossain Sayeedi. After the accused had left, they on inquiry could come to know that he had fled away towards Talbaria by a bullock cart in veil. He further heard from Raushan Saheb that the accused was from Pirojpur and he (the accused) hid in his house, as he was not in a position to stay at Pirojpur after the liberation war. He further stated that he did not see, but heard from the people that the accused perpetrated torture at Pirojpur during *Muktijuddho* for which he hid at the house of Raushan Ali. It sounds to me absurd and against common course of human conduct that a man who allegedly hid at the house of Raushan Ali because of his commission of crimes against humanity would show up at the Bazaar and if he was really seen at the Bazaar, he would be allowed to go to the house of Raushan Ali to facilitate him to flee away in an opportune moment.

From the evidence of PWs15 and 16, it is also clear that there is no uniformity in their testimonies as to the source of their knowledge of the atrocious activities of the accused in Pirojpur area in 1971 and also the place for which the accused left the house of Raushan Ali. Moreso, PW28, the Investigation Officer admitted in his cross-examination that PW16 did not make any statement to him to the effect as stated by him (the PW) in his examination-in-chief. The omission of PW16 in not stating what he stated in Court in his examination-in-chief is surely material contradiction and such contradiction made him an unreliable and untrustworthy witness. The testimonies of PW16 that when they *gheraoed* the house of Raushan Ali, the accused fled away by a bullock cart towards Talbaria were also belied by the testimonies of PW28, the Investigation Officer. He stated in his examination-in-chief that "..... সে (the accused) মোঃ রওশন আলী (৭০), পিতা-মৃত সুফি দাউদ আলী

বিশ্বাস, সাং-দোহাখোলা, থানা-বাঘারপাড়া, জেলা-যশোর এর বাড়িতে শেল্টার লইয়া দীর্ঘদিন আত্মগোপন করিয়া থাকে। তিনি সেখানে রওশনের বাড়িতে থাকা গরু মাঠ চরাইতেন। অনেকদিন থাকার পর তাহার রাজাকার পরিচয় এবং মুক্তিযুদ্ধের সময়ে হত্যা, গণহত্যা, ধর্ষণ, লুণ্ঠন, অগ্নিসংযোগসহ অন্যান্য অপরাধে জড়িত থাকার বিষয়টি উক্ত এলাকায় জানাজানি হইয়া গেলে সেখান হইতে পরিবারবর্গ সহ একটি গরুর গাড়িতে করিয়া পালাইয়া অন্যত্র চলিয়া যায়।".

It is also very significant to state that although the defence specifically stated that before the accused was taken by Raushan Ali (DW6) to his house, he had come to the house of Sadaruddin Peer Saheb of Mohiron in the middle of April and stayed in his house for 15 days, but PWs15 and 16 did not say anything about the said case of the defence and none from village-Mohiron was examined to counter the said claim of the defence.

PW24, Md. Hossain Ali, stated in his examination-in-chief that there was an election meeting at the School field of Bagharpara School in 1970. He was not present in the meeting, but heard that there was a meeting. He saw the accused at the house of Raushan Ali of Bagharpara, but he could not remember whether it was before or after liberation of the country. The defence declined to cross-examine this PW. The testimonies of this PW did not at all support the case of the prosecution rather substantiated the case of the defence.

PW28 stated that S.M. Moniruzzaman, the Superintendent of Police, Pirojpur sent a report by a Memo dated 21.04.2011 along with another Memo bearing No.360 of the Senior Assistant Police Super, Sadar Circle, Pirojpur, Md. Akramul Hossain of the same date (21.04.2011) to Mr. Abdul Hannan, the co-ordinator of the *Tadanta Sangstha* and in that report, it was stated " ১৯৭১ সালে মহান মুক্তিযুদ্ধের পূর্বে তিনি বিভিন্ন জায়গায় তফসির মাহফিল করতেন। ১৯৭১ সালে সাঈদী সাহেব স্বাধীনতা

বিরোধী কাজে জড়িত ছিলেন মর্মে কোন বক্তব্য উল্লেখিত চিঠিতে নাই, কারণ ১৯৭১ সালের ঘটনা সম্পর্কে কোন রিপোর্ট চাওয়া হয় নাই। ১৯৭১ সালে তিনি কোথায় অবস্থান করতেন তার পেশা সম্পর্কে ঐ রিপোর্টে উল্লেখ আছে। আসামী দেলওয়ার হোসেন সাঈদী সাহেব ১৯৭১ সালে পাঁচ তহবিল নামক কোন সংগঠন পরিচালনা করতেন তৎমর্মে কোন কোন বক্তব্য ঐ রিপোর্টে নাই।" The above report totally belies the prosecution story that the accused used to run a small business at Parer Hat Bazaar in 1971 and used to sell oil, salt, pepper sitting on the road as stated by the PWs and, in fact, supports the defence case that the accused was not present at Parer Hat and at the other crime sites since before the liberation war.

DWs4, 6, 8, 12 and 14 appear to be natural and trustworthy witnesses and I find no reason to disbelieve their testimonies that the accused used to live at the housing Estate of New Town, Jessore since before 1971 and he along with his family and 3(three) other families had left Jessore Town on 3 or 4 April, 1971 and then after staying one night at Sheikh Hati went to village-Dhon Ghata and after staying there for 7/8 days went to the house of Sadaruddin Peer Saheb of Mohiron and after staying there for two weeks, at the request of Peer Saheb, DW6 Raushan Ali took him to his house and he lived there upto the middle of July, 1971 and then went to his village. The testimonies of these DWs along with the suggestion given by the prosecution to DW6, the testimonies of PWs15, 16, 24 and 28 as quoted and discussed above, conclusively proved that at the relevant time, i.e. 8 May, 1971, 2 June, 1971, the accused was not present at the crime sites being village-Baduria, Chitholi, Parer Hat Bondar and Umedpur as alleged in charge Nos.7, 8 and 10 as well as at Parer Hat on 7 May as alleged in the other charges and on those dates, he was at the house of Raushan Ali (DW6) at Doha Khola. Therefore, the question of commission of crimes by him on

those dates that at about 1:30 pm, he led a team of armed accomplices accompanied by Pakistani Army raided the house of Shahidul Islam Khan of village-Baduria and identified him (Nurul Islam Khan) as an Awamileaguer and handed him over to Pakistani Army who tortured him and after looting away the goods from his house destroyed the house by setting fire and that under the leadership of the accused, his accomplices accompanied by the Pakistani Army raided the house of Manik Posari of village-Chitholia and held his brother, Mofizuddin and one Ibrahim Kutti therefrom and that at his instance, other accomplices poured kerosene oil on five houses, those were burnt to ashes causing a great havoc and on way to the Army camp, the accused instructed the Pak Army who killed Ibrahim Kutti by gun shot and the dead body was dumped near a bridge, then Mofiz was taken to Army camp and was tortured and thereafter, the accused and others set fire on the house of Hindu community at Parer Hat Bondar causing huge devestation and that at the leadership of the accused, his armed associates accompanied by Pakistani Army raided the Hindu Para of village-Umedpur and the accused burnt 25 houses including the houses of Chitta Ranjan Talukder, Jahor Talukder, Horen Tagore, Anil Mondal, Bisabali, Sukabali, Satish Bala and at one stage, Bisabali was tied to a coconut tree and at his instance, Bisabali was shot dead by his accomplices as alleged in charge Nos.7, 8 and 10 does not arise at all.

Besides the plea of *alibi* of the accused, his further defence case that the crimes against humanity as alleged in the respective charge were committed by the local *Razakars* including Delwar Shikder, son of late Rasul Shikder and Delwar Hossain Mollick and the members of the Peace Committee along with

the Pak Army was also substantiated by the testimonies of DWs1, 2, 3, 5, 7, 10, 15 and 16.

I am leaving out PWs9 and 11 from consideration as, from their cross-examination by the prosecution, it transpired that they were active in politics. PW9 is involved with the politics of BNP and PW11 with the politics of Jamaat-e-Islam of which the accused is a leader.

Let us consider and sift the evidence of these DWs.

DW1, Md. Shamsul Alam Talukder, aged about 58 years, in his examination-in-chief, gave detailed account of his philantrophic social work right from his student life and also about his political back ground till he joined the *Muktijoddho*. One thing I must say at the very outset (although I shall refer to the cross-examination later on) that he was a freedom fighter was neither challenged nor denied by the prosecution during his cross-examination. During his student's life, the DW was an activist of Chhatro Union and he held important posts in that organisation. While he was a student, he suffered imprisonment twice for his participation in the movement against the Education Report of Hamoodur Rahman and for the democratic movement. He joined active politics with Maulana Bhasani. He stated in his examination-in-chief that from the incidents which occurred after the speech of Banga Bandhu on 7 March, 1971, he along with others could understand that no fruitful result would come out through the discussions and they organised the youths of the area and started preparation for *Muktijoddha* and towards the end of May, 1971, they collected some rice, pulse and other food items and arranged a place for the shelter inside the Sundarbon area near Shwaronkhola, so that they could utilise those food items for the *Muktijoddha*s in case of their need. The *Razakars* first

came to village-Moralganj towards the end of May, in 1971. He along with some ex-Bangali Army officers and other Army personnel including Kabir Ahmed Modhu and the other local *Muktijoddha*s attacked the *Razakar* camp at the Union office of Moralganj at about 11 pm during which a boy named Abu faced martyrdom and 3(three) *Razakars* were also killed. The DW along with the other *Muktijoddha*s assembled at the house of Radha Govinda, 2(two) miles away from Moralganj and chalked out subsequent programme and they established a camp at the house of Radha Govinda with the then leaders of the Chhatro Union, Chhatro League and Jubo League. From his testimonies, it further appears that they on coming to know that Major Ziauddin was staying at a house (no mention of the place) brought him to them and made him, the Commander of the area and he (the DW) was appointed as his "টু. আই. সি.". From his testimonies, it also appears that they established *Muktijoddha* camp inside Sundorban and sent Major Ziauddin to India for bringing arms and Major Ziauddin brought arms from India twice. From his testimonies, it also appears that a small like Cantonment was established in Sundorban area and they carried out various operations in the area against the *Razakar* camp and they fought the Pakistan Army by resorting to various tactics. From the testimonies of the DW, it is further apparent that when he along with Major Ziauddin went to Parer Hat, none made any complaint against the accused. It also appears that Major Ziauddin had left Parer Hat with the instructions to the DW to go to Pirojpur after 2/3 hours on being appraised the entire circumstances. During his stay at Parer Hat Commander Khasru, Mukarram, Liakat Ali Badsha, Baten, Munam, Shanu Khandokar and many other *Muktijoddha*s and general public narrated their position. The DW also visited the *Muktijoddha* and the *Razakar* camp

where they narrated the torture perpetrated upon them by Muslem Maulana, Danesh Mollah, Sekandar Shikder, Razzaque, two Chowkiders and some others, but none said anything about the accused. The DW stated that he was the joint Secretary General of Central *Muktijoddha* Command Council from 2002 to 2007.

The DW was cross-examined extensively. In cross-examination, he stated that he took part in a number of battles against the *Razakars,* but he could not tell the number at that moment. As already stated hereinbefore, that the DW was a *Muktijuddha* and was ‘টু. আই. সি” to Major Ziauddin was not at all challenged by the prosecution even by giving suggestion. The claim of the DW that he was the Secretary General of Central *Muktijoddha* Command Council from 2002 to 2007, was not also challenged. Therefore, I do not find any reason to accept the assertion made by the DW that he was a freedom fighter and he fought as ‘টু. আই. সি.” to Major Ziauddin, a vetaran freedom fighter who fought for *Muktijoddho* in Sundarbon area and was the Sub-sector Commander of sector-9.

From the cross-examination of the DW, it further appears that the entire cross-examination was directed to portray him as a BNP man to show that as BNP was in the same political jote with Jamaat-e-Islam, so he came to depose in support of the accused who was a leader of Jamaat-e-Islam. It is true that this DW admitted in cross-examination that he first joined Jatiotabadi front under the leadership of Moshiur Rahman Jadu Miah and then through the said jote joined BNP in 1979. He also admitted that he became the Secretary of District Bagerhat BNP and also a member of the Central Committee, but he at the same time asserted that as he was not physically well now, he was silent in politics (in

the deposition sheet, in Bangla, it has been recorded as: "আমার শরীর খারাপ থাকায় আমি এখন রাজনীতিতে নিরব") and this assertion of the DW could not be negated by cross-examining him. The prosecution failed to bring on record any fact or any material that still he is in active politics of BNP. From the above, it is obvious that the DW is inactive in politics. Therefore, I do not see any reason on his part to depose before the Court in a biased way in support of the accused, a leader of Jamaat-e-Islam for political reason. In this context, it is very important to state that in cross-examination, the DW further stated that when he was in BNP, he filed case against Khaleda Zia, the Chairperson of BNP for organisational reason and he also held press conference against her. This shows that he is a man of independent and spirited character and not a 'yes man' politician or a blind political activist and therefore, it cannot be accepted that he is a man who would depose falsely. Further, he being a freedom fighter, it does not sound wise to accept that a freedom fighter would depose in support of the accused, if he was really a *Razakar* as well as a member of the Peace Committee and resorted to the crimes against humanity, such as, killing the innocent people, setting fire on the houses of the Hindus and the Awami Leaguers and also committing rape upon women and other acts including the conversion of Hindus into Muslim. From the cross-examination, it further appears that the prosecution also tried to show that Moshiur Rahman Jadu Mia, leader of Nap, was anti-liberationist and he was against *Muktijuddho,* but I failed to understand how that affected the claim of the DW that he was a *Muktijoddho* and "টু. আই. সি." to Major Ziauddin, sector sub-Commander of sector-9.

I do not also find any rationale in the suggestion given to the DW that he contributed much for the rehabilitation of the parties or the persons against *Muktijuddho* after killing Banga Bandhu. The DW being a leader of the District level and then being holder of the highest post in the party as a member of the Central Committee of BNP, in no way, could contribute for the rehabilitation of the parties and the persons who were against *Muktijuddho* after the killing of Banga Bandhu. This suggestion was given for the sake of suggestion only. On an overall assessment of the testimonies of the DW, it appears to me that he is an independent, impartial and a truthful witness and moreso, he being a freedom fighter, his testimonies that when he along with Major Ziauddin went to Parer Hat after liberation of the country, none said anything against the accused and that had the accused done anything illegal, the Commanders and the people would have told him, bear truth and I find no reason to disbelieve him. Suggestion was given to the DW that the statements made by him in his examination-in-chief were untrue and that he deposed being tutored by the son of the accused which he denied. When the prosecution by cross-examining the DW could not impeach his credibility as a witness and could not also dislodge his claim that he was a freedom fighter and could not show any tangible and plausible reason to be biased towards the accused and to depose falsely in his favour mere suggestion as indicated hereinbefore cannot make his positive testimonies nugatory.

DW2, Abdur Razzaque Akond of village-Nalbunia, the maternal uncle of PW14, Abdul Halim Babul, stated categorically in his examination -in-chief that he came before the Tribunal to tell the truth in favour of the accused. In 1971, no Pak Army, *Razakar* went to the house of his nephew, Abdul Halim Babul and

there was no looting and none set fire on his house and no such occurrence took place in that house. He further stated that Abdul Halim Babul was aged about 8/9 years during the *Muktijuddho* and he deposed falsely before the Tribunal against the accused. He further stated that as Abdul Halim Babul decided to depose falsely against the accused, his mother had left his house and went to the house of his brother Bahadur in Dhaka. He further stated that his sister (mother of Abdul Halim Babul) would have deposed in the case, had she been in the good health. He further stated that only one incident took place at Nalbunia during the liberation war in 1971. In the middle of Ashwin, one day in the last part of the night, there was a sound; he thought that it was a sound of firing. It was the time for Fazr prayer. He gave Azan and then offered his prayer. After offering prayer, he went to the northern side of the road to know what happened and where. He saw that the dead body of Ibrahim Kutti was being brought by a boat towards Parer Hat from the northern side through the canal. He saw Kalam Chowkider, Aiyub Ali Chowkider and Hakim Munshi in the boat. He also saw some other persons coming from the north by the side of the canal. The people who were coming included Danesh Molla, Sekandar Shikder, Muslem Maulana, Ruhul Amin and Mumin, all were the *Razakar*s. He also saw those people bringing the wife of Arju Haulader and his son-Saheb Ali folding and they took them towards Parer Hat. On the next day, he heard that the wife of Arju Haulader came back home, but Saheb Ali was taken to Pirojpur and was shot dead there by the *Pak Army*. A few days after liberation, he (the DW) heard that the wife of Ibrahim Kutti had filed a case.

In cross-examination, the DW stated that during the liberation war, he used to go to Parer Hat Bazaar. During the liberation war, he had gone to Parer

Hat Bazaar only once and that was in the month of Ashwin. Then said besides the month of Ashwin, he went to Parer Hat before and after the month of Ashwin. But during the liberation war, he went to Parer Hat seldom. He went to Parer Hat Bazaar seldom out of fear for the Pakistani Bahini and the *Razakars*. The *Razakars* used to loot at that time. He heard that the *Razakars* set fire in village Hugla Bunia. The *Razakar*s used to set fire on the houses of the Hindu Community. He also heard that the *Razakars* set fire on houses of the Muslims and the *Muktijoddha*s. The *Razakar*s also set fire on the house of *Muktijoddha* Khasru of village Shankor Pasha on the other side of the canal. The *Razakar*s also set fire on another house by the side of the house of Khasru, but he could not remember the name of the owner of the house. He further stated that Nanna Miah, brother-in-law of the accused, brought him to Dhaka. He was acquainted with the accused $1\frac{1}{2}$/2 years before liberation. Nanna Miah who brought him to depose was known to him for the last 15/20 years. He (the DW) had no visiting term to the house of the accused and he (the accused) did not also visit his (the DW) house. Younus Munshi, father of Nanna Miah, had a piece cloth shop at Parer Hat Bazaar and they (the DW) used to stitch the clothes in that shop, thus he was acquainted with him. Before the beginning of the *Muktijuddho,* the accused used to hold *Mahfil,* the accused also held *Mahfil* one year after the liberation. The DW asserted that after *Muktijuddho,* no allegation was made against the accused. Suggestion was given to the DW that he knew nothing about the accused and the statements made by him in his examination-in-chief about his sight bringing the dead body of Ibrahim Kutti by a boat from the north through the canal upto the filing of the case by the wife of Ibrahim Kutti were

untrue which he denied. He denied the prosecution suggestion that it was not a fact that during liberation war, in 1971, no Pak Sena and *Razakar* had gone to the house of Babul and looted his house and set ablaze his house and nothing like that happened.

From a close scrutiny of the testimonies of the DW, it is apparent that he firmly stated that the accused used to hold *Mahfil* before the beginning of the *Muktijuddho* and he also held *Mahfil* one year after the *Muktijuddha* and that after *Muktijuddho,* no allegation was made against him and that the accused was not in any how connected with the killing of Ibrahim Kutti and Saheb Ali and in 1971, Abdul Halim Babul (PW14) was 8/9 years old and his house was neither looted nor was set on fire. A vague suggestion was given to the PW that he gave untrue statements being influenced by the relatives of the accused to save him. I find to reason to disbelieve the DW because of the said vague suggestion.

DW3, Nurul Haque Haulader, aged about 60 years, stated in his examination-in-chief that he came before the Tribunal to tell the truth in favour of the accused. In 1969, he (the DW) used to live at his own residence at Parer Hat Bondor. The Peace Committee set up their office at the building of Fakir Das in the first part of liberation war, in 1971. That office was 100/150 yards away from his residence. He saw all the time Sekandar Shikder, Danesh Molla, Muslem Maulana, Hazi Abdul Gani Gazi, Shafiz Uddin Moulovi and Asmat Ali Munshi in the said office and he never saw the accused in that office. A *Razakar* camp was established at the first floor of Rajlaxmi High School at Parer Hat either in the middle of Joistho, or at the last part of the month in 1971. In that *Razakar*s' camp, he saw *Razakar*s Abdul Halim, Razzaque, Momin, Mohshin, Ruhul Amin, Bazlur Rahman, Habibur Rahman Mridha, Abdur Rashid, Moshiur

Rahman, Sultan, Isahaque and Solaiman. He never saw the accused in the *Razakars'* camp. In the last part of Boishakh, 1971, the Pak Army came at Parer Hat and looted 5/6 shops. The owners of those looted shops were: Makhon Saha, Modon Saha, Narayan Saha, Bijoy Master and Gouranga Paul. After looting, they went to Pirojpur. Sekander Shikder, Danesh Molla, Muslem Maulana, Haji Gani Gazi and Asmat Ali Munshi were with them. He did not see the accused any where. On the next day, while sitting at his residence, he heard hue and cry. He saw many people including the Army through the window. The persons who were there earlier also accompanied the Pak Army, when they (the Pak Army and those named persons) proceeded towards the South crossing his residence, he followed them and saw them going to village-Baduria crossing Parer Hat Bridge. The DW hid himself by the side of a shop, he saw them entering into the house of Nuru Kha, the leader of Awami League. Sometimes after, he saw the flame of fire. He also saw those persons going towards the South after coming out from the house of Nuru Kha. After half an hour, he saw black smoke in the sky. After an hour, those persons went to Pirojpur crossing the bridge.

Mahbub Alam Haulader of Tengrakhali was the nephew of his (the DW) brother-in-law. Mahbub Alam Haulader was also the first cousin of the *Fufato Bhai* of the DW and through that relationship, he (Mahbub Alam Haulader) was his (the DW) cousin. The room of his *fufato Bhai* and that of Mahbub Alam Haulader are situated side by side. He used to visit that house from his boyhood. For the last 40 (forty) years, he never heard that their house was looted. He heard that a case was filed against the accused. After filing the case against the accused when the DW told the said fact to his (Mahbub Alam Haulader) elder brother-Baten Haulader, he (Baten Haulader) replied not to say anything and he

felt ashamed and further told that had their house been looted, he (the DW) could have known the said fact. Baten Haulader further told that no *Razakar* or Pak Army had ever come to Tengrakhali village not to speaking of looting their house. When the DW asked his *fufato Bhai* Abdus Salam Haulader, he replied that in 1971, Mahbub Alam Haulader was aged about 10/11 years and he was a student of Primary School and he (Mahbub Alam Haulader) might have filed the case against the accused for any big interest. He (Abdus Salam Haulader) further told that as no witness would be available from their house as well as from the neighbour houses, the witnesses of far off places were cited. Mizanur Rahman Talukder is the brother-in-law of the maternal cousin of the DW, so he was his (the DW) brother-in-law and his house (Mizanur Rahman Talukder) was nearer the house of the DW and one could hear the call if made loudly from that house. He (Mizanur Rahman Talukder) lodged a complaint with the Tribunal against the accused alleging that his elder brother, Mannan Talukder, was taken at the *Razakar* camp at Parer Hat and was tortured there. After looting, the *Razakars* deposited the goods at the house of Mizanur Rahman Talukder and those goods were returned to the owners by beating drum. He never heard those things within the last 40 (forty) years. He (the DW) had close relationship with Mannan Talukder who was the president of Togra Kamil Madrasa and Orphanage. He (the DW) had been the vice-president of the said Madrasa for 8/9 years. Mannan Talukder used to talk to him about his family. But he never told him that he was tortured. He did not also hear from anybody about the torture at the *Razakar* camp at Parer Hat for the last 40 (forty) years. Gouranga Saha complained that the accused took his sister to Pak Army camp and got her raped there (in the deposition sheet, in Bangla, it has been recorded as "গৌরাঙ্গ সাহা অভিযোগ করেছে যে,

তার বোনকে সাঈদী সাহেব পাক আর্মি ক্যাম্পে নিয়ে ধর্ষন করিয়েছে"). At that time, Gouranga Saha was aged about 10/11 years. His (Gouranga Saha) sisters were younger to him. The eldest one was aged about 6/7 years. He further stated that no woman of Parer Hat Union was raped and during the last 40 (forty) years, none told that the sister of Gouranga Saha was raped though he went to the Bazaar for long. The Hindus in order to save their lives voluntarily had gone to the Khanka of Yeasin Maulana Saheb and embraced Islam. The allegation was made that Bhanu Saha, daughter of Bipod Saha, was raped by the accused, that allegation was false. Muslem Maulana used to live at that house all the time in 1971. It was publicized that Muslem Maulana married Bhanu Saha. The accused was neither a *Razakar* nor was anti-liberationist and he never resorted to any acts against humanity. The accused was totally innocent in respect of those allegations. The accused contested the MP election thrice and his opponents never made any allegation against him complaining the commission of any crime against humanity, had he committed those crimes, his opponents would have surely made these allegations during the election campaign. He further stated that before 1971, the accused was at Satkhira-Jessore and he came to Parer Hat in the month of Ashar-Shrabon, 1971.

In cross-examination, the DW stated that the house where he used to live at Parer Hat Bazaar in 1969 was his own. His father purchased the house in their name by a Kabala. The house was purchased from the Hindus. He had acquaintance with the accused since before 1969. He did not visit the village home of the accused regularly. He did not also visit the house of his father-in-law. But he had acquaintance with the inmates of the house of the father-in-law of the accused. He himself came to Dhaka by bus to depose before the Tribunal.

Then said Nanna Miah, brother-in-law of the accused, brought him from Saydabad. Then said Masud Sayeedi brought him to the Tribunal from the place where he was staying. He came to Dhaka having a phone call from Masud Sayeedi. He came to know about one year before that he had to depose. At that time, Rafique Bin Sayeedi, in front of their Madrasa and in presence of many people, asked whether they (the DW and the persons present there) had any idea about the case filed against the accused, the people told that the case was totally false. Then Rafique Bin Sayeedi asked whether they would go to Court and say so. Then he (the DW) and many others agreed to depose in Court. He could not remember whether the investigation of the case was going on when he heard about the case from Rafique Bin Sayeedi. He read the newspapers after he had met Rafique Bin Sayeedi. Then said on reading the newspapers, he could understand that the investigation was going on. The DW asserted that from the first day of May, 1971 upto the 16th day of December, 1971, he was at Parer Hat Bazaar. The persons who used to live at Parer Hat Bazaar, amongst them, the Hindus fled away, he could not remember whether any Muslim fled away. He never went to the *Razakars'* camp and the office of the Peace Committee. He could not say what acts used to be done in those two offices and what deliberations used to take place there. He asserted that he was not a *Razakar* and he never went into any operation with the *Razakar*s. Village-Togra was divided by a road. There were houses of some *Razakar*s to the East of the road, then said there were houses of 5/6 *Razakar*s named Habibur Rahman Mridha, Bazlur Rahman Haulader, Moshiur Rahman, Abdur Rashid Haulader, Solaiman Sultan and Isahaque. On the West side of the road, there was a house of a *Muktijoddha,* Mizanur Rahman Talukder. The house in which Mahbub Alam Haulader resided

was at village-Tengrakhali. He had sold the house of his father and presently he lived at the property of the same village which he inherited from his maternal grand father. The present house of Mahbub Alam Haulader was a tin shed building and presently the work of first floor was going on. He further stated that he never went inside Rajlaxmi High School at Parer Hat. The School was situated by the side of the road near his house. The persons who converted themselves from Hindu to Muslim would have been killed, had they not embraced Islam. They embraced Islam out of fear as they saw that the Pakistani Militaries were killing the Hindus. Though the Pakistan Army did not know who the Hindus were and who the Muslims were, the members of the Peace Committee used to identify them.

During *Muktijoddha,* he met the persons at Parer Hat Bazaar who embraced Islam. He saw *Muktijoddha* Mizanur Rahman Talukder after one month. After liberation, the *Muktijoddha*s used to stay at the office of the Peace Committee and the *Razakar*s' camp. He denied the prosecution suggestion that it was not a fact that Mannan Talukder never told him about the torture perpetrated on him. He denied the prosecution suggestion that it was not a fact that the *Razakar*s used to deposit the looted goods at the house of Mizanur Rahman and he returned those goods to its owners by beating drum and that he did not hear those facts within 40 (forty) years. During *Muktijuddho,* there were 20/25 houses in between his house and the house of Gouranga Saha, and of those houses, 7/8 were of the Hindus. There were 10/15 houses in between the house of the DW and the *Razakar* camp. He denied the prosecution suggestion that it was not a fact that in 1971, Gouranga Saha was aged about 10/11 years and his sisters were younger to him and the age of his eldest sister was 6/7 years and

that no woman in Parer Hat Union was raped and for the last 40 (forty) years, the people did not say that the sister of Gouranga Saha was raped. He denied the prosecution suggestion that it was not a fact that the accused was neither a *Razakar* nor an anti-liberationist and he did not indulge in any activity against humanity and that he was totally innocent. He read about the complaints against the accused in respect of the commission of crimes against humanity in the newspapers, namely: the Dainik Janakantha, the Jugantar and the other newspapers as well. He denied the prosecution suggestion that it was not a fact that though the accused participated in the parliamentary election 'thrice', his opponents did not make any allegation in their election campaign against him alleging commission of any crimes against humanity; had he committed any crime against humanity, his opponents would have brought those allegations in their election campaign. He denied the prosecution suggestion that it was not a fact that the accused came to Parer Hat in the months of Ashar-Shrabon, 1971. He denied the prosecution suggestion that it was not a fact that his nephew was a *Razakar* and his entire family actively opposed *Muktijuddho*. He denied the prosecution suggestion that it was not a fact that presently he was a Jamaat-e-Islam and in-charge of Jamaat-e-Islam of Parer Hat. He denied the prosecution suggestion that as he was actively associated with Jamaat-e-Islami politics, so he deposed falsely by suppressing facts in favour of the accused, a Jamaat leader. He also denied the prosecution suggestion that it was not a fact that his father was a member of the Peace Committee.

From the cross-examination of the DW, it is clear that he withstood the test of cross-examination. By cross-examining the DW, the prosecution could not impeach his credibility as an independent, disinterested and truthful witness.

His assertion made in the examination-in-chief that he was a resident of Parer Hat Bazaar, the office of the Peace Committee in the building of Fakir Das set up in the first part of liberation, in 1971, was 100/150 yards away from his residence where he saw all the time the members of the Peace Committee mentioned while reproducing the testimony of the DW earlier and he never saw the accused at the *Razakar* camp set up at Rajlaxmi High School at Parer Hat (the names of the *Razakars* have been mentioned while reproducing the testimonies of the DW in his examination-in-chief) and that the shops of Makhan Saha, Modon Saha, Narayan Saha, Bijoy Master and Gouranga Paul were looted by those persons and on the next day as well when the Army came, those persons accompanied them and they set fire on the house of Nuru Kha and that the house of Mahbub Alam Hawlader was never looted and that in 1971, Mahbub Alam Hawlader was 10/11 years and was a student of Primary School and that Mannan Talukder with whom he had close relationship who used to talk to him about his family never told him that he was tortured at the *Razakars'* camp at Parer Hat and that he never heard such story for the last 40 (forty) years and that in 1971, Gouranga Saha was aged about 10/11 years and his sisters were younger to him, the eldest one being 6/7 years and during the last 40(forty) years, none told that the sister of Gouranga Saha was raped though he went to the Bazaar for long and that no woman of Parer Hat was raped and that the accused was neither a *Razakar* nor anti-liberationist and he never resorted to any acts against humanity and the accused was totally innocent in respect of those allegations, remained unassailed and unimpeached, so I find no reason to disbelieve the testimonies of the DW.

DW5, Md. Khosrul Alam, aged about 62 years, stated in his examination-in-chief that in 1971, he was a student of I.Com. of S.M. College at Moralganj and he was a member of Chhatro League of Moralganj College. He along with the then VP of Moralganj College, Liakat Ali Khan and former VP, Mosharrof Hossain Khan, under the leadership of ex-Subedar S.M. Kabir Ahmed Modhu joined together to organise *Muktijuddho* and under the leadership of Kabir Ahmed Modhu, they took training in operating rifle. They along with Subedar Modhu took part in operation at various places. He got the information that *Razakar* Mohsin, son of Moulovi Shafizuddin, member of Parer Hat Peace Committee, accompanied by some Punjabis, went to their house at Shankar Pasha and set ablaze the house as he was a Chhatro Leaguer and took part in the *Muktijuddho*. His mother aged more than 60 years was physically violated by the Pakistani Army. He got the said news at the last part of May. On hearing the said news, at the direction of Sundarbon Sub-sector Commander Captain Ziauddin, Liaquat Ali Khan, students' camp was formed under the leadership of Liaquat Ali Khan V.P. of Morolganj College, Shamsul Alam Talukder 'টু. আই. সি' to Captain Zia was with him. After formation of the students' camp, many students joined the camp. Captain Ziauddin appointed one Poritosh as the instructor to train them and after training, they carried out operation at various places. On 7 December, 1971, Captain Zia sent about 250 *Muktijoddha*s under the leadership of Liakot Ali Sheikh to Pirojpur to capture it and from there, they reached at Parer Hat at about $1/1\frac{1}{2}$ am**.** Liakot Ali Sheikh Badsha stayed there for sometimes and visited various places of Parer Hat with the local *Muktijoddha*s. On getting information about the arrival of the DW and the other *Muktijoddhas*,

the *Razakar*s had fled away abandoning their camp. The camp was at the building of Fakir Das at Parer Hat. Liakat Ali Badsha kept the DW there to look after the camp. Mokarrom Hossain Kabir and Abdul Goni Posari were in the camp along with the DW. Subsequently Captain Zia along with his 'টু. আই. সি' and some *Muktijoddha*s came at Parer Hat. Many people gathered at the camp to receive them. Major Zia stayed there for 5/10 minutes and after delivering a short speech went to Pirojpur, but Shamsul Alam Talukder (DW1) stayed at Parer Hat for 2/3 hours. Commander Liakat Ali Sheikh and Shamsul Alam Talukder jointly visited various places including Parer Hat High School where there was a camp of the *Razakar*s, where sometimes Pak Army also used to stay. The local people informed Captain Ziauddin about the activities of the *Razakar*s. The *Razakars* mentioned by the local people, amongst others, were Sekandar Ali Shikder, Chairman of the Peace Committee and other members, namely: Danesh Ali Molla, Shafizuddin Moulovi, Abdul Goni Gazi and along with them there were other notorious *Razakar*s named Toiyab Ali Mistri, Abdul Karim, a son-in-law of Shafizuddin Moulovi and many others had fled away, but none of them told Captain Zia that the accused was a *Razakar.* Maulana Muslemuddin was a notorious *Razakar*. He lived long 8(eight) months in the house of Bipod Saha with his daughter Bhanu Saha. Captain Zia while leaving gave them (the DW and the other *Muktijoddhas*) the responsibility and accordingly, they by beating drum through Nishi Kando Bhui Mali, intimated all that whatever they had to say, they would be able to say to them, if any one was shy to say in presence of others, he/she would be able to tell them secretly and none would give shelter to the *Razakar*s. He (the DW) stated that he knew the accused after marriage. The accused used to come to his father's-in-law house. No woman in Parer Hat

Union and Shankar Pasha was raped and if any one said so, it was a lie. Sekander Ali Shikder, Shafizuddin Moulovi were detained by them. They raided the houses of Danesh Molla, Muslem Maulana and the other notorious *Razakar*s many a time to hold them. 2/3 days after, his (the DW) elder brother came to the camp, he did not also tell him that the accused was a *Razakar* or he was indulged in any anti-state activities. After liberation when he (the DW) was staying at the camp, he saw the accused at the camp once or twice.

In cross-examination, the DW stated that they listed the *Razakar*s who were notorious. So far he knew there were more than 30 (thirty) *Razakar*s at Parer Hat area. He (the DW) was in the camp upto 15/20 February. The camp remained open thereafter as well, but he went to S.M. College at Moralganj. The DW was involved with Chhatro League from 1966/1967. To get membership of Chhatro League, he put his signature on the *wada patra*. While, in School, he was a supporter of Chhatro League, but while, in College, he became the member of the Chhatro League. He denied the prosecution suggestion that it was not a fact that he was never involved with Chhatro League and Chhatro League had no *wada patra*. He had gone to Saudi Arabia on 5 May, 1985 and came back in 2004. He denied the prosecution suggestion that it was not a fact that after liberation he had fled away to Saudi Arabia, as an accused in an arms case disclosed his name. He further stated that during *Muktijuddho,* Shamsul Alam Talukder (DW1) was the man of Chhatro Union and he belonged to Bhasani group. During *Muktijuddho,* he (the DW) had good relationship with Talukder Saheb. He denied the prosecution suggestion that it was not a fact that Shamsul Alam Talukder was the supporter of anti-*Muktijuddho* group of Bhasani Nap. The DW asserted that Shamsul Alam Talukder Saheb was the member of the

group which supported the *Muktijuddho*. He further stated that he (the DW) along with Mokarrom Hossain Kabir, Abdul Goni Poshari, Selim Khan, Abdus Salam Poshari, Abdus Sobhan, Mizanur Rahman Talukder and Shah Alam was in the *Muktijuddho* camp and long after Ruhul Amin Nobin had come. It was not within his knowledge whether after liberation of the country till 15 August, 1975 there was any complaint against the accused and whether he was arrested. He further stated that during *Muktijuddho*, possibly the accused had two sons. He denied the prosecution suggestion that it was not a fact that he was not a *Muktijoddha*. He denied the prosecution suggestion that it was not a fact that his *Sonad* as a *Muktijoddha* was cancelled after verification and his name was deleted from the list of *Muktijoddhas*. He denied the prosecution suggestion that it was not a fact that his statements that none of Parer Hat and Shankar Pasha was raped and if any one said so was false and that none told Captain Ziauddin that the accused was a *Razakar* were untrue. He denied the prosecution suggestion that it was not a fact that the statements made by him that 2/3 days after his elder brother came to the camp, he did not also say that the accused was a *Razakar* or indulged in any anti-state activities, were untrue. He denied the prosecution suggestion that it was not a fact that the statements made by him that after liberation while he was in the camp, he met the accused once or twice, were untrue. He denied the prosecution suggestion that it was not a fact that presently he was involved with Jamaat-e-Islami politics. He denied the prosecution suggestion that it was not a fact that he deposed falsely in favour of the accused, a leader of Jamaat-e-Islam as he had gone to Saudi Arabia being sponsored and co-operated by Jamaat-e-Islam or he earned his livelihood with their assistance.

From the evidence of the DW, it is clear that he was a *Muktijoddha* and after *Muktijoddho,* he was at Parer Hat camp of the *Muktijoddhas*. The very suggestion given by the prosecution to the DW that his *Sanad* as a *Muktijoddha* was cancelled and after verification, his name was deleted from the list of *Muktijoddha, prima facie,* proved that he was a *Muktijoddha.* Be it noted that in support of the prosecution case that the *Sanad* of the DW as *Muktijoddha* was cancelled, no document was filed before the Tribunal by the prosecution. The assertions made by this DW in his examination-in-chief that none told captain Ziauddin that the accused was a *Razakar* and his (the DW) brother who came to see him in the *Muktijoddha* camp did not tell him that the accused was a *Razakar* and none made any complaint against him (the accused) and the other statements made by him in his examination-in-chief as noted down hereinbefore, was not in any way shattered or shaken or impeached during cross-examination. Except giving unfounded common suggestion like the other witnesses of the defence that presently he was involved with Jamaat-e-Islami politics, nothing could be brought on record or placed before the Tribunal that the DW was in any how linked or connected with Jamaat-e-Islami politics or in any how, he was linked with the accused. The evidence of his DW is very vital, as during *Muktijoddha*, his house was burnt and his 65 years old mother was also violated. It is very significant to note that from the prosecution, no suggestion was given to the DW that his house was not burnt and his mother was not violated. In view of the above factual position, it is hard to believe that the DW, a *Muktijoddha* whose house was burnt and mother was violated, would depose in favour of the accused stating categorically that none at Parer Hat made any complaint against him (the accused) and that he was not a *Razakar*, had the accused really been a

Razakar and committed the crimes against humanity. I do not also find any material from the cross-examination of the DW and any earthly reason on behalf of the DW to depose falsely in favour of the accused by suppressing the fact that the accused was a *Razakar* and in that capacity, he committed the crimes against humanity in 1971. I find the DW as a natural and truthful witness, therefore, no reason to disbelieve his testimonies.

DW7, Jamal Hossain Fakir, aged about 60 years, stated in his examination-in-chief that in Ashwin, the canals and the beels of their area were full of water. During the *Muktijuddho* in the middle of Ashwin, 1971, in the first part of the night, he went to the beel and came back by setting hooks. In the last part of the night, after lifting the hooks, when he came near his house by a boat, he heard a big sound. On hearing the sound, he became alert and heard the crying from the house of Azahar Ali Haulader, his adjacent house. He went to his room, his father told that he had heard a big sound from Azahar uncle's house and there was also sound of crying and he proposed to go to that house to see what happened there. Then he went to the house of Azahar Ali by the Eastern side of his house and after standing by the side of a tree situated in the middle of the courtyard of Azahar Ali's house, he saw Ayub Ali Chowkider, Kalam Chowkider, Hakim Munshi, Mannan and Ashraf Ali dragging the dead body of Ibrahim Kutti towards the canal and behind them Danesh Molla, Sekandar Shikder, Muslem Maulana, Ruhul Amin and Momin Saheb taking Saheb Ali by folding him from behind along with his mother towards Parer Hat. He, on going a bit forward, saw taking the dead body in the boat and then going towards Parer Hat. Thereafter, he went to the room of Saheb Ali and saw Momtaz Begum, wife of Ibrahim Kutti crying on roll and blood was oozing

from her hand and her sister-Rani Begum was bandaging her hand. Then he (the DW) asked Momtaz Begum what happened to her, she replied that the bullet which killed Ibrahim Kutti also struck her hand. She further stated that her father was also hit by a lathi. Many people including the neighbourers gathered there and then they (the DW and his father) went back to their house. In the evening, he heard that Saheb Ali and his mother were taken to Pirojpur and the dead body of Ibrahim Kutti was kept tied in a boat with the Badura bridge at Parer Hat. On the next day, at about 11:00 am, on hearing that mother of Saheb Ali returned home, they went to her house and asked her about the whereabouts of Saheb Ali, she replied that Saheb Ali was taken to Pirojpur where he was shot dead by the Military. Some days thereafter, the country was liberated. 5/6 months after the liberation of the country, Momtaz Begum filed a case for the killing of her brother and husband.

In cross-examination, the DW stated that he had heard about giving deposition in the case one year and two months before. He himself gave his name as well as his father. He asserted that he saw Saheb Ali and his mother being taken away after the Fazr prayer when the sky was clear. On the date of occurrence, no Army came to the house of Saheb Ali, only the *Razakar*s came. Those who took Saheb Ali and his mother were the *Razakar*s. He did not know all the *Razakar*s of Parer Hat, he knew only 2/4. Sitara Begum, Rani Begum and Mostafa might have given statements to the Investigation Officer, but he did not know. The *Razakar*s and the Pakistani Army set fire on the houses at villages-Chitholia and Baduria. He denied the prosecution suggestion that it was not a fact that the dead body of Ibrahim Kutti was never taken to village-Nalbunia and he did not see his dead body in the manner, at the place and on the date as stated

by him. He denied the prosecution suggestion that it was not a fact that the age mentioned by him in his examination-in-chief was not his actual age and during the *Muktijuddho*, he was minor. He stated that it was the month of Ashar, 2(two) months after the *Muktijuddho* was started. On a specific question put by the Tribunal as to whether 2/3 months after the beginning of the *Muktijuddho,* Saheb Ali and his mother were held and taken away by the Pakistani Army and the *Razakar*s, he replied that it was the *Razakar*s, not the Army who took them away and it was in the month of Ashwin. He denied the prosecution suggestion that it was not a fact that 5/6 months after the liberation of the country, Momtaz Begum filed a case for the killing of her brother and husband.

From the examination-in-chief of the DW, it is absolutely clear that Ibrihim Kutti was killed by the *Razakars*, namely: Ayub Ali Chowkider, Kalam Chowkider, Hakim Munshi, Mannan, Ashraf Ali, Danesh Molla, Sekandar Shikder, Muslem Maulana, Ruhul Amin and Momin. And of these *Razakars,* Saheb Ali and his mother were taken to Pirojpur by Danesh Molla, Sekandar Shikder, Muslem Maulana, Ruhul Amin and Momin. By cross-examining the DW, the said facts could in no way be shifted or shattered or dislodged and the DW in no way implicated the accused with the killing of Ibrahim Kutti and Saheb Ali. Mere suggestion given by the prosecution that he did not see the body of Ibrahim Kutti taken by those *Razakars,* could not belie his positive statements made in his examination-in-chief or create any doubt about the same. It is to be further stated that in cross-examination, the DW re-asserted his statement made in his examination-in-chief that Ibrahim Kutti was killed by the *Razakars* and Saheb Ali was taken by the *Razakars* to Pirojpur folding along

with his mother and he was killed there by the Military. I find no reason to disbelieve the DW.

DW10, Md. Anowar Hossain, aged about 57 years, stated in his examination-in-chief that in 1971, he was a student of class-X and he is a *Muktijoddha.* On hearing the news, in the morning of 26 March, 1971 about the killing of thousands of un-armed Bangalis by the Pak Army in the black night of 25 March, 1971, in Dhaka and at other places of Bangladesh and also the arrest of Banga Bandhu, he along with 6/7 others went to Advocate Enayet Hossain Khan Saheb, the then M.N.A. At that time, he (Advocate Enayet Hossain Khan) was delivering speech in a public meeting. At one stage of his speech, the agitated public told that they had come not to hear speeches and they demanded arms. At the spur of the moment, Enayet Hossain Khan along with the agitated people went to the treasury and after taking the arms and the ammunitions from there without any resistance went to the field of the Government School and he, keeping the arms under his custody, told the persons who wanted to join the *Muktijoddho* to come on the next day before 8:00 am at the same place with a plate, a pillow and a bed sheet. Accordingly, in the morning on 27 March, he and 21(twenty) others assembled at the School field and their names were enlisted. Total number in their group were 30(thirty) and 2(two) instructors were appointed. The instructors were Barkat and Golam Sarwar, both were Habilder of the Army. During the course of training, a group of *Muktijoddha*s looted away the money from Pirojpur treasury and over this looted money, there was division amongst the *Muktijoddhas* and they became scattered. That incident took place on the 3rd day of May, and this led a vacuum in the leadership and then he went home on that very date. On the next day, i.e. 4 May, his elder

paternal aunt told him to go to Pirojpur with his brother-Wadud to fetch his sister-Anowara Begum as she heard that a very big chaos would take place. Abdus Sattar the brother-in-law (husband of Anowara) joined the S.D.O's office, Pirojpur as Head Clerk in the month of February on being transferred from Bhola and used to live at a rented house at Dhopa Bari, Pirojpur. When he (the DW) along with his brother-Wadud reached the residence of his sister, it was 10:00 (no hour either a.m. or p.m is mentioned). After about 8/10 minutes seeing that the people outside the house started running, his brother-in-law went out and coming back after a while told that Military was coming to Pirojpur from Hularhat and then he closed the windows and the doors of the room and also forbade the DW not to go out. After 10/15 minutes, they heard the sound of boots like and by peeping through the space of the wooden fence saw many Militaries going towards the South fronting their house, there were 4(four) Bangalis in front of the Army and they were known to the DW. The Bangalis were Ashraf Chairman of Hularhat, Delowar Shikder, son of Rasul Shikder of Chilla, Manik Khondoker and Sattar Mukter. Just 5/6 minutes after, he heard a big sound of firing from the East-South corner of their house and then by peeping through the space of the wooden fence could see the flame of fire. 8/10 minutes after, again he heard a big sound near their house. Immediately thereafter, the military went towards the North fronting their house and at the time, he also saw those 4(four) Bangalis ahead of the Army. After half an hour, the situation became a bit cool and 2/1 persons started moving on the road and then his brother-in-law went out of his house and coming back after an hour told that 10/12 persons were killed at Mondol Para and 4/5 persons were killed at Dhopa Bari and the Military set up their camp at the Government School

situated inside the town. Immediate after the sun set, the DW reached safely at their house with his sister, nephew and nieces.

Subsequently, they again started organising to participate in the *Muktijoddha*. In the middle of Ashar, he and 21 others went to India and they stayed at Thuba youths' camp. After enlistment of their names, preparation was going on to send them to various places for training. After about 15 (fifteen) days, i.e. in the first part of Shrabon the instructor, Golam Sarwar who was known to the DW from before, came to their camp and asked who else had come to the camp and also asked them to come to Bangladesh with the arms. He (Golam Sarwar) further told that he had collected huge arms and ammunitions from the Government of India. When the DW told him (Golam Sarwar) about his preparation for training at Bihar, he (Golam Sarwar) told that he (the DW) had already training in operating rifle and he would give training in Bangladesh about the new arms. Out of 22, he (Golam Sarwar) selected 15 and then he along with 15 others of his companion came to Bangladesh and set up camp at village Binary Kumarkhali under Nazirpur Police Station. He took training of the new arms brought from India. In the middle of Shrabon, at about 10 pm, they attacked the camp of the *Razakars* at Nazirpur. A bullet shot by the *Razakars* hit at the forehead of their Commander Golam Sarwar and he faced martyrdom, his dead body was handed over to his men. On that very night, they with their entire team moved to Kadamtola and they set up 2(two) camps, one at Jujkhola and another at Kadamtola. A few days after, they came to know that a woman named Bhagirothi used to visit the Pakistani Army camp regularly and she was from village Baghmara of their Union. After the killing of Golam Sarwar, Sarder Motiur Rahman, the present Upazilla Chairman of Pirojpur Sadar was made

their Commander. Sarder Motiur Rahman chalked out a plan with Bhagirothi and stationed 3(three) groups at 3 different places at Baghmara and told that through Bhagirothi, he had come to know that the Pakistani Army would come to hold them. They were also waiting for the arrival of the Pakistani Army. In the evening of that day, after Asar prayer when the Pakistani Army came within their encirclement, they attacked them fiercely. On being attacked, the Pakistani Army became puzzled and fled away and 10/12 Pakistani Army was killed. They (the DW and the other *Muktijoddhas*) found 10 riffles, 3 helmets left by the Pakistani Army and saw profuse bleeding on the road. On that day, when they went to know about the whereabouts of Bhagirothi, their Commander told that she did not come home. Bhagirothi used to come back home regularly from Pirojpur. Commander Motiur Rahman sent the DW and Co-*Muktijoddha,* Abdul Malek in disguise to Pirojpur to know the whereabouts of Bhagirothi and when they went near the National Bank at Pirojpur, they heard sound of a vehicle coming from the West and seeing the other people standing by the side of the bank, they also stood there by their side and 2/1 minutes after, they saw a woman naked and injured condition being dragged by tying her legs behind that vehicle. After the vehicle passed, they came back to their camp and informed the Commander that Bhagirothi was killed by the Pakistani Army after being dragged.

The Pakistani Army used to come to Kodomtola and Jujkhola every day to take revenge for which they considered those two places unsafe for them and accordingly, they went to *Muktijuddho* bogi camp at Sundarban and they were kept in camp No.1 inside Taltola Khal. Shafijuddin Ahmed, a Habilder of British period was appointed as their Commander and under the leadership of

the new Commander, they carried out an operation at the *Razakars'* camp at Tafalbari, but the *Razakar*s had left the place on having the sense of their arrival. However, they held 4(four) *Razakar*s and killed them. On 7 December, the Commander ordered to board a boat with arms and ammunitions. Accordingly, they boarded a boat and by the boat reached at Moralganj. Many other *Muktijoddhas* also reached at Moralganj by boat. In the morning of 8 December, the Commander asked them to proceed towards Pirojpur on foot and told that Pirojpur had to be attacked. Different groups moved on different routes and their group reached on the other bank of river-Boleshwar on the West of Pirojpur through Moralganj at 7:30 pm. They heard the voice of joy of the people from all sides uttering *Joybangla Joybangla*. Then they entered into the town by ferry and went to the Government School where there was Military camp and they set up their camp there. In the camp, many complaints were made to them about the *Razakar*s. After two days Delowar Shikder, Manik Khondoker and Razzaque were killed by the agitated public and they dragged them to their camp by tying their legs with the rope. At the order of the Sub-Sector Commander Major Ziauddin, they tried to find out the infamous *Razakars*-Ashraf Chairman and Sattar Mukter, but they could not be found out though they searched for them vigorously. Thereafter, the DW was posted at Hularhat camp. Around the month of March, he deposited the arms and devoted himself to study.

From the above testimony of DW10, it is clear that he was a freedom fighter and he fought during the liberation war and carried out many operations against the *Razakars*. He specifically stated that Delwar Shikder, son of Rasul Shikder who was a *Razakar* was killed by the agitated people after liberation of Pirojpur and that Bhagirothi was killed by the Pakistan Army. In cross-

examination, the prosecution made an attempt to show that he was not a *Muktijoddha,* but failed. A question was put to the DW whether his name appeared in the special Gazatte of the *Muktijoddhas* published in 'the Muktir Barta' to which he replied that he did not know, but he emphatically asserted that his name was in the national Gazette. He further asserted that his name was there in the voter list of the *Muktijoddha*s. He further asserted that during *Muktijuddho,* he was in India for 15/16 days. He denied the prosecution suggestion that it was not a fact that in the last voter list of the *Muktijoddhas* of Pirojpur, his name was not included. He denied the prosecution suggestion that it was not a fact that the fact of his participation in the *Muktijuddho* was not supported by any document. No document was filed or produced from the prosecution side that the name of the DW did not appear in the last voter list of the *Muktijoddhas* of Pirojpur. When the DW asserted that his name was in the voter list of the *Muktijoddhas,* since the prosecution disputed that the onus was upon them to show the voter list that his name was not there in the voter list. By giving mere suggestion without any tangible evidence, the positive assertion made in the examination-in-chief by the DW that he started organising *Muktijoddha* right from 27 March, 1971 and to that end, he took training in operating rifle and also went to India and as a *Muktijoddha* carried out various operations against the *Razakars* cannot be disbelieved. The statements made by the DW in his examination-in-chief that Bhagirothi was killed by the Pak Army and after two days of liberation of Pirojpur while he was in the camp of the Government School, Delwar Shikder, Manik Khondoker and Razzaque were killed by the agitated public and they dragged them to their camp by tying their

legs with rope also remained unassailed and unimpeached and I find no reason to disbelieve him.

DW13, Masood Sayedee, the son of the accused, just proved the documents in support of the facts as were revealed during the cross-examination of the prosecution witnesses and also in support of the defence case. This DW did not state any new facts. Therefore, I do not consider it necessary to discuss and sift his testimony. I shall refer to the documents proved by the DW at the appropriate place.

DW15, Abdus Salam Haulader, aged about 65 years, of village-Baduria, stated in his examination-in-chief that in 1971, his father had a shop at Parer Hat Bazaar and sometimes he used to sit there. The Pak Senas came to Parer Hat on 7 May. In collaboration with them, some people of Parer Hat, such as: Danesh Molla, Sekander Shikder, Muslem Maulana, Gani Gazi, Asmot Ali Munshi, Malek Shikder looted 5/6 Hindu shops at Parer Hat. After looting, the Pak Senas went towards Pirojpur. The Pak Senas came to Parer Hat again on the next day of the looting and they with the help of those people, i.e. Danesh Molla, Sekander Shikder, Muslem Maulana, Gani Gazi, Asmat Ali Munshi and Malek Sikder crossing the bridge entered into the house of his uncle, Nuru Khan situated to the southern side. The members of the Peace Committee showed the said house to the Pak Senas and they set fire thereon. His uncle (Nuru Khan) was an Awami League leader. At that time, his uncle-Nuru Khan, his son-Selim Khan and the mother of Selim Kha were not at home, they had fled away from their home before the beginning of the war. 15/20 minutes after setting fire on the house, the Pak Senas came out therefrom and went towards village-Chitholia. Sometimes thereafter, they saw smoke. Many people were running

and telling that they heard that fire was set on the houses of Soizuddin and Roizuddin of village-Chitholia. After half an hour or forty five minutes, the Pak Senas along with the members of the Peace Committee again started for Parer Hat Bazaar. At that time, he (the DW) was standing along with other people on the northern side of the bridge. He saw the Pak Senas along with the members of the Peace Committee coming towards Parer Hat crossing the bridge. He did not see the accused along with them. The Pak Senas after staying for sometimes at Parer Hat Bazaar set for Pirojpur. After 2/3 days, the Peace Committee was formed at Parer Hat with Sekander Shikder, Muslem Maulana, Danesh Molla, Shafijuddin Moulavi, Gani Gazi, Asmot Ali Munshi, Malek Shikder. The office of the Peace Committee was established by occupying the building of Fakir Das situated at the East row of Parer Hat Bazaar. The *Razakars* camp was established at the first floor of Parer Hat High School in the last part of Joistho. He knew Momin, Razzaque, Bazlu Kari, Hanif and Mohsin as *Razakar*s and they used to come at Parer Hat Bazaar. He never saw the accused with them. The accused contested the parliamentary election thrice from Pirojpur-1, twice with Babu Sudhanshu Shekhar Halder, a renowned lawyer and he never made any allegation of the commission of any war crime by the accused and he (Babu Sudhanshu Shekhar Halder) did not also file any case against him; the 3rd time, the accused contested the election with A.K.M.A. Awal Saheb (PW12), who did not also make any allegation of the commission of war crimes by the accused.

The DW was cross-examined by the prosecution extensively, but the facts stated by him in his examination-in-chief that the house of Nuru Khan was set ablaze by the Pak Senas along with Danesh Molla, Sekander Shikder, Muslem Maulana, Gani Gazi, Asmat Ali Munshi and Malek Sikder, could not be

dislodged and assailed. The prosecution by cross-examining the DW could not also disprove or otherwise dislodge his claim that his father had a shop at Parer Hat Bazaar and sometimes he used to sit there, on 7 May, when the Pak Army came, Danesh Molla, Sekander Shikder, Muslem Maulana, Gani Gazi, Asmat Ali Munshi and Malek Sikder in collaboration with them looted the Hindu shops at Parer Hat and also accompanied the Pak Senas to the house of Nuru Khan and the other houses and set fire thereon. By cross-examining the DW, the prosecution could not in any way discreedit him as a hired witness or an unworthy witness and thereby dislodged the statements made by him in his examination-in-chief that he never saw the accused along with the persons who accompanied Pak Army on 7th and 8th May. The prosecution could not also bring any material on record to show that the father of the accused had no shop at Parer Hat in 1971 and that during the Parliament election, the opponents of the accused, namely, Babu Sudhanshu Shekhar Halder and the sitting M.P. A.K.M Awal made any complaint against the accused in their election campaign alleging the commission of war crimes by him. The prosecution by cross-examining the DW could not show that he had any reason to be biased towards the accused or in any how was linked with the accused or his party politics, except giving suggestion that he and his father were against liberation and having pecuniary benefit deposed falsely by suppressing facts. Therefore, I do not see any reason to disbelieve the DW.

DW16, Abdul Halim Fakir, aged about 55 years, of village-Tengrakhali, stated in his examination-in-chief that in 1971, he was a student of class-IX. In 1971, during the great liberation war, no *Razakar* and no member of the Peace Committee and the Pak Army entered into their village-Tengrakhali and no

house was looted and no one was tortured. During the great liberation war, in 1971, the accused was neither a *Razakar* nor a member of the Peace Committee nor an anti-liberationist and he did not indulge in any activity against humanity.

In cross-examination, he stated that he could not say exactly how many *Razakar*s were there in Parer Hat Union. But he could tell the name of all the members of the Peace Committee of the Union. He knew all the members of the Peace Committee as they were the men of *Murubbi* class. He denied the prosecutioon suggestion that it was not a fact that his family had liaison with the Peace Committee and familywise, they were anti- liberationists. He re-asserted that during the great liberation war, in 1971, no *Razakar,* member of the Peace Committee and Pak Army entered into their village-Tengrakhali and no house was lootted and no man was tortured. He denied the prosecution suggestion that it was not a fact that the accused was neither a *Razakar nor a* member of the Peace Committee and not an anti-liberationist and he was not involved with any activity against humanity. On the 10th instant, he could know that he had to depose in the case. He denied the prosecution suggestion that it was not a fact that he was in the habit of testifying whenever asked. He asserted that he came to the Tribunal to depose for the first time in his life. Of course, he stated that Nanna Miah, brother-in-law of the accused, told him to depose before the Tribunal. He denied the prosecution suggestion that it was not a fact that they, being familywise anti-liberationists and presently being involved with the politics of Jamaat-e-Islam and also for pecuniary benefits, deposed falsely by suppressing facts to save the accused, a Jamaat leader.

From the cross-examination of the DW, it is clear that except giving a common and wild suggestion that he deposed falsely as he was involved with

the politics of Jamaat-e-Islam and for pecuniary gain, nothing could be drawn out from the mouth of the witness to show that he was in any way biased or bent upon to depose falsely in favour of the accused by suppressing facts. The assertion made by the DW in his examination-in-chief that during the great liberation war, in 1971, the accused was neither a *Razakar* nor a member of the Peace Committee nor an anti-liberationist and he was not involved with any activity against humanity, remained unassailed and unimpeached. Therefore, I find no reason to disbelieve the testimonies of this DW in his examination-in-chief.

DW17, Gonesh Chandra Saha, aged about 51 years, son of Bhagirothi, stated in his examination-in-chief that the *Muktijoddha*s used to live in their house and her mother used to work at the Military camp. His mother used to pass information of the camp to the *Muktijoddha*s. Motiur Rahman Sarder, Kalu Molla, Hanif Kha were *Muktijoddhas*. Motiur Rahman Sarder was the present Upazilla Chairman of Pirojpur Sadar. His mother used to go to the camp in the morning and used to come home in the night. Some days after, the Military came at Baghmara, there was an exchange of fire between the Mukti Bahini and the Military. 10(ten) Militaries were killed and they fled away to Pirojpur by leaving their arms. On that day, his mother did not come back home. Next day, he and his brother named Kartik Chandra Saha went out to look for their mother, Kartik was now dead. At about 12 0'clock, they heard that one woman was taken away and she was their mother. They further heard that the Military dragged her near the river by a vehicle tying her waist and legs with a rope. They went there and saw their mother with multiple injuries and 5(five) persons sitting in the vehicle. After killing their mother, her body was thrown at the bed

of the river. He did not know those 5(five) persons and he could not also understand what they said. After a while, they (the personnel in *Khaki* dress) went away by their vehicle. He did not see any *Razakar* with them. He came to know $1\frac{1}{2}$ year before that he was a witness in the case. Then said he came to know in the last part of Baishakh. Rafique Bhai met him in the last part of Baishakh about his testifying in the case. He further stated that he (Rafique) inquired from him who killed his mother, he told that the Pakistani Military killed his mother. Then he (Rafique) said whether any other person killed her, he (the DW) replied in the negative and said only the Pak Army killed her. Then he (Rafique) told him to say on promise. He (the DW) said in the negative and told that there were dramas and novels over her mother's death and those were being staged every year and the people saw those. Rafique told him whether his father (the accused) killed his mother. He (the DW) asked him who his father was, he (Rafique) replied Sayeedi Saheb. Then he (DW) told that he (the accused) did not kill his mother.

In cross-examination, the DW stated that Rafique Bhai had gone to his house one day only and he saw him once. In the last part of Baishakh, he (Rafique) went to Pirojpur either for *Waj* or to hold a *Mahfil*. When he (Rafique) had gone to their house, the DW was in the field and he was called over cell phone. Another man also accompanied him (Rafique) in their house. When he asked him (Rafique) why he (the DW) was being asked those questions, he (Rafique) replied that as he did not know who killed his (the DW) mother, so he came to know that fact which was necessary for him. He did not ask him (Rafique) why he came after such a gap. In the last Falgun, people from the

Court had come to him and told him that they were from the Court and they came to investigate. The persons who had come did not tell their names, but told that they had come from Dhaka, he (the DW) did not also ask their names. After one week, they again came and he told them about the killers of his mother or he narrated what happened. He further stated that the son of Sayeedi Saheb asked him (the DW) whether he filed any case against his father, he replied in the negative, then he (son of Sayeedi) asked him whether he would be able to say so in Court and he (the DW) replied in the affirmative and he came to the Court to tell all those facts. He denied the prosecution suggestion that it was not a fact that the accused had direct hand in the killing of his mother. He denied the prosecution suggestion that it was not a fact that Rafique Saheb, his maternal uncle and the men of Sayeedi, brought him to the Tribunal not to tell the said fact having paid money and also by misleading him. He stated that Nanna Bhai brought him from Pirojpur and he stayed with him in a hotel and in the morning, he brought him to the Court. He denied the prosecution suggestion that it was not a fact that he deserted the prosecution side for money. He denied the further prosecution suggestion that it was not a fact that knowing fully well that the accused had direct involvement in the killing of his mother, he deposed falsely by suppressing fact.

Before I go to the documentary evidence adduced in the case by the defence, two pertinent facts which cropped up from the testimonies of the DWs need to be addressed: (i) the appearance of the DWs before the Tribunal to depose in the case at the request either made by the son of the accused or by his brother-in-law, Nanna Miah and (ii) the holding of Waz *Mahfil* by the accused in greater Jessore area since before 1971.

So far as the first fact is concerned, it is in evidence that some of the DWs stated that they were told by the son of the accused to depose in the case and some told that they were told by Nanna Miah, brother-in-law of the accused, to depose in the case and some also said that they were brought before the Tribunal either by the son of the accused or by Nanna Miah. There was nothing wrong if the DWs were requested to depose in the case or brought before the Tribunal by either of them (son of the accused and Nanna Miah). **My reasons are:** (a) the witnesses of the prosecution are cited in the charge sheet on the basis of the evidence collected by the Investigation Officer during the investigation of the case; (b) during investigation, a witness is examined by the Investigation officer, so he gets a notice that he might be cited in the case as a witness and he might have to depose in the case; (c) the Investigation Agency is under an obligation to produce the witnesses before the Tribunal as required by the prosecution. The law enforcing agencies of the concerned area are duty bound to provide all necessary assistance to the Investigation Agency in executing the process issued for securing the attendance of a witness (see sub-rule (3) of rule 18 of the Rules of Procedure); (d) a defence witness is not supposed to know that he has to depose in a case before the Tribunal as well as the date on which he/she has to depose before it and naturally some one on behalf of the defence has to inform a witness about such facts; (e) mere request made either by the accused or by any one on his behalf before the Tribunal to a person to depose and to fetch him to the Tribunal for the said purpose, does not at all diminish the evidentiary value of a witness inasmuch as the prosecution gets chance to cross-examine the respective DW and thus to test his veracity or truthfulness and also to find out the desirable facts in its favour from the mouth of the witness and to draw out

the truth as well; (f) the prosecution has nothing to be prejudiced as the list of the defence witnesses along with the documents are furnished to the prosecution at the time of commencement of the trial as provided in sub-section (5) of section 9 of the Act, 1973 and sub-rule (6) of rule 18 of the Rules of Procedure; (g) in the Rules of Procedure, there is no provision for compelling the law enforcing agencies of the concerned area to produce a defence witness, therefore, as a compulsion request had to be made on behalf of the accused to the concerned DW to appear before the Tribunal and depose in the case either by his son or by his brother-in-law and if necessary to bring a witness before the Tribunal, of course, the Tribunal shall issue such process for compelling the attendance of a witness proposed by an accused if he applies for the issuance of any such process unless it considers that such application should be refused on the ground that the same was made for the purpose of vexation or delay or for defeating the ends of justice, but that provision has to be resorted only when a DW refuses to appear before the Tribunal (see sub-rule (2) of rule 51A of the Rules of Procedure).

Now, the second fact, i.e. whether the accused used to hold *Waz Mahfil* in greater Jessore area since before 1971: To me it appears that this is a proved fact. DW4 stated in his examination-in-chief that in 1971, the accused used to hold *Waz Mahfil* in different areas of greater Jessore. In cross-examination, he also re-asserted the said fact. The DW further stated that the accused was not a Peer, but a *Waezin*. This DW was not at all confronted with the fact that the accused used to hold *Waz Mahfil* in different areas of greater Jessore. DW2, though, did not say in his examination-in-chief about the holding of *Waz Mahfil* by the accused, in cross-examination, he categorically stated that

since before the beginning of the *Muktijuddho,* the accused used to hold *Waz Mahfil*. He further stated that the accused also held *Waz Mahfil* one year after the liberation. DW6 stated in his examination-in-chief that in 1969/70, the accused held many religious meetings in their area and he was acquainted with him through those religious meetings. DW8 stated in his examination-in-chief that in 1969/70, the accused used to live at a rented house at New Town, Jessore and he used to hold *Waz Mahfil* in different areas of Jessore District. The DW was not at all confronted with the fact that the accused used to hold *Mahfil* at various parts of Jessore areas. DW12 stated in his examination-in-chief that the accused used to hold *Waz Mahfil* at various places in greater Jessore. In cross-examination, the DW also re-asserted the said fact. DW14 stated in his examination-in-chief that in 1969-70, the accused lived at a rented house at Jessore Town and at that time, he used to hold religious meetings. By cross-examining the DW, the prosecution could not impeach the said assertion of the DW.

The accused used to hold *Waz Mahfil* since before 1971 has also been admitted by the prosecution and this was clear from the cross-examination of PW28(the Investigation Officer). This PW stated in his cross-examination that in the report sent by the Superintendent of Police, Pirojpur vide Memo dated 21.04.2011 to Mr. Abdul Hannan, the co-ordinator of the *Tadanta Songsthat,* it was mentioned "১৯৭১ সালের মহান মুক্তিযুদ্ধের পূর্বে তিনি বিভিন্ন জায়গায় তফসির মাহফিল করতেন।". After this admission of PW28, there was no scope of questioning the fact whether since before the liberation war, the accused used to hold *Waz Mahfil* in greater Jessore area as claimed by the defence or not. And everybody

has a right to live in a particular part of the country and to carry on with his activities within the periphery of law. When there is positive evidence and also admission on the part of prosecution that the accused used to hold *Waz Mahfil* since before 1971, at diferent places, in greater Jessore area; we cannot hold otherwise on presumption and assumption.

Now let us have a look at the documentary evidence adduced on behalf of the defence in support of its defence case:

All the documents, except the FIR lodged by Momtaz Begum, wife of Ibrahim Kutti, for killing her husband and brother-Saheb Ali @ Siraj @ Sahabuddin, were proved and exhibited by DW13. The photocopy of the Ejahar lodged by Momtaz Begum was proved as exhibit-'A' through DW11. Exhibit-'B' is the photocopy of certified copy of the judgement passed by the High Court Division in Writ Petition No.5127 of 2009. Exhibit-'C' is the photocopy of the certified copy of the judgment dated 24.08.2009 passed by this Division in the civil petition for leave to appeal preferred by the Government against the judgment and order in the writ petition. Exhibit-'E' is a book under the title ''জ্যোৎস্না ও জননীর গল্প'' written by popular novelist Humayun Ahmed, son of the then S.D.P.O of Pirojpur, Shahid Foizur Rahman, the relevant pages of the book are: 182, 183 and 350. Exhibit-'Q' is the photocopy of the book ''জীবন যে রকম'', a biographic book written by Ayesha Foiz, wife of the then S.D.P.O, Shahid Foizur Rahman and mother of the popular novelist Humayun Ahmed, the relevant pages of the book are: 52, 59, 79, 81 and 83. Exhibit-'R' is the photocopy of the book ''মুক্তিযুদ্ধে সুন্দরবনের সেই উন্মাতাল দিনগুলি'' written by Major Ziauddin (Rtd.), Sub-sector Commander of Sector No.9 of the *Muktijoddha.*

Exhibit-'V' is the photocopy of the 8th volume of the book ''বাংলাদেশের স্বাধীনতা যুদ্ধ দলিলপত্র'' edited by Hasan Hafizur Rahman, the relevant pages of the book are: 240-247, 249, 385, 386, 397 and 398. Exhibit-'X' is the photocopy of pages 669-675 of the 7th volume of the book ''স্বাধীনতা যুদ্ধের দলিলপত্র'' edited by Hasan Hafizur Rahman. Exhibit-'AJ' is the photocopy of the book "পিরোজপুর জেলার ইতিহাস" published by Pirojpur Zila Parisad and edited by *Muktijoddha,* Abul Kashem and the others. Exhibit-'AK' is the photocopy of pages 435-441 of the 10th volume of the book "বাংলাদেশের স্বাধীনতা যুদ্ধ দলিলপত্র" edited by Hasan Hafizur Rahman wherein the interview of Shamsul Alam Talukder, second in command of Sub-sector Commander of Sector-9 of the *Muktijuddho,* has been recorded.

The above mentioned documents were filed on behalf of the defence to show that the accused was neither a *Razakar* nor a member of the Peace Committee and had he been a *Razakar* and a member of the Peace Committee and had he committed the crimes against humanity as alleged in the charges than his name would have been mentioned in any of the books with reference to the occurrences which took place during *Muktijuddho*. I have gone through the documentary evidence. These books have been written over *Muktijuddho* and the facts have been narrated which took place during *Muktijuddho* and in none of these books, the name of the accused has been mentioned either as a *Razakar* or a member of the Peace Committee and no incident has been linked with the accused. And attention of the Investigation Officer, PW28, was also drawn to the above facts by giving him suggestion to the effect "১৯৭১ সালে সংঘটিত কোন অপরাধের সহিত আসামী দেলওয়ার হোসেন সাঈদী সাহেব জড়িত নহেন এই কারণে আমি ইচ্ছাকৃতভাবে স্বাধীনতা পরবর্তীকালের সরকার কর্তৃক গঠিত তদন্ত কমিশনের রিপোর্ট দাখিল করি নাই, ইহা সত্য নহে।

একই কারণে স্বাধীনতা পরবর্তীকালের অর্থাৎ ১৯৭২-৭৩ সালের জি,আর, রেজিষ্টার পর্যালোচনা করে তার উপর কোন মন্তব্য করি নাই, ইহা সত্য নহে। একই কারণে তৎকালীন অর্থাৎ ১৯৭১ সালের মুক্তিযুদ্ধকালীন সময়ের স্থানীয় জনপ্রতিনিধি, জেলা প্রশাসন ও পুলিশ প্রশাসনের কোন ব্যক্তিকে সাক্ষী করি নাই, ইহা সত্য নহে। একই কারণে সংশ্লিষ্ট এলাকার সাব সেক্টর কমান্ডার মুক্তিযোদ্ধা মেজর জিয়াউদ্দিন, তার সেকেন্ড ইন কমান্ড সামছুল আলম তালুকদার, পিরোজপুর মুক্তির নেতৃত্ব দানকারী ব্যারিষ্টার শাহজাহান ওমর। (তৎকালীন ক্যাপ্টেন), পাড়ের হাটের মুক্তিযোদ্ধা ক্যাম্পের কমান্ডার খসরুল আলম সহ জেলা মুক্তিযোদ্ধা কমান্ডের কোন কমান্ডারকে এই মামলায় সাক্ষী হিসাবে উপস্থাপন করি নাই বা সাক্ষী করি নাই, ইহা সত্য নহে। একই কারণে মেজর (অবঃ) জিয়াউদ্দিন কর্তৃক লিখিত "মুক্তিযুদ্ধে সুন্দরবনের সেই উন্মাতাল দিনগুলো", আয়েশা ফয়েজ কর্তৃক লিখিত "জীবন যে রকম" এবং এস,ডি,পি,ও ফয়জুর রহমান আহম্মদ সাহেবের ছেলে হুমায়ুন আহম্মেদ কর্তৃক লিখিত "জোৎস্না ও জননীর গল্প", কবি হাসান হাফিজুর রহমান সম্পাদিত তথ্য মন্ত্রণালয় কর্তৃক প্রকাশিত "স্বাধীনতা যুদ্ধের দলিলপত্র" এবং পিরোজপুর জেলা পরিষদ কর্তৃক প্রকাশিত এবং মোঃ আবুল কাশেম এবং অন্যান্য মুক্তিযোদ্ধাদের কর্তৃক সম্পাদিত "পিরোজপুর জেলার ইতিহাস" নামীয় বই সমূহ পর্যালোচনার পরও তা অত্র মামলায় দাখিল করি নাই, ইহা সত্য নহে।"

The most relevant and important book proved on behalf of the defence is exhibit-'AJ' "পিরোজপুর জেলার ইতিহাস". In this book, the name of the *Razakars* including Delowar Hossain Mallick and their anti-liberation activities have been specifically mentioned and no where in the book, the name of the accused has been mentioned either as *Razakar* or as a member of the Peace Committee, rather the name of the accused has been noted with appreciation. On behalf of the learned Attorney General, it was argued that no reliance can be placed upon the book, as the same was printed and published at a time when the accused was a member of the Parliament, so true history of the *Muktijoddha* of Pirojpur has not been reflected in the book. I do not find any substance in the argument of the learned Attorney General inasmuch as the book was published in 2007 during

the Caretaker Government and was edited, amongst others, by *Muktijoddha,* Abul Kasem and the other *Muktijoddhas*. In this regard, it is necessary to state that no suggestion was given from the prosecution side that Abul Kashem was not a *Muktijoddha* or that the *Muktijoddhas* were not at all involved with the publication of the book. It is true that the accused was elected as a member of the Parliament from Pirojpur-1. The Zila Parisad, Pirojpur was an independent body and therefore, it is hard to believe that the accused could influence it to write the history of Pirojpur Zila in a distorted manner by leaving out his name, if really, he had been a *Razakar* and a member of the Peace Committee and had committed so many crimes against humanity as alleged in the charges. I see no reason not to mention the name of the accused, particularly, when the *Muktijoddhas* were involved with the publication of the book and the name of the other *Razakars* were mentioned in the book. Even if it is accepted that after killing Banga Bandhu, the proof of the *Razakars*, the members of the Peace Committee and the anti-liberation forces and their activities in Pirojpur area, had been destroyed, but what about the books, vide exhibits-'E', 'Q', 'R', 'V', 'X', 'AJ' and 'AK'. How the accused could influence the writer/the author/the editor of those books to omit his name as a *Razakar* and a member of the Peace Committee. In the context, it is necessary to point out that in 1971, the accused was not such a personality, figure or a political element that he could influence the writer/the author/the editor of those exhibits not to mention his name either as a *Razakar* or as a member of the Peace Committee and not to connect him with the crimes committed during the liberation war, in 1971. It is apparent from the evidence of PW28 that in 1971, the accused was an ordinary man. This PW stated in his examination-in-chief that from the 5(five) police reports, it

appeared that during *Muktijuddho,* in 1971, the accused used to run a business at Parer Hat Bondar (presently Police Station Indurkani) and he used to live at the house of his father-in-law and after liberation, he went to Khulna Town and used to hold *Tafsirul Quran Mahfil* in different places in the area. The PW further stated that after liberation, he (the accused), in order to save his life, had left his village home and took shelter at the house of Raushan Ali (DW6) and lived there for long by concealing his identity and there, he used to do the job of a cow boy and from there, he fled away by a bullock cart after his identity was disclosed. The same PW in another place in his examination-in-chief stated that "তদন্তকালে প্রাপ্ত সাক্ষ্য প্রমাণে জানা যায় ১৯৭১ সালের মহান মুক্তিযুদ্ধের পূর্ব হইতেই দেলওয়ার হোসেন সাঈদী ওরফে দেলু ওরফে দিইল্লা পিরোজপুর জেলার ইন্দুরকানি থানাধীন পারের হাট বন্দরের পার্শ্বে তাহার শ্বশুর বাড়িতে ঘর জামাই হিসাবে অবস্থান করিয়া পারের হাট বাজারের রাস্তার উপর বসিয়া লবন, মরিচ, তৈল ও অন্যান্য সামগ্রীর ব্যবসা করিতেন". That the accused was a man of low profile has also been found by the Tribunal as it held *"From the evidence on record we have found that acused Delowar Hossain Sayeedi had a very low profile having no significant social or political status in the society. He was simply a grocery shop keeper who used to sell oil, salt, onion, pepper etc. at Parerhat Bazaar. His financial condition was not good."*

Before I give my penultimate decision about the further defence of the accused as stated at the beginning of the judgment, I consider it a must to discuss and sift the relevant oral evidence of the Investigation Officer (PW28) as well as the documentary evidence proved by him to see whether the prosecution could any how succeed that the accused was a *Razakar* or a member of the Peace Committee during the liberation war, in 1971; in view of the specific case

of the prosecution that the accused was a *Razakar* as well as a member of the Peace Committee in 1971 and in those capacities, he committed the crimes against humanity as alleged in the charges. The onus was heavily upon the prosecution to prove those facts beyond reasonable doubt in view of the provision of rule 50 of the Rules of Procedure. Further in sub-rule (3) of rule 51 of the Rules of Procedure, it has been unequivocally stated that *"Mere failure to prove the plea of alibi and or the documents and materials by the defence shall not render the accused guilty*". If the accused was neither a *Razakar* nor a member of the Peace Committee, the question of commission of the crimes by him against humanity as alleged in the respective charge would not arise at all.

PW28 stated in his examination-in-chief that during investigation, he reviewed the various books on *Muktijoddha*, the newspapers, the internet and the various other informations. In the list of "War Crimes Facts Finding Committee" and "the Truth Commission for Genocide in Bangladesh" of which Doctor M. A. Hasan was the convener, the list of the *Razakars*, the Al-Badars and the Al-Shams of Pirojpur who committed the crimes against humanity and mass killing in 1971 as the auxiliary forces of the Pakistani occupation forces, were published. In the list of *Razakar* Bahini of Pirojpur district, there were in total 18 names and in that list, the name of the accused appeared at serial No.16. The list of the *Razakars* started from pages 3510 in the 13th volume of the documents filed by them and the name of the accused as *Razakar* was mentioned at page 3524. He proved the list as exhibit-'35' and the page where the name of the accused appeared as exhibit-'35/1'. In the website being http://warcriminalsbd.org/ list/Razakars-of-Dhaka-division, the names of the *Razakars* were published Division and District wise and in that list, the names of

957 *Razakars* were published. He reviewed the book 'Associates of Pakistan Army 1971' by Shamsul Arefin. With reference to the said book, he seized the Dainik Janakantha dated the 5th day of March, 2001. The gist of the news published in that paper on the said date was "সেই রাজাকার, ৭১ এর রাজাকার দিইল্লা এখন মওলানা সাঈদী". As per the said news published in the Daily Janakantha, the accused was involved with the commission of crimes against humanity in 1971. He categorised the crimes committed by the accused under 13 heads (heads are not mentioned for the sake of brevity). He further stated that, on the basis of the evidence collected during investigation, it was proved that during the great *Muktijuddho*, in 1971, like the other places of Bangladesh, the crimes under section 3(2) of the Act, 1973, were committed at Pirojpur and it was *prima facie* proved that the accused, Delu @ Dailla, committed the crimes within the meaning of section 3(2) of the Act, 1973 and accordingly, he submitted the charge sheet against him.

The other documents proved and marked as exhibits that the accused was a *Razakar* and as *Razakar*, he committed the crimes against humanity in 1971, were the daily newspapers of various dates. The newspapers which were proved and marked as exhibits are exhibit-8, the Daily Janakantha dated 05.03.2001; exhibits-'11 and 11(1)', the Daily Bhorer Kagoj dated 04.11.2007, news published therein under the head: "রাজাকারের একাত্তর নামা-৭, হত্যা,ধর্ষন, লুটপাটে অভিযুক্ত দেলওয়ার হোসেন সাঈদী"; exhibits-'34', '34/1' and '34/2', the Dainik Shamakal, dated 10.02.2007, the news published therein under the head: "জামায়াতের গডফাদাররা ধরা ছোয়ার বাইরে"; exhibits-'46', '46/1', '46/2', the Daily Janakantha dated 17.10.2010, the news published therein under the head: "সাঈদীর নির্মম

হত্যাকান্ডের শিকার শহীদ মিজান”; exhibit-‘47’, the Daily Janakantha dated 14.04.2001, the news published under the head: “রাজাকার নন প্রমাণে সাঈদী মুক্তিযুদ্ধের চ্যালেঞ্জ গ্রহণ করেননি”; exhibits-‘48’, ‘48/1’ and ‘48/2’, the Daily Azad dated 03.02.1972, the news published therein under the head: “বর্বরতার রেকর্ড ভাগীরথিকে নির্মমভাবে হত্যা করা হয়”; exhibits-‘49’, ‘49/1’, ‘49/2’, ‘49/3’, ‘49/4’, the Daily Janakantha dated 13.02.2002, the news published therein under the head: “তালেবান শেষ হলে কি হবে আমেরিকার বিরুদ্ধে যুদ্ধ চলতে থাকবে-সাঈদী”, the Daily New Age dated 16.03.2004, the news published therein under the head: “Sayeedi on no fly list of U.S.” respectively; exhibits-‘51’, ‘52’, ‘53’, ‘54’, ‘55’, ‘56’, ‘57’, ‘58’ and ‘59’, the Daily Janakantha dated 14.12.2000, 18.12.2000, 19.12.2000, 20.12.2000, 21.12.2000, 22.12.2000, 23.12.2000, 24.12.2000, 25.12.2000 and 26.12.2000, the news published therein under the heads “সেই রাজাকার’ অসংখ্য মানুষের ঘাতক আফসার ঘাতক একখন চায়ের দোকান চালায়”, “সেই রাজাকার দু’বার স্বাধীনতা পদক পেয়েছেন তিনি”, “সেই রাজাকার শতশত নিরীহ মানুষ হত্যাকারী খালেক প্রফেসর এখন জামায়াত নেতা”, “সেই রাজাকার দেশের প্রথম রাজাকার বাহিনী গঠনকারী মাওলানা ইউসুফ”, “সেই রাজাকার মুক্তিযোদ্ধা হত্যাকারী আব্দুল আলিম এখন জনপ্রতিনিধি”, “সেই রাজাকার কামরুজ্জামান দশ কুখ্যাত নরঘাতকের একজন”, “সেই রাজাকার আমজাদ কায়েম যশোরে হত্যা করেছে অগণিত মানুষ”, “সেই রাজাকার ফেনী আবুল হোসেনের ঘাতক তজু রাজাকার এখন ঢাকায় ধনাঢ্য ব্যক্তিদের একজন”, “সেই রাজাকার এবার ফকা-সাকা চৌধুরীর কাহিনী”, “সেই রাজাকার শত শত মানুষের খুনী আল-বদরের জল্লাদ আশরাফ আস্তানা গেড়েছে ঢাকায়”; exhibits-‘63-91’, the Daily Janakantha dated 02.01.2001 upto 31.01.2001 in total 29, the news published therein under the head “সেই রাজাকারের সিরিজ”; exhibits-‘94-121’, the Daily Janakantha from the 1st day of February, 2001 to the 28th day of February, 2001 in total 28, wherein a series of news were published under the head: “সেই রাজাকার”; exhibits-‘124-150’, the Daily Janakantha from the 1st day of

March 2001 to the 31st day of March, 2001 in total 27, wherein a series of news were published under the head: "সেই রাজাকার"; exhibits-'159', '160' and '161', the Daily Bhorer Kagoj dated 29.10.2007, 30.10.2007 and 31.07.2007 wherein news were published giving description of the killing, mass killing, rape, looting, setting fire, crimes against humanity and the other crimes committed all over Bangladesh during the great *Muktijoddho* in 1971; exhibits-'163-199', the Daily Bhorer Kagoj dated 01.11.2007-15.11.2007, in total 15, dated 18.11.2007-21.11.2007, in total 4, dated 26.11.2000-28.11.2003, in total 3, dated 30.11.2007, dated 02.12.2007 and 06.12.2007, in total 5, dated 08.12.2007 and 09.12.2007, in total 2, dated 11.12.2007-14.12.2007, in total 4, dated 26.12.2000 and 07.01.2008-10.01.2008, in total 2, the grand total being 37.

The other newspapers proved and marked as exhibits were the Daily Purbadesh dated 13.11.1970, the Daily Dawn dated 20.12.1970, the Daily Ittefaque dated 02.03.1971, the Daily Ittefaque dated 04.03.1971, the Daily Purbadesh dated 14.03.1971, the Daily Pakistan dated 13.04.1971, the Daily Azad dated 14.04.1971, the Daily Pakistan dated 16.04.1971, 17.04.1971, 22.04.1971, 26.04.1971 and 27.04.1971, the Daily Sangram dated 13.06.1971, the Daily Pakistan dated 07.04.1971, the Daily Sangram dated 07.04.1971 in total 16 and those were marked as exhibits-'201-216', the Daily Pakistan dated 14.08.1971 and 26.07.1971, the Daily Azad dated 08.05.1971, the Daily Pakistan dated 17.06.1971, the Daily Azad dated 01.01.1972, 02.01.1972, 13.01.1972, 18.01.1972, 19.01.1972, 22.01.1972, 29.01.1972 and 31.01.1972 in total 12 and those were marked as exhibits-217-228; the Daily Pakistan dated 20.04.1971, 22.05.1971, the Daily Sangram dated 09.06.1971, the Daily Pakistan dated 24.06.1971, 07.11.1971 and 08.11.1971, the Daily Sangram

dated 13.11.1971, the Daily Pakistan dated 03.12.1971, 19.12.1971, in total 9 which were marked as exhibits-‘229-237’; the Daily Azad dated 02.03.1972, 03.03.1972, 06.03.1972, 08.03.1972, the Daily Ittefaque dated 20.12.1972, 21.12.1972, 28.12.1971, 30.12.1971, 07.02.1972, 05.12.1972, 21.04.1972, 16.12.1972, 19.04.1972 in total 13 which were marked as exhibits-‘239-251’.

The other materials proved and marked as exhibits were the application filed by PW1, Md. Mahbubul Alam Haulader, in the office of *Tadanta Sangstha*, International Crimes Tribunal which was accepted by their office diary No.100(1) dated 20.07.2010, the still photographs and the VDO photographs, the print copy of the still photographs of the places of occurrence from the CD (the compact disk), the seizure list showing the seizure of the above mentioned newspapers, the sketch map of the places of occurrences as alleged in the respective charge, their indexes, the photograph of the slaughty house and the mass grave, the burnt articles such as burnt bamboo and burnt tin, the burnt corrugated iron tin, the corrugated tin, the historic speech delivered by Banga Bandhu at Suhrawardi Uddayan on 7 March, 1971, audio cassette of the speech of Banga Bandhu delivered on the 7th day of March, 1971 ‘বজ্রকণ্ঠ’, the এ্যালবাম গ্রন্থ of ‘জাতির জনক’ pages-1-244, published on the 1st day of August, 1997, newspaper clippings of 1971 from the collection of Abdul Matin liberation war Musium, Bangladesh volume-1, March-April, 1971, volume-2, May-June, 1971, volume-3, July, August and September, 1971, volume-4, October-November, 1971, volume-5 , December, 1971, the photocopy of the nomination paper filed by the accused along with its annexures (in total 26) for the Parliament election, 2008 from Pirojpur-1 which was proved and marked as exhibit-‘151’, report sent to

Mr. Abdul Hannan, the co-ordinator of the *Tadanta Sangstaha* by the Police Superintendant, Special Branch, Pirojpur District vide his Memo No.642/84-93 dated 03.03.2011 about taking legal step on the General Diary made over the threat put to the witnesses of the case, CD of the Audio and VDO of the speech of Banga Bandhu in the Race Course Maidan on 7 March, 1971, the declaration of independence by Banga Bandhu after the crack down by the Pakistan Army on 25 March, 1971, the CD of the documentory film broadcast by N.B.C and C.B.S over the killing, destruction, setting fire, commission of rape and the other crimes committed on 25 March, 1971, the CD of the formation of Mujibnagar Government, the CD of the documentary film made by ATN Bangla under the title: "মুক্তিযুদ্ধের ইতিহাস" (material exhibit-'X'), the copy of the gazette notification made on August, 1971 as to the formation of *Razakar* Bahini, the CD of a documentary film under the title: "একুশের চোখ" made on the commission of crimes against humanity at Pirojpur in 1971 broadcast by Ekushe Television at different times (material exhibit-'XI'), the surrender document of the Pakistan Army on 16 December, 1971 at the Race Course Maidan, the still photographs and the VDO photographs of the house of Raushan Ali (DW6), where according to the prosecution, the accused hid after the liberation of the country, the CD of the documentary film 'India News Review', 'Diary on Bangladesh-1971' made and broadcast by the Indian Government on the killing, setting fire and the destruction committed by the Pakistani occupation forces and its auxiliary forces, namely: Shanti Committee, the *Razakar* Bahini, the Al-Badar and the Al-Shams, all over Bangladesh, the CD of the documentary film made and broadcast by ATN Bangla at different times under the title: 'একাত্তুরের ঘাতকেরা'

(material exhibit-‘XV’) on the incidents of killing, rape, looting, setting fire, crimes against humanity and the other crimes by the Pakistani occupation forces and its auxiliary forces, namely: the Shanti Committee, the *Razakar*s, the Al-Badars and the Al-Shams, the statements of the 15(fifteen) witnesses recorded by the Investigation Officer during investigation of the case and admitted into evidence under section 19(2) of the Act, 1973 (exhibits-‘254 to 268’), the computer copy of the historic speech delivered by Banga Bandhu at Suhrawardi Uddayan on 7 March, 1971 (the exhibit marks of all the documents and the materials are not mentioned as these are not material for deciding the crucial fact whether the accused was a *Razakar* as well as a member of the Peace Committee in 1971).

In cross-examination, the PW stated that he did not know who was the domain hosting of website No.http://warcriminalsbd.org/list/rjakars-of-dhaka-division. He could not say when the website was started or how many times, it was updated. He did not know the expiry date of the said website. He could not say who operated the website. He could not say from which country the website was opened. He could not say the domain hosting of website www.genocidebangladesh.org and when it was started or how many times, it was updated. He had no knowledge about the expiry date of the website. He could not say who operated the same and from which country the same was opened. He denied the defence suggestion that it was not a fact that there were two other links of the website. He further stated that he got the information of the website for the first time on 23.07.2010 at 12:15 pm while checking the websites in his official laptop. None supplied the address of the website and he got the same while searching in the interest of the investigation and he

downloaded the relevant portion of the website. He denied the defence suggestion that it was not a fact that though he knew that the website was not started from Bangladesh but from America, yet he was suppressing the same. He denied the defence suggestion that it was not a fact that he was pretending about his ignorance about the other information of the website, as it would reveal that the information of the website was not correct. He further stated that from the website link http://www.kean.edu/~bgsg/welcom.html of website www.genocidebangladesh.org, he got the information about the damage of 60% of the houses, 47 slaughty houses and mass grave, the fact of rape committed upon 3,400 women, availability of 2,500 skeletons and the killing of 65,000 people of Barisal town, Jhalokathi, Rajapur, Kaukhali, Swarupkathi, Kanthalia, Pirojpur, Mathbaria and Babuganj of Barisal District. He denied the defence suggestion that it was not a fact that the link http://www.kean.edu/~bgsg/welcom.html was not included in website www.genocidebangladesh.org till 12:40 pm till date, i.e. 08.05.2012. The references of the information were from *"Genocide in Bangladesh (1972): Kalyan Chaudhuri, Orient long man, pp. 1992-2002"*. He (the PW) did not review the said book of Kalyan Chaudhuri verifying whether the information given in the website were in the said book. He denied the defence suggestion that it was not a fact that website http://www.kean.edu/~bgsg/welcom.html was a website of the external education of Kean University of New Jursey of the United States of America and in that website, there was no information of Barisal or Pirojpur, not to speak of Bangladesh or its liberation war, yet he intentionally gave wrong information to the Court by giving reference to the said website. He did not know surely whether the website www.genocidebangladesh.org had 26 other links. He did not know whether, in

the part "বাংলা আরকাইভ সমূহ", there were mentions of 301 books or article about the *Muktijuddho* of Bangladesh. He categorically admitted that in the information and the materials of the website downloaded by him, the name of the accused had not been mentioned (in the deposition sheet, in Bangla, it has been recorded as: "আমার কর্তৃক ডাউনলোডকৃত ওয়েব সাইটের তথ্য উপাত্তের মধ্যে দেলওয়ার হোসেন সাইদী সাহেবের নাম উল্লেখ নাই"). In the information and the photographs shown in the movie file, material exhibit-'VIII' (this material exhibit is the CD of the documentary film broadcast by NBC and CBS about the killing of people both individual and enmass, destruction, setting fire, commission of rape and the other offences committed on 25th March, 1971), there was no information or statement showing the involvement of the accused, but there was mention of the activities of the anti-liberation forces. He did not inquire during investigation from which country that was broadcast. It was not in his case docket from which country CBS television was operated. Then said CBS news was broadcast on 02.02.1972. On a specific question put by the Tribunal whether the accused had any link with the occurrences mentioned in the CBS news, the PW replied in the negative. Then said there were some description of the commission of crimes against humanity, mass killing and other crimes all over Bangladesh during the great *Muktijuddho* in 1971. Material exhibit-'XIV', the movie file was not seized by him, he got the same from the prosecution office through the letter dated 03.03.2011 *(material exhibit-'XIV' is the CD of 'India News Review' and 'Diary on Bangladesh 1971', a documentary film produced and broadcast by the Government of India on the killing, setting fire and destruction by the Pakistan occupation forces and their auxiliary forces namely, the Shanti*

Committee, the Razakars, the Al-Badar and the Al-Shams during the greate Muktijuddho in 1971). He could not say how and from where the prosecution got the said material exhibit. He did not know whether the said movie file was broadcast in any television channel at any time. He did not investigate who was the planner, camera man and the narrator of the story of the movie. He did not try to contact during investigation with the victim or the sufferers mentioned in the movie file. He further admitted that in the movie file, there was no mention of the occurrences of any other place except Khulna. He further admitted that he did not investigate into the occurrences mentioned in the movie file vide material exhibit-'XIV'. He admitted that the accused had no complicity with the occurrences mentioned in the movie file or name of the accused was not mentioned. In the book "দি এসোসিয়েট অব পাকিস্তান আর্মি" published by Rabiul Hossian Kochi and written by Shamsul Arefin, all the addresses have been shown at one place, i.e. 59 Kazi Nazrul Islam Avenue, Firmgate, Dhaka-1215 and just above the address, it is written "কম্পিউটার কম্পোজড, মোঃ আতিকুর রহমান" and above that, it is written "প্রিন্টেড বাই ক্রিয়েটিভ কমিউনিকেশন, ১০৪৩ বেগম রোকেয়া সরনী, শেওড়াপাড়া, মীরপুর, ঢাকা-১২১৫", no address of the two publishers has been mentioned below the name of the two publication organisations. There is no autobiography of the writer of the book. The book "এসোসিয়েট অব পাকিস্তান আর্মি-১৯৭১" was first published in December, 2008 and then its 2nd edition was published in 2009. In the book, there are allegations against 44 persons and out of those 44 persons, 43 have no link with the instant case. On 22.07.2010, he came to know that there was information about the accused in the book.

The PW pleaded his ignorance whether the Daily Janakantha started its publication on 21 February, 1992. He stated that some news about the activities of the *Razakars* during the liberation war used to be published in newspaper published during that time. He clearly and unequivocally admitted that in none of the newspapers of the liberation period seized and filed by him, there was any information or news about the activities of the accused. He further stated that he did not seize any newspaper of the pre-liberation period concerning the activities of the accused. He admitted that in none of the newspapers seized by him after 16 December, 1971 upto 15 August, 1975, there was any information or news about the accused. The newspapers which he seized after 16 December, 1971 till 15 August, 1975 included the Daily Ittefaque (in the deposition sheet, in Bangla, it has been recorded as: "স্বাধীনতা যুদ্ধকালীন সময়ের যে সকল পত্রিকা আমি জব্দ করে দাখিল করেছি তার কোনটিতেই আসামী দেলওয়ার হোসেন সাঈদী সাহেবের কর্মকান্ড সম্পর্কিত কোন তথ্য বা খবর নাই। স্বাধীনতার পূর্বকালীন আসামী দেলওয়ার হোসেন সাঈদী সাহেবের কর্মকান্ড সম্পর্কিত কোন পত্রিকা আমি জব্দ করি নাই। ১৯৭১ সালের ১৬ ডিসেম্বরের পর হইতে ১৯৭৫ সালের ১৫ই আগষ্ট পর্যন্ত সময়কালের যে সকল পত্রিকা আমি জব্দ করেছি তার কোনটিতেই আসামী দেলওয়ার হোসেন সাঈদী সাহেব সম্পর্কিত তথ্য বা খবর নাই। ১৯৭১ সালের ১৬ই ডিসেম্বরের পর হইতে ১৯৭৫ সালের ১৫ই আগষ্ট পর্যন্ত সময়কালের যে সকল পত্রিকা আমি জব্দ করেছি তার মধ্যে দৈনিক ইত্তেফাক পত্রিকাও আছে।" He further stated that he reviewed the Daily Ittefaque of 1971 and 1972, the Daily Sangram of 1971, the Daily Purbudesh of 1970, the Daily Azad of 1971 and 1972, the Daily Pakistan of 1970 and 1971, the Daily Dawn of 1970, the Daily Sangbad of 1971 and in those newspapers, no news was published about the role of the accused in 1971. He pleaded his ignorance whether the Daily Bhorer Kagoj and the Daily Janakantha started their publication in the first part of 1990's decade. He also

pleaded his ignorance whether the Daily Shamakal and the Daily New Age started its publication in 2005 and 2003 respectively.

It is noteworthy to mention that the news published in the newspapers implicating the accused with the crimes against humanity which took place at the different places in the then Pirojpur Sub-Division in 1971 as alleged in the respective charge are of the years 2000, 2001, 2002, 2004, 2007 and 2010 (dates have been mentioned earlier) and none of the correspondents or reporter of those news was examined by the Investigation Officer (PW28) during investigation of the case and he clearly admitted this fact in his cross-examination. He stated in his cross-examination that he did not examine the reporters of the news published in the newspapers seized by him to verify the truth of the news published therein (the name of the newspapers and the dates of publication of the news have been detailed hereinbefore). I consider it better and beneficial to quote some portions of the testimonies of the PW in that respect, such as: "প্রদর্শনী-৮ এবং প্রদর্শনী-১২৮ একই পত্রিকা। প্রদর্শনী-৮ এ উল্লেখিত ৫ই মার্চ, ২০০১ সালের দৈনিক জনকণ্ঠ পত্রিকায় যে রিপোর্টটি প্রকাশিত হয়েছে সেটি পর্যালোচনা করে আমি ১৩টি দফায় ধারাবাহিকভাবে বিভক্ত করে জবানবন্দী প্রদান করেছি। ৫ই মার্চ, ২০০১ সালের দৈনিক জনকণ্ঠ পত্রিকায় যে রিপোর্টটি প্রকাশিত হয়েছে সেই রিপোর্টটি একজন সংবাদদাতা না একাধিক ভিন্ন ভিন্ন সংবাদদাতার রিপোর্টের সমন্বয়ে তা অনুসন্ধান করার জন্য আমি জনকণ্ঠ পত্রিকার কর্তৃপক্ষের নিকট তথ্যানুসন্ধানে যাই নাই। উল্লেখিত রিপোর্টের পিরোজপুরের সংবাদদাতা কে তা আমি অনুসন্ধান করেছি। উল্লেখিত সংবাদ দাতার নাম শফিউল হক মিঠু। তিনি জীবিত আছেন। তাকে অত্র মামলায় জিজ্ঞাসাবাদ করি নাই বা সাক্ষীও করি নাই।

. . .

প্রদর্শনী-৯ হচ্ছে ০৪-১১-২০০৭ ইং তারিখে দৈনিক ভোরের কাগজ জব্দ করার জব্দনামা, প্রদর্শনী-১০ উক্ত পত্রিকার জিম্মানামা এবং প্রদর্শনী-১১ উক্ত পত্রিকাটি। উক্ত সংবাদের সংবাদদাতার নাম হচ্ছে আশিষ

কুমার দে। তদন্তকালে উক্ত সংবাদের সংবাদদাতা আশিষ কুমার এর সাথে যোগাযোগ করি নাই। . . . প্রদর্শনী-৪৬ এ বর্ণিত, 'সাঈদীর নির্মম হত্যাকান্ডের শিকার শহীদ মিজান' শিরোনামের সংবাদের নড়াইল সংবাদদাতা হলেন রিফাত বিন তোহা, তবে তাকে আমি জিজ্ঞাসাবাদ করি নাই। তিনি যে মূল সংবাদটি দৈনিক জনকণ্ঠে পাঠিয়েছিলেন সেটি আমি সংগ্রহ করি নাই। . . . প্রদর্শনী-৫১তে প্রকাশিত খবরে যে সকল ভিকটিম এবং প্রত্যক্ষদর্শীদের উল্লেখ আছে আমি তদন্তকালে তাদের জিজ্ঞাসাবাদ করি নাই। 'স্বাধীনতা পদক' কি জন্য দেয়া হয় সে বিষয়ে আমার সুস্পষ্ট ধারণা নাই। উল্লেখিত সংবাদের সংবাদদাতা শওকত মিল্টনকে আমি জিজ্ঞাসাবাদ করি নাই বা তাকে সাক্ষী করি নাই। ১৯-১২-২০০০ ইং তারিখের দৈনিক জনকণ্ঠ (প্রদর্শনী-৫২) পত্রিকায় প্রকাশিত সংবাদের সংবাদদাতা ফিরোজ মান্নাকে আমি জিজ্ঞাসাবাদ করি নাই কিংবা তাকে সাক্ষী করি নাই। উক্ত পত্রিকায় বর্ণিত অভিযোগ সম্পর্কে আমি নিজে কোন তদন্ত করি নাই। . . . ২১.১২.২০০০ইং তারিখের দৈনিক জনকণ্ঠ (প্রদর্শনী-৫৪) পত্রিকার সংবাদের সংশ্লিষ্ট সংবাদদাতা কে তা আমি তদন্তকালে অনুসন্ধান করি নাই" (there are many other admissions of the PW as to the non-examination of the reporter or sender of the news published in the newspapers seized and filed by him which were proved and marked as exhibits as mentioned earlier).

The above quoted testimonies of PW28 *prima facie* show that he did not at all investigate the allegations made against the accused in the news published in the newspapers. The testimonies of the Investigation Officer further show that he did not at all feel the necessity to verify as to whether news published in the newspapers had any factual basis, he remained complacent with the news published in the newspapers of 2000, 2001, 2002, 2004, 2007 and 2010 although the occurrences took place in 1971 without making the slightest endeavour or attempt to verify the truth or the correctness of the news and to ascertain whether the accused was really a *Razakar* or a member of the Peace Committee

or both in 1971 and in those capacities committed the crimes against humanity as alleged in the news published in the newspapers. I wonder why the Investigation Officer did not examine the concerned reporter of the news published in the dailies as mentioned above and actually what prevented him from examining the concerned reporter of the news published in the newspapers. I also failed to conceive of any reason on the part of the Investigation Officer in not examining the concerned reporter during investigation of the case and cite him as witness in the case when section 8(3) of the Act, 1973 has clearly provided that any Investigation Officer making an investigation under the Act may, by order in writing, require the attendence before himself of any person who appears to be acquianted with the circumstances of the case; and such person shall attend as so required, and section 8(4) thereof has further provided that any Investigation Officer making an investigation under the Act may examine orally any person who appears to be acquainted with the facts and circumstances of the case. The examination of the concerned reporter of the news published in the newspapers was all the more necessary, because the reports published in the newspapers had no conclusive evidentiary value; in other words, the news published in the newspapers could not be accepted as a conclusive proof of the facts stated in the news, the law, namely, section 19(1) of the Act, 1973 has only empowered the Tribunal to admit the report published in the newspapers as evidence and that does not mean that the report published in a newspaper shall be accpted as a conclusive proof of a fact stated or information given in a news. In the context, it is very pertinent to state that the newspapers, namely: the Janakantha, the Bhorer Kagoj, the Shamakal and the New Age seized and exhibited in the case started their publication in 1990’s,

2003 and 2005 respectively. The two oldest newspapers in the country are the Daily Ittefaque and the Daily Sangbad. The Daily Ittefaque had a great contribution in moulding the public opinion, first in favour of autonomy of then East Pakistan and then the liberation of the country, but not a single publication of the said newspaper could be seized by the Investigation Officer where any news as to the involvement of the accused with the crimes against humanity in 1971 either as a *Razakar* or a member of the Peace Committee was published; similarly not a single copy of the Daily Sangbad was proved and exhibited where any news was published as to the activities of the accused either as a *Razakar* or a member of the Peace Committee in 1971.

My intelligence could not help me even to imagine as to how the Investigation Officer could accept the news published in the Daily Janakantha dated 05.03.2001 under the head: "সেই রাজাকার, ৭১ এর রাজাকার দিইল্লা, এখন মওলানা সাঈদী" as the basis to categorise the allegations of commission of crimes against the accused under 13(thirteen) heads in 1971 without examining its reporter.

The above conduct of the Investigation Officer showed his utter negligence in investigating the case and thus verifying the truth or correctness of the news published in the newspapers and that to the detriment of the prosecution too.

Interestingly though reporter, Faisul Islam Bachchhu of the news published in the Daily Shamakal dated 10.02.2007 under the head: "জামায়াতের গডফাদাররা ধরা ছোয়ার বাইরে" was examined by the Investigation Officer and cited as a witness in the charge sheet, he was not examined at the trial and even no process was taken against him for his examination. PW28 stated that Fasiul

Islam Bacchu was aged about 39 years and when he was examined, he was not ill and he was a regular employee of Shamakal. I consider it better to quote the relevant portion of the testimonies of PW28 in his cross-examination which is as follows:

> ‘‘প্রদর্শনী-৩৪এ বর্ণিত ‘জামায়াতের গডফাদাররা ধরা ছোঁয়ার বাইরে’ শিরানামে প্রকাশিত সংবাদটি কয়েকটি সংবাদের সমন্বয়ে তৈরী করা। উক্ত প্রদর্শনী-৩৪এ পিরোজপুর এবং সাঈদী সাহেব সম্পর্কিত সংবাদদাতা ছিলেন সমকালের পিরোজপুরের স্থানীয় সমকাল প্রতিনিধি জনাব ফসিউল ইসলাম বাচ্চু। তাকে এই মামলায় সাক্ষী করেছি। তাকে অত্র ট্রাইবুনালে সাক্ষী দেওয়ার নিমিত্তে হাজির করার জন্য কোন প্রসেস নিই নাই। উক্ত ফসিউল ইসলাম বাচ্চুর বাড়ি পিরোজপুরে। ফসিউল ইসলাম বাচ্চুর বয়স অনুমান ৩৯ বৎসর। তাকে যখন জিজ্ঞাসাবাদ করি তখন তিনি অসুস্থ ছিলেন না এবং উক্ত সমকাল পত্রিকায় নিয়মিত কর্মরত ছিলেন। . . . উক্ত প্রদর্শনী-৩৪তে বর্ণিত সংবাদ সমূহের পিরোজপুরের বাইরে কোন সংবাদ ও সংবাদদাতার বিষয়ে আমি কোন তদন্ত করি নাই। উক্ত প্রদর্শনী-৩৪তে বর্ণিত পিরোজপুর সংক্রান্ত পিরোজপুরের সংবাদদাতা কর্তৃক দৈনিক সমকাল পত্রিকায় প্রেরিত মূল সংবাদটি আমি পর্যালোচনা করি নাই। উক্ত প্রদর্শনী-৩৪তে বর্ণিত সংবাদের প্রথম অংশে আসামী দেলওয়ার হোসেন সাঈদী সাহেবকে একটি দোকানের কর্মচারী হিসাবে উল্লেখ করা হয়েছে। আসামী দেলওয়ার হোসেন সাঈদী সাহেব স্বাধীনতার পরে শিকদার পদবী ছেড়ে সাঈদী হন মর্মে উক্ত পত্রিকায় উল্লেখ আছে, তবে স্বাধীনতার পূর্বে সাঈদী সাহেব শিকদার ছিলেন এই মর্মে কোন দালিলিক তথ্য প্রমান নাই। ফসিউল ইসলাম বাচ্চুকে এই মর্মে তথ্য প্রমাণ দেওয়ার জন্য আমি বলি নাই।”

On behalf of the defence, suggestion was given to the PW that he filed the application before the Tribunal making untrue statements that it was not possible to produce Fasiul Islam Bachchu, the reporter of the news, without making any prayer to the Tribunal for issuing process to him to depose in the case, because had he been examined, the news published in exhibit-‘34’ would have been proved untrue which he denied. I find rationale in the suggestion given by the defence in view of the fact that Fasiul Islam Bacchu was less than 40 years and

being physically fit, there could not be any earthly reason for his non-examination in the case.

Because of non-examination of the reporters of the news published in the Daily Janakantha, the Daily Bhorer Kagoj, the Daily Shamakal and the New Age, the accused had no chance to challenge the veracity or the truth of the news published in those newspapers and this has seriously prejudiced him in taking his defence. Non-examination and non-citing of the concerned reporter of the news published in the newspapers as witness in the case, in fact, has put a question mark as to the evidentiary value of the news, particularly, when the defence adduced positive evidence that at the relevant time, the accused was not present at the crime sites and claimed that he was neither a *Razakar* nor a member of the Peace Committee and that the crimes alleged in the respective charge were committed by the local *Razakars* and the members of the Peace Committee along with the Pak Army. Therefore, the Tribunal ought not to have relied upon the news published in the newspapers.

But unfortunately the Tribunal did not at all consider all these apparent factual and legal aspects of the case. The Tribunal also made a fundamental mistake in failing to comprehend the distinction between the admissibility of an evidence and the evidentiary value of an evidence and thus also erred in law in relying upon the news of the newspaper as a conclusive proof that the accused was a *Razakar* in 1971 and in that capacity, he committed the crimes as alleged in the respective charge.

The only document proved and exhibited from the side of the prosecution that the accused was a *Razakar* was exhibit-‘35’. This exhibit is nothing, but the list of the *Razakars* downloaded from a private website where the name of the

accused was allegedly mentioned at serial No.16, out of the 18 *Razakars* named in the website. PW28 in his cross-examination stated that he did not seize the list of the *Razakars* (exhibit-‘35’) by any seizure list, but he collected the same from the website and he mentioned the name of website in his examination-in-chief. He further stated that in the website, no reference was mentioned. Above exhibit-‘35’, there was an e-mail I.D. and that was of Dr. M.A. Hasan Saheb. The title of exhibit-‘35’ was the list of the offenders who committed war crimes, crimes against humanity and mass killing in 1971. In that list, none of the name of Pakistan Army who committed crimes against humanity and mass killing, was mentioned. Doctor M.A. Hasan was alive, he (the PW) himself did not examine him to verify the correctness of the statements made in exhibit-‘35’, but on his (the PW) behalf, an Investigation Officer examined him and gave him (PW28) the information. The name of his associate officer was Assistant Police Commissioner, Monwara Begum. She (Monwara) examined Doctor M. A. Hasan on 28.04.2011, but she did not record his statement. The PW further stated that he did not cite Doctor M.A. Hasan as a witness in the case. He did not also record the statements of Monowara Begum and made her a witness in the case (in the deposition sheet, in Bangla, it has been recorded as: “রাজাকারদের তালিকা (প্রদর্শনী-৩৫) আমি কোন জব্দ তালিকা মূলে জব্দ করি নাই, আমি ওয়েব সাইট থেকে সংগ্রহ করেছি। ওয়েব সাইটটির নাম জবানবন্দিতে বলা আছে। ওয়েব সাইটটিতে কোন সূত্র উল্লেখ করা হয় নাই। প্রদর্শনী-৩৫ এর উপর একটি ই-মেইল আই,ডি, আছে। প্রদর্শনী-৩৫ এর উপরে উল্লেখিত ই-মেইল আই,ডি, টি ডাঃ এম,এ, হাসান সাহেবের। প্রদর্শনী-৩৫ এর শিরোনাম হচ্ছে একাত্তরের যুদ্ধাপরাধ, মানবতা বিরোধী অপরাধ ও গণহত্যা সংশ্লিষ্ট অপরাধীদের তালিকা। উল্লেখিত তালিকায় ১৯৭১ সালে সংঘটিত মানবতা বিরোধী অপরাধ ও গণহত্যা সংঘটনকারী পাকিস্তানি সেনাবাহিনীর কারো নাম নাই। ডাঃ এম,এ, হাসান সাহেব জীবিত

আছেন। প্রদর্শনী-৩৫ এর বর্ণণার যথার্থতা প্রমাণের জন্য আমি নিজে ডাঃ এম,এ, হাসান সাহেবকে জিজ্ঞাসাবাদ করি নাই, তবে আমার পক্ষে অন্য একজন তদন্তকারী কর্মকর্তা তাকে জিজ্ঞাসাবাদ করেছিলেন এবং আমাকে তথ্য দিয়েছিলেন। আমার সহযোগী উক্ত কর্মকর্তার নাম হল সহকারী পুলিশ সুপার, মোনোয়ারা বেগম। তিনি ডাঃ এম,এ, হাসানকে ২৮-০৪-২০১১ইং তারিখে জিজ্ঞাসাবাদ করেছিলেন, তবে তাহার কোন জবানবন্দি লিপিবদ্ধ করেন নাই। ডাঃ এম,এ, হাসান সাহেবকে আমি অত্র মামলায় সাক্ষী করি নাই। মোনোয়ারা বেগমের জবানবন্দী আমি রেকর্ড করি নাই। মোনোয়ারা বেগমকে আমি এ মামলায় সাক্ষী করি নাই।").

PW28 further stated that the War Crimes Facts Finding Committee and the Truth Commission for Genocide in Bangladesh were two different organisations. He could not say the name of the member Secretary and the other officers of the War Crimes Facts Finding Committee. He could not also say the name of the Secretary and the other officers of the Truth Commission for Genocide in Bangladesh. He did not collect any information whether any one of the Facts Finding Committee ever went to Pirojpur. He did not investigate who were the persons from Pirojpur who deposed before the War Crimes Facts Finding Committee. He did not investigate on what references War Crimes Facts Finding Committee prepared the list of the *Razakars*. He had no definite idea about the Truth Commission. He could not say in which year the Truth Commission for Genocide in Bangladesh was formed and who was its first convener. He did not get any information whether any person tortured in 1971 gave any statement to the Truth Commission for Genocide in Bangladesh. He further stated that during investigation, he did not get any information that any eye witness of the torture in 1971 gave statements to the Truth Commission for Genocide in Bangladesh. He did not collect any information during investigation

on whose evidence or on what reference the Truth Commission for Genocide in Bangladesh prepared the said list of the *Razakars*. He did not give any letter to the domain hosting, domain admin or any members of the website from which he collected the list of the *Razakars* to verify the truth given in the website. He further stated that he could not say which was the country of origin of the website from which he collected the list of the *Razakars* (in the deposition sheet, in Bangla, it has been recorded as: "ওয়ার ক্রাইমস ফ্যাক্টস ফাইন্ডিং কমিটি ও ট্রুথ কমিশন ফর জেনোসাইড ইন বাংলাদেশ দুটি পৃথক সংস্থা। ওয়ার ক্রাইমস ফ্যাক্টস ফাইন্ডিং কমিটির সদস্য সচিব সহ অন্য কোন কর্মকর্তার নাম আমি বলতে পারব না। ট্রুথ কমিশন ফর জেনোসাইড ইন বাংলাদেশেরও সদস্য সচিব সহ অন্য কোন কর্মকর্তার নাম আমি বলতে পারব না। ওয়ার ক্রাইমস ফ্যাক্টস ফাইন্ডিং কমিটির কেউ কোন দিন পিরোজপুরে গিয়েছিল কিনা সেমর্মে আমি কোন তথ্য সংগ্রহ করি নাই। ওয়ার ক্রাইমস ফ্যাক্টস ফাইন্ডিং কমিটিতে পিরোজপুর এলাকার কোন্ কোন্ ব্যক্তি সাক্ষ্য প্রদান করেছে তা আমি তদন্ত করি নাই। কোন সূত্রের প্রেক্ষিতে ওয়ার ক্রাইমস ফ্যাক্টস ফাইন্ডিং কমিটি রাজাকারদের সংক্রান্তে উক্ত লিষ্ট তৈরী করেছে সে মর্মে আমি কোন তদন্ত করি নাই। ট্রুথ কমিশন সম্পর্কে আমার সুনির্দিষ্ট ধারণা নাই। ট্রুথ কমিশন ফর জেনোসাইড ইন বাংলাদেশ কোন্ সালে গঠিত হয় তা আমি বলতে পারব না। উহার প্রথম আহ্বায়ক কে ছিলেন তা আমি বলতে পারব না। ট্রুথ কমিশন ফর জেনোসাইড ইন বাংলাদেশ এর নিকট পিরোজপুরের কোন ব্যক্তি ১৯৭১ সালের কোন ঘটনার দায় স্বীকারে কোন বক্তব্য দিয়েছিল কিনা তদন্তকালে এরুপ কোন তথ্য আমি পাই নাই। ১৯৭১ সালে নির্যাতিত কোন ব্যক্তি ট্রুথ কমিশন ফর জেনোসাইড ইন বাংলাদেশ এর নিকট জবানবন্দী প্রদান করেছিল কিনা সেমর্মে কোন তথ্য পাই নাই। ১৯৭১ সালে নির্যাতনের কোন প্রত্যক্ষদর্শী সাক্ষী ট্রুথ কমিশন পর জেনোসাইড ইন বাংলাদেশ এর নিকট জবানবন্দি প্রদান করেছিল তৎমর্মে আমি তদন্তকালে কোন তথ্য পাই নাই। কোন্ কোন্ ব্যক্তির প্রদত্ত সাক্ষ্যের উপর ভিত্তি করে অথবা কোন সূত্রের উপর ভিত্তি করে ট্রুথ কমিশন ফর জেনোসাইড ইন বাংলাদেশ উল্লেখিত রাজাকারদের তালিকা তৈরী করেছে তা আমি তদন্তকালে যাচাই করার প্রয়োজন নাই বিধায় আমি যাচাই করি নাই, কারণ তথ্যটি ওয়েব সাইটে দেয়া আছে। ওয়ার ক্রাইমস ফ্যাক্টস ফাইন্ডিং কমিটি ও ট্রুথ কমিশন ফর জেনোসাইড ইন বাংলাদেশ রাজাকারদের তালিকা সংক্রান্ত বিষয়ে

কোন প্রতিবেদন প্রকাশ করেছিল কিনা সে বিষয়ে আমি তদন্তকালে কোন তথ্য সংগ্রহ করি নাই। ডাঃ এম, এ, হাসান বা ওয়ার ক্রাইমস ফ্যাক্টস ফাইন্ডিং কমিটি বা ট্রুথ কমিশন ফর জেনোসাইড ইন বাংলাদেশ এর কোন সদস্য উক্ত ওয়েব সাইটের ডোমেইন হোষ্টিং বা ডোমেইন এ্যাডমিন কিনা তা আমি তদন্ত করি নাই, তবে এ লিষ্ট তাদের করা তা আমি তদন্তকালে পেয়েছি। যে ওয়েব সাইট থেকে আমি রাজাকারদের তালিকা সংগ্রহ করেছি সেই ওয়েব সাইটের ডোমেইন হোস্টিং, ডোমেইন এড্যামিন বা কোন সদস্যকে ঐ তথ্যের সত্যতা যাচাইয়ের জন্য কোন পত্র প্রেরণ করি নাই। যে ওয়েব সাইটটি হইতে রাজাকারদের তালিকা সংগ্রহ করেছি সেই ওয়েব সাইটটি কোন্ দেশের তা আমি বলতে পারব না।").

In view of the above testimonies of PW28, it is obvious that he did not at all direct his investigation to see whether there was any factual basis in giving the list of the *Razakars* in the website in question. The most pertinent admitted fact is that PW28 did not even examine Doctor M.A. Hasan to find out the truth of the description given therein and though some one (Assistant Police Commissioner, Monwara Begum) allegedly examined Dr. M.A. Hasan on 28.04.2011, she did not record his statements and admittedly Dr. M.A. Hasan was not cited as a witness, though he was alive and that he did not collect any information whether any one of the War Crimes Facts Finding Committee ever went to Pirojpur and that he did not investigate who were the persons from Pirojpur who deposed before the War Crimes Facts Finding Committee and that he did not investigate on what references, the War Crimes Facts Finding Committee prepared the list of the *Razakars.* Not only that in the website, no reference was mentioned to show the basis in preparing the said list of the *Razakars* given in the website, but unfortunately the Tribunal without taking into consideration the above quoted testimonies of PW28 simply relied upon exhibit-'35' as conclusive proof to come to the finding that the accused was a

Razakar, as if there was no cross-examination on exhibit-‘35’ and the testimonies of PW28 in cross-examination had no evidentiary value at all. My common sense and conscience failed to appreciate the approach made by the Tribunal in respect of exhibit-‘35’. And I also wonder how the Tribunal could accept exhibit-‘35’ as a document of conclusive proof that the accused was a *Razakar* in 1971 in view of the testimonies of PW28 as quoted hereinbefore. The Tribunal accepted exhibit-‘35’ with the finding:

> “80. Ext. 35 is a list of Razakars, prepared by Dr. M.A. Hasan, Convener, War Crimes Facts Finding Committee, Truth Commission For Genocide in Bangladesh, the name of the accused Delwar Hossain Sayeedi Appears to have been in the said list under district Pirojpur.”

The finding of the Tribunal is totally against the concept of ‘fair trial’ and ‘a fair and public hearing’ as envisaged in section 6(2A) of the Act, 1973 and rule 43(4) of the Rules of Procedure respectively inasmuch as it totally ignored the testimonies of PW28 in cross-examination on exhibit-‘35’ and the further fact that Dr. M. A. Hasan was not cited as a witness in the case and therefore, the accused had no chance to challegne the authenticity of the list of the Razakars where his name was mentioned. Exhibit-‘35’ was not prepared on correct information and had no factual basis which was also apparent from the fact that PW28 clearly stated in his cross-examination that “প্রদর্শনী-৩৫ এ যে রাজাকারের তালিকা প্রদর্শন করা হয়েছে সেই পিরোজপুর জেলার তালিকায় রাজ্জাক রাজাকার, মোসলেম মওলানা, সেকেন্দার শিকদার মোমিন কারী দের নাম নাই ।”. My reason for holding so is that both the PWs and the DWs categorically stated in their examinations-in-chief that Sekandar Ali Shikder, Muslem Moulana, Momin Kari and Razzaque were the *Razakars* and of these *Razakars*, Muslem Moulana lived in the house

of Bipad Saha during the entire period of *Muktijoddha* and it was publicised that Muslem Moulana married Bhanu Saha, the daughter of Bipad Saha, but in the list of the *Razakars* vide exhibit-'35', their names were not mentioned. Non inclusion of the names of Sekander Ali Shikder, Muslem Moulana, Momin Kari and Razzaque in the *Razakars* list *prima facie* shows that exhibit-'35' had no basis and the same was prepared just to implicate the accused with the crimes alleged in the respective charge.

Another book relied upon by the prosecution in branding the accused as a *Razakar* is "এসোসিয়েটস অব পাকিস্তান আর্মি-১৯৭১" and the source of news published in the Daily Janakantha dated 5 March, 2001 (exhibit-8) under the head: "সেই রাজাকার, ৭১ এর রাজাকার দিইল্লা এখন মওলনা সাঈদী" was also that book. It is to be further noted that the Investigation Officer admitted that relying on the news vide exhibit-'8' that the accused was involved with crimes against humanity in 1971, he serialised the main facts revealed in the news under 13 heads. But by no reason or logic that book can be accepted as a book of worth, as it was full of incorrect statements of facts about the accused and the occurrences which took place at Parer Hat in 1971. PW28 stated that at serial No.01 of note B1 at page 37 of the book "এসোসিয়েটস অব পাকিস্তান আর্মি-১৯৭১", it has been stated that after liberation, the accused had fled away to Saudi Arabia and came back in 1985. But this fact is totally belied by the testimony of the Investigation Officer himself as he stated in his examination-in-chief that from the 5(five) reports and the relevant papers filed by the Police Super, Special District Cell, Pirojpur, the Joint Police Commissioner, Dhaka Metropolitan Police, Dhaka, the Deputy Police Commissioner, Motijheel Area, Dhaka Metropolitan Police, Dhaka,

Special Police Super, Dhaka Metro South, C.I.D Bangladesh Police, Dhaka, Additional D.I.G, Special Branch Bangladesh, it appeared that after the liberation of the country, the accused went to Khulna Town and he used to hold *Quran Tafsir Mahfil* at the various places and in 1973, he built a 1/2 storied house by the side of Siddiqia Moholla and he was arrested from Khulna Town in 1975 and after bringing him to Dhaka, he was interrogated at S.B. office, Dhaka and the detention order was passed against him under the Special Powers Act, 1974. Thereafter, he was released by filing a writ petition and this is clearly borne out from exhibits-'B' and 'C', i. e. the judgment passed by the High Court and the Appellate Division in Writ Petition No.5127 of 2009 and the civil petition for leave to appeal respectively. The said facts stated in the book 'the Associates of Pakistan Army-1971' are also belied by exhibit-'BJ', the news published in the Daily Ittefaque dated 29.12.1974 about the speech delivered by the accused at a *Quran Tafsir Mahfil* at Motijheel, Dhaka under the head: "পিএন্ডটি কলোনী মসজিদ পবিত্র কোরআন পাকের তফসীর উপলক্ষে জলসা". As per the news published in the Daily Janakantha dated 05.03.2001, there were mention of 3(three) incidents in 3(three) months in the book: "এসোসিয়েটস অব পাকিস্তান আর্মি-১৯৭১", 6th month, 8th month and 9th month. In the incident of the 9th month, there is mention of the looting of the shops of Makhon Saha and Narayan Saha and this shows that the writer of the book had neither any knowledge nor any correct information about the incidents which took place at Parer Hat area under Pirojpur in 1971 and he wrote the book from his imagination and sweet will having no bearing on the actual facts inasmuch as the specific case of the prosecution was that the shops of Makhon Saha, Narayan Saha along with others

were looted on 7 May, 1971 (in the deposition sheet, in Bangla, it has been recorded as: "উল্লেখিত বইয়ে ৫ই মার্চ, ২০০১ তারিখের দৈনিক জনকন্ঠ পত্রিকার তথ্য অনুযায়ী ৬ মাস, ৮ মাস ও ৯ মাসের তিনটি ঘটনার উল্লেখ আছে। নবম মাসের ঘটনায় মাখন সাহা ও নারায়ন সাহার দোকান লুটের ঘটনার উল্লেখ আছে।" It needs to be further mentioned that none of the prosecution witnesses stated that looting of the shops of Makhon Saha, Narayan Saha took place in September and in none of the charges (including the those from which the accused has been acquitted) such fact was alleged as well. Therefore, the facts stated in the Associates of Pakistan Army, 1971 can no way be relied upon as the basis to connect the accused with the incidents which took place at Parer Hat Bazaar in 1971 and for that matter to come to the finding that in 1971, the accused was a *Razakar* as well as a member of the Peace Committee and he was involved with the commission of crimes against humanity in 1971 and therefore, the news published in the Daily Janakantha on 5 March, 2001 (exhibit-'8') had no factual basis, in other words, were not true. No reliance can be placed on the said book for the further reason that no autobiography of the writer has been given in the book which is a common and normal thing that remains in every book and in the absence of the autobiography of the author, a reasonable suspicion arises about the competency of the author of the book and the facts stated or the information given in the book.

PW28 further stated that he did not ask *Muktijoddha,* Shahjahan Omar (বীর বিক্রম) whether after the liberation of the country, he arrested any *Razakar* or collaborator. He inquired from Major Ziauddin, Sub-Sector Commander of Pirojpur whether he arrested any *Razakar* or collaborator immediate after liberation of the country. But he (Major Ziauddin) did not give any information

to him as to how many *Razakars* or collaborators were arrested by him or whom he arrested. He further stated that he did not examine Shamsul Alam Talukder (DW1) second-in-command of Major Ziauddin. He could not say whether Shamsul Alam Talukder was dead or alive, because that was not in his record. He did not collect any information who, the persons of Pirojpur, were tried by the Special Tribunal set up at Barisal under the Collaborators Act. He further stated that the reporter of the news published in the Daily Janakantha dated 25 January, 2001 (exhibit-'85') under the head: "সাঈদীকে পিরোজপুর থেকে উৎখাতের শপথ" was Shafiqul Haque Mithu and he was alive, he (the PW) neither examined him during investigation nor made him a witness in the case. He did not go to the office of Janakantha to inquire whether the news sent by him (Mithu) was published verbatim or in an abridged form. In the said news, there was reference of the utterances of Major Ziauddin and he asked him (Major Ziaddin) whether he made those utterances as reported in the said news, but he did not give any statement to him. Major Ziauddin lives in Dhaka and he was cited as a witness. He (the PW) made prayer to the Chief Prosecutor to produce him before the Tribunal, but he (the PW) did not get any process. He admitted that it was neither impossible nor expensive to produce Major Ziauddin before the Tribunal (in the deposition sheet, in Bangla, it has been recorded as: "উল্লেখিত সংবাদে মেজর জিয়াউদ্দিন সাহেবের যে উদ্ধৃতি আছে সেটা তার কিনা সেমর্মে আমি মেজর জিয়াউদ্দিন সাহেবকে জিজ্ঞাসাবাদ করেছিলাম। উল্লেখিত বিষয়ে তিনি আমার নিকট কোন বক্তব্য প্রদান করেন নাই। মেজর জিয়াউদ্দিন সাহেব ঢাকাতে থাকেন। মেজর জিয়াউদ্দিন সাহেবকে আমি এই মামলায় সাক্ষী করেছি। তাকে ট্রাইব্যুনালে হাজির করার জন্য বিজ্ঞ চীফ প্রসিকিউটরের নিকট প্রার্থনা করেছিলাম। মেজর জিয়াউদ্দিন সাহেবের সাক্ষ্য প্রদান সংক্রান্ত কোন প্রসেস আমি পাই নাই। তাকে ট্রাইব্যুনাইলে সাক্ষ্য প্রদানের জন্য হাজির করা অসম্ভব বা

ব্যয়বহুল ছিলো না।" Suggestion was given to the PW from the defence that Major Ziauddin was not produced before the Tribunal out of fear that if he was examined, the news as contained in said exhibit in respect of the accused, would have been proved false which the PW denied.

In the facts and circumstances of the case, Major Ziauddin was the most vital and important person to be examined by the prosecution to prove the fact that the accused was a *Razakar* and a member of the Peace Committee, because he was the Sub-Sector Commander of sector-9 and Parer Hat and other crime sites were under his area. The examination of Major Ziauddin was a must, as DW1 categorically stated in his examination-in-chief that he was a *Muktijoddha* and was 'টু.আই.সি' to him and that after liberation of Pirojpur on 8 December, he along with Major Ziauddin went to Parer Hat and after staying there for 10/15 minutes, Major Ziauddin left Parer Hat keeping him with the instruction to go to Pirojpur after 2/3 hours having been apprised the entire circumstances and that he visited the *Muktijuddha* and *Razakar* camps and the *Muktijoddhas* and general public narrated their position and they also narrated the torture perpetrated upon them by Muslem Maulana, Danesh Molla, Sekandar Shikder, Razzaque, two Chowkiders and some others and at that time, none said anything about the accused. Had Major Ziauddin been examined, it could have been cleared whether DW1 was a *Muktijoddha,* whether he was "টু.আই.সি" to him and whether the *Muktijoddhas* and the other general people made any complaint against the accused when he went to Parer Hat. For myself, I do not see any reason whatsoever for withholding Major Ziauddin as a witness in the case when he was cited in the charge sheet as a witness and he lived in Dhaka. And because

of non-examination of Major Ziauddin, an adverse presumption has been created against the prosecution story that the accused was a *Razakar* and a member of the Peace Committee and in those capacities, he committed the crimes against humanity in 1971 and therefore, the suggestion given to PW28 as noted hereinbefore could not be just ignored.

The other evidence produced from the side of the prosecution to show that the accused was a *Razakar* in 1971 and committed the crimes against humanity are the CDs of the documentary film which were broadcast by ATN Bangla and Ekushe Television under the title: 'মুক্তিযুদ্ধের ইতিহাস' (material exhibit-'X'), 'একাত্তরের ঘাতকেরা' (material exhibit-'XV') and 'একুশের চোখ' (material exhibit-'XI') respectively. But none of these documentary films were of the contemporary period of *Muktijuddho,* i.e. 1972, 1973, 1974 and upto 15 August, 1975. Admittedly in those years and in the subsequently years, the private channels: Ekushe Television and ATN Bangla, had no existence and it was Bangladesh Television (BTV) which was in existence and is in operation till date. And I am sure that there were many television programmes in BTV over the liberation war on the Independence day, i.e. on 26 March and on the Victory Day, i.e. on 16 December and in those programmes, the occurrences of Pirojpur must have come for discussion, but the prosecution failed to produce any CD of any such programme or any documentary film participated by the *Muktijoddhas*, the organisers of *Muktijoddho* and pro-liberation forces where the story of commission of crime by the accused in Pirojpur area was narrated or came up for discussion. More surprising thing is that the Investigation Officer did not even try to collect any such CD from BTV which is apparent from his testimony

in his cross-examination. He stated that the TV channels to which he gave notice to give information about the war crimes also included BTV, but BTV did not give any reply to the letter. He further stated that he sent *Tagada Patra* to BTV on 09.01.2011 to give reply to his letter, but BTV did not give any reply to the said *Tagada Patra* and he himself did not also go to the archive of BTV. I failed to understand why the Investigation Officer remained contended by simply writing letter to BTV to give information about the war crimes and why he did not go to BTV and what prevented him from going to BTV and visit it's Archive to look for any VDO or any other information about the commission of crime by the accused in Pirojpur in 1971 either as a *Razakar* or a member of the Peace Committee. In the context, I again recall the provisions of section 8(3)(4) of the Act, 1973 as discussed hereinbefore and reiterate my comment about the Investigation Officer.

PW28 further stated that he did not seize material exhibit-'XV' by any seizure list, he got the same through a letter, the letter was sent on 03.01.2011 and he got the movie on 03.04.2011. The movie was sent by the head of news জ. ই. মামুন and that he was alive, but he (the PW) did not cite him as a witness. The movie was not broadcast in one day, it was recorded in a compact way but was divided in 24 segments and used to be broadcast as part of the news. PW28 admitted that only in segment 12, there was information about the accused, but he did not collect any information during investigation on what information, the presenter mentioned the name of the accused in the segment. He did not examine Shafiqur Rahman, the representative of ATN at Pirojpur of the 12th segment and cite him as a witness. In this case, I also failed to visualise any

reason whatsoever, comprehend as to why the Investigation Officer did not examine the presenter of the 12th segment of the ATN programme in which information about the accused was divulged and as to why he did not also try to investigate on what information the presenter mentioned the name of the accused in the segment. The Investigation Officer did not also examine the other concerned persons, such as: the producer, the director, the programmer, involved with the production of the documentary film as mentioned above and the persons who allegedly gave their interviews in the programme.

PW28 further stated in his cross-examination that he could not say the date on which the programme 'মুক্তিযুদ্ধের ইতিহাস' was first broadcast and the last date of its broadcast. He could not also say on how many days that programme was broadcast, then said the programme was broadcast in 2006. Its manuscript was written by Rumi Noman and Ruhul Raha (in the deposition sheet, in Bangla, it has been recorded as: "এ.টি.এন. বাংলা টেলিভিশন চ্যানেলে ১৯৭১ সালে মুক্তিযুদ্ধের ইতিহাস প্রোগ্রামটি একই দিনে প্রচারিত হয় নাই, ইহা ধারাবাহিকভাবে প্রচারিত হইয়াছে। উক্ত প্রোগ্রামটি প্রচার শুরু ও প্রচার শেষ হইবার তারিখ আমি বলিতে পারিব না। কতটি দিবসে প্রচারিত হয় তাহা আমি বলিতে পারিব না।" He further stated that he did not know when ATN Bangla Television channel started its operation in Bangladesh and it is a private television channel. The first private television is Ekushe TV. He further admitted that in 1971, ATN Bangla Television channel had no existence.

The PW further stated in his cross-examination that he did not know the first date on which the first episode of 'একুশের চোখ' was broadcast, but it was broadcast in 2008 and it used to be broadcast as a part of news. He could not say the date on which 100 episode of the programme was broadcast and at what time

of the news the episode used to be broadcast, as the same was not mentioned in his case docket. The subject matter of the programme 'একুশের চোখ' was a general report based on inquisitiveness. He did not know the name of the planner of the programme 'একুশের চোখ' and did not also know who was its director. The producer of the programme was Afzalul Hasan Tipu, the executive producer was Monwar Shahadat Dorpan, the VDO was taken by Manzurul Islam Manzur and Khan Amin, the news reporters were Nur Siddique and Dipu Sarwar and the presenter was Harun-or-Rashid, but he neither examined any one of them during investigation nor cited them as witness in the case (in the deposition sheet, in Bangla, it has been recorded as: "একুশের চোখ এই অনুষ্ঠানটির প্রথম পর্ব কত তারিখে প্রচারিত হয় তাহা আমার জানা নাই, তবে ইহা ২০০৮ সালে প্রচারিত হয়। সাধারনতঃ ইহা খবরের অংশ হিসাবে প্রচারিত হইত। শততম পর্বটি কোন্ তারিখে কয়টার খবরে প্রচারিত হয় তাহা আমার কেস ডকেটে উল্লেখ না থাকায় বলিতে পারিব না। একুশের চোখ অনুষ্ঠানটির সাধারণতঃ বিষয়বস্তু তথ্য অনুসন্ধান সংক্রান্ত প্রতিবেদন। একুশের চোখ অনুষ্ঠানটির পরিকল্পনাকারীর নাম আমার জানা নাই। উক্ত অনুষ্ঠানের পরিচালক কে ছিলেন তাহা আমার জানা নাই। উক্ত অনুষ্ঠানের প্রযোজক ছিলেন আফজালুল হাসান টিপু। নির্বাহী প্রযোজক ছিলেন মনোয়ার সাহাদাত দর্পন। ভিডিও ধারণকারী মঞ্জুরুল ইসলাম মঞ্জুর ও খান আমিন। সংবাদ দাতা নূর সিদ্দিকী এবং দীপু সরোয়ার। গ্রন্থনা ও উপস্থাপনা হারুন-উর-রশিদ। উল্লেখিত ব্যক্তিগণের কাউকে তদন্তকালে জিজ্ঞাসাবাদ করি নাই বা অত্র মামলায় সাক্ষী করি নাই").

The above testimonies of the Investigation Officer, *prima facie,* show that he did not at all make any attempt in the real sense to get any information as to whether there was any factual basis of the information or the facts narrated in the television programme and he just relied upon the documentary films broadcast by Ekushe television and ATN Bangla without examining the concerned persons involved in producing, directing and presenting the

programme and thus again failed to conduct the investigation of the case within the meaning of section 8(3) and 8(4) of the Act, 1973.

Again I failed to understand why the Investigation Officer was so much contended and complacent with the 3(three) television programmes broadcast by the two private channels in 2006 and 2008 respectively accepting them in their face value without caring to see whether those had the semblance of truth.

Material exhibit-'XIV' (this exhibit is a movie file produced and broadcase by the Indian Government under the title 'India News Review' and 'Diary on Bangladesh-1971' on the mass killing, setting fire and destruction during *Muktijuddho*) does not at all help the prosecution to prove the fact that in 1971, during *Muktijuddho,* the accused was a *Razakar* as well as a member of the Peace Committee, as, admittedly in the said material exhibit, except the occurrences of Khulna, there was no mention of the other places. The PW further admitted that the accused had no complicity or his name was not mentioned with the occurrences of the movie file material exhibit-'XIV'.

The PW further stated that no information was available against the accused from any foreign TV channel including Door Darshan of India, CNN of America and Voice of America and BBC.

It is a very pertinent as well as a disturbing fact that the prosecution failed to produce any book or journal or any write-up of contemporary period, i.e. of the year 1971, 1972, 1973 even upto 15 August, 1975 or thereafter written by any author concerning *Muktijuddho* wherein the name of the accused appeared as a *Razakar* as well as a member of the Peace Committee or he was shown to have any link or connection with any crimes against humanity such as killing, commission of rape upon women, setting fire on the houses and conversion of

the Hindus into Muslim committed in 1971. PW28 in his cross-examination categorically stated that ‘‘আমার জবানবন্দীতে উল্লেখিত ১৩টি বইয়ের মধ্যে ২ নম্বর ক্রমিকে উল্লেখিত মুনতাসির মামুন ও হাশেম খান সম্পাদিত ‘আলোকচিত্র সংকলন ঢাকা ১৯৪৮-১৯৭১’ নামীয় বইটি অত্র মামলার অভিযোগের সাথে সংশ্লিষ্ট নহে। ১০ নম্বর ক্রমিকে ‘মহান একুশে সুবর্ণ জয়ন্তী গ্রন্থ’ সম্পাদনা মাহবুব উল্লাহ বইটির ২৪শে মার্চ ১৯৪৮ সালের ঢাকা বিশ্ববিদ্যালয়ের সমাবর্তন অনুষ্ঠানের অংশটুকু নিয়েছি। সেখান থেকে মোহাম্মদ আলী জিন্নাহর ভাষণের অংশ নিয়েছি। মোহাম্মদ আলী জিন্নাহ সাহেব ১৯৪৮ সালে ঢাকা বিশ্ববিদ্যালয়ের সমাবর্তন অনুষ্ঠানে রাষ্ট্র ভাষা সংক্রান্তে যে ভাষণ দিয়েছিলেন সে ভাষণের বক্তব্যের সম্পর্কে কোন বিরোধ নাই। উক্ত বইয়ে ১৯৭১ সালে স্বাধীনতা যুদ্ধের সময় পিরোপজুরে সংঘটিত কোন ঘটনা বা আসামী দেলওয়ার হোসেন সাঈদী সাহেবের কোন সম্পৃক্ততার বিষয় উল্লেখ নাই। মোঃ জাফর ইকবাল কর্তৃক রচিত ‘মুক্তিযুদ্ধের ইতিহাস’ বইটি আমি পর্যালোচনা করেছি। এই জাফর ইকবাল মুক্তিযুদ্ধকালে পিরোজপুরে নিহত হওয়া শহীদ ফয়জুর রহমান সাহেবের পুত্র। উক্ত বইটি মৌলিক গ্রন্থ নহে, ৩৭টি বই, পত্রিকা এবং লেখকের উদ্ধৃতি দিয়ে সম্পাদিত একটি সংকলন। উক্ত বইয়ের কোন স্থানে আসামী দেলওয়ার হোসেন সাঈদী সাহেব কিংবা পিরোজপুরে ১৯৭১ সালে সংঘটিত কোন ঘটনার উল্লেখ নাই। .

. . অবসরপ্রাপ্ত মেজর জেনারেল কে, এম, শফিউল্লাহ, বীর উত্তম হচ্ছেন একজন সেক্টর কমান্ডার। তিনি পরবর্তীকালে বাংলাদেশ সেনাবাহির (sic) প্রধান নিযুক্ত হয়েছিলেন। তিনি গত আওয়ামী লীগ সরকার আমলে প্রতিরক্ষা মন্ত্রণালয় সম্পর্কিত সংসদীয় কমিটির প্রধান ছিলেন। তার কর্তৃক লিখিত ‘‘বাংলাদেশ এ্যাট ওয়ার’’ বইটি সর্বপ্রথম ১৯৮৯ সালের ফেব্রুয়ারী মাসে প্রকাশিত হয়েছিল। উল্লেখিত বইয়ে দেলওয়ার হোসেন সাঈদী সাহেব সম্পর্কে কোন অভিযোগ নাই। জনাব মুনতাসির মামুন বাংলাদেশের প্রথিত যশা একজন লেখক এবং ঐতিহাসিক। তার কর্তৃক সম্পাদিত ও সংকলিত ‘‘বঙ্গবন্ধু ও বাংলাদেশ’’ (১৯৭১-১৯৭৫) বইটি সর্বপ্রথম ২০০৪ সালের ১৫ই আগষ্ট তারিখে প্রকাশিত হয়। উল্লেখিত বইয়ে ৭৬০১ টি উদ্ধৃতি আছে। উল্লেখিত বইয়ের কোথাও দেলওয়ার হোসেন সাঈদী সাহেবের নাম নাই। বঙ্গবীর কাদের সিদ্দিকী, বীর উত্তম বাংলাদেশের একজন পরিচিত মুখ। তার কর্তৃক লিখিত ‘‘স্বাধীনতা ৭১’’ বইটি সর্বপ্রথম ১৯৯৭ সালে প্রকাশিত হয়। ৬১২ পৃষ্ঠার উল্লেখিত বইয়ে দেলওয়ার হোসেন সাঈদী সাহেবের বিরুদ্ধে কোন অভিযোগ নাই। সালাম আজাদ সাহেবের লিখিত ‘‘কনট্রিবিউশন অব ইন্ডিয়া ইন দি ওয়ার অব লিবারেশন অব

বাংলাদেশ'' বইটি ২০০৩ সালের ডিসেম্বর মাসে প্রথম প্রকাশিত হয়। ৫১৮ পৃষ্ঠার এই বইয়ে দেলওয়ার হোসেন সাঈদী সাহেবের কোন অভিযোগ নাই। সিদ্দিক সালেক কর্তৃক লিখিত ''উইটনেস টু সারেন্ডার'' বইটি ১৯৯৭ সালে প্রথম বাংলাদেশে প্রকাশিত হয়। উল্লেখিত লেখক প্রথম জীবনে পাঞ্জাব ইউনিভার্সিটির লেকচারার ছিলেন কিনা তা আমার জানা নাই। তিনি ১৯৭১ সালে পাকিস্তান সামরিক বাহিনীর ইষ্টার্ণ কমান্ডের পি,আর,ও, ছিলেন কিনা তা আমি বলতে পারব না। উল্লেখিত বইটি তিনি অখন্ড পাকিস্তানের স্মৃতির প্রতি উৎসর্গ করেছেন। পাকিস্তানের যুদ্ধপন্দীদের মধ্যে তিনিও ছিলেন কিনা তা আমার নোটে না থাকায় বলতে পারছি না। তার লিখিত উল্লেখিত বইয়ে দেলওয়ার হোসেন সাঈদী সাহেবের বিরুদ্ধে কোন অভিযোগ নাই। হাবিবুল আলম, বীর প্রর্তক কর্তৃক লিখিত ২০০৬ সালে প্রকাশিত ''ব্রেভ অব হার্ট'' বইটিতে দেলওয়ার হোসেন সাঈদী সাহেবের বিরুদ্ধে কোন অভিযোগ নাই। আমির হোসেন কর্তৃক লিখিত ২০০৮ সালে প্রকাশিত ''বঙ্গবন্ধু ও মুক্তিযুদ্ধ'' বইয়ে দেলওয়ার হোসেন সাঈদী সাহেবের বিরুদ্ধে কোন অভিযোগ নাই। রফিকুল ইসলাম, বীর উত্তম কর্তৃক লিখিত ''লক্ষ প্রাণের বিনিময়ে-মুক্তিযুদ্ধ ১৯৭১'' বইটি প্রথম ১৯৯৬ সালে প্রকাশিত হয়। বইটির লেখা সমূহ বই আকারে প্রকাশের পূর্বে প্রথমে একটি পত্রিকায় ধারাবাহিকভাবে প্রকাশিত হয়েছিল। তিনি বিগত আওয়ামী লীগ সরকারের স্বরাষ্ট্র মন্ত্রী ছিলেন। উক্ত বইয়ে দেলওয়ার হোসেন সাঈদী সাহেবের বিরুদ্ধে কোন অভিযোগ নাই।''

Had the accused been a *Razakar* as well as a member of the Peace Committee and involved with so many crimes against humanity in 1971 as alleged in the respective charge by the prosecution, his name would surely have been mentioned some where in some books of the author over *Muktijuddho.* As already stated earlier, nowhere in the books, namely: ''মুক্তিযুদ্ধের সুন্দরবনের সেই উন্মাতাল দিনগুলি'', ''জীবন যে রকম'', ''জোৎস্না ও জননীর গল্প'', ''বাংলাদেশের স্বাধীনতা যুদ্ধের দলিল পত্র'', ''পিরোজপুর জেলার ইতিহাস'' written by Major Ziauddin, Sub-Sector Commander, Sector-9, Aesha Foiz, Humayun Ahmed, edited by Hasan Hafizur Rahman, published by Pirojpur Zila Parishad and edited by the *Muktijoddhas,* amongst others, respectively (these books were produced on behalf of the defence and

were marked as exhibits-‘E’, ‘Q’, ‘R’, ‘V’, ‘X’, ‘AJ’ and ‘AK’) the name of the accused has been also mentioned either as a *Razakar* or as a member of the Peace Committee. In the context, it is also noteworthy to state that the writers of the first 3(three) books were the most relevant persons to say about the incidents which happened in Pirojpur area, particularly, at Parer Hat during *Muktijuddho*. At the risk of repetition, it may be stated that admittedly Major Ziauddin was the Sub-Sector Commander of Sector-9 and Parer Hat was under his command, but in the book written by him, on *Muktijuddho,* the name of the accused has not been mentioned either as a *Razakar* or as a member of the Peace Committee and no incident at Parer Hat and other crime site has been attributed to him.

The prosecution case that in 1971, the accused was a *Razakar* as well as a member of the Peace Committee and in those capacities, he committed the crimes against humanity as alleged in the respective charge was depended upon the oral evidence of the PWs, exhibit-‘35’, the list of the *Razakars* downloaded from a private website, news published in the daily newspapers, such as: the Daily Janakantha, the Daily Bhorer Kagoj, the Daily Shamakal and the New Age of the various dates of the years, 2000, 2001, 2004, 2007 and 2010, the documentary films broadcast by the two private channels: ATN Bangla and Ekushe Television which have been dealt with earlier. In this regard, it is also very pertinent to state that PW28 admitted in his cross-examination that in none of the newspapers published in 1971, being the Daily Ittefaque, the Daily Sangram, the Daily Azad, the Daily Purbadesh, the Daily Sangbad, the Daily Dawn, the Daily Pakistan any news was published about the role of the accused. He also admitted that in none of the newspapers including the Daily Ittefaque

seized by him after 16 December, 1971 upto 15 August, 1975 there was any information about the accused.

The other evidence produced on behalf of the prosecution, namely, the still photographs of the places of occurrences, the slaughty houses, the burnt materials, tin and corrugated iron tin, the CDs of the documentary films proved as material exhibits do not help the prosecution in proving the charges brought against the accused inasmuch as if he was not at all a *Razakar* as well as a member of the Peace Committee and if he was not at all present at the crime site as mentioned in the respective charge, he could not be linked/connected with the crimes alleged in the charges. In the context, it may be stated that on behalf the accused, no attempt also was made to deny the occurrences as alleged in the charges as quoted at the very beginning of the judgment and the defence rightly choose not to make any such attempt. At the risk of repetition, it is stated that the defence took two specific pleas (i) *alibi*, i.e. he was not at all present at the crime site mentioned in the respective charge, (ii) the crimes were committed by the local *Razakars* and the members of the Peace Committee (names of the *Razakars* and the members of the Peace Committee have been specifically mentioned by the defence witnesses in their examination-in-chief) along with the Pak Army. In this connection, it is also necessary to point out that the prosecution witnesses also stated the name of the other *Razakars* and the members of the Peace Committee who committed the crimes as alleged in the respective charge allegedly with the accused.

In sifting the evidence adduced in the case, we must not confuse ourselves between “the commission of crimes” and “the complicity of the accused with the crimes” as alleged in the charges, because these two are absolutely two different

and distinct things. Merely because an occurrence took place or a crime was committed does not mean that it was the accused who was involved with the commission of the crime, particularly, when the defence took specific plea of *alibi* and in support of that plea adduced evidence, both oral and documentary. In the context, it is very pertinent to state that the Tribunal totally failed to comprehend the broad distinction between "the commission of crimes" and "the complicity or involvement of the accused with the crimes" as alleged in the respective charge in sifting the evidence. The Tribunal also failed to consider that admittedly the crimes were not committed by the accused alone, but allegedly along with the other accused, so the prosecution was more obliged to prove beyond reasonable that the accused committed the crimes alleged in the charges beyond reasonable doubt along with the other accused.

It is a universally recognised settled legal principle that the accused must be dealt with fairly and in section 6(2A) of the Act 1973 and in rule 43(4) of the Rules of Procedure; it has been clearly provided that "The Tribunal shall be independent in the exercise of its judicial functions and shall ensure fair trail" and that the accused shall be "entitled to a fair and public hearing" respectively; 'fair trial' and 'a fair and public hearing' surely mean consideration, sifting and weighing the evidence of both the parties, i.e. the prosecution and the defence equally. But unfortunately, the Tribunal in coming to the finding of guilt of the respective charge against the accused considered the testimonies of the PWs and the DWs in their examination-in-chief as to the commission of the respective crime only without considering the testimonies of the PWs in their cross-examination and the testimonies of the DW as to the defence plea. It simply referred to the suggestion given to the PWs by the defence that the accuseed was

not involved with the crimes as alleged in the respective charge and that he was not present in the crime site during *Muktijoddho,* in 1971 on the observation that the respective PW denied the suggestion. The Tribunal did not at all consider the testimonies of the DWs, both in their examination-in-chief and in cross-examination, who clearly substantiated the defence plea as well as the documentary evidence in that respect. The Tribunal also failed to consider the defence plea in its proper perspective with reference to the testimonies of PWs15, 16 and 24. The funny thing is that the Tribunal after finding the appellant guilty of the charges brought against him rejected the plea of *alibi* on the findings:

> "237: On perusal of the evidence adduced by D.W.5 it is found that the evidence of P.W.4 and 6 that they have categorically stated while accused Delowar Hossain Sayeedi used to reside in Jessore before starting the War of Liberation in 1971, at that time he had two children. The prosecution has proved the copy of Nomination paper (Exbt. 151) for National Assembly election filed by accused Delowar Hossain Sayeedi which shows that the accused gave particulars of his four sons with the date of birth as quated (sic) bellow(sic):-
>
> | **Name of son** | **Date of birth** |
> |---|---|
> | 1. Rafiq Bin Sayeedi | 18.11.1970 |
> | 2. Shamim Sayeedi | 01.01.1972 |
> | 3. Masud Sayeedi | 01.11.1975 |
> | 4. Nasim Sayeedi | 08.12.1976 |
>
> 238. The Nomination Paper (Exbt. 151) dated 30.11.2008 submitted by the accused goes to prove that he had only one son at the time of War of Liberation in 1971. The learned defence counsel gave suggessions to P.Ws. 1,2,4,5,6,8,9,10,12 and 13 that the accused used to live in

Jessore since before starting the war of Liberation till middle of July, 1971 but all the P.Ws flatly denied the suggessions as to his alleged residing in Jessore at the time of starting liberation struggle. The aforesaid P.Ws and the accused belong to same locality and the PWs have categorically stated his presence and participations in the atrocities committed in Parerhat area since May, 1971. P.W. 2 Ruhul Amin Nobin as a commander of freedom-fighter testified that he went to Parerhat Bazar on 18.12.1971 but he could not arrest accused Delowar Hossain Sayeedi and his associates as they reportedly fled away. P.W.12 A.K.M.A Awal M.P. also stated that after Liberation the accused left his locality for saving his life. It is evident that while Bangladesh war was over, diberted the accused left his village home and went into hinding. The factual aspect supposes that soon after Liberation the accused might have taken shelter in Jessore for his safety, at that time D.W.4 and 6 might have seen the sons of the accused.

289. In consideration of both oral and documentary evidence, we are inclined to hold that the defence could not prove the plea of alibi. Thus, the plea of alibi does not inspire any amount of credence and appears to be a futile effort with intent to evade the charges brought against him."

From the quoted findings of the Tribunal, it is clear that it rejected the defence plea of *alibi* without discussing and sifting the testimonies of the DWs, the counter case of the prosecution through PWs15, 16 and 24 and the admission of PW28 as considered and sifted hereinbefore. The Tribunal also failed to consider the written explanation given by the accused under section 17(1) of Act, 1973 that he had two sons in 1971, though the date of birth of his second son could be different in his academic certificate. The Bangla version of the explanation reads as follows:

"১৯৬৯ সাল থেকে মহান স্বাধীনতা যুদ্ধ শুরু হওয়ার প্রাক্কাল পর্যন্ত আমি স্বপরিবারে যশোরে নিউ মার্কেট এলাকার নিউ টাউন বা উপ শহরের 'এ' ব্লকের এ বাড়িতেই ছিলাম। তখণ আমার দুই সন্তান। বড় ছেলে রাফীক বিন সাঈদী আর মেঝ ছেলে শামীম বিন সাঈদী। তবে, তাদের একাডেমিক সার্টিফিকেটে অথবা পাসপোর্টে তার জন্ম তারিখ উপরোক্ত বয়সের সাথে মিল নাও থাকতে পারে ".

The explanation given by the accused is a common phenomenon in our country. There is always 2/1 years difference between the actual date of birth and the date of birth mentioned in the academic certificate. Further the date of birth of the sons of the accused mentioned in exhibit-'151' could not altogether falsify the positive evidence of DWs4 and 6 that since before *Muktijoddho,* in 1971, the accused used to live with his family at New Town, Jessore. Beside DWs 4 and 6, there are the positive testimonies of the other PWs, namely: DWs 8, 12 and 14 that since before 1971, the accused used to live at a rented house at Jessore Town.

When the accused in support of his defence plea examined witnesses and proved documents which were duly exhibited, it was the incumbent duty of the Tribunal to consider and sift the defence evidence (oral and documentary) in juxtaposition with the evidence of the PWs, but unfortunately, the Tribunal considered the evidence of defence with an apathy as pointed out hereinbefore. A reading of the judgment of the Tribunal shows that it received the evidence adduced on behalf of the prosecution as sacrosanct and ignored the evidence adduced on behalf of the defence which favoured the accused specially those testimonies which supported his plea of *alibi*.

It needs to be further stated that before considering and sifting the evidence chargewise, the Tribunal decided the question first as to *"whether accused Delowar Hossain Sayeedi was a member of the local Razakar*

Bahini/peace committee?" and decided that *"the accused was potential member of local Razakar Bahini and a close accomplice of Pakistan occupation Army posted at the then Pirojpur Sub-division in 1971".* In coming to the said finding, the Tribunal relied upon the oral testimonies of PW1-Md. Mahbubul Alam Haulader, PW2-Ruhul Amin Nabin, PW3-Md. Mizanur Rahman Talukder, PW4-Sultan Ahmed Hawlader, PW5-Md. Mahbubuddin Haulader, PW6-Manik Posari, PW7-Md. Mofizuddin Posari, PW8-Mostafa Haulader, PW9-Altaf Hossain Haulader, PW10-Basudev Mistri, PW11-Abdul Jalil Sheikh, PW26-Abed Khan who was the editor of the Daily Vernacular, the Dainik Shamakal in 2007 in their examination-in-chief only, exhibit-'35', a list of the *Razakars* downloaded from a private website (earlier detailed discussion has been made about this exhibit), on the book "যুদ্ধাপরাধীর তালিকা ও বিচার প্রসঙ্গ" written by Dr. M. A. Hasan published in 2009(as noted by the Tribunal), where the name of the accused has been allegedly mentioned at page 148 as a *Razakar* of Pirojpur District, a book named "Shanti committee 1971" which was allegedly exhibited in the case of Professor Ghulam Azam as exhibit-'FV' *"which also speaks that the name of Delowar Hossain Sayeedi has been mentioned as one of the Razakar of District Pirojpur",* exhibit-'8', an issue of the Daily Janakantha dated 05.03.2001 wherein a news was published under the head: "একাত্তরের 'রাজাকার দিইল্লা' এখন মাওলানা সাঈদী" (this exhibit has been dealt with earlier), exhibit-'11', an issue of the Daily Bhorer Kagoj dated 04.11.2007 wherein a news was published under the head: "রাজাকারের একাত্তর নামা ৭-হত্যা ধর্ষণ লুটপাটে অভিযুক্ত দেলোয়ার হোসেন সাঈদী" and did not consider and sift a single oral testimony of the DWs and the documents adduced on behalf of the accused as discussed above. In

accepting exhibit-‘35’ as a conclusive proof of the fact that the accused was a *Razakar*, the Tribunal did not at all consider the testimonies of PW28 in his cross-examination that he did not know who was the domain hosting of the said website; he could not say when the website was started or how many times it was updated; he did not know the expiry date of the website; he could not say who was the operator of the website and from which country, the same was operated; he got the information of the website for the first time 23.07.2010 at 12:15 pm while checking the website in his official laptop, the references of the information were from genocide in Bangladesh (1972) by Kalyan Choudhury, orient long map, PP1992-2002, but he did not review the said book of Kalyan Choudhury to verify whether the information given in the website were in the said book (genocide in Bangladesh); he did not collect any information whether any one of the War Crimes Facts Finding Committee ever went to Pirojpur; he did not investiate who were the persons from Pirojpur who deposed before the War Crimes Facts Finding Committee and he did not investigate on what references the War Crimes Facts Finding Committee prepared the list of the *Razakars*. It needs to be mentioned that the list of *Razakars*, exhibit-‘35’, was prepared by the War Crimes Facts Finding Committee. Sugestion was given to the PW that the website was the website of the external education of the Kean Univerasity of New Jursey of the United States of America and in the website, there was no information of Barisal or Pirojpur not to speak of Bangladesh and its liberation war and that he intentionally gave wrong information to the Court giving reference to the said website.

It is true that the Tribunal may admit any evidence including the reports and photographs published in the newspaper, periodicals and magazines, films

and tape recordings and other materials as may be tendered before it, which it deems to have probative value under section 19(1) of the Act, 1973 and rule 44 of the Rules of Procedure, but mere admissibility of those things into evidence does not mean that those must be accepted as a document of intrinsic value of conclusive proof to come to the finding that the accused was a *Razakar* in 1971, particularly, when the defence adduced evidence, both oral and documentary, giving a totally different version. In accepting exhibits-'35', '8' and '11' produced by the prosecution, the Tribunal failed to consider that those had no probative value in view of the testimonies of PW28 and the other attending facts and circumstances as discussed hereinbefore.

Admittedly, M.A Hasan was neither examined by the Investigation Officer during investigation of the case nor cited as a witness in the case though he was very much alive. Moreso, the book "যুদ্ধাপরাধীর তালিকা ও বিচার প্রসঙ্গে" was not at all proved and exhibited in the case, not only that, none of the PWs including PW28 even mentioned the name of the book in their testimonies, so no notice was brought to the accused about the said book. Therefore, I failed to understand how the Tribunal could refer and rely on that book. Similarly, on behalf of the accused (Delowar Hossain Sayeedi), no book, such as, "Shanti Committee 1971", was filed before the Tribunal, how the Tribunal could rely upon the same to find the accused as a *Razakar*. I could not lay my hands on any provisions in the Act, 1973 and in the Rules of Procedure which authorised the Tribunal to make such an exercise. The consideration of the said two non-exhibited books by the Tribunal was totally against the concept of ensuring "fair trial" within the meaning of section 6(2A) of the Act, 1973 read with rule 43(4) of the Rules of Procedure. The Tribunal accepted exhibit-'8' as a conclusive proof that the

accused was a *Razakar* in 1971 without considering that the basis of the news published in the newspaper, the Daily Janakantha dated 05.03.2001, was the information given in the book "এসোসিয়েটস অব পাকিস্তান আর্মি-১৯৭১", but that book was not at all an authenticated one and the information furnished therein were not correct as had been discussed earlier. In acepting exhibit-'11', the Daily Bhorer Kagoj wherin a news was published under the head: "রাজাকারের একাত্তর নামা-৭, হত্যা, ধর্ষণ, লটপাট অভিযুক্ত দেলওয়ার সাঈদী", the Tribunal failed to consider that the reporter of the news published therein was neither examined during investigation nor cited as a witness in the case and due to the non-examination of the reporter of the news, it had no probative value. The issue of the newspaper was merely admissible in evidence, but could not be accepted as a conclusive proof of the fact stated therein. In considering this exhibit, the Tribunal failed to consider that PW28 clearly stated in his cross-examination that "প্রদর্শনী-৯ হচ্ছে ০৪-১১-২০০৭ইং তারিখে দৈনিক ভোরের কাগজ জব্দ নামা, প্রদর্শনী-১০ উক্ত পত্রিকার জিম্মানামা এবং প্রদর্শনী-১১ উক্ত পত্রিকাটি। উক্ত সংবাদের সংবাদদাতার নাম হচ্ছে আশিষ কুমার দে। তদন্তকালে উক্ত সংবাদের সংবাদদাতা আশিষ কুমার দে এর সাথে আমি যোগাযোগ করি নাই।" In this regard, the observations made earlier on the news published in the newspapers proved and exhibited on behalf of the prosecution are also referable.

The Tribunal also failed to consider that 3(three) *Muktijoddhas*, namely, DWs 1, 5 and 10 also supported the defence plea that the accused was neither a Rajakar nor a member of the Peace Committee and he did not indulge in any of the crimes as alleged in the charges and that those crimes were committed by the local Rajakars and the members of the Peace Committee along with the Pakistan Army.

Admittedly, the burden of proving the charge beyond reasonable doubt was upon the prosecution and when the defence adduced evidence oral and documentary which, in fact, posed a serious contra-claim to the prosecution case that the accused was a *Razakar* and in that capacity, he committed the crimes as alleged in the respective charge; the Tribunal should have taken the claim of the defence seriously and should have treated the evidence adduced on its behalf fairly along with the evidence of the PWs. The Tribunal failed to consider that neither in the Act, 1973 nor in the Rules of procedure, any special treatment had been given to the evidence of the prosecution witnesses. The Tribunal also failed to consider that except the oral evidence of the PWs that the accused was a *Razakar* in 1971 and in that capacity, he committed the crimes at the crime site as alleged in the respective charge; there was no documentary evidence of the contemporary period and the other evidence, such as, CDs, VDOs or any documentary film to show that the accused was really a *Razakar* in 1971. The Tribunal also failed to consider the serious negligence on the part of the Investigation Officer to investigate the case as pointed out hereinbefore (negligences are not repeated herein to avoid repetition).

The Tribunal also failed to consider the salutory oft quoted proverb that ‘men may lie but the circumstances do not’. The failure on the part of the prosecution in producing any documentary evidence of the contemporary period that the accused was a *Razakar* and a member of the Peace Committee in 1971 and in those capacities, he committed crimes against humanity is a serious circumstantial adverse to the prosecution and the production of the documentary evidence on behalf of the defence vide exhibits-‘E’, ‘Q’, ‘R’, ‘V’, ‘X’, ‘AJ’ and ‘AK’ where the name of the accused was neither mentioned as a *Razakar* nor as

a member of the Peace Committee and no crime against humanity was attributed to the accused is a circumstantial favour in favour of the accused. This failure on the part of the Tribunal has caused a serious miscarriage of justice in arriving at the finding of guilt against the accused of the charges brought against him by the prosecution. The whole approach of the Tribunal in not considering and sifting the oral evidence of the DWs and the documentary evidence produced on behalf of the accused was wrong and such approach also led the Tribunal in coming at the wrong finding of guilt against the accused.

For the discussions made hereinbefore, I am constrained to hold that the defence proved its further defence case conclusively that the accused was neither a *Razakar* nor a member of the Peace Committee during *Muktijuddho,* in 1971 and he was not at all involved with the commission of crimes against humanity at Parer Hat, Baduria, Chitholia, Umedpur, Tengrakhali, Parer Hat Bondor, Houlabunia and other places as alleged in the respective charge being Nos.6, 7, 8, 10, 11, 14, 16 and 19 and the crimes alleged in those charges were committed by the local *Razakars* and the members of the Peace Committee along with the Pakistan Army (the names of the *Razakars* and the Peace Committee have been specifically mentioned in the testimonies of the DWs in their examination-in-chief as well as in the examination-in-chief of the PWs).

In view of my findings given hereinbefore that the accused proved its defence plea of *alibi* that at the relevant time, he was not present at Parer Hat and other crime sites and since before the beginning of *Muktijuddho*, in 1971, he used to live at a rented house at New Town, Jessore and that he along with 3(three) other families had left Jessore Town on 3 or 4 April, 1971 and after staying one night at Sheikh Hati went to Dhan Ghata and after staying there for

7/8 days, he took shelter at the house of Peer Sadaruddin Saheb of Mohiron in the middle of April and that at the request of Peer Saheb, Raushan Ali (DW6) took him to his house at Doha Khola and after staying there for $2\frac{1}{2}$ months, he (the accused) left for his village home in the middle of July and the further defence case that the crimes alleged in the respective charge were committed by the local *Razakars* and the members of the Peace Committee along with the Pakistan Army, no further consideration and sifting of the evidence of both sides, i.e. the PWs and the DWs would have been necessary, had the date of commission of the crimes alleged in charge Nos.16 and 19 been mentioned. But in those charges, no date and even month as to the time of the commission of crime by the accused has been mentioned. Therefore, it has become necessary to deal with the said two charges separately. Accordingly, those two charges (charge Nos.16 and 19) all are dealt with separately

Charge No.16:

The charge reads as follows:

> "That during the time of liberation war in 1971, you led a group of 10-12 armed *Razakar*s and Peace Committee members and surrounded the house of Gowranga Saha of Parer Hat Bandor under Pirojpur Sadar Police Station. Subsequently you and others abducted (i) Mohamaya (ii) Anno Rani (iii) Komol Rani the sisters of Gowranga Saha and handed over them to Pakistani Army Camp at Pirojpur where they were confined and raped for three days before release. You are directly involved in abetting the offence of abduction, confinement and rape as crimes against humanity.
>
> Thus, you have committed an offence of abduction, confinement and rape which are punishable under section 3(2)(a) and 3(2)(g) of the Act."

To substantiate the charge, the prosecution relied upon 5(five) PWs, namely: PWs1, 3, 4, 5 and 13. But a perusal of the testimonies of the PWs, it

appeared that, in fact, it is PW13 who actually stated specifically about the allegation made in the charge. PWs1, 3, 4 and 5 made general statements in their examination-in-chief that the accused as a member of *Razakar* Bahini committed various offences at Parer Hat after the arrival of Pak Army such as: arson, killing, looting, and torture on women, converting Hindus into Muslims under threat and handing over women to the Army for committing rape. None of these 4(four) PWs stated that Gouranga Saha had three sisters and that they were abducted by the accused and his companion *Razakars* during *Muktijuddho* and then they were handed over at the Pak Army camp at Pirojpur where they were confined and raped by the Pak Army for 3(three) days and after 3(three) days, they were allowed to come back to their house. This will be clear if the relevant portion of the testimonies of those PWs in their examination-in-chief is reproduced.

PW1, Mahbubul Alam Haulader, stated in his examination-in-chief that "পিরোজপুর জেলার সর্ব এলাকায় রাজাকার শান্তি কমিটি নিয়া ধর্ষণ লুন্ঠন অগ্নি সংযোগ, নিরিহ সাধারন মানুষকে হত্যা করার মুক্তি যুদ্ধ ও মুক্তি যুদ্ধের পক্ষের হিন্দু সম্প্রদায়ের মানুষকে গুলি করে হত্যা করে এবং মহিলাদের জোর পূর্বক ধরে ধর্ষণের উদ্দেশ্যে পাক হানাদার বাহিনীর নিকট জোর করে ধরে দেওয়া হয় ।"

PW3 stated in his examination-in-chief that "রেপের উদ্দেশ্যে গ্রাম্য মহিলাদের ধরে সেনাবাহিনীর হাতে হস্তান্তর করা এই সমস্ত কাজের জন্য দেলওয়ার হোসেন শিকদার প্রত্যক্ষ ও পরোক্ষভাবে জড়িত ছিলেন ।"

PW5 stated in his examination-in-chief that "২৫শে মার্চের পর শান্তি কমিটি ও রাজাকার বাহিনীর লোকেরা মুক্তিযোদ্ধা এবং মুক্তিযুদ্ধের পক্ষের লোকজনের বাড়ি ঘর লুটপাট, অগ্নি সংযোগ, হত্যা করিত এবং মহিলাদের ধর্ষণ করিত এবং তাদেরকে ধর্ষণের উদ্দেশ্যে পাকিস্তান সেনাবাহিনীর ক্যাম্পে তুলে দিত ।".

PW13, Gouranga Saha, stated in his examination-in-chief that in 1971, he was aged about 27 years. In 1971, the accused along with some *Razakars* had gone to his house and looted his house, sometime after, some *Razakars* came and they abducted his 3(three) sisters: (i) Mohamaya (ii) Anno Rani (iii) Komol Rani. Amongst the sisters, Mohamaya was the eldest. He further stated that the accused and the *Razakar* Bahini took his 3(three) sisters to the Pak Army camp at Pirojpur and handed them over there where they were raped forcibly and they were returned after 3(three) days. Some days after, his sisters came to their residence, the accused converted all of his house including his parents, brothers and sisters into Muslim by reciting *Kalema* and took them to the mosque to offer prayer and out of that shame, his parents, brothers and sisters had gone to India and he alone was in the country. He identified the accused in the dock

In cross-examination, the PW stated that all the 3(three) sisters were younger to him and they were succeeding in birth. After liberation, he did not say about his complaint to Mahabubul Alam Howlader (PW1). He did not know whether the local Member of Parliament, A.K.M.A Awal Saheb (PW12), knew about the incident stated by him. He could not say whether the fact of abduction of his sisters by the accused with the help of the *Razakars* and then taking them at Pakistani Army camp and handing them over there and the commission of rape upon them was known to Ruhul Amin Nabin (PW2), Mostafa Haulader (PW8), Sultan Ahmed Hawlader (PW4), Mizanur Rahman Talukder (PW3), Mahtab Talukder (PW5), Manik Poshari (PW6), Bashu Deb Mistry (PW10), Jalil Sheikh (PW11), Altaf Hossain Haulader (PW9). He further stated that his 3(three) sisters were abducted about 10/15 days after the Pakistan Army had come to Parer Hat. In 1971, none of his 3(three) sisters was married. His 4(four)

sisters including the 3(three) sisters (as named by him in his examination-in-chief) had gone to India, but he could not say whether they were married. He could not say who lived whereabouts as well. He further stated that his parents died in India and he got a telegram at Parer Hat. The telegram was sent by his elder brother. He further stated that he sent his parents, brothers and sisters to India through Roisuddin Naia. Except the news of death of his parents, no news came to him about his brothers and sisters. Except the name of the accused, he did not know the name of the other *Razakars*. He denied the defence suggestion that it was not a fact that his sister Mohamaya was married to Laxi Kanto, son of Atul Poddar at Parer Hat long after liberation. He could not also tell the name of the Secretary and the other members of the Peace Committee. He could remember another *Razakar* named Razzaque who was killed. He admitted that he filled up the form before preparation of National Identity card and he signed the same, he also took his photograph. In the National Identity card, his date of birth was written as 08.07.1963 either mistakenly or he told his wrong date of birth. He did not file any application for correction of his date of birth in the National Identity card. His son has been living at Chittagong for the last 10/12 years, but he could not say what he does there. He denied the defence suggestion that it was not a fact that all his 3(three) sisters were infant in 1971. He denied the defence suggestion that it was not a fact that in 1971, none of Zia Nagar Upazila including his 3(three) sisters, was raped by Pakistan Army with the help of the *Razakars*. He denied the defence suggestion that it was not a fact that National Identity card was prepared by giving correct date of birth. Suggestion was given to this PW by referring to his statements made in his examination-in-chief that he did not say those facts to the Investigation Officer which he denied.

He denied the defence suggestion that it was not a fact that he deposed falsely that the accused abducted his three sisters and handed them over to the Pakistan Army where they were raped, because of the benefit, he had already received from the party in power and also in the hope of getting more benefit in future. He denied the further defence suggestion that it was not a fact that since before 1971 till the middle of July, the accused was neither at Parer Hat nor at Pirojpur.

From the judgment of the Tribunal, it appears that it relied upon the testimonies of PW13 and the statements of Ajit Kumar Sheel made before the Investigation Officer and admitted into evidence under section 19(2) of the Act, 1973 (exhibit-'264'). I have quoted the relevant testimonies of PWs1, 3, 4 and 5, none of these PWs said anything specifically about the abduction of the 3(three) sisters of Gouranga Saha (PW13) by the accused and his accomplice *Razakars* and then handing them over to the Pak Army camp at Pirojpur, they did not even say that Gouranga Saha ever made any such complaint to them. The very admission by the PW that after the liberation, he did not say about the complaint to PW1 and his further testimonies that he could not say whether the other PWs, namely: PWs 2, 4, 5, 6, 8, 9, 10, 11 and 12 (the names of the PWs have been mentioned earlier) knew about the fact of abduction of his sisters by the accused with the help of the *Razakars* and then handing them over to the Army camp where they were confined and raped show that the story of abduction of his sisters by the accused along with the other *Razakars* was concocted by the prosecution only to implicate the accused with the commission of the crime of rape. If really, the three sisters of PW13 had been raped by Pakistan Army confining them for 3(three) days in the Army camp at Pirojpur, there was no

reason on his part not to tell the PWs about the same. Moreso, such an incident would not have remained unknown to the said PWs.

From the discussions made above, it is clear that PW13 (except the statement of Ajit Kumar Sheel) is the sole witness as to the fact of abduction of his sisters by the accused along with the other *Razakars* and then handing them over to the Pak Army at Pirojpur where they were raped. Let us see how for his testimonies can be accepted.

In the examination-in-chief, PW13 did not say any specific date or time even with reference to the month when his 3(three) sisters were allegedly abducted by the accused and the other *Razakars* and handed them over to the Pak Army, but in his cross-examination, he stated that his sisters were abducted and handed over 10/15 days after the Pakistan Army had come to Parer Hat.

The specific case of the prosecution as stated by the PWs was that the Pak Army came at Parer Hat on 7 May, 1971, if that be so, 10/15 days comes to 17/22 May. As already found earlier, the accused took shelter at the house of Peer Sadaruddin at village-Mohiron in the middle of April, 1971 and then at the house of DW6, Raushan Ali in the first week of May where he lived for $2\frac{1}{2}$ months and then he left for his village home only in the middle of July. Therefore, the question of abduction of the sisters of Gouranga Saha (PW13) by the accused along with the other *Razakars* and then handing them over to the Pak Army camp at Pirojpur, does not arise at all.

PW13 claimed that he was 27 years old in 1971, but except him, the other PWs did not say a word about his age. In the National Identity card, the date of birth of the PW was specifically mentioned as 08.07.1963, i.e. in 1971, he was

8(eight) years old and the age mentioned in the National Identity card is clearly corroborated by the testimony of DW3, Nurul Haque Haulader who categorically stated that Gouranga Saha was aged about 10/11 years in 1971 and his sisters were younger to him and the eldest one was aged about 6/7 years. DW3 also categorically stated in his examination-in-chief that no woman of Parer Hat was raped, and during the last 40 years, none told that the sister of Gouranga Saha was raped though he went to Bazaar for long. He (DW3) further stated that Gouranga Saha complained that the accused took his sister to Pak Army and got her raped there (in the deposition sheet, in Bangla, it has been recorded as: "গৌরাঙ্গ সাহা অভিযোগ করেছে যে, তার বোনকে সাঈদী সাহেব পাক আর্মি ক্যাম্পে নিয়ে ধর্ষণ করিয়েছে।". And this complaint of Gourango Saha is certainly referable only to his deposition before the Tribunal, as admittedly he (Gourango Saha) did not say in his examination-in-chief that before deposing in Court, he ever made any complaint to any one in that respect and he ever disclosed the said fact to any one. DW5 also categorically stated in his examination-in-chief that no woman in Parer Hat and Shankar Pasha Union was raped, and if any one said so, it was a lie. By cross-examining the DW, the prosecution could not impeach the said testimonies of DW5.

When there was a big apparent discrepancy as to the date of birth of Gouranga Saha between his statement made in his examination-in-chief and the National Identity card, some proof or corroboration as to the age claimed by him was necessary, but there was no other proof or corroboration whatsoever in that respect. None of the PWs stated that Gouranga Saha was aged about 27 years in 1971 or nearer to that age and his sisters were major. Difference of age of 2/1

years or even 3 years is understandable, but the gap of 19 years is not at all believable and this shows that PW13 told his age as 27 years in 1971 only to show that her 3(three) sisters who were admittedly younger to him, were major.

Besides the above, let us see what type of man Gouranga Saha is and whether he can at all be accepted as a natural and truthful witness. He stated in his examination-in-chief that sometimes after, his sisters came back to their residence from the Pak Army camp all of his house including his parents, brothers and sisters, were converted into Muslim by reciting *Kalema* and they were also compelled to go to mosque to offer prayer and out of that shame, his parents, brothers and sisters had gone to India and he alone was in Bangladesh. But in cross-examination, he stated that his 4(four) sisters including the said 3(three) sisters (those who were allegedly abducted by the accused along with the *Razakars*) had gone to India and he could not say whether they were married or not, he could not tell their address as well and their present position. He further stated that his parents died in India and he got a telegram at Parer Hat about the said news only, the telegram was sent by his elder brother. He further stated that he sent his parents, his brothers and sisters to India by Roisuddin Naia. He had no information about his brothers and sisters except the death news of his parents (in the deposition sheet, in Bangla, it has been recorded as: ‘‘আমার উল্লেখিত তিন বোন সহ ৪ বোন ভারতে গিয়েছে, তাদের বিবাহ হয়েছে কিনা বলতে পারিনা, কে কোথায় কিভাবে আছে তাও বলতে পারিনা। আমার পিতা-মাতা ভারতে মারা গিয়েছে এই মর্মে পারের হাটে টেলিগ্রাম পেয়েছি। টেলিগ্রাম পাঠিয়েছিল আমার বড় ভাই। আমার পিতা-মাতা, ভাই-বোন সকলকে রইজুদ্দিন নাইয়ার মাধ্যমে ভারতে পাঠিয়েছিলাম। পিতা-মাতার মৃত্যুর সংবাদ পাওয়া ছাড়া আমার ভাই বোনদের সম্পর্কে আমার নিকট আর কোন খবর নাই।’’).

The above testominies of the PW appear to be unusual and against normal human behaviour, because even if it is accepted that his parents along with his children, i.e. his (the PW) brothers and sisters, had gone to India out of shame of the commission of rape upon their daughters by the Pakistan Army and their conversion into Muslim; is it a natural behaviour of a human being that he would not know anything about his brothers and sisters and would not know even whether his sisters were married or not and their address in India as well. Such behaviour or apathy towards the brothers and sisters as stated by him is absolutely against normal human behaviour; therefore, it poses a natural question about the veracity or truthfulness of the PW. The behaviour of the PW appears to be unusual and abnormal for the further reason that India is a neighbouring country and the relationship between India and Bangladesh is very good, cordial and friendly. It is also a common knowledge that every day, large number of people from this country go to India for treatment and sight seeing as well. Therefore, it is not believable that for the last 41(forty one) years, PW13 would not go to India and would not know anything about his brothers and sisters. That the PW is a partisan witness and is determined not to state the actual fact or the truth is apparent from the further fact that he did not even know what his son did at Chittagong who had been living there for the 10/12 years.

And finally, the testimony of DW3 that Gouranga Saha was 10/11 years old in 1971, appeared to be true as the same was quite approximate to the date of birth recorded in the National Identity card. Admittedly the 3(three) sisters of Gouranga Saha were younger to him, so the eldest sister of Gouranga Saha was aged about 6/7 years only as stated by DW3 also appears to be true. Telling lie

by the PW13 is also apparent from the further fact that though he stated in his examination-in-chief that he had 3(three) sisters who were allegedly abducted and handed over at the Army camp at Pirojpur by the accused; he stated in cross-examination that his 4(four) sisters including the three had gone to India. It is also unbelievable that a girl of 6/7 years would be handed over to the Pak Army for committing rape and if really the sisters of Gouranga Saha were raped by the Pakistan Army in their camp for 3(three) days, they would come back to their house in a normal physical condition, but the testimony of Gouranga Saha shows that they returned to their residence in normal physical condition, because the PW did not say that after his sisters returned back to their house from the Army camp, they were taken to any doctor or to a hospital for treatment. Further, if really such incident happened in 1971, it would have been known to every body including PWs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 and the others at Parer Hat Bazaar as stated earlier, but none deposed that the sisters of Gouranga Saha were raped at the Pak Army camp for 3(three) days, rather there was positive evidence from the DWs3 and 5 that none of Parer Hat was raped. The fact that none of Parer Hat was raped was also admitted by PW1, as he stated in his cross-examination that in his report dated 25.01.2011, he stated that there was no Birangana, i.e. the raped victim in Zia Nagar Upazila (Parer Hat is presently under Zia Nagar Upazila) (in the deposition sheet, in Bangla, it has been recorded as: "জিয়া নগর উপজেলায় কোন বিরাঙ্গনা নাই।", (page 7585 of part III of the paper book) and this fact was also affirmed by PW28, who stated in his cross-examination that "তদন্তকালীন সময়ে তদন্ত সংস্থার প্রধান বরাবরে পিরোজপুর জেলা ম্যাজিষ্ট্রেটের ২৫-০১-২০১১ ইং তারিখের স্মারক নং-৪৪.৩৪৪.০০৬.০৭.০৪.০১২.২০১০/৭৬ মূলে প্রেরিত প্রতিবেদন যা আমাকে এনডোরস করা হয়েছিল তা আমি সংগ্রহ করেছিলাম। উল্লেখিত প্রতিবেদনের সংগে

জিয়ানগর (ইন্দূরকানি) উপজেলার মুক্তিযোদ্ধা কমান্ডার জনাব মাহবুবুল আলম (PW1) কর্তৃক স্বাক্ষরিত জিয়ানগর উপজেলার তথ্য উপাত্ত আছে। উক্ত তথ্য ও উপাত্তের ৩নং ক্রমিকে জিয়ানগর উপজেলায় কোন বিরাঙ্গনা নাই মর্মে উল্লেখ আছে ।”

The Tribunal in finding the accused guilty of the charge accepted the statements of witness-Ajit Kumar Sheel made before the Investigation Officer and admitted into evidence under section 19(2) of the Act, 1973. Ajit Kumar Sheel stated before the Infestigation Officer that the accused along with his associates abducted the 3(three) sisters of Gouranga and handed them over to the Pakistani Army at Pirojpur who committed rape upon them; the parents of Gouranga and his three sisters had gone to India during liberation war and did not come back. This Ajit Kumar Sheel is also known as Adhir as admitted by PW28 (page 1116 of part III of paper book). No reliance can be put upon the testimony of Ajit Kumar Sheel for the reason that though he was very much available at the Safe House in Dhaka (page 3540, Part-IX of the paper book), he was not examined in Court, instead application was filed by the prosectuion in admitting his statements into evidence under section 19(2) of the Act, 1973. The Tribunal was not also justified in admitting the statements of Ajit Kumar Sheel into evidence under section 19(2) of the Act, 1973, as the prosecution failed to prove sufficient materials before it that his attendance could not be procured without an amount of delay or expense. Further the evidence of DWs4, 6, 8, 12 and 14 that at the relevant time, the accused was at the house of DW6 at Doha Khola read with the evidence of DW3 that Gouranga Saha was aged about 10/11 years and the age of his eldest sister was 6/7 years and the further evidence of DWs3 and DW5 that none at Parer Hat was raped and the report of PW1 that

there was no Birangana at Zianagar, *prima facie* belied the testimonies of PW13 and the statements of Ajit Kumar Sheel that the accused along with the other *Razakars* abducted his three sisters and handed them over to Pakistan Army camp at Pirojpur where they were raped, so no reliance can be placed upon the testimonies of PW13 and the statements of Ajit Kumar Sheel in coming to the finding of guilt against the accused of this charge.

But unfortunately, the Tribunal did not at all apply its judicial mind in the facts and circumstances of the case and did not at all consider and sift the evidence as discussed above in its proper perspective in deciding the guilt of the accused in respect of the charge brought against him.

For the reasons stated hereinbefore, I conclude that the prosecution failed to prove the charge against the accused beyond reasonable doubt and therefore, he is entitled to be acquitted of the charge. And accordingly, he is found not guilty of the charge and is acquitted therefrom.

Charge No.19:

In this charge, it has been alleged that during the period of "liberation war starting from 26.03.1971 to 16.12.1971", the accused being a member of *Rajakar Bahini*, by exercising his influence over the Hindu community of the then Pirojpur Sub-Division (now Pirojpur District) converted (1) Modhusudan Gharami, (2) Kristo Saha, (3) Dr. Gonesh Saha, (4) Azit Kumar Sheel, (5) Bipod Saha, (6) Narayan Saha, (7) Gowranga Pal, (8) Sunil Pal, (9) Narayan Pal, (10) Amullya Haulader, (11) Hari Roy, (12) Santi Roy Guran, (13) Fakir Das and (14) Tona Das, (15) Gouranga Shaha, (16) his father Haridas, (17) his mother (not named) and three sisters, (18) Mahayamaya, (19) Anno Rani and (20) Kamalrani and the other 100/150 Hindus of village-Parer Hat and the other

villages under Indurkani Police Station into Muslims and also compelled them to go mosque to offer prayers. The act of compelling some body to convert his own religious belief to another religion is considered as an inhuman act which are treated as crimes against humanity.

To substantiate the charge, the prosecution examined 5(five) witnesses. And of the five witnesses, PWs13 and 23 were amongst the alleged convertees from Hindu to Muslim. So, let us first see what these two PWs told in their examinations-in-chief.

PW13 stated in his examination-in-chief that some days after, his sisters had come back to their residence (in charge No.16 it was alleged that the 3(three) sisters of the PW were abducted by the accused along with the other *Razakars* and were handed over to the Pakistan Army camp at Pirojpur where they were confined for 3(three) days and raped), the accused converted all of his house including his parents, brothers and sisters into Muslim by reciting *Kalema* and took them to mosque to offer prayer and out of that shame, his parents, his brothers and sisters had gone to India and he alone was in Bangladesh. He further stated that many other Hindus numbering 100/150 were converted into Muslim and they had to offer prayer in mosque. After converting him (the PW), the accused named him Abdul Gani and he gave him *Tupi* and *Tajbih*. After liberation of the country, the PW reverted back to his own religion. He further stated that 100/150 Hindus who were converted into Muslims included Narayan Saha, Nikhil Paul, Gouranga Paul, Sunil Paul, Haran Bhoumick. Out of the converted Hindus, many died and many had gone to India.

In cross-examination, the PW stated that he could not say whether witness-Sultan Ahmed Haulader (PW4) knew the fact of converting all of his

family members including him into Muslims; he did not know whether Mahtabuddin Haulader (PW5) of Tengra Khali, Manik Poshari (PW6), Bashu Dev Mistry (PW10) and Jalil Sheikh (PW11) knew the fact of converting his entire family including himself into Muslim. He could not also say whether Altaf Hossain Haulader (PW9) of village Tengra Khali knew about the fact of converting his entire family including himself into Muslim. After about 2(two) months of the arrival of Pakistan Army at Parer Hat, he (the PW) was converted into Muslim, he forgot the name of Imam and Muazzin of the mosque in which he (the PW) was taken to offer prayer. He knew Yasin Maulana, Peer of village Char Khali who had a Khanka Sharif at Parer Hat. He became Muslim to save his life, so there was no necessity of atonement. After some days of conversion into Muslim, his parents, brothers and sisters had gone to India. He denied the defence suggestion that it was not a fact that he did not tell the Investigation Officer that "আমার বোনেরা বাসায় আসার কিছুদিন পরে". He denied the further defence suggestion that it was not a fact that he did not tell the name of Narayan Saha, Nikhil Paul, Gouranga Paul, Sunil Paul and Haran Bhoumick amongst the 100/150 Hindus who were converted into Muslims. He admitted that about 3(three) years before, he got a room in the abode project. By putting the statements made by him in his examination-in-chief, suggestion was given to him that those were not true which he denied. He denied the defence suggestion that it was not a fact that since before the beginning of *Muktijuddho* till the middle of July, the accused was not at Parer Hat or at Pirojpur. He denied the defence suggestion that it was not a fact that it was Peer Yasin Saheb of Char Khali who converted the Hindus of Parer Hat into Muslim sitting in his Khanka. He denied the defence suggestion that it was not a fact that he deposed falsely in

the false allegation brought against the accused that all the members of his family including himself were converted into Muslims as he received favour from the party in power and also for getting more favour in the near future.

PW23, Madhusudan Gharami, stated in his examination-in-chief that he was a carpenter in 1971 and at that time, he was aged about 38 years. One day (no date mentioned), in the night, 9(nine) persons of their village Houlabunia were held and taken away, but he did not see who held them and in the morning, the said nine persons were not found. 3/4 days after the said occurrence, the *Razakars* came at his house at about 4/4:30 pm, but he could not say who came. Then said subsequently his wife told him to flee away saying that the person who had converted him into Muslilm came, his wife further told that she was raped and she was having severe pain. One day (no date mentioned), Krishna Saha, Gonesh Doctor and himself were converted into Muslim sitting in the mosque of the Bazaar and he was named Ali Ashraf and Krishna Saha was named Ali Akbar. Then said Delowar Shikder converted them into Muslim saying that they would survive if they became Muslim otherwise they would not survive. He further stated that after *Muktijuddho,* he reverted back to his own religion. Krishna Saha could not survive 2/3 days after though he was converted into Muslim. He further stated that of the two others, one died and the other had gone to India. The person who had gone to India was Gonesh Saha.

In cross-examination, the PW stated that the Imam of the mosque in which he was converted into Muslim died long before and he could not remember his name, he could not also remember the name of the *Muazzin*. He heard the name of Yasin Maulana of village Char Khali, he had a *Khanka* at Parer Hat and sometimes he (Yasin Maulana) used to sit there. After being

converted as a Muslim, he used to stay at the house, but after the death of Krishna Saha, after 3(three) days he used to flee away out of fear. He never told any body whatever he told in Court except telling those to the Investigation Officer. His wife did not know any *Razakar*, Chairman and member of the Peace Committee. He could not remember whether he told the Investigation Officer that subsequently his wife told him to flee away saying that the person who had converted him into Muslim came. He could not remember whether he told the Investigation Officer that he was converted into Muslim sitting at the mosque at Parer Hat. He could not remember whether he told the Investigation Officer that he was named as Ali Ashraf and Krishna Saha was named as Ali Akbar. Since 2010, he and his *Boudi* (the wife of the elder brother) have been getting allowance.

PW2, Ruhul Amin Nabin, stated in his examination-in-chief that the members of the Peace Committee did not stop committing looting, setting fire, committing rape, they also converted 50/60 Hindus into Muslims by force including Noni Saha, Makhon Saha, Dr. Ganesh Chandra Roy, Dr. Satish Chandra Roy, Sudhir Chandra Roy, Gouranga and also compelled them to go to mosque to offer 5(five) times prayer and also taught them 2/4 suras and gave them *Jaynamaj, Tojbih, Tupi.* Some of them had gone to India in opportune moment and the others who lived at Parer Hat reverted back to their own religion. In cross-examination, he denied the defence suggestion that it was not a fact that before deposing in the Tribunal, he never gave any statement any where to the effect that the accused was against *Muktijuddho.* He admitted that he was a supporter of the party in power. He denied the defence suggestion that it was not a fact that he deposed in false case falsely having financial benefit from the

Government and out of political vengeance and enmity as the accused was a central leader of Jamaat-e-Islam.

PW3 stated in his examination-in-chief that the accused converted the Hindus into Muslims by force. He (the accused) gave them *Jaynamaj, Tojbih, Tupi* and directed them to offer prayer at mosque, the converted Muslims were given Muslim name. After liberation, the converted Muslims reverted back to their own religion. In cross-examination, he admitted that he was involved with Awami League politics. He denied the defence suggestion that it was not a fact that he did not tell the Investigation Officer that the accused converted the Hindus into Muslims and he gave them *Jainamaj, Tupi and Tojbih* and gave them direction to offer five times prayer.

PW4 stated in his examination-in-chief that the father and the brother of Bhanu Saha were converted into Muslims and they were compelled to offer prayer at mosque. In cross-examination, he denied the defence suggestion that it was not a fact that before giving deposition in the instant case, he did not depose any where else. He denied the defence suggestion that it was not a fact that the majority Hindus of Pirojpur Sadar Police Station had gone to India at the beginning of *Muktijuddho* in 1971. He denied the defence suggestion that he being envious of the popularity of the accused and at the advice of the present MP from Awami League, the present central leaders of Awami League and under their supervision deposed falsely against the accused. He denied the defence suggestion that it was not a fact that he deposed falsely that the father and the brother of Bhanu Saha were converted into Muslim from Hindu by force and they were forced to offer prayer at mosque. He denied the defence

suggestion that since before the beginning of *Muktijuddho* in 1971 till the middle of July, the accused was not at Parer Hat or within the area of Pirojpur.

PW28, the Investigation Officer, in his cross-examination stated that PW2 did not tell him the name of Sudhir Chandra Roy and Gouranga amongst the persons who were allegedly converted into Muslims from Hindus. PW3 did not tell him that the so-called Sayeedi Saheb converted the simple hearted Hindus into Muslims by force and gave them *Tupi, Jainamaj and Tajbih* and directed them to offer five times prayer in mosque and that the converted Muslims were compelled to offer five times prayer in mosque and they were given Muslim names and after liberation, the converted Muslims reverted back to their own religion (in the deposition sheet, in Bangla, it has been recorded as "শুধু তাই নয় কথিত সাঈদী সাহেব সরল ধর্মপ্রাণ হিন্দুদের ধরে এনে জোর পূর্বক ধর্মান্তরিত করে মুসলমান বানায়। তাদের টুপি, তজবী, জায়নামাজ দিয়ে মসজিদে পাঁচ ওয়াক্ত নামাজ পড়ার নির্দেশ দেয়। ধর্মান্তরিত লোকেরা বাধ্য হইয়া মসজিদে নামাজ পড়ত এবং তাদের মুসলমানের নাম দেয়। দেশ স্বাধীনের পর ধর্মান্তরিত লোকেরা নিজ নিজ ধর্মে ফিরে যায়। এই সাঈদী সাহেব দেশ স্বাধীনতার পূর্বে পারের হাট বাজারে খেয়াঘাটে সামনে মধ্য গলিতে মাটিতে চট বিছায়ে তেল, লবন, হলুদ, মরিচ বিক্রয় করিত। এই কথাগুলি পি,ডব্লিউ-৩ মোঃ মিজানুর রহমান আমার নিকট প্রদত্ত জবানবন্দীতে বলে নাই।" He further stated that PW3 did not tell him that Delowar Hossain Shikder was directly and indirectly involved in all the evil activities, such as: setting fire, killing, looting, torture on women, converting the Hindus into Muslims and handing over the village women to the Army for rape (in the deposition sheet, in Bangla, it has been recorded as "দেলওয়ার হোসেন শিকদার কথিত সাঈদী শিকদার পিতা ইউসুফ শিকদার, সাং সাউথখালী ৭ই মে পারের হাটে সেনাবাহিনী আসার পর এবং রাজাকার ক্যাম্প গঠনের পর পারের হাট অঞ্চলে যে সমস্ত কু-কর্ম সংঘটিত হয়েছে যেমন অগ্নি সংযোগ, হত্যা, লুণ্ঠন, নারী নির্যাতন, হিন্দুদের জোর করে ধর্মান্তরিত করা, রেপের

উদ্দেশ্যে গ্রাম্য মহিলাদের ধরে সেনাবাহিনীর হাতে হস্তান্তর করা এই সমস্ত কাজের জন্য দেলওয়ার হোসেন শিকদার প্রত্যক্ষ্য ও পরোক্ষভাবে জড়িত ছিলেন'' এই কথাগুলি পি,ডব্লিউ-৩ মোঃ মিজানুর রহমান আমার নিকট প্রদত্ত জবানবন্দীতে বলে নাই ।).

PW28 further stated that PW4 did not tell him that the father and the brother of Bhanu Saha were forcibly converted into Muslims and they were compelled to offer prayer in mosque. PW28 further stated that PW23 did not tell him that subsequently, his wife told him to flee away saying that the persons who had converted him into Muslim came. PW23 did not tell that one day he became Muslim sitting in mosque at the Bazaar. PW23 did not tell him that after conversion he was named as Ali Ashraf and Kirshna Saha was named as Ali Akbar.

From the impugned judgment, it appears that the Tribunal besides relying upon the testimonies of PWs 2, 3, 4, 13 and 23 also relied upon the statements of Ajit Kumar Sheel admitted into evidence under section 19(2) of the Act, 1973 (exhibit-'264') in coming to the finding of guilt against the accused in respect of this charge. From the statements of Ajit Kumar Sheel, it appears that he stated that at the end of June, 1971, the accused and his associates had come to his house one day and gave pressure upon them to convert into Mulsim and they all including his brother were forcibly converted into Muslims taking them to a mosque at Parer Hat Bazaar by reciting *Kalema*. Besides them, Bipod Saha, Narayan Saha, Gouranga Pal, Sunil Pal, Narayan Pal, Anullya Haulader, Hari Roy, Shanti Roy, Juran, Fakir Das and Juna Das along with other 100/150 Hindus were also converted into Muslims under "constraint". Out of fear of those *Razakars,* many Hindus migrated to India and did not come back till then.

The accused compelled him to offer prayer at mosque. After converting him, he was named as Sultan, many people yet know him as Sultan.

Although, in the charge, no specific date or time has been mentioned when PWs 13, 23, Ajit Kumar Sheel and the other Hindus were converted into Muslims by the accused; PW13 in his examination-in-chief stated that he was allegedly converted into Muslim 2(two) months after the Pakistan Army had come to Parer Hat. The specific case of the prosecution was that the Pakistan Army came to Parer Hat on 7 May, 1971 and 2(two) months of the arrival of the Pakistan Army at Parer Hat comes on 7 July, 1971 and on that date as I had already found earlier that the accused was at the house of DW6 (Raushan Ali) at Doha Khola. The further specific case of the prosecution was that the accused as a member of *Razakar* Bahini converted the Hindus of Parer Hat into Muslims, but earlier I found that the accused was neither a *Razakar* nor a member of the Peace Committee, so the question of converting the PW into Muslim by the accused does not arise at all. Further no reliance can be placed upon the testimonies of PW13 in respect of this charge for the reasons as assigned while dealing with charge No.16.

So far as PW23 is concerned he also did not give any specific date or mention any specific month in his examination-in-chief when he was allegedly converted into Muslim by the accused. Ajit Kumar Sheel stated before the Investigation Officer (exhibit-‘264’) that at the end of June, 1971, one day, the accused and his associate had come to his house and gave pressure upon them to convert themselves into Muslim and all including himself were forcibly converted into Muslims by taking them to a mosque at Parer Hat by reciting *Kalema* under “constraint”. So far as the conversions of the other Hindus were

concerned, he did not give any specific time either mentioning date or any month. If the statements of Ajit Kumar Sheel are accepted for argument's sake, then it is the end of June, 1971 when he and the other Hindus were converted into Muslims, but during that period, the accused was at the house of DW6, Raushan Ali, at Doha Khola, so the question of his (the accused) converting the Hindus including PWs 13, 23 and Ajit Kumar Sheel into Muslims does not arise at all.

On behalf of the defence specific suggestion was given to PW23 that it is Peer Yeasin of village Char Khali who had a *Khanka* at Parer Hat and he (Peer Yasin) converted the Hindus of Parer Hat into Muslims at his *Khanka* which the PW denied. But the fact that there was a *Khanka* of the said Peer at Parer Hat had been admitted by the PW. In this regard, the evidence of DW3 Nurul Haque is also very relevant. He (the DW) categorically stated in his examination-in-chief that the Hindus in order to save their lives had gone to *Khanka* of Yeasin Maulana Saheb voluntarily and embraced Islam. By cross-examining, the DW the said assertion made by him in his examination-in-chief could not be impeached. Attention of PW28 was also drawn about *Khanka* of Peer Yasin at Parer Hat, and he stated that during investigation, he did not go to *Khanka* of Peer of Char Khali at Parer Hat. A specific question was put to PW23 in his cross-examination to the effect "প্রশ্নঃ- রাজ্জাক রাজাকার ও রাজাকার দেলোয়ার শিকদার, পিতা রসুল শিকদারকে মুক্তিযুদ্ধের পরে তাদের অত্যাচারের কারণে মুক্তিবাহিনী ও স্থানীয় লোকজন তাদের মেরে ফেলেছে", he replied "পিরোজপুর হতে পারে" and this also falsifies prosecution case that the accused converted the PW into Muslim. Therefore, the prosecution case that

the accused who was a *Razakar* converted the Hindus of different villages of Pirojpur into Muslims by force or coercion, can not be believed.

The statements of the Ajit Kumar Sheel made before the Investigation Officer and admitted under section 19(2) of the Act, 1973 (exhibit-'264') cannot be beleived in respect of this charge as well for the same reason assigned in respect of charge No.16.

The Tribunal in finding the accused guilty of the charge did not at all consider the evidence of DW3 and the contradictions in the testimonies of PWs13 and 23 and the omissions made by PWs2, 3, 4 and 23 while they were examined by the Investigation Officer during investigation under 8(4) of the Act, 1973. The omissions so made by the PWs were material contradictions and those made their testimonies before the Tribunal unworthy and unreliable. In the context, the Tribunal failed to consider the true purport and meaning of the provisions of rule (2) of rule 53 of the Rules of Procedure which reads as follows:

"(2)	The cross-examination shall be strictly limited to the subject matter of the examination-in-chief of a witness but the party shall be at liberty to cross-examine such witness on his credibility and to take contradiction of the evidence given by him."

To understand the implication of sub-rule (2) of rule 53 of the Rules of Procedure in cross-examining a prosecution witness, some other provisions of the Act and the rules of the Rules of Procedure have to be read very carefully. Section 8(4) of the Act, 1973, has clearly provided that any Investigation Officer making an investigation under the Act may examine orally any person who

appears to be acquainted with the facts and circumstances of the case. Sub-section (6) of the section has provided that the Investigation Officer may reduce into writing any statement made to him in the course of examination under this section. And the detailed procedures to investigation have been provided in Chapter-II of the Rules of Procedure. Of the rules, in this Chapter, rule-4, sub-rules (1) (2) (4) of rule 8 and rule 11 are very relevant for our purpose.

A combined reading of section 8(4)(6) of the Act and the rules mentioned above *prima-facie* shows that the Investigation Officer is to record the statements of the witnesses examined during his investigation. The very provision in sub-rule (1) of rule 8 that the Investigation Officer shall maintain a case diary for each case in connection with the investigation mentioning its day to day progress untill completion of such investigation and the provisions in sub-rule (2) that he may use the case diary at the time of deposition before the Tribunal to refresh his memory or to explain any fact therein and in sub-rule (4) thereof that the Tribunal may peruse the case diary for clarification or understanding of any fact transpired at the time of investigation shows the importance of the recording of the statements of the witnesses during investigation by the Investigation Officer. Therefore, the Investigation Officer cannot record it in a haphazard or undisciplined manner. A reading of rule 11 of the Rules of Procedure makes it further clear that it is obligatory upon the Investigation Officer to record the statements of the witnesses during the investigation as it says:

> "After completion of investigation, the Investigation Officer shall submit an Investigation Report together with all the documents, papers and the

evidence collected during investigation of offence(s) as specified in the Act committed by a person(s) before the Chief Prosecutor."

Sub-section (3) of section 9 of the Act has clearly stipulated that the Chief Prosecutor shall, at least three weeks before the commencement of the trial, furnish to the Tribunal a list of witnesses intended to be produced along with the recorded statements of such witnesses or copies thereof and copies of the documents which the prosecution intends to rely upon in support of such charges. And this shows that the recording of the statements of the witnesses during investigation is a must and the Tribunal should have a previous idea about the statements of the witnesses recorded during investigation and the other materials against the accused before the commencement of the trial. And this is all the more necessary to frame formal charge against the accused as provided in rule 18(1) of the Rules of Procedure which reads as follows:

"18(1).	Upon receipt of report of investigation of offences(s), the Chief Prosecutor or any other Prosecutor authorized by him shall prepare a formal charge in the form a petition on the basis of the papers and documents and the evidences collected and submitted by the Investigation Officer and shall submit the same before the Tribunal"

Sub-sction (2) of section 16 of the Act has mandated that a copy of the formal charge and a copy of each of the documents lodged with the formal charge shall be furnished to the accused person at a reasonable time before the trial; and in case of any difficulty in furnishing copies of the documents, reasonable opportunity for inspection shall be given to the accused person in such manner as the Tribunal may decide.

All these provisions of the Act and the rules show that there is no scope on the part of the Investigation Officer to be negligent in recording the statements of a witness during investigation of a case and the accused must have a chance to go through the statements of the witness both before the framing of charge and the trial as well.

Section 10: 1(e) of the Act, 1973 reads as follows:

"10(1)(e)	the witnesses for the prosecution shall be examined, the defence may cross-examine such witnesses and the prosecution may re-examine them."

A mere reading of the section shows that the legislature has not put any limitation on the defence to cross-examine a prosecution witness, so there is no scope of giving a narrow meaning to sub-rule (2) of rule 53 of the Rules of Procedure that the cross-examination cannot be made beyond the subject matter of the examination-in-chief of a prosecution witness and if such a meaning is given, it would be against the spirit of section 10(e) of the Act. Again the very provision in sub-rule (2) of rule 53 that "*but the party shall be at liberty to cross-examine such witness on his credibility and to take contradiction of the evidence given by him*" clearly shows that the defence is entitled to cross-examine a witness as to the omissions made by him to the Investigation Officer in the statements recorded during investigation and the statements made before the Tribunal to shake his credibility. And if that recourse is not allowed, the credibility of a prosecution witness and veracity of his statements made before the Tribunal can never be tested and if that cannot be done 'fair trial' as mandated in sub-section (2A) of section 6 of the Act, 1973 read with sub-rule (4) of rule 43 of the Rules of Procedure shall be a far cry and the cross-

examination will be made farcical leaving the accused at the mercy of the prosecution witness who may say anything and everything at the time of trial. Therefore, I am of the view that the Tribunal was wrong in not considering the interse contradictions of the testimonies of PWs13 and 23 and the contradictions of PWs2, 3, 4 and 23 between their statements made before the Investigation Officer and the statements made by them before the Tribunal and this lead it to a wrong conclusion in arriving at the finding of guilt against the accused of this charge.

As per the testimonies of PWs13 and 23, the accused compelled them and the other Hindus to offer five times prayer in mosque and this must have continued till liberation of the country as the PWs stated that they reverted back to their old religion after liberation, but neither the *Muazzin* nor the Imam of mosque nor any *Musolli* of the mosque where they used to offer prayer was either examined by the Investigation Officer during investigation of the case or cited as a witness in the case. If the testimonies of the PWs were true then the *Muazzin*, the Imam and at least one or two *musollis* would have been cited in the case as a witness, but none was cited in the case. That the *musollis* of the mosque where PWs13, 23 and the other converted Muslims were compelled to offer 5(five) times prayer were neither examined by the Investigation Officer during investigation nor cited as a witness has been admitted by him. This PW stated in his cross-examination that ".....১৯৭১ সালে যুদ্ধকালীন সময়ে পাড়ের হাট মসজিদে নিয়মিত মুসল্লী ছিলেন এমন কাউকে আমি পরীক্ষা করি নাই। মুক্তিযুদ্ধের অব্যবহিত পরে পাড়ের হাট মসজিদের ইমাম ও মুয়াজ্জিন কারা ছিলেন তা আমি খোঁজ নিই নাই।". In the context, it is to be pointed out that PW13 in his cross-examination stated that he forgot the

name of the *Muazzin* and the Imam of the mosque in which he was taken to offer prayer. PW 23 stated in his cross-examination that the Imam of the mosque in which he was converted into Muslim died long before, but he could not remember his name. He could not also remember the name of the *Muazzin*. Conversion of PWs13 and 23 into Muslim was a very serious matter and, in fact, if they were compelled to offer five times prayer in mosque after conversion it was more a serious matter, so if actually they had to offer five times prayer in mosque as stated by them, then they were not supposed to forget the name of the *Muazzin* and the Imam of the mosque. So, their failure to remember the name of the Imam and the *Muazzin* really puts a question mark as to the veracity of their statments that they were converted into Muslims and that they were compelled to offer prayer in mosque. But the Tribunal did not at all consider all these factual aspects of the case.

Another legal loophole in the prosecution case was that the charge was not framed in accordance with the provision of section 16(1)(c) of the Act, 1973 and rule 20(1) of the Rules of Procedure. I consider it better to quote the section in its entirety.

Section 16 (1)(c) reads as under:

"16(1).	Every charge against an accused person shall state-	
	(a)	the name and particulars of the accused person;
	(b)	the crime of which the accused person is charged;
	(c)	such particulars of the alleged crime as are reasonably sufficient to give the accused person notice of the matter with which he is charged.
(2)	A copy of the formal charge and a copy of each of the documents lodged with the formal charge shall be furnished to the accused person at a reasonble time before	

	the trial; and in case of any difficulty in furnishing copies of the documents, reasonable opportunity for inspection shall be given to the accused person in such manner as the Tribunal may decide.”

Rule 20(1) of the Rules of Procedure reads as under:

“20(1). At the time of submitting a formal charge in the form of a petition, it must contain the name and address of the accused person, witness, and the date, time and place of the occurrence and the offence(s) committed under the Act by the accused.”

A combined reading of section 16(1)(c) and rule 20(1) quoted above shows that in the charge, such particulars of the alleged crimes as are reasonably sufficient to give the accused person notice of the matter which he is charged shall be stated and that at the time of submitting formal charge, the date, time and place of the occurrence must contain. Now if we look at the charge, it will be clear that neither the date nor the time when the Hindus were converted and the place where they were converted into Muslims were mentioned. In the charge, full particulars of the alleged convertees, such as: father’s name and the village, was also not mentioned. It was stated in a vague way that the Hindus of village Parer Hat and other village under Pirojpur Sadar Police Station were converted (of course name of 20 Hindus were mentioned), even the place of the mosque where the convertees were compelled to offer the prayer was not mentioned. Because of the non-compliance with the provisions of law in framing the charge and the vagueness in the charge as pointed out above, the accused was surely prejudiced in taking his defence and the non-compliance with the provisions of section 16(1)(c) of the Act, 1973 and rule 20(1) of the Rules of Procedure in framing the charge was contrary to the concept of fair trial. But the Tribunal was oblivious of the above mentioned provisions of law.

Lastly the admitted case of the prosecution was that the Pakistan Army came to Parer Hat on 7 May, 1971 and the *Razakars*' camp was established after the said date and as per the testimonies of DWs1, 5 and 10 Pirojpur was liberated on 8 December, 1971, so it was an absurd story that even before formation of the *Razakar Bahini,* the accused who was allegedly a *Razakar* started converting the Hindus into Muslims from 26.03.1971 and he continued with such conversion even after liberation of Pirojpur, as in the charge, the period of conversion of the Hindus into Muslims was clearly mentioned from 26.03.1971 to 16.12.1971, and such factual absurdity also falsified the charge brought against the accused. But the Tribunal failed to consider the above *prima facie* absurdity in the prosecution case in finding the accused guilty of the charge.

For the reasons stated hereinbefore as well as for the finding given earlier that the accused proved his defence case. I am constrained to hold that the prosecution failed to prove the charge against the accused beyond reasonable doubt and as such, he is entitled to be acquitted of the charge. Accordingly, the accused is found not guilty of the charge and he is acquitted therefrom.

Conclusion

In the instant case, both parties led evidence, oral and documentary, in support of their respective case. At the risk of repetition, it is stated that the prosecution case was that the accused was a *Razakar* and in that capacity, he committed the crimes against humanity in 1971 as specified in charge Nos.6, 7, 8, 10, 11, 14, 16 and 19, whereas, the accused took the plea of *alibi* stating categorically that he was not at all present at the crime sites at the relevant time

when the alleged crimes were committed and he was at the house of Raushan Ali (DW6) at Doha Khola and took the further defence that he was not a *Razakar* and the crimes alleged in the respective charge were committed by the local *Razakars* and the members of the Peace Committee (the names of the *Razakars* and the members of the Peace Committee have been specifically mentioned in the testimonies of the DWs) along with the Pakistan Army (the PWs also mentioned the names of the *Razakars* and the members of the Peace Committee other than the accused who committed the crimes against humanity in 1971 allegedly along with the accused). In view of the prosecution case and the defence plea, the burden of proving the crucial fact that the accused was a *Razakar* or a member of the Peace Committee in 1971 and in that capacity, he committed the crimes against humanity as alleged in the respective charge, was upon the prosecution, but the prosecution failed to prove the said crucial fact beyond reasonable doubt. Moreso, the evidence adduced on behalf of the defence, particularly, the documentary evidence vide exhibits-'E', 'Q', 'R', 'V', 'X', 'AJ' and 'AK' have created a clear reasonable doubt as to the very case of the prosecution that the accused was a *Razakar* in 1971 or a member of the Peace Committee and the benefit of that doubt must be given to the accused.

For the discussions made hereinbefore, I conclude that the prosecution failed to prove the charges brought against the accused in charge Nos.6, 7, 8, 10, 11, 14, 16 and 19 beyond reasonable doubt and as such, he is entitled to be acquitted of all those charges. Accordingly, the accused is found not guilty of those charges and he is acquitted therefrom.

In the result, Criminal Appeal No.39 of 2013 is allowed and criminal Appeal No.40 of 2013 is dismissed.

J.

Hasan Foez Siddique, J: I have gone through the judgments prepared by my learned brothers Surendra Kumar Sinha and Md. Abdul Wahhab Miah, JJ. I agree with the judgment prepared by my learned brother Surendra Kumar Sinha, J.

J.

A.H.M. Shamsuddin Choudhury, J.:

This appeal came into being when the appellant before us (henceforth variedly described as “the appellant” and “the accused” as befitting to the context) exercised his right to do so under the provisions contained in Section 21(1) of the International Crimes (Tribunal) Act, 1973. (Henceforth cited as the Act).

The appellant was tried by Tribunal No.1, a progeny of the Act, for a total of 20 charges, but was eventually convicted of 8 charges namely charges No. 6, 7, 8, 10, 11, 14, 16 and 19.

He was sentenced to death for the offences as alleged in charges No. 8 and 10 under section 20(2) of the Act.

No sentencing order was passed in regard to the offences enumerated in charges No. 6, 7, 11, 14, 16 and 19.

Prosecution also preferred an appeal against the non awarding of sentence in respect to charges No. 6, 7, 11, 14, 16 and 19.

Mr. S.M. Shahjahan, a learned advocate of this Division represented the appellant, while Mr. Mahbuby Alam, the learned Attorney General, assisted by Mr. Murad Reza (Additional Attorney General), Mr. Momtazuddin Fakir (Additional Attorney General), Mr. Syed Haider Ali (prosecutor at the ICT), Mr. Biswajit Debnath (Deputy Attorney General), Mr. Bashir Ahmed (Assistant Attorney General) appeared for the prosecution.

While I am in total agreement with my learned brother, Surendra Kumar Sinha J.'s findings on laws and facts on most aspects, regrettably I am unable to lend my support to some of his findings, and most importantly, on the sentence.

In my view, the allegation on the killing of Ibrahim Kutti at the order of the appellant stood proved beyond reasonable doubt and hence death sentence inflicted under charge 8, (Kutti killing) calls for no interference.

I am also firmly swang to the conclusion that death sentences as passed by the Tribunal on charges No. 8 and 10 are quite apposite and congruous and are wholly consistent with high preponderant authorities and that there exists nothing to justify commutation of the extreme penalty, the Tribunal passed. As such I am writing my own judgment.

To reckon in its true perspective, the reason for commencing trials of those accused of Crimes against Humanity, it is incumbent to know the extent, curse and the ramification of 71 Genocide. New revelation of old facts will more virulently deflect obscurantists, and expose facts hitherto kept in concealment or hibernation.

Some New Revelation on 71 Genocide

The World witnessed one of history's ugliest genocide in 1971, which took place in Bangladesh. By a Pakistan General's own account it dwarfed Gengis Khan and General Dyer's savagery and according to a modern American research scholar, the ferocity of 71 genocide was worse than that in former Yugoslavia.

It goes without saying that Pakistani soldiers being alien to our soil, they would, but without the direct participation of their native quislings, have been totally undone and lost in wilderness.

The extent, and magnitute of the atrocities committed by Pakistani soldiers' and their local cronies were so horrendous and frenzied that even the Dhaka based US diplomats could not resist their emotion and conscience and went a bit out of the way to send a telegramme to their Government risking, and, indeed sacrificing their career. This telegramme signed by 20 of them led by the head of the Mission Mr. Archer Blood, (now declassified in the US) spoke of the horror and the beastiality that was resorted to by the Paki soldiers and their beastly faced native cohorts.

In the earlier telegramme (March 27, 1971), Blood wrote about Americans' observations on what they termed as "Selective genocide";

> "1. Here in Decca we are mute and horrified witnesses to a reign of terror by the Pak[istani] Military. Evidence continues to mount that the MLA authorities have list of AWAMI League supporters whom they are systematically eliminating by seeking them out in their homes and shooting them down.
>
> 2. Among those marked for extinction in addition to the A.L. hierarchy are student leaders and university faculty. In this second

> category, we have reports that Fazlur Rahman head of the philosophy department and a Hindu, M. Abedin, head of the department of history, have been killed. Razzak of the political science department is rumored dead. Also on the list are the bulk of MNA's elect and number of MPA's.
>
> 3. Moreover, with the support of the Pak[istani] Military, non-Bengali Muslims are systematically attacking poor people's quarters and murdering Bengalis and Hindus".
>
> (U.S. Consulate (Dacca) Cable, Selective genocide, March 27, 1971)

The Blood's final telegramme (April 6, 1971), was seen as the most strongly worded expression of dissent in the history of U.S. Foreign Service. The telegramme reads:

> "Our government has failed to denounce the suppression of democracy. Our government has failed to denounce atrocities. Our government has failed to take forceful measures to protect its citizens while at the same time bending over backwards to placate the West Pakistan dominated government and to lessen any deservedly negative international public relations impact against them. Our government has evidenced what many will consider moral bankruptcy, but we have chosen not to intervene, even morally, on the grounds that the Awami conflict, in which unfortunately the overworked term genocide is applicable, is purely an internal matter of a sovereign state. Private Americans have expressed disgust. We as professional civil servants, express our

> dissent with current policy and fervently hope that our true and lasting interests here can be defined and our policies redirected."

In a book published in 2013 following the de-classification and the disclosure of the US diplomats' telegramme, Professor Garry J. Bass of Politics and International Affairs at Princeton University made a conspicuous with liud out-burst against Nixon-Kissinger's antithetical policy on Bangladesh War of Liberation, terming the brutality perpetrated by Paki soldiers as "Genocide." Stating that hundreds of thousands of Bengalis were slaughtered, innumerable women were raped and several millions were forced to make huge exodus to India, this research scholar felt that Nixon-Kissinger administration could have reduced the casualties. The book, published by "Amazon" titled "Blood Telegramme: Nixon-Kissinger and a forgotten Genocide" attracted so much of popular and intellectual attention that while the New York Times described it as "Notable Book of the year, the Economist, Washington Post and Financial Times termed it as the "Best Book of the Year". Besides, it was also credited to be in the envious Pulitzer Prize first list and has been crowned with the Council on Foreign Relations' Arthur Ross Book Award, the Lionel Gelber Prize, Asia Society's Bernard Schwartz Book award, the Cundi Prize and the Society for Historians of American Foreign Relations Robert H. Ferrel Book Prize.

Gary J. Bass' elaboration unveils how the Pakistani army launched a crackdown on Bangladesh, killing hundreds of thounands of people and sending many refugees to India terming it as one of the worst humanitarian crises of the twentieth century.

Drawing on previously unheard White House tapes, recently declassified documents, and extensive interviews with White House staffers and Indian

military leaders, the book tells this thrilling story for the first time, unveiling Nixon and Kissinger's hidden role in a tragedy that was far bloodier than Bosnia.

On the book, Neil Sheehan, the Pulitzer Prize-winning author of " A Bright Shining Lie: John Paul Vann and America in Vietnam" and " a Fiery Peace in a cold War: Bernard Schriever and the Ultimate Weapon, observes;

"Now Gary J. Bass, a journalist and Professor of Politics and International affairs at Princeton, has come forth with "The Blood Telegram," a profoundly disturbing account of the hitherto hidden role of Richard Nixon and Henry Kissinger in the slaughter of hundreds of thousands of inhabitants of East Bengal (subsequently the nation of Bangladesh) and the making of 10 million refugees during Pakistan's civil war in 1971.

Serious trouble began in 1970 when the president of Pakistan, Gen. Agha Muhammad Yahya Khan, permitted a national election. The winner was a charismatic Bengali leader named Sheikh Mujib-ur-Rahman and his Awami League. Mujib enraged the army leadership, whose troops were drawn almost entirely from the Punjab and other western provinces and had no affection for the Bengalis, by publicly advocating autonomy for both wings under a federal system, while privately promoting secession and independence for East Bengal.

On the night of March 25, 1971, Yahya Khan launched a ferocious crackdown. The orgy of murder, rape and mayhem went on for months, focusing in genocidal fashion.

Nixon and Kissinger, his national security adviser, have sought to draw a curtain of silence over their role by omitting or glossing over the atrocities in their memoirs. Bass has defeated the attempted coverup through laborious

culling of relevant sections of the Nixon White House tapes, declassified State Department documents and interviews with former officials, American and Indian, who were involved.

In “The Blood Telegramme: Nixon, Kissinger, and a Forgotten Genocide”, Gary J. Bass has revived the terrible and little-known story of the birth of Bangladesh in 1971, and of the sordid and disgraceful White House diplomacy that attended it. This is a dark and amazing tale, an essential reminder of the devastation wrought by the hardhearted policy and outright bigotry that typified much of the diplomacy of the cold war. It is not a tale without heroes, though; a number of American diplomats – most especially a man named Archer Blood – risked and even sacrificed their careers by refusing to knuckle under to the White House and telling truth about what was happening on the ground.

Pakistan carried on for 23 years like that, with the more numerous Bengalis in the east feeling increasingly neglected by their Punjabi brethren in the west, where the capital was. Things came to a head in December 1970, when Sheikh Mujib- ur- Rahman, a pipe –smoking Bengali leader, and his party, the Awami League, won the elections on the promise of autonomy for East Pakistan. Rahman never got a chance to form a government. Gen. Agha Muhammad Yahya Khan, egged on by Zulfiqar Ali Bhutto, the second – place finisher, arrested Rahman and ordered the army to crush the Bengalis. Dominated by Punjabis, the army moved brutally, shooting and detaining Bengali leaders, intellectuals and anyone who opposed them.

At the time of the crackdown in East Pakistan, President Nixon and his national security adviser, Henry Kissinger, were trying to establish relations with the People’s Republic of China, which was only then emerging from the

chaos of the Cultural Revolution. Pakistan and, in particular, Yahya, its military leader, became Nixon's secret liaison with the Chinese leader Zhou Enlai. Yahya helped lay the groundwork for the visits to China by Kissinger and then Nixon.

Bass lays out his indictment of the White House: Nixon and Kissinger spurned the cables, written by their own diplomats in Dacca (the capital of East Pakistan), that said West Pakistan was guilty of carrying out widespread massacres. Archer Blood, the counsel general in Dacca, sent an angry cable that detailed the atrocities and used the word genocide.

By failing to restrain West Pakistan, they allowed a blood bath to unfold, and then a regional war, which began when Gandhi finally decided that the only way to stop the tide of refugees was to stop the killing across the border. That, in turn, prompted West Pakistan to attack India.

At this point, the recklessness of Nixon and Kissinger only got worse. They dispatched ships from the Seventh Fleet into the Bay of Bengal, and even encouraged China to move troops to the Indian border, possibly for an attack –a maneuver that could have provoked the Soviet Union."

Dexter Filkins, a staff writer for The New Yorker, and formerly a correspondent in South Asia for the New York Times and The Los Angeles Times, wrote on the book;

"Relations between the two halves were always poor. The west dominated: it had the capital. Islamabad, and greater political, economic and military clout. Its more warlike Pakhtuns and prosperous Punjabis, among others, looked down on Bengali easterners as passive and backward.

The split into Pakistan and Bangladesh was perhaps inevitable. It began in late 1970, after Pakistan's first national elections. To the shock of West Pakistanis, an easterner Sheikh Mujibur Rahman, won a sweeping victory, and was poised to lead the country. His Awami League wanted greater rights for Bengalis. But the army chiefs and politicians in Islamabad would not countenance his taking office. They arrested him and the army began repressing eastern protesters.

Bengalis flocked to join the rebel forces who were fighting for independence. West Pakistani soldiers stationed in the east, plus a few local supporters, began targeting students writers, politicians;

In "The Blood Telegramme", Gary Bass, a Princeton academic (who once wrote for The Economist), sets out to assess America's handling of the war. He argues that the killings amounted to a genocide.

Nixon and Mr. Kissinger stood with Pakistan, even as they knew of the extent of the slaughter. Their own diplomats told them about it. The centrepiece of Mr. Bass's gripping and well – researched book is the story of how America's most senior diplomat in East Pakistan, Archer Blood, the consul-general in Dhaka, sent regular, detailed and accurate reports of the bloodshed. Early on he stated that a "selective genocide" was under way.

It was an extreme and idealistic step for a diplomat, whose career was soon cut short. Though the telegram did not change American policy, it rates as an historic document. Such open dissent is extremely rare.

Could things have been different if America, having listened to Blood, had pressed Pakistan not to slaughter its own people in 1971? Mr Bass does not speculate directly. Yet if a peaceful secession of Bangladesh had been possible,

many lives would have been saved and a source of deep division in a troubled region would have been removed.

The U.S. not only did not intervene; in fact, it supported the Pakistani regime in what Bass identifies as "one of the worst moments of moral blindness in U.S. foreign policy". This was not, argues Bass, mere passivity. Rather, it was a series of deliberate choices made by Nixon and Kissinger: to ignore the hundreds of thousands killed; to downplay the emerging humanitarian crisis. Bass presents his evidence with devastating clarity and does not pull his punches. Reexamining a largely overlooked genocide (and dovetailing nicely with Christopher Hitchens' The trial of Henry Kissinger, 2001), this book also serves as a reminder of the complicated costs paid for Nixon's lauded trip to China".

Professor Ben Kiernan

Professor Ben Kiernan, Director of the Genocide Studies Programme at the Yale University, who, in his book "Blood and Soil, A World History of Genocide and Extermination from Sparta to Darfur" published by Yale University Press in 2007 has furnished valued research oriented information on genocide committed in different countries at different times. On Bangladesh he states that Yahya Khan reportedly asked his military top brass to annihilate 3 million Bengalis and that General Tikka Khan, on assumption of the post of the Governor General, reportedly transmitted threat to kill 4 million people.

According to Prof. Kiernan, massive armed onslaught was mounted on 25th March 1971 against Dhaka population in which thousands of West Pakistani reinforced soldiers took part, killing intellectuals, students, Hindus.

He also referred to diplomat Archer Blood's telegramme to the US administration, under the caption "selective genocide".

Prof. Kiernan quoted several sources which insisted that army's campaign resulted in huge civilian casualties and compelled some 30 million people to take refuse in the countryside and 10 million East Bengalis to make exodus to India and that General Tikka Khan, (who was the Pakistani Commander at the time of the so-called "operation search light on 25th March, 1971), when asked about the scale of the massacre, reportedly replied that he (Tikka) was not concerned with the people but with the land. Prof. Kiernan echoed that the killing subsisted for the most part of 1971, making the cities empty of young males and that the Soldiers raped Bengali girls and women and that the Pakistani authorities indulged upon the most brutal and premeditated genocide while soldiers burnt villages and slaughtered the inhibitants and then targeted the urban areas and that they went ahead to kill the intellectuals only a few days before their surrender. He also states that most of the victims were rural Bengali Muslims and highlights the fact that Islamic fundamentalists organisations like Jamat –e- Islami played a part in the killing.

Professor Rownak Jahan

Prof. Jahan of the Political Science Department at Dhaka University states in her book that the army's campaign against the cities and towns not only led to massive civilian casualties but also drove possibly 30 million people out of the cities while another 10 million people fled to India.

Contemporaneous Publication on 71 Genocide

According to Mr. Simon Dring, an internationally acclaimed World Media on 71 Genocide journalist of UK's prestigious Daily Telegraph, who

superstitiously transmitted report from Dhaka, stated that several thousand Bengalis were massacred during first twenty four hours of ruthless and barbarous operation (Mr. Shariar Kabir, a well reserached journalist with wide studies on our war of liberation, put the figure at a much higher ladder), undertaken by Pakistan army

Part of his report is reproduced below:

GENOCIDE IN BANGLADESH SOME EYE-WITNESS ACCOUNTS.

But the first target as the tanks rolled into Dacca on the night of Thursday, March 25, seems to have been the students.

An estimated three battalions of troops were used in the attack on Dacca. By 11, firing had broken out and the people who had started to erect makeshift barricades-overturned cars, tree stumps, furniture, concrete piping-became early casualties.

Sheikh Mujibur was warned by telephone that something was happening, but he refused to leave his house. “If I go into hiding they will burn the whole of Dacca to find me,” he told an aide who escaped arrest.

Led by American supplied M-24 World War II tanks, one column of troops sped to Dacca University shortly after midnight. Troops took over the British Council Library and used it as a fire base from which to shell early dormitory areas.

Caught completely by surprise, some 200 students were killed in Iqbal Hall, headquarters of the militantly anti-government student’s union, I was told. Two days later, bodies were still smoldering in burnt-out rooms, others were

scattered outside, more floated in a nearby lake, an art student lay sprawled across his easel.

The military removed many of the bodies, but the 30 bodies till there could never have accounted for all the blood in the corridors of Iqbal Hall.

At another hall, reportedly, soldiers buried the dead in a hastily dug mass grave which was then bull-dozed over by tanks. People living near the university were caught in the fire too, and 200 yards of shanty houses running alongside a railway line were destroyed.

Army patrols also razed nearby market area. Two days later, when it was possible to get out and see all this, some of the market's stall-owners were still lying as thought asleep, their blandest pulled up over their shoulders. In the same district, the Dacca Medical College received direct bazooka fire and a mosque was badly damaged.

As the university came under attack other columns of troops moved in on the Rajarbag headquarters of the East Pakistan Police, on the other side of the city. Tanks opened fire first, witness said: then the troops moved in and leveled the men's sleeping quarters, firing incendiary rounds into the buildings. People living opposite did not know how many died there, but out of the 1,100 police based there not many are believed to have escaped.

By 2 O'clock Friday

Fires were burring all over the city, troops and occupied the university and surrounding areas. There was still heavy shelling in some areas, but the fighting was beginning to slacken noticeably.

Shortly before dawn most firing had stopped, and as the sun came up an eerie silence settled over the city, deserted and completely dead except for noise

of the crows and the occasional convoy of troops or two or three tanks rumbling by mopping up.

At noon, again without warning, columns of troops poured into the old section of the city where more than I million people lived in a sprawling maze of narrow winding streets.

For the next 11 hours, they devastated large areas of the “old town”. English Road. French Road, Naya Bazar, City Bazar were burned to the ground.

“They suddenly appeared at the end of the street”, said one old man living in Naya Bazar area. “Then they drove down it, firing into all the houses.”

The lead unit was followed by soldiers carrying cans of gasoline. Those who tried to escape were shot. Those who stayed were burnt alive. About 700 men, women and children died there that day between noon and 2p.m. I was told.

The pattern was repeated in at least three other areas of up to a half square mile or more. Police stations in the old town were also attacked. Constables killed

“I am looking for my constables”, a police inspector said on Saturday morning as he wandered through the ruins of one of the bazars. “I have 240 in my district, and so far I have only found 30 of them-all dead.

In the Hindu area of the old town, the soldiers reportedly made the people come out of their houses and shot them in-groups. This area too was eventually razed.

The troops stayed on in force in the old city until about 11 p.m. on the night of Friday, March 26, driving around with local Bengali informers. The soldiers would fire a flare and the informer would point out the houses of

Awami League supporters. The house would then be destroyed-either with direct fire from tanks or recoilless rifles or with a can of gasoline, witness said.

Meanwhile troops of the East Bengal Regiment in the suburbs started moving out towards the industrial areas about 10 miles from the Sheikh's centers of support. Firing continued in these areas until early Sunday morning.

One of the last targets was the daily Bengali language paper "Ittefaq". More than 400 people reportedly had taken shelter in its offices when the fighting started. At 4 o'clock Friday afternoon, four tanks appeared in the road outside. By 4-30 the building was an inferno, witnesses said. By Saturday morning only the charred remains of a lot of corpses huddled in back rooms were left.

Magically, the city returned to life, and panic set in. by 10 a.m. with palls of black smoke still hanging over large areas of the old town and out in the distance toward the industrial areas, the streets were packed with people leaving town. By car and in rickshaws, but mostly on foot, carrying their possessions, with them, the people of Dacca were fleeing. By noon the refugees numbered in the tens of thousands.

"Please give me lift, I am old man"- "In the name of Allah, help me"- "Take my children with you". Silent and unsmiling they passed and saw what the army has done. Within seconds, 2,000 people were running.

Nearly every other car was either taking people out into the countryside or flying a red cross and conveying dead and wounded to the hospitals.

At 4 O'clock Saturday afternoon, the streets emptied again. The troops reappeared and silence fell once more over Dacca. But firing broke out again

almost immediately. “Anybody out after four will be shot”, the radio had announced earlier in the day.

The night watchman at the Dacca Club, a bar left over from the colonial days, was shot when he went to shut the gate of the club. A group of Hindu Pakistanis living around a temple in the middle of the race course were all killed apparently because they were out in the open.

Beyond these roadblocks was more or less no-man’s land, where the clearing operations were still going on. What is happening out there now is anybody’s guess, except the army’s.

Many people took to the river to escape the crowds on the roads, but they ran the risk of being stranded waiting for a boat when curfew fell. Where one such group was sitting on Sunday afternoon there were only bloodstains the next morning.

“Things are much better now”, said another officer. “nobody can speak out or come out. If they do we will kill them-they have spoken enough-they are traitors, and we are not. We are fighting in the name of God and a united Pakistan.” (Despatch by Simon Dring of DailY Telegraph, London, in Washington post, March 30th 1971).

Peter Hazelhurst

Peter Hazelhurst of The Times of London reported that Mr. Bhutto thanked God as “the tanks and guns rolled into Bengal” (The Times 29th March 1971).

Anthony Mascarenhas

Anthony Mascarenhas, the West Pakistan Journalist who was officially attached to the Pakistan Army’s 9th Division and who later fled to Europe and published a detailed account of the army atrocities, stataes that he was later told

by three separate army officers that the army had lists of people to be liquidated. (Reference Bangladesher Mukti Judho, Prashonggik Dalilpotra 1905-1971) First Part. Page-674).

Abu Sayeed Chowdhury, J.

On hearing about the atrocities in Dhaka Mr. Justice Abu Sayeed Chowdury who was in Europe on an official tour, traveled to London from Geneva on 26th March 1971. There he met with Mr. Ian Sutherland at the Foreign Ministry, who was then the head of South East Asia Wing at the British Foreign and Commonwealth Office. Justice Abu Sayeed Chowdhury inquired about the conflagration in Dhaka. During that time, Mr. Sutherland received a telex message from the British High Commission in Dhaka. In his Book, Probashey Muktijuddher Dingali (The Days of Liberation War in Exile), Justice Abu Syed Chowdhury, wrote in Bengali, the English version of which would read like this; "After reading the telex (Mr. Sutherland) uttered that on the night of 25th March British Deputy High Commission in Dhaka passed through a horrific time. The following day, when he tried to enter the city area of Dhaka from Gulshun, he saw scores of dead bodies all over the Streets. One of his First Secretaries could manage to go to the Dhaka University for a while when curfew was relaxed in the evening. He found blood was spilling through the stairs at Iqbal Hall. He came to know that the dead bodies of many students were thrown into a mass grave dug in front of Jaganath Hall. Those students who were compelled to collect those dead bodies were shot to death and thrown into the same grave" (Ref: Probashey Muktijuddher Dingali(The days of liberation war in exile), by Abu sayeed Chowdhury).

New Statesman

The New Statesman on the 17th April 1971 wrote, " if blood is the price of people's right to independance, Bangladesh has over paid."

Mr. Schanberg was of 35 foreign newsmen expelled Saturday morning from East Pakistan. He cabled this dispatch from Bombay, India, stating that the Pakistan Army is using artillery and heavy machine guns against unarmed East Pakistani civilians to crush the movement for autonomy in this province of 75 million people.

The attack began late thusday night without warning. West Pakistani soldiers, who predominate in the army, moved into the streets of Dacca, the provincial capital, to besiege the strongholds of the independence movement, such as the university.

There was no way of knowing how many civilians had been killed or wounded. Neither was any information available on what was happening in the rest of the province, although there has been reports before the Dacca attack of clashes between civilians and West Pakistani soldiers in the interior.

From the hotel, which is in North Dacca, huge fires could be seen in various parts of the city, including the university area and the barracks of the East Pakistan Rifles, a para-military force made up of Bengalis, the predominant people of East Pakistan.

Some fires were still burning and sporadic shooting was continuing early this morning when the 35 foreign newsmen were expelled from Dacca.

"My God, my God," said a Pakistani student watching from a hotel window, trying to keep back tears, "they're killing them. They're slaughtering them."

On the ride to the airport in a guarded convoy of military trucks, the news-men saw troops setting fire to the thatched-roof houses of poor Bengalis who live along the road and who are some of the staunchest supporters of the self-rule movement.

When the military action began on Thursday night, soldiers, shouting victory slogans, set ablaze areas in many parts of Dacca after first shooting into the buildings with automatic rifles, machine guns and recoilless rifles.

When the foreign newsmen, all of whom were staying at the Intercontinental Hotel tried to go outside to find out what was happening, they were forced back in by a heavily reinforced army guard and told they would be shot if they tried to step out of the building.

The fire began to increase in the vicinity of the hotel and at 1 A.M. it seemed to become very heavy all over the city.

At 1-25 a.m. the phones at the hotel went dead, shut down by order of the military guard outside. The lights on the telegraph office tower went out at about the same time. Heavy automatic-weapons fire could be heard in the university area and other districts.

Sydney H. Schanberg In New York Times, March 28, 1971

New Delhi, March 26 (Reuters):- Thousands of villagers have joined International Herald Tribune, March 27-28, 1971

Noon: From upstairs windows you can see patrols of jeeps and tanks moving through the deserted streets. They appear to be firing at random. As they go there are two more big smoke columns, one of them looking as though it is coming from the part of downtown where the Awami League office is. It is frustrating to see all this and not be able to communicate it to the out side world.

Shortwave radio news broadcasts show that no word of the army's move has yet reached the outside world. The afternoon passes quietly with occasional sounds of gunfire. A new column of smoke appears on the southern edge of the city. You can see flames blowing upward as the sun goes down.

I ask how long he thinks the situation will continue and he says that he just follows orders. Then, he adds suddenly, that "everything will work out all right here". He turns to me and grins, "We will fix these people," he says.

1 p.m.: I get my customs check and the inspector tells me he is under "special order" when I tell him that we were already checked in Dacca. He confiscates my notebooks, carbon copies of cables I have filed from Dacca, newspaper clippings and any scraps of paper he can find in my suitcase, including letters from my wife. He then seizes 14 rolls of unexposed film I have in my camera bag and puts everything in brown manila envelopes.

I catch my flight to Bombay and consider myself lucky that although I have lost my notebooks, I still have a story which I wrote before leaving Dacca in my hip pocket. One other correspondent on the plane was subjected to a personal search and lost the copy he had hidden.

U.P.I. Report, Hongkong, Published In The Sydney Morning herald, March 29, 1971.

West Pakistan troops tightened the Army grip on the Eastern province yesterday after a weekend in which many hundreds of civilians were reported to have been killed.

Out staff correspondent in Delhi cabled that East Pakistan was virtully sealed off from the outside world, but the indications were that killing was on a

mass scale. The Dacca curfew was lifted yesterday, but last night more troops were flown to Chittagong to quell disturbances.

The daily Telegraph, March 29, 1971.

Killing on a mass scale is underway in East Pakistan, caught in the grip of a vicious civil war, according to all available indications from the province, which is now virtually sealed off from the outside world.

Diplomatic sources which still have tenuous radio links with their missions in Dacca, as well as foreign observers who have left the province since fighting began on Friday, say the 70,000 West Pakistan soldiers are showing no mercy in their bid to suppress the Bangladesh independence movement.

Estimates of the number of Bengalis who have been killed range from 10,000 to 100,000. Whatever the true figure there can be no doubt not only of the Army's determination to impose its will on the province but of the relish and ruthlessness with which it will do so.

Heavy civilian causalities can be expected from the Army takeover of East Pakistan. The shelling of the capital, Dacca, has been cold blooded and indiscriminate although there was almost no sign of armed resistance.

Heavy artillery shook my hotel as the Army moved into the city and I could see buildings burning in the distance.

The sound of machine-gun fire was coming from the direction of the university where the students include extremist elements of Sheikh Mujibur Rahman's Awami Leage.

There were three hours of unprovoked shooting in Dacca after Government troops had taken control at midnight. They attacked key areas of the city and by morning several buildings were ablaze.

Streets were deserted on Friday but there were scattered outbursts of small arms fire and shelling during the day as tanks and trucks loaded with troops in camouflaged combat dress moved through the capital.

Judging from the clashes in Dacca the number of dead and wounded among civilian populations of important towns will be very high, with light Army losses.

Simon Dring, Again on, March 29, 1971.

Last Friday they opened fire with machine guns, recoilless rifles and tanks against the largely unarmed-or heavily outgunned—citizenry of East Pakistan. Evidently thousands were killed; the number can only be estimated because the government at once imposed censorship and expelled all foreign correspondents, confiscating their notes and film.

American arms are again being used by a recipient government against what it claims to be its own citizens. That is deplorable. But the real tragedy is Pakistan's own.

International Herald Tribune, March 30, 1971.

Dacca (AP):- After two days and nights of shelling in which perhaps 7,000 Pakistanis died in Dacca alone, the Pakistan Army appears to have crushed Sheikh Mujibur Rahman's 25 days of defiance in East Pakistan.

The army, which attacked without warning on Thursday night with infantry, artillery and American-supplied M-24 tanks, destroyed large parts of the city.

Its attack was aimed at the university, the populous old city, where Sheikh Mujib, the Awami League leader, had his strongest following, and the industrial areas on the outskirts of the city of 1.5 million people.

At the university, some student's bodies still lay in their dormitory beds. The dormitories had taken direct hits of tank shells.

As mass grave had been hastily covered at the Jaggernath College [Jaganntath Hall] , where 200 students were reported killed, In Iqbal Hall about 20 bodies were still lying on the ground and in the dormitories.

Troops reportedly fired bazookas into the medical college hospital but the causally toll was not known.

A few independent reporters escaped this net and their stories – just emerging – reek with horror: crows indiscriminately machine – gunned, student hostels razed by shells, shanty towns burned and bombed, civilians shot dead in their beds.

Editorial, The Guardian, London, March 31, 1971.

Acting " in the name of God and a united Pakistan", forces of the West Pakistan-dominated military government of President Yahya Khan have dishonoured by their ruthless crackdown on the Bengali majority seeking a large measure of autonomy for their homeland in the country's eastern region.

Editorial, New York Times, March 31, 1971.

New Delhi, April 1 (Reuters): Indian press and radio reports said tonight that the Pakistan Army, Navy and Air Force had launched an all-out offensive to quell Sheikh Mujibur Rahman's resistance in East Pakistan.

All India Radio and the Press Trust of India News agency, quoting reports reaching Calcutta said the drive followed the arrival of troops reinforcements from West Pakistan.

The radio said that Pakistan Air Force had bombed Dacca and several other towns and that heavy fighting was gong on for control of the capital.

International Herald Tribune, April 2, 1971.

"Despite censorship and official lies, reports are coming out of Dacca that must shock even readers accustomed to all that's implied in the sinister phrase: 'Order was restored'. President Yahya Khan's tanks have been ordered into destructive action, no holds barred, against the people of East Pakistan: and, in grim logic, the enemy must be the whole people because they had declared themselves with rare unanimity for demands of self-rule.

"For the moment, one has to think of the human tragedy. With pitiful wooden shacks burned to the ground – soldiers were seen 'armed' with petrol cans – those who had little have lost their all.

Mervyn Jones In New Statement, London, April 2, 1971.

The more the news from East Pakistan accumulates, the more harrowing it becomes. Senseless murder hysterical cruelty and what must be a creeping fear run like a current throughout this packed mass of human beings. All this distant observer may assume despite the protests of the Pakistan Government at some of the stories that have been given circulation.

By now the picture is a little more clear and a great deal more gruesome. Enough first-hand reports from Dacca itself and from some of the major towns have come in to confirm that what is happening is far worse than what might have been expected in a war of East Pakistan resisting the forces of the Central Government in their demand for independence. The accounts piling up make conditions in East Bengal sound only too much like the massacres that broke out between Muslims and Hindus in the months leading up to the partition of India. Sparks from one fire set another going. Murder here demands vengeance there. And when the forces of order, military or police, are themselves the objects of

one side or the other's hatred there are no boundaries to the hysteria of fear and murder. Yet in some ways the killing now in East Pakistan is worse.

Editorial, The Times, London, April 3, 1971

Killing on a mass scale are reported to be continuing in East Pakistan, indicating that the Army has shown no let-up in the terror campaign begun after President Yahya Khan gave it his "full authority" to restore central Government control.

An East Pakistan policeman who crossed into India near Agartala said yesterday that at least 2,600, including 500 police and 100 West Pakistani soldiers, were killed in clashes at Comilla.

He described the situation in Comilla as "critical". Most of the 70,000 population had fled into the countryside.

The Daily Telegraph, April 3, 1971: Because Pakistan's central government immediately imposed strict censorship on communications in and out of East Pakistan, early reports were sketchy. Still, even the fragmentary dispatches from neighboring India provided a dismal picture of bloody fighting that pitted a modern, professional army against rebels who were often armed with little more than passion and pitchforks. Hopelessly outgunned, the East Pakistani guerrillas reportedly suffered thousands of casualties.

Newsweek, April 5, 1971.

India could not remain a silent spectator of events in East Pakistan, Mrs. Gandhi, Prime Minister, said yesterday. But she called on Indians to keep emotions in check.

Mr. Swaran Singh, Foreign Minister in a speech to the committee accused President Yahya Khan's military regime of "naked barbarism" against the unarmed the defenceless people of East Pakistan.

India had never interfered in the internal affairs of any other country, she said in countering Pakistani charges of Indian meddling.

"At the same time, she has never failed to raise her voice against tyranny or injustice in any part of the world.

"What is happening in Bangladesh is something quite out of the ordinary. It is something that is going to have global repercussions in one way or the other".

The Congress party resolution, approved four days after a similar motion in Parliament, appealed to all nations to take urgent and constructive steps to end what it called "inhuman atrocities in East Pakistan.

The Daily Telegraph, April 5, 1971.

"It's a massacre," said John Martinussen, a Danish student.

"We saw the army shooting civilians," said Neil O'Toole, an American from New Rochelle, N.Y. "I don't want to say too much because I' am afraid of reprisals against our organization. "He asked that the name of his organization not be mentioned.

Though some of the evacuees were reluctant to talk, others painted a grim picture of Chittagong, East Pakistan's second-largest city. Until now little has been known of how that city of 400,00 inhabitants has fared in the fighting.

In the city, where fighting broke out early Friday morning, on March 26, the foreigners said the army had burned to the ground many of the flimsy slums of the poor, the stanchest of independence.

The ashes of the bamboo huts in these neighbourhoods were still smoldering, the foreigners said, as they were taken to the docks under military escort yesterday morning to be evacuated.

“Nothing is calm, and nothing has come back to normal,” said Mr. Martinussen, who came to Chittagong seven months ago with his wife Karen to study Pakistani polities as part of his master’s degree program at Aarhus University in Denmark.

“They systematically burned down the districts of the poor people, apparently because they felt they couldn’t search them thoroughly,” he went on. “They seemed to be enjoying killing and destroying everything.”

“Many Bengalis have been killed,” the 23-year-old student went on. “In the river just four days ago, you could count 400 bodies floating in one area”.

Sydney H. Schanberg, New York Times, April, 1971.

“Pakistan has clearly entered into a period of civil war which is likely to be long. Far from looking for a compromise, even one which would be favourable to the Central Government, with the Bengali autonomists, Yahya Khan is stepping up the repression which has now reached such a degree of brutality that one wonders if it was not premeditated.

Le Monde, Paris, April 9, 1971.

Sgt-Major Rab and his forces have no illusions about what will happen when the enemy do attack. They have overheard on their captured military radio official order from President Yahya Khan’s high command that opposition be crushed by slaughtering indiscriminately, destroying indiscriminately and, above all, by killing all military, civic and intellectual leaders. “It will be a massacre”,

says the Sergeant Major. “It is worse than anything Hitler did. It is deliberate genocide.

Genocide is an over-used word. But, in the light of these explicit military orders to West Pakistan troops -- which I have independent reasons to thing Sgt. Major Rab has accurately reported – it seems justified. In the light, also, of my three visits to East Pakistan in the past few days it seems justified. From there it was difficult to see Yahya Khan’s policy as anything other than an effort to kill swiftly so many Bangladesh supporters that resistance will vanish for the next 15 years. The killing is taking place. We have seen the massacres with our own eyes and that radio message appears to prove the deliberate intention.

By Nicholas Tomalin, The Sunday Times, April 11, 1971

As the reports of the Army’s repressive activities have continued, there has been mounting concern in Congress, reflected in the press and in public circles. Four senators-two Democrats and two Republicans-asked Secretary of State William P. Rogers today to specify U.S. and to Pakistan and to clarify whether American weapons had been used by army units against the East Pakistanis.

Sens. Edmund S. Muskie, D. Maine Walter F. Mondale. D. Minn. Edward Brooke, R. Mss., and Mark O. Hatfield, R. Ore., said in a joint letter that they were “deeply disturbed over the recent bloodshed in East Pakistan.” They called on the State Department to disclose “even the most indirect” American involvement.

Congressional source said that Sen. Clifford P. Case, R., N.J., and Sen. Mondale would soon co-sponsor a resolution in Congress to bar all military aid and sales to Pakistan until the current conflict, is ended.

By Benjamin Welles, International Herald Tribune, April 12, 1971.

"There is no doubt" said a foreign diplomat in East Pakistan last week, "that the world massacre applies to the situation." Said another Western official: "It's a veritable bloodbath. The troops have been utterly merciless.".

Reports coming out of the East via diplomats, frightened refugees and clandestine broadcasts varied wildly. Estimates of the total dead ran as high as 300,000.

Opposed only by bands of Bengali peasants armed with stones and bamboo sticks, tanks rolled through Dacca, the East's capital, blowing houses to bits. At the University, soldiers slaughtered students inside the British Council building. "It was like Chengis Khan," said a shocked Western official who witnessed the scene. Near Dacca's marketplace, Urdu-speaking government soldiers ordered Bengali speaking townspeople to surrender, then gunned them down when they failed to comply. Bodies lay in mass graves at the University, in the old city, and near the municipal dump.

During rebel attacks on Chittagong, Pakistani naval vessels shelled the port, setting fire to harbour installations. At week's end there reports that East Bengali rebels were maintaining a precarious hold on Jessore and perhaps Chittagong. But in Dacca and most other cities, the rebels had been routed.

Time, April 12, 1971.

From all indications, foreign governments were experiencing similar problems in obtaining solid information on the East Pakistan situation. In Washington Sen. Edward Kennedy said that reports received by his refugee subcommittee told of "indiscriminate killing, the execution of dissident political

leaders and students and thousands of civilians suffering and dying every hour of the day",

When the army decided to strike, it attacked without warning. Truckloads of troops spread out through Dacca under cover of darkness with orders to use maximum force to stamp out all resistance. Houses were machine gunned at random; tanks firing on the apparent whim of there commanders, clanged through the streets. It was a blatant exercise in terror and vengeance. There can never be any excuse for the sort of firepower we saw and heard being directed against unarmed civilians. There can be no excuse for the merciless burning of the shanty homes of some of the world's most impoverished people.

Newsweek, April 12, 1971

"The firing continued. In the morning there was a lull and I saw some Pakistani soldiers giving orders to the terrified bearers. After a while I saw the bearer dragging the bodies of students and lecturers towards the football ground.

"They were ordered to dig a huge grave. The Pakistani soldiers told the eight or nine bearers to sit down. After a while they were ordered to stand and line up near the grave. The guns fired again and they fell next to the bodies of my friends."

The Army had sent in almost 1,000 men with machine guns, artillery and mortars to attack the estimated 600 students in the two halls. But most of the students had returned home and not more than 40-terrified students and the academic staff were trapped in the two halls by the military on the night of March 25 when the Army moved into Dacca University. Countless numbers of students from adjoining colleges are also reported to be dead.

"At about 11.30 p.m. the sounds of heavy firing woke us. We heard Army trucks racing towards the university about a mile away. At first I heard heavy firing of light arms and artillery coming from the university but latter it seemed to spread all over the city. We lay down on the floor and at about three O'clock we heard a mobile loudspeaker van passing through the streets announcing that curfew had been imposed. The firing continued throughout the night but the intensity dropped during the morning.

"Shortly after eight O'clock on Friday night the firing intensified all over the city. We did not know what was happening but a little later we heard All India Radio announce that civil war had broken out.

Jet planes whizzed over the city and we heard the clatter of machineguns and cannons from all parts of the city. Firing continued throughout the night and the next morning (Saturday) Radio Pakistan came on the air briefly to announce that the curfew had been lifted for seven hours.

At the market itself we saw burnt out shops and huts of the shopkeepers. There were many charred bodies lying in the ruins. We also saw some bodies of pavement dwellers who had apparently been shot in their sleep.

We turned off towards Iqbal Hall on the university grounds and saw many dead bodies in the nearby colony of rickshaw pullers and newspaper vendors. I rushed straight towards Jagannath Hall (the headquarters of the East Pakistan Students' Union) which had been the main target of attack. A passing student told me that Dr. Gobinda Chandra Deb, head of the department of philosophy had been killed.

"I saw many bodies of the colony of poor washermen attached to the university. Women were weeping over bodies of children. I saw tank tracks

leading up to the hostel. As we passed the football ground I was shown a communal grave covered with fresh earth. We ran on to Jagannath Hall. I saw the body of the gate keeper, Dukki Ram, lying at the entrance. Portions of the northern hall had been blown away. It was a bloodbath inside. They had dragged bodies of students outside and trails of blood led us to the dormitories. A blood spattered mosquito net in the one dormitory was still burning, parts of the roof had been blown away. I met a friend who had survived the attack. He told me that he had jumped out of a window when the Army had fired on the hall with cannons and machine guns."

The lecturer continued: "We saw that the canteen and the servants quarters had been burnt down. There were pools of blood everywhere. We went down to compound surrounding the hall. There is bachelor teacher's residential quarters there. We found Mr. Bhattacharya, a lecturer in applied physics, lying dead. The door to the home of Dr. Chandra Deb was locked and a pool of dry blood covered the doorstep.

By Peter Hazelhurst, The Times, April 13, 1971.

"This correspondent saw Pakistani soldiers burning villages to deny the resistance forces cover or hiding places. As the smoke from the thatched and bamboo huts billowed upon the outskirts of the city of Comilla, circling vultures descended on the bodies of peasants, already being picked apart by dogs and crows.

Chuadanga, East Pakisan, April 13, Armed resistance in much of East Bengal was crumbling fast today before the advancing columns of President Yahya Khan's Pakistan Army.

The Times, April 14, 1971

"During this four weeks of civil war Pakistan's Central Government won the first round through ruthless massacres of the people by means of tanks and bomber aircraft. Nevertheless the struggle for emancipation of the 75 million people of East Pakistan marches on steadfastly along the road to independence …… The entire population of East Bengal, united under the banner of the Awami League, are not afraid of death and boldly continue to resist – the more brutal the massacre, the greater is the sacrifice. Although we are denied reliable news, thanks to Pakistani censorship, we can well imagine the heroic struggle of a whole nation - the people of East Bengal.

Chinese Language Daily Kwong Wah Yit Poh, Penang, April 14, 1971.

Politicians, thinkers, teachers, students, doctors, engineers and even unarmed civilians, including women and children, are wiped out in East Pakistan. Will the Muslim world in general, suffer this? Does Islam permit killing of unarmed Muslims by armed Muslims? Can Islamic principles justify the suppression by a minority of a majority demand for social and economic justice?

Muslim states should act quickly and see that good Muslims are not massacred by fellow Muslims. International Islamic organisations should also not be silent spectators in the present situation in East Pakistan. They should do whatever is possible within their limited means to stop the genocide and restore peace in the region. President Yahya Khan may consider the East Pakistan happenings as national matter but if East Pakistan ultimately becomes a

sovereign State – which the world knows is bound to be – will the present crisis in Pakistan not be the concern to other Muslim states of the world?

Meanwhile, refugees from East Pakistan poured into India today fleeing from the advancing Pakistan Army troops. “What was a trickle has become a stream”, said a high Indian Official, describing the influx of refugees.

The Statesman, a newspaper in Calcutta, said that at least 31,000 refugees had entered India this week along the 1,349 mile border with East Pakistan.

International Herald Tribune, April 15, 1971.

Meanwhile, the Pakistan Army, now heavily reinforced, is busy sealing all important exit routes from the province.

Thousands of refugees are now streaming from East Pakistan into India across miles of unpatrolled border in the ore remote areas of Assam and West Bengal.

They are posing serious health and food problems from the hardpressed Indian authorities, which have not baulked at what they see as a humanitarian duty.

Smallpox and cholera have already broken out among Bengali refugees in some areas of East Pakistan, and mass inoculations and vaccinations are being carried out in the Indian refugee camps to prevent an epidemic.

Cholera could spread disastrously in Assam, where many river people eat fish - - a potent cholera carrier –as a staple diet.

The flow of refugees into India has arisen sharply with the advance of the Pakisan Army, and there are now thought to be 31,000 in India. Many people I saw were desperately hungry.

The manager of a tea estate owned by the Glasgow firm of James Finlay and Sons told me: “Our situation is really desperate”. I have 2,000 labourers and 1,000 more from an estate owned by Duncan Bros.

There is nothing we can do. We are trying what we can do. We are getting no help from any quarter.

“Last week, the Army came to shoot me in my garden, but my labourers killed them with bows and arrows”.

My labourers are getting no pay. Our rice stocks can’t last beyond April 25. Then I must advise them to run for the border.

“I sent my driver to Sylhet to find out about my wife and children. I do not know if they are alive, but my driver was ambushed and killed”.

A Bengali guerrilla driver said to me: “Soon we will have to fight like the Vietnamese, but without guns. The Punjabis have burned our tea gardens and our homes. “We will starve and die but will fight on for 1,000 years”.

By David Loshak in Calcutta, The Daily Telegraph, April 17, 1971

Nicholas Tomaline, after seeing the horror of the East Pakistani fighting, visits the Pruce Modern capital in West Pakistan. He finds a complacent refusal to recognise the tragedy and its social and economic repercussion.

General Yahya Khan, President of Pakistan and C-in-C of the Pakistan army is a good man and intelligent soldier. It was simple sense of duty (and catastrophic intelligence misinformation), which perusaded him three weeks ago to order his troops to restore the law and order in Pakistan.

Because he is a decent, orthodox armyman, who acted according to orthodox army logic, General Yahya thinks he has succeeded and can now

continue as leader of a united nation. He is still unaware that his attempted coup was the worst military crime of the recent years and probably the biggest political blunder.

Islamabd, the West Pakistani capital, is full of noble looking soldiers like Yahya. They stride around the orderly streets with a fine proud bearing; they play polo as if nothing had happened to disturb their sport. It is strange to arrive here and see them, so remote from the piles of dead in East Pakistan.

The Sunday Times, April 18, 1971

In the last two issues of The Sunday Times, we have published graphic despatches from our special correspondent, in East Pakistan. These have borne out, and added to, the mass of evidence from other sources, all of it suggesting that a terrible, communal, bloodbath has been the result of the West Pakistan decision to quell with bullets the democratically expressed wish of the East Pakistan Bengalis for a wide measure of autonomy. On the opposite page, the same correspondent, after visiting West Pakistan, describes the influences and ideas at work there. What emerges, with a force that leaves no room for doubt, is that an appalling error has led to an appalling tragedy. The Indian subcontinment has, unhappily, been witness before now to mass killings by one race of another. But there is no modern precedent in the subcontinent, or elsewhere for what can only be regarded as the deliberate intention on the part of the central Pakistani Government to wipe out by killing as many as possible of the adherents, present and future, of Bengali nationalism.

Time Magazine, April 19, 1971

“All of the most powerful Generals of Pakistan’s ruling military clique, including President Yahya Khan himself, were deeply involved in planning,

supervising or commanding the Dacca massacre which plunged this country into civil war two weeks ago.

It was a carefully organised military operation, not a case of the local commander, Lieut General Tikka Khan, engaging in excessive force on his own initiative.

Montreal Star, Ottawa, April 21, 1971

Stonehouse said that "terrible" things had happened in East Bengal, things which have not been seen since the last war. Describing it further, Stonehouse said that what had happened in East Bengal "makes Vietnam look like a tea-party". He talked in particular of the incident at Dacca University of March 25, when staff and students were "rounded up and shot in cold blood".

The Daily Mirror, London, April 28, 1971

Prime Minister Indira Gandhi complained today that "no prosperous country" or any of the "upholders of democracy" has tried to help the nearly three million East Pakistani refugees now in India.

"What is happening in East Benal (East Pakistan) is not only India's concern but that of the whole world," Mrs. Gandhi said in a speech in northern India, according to the Government radio network.

"These people have been forced out of their homes for demanding food and freedom, and not a single country among the upholders of democracy has raised its voice at the atrocities coummitted on helpless men, women and children.

A three-man team from the United Nations High Commission for Refugees is due to fly to Geneva tomorrow with recommendations on how the world body can help care for the refugees. The team, headed by Deputy High

Commissioner Charles Mace, spent the past week touring some of the relief camps.

International Herald Tribune, May 19, 1971

Unfortunately, the agreement did not specify that Karachi respect the security of its own nationals.

Consequently, as the Department of State has finally admitted defensively, the planes and the armour were used freely in the campaign of savage slaughter in East Pakistan that began late in March. Washington also concedes having supplied Pakistan with ammunition and military equipment parts in recent years. Against that background, the private pleas for restraint it claims to have make to Karachi can scarcely have been very effective.

Editorial, The New York Times, May 6, 1971

The world must be shocked by harrowing accounts of genocide perpetrated against the people of Bangladesh by statocratic and aristocratic regime of East Pakistan and must raise its voice in anguish to express its sense of outrage at the crimes committed by an increasingly unpopular military junta against the defenceless people of East Bengal.

Time Magazine, May 24, 1971

We saw the amputation of a mother's arm and a child's foot. These were too far from the borer, and gangrene developed from their bullet-wounds. Many saw their daughters raped, and the heads of their children smashed in. Some watched their husbands, sons and grandsons tied up at the wrists and shot in more selective male elimination.

No sedative will calm a girl now in Bougavu hospital – she is in a permanent delirium crying, "they will kill us all, they will kill us all …" Next to her is girl still trembling from day-long raping and a vaginal bayonet wound.

About 400 were killed at Chaudanga while on their way to India, surrounded and massacred. Why? Lest they take tales to India? Or because choosing a certain democratic system under Sheikh Mujib means forfeiting the right to live in any country?

Most vicious of all perhaps was the attempted annihilation of the East Bengal Regiment. Few of the 1st Battalion escaped through a curtain of bullets fired by those who the previous day were their mates in the mess. It was symbolic of the betrayal of the whole of the Eastern Province.

Letter From Rev. John Hastings And Rev. John Glapher In The Guardian, London, May 27, 1971

"Villages have been surrounded, at any time of day or night, and the frightened villagers have fled where they could, or been slaughtered where they have found, or enticed out to the fields and mown down in heaps. Women have been raped, girls carried off to barracks, unarmed peasants battered or bayoneted by the thousands.

"The pattern, after seven weeks, is still the same. Even the least credible stories, of babies thrown up to be caught on bayonets, of women stripped and bayoneted vertically, or of children sliced up like meat, are credible not only because they are told by so many people, but because they are told by people without sufficient sophistication to make up such stories for political motives.

"We saw the amputation of a mother's arm and a child's foot. These were too far from the border, and gangrene developed from their bullet wounds. Many saw their daughters raped and the heads of their children smashed in. Some watched their husbands, sons, and grandsons tied up at the wrists and shot in more selective male elimination.

"About 400 were killed at Chaudanga while on their way to India, surrounded and massacred. Why? Lest they take tales to India? Or

"Most vicious of al perhaps was the attempted annihilation of the East Bengal regiment. Few of the 1st Battalion escaped through a curtain of bullets fired by those who the previous day were their mates in the mess. It was symbolic of the betrayal of the whole of the eastern province.

The Guardian, London, May 27, 1971

The indiscriminate killing and destruction in the East which bordered on genocide can hardly be the best answer to the problem that confronted the Presendent.

Editorial In The Sunday Mirror , Accra, May 29, 1971

New Delhi, May 30 (Reuters)-India announced today that more than four million East Pakistan have fled into its territory since the Martial-Law creackdown in their province.

Labor and Rehabilitation Minister R.K. Khadilkar said "what the eventual figure will be is anybody's guess, it may be five or even eight million".

Reports have said living conditions in overcrowed temporary border camps have led to 300 deaths from cholera and gastroenteritis.

Mr. Khadilkar said a cholera epidemic is raging across the border, and the disease was spread by the fleeing East Pakistanis.

International Herald Tribune, May 31, 1971

The evidence that military Government of West Pakistan has committed an appalling crime against humanity in East Bengal is incontrovertible. Indeed the constant stream of refugees fleeing from the terror confirms that the crimes continue.

Letter In The London Times, By John Stone House, M.P., June 8, 1971.

Calcutta, June 7 (WP): Talk of a war with Pakistan has increased here as a result of the continuing flow of refugees into India, which confronts this country with an enormous, unwanted burden.

However, army officers and government officials discuss starting a war should the refugee situation continue to worsen and should there appear to be no peaceful way for the refugees to return to their homes.

By Lee Lescaze, International Herald Tribune, June 8, 1971.

Governments of the world are asked to unite in giant mercy mission to relieve the mass misery of Bengal.

Editorial In The Sunday Times, London, June 13, 1971

Shikarpur, India, June 13 (AP) – The Pakistan army had launched a scorched-carth operation along the frontier between East Pakistan and India, according to Indian military and civilian authorities on the spot.

President yahya Khan's troops are burning frontier village, destroying jute and sugar-cane plantations and ordering those inhabitants who have not already fled to India to pull back at least five miles from the border, the Indians report.

The road to Krishnanagar, 50 miles away, is marked by mass graves and the rags and sleeping mats of refugees who dropped by the wayside. Many

graves have been flushed open by monsoon rains and dogs and vultures fatten on the bodies.

International Herald Tribune, June 14, 1971

Hiroshima and Nagasaki are vividly remembered by the mind's eye primarily because of the novel means that brought holocaust to those cities. Statistically comparable disasters in Hamburg and Dresden are more easily forgotten; they were produced by what we already then conceived of as "conventional" methods.

Against this background one must review the appalling catastrophe of East Pakistan whose scale is so immense that it exceeds the dolorimeter capacity by which human sympathy is measured. No one can hope to count the dead, wounded, missing, homeless or stricken whose number grows each day.

C.L. Sulzberger From Paris, The New York Times, June 16, 1971

Begum Majeda, a housewife, was fetching water from a street tap. Two Punjabi policemen tried to lift her on to a truck. She screamed and the Punjabis were beaten off with sticks and stones. That night whole of the Bashabo area was set on fire.

The Sunday Times, June 20, 1971

"The reign of terror in East Bengal is now in its fourth month. The fleeing and hunted people are still streaming across the border into India. There is no limit to the brutality of the Pakistani military dictatorship – very few of the terror victims belong to the Bengali group of leaders whom the aggressors are trying to eradicate. Also the common man falls victim to the 'final solution' which the Pakistani Army, obsessed by power, is trying to force through as the terrible climax to decades of systematic misgovernment.

The Dagens Nyheter, Stockholm, June 27, 1971

Other foreigners, too, were dubious about the atrocities at first, but the endless repetition of stories from different sources convinced them. "I am certain that troops have thrown babies into the air and caught them on their bayonets," says Briton, John Hastings a Methodist missionary who have lived in Bengal for twenty years. "I am certain that troops have raped girls repeatedly, then killed them by pushing their bayonets up between their legs".

All this savagery suggests that the Pakistani army is either crazed by blood-lust or, more likely, is carrying out a calculated policy of terror amounting to genocide against the whole Bengali population.

Tony Glifton In Newsweek Magazine, New York, June 28, 1971.

The British Parliamentary Delegation to East Bengal led by Mr. Arthur Bottomley, Labour MP for Middlesbrought – East left Dacca for Calcutta yesterday in a frustrated and gloomy mood.

He had spent some hours in a vain attempt to visit Boliadi, a village 15 miles north of Dacca, which was destroyed at dawn on Sunday morning by the West Pakistan Army.

Mr. Toby Jessel, Conservative MP for Twickenham, commenting to the British Press, said: "The reign of terror which has been imposed here is not conducive to the restoration of the economic life of the country".

Drawing on his experiences with the fact finding mission during the past four days Mr. Jessel said the disappearance of local people and the sacking of village add to the great fear Bengalis already have of the Pakistani Army.

By Clare Hollinworth In Dacca, The Daily Telegraph, June 29, 1971

Recent and Contemporaneous Publication on Sexual Savagery

Lisa Sarlach's Description

In projecting without distortion, the atrocities Bengali women suffered during the Liberation War period, Lisa Sharlach of the University of Alabama in her work, "Rape as Genocide: Bangladesh, Former Yugoslavia and Rwanda", published in the book New Political Science, March 2000, enumerates with sordid description the devastation raping by Paki soldiers and their local cohorts caused. Her account is really afflictions. She states;

"East Pakistan's secession, the wars in Bosnia-herzegovina, Croatia and Kosovo against Serbia, and the 1994 civil war in Rwanda indicate that rape may be an instrument of genocide. In all three regions, soldiers or militia used rape as a tactic to cause either death or psychological and physical harm to women and girls.

During the 1971 nine-month war between East Pakistan (now Bangladesh) and West Pakistan (now Pakistan), approximately 3 million people died. Pakistani soldiers raped between 200,000 and 400,000 Bangladeshi women and girls. The lowest estimate of Bangladeshis raped is more than triple that of even the highest estimates of rapes of ex-Yugoslavas in the recent civil war.

The genocide against East Pakistani Bengalis (an ethnic group comprised of both Hindus and Muslims) during the war of 1971 was fueled by West Pakistani perceptions of Bengalis as racially inferior. Rummel notes that the West Pakistanis considered Bengali Hindus to be sub-human, akin to monkeys or chickens. Hindus were the group they earmarked for genocide, but Muslims comprised the majority of the casualties.

During the war, West Pakistani soldiers raided houses, killing men and raping women. The victims of rape known as biranganas, were primarily Bengali females of all castes and religions. After raping the women, soldiers often murdered them by forcing a bayonet between their legs. The pre-pubescent girls who were cut and gang-raped often died thereafter from the injuries. There are many reports of women and girls who survived the assaults and later killed themselves. War correspondents heard repeatedly from refugees that soldiers killed babies by throwing them in the air and catching them on their bayonets, and murdered women by raping them and then spearing them through the genitals. Newsweek concluded that the prevalence of these unusual forms of murder targeting children and women was an indication that the West Pakistani army was "carrying out a calculated policy of terror amounting to genocide against the whole Bengali population."

A newspaper columnist in Calcutta, India, Amita Malik, writes that a West Pakistani solder said:

"Hum ja rahe hain. Lekin beej chhor kar ja rahe hain." ("We are going. But we are leaving our Seed behind.") He accompanied it with an appropriately coarse gesture. Behind that bald statement lies the story of one of the most savage, organized and indiscriminate orgies of rape in human history: rape by a professional army, backed by local armed collaborators. It spared no one, from elderly widows to schoolgirls not yet in their teens, from wives of high-ranking civil officers to daughters of the poorest villagers and slum dwellers. Senior officers allowed, and presumably encouraged, the forced confinement of innocent girls for months inside regimental barracks, bunks and even tanks.

After independence, Sheikh Mujibur Rahman tried to lessen the stigma associated with rape. He valorized the rape survivors as biranganas, or war heroines, set up rehabilitation centers for them, and offered rewards to men who would marry the girls. Nevertheless, most Bengalis refused to issue marriage proposals to the girls or even to take the wives or daughters back into their families because of the dishonor associated with having a family member raped. Some of the biranganas killed themselves. Others fled to West Pakistan, where their shame would be a secret.

Angela Debnath

Angela Debnath, in her well researched Article under the caption "The Bangladesh Genocide: The Plights of Women states; "On 25th March 1971 the Government of East Pakistan initiated a genocide campaign against Bengalis in the province of East Pakistan ostensively to suppress Bengali Nationalist movement. An attempt initiated a quarter of century earlier to unify the ethnically and langutically distinct population of East and West Pakistan (separated by more a thousand miles of Indian territory) on the basis of a common religion –Islam-had failed. The systematic violence and widespread destruction executed by Pakistani army, with assistance of local supporters eventually displace 3,000,0000/- people within East Pakistan, drove 1,000,0000/- into India and resulted in the death of (estimate of the death toll vary between 1-3 million victims). Despite the extreme and systematic violence that precipitated the creation of Bangladesh, the event is largely neglected by genocide scholars. In fact, Bina D' Costa (2006) declares, "The War of 1971 remain one of the most under research conflict in the world, and the traumatic experience of the civilians after the war remain virtually unknown despite

growing interest in nationalism and ethnic violence. Indeed, notwithstanding the extraordinary number of people killed during over a relatively short period, it is far from commonly accepted that the event was genocidal in nature. Volumes on systematic violence which include Bangladesh 1971, such as this one, are therefore, rare ---- as Yesmin –Cika (Impress) states that although 1971 is considered one of the most intense cases of brutalization of women in twentieth century wars, there is no history of violence. Scholars as well as gender studies internationally had overlooked and forgotten 1971. One of the most distinctive features of the period was the use of various forms of violence against females. Regardless of class, ethnicity, religious – social backgrounds and age, females were principle targets of aggression including killing, torture, beating and dismemberment.

Systematic rape was one of the chief weapons of the atrocity campaign. Any where from 2,00,000-4,00,000 women were raped. Susan Brownmillar (1975), who published one of the earliest analyses of the event in her pioneering work on the 'Politics of Sexual Violence' reported the following, "Rape in Bangladesh had hardly been restricted to beauty. Girls of 8 and grandmother's '75 had been sexually assaulted during nine months repression. Pakistani soldiers had not only violated Bengali women on the spot; they abducted tens of hundreds and held them by force in their military barracks for nightly use. The women were kept naked to prevent their escepe".

Subsequently, victims were forced to endure what some have referred to as second rape in which they suffered from widespread gynecological infections, intense feeling of shame and humiliating social ostracism, the loss of relationship and economic security (Brownmillar 1975 P-83-84).

To avoid such Horrors and agony many committed suicide (Brownmillar 1975 P-84).

"The sexual violence also resulted in acute pregnancy crisis during which scores of poor victims underwent dangerous abortion, often including serious medical complications (Brownmillar 1975 P-84)."

The exact number of women impregnated as result of rape in 1971 is unknown. Brownmillar (1975) deposed that 25,000 women suffered from unwanted pregnancies while the Bangladesh government claimed that over 70,000 women were impregnated (p 84). The International Commission of Jurists' 1972: legal analysis of the Conflict concludes that "Whatever the precise number, the team of American and British Surgeons carrying out abortions and the widespread government efforts to persuade people to except this girls into the community, testify to the scale on which rape is occurred.

After travelling throughout the War ravaged country between 1971-72 Indian journalist Amita Malik (1972) observed that "the fate of the women of the Bangladesh was indeed, the proverbial fate worse then death". It is story of one of the most savage, organised and indiscriminate orgies or rape in human history – rape by a professional army, backed by local armed collaborators (p 54)".

(An Article written in the book Plight and Fate of Women during and following Genocide).

Dr. Davies' Account

Dr. Geoffrey Davies of Australia, who was Director of International Abortion Research and Training Centre in Sydney and earned international notoriety for performing late- term abortions following mass rapes of Bengali

Women during Bangladesh's Liberation War, the Job he undertook at the request of the World Health Organisation and International Planned Parenthood Federation, estimated that upto 400000 women and children had been raped by the Pakistani soldiers and their Bengali collaborators, stating that commonly cited figures were probably very conservative, that he had heard of numerous suicide by victims and of infanticides and that around 5000 rape victims performed self induced abortions (Source: Wikipedia).

Professor Montasir Mamoon

Professor Montasir Mamoon of History Department, Dhaka University, who has conducted years of research on 1971 genocide, has furnished detailed and vivid description of sexual atrocities unleashed by Paki soldiers on Bengali girls and women during our Glorious War of Liberation in his book (in Bengali) tilted "Mukti Judhya Kosh" some translated extracts from that book would project how beastly, harrowing and frenzied those atrocities were;

"A sweeper at Razarbagh Police Lane named Rabeya supplied some information. The invading forces tracked her on 26th March, '71 and commenced the trial of ravishing her. They preferred to keep her alive so that garbage at the Police Line could be cleaned. She said since than the Paki soldiers began to drag girls, women of varying ages from various parts of the city. Immediately there after the spree of horrific and merciless raping began. Punjabi soldiers used to enter into the Line like mad dogs, stripped off targeted girls, kicked them to the floor and raped them. It was not rapes only, they used to bite the breasts and the chicks of those girls to a point of profuse bleeding. Breasts of many tender aged girls were dismembered. Those who dared resisting

Paki soldiers' advances, had to face indescribable barbarism. Sharp edged knives and bayonet were pricked through their vaginal canal and the anus.

Paki beasts used to haul to the open area blood enundated raped victims and then tear apart their bodies by dividing them through their legs.

Punjabi soldiers incessantly raped young girls as and when they wished after getting drunk. It was not only the Jawans. Even senior officers indulged on the orgy of hysterically ruthless raping spree after being drunk like wild tigers. Victims were not allowed slightest intermission. Many of them could not withstand the trauma uninterrupted gang rape caused, but plunged into mortality. Those beasts used to cut into pieces the corps of those girls who succumbed to sexual atrocities within the vision of other confined girls.

Terrified by such harrowing views, other girls felt compelled to submit to the lustful desires of Paki soldiers. Even those girls who co-operated, were not, at the end of the day, spared. Senior officers after gang raping them finally pierced their breasts and pushed sharp knives and bayonets through their genital passage to elate themselves with sadistic pleasure. The soldiers kept the girls locked when they were away.

General Niazi on Rape

Even Pakistani General Niazi, who succeeded General Tikka Khan as the head of the Pakistani occupation forces in Bangladesh described Paki soldiers savagery in Bangladesh as worse than those of Chengis – Halaku at Bokhara and Baghdad and of General Dyer at Jallianwalabagh. (Betrayal of East Pakistan by General Tikka Khan page 45 / 46), confirmed before Hamoodur Rahman Commission (Commission headed by Paki Chief Justice) that whole sale rape by Paki soldiers did in fact take place.

Publications on Peace Committee

Shahriar Kabir

As a first step to help Pakistan Army, Ghulam Azam formed 'Peace Committee' on April 10, 1971. The main objective of forming this Peace Committee was to resist liberation war and to destroy all freedm fighters. The first meeting of the peace Committee expressed their gratitude to the Pakistan Army for their maiden successful military operation of genocide, and bitterly condemned the freedom-fighters and the freedom-loving people of our country as being anti-Islamic. As a matter of fact, to a man like Ghulam Azam, Pakistan, Jamat-i-Islami and Islam are synonymous. That is why, opposing Pakistan, to them, is opposing Islam;- mere criticism of Jamat-i-Islami tantamounts to opposing Islam itself. On April 12, 1971 Ghulam Azam led a Peace Committee procession against liberation movement in Dhaka and at the end be prayed to Allah for granting success to Pakistan Army's crack-down on the civilian population of the then East Pakistan (The Dainik Sangram / April 13, 1971).

In a statement released on April 22, 1971, the Peace Committee appealed to all patriotic people to resist and stop anti-state activities of the freedom fighters and urged them to extend all out help to Pakistan Army in their noble mission to suppress the liberation war (The Dainik Pakistan / April 23, 1971). General Tikka Khan praised very highly the Peace Committee for their extensive help to the Pakistan Army. On August 14, 1971, in a Pakistan Independence Day celebration, Ghulam Azam spoke on the importance of building a bridge of mutuality between the Pakistan Army and the Peace Committee and he also said, 'the Peace Committee has done a great job towards saving the country from the secessionists. If the Peace Committee had not let the

world know the fact that the people of East Pakistan are committed for one, undivided Pakistan-volatile, emerging situation would have taken a completely unwarranted, unwelcome turn'. He also said, 'It is the responsibility of the army to save the country – and the Peace Committee has to undertake the responsibility of making army's mission clear and understable to the people'. Besides, he laid emphasis on finding out all foes remaining in our midst; - hiding in the comfort of our own homes and hearths (The Dainik Bangla / August 16, 1971).

Alongside the Peace Committee, Ghulam Azam took a leading role in forming an armed cadre to help the Pakistan Army. At his instruction, one of his followers, Mr. A.K.M. Yusuf formed the Razakar Force on May, 1971 with 96 Jamat workers at an Ansar Camp at Khan Jahan Ali Road, Khulna. In the beginning, the Razakar Bahini was under the leadership of the Peace Committee. But on June 1, 1971, General Tikka Khan by proclamation of the 'East Pakistan Razakar ordinance 1971' abolished the Ansar Bahini and turned into Razakar Bahini – but then again, its leadership still continued in the hands of Jamat-i-Islami. On September 7, 1971, Pakistan Defence Ministry through an official order (No: 4/8/52/543 P.S. = 1/Ko/3659 D-Ko) elevated members of the Razakar Bahini to the status of their counterparts in the Pakistan Armd Forces. What the Razakars did after a short training was go to the rural areas, loot wrecklessly, kill innocent villagers and torture women. Used as guides in the largely unfamiliar, previously unknown areas and as advanced elements of the attacking army, they were very frequently praised by the Pakistani Generals. In a workers' meeting at Hotel Empire in Dhaka on September 25, 1971, Ghulam Azam said, 'The purpose for which the Jamat-i-Islami joined the Peace

Committee and the Razakar Bahini was to keep Pakistan intact, in other words, to save Pakistan …. By embracing martyrdom, Jamat workers have expounded the spirit that they would rather die than see Pakistan broken into pieces, disintegrated (The Dainik Pakistan / September 26, 1971).

After Bangladesh emerged as an independent People's Republic under the intrepid, determined and inflexible leadership of the Founding Father of the Nation, Bangabandhu Sheikh Mujibur Rahman, the orchestrated voice of the entire populace that penetrated the sonic barrier, culminated in the demand for the trial of those who were blended with one of the bloodiest inferno human history has witnessed. Such a demand, however, did not arise out of blue: similar trials took place and, have been taking place, to book those who were responsible for merciless torments and monstrosity during the 2nd World War and even subsequently.

Soon after we achieved our much coveted liberation from Pakistani suzerainty, cry for the trial of those who ……

Brief History of the Case

The case in question came into being on 11th July 2011 when the Chief Prosecutor, on receipt of investigation report supplied by the Investigation Agency, submitted the formal charge invoking Section 9(1) of the International Crimes (Tribunal) Act 1973, (henceforth, the Act) implicating the instant appellant (henceforth cited as the appellant) as the sole accused. As he was already in custody on the given date in conexion with same different cases, he was produced before Tribunal no. 2, (henceforth the Tribunal), a progeny of the

Act on 14th July 2011, in response to a production warrant that the Tribunal issued.

The Tribunal then took cognizance of the offence under Section 3(2) of the Act. On 3rd October 2011, and then framed as many as 20 charges engaging Sections 3(2) (a), 3(2) (C1), (g) and (h) of the Act, all of which, read with Section 3(1), are punishable under Section 20(2) of the Act. During arraignment, as the documents reveal, the charges were read over to the accused, and his pleaded "not guilty".

Individual Charges

Charge - 1

Charge no. 1, read that the appellant (accused before the Tribunal below) on 4th May 1971, as a member of a local Shanti Committee transmitted information to the Paki army that some twenty unarmed civilian people assembled behind a bus stand in a place called Madhya Masimpur, on the basis of which information the army killed all those people.

Prosecution could produce no person to substantiate this charge.

Charge-2

Through charge no. 2 it was claimed that the appellant on 4th May 1971, together with Paki army personnel, raided the Hindupara under Pirojpur Police Station, looted the houses therein, set them ablaze, the appellant gunned down 13 unarmed Hindu civilians with a view to wipe out wholly or partially those people who professed Hindu religion.

Again the prosecution could not examine any person to prove this charge.

Charge-3

Charge 3 had it that the appellant on 4th May 1971, along with Paki army, went to the Hindupara at a place called Masimpur and robbed items from the houses of two people named Monindra Nath Mistri and Suresh Chandra and also set ablaze houses at several villages.

Prosecution was unable to produce any person to depose for this charge either.

Charge-4

Charge No.4 story is that on 4th May 1971, along with Paki army instrumentalities, the appellant surrounded the Hindu locality in front of a place called Dhopa Bari within the catchment area Pirojpur Police Station, with intent to alihinate Hindu people, and shot dead some Hindu persons named Debendranath Mondol, Jogendrnath Mondol, Pulin Bihari and Mukando Bala.

Prosecution did not produce any person to depose in support of this charge.

Charge-5

By Charge No.5 the appellant was accused of being present as a member of the killer party that shot dead Foyezur Rahman, the then Sub-Divisional Police Officer, Abdur Razzak, the then Sub-Divisional Officer, Pirojpur and Saief Mizanur Rahman, the then Deputy Magistrate of Pirojpur (a pro-liberation activist, desire to arrest whom was publicly expressed by the appellant), and threw the corps into the river Baleshwar. He was accused of direct participation as well as of abetting the act of abduction and killing of those three officers.

Prosecution adduced P.W.27, who is in fact, a sibling of Saief Mizanur Rahman, as the singular witness to substantiate this charge.

Charge-6

Charge No.6 narrates that the appellant led a team of Peace Committee to receive Paki army at a place called Parerhat Bazar within the catchment area of Pirojpur Police Station, identified the houses and shops owned by Awami League people, members of the Hindu faith and those who supported the liberation war, and looted valuables therefrom, including 22 seers of gold and silver from the shop that belonged to one Manik Lal Shaha.

Charge-7

By Charge No.7 the appellant had been implicated of leading a team of armed accomplices being in the company of Paki soldiers in raiding the house of one Shahidul Islam Selim, son of one Nurul Islam Khan of a village with Pirojpur Sadar Police Station and identified said Nurul Islam Khan as an Awami League Leader and Shahidul Islam Selim as a Freedom Fighter. He then detained Nurul Islam Khan and handed him over to Paki army, who in turn tormented the earlier. The appellant after looting the house, set the same aflamed.

Prosecution adduced P.Ws.1, 8, and 12 to prove this charge.

Charge-8

Charge No.8 has it that on 8th May 1971 at about 3.00 p.m. under the appellant's leadership, the appellant and his accomplices, accompanied by Paki solders, raided the house of one Manik Poshari of village Chitholia within Pirojpur Sadar Police Station and apprehended the latter's brother named Mofizuddin and another person named Ibrahim Kutti therefrom, and at the appellant's instance his accomplices, put five houses on fire pouring kerosine oil and on way to the army camp, the appellant instigated Paki army, who shot dead Ibrahim Kutti, and then Mofiz was taken to the army camp and was tortured and

the appellant and his accomplices then torched the houses of the people of Hindu faith at Parerhat Bandar.

Prosecution examined PWs. 2, 4, 6, 7, 8, 9, 10, 11 and 12 for this charge.

Charge-9

Charge No.9, states that at about 9.00 a.m. on 2nd June 1971 armed associates of the appellant under his leadership, in company of Paki army, raided the house of one Abdul Halim Babul of village Nolbunia under Indorkani Police Station and looted valuables therefrom before setting the house on fire.

Prosecution examined PWs. 14 as the lone witness.

Charge-10

According to Charge No.10 at about 10.00 a.m. on 2nd June 1971 under the appellant's leadership, the appellant's armed associates in the accompaniment of the Paki forces, raided the Hindu locality at village Umedpur within Indurkani Police Station, burnt 25 houses including those of Chitta Ranjan Talukdar, Jahar Talukdar, Horen Tagore, Anil Mondol, Bisabali, Sukabali, Satish Bala. Bisabali was, at one stage, tied and shot dead at the appellant's instruction by his accomplice.

Prosecution adduced P.Ws. 1, 5 and 9, for this charge.

Charge-11

Charge No.11 states that on 02.06.1971, the appellant led a team of Peace (Shanti) Committee members, who along with the Pakistan occupying forces, raided the houses of Mahbubul Alam Howlader (freedom-fighter) of village-Tengra Khali under Indurkani Police Station and detained his elder brother Abdul Mazid Howlader and tortured him. Thereafter, he looted cash money,

jewellery and other valuables from their houses and damaged the same. He directly participated in the acts of looting valuables and destroying houses.

PWs. 1 and 5 were put in the witness box to depose in support of this Charge.

Charge-12

Charge No.12 reads as under; "During liberation war on one day a group of 15/20 armed accomplices under your leadership entered the Hindu Para of Parerhat Bazar under Pirozpur Sadar Police Station and captured 14 Hindus namely Horolal Malakar, Aoro Kumer, Taronikanta Sikder, Nando Kumer Sikder and others, all were civilians and supporters of Bangladesh independence. You tied them with a single rope and dragged them to Pirozpur and handed them over to Pakistani Military where they were killed and bodies were thrown into the river. This act was directed against a civilian population with intent to destroy in whole or part of a religious group, which is genocide.

Thus, you have committed the said offence of genocide punishable under section 3(2)(c)(i) of the Act".

None of the prosecution witnesses deposed to substantiate this specific allegation.

Charge-13

Charge No.13 reads thus; "About 2/3 months after the start of the Liberation War, on one night under your leadership some members of Peace Committee accompanied with the Pakistani Army raided the house of Azhar Ali of village-Nalbunia under Pirozpur Sadar Police Station and then caught and tortured Azhar Ali and his son Shaheb Ali. Thereafter, you abducted Shaheb Ali and ultimate he was taken to Pirozpur and after killing him threw his dead body

in the river. The acts of murder, torture, and abduction are crimes against humanity.

Thus, you have committed the said crimes punishable under sections 3(2)(a) of the Act".

Charge-14

Charge No. 14 reads; "During the last part of the liberation War, you led a team of Razakar Bahini consisting of 50 to 60, in the morning of the day of occurrence in a planned way, you attacked Hindu Para of Hoglabunia under Pirozpur Sadar Police Station. On seeing them Hindu people managed to flee away but Shefali Gharami the wife of Modhu Sudhan Gharami could not flee away, then some members of Razakar Bahini entering into her room raped Shefali Gharami. Being the leader of the team you did not prevent them in committing rape upon her. Thereafter you and members of your team set-fire on the dwelling houses of the Hindu Para of village-Hoglabunia resulting complete destruction of houses of the Hindu civilians. The act of destruction of houses in the Hindu Para by burning in a large scale is considered a crime of persecution on religious ground and the act of raping both as crimes against humanity.

Thus, you have committed the said crimes punishable under sections 3(2)(a) and 3(2)(g) and 3(2)(h) of the Act".

PWs. 1, 3, 4, and 23 testified for this charge.

Charge-15

Charge No.15 reads; "the last part of liberation war, 1971 you led 15/20 armed Razakars under your leadership and entered into the village-Hoglabunia under Pirozpur Sadar Police Station, caught 10 (ten) Hindu civilians namely Toroni Sikder, Nirmol Sikder, Shyamkanto Sikder, Banikanto Sikder, Horolal

Sikder, Prokash Sikder and others. You then tied all of them with a single rope with intent to kill and dragged them to Pirozpur and handed them over to the Pakistani Army where they all were killed and the bodies were thrown in the river. This conduct was directed against a civilian population with intent to destroy a religious group which is genocide.

Thus, you have committed an offence of genocide punishable under section 3(2)(c)(i) of the Act."

P.W. 23 singularly deposed to prove this charge.

Charge-16

Charge No.16 is in following terms; "During the time of liberation war in 1971, you led a group of 10-12 armed Razakars and Peace Committee members and surrounded the house of Gowranga Saha of Parerhat Bandor under Pirozpur Sadar Police Station. Subsequently you and others abducted (i) Mohamaya (ii) Anno Rani (iii) Komol Rani the sisters of Gowranga Saha and handed them over to Pakistani Army Camp at Pirozpur where they were confined and raped for three days before release. You are directly involved in abetting the offence of abduction, confinement and rape as crimes against humanity.

Thus, you have committed an offence of abduction, confinement and rape which are punishable under section 3(2)(a) and 3 (2) (g) of the Act."

P.Ws. 3, 4, 5 and 13 deposed for this charge, and adduced recorded statement of Ajit Kumar Sheel (Ext.264).

Charge-17

Charge No. 17 : "That during the time of liberation war in 1971, you along with other armed Razakars kept confined Bipod Shaha's daughter Vanu Shaha at Bipod Shaha's house at Parerhat under Pirozpur Sadar Police Station

and regularly used to go there to rape her. This was committed by force or by threat and directed against a civilian population.

Thus, you have committed an offence of rape under section 3(2)(a) of the Act."

Charge-18

Charge No.18 says that during the liberation war, one Vagirothi used to work in the camp of Pakistani Army. On one day, after a battle with the freedom fighters, and at the instance of the appellant, aforenamed Bhagirothi was arrested on charge of passing information to the freedom fighters and was tortured and then after taking her to the bank of river Boleshwar she was killed and the dead body was thrown into the river.

P.W. 12 alone testified for this charge. Though statement of one Gonesh Shaha recorded pursuant to section 19(2) of the Act was also adduced, Ganesh actually deposed for the defence.

Charge-19

Charge No.19 avers that during the period of Liberation War starting from 26.03.1971 to 16.12.1971 the appellant being a member of Razakar Bahini, by exercising his influence over the Hindu community of the then Pirozpur Subdivision (now Pirozpur District) converted by force a number of Hindus to Islamic religion and those so converted were (1) Modhusudan Gharami (2) Kristo Saha (3) Dr. Gonesh Saha (4) Azit Kumar Sil, (5) Bipod Saha, (6) Narayan Saha, (7) Gowranga Pal, (8) Sunil Pal, (9) Narayan Pal, (10) Amullya Hawlader, (11) Hari Roy, (12) Santi Roy Guran, (13) Fakir Das and (14) Tona Das (15) Gouranga Saha (16) his father Haridas (17) his mother and three sisters (18) Mahamaya, (19) Annorani and (20) Kamalrani and other 100 / 150 Hindus

of village-Parerhat and other villages under Pirozpur Sadar Police Station. It is further averred that the appellant also compelled them to go the mosque to say prayers.

PWs. 2, 3, 4, 13 and 23 deposed to substantiate this charge.

Charge-20

Charge No.20 avers that one day in the last part of November, 1971 the appellant received information that thousands of civilian people were fleeing to India in order to save their lives. Then, under his leadership a Razakar group consisting of 10-12 armed people, in a planned way, attacked the Talukdar Bari in the village, Indurkani under Indurkani Police Station and detained a total of 85 persons and looted goods therefrom. He then dragged them to the local Razakar camp. Except 10-12 persons, the rest of the persons were released on taking bribe negotiated by Fazlul Huq a member of Razakar Bahini. Male persons were tortured and female persons, including Dipali, daughter of Khagendra Nath Saha Talukder, Niva Rani, wife of Khagendra Nath Saha Talukder and Maya Rani daughter of Rajballav Saha and others were raped by Pakistani Army deployed in the camp. The appellant directly participated in the acts of abduction, torture and abated the offence of rape which fall within the purview of the crimes against humanity.

Prosecution could not produce anyone to depose for this charge. At the close of the examination of the prosecution witnesses, the appellant as the accused examined 14 people to depose for him as D.Ws. They testified mainly to substantiate the appellant's alibi plea.

Found Guilty of Charges 6, 7, 8, 10, 11, 14, 16 and 19

At the end of the trial process, which took ….? days, during which, in compliance with the mandatory procedures, the Tribunal, as the records depict, allowed the prosecution to examine their witnesses, the accused's team to cross examine prosecution witness, examined the accused under Section …..? of the Act, and allowed the counsel of both the sides to make respective submissions, the Tribunal found the appellant guilty of Charges No. 6, 7, 8, 10, 11, 14. 16 and 19, holding that the prosecution succeeded to prove these charges beyond reasonable doubt and inflicted varying sentence inclusive of the extreme sentence for charges 8 and 10. The Tribunal, however, refrained from passing any sentence for the Charges No. 6, 7, 11, 14, 16 and 19.

The Tribunal could find no reason to place any credence on the alibi evidence. The appellant exercised his right, as conferred by Section 21 of the Act, to prefer appeal against the conviction as well the sentence imposed.

Respective Submissions before us

As we commenced appeal hearing, to substantiate his challenge, the appellant relied on a number of grounds, though, his learned advocates substantially pruned the grounds, as discussed below.

Mr. S.M. Shahjahan, the learned Counsel for the appellant made lengthy submissions seeking reversal of the conviction and the sentences.

On Charge No.6, the learned Advocate for the appellant contended that reliance on the depositions of P.Ws. 1, 2, 3, 4, 8, 9, 12 and 14 was erroneous as the prosecution did not examine the victims whose shops were allegedly looted.

On Charge No.7, the appellant's learned advocate contended that the Tribunal misdirected itself by relying on the testimonies of P.Ws. 1, 8 and 12 as they made inconsistent statement on material particulars and as they did not state

to the Investigating Officer during investigation process some of those things that they stated in the Tribunal during deposition.

On Charge 8, Mr. Shahjahan launched a two prong attack on the Tribunal's judgment on conviction and sentence, the first one was on law and the second, on fact.

On law points, it is Mr. Shahjahan's case that the Tribunal failed to appreciate that to attract ingredients of Crimes Against Humanity, the prosecution is required to prove that the attack was wide spread and systematic as was ordained by the UN sponsored tribunals and the International Military Tribunal (IMT) at Nuremberg. On this score his attack was also directed against admission of hearsay evidence, admission of statements allegedly made by those witnesses who, though named, were not before the Tribunal to depose, reliance on discrepant testimony, and on the rejection of Ext. A document. On fact, he submitted that the evidence of Defences witness were sufficiently decisive to find the appellant not guilty and that most of the prosecution witnesses were partisan.

According to Mr. Shajahan versions of the prosecution witnesses were discrepant in two ways; firstly their story as placed before the Tribunal is inconsistent with the previous ones they put to the I.O. during the investigation stage, and that discrepancies are also on record as between the statements of different prosecution witnesses inter se.

Mr. Shahjahan placed heaviest reliance on the document in Ext. A.

Mr. Mahabuby Alam, the learned Attorney General, representing the Chief Prosecutor, on the other hand, submitted that Mr. Shahjahan's submission as to discrepancies, are delusive.

He also argued that provisions of the Act do not require the attacks to be wide spread or systematic, though in any event, they were indeed widespread and systematic as the Tribunal found.

The learned Attorney General also addressed us at length, on the Ext. A document.

Detailed and residual submissions of both of them will appear below.

I shall now proceed to discuss at length, relative strength and the probative value of the evidence adduced by both the sides, submissions proffered by the parties and the applicable legal dictates, charge by charge.

As the Tribunal below passed no conviction on Charge Nos. 1-5, 9, 12, 13, 15, 17 and 18, and as the prosecution lodged no appeal either on those charges, I am poised to discusses the charges other than these ones.

Charge No.6

Prosecution examined as many as 11 (eleven) witnesses, who are 1, 2, 3, 4, 5, 6, 8, 9, 10, 12 and 13.

P.W. 1 during his testimony expressed without equivocation that soon after the onset of our Glorious War of Liberation, anti liberation protagonists, inclusive of the appellant, formed a so-called Peace Committee at Parerhat area, with a view to thwart the War of Liberation. He also described how on 7th May, 1971, Paki soldiers set their feet at Parerhat, and how the appellant, taking advantage of his mastery over Urdu language, found it convenient to get closer to Paki soldiers, welcome them to Parerhat and identified Hindu and Awami activists' houses and shops for Paki Captain Ejaj, whereupon those shops were looted at the latter's direction, that Captain Ejaj grabbed 22 seers of gold and silver from the dwelling of one Makhan Saha. His version was that he came to

know that it was the appellant who distributed the looted gold amongst his cronies.

P.W.2 in his testimony put forward the same story, with the minor exception that according to him it was the Paki soldiers who took away the gold and the silvers.

P.W. 3 made a rather generalised statement on the looting, without being specific, while P.W.4's version fully tallied with that put forward by P.W.1.

Again, though P.W.5's story was a generalised one, it is, in material respect, corroborative of the deposition made by P.Ws. 1, 2 and 4.

Though PW. 7's story was more or less a generalised one on the allegation of looting, his version was, nevertheless, quite specific, and by and large corroborated with those of PWs. 1, 2, and 4 on the factum of the appellant's primordial role in raising the so-called Peace Committee at Parerhat, and Paki soldiers arrival at Parerhat. P.Ws. 9, 10, 12 and 13 also made generalised statement, while PW.6's version was not in corroboration with the version of others. Notwithstanding generalised nature of the statement made by PWs. 9, 10, 12 and 13, all of them were specific on the looting of Makhan Shah's shop.

Charge -7

5 witnesses, namely, PWs. 1, 4, 8, 9 and 12 deposed for the prosecution to substantiate this charge.

P.W.1 had to say that at Bangabandhu's commandments, following the Paki occupation regime's unleashing of the act of holocaust on 25th March 1971, people all over geared themselves to compose pro-Liberation militia to fight Paki occupying forces, whereas at Parerhat area several anti Liberation (by

naming them) quizlings, including the appellant, set up Peace Committee to ward off pro-Liberation surge, taking with them the collaborators of Paki regime who included all anti liberationists and madrasa students. He went on to say that towards early May 1971, Paki soldiers arrived at Pirojpur district when the appellant, taking benefit of his proficiency in Urdu vernacular, went forward to help the foraying army by becoming the interpreter of their Captain Ejaj, who then permeated into Parerhat with the appellant's help. According to his testimony, at the conclusion of the looting of Makhan Shah's and Modan Shah's shop, the invaders went to the villages named "Baduria" and "Chitola" and embarked on the spree of looting the houses of Manik Poshari and others and set those dwellings ablaze. The appellant's Urdu expertise and shrewd propensity, enabled him to get closer to Captain Ejaj, whereby he could take a leading part in the savage operations along with other leading orchastrators like Sekandar Ali, Danesh Molla.

This witness was extensively, and, as the records depict, quite skillfully cross examined by the defence team, but, could not be removed an inch from his stand that the appellant was very much present and active throughout the atrocious acts.

P.W.4's testimony was in wholesome corroboration with the version advanced by P.W.1 on the fact as to the inception of the Peace Committee at the location in question. He claimed to have been a direct spectator on the atrocious acts that reduced Manik Pashari and Nurul Islam Khan's houses to ashes, in which the appellant directly participated along with others (naming them).

P.W. 8 on the establishment of the so-called Peace Committee remained fully consistent with what PWs. 1 and 4 stated. On the acts of arson on Nuru

Khans also his deposition was specific and assertive, and undistortedly affirmed that it was the appellant who pointed the houses concerned to the Paki soldiers, affirming further that Saizuddin Pasari's house was not vandalised before 8th May 1971 by any one (under cross examination).

P.W.8 also affirmed under cross that he himself saw the acts of arson on those houses from a distance of about 200 /300 yards.

The defence sides desperate endeavour to extract from the mouths of the prosecution witnesses that the houses were burnt before 8th May by people other than the appellant and his cohorts fell through.

P.W. 8 remained unshaken and static during vigorous cross-examination.

P.W. 9 asserted during his testimony that the appellant actively participated with others in all the devastating acts that were perpetrated against the Hindus and pro-liberation people and their properties in Parerhat area. He, in line with the versions advanced by other prosecution witnesses, insisted that the appellant played a decisive role in the formation of the so-called Peace Committee and Razakar outfits, and quite ardently denied defence suggestion that the appellant was away from Parerhat at the time in question.

Defence attempt to wreck this witness through cross examination ended in nihility.

Statement of Shahidul Islam Khan, recorded under power conferred by section 19(2) of the Act, as he could not be produced before the Tribunal, (Ext. 261) was in a sense rather vivid and poignant. It reads that on being intimated that the Paki soldiers would make a forray on his village, he, in company with others, hided themselves in a jungle to monitor movement of the Paki soldiers and their native quizlings, and observed that at noon the appellant with Paki

soldiers and some 8/10 Rajakars entered into his house, detained and tortured his father, looted valuables and then torched the house.

On Ayub Ali Howlader, whose recorded statement was also adduced before the Tribunal by virtue of section 19(2) of the Act for the same reason as narrated above, made statements identical to those made by Abdul Latif Howlader, stated above. P.W. 28, the Investigating Officer (I.O.) during his examination in chief as well as under cross-examination, offered sufficient explanation for the prosecution's inability to produce them before the Tribunal.

Defence witness Abdus Salam Howlader who deposed as D.W. 15 also confirmed the events of looting and burning of the house owned by Shahidul Islam Khan Selim, claiming to have seen the incident from other side of a bridge when Paki soldiers along with the instrumentalities of the so-called Peace Committee entered into Parerhat Bazar. He did, however, exclude the appellant's name, though his version, save the exclusion of the appellant's name was, in all other respects, similar.

Depositions of PWs.4 and 8 were all alike on the facts as to the appellant's participation in the offences perpetrated at Parerhat on 8th May 1971, described above. In addition, recorded statements of Shahidul Islam Khan, Ayub Ali Howlader and Abdul Latif Howlader, Exits. 261, 262 and 258 respectively, were also in similar terms.

There can therefore, be no qualm on the commission of the crimes.

The appellant's plea in respect to this and, of course other charges, is that he was far away from Parerhat at the material time, but overwhelming weight of evidence discard this plea alibi. (Discussed below at length)

Charge-8

This charge may well be divided into two parts, namely the killing part of one Ibrahim Kutti and the part that relates to the ablazement of Hindu owned houses at Parerhat.

Prosecution examined as many as eight witnesses and adduced six sets of statements recorded pursuant to power conferred by section 19(2) of the Act, detailed above.

Defence also adduced three witnesses, i.e. D.Ws. 2, 7 and 11.

P.W. 1 a Freedom Fighter, fervently asserted that the appellant was very much present at Parerhat throughout the period covered by our Glorious War of Liberation, and that the appellant with the help of Madrasa students and other anti liberationists, established Rajakar paramilitia, that Paki soldiers entered into Parerhat in the early part of May 71, and committed various atrocities, as vividly narrated by him.

P.W. 2 deposed, totally corroborating with P.W.1's version on the formation of the so-called Peace Committee, and Rajakar auxiliary at Parerhat, and went on to testify that on 8th May 71, so-called Peace Committee members looted the houses of Roisuddin Posari, Soijuddin Posari and Manik Posari along with Paki soldiers and thereafter set those houses ablaze.

This witness could not be removed from his stand during extensive cross-examination.

P.W. 6, an eye witness to the crimes committed in Parerhat, deposed that when, on 8th May 71, the Paki soldiers in company of the appellant kept advancing towards his house from Parerhat, he along with his brothers took ambushing position in a jungle and kept observing actions of the perpetrators which included looting and ablazing houses. At one stage Mofizuddin (P.W.7)

tried to runaway, but they caught hold of him and tied him with the same rope, as Ibrahim Kutti was. And after completing the looting process, they, at the instruction of the appellant, began the process of setting houses on fire with kerosine. Thereafter, the perpetrators took Mofiz and Kutti towards Parerhat. This witness, who kept on the vigil, saw the appellant and one Danesh engaged in consultation with the Paki soldiers, who then untied Kutti, put him on the middle part of Parerhat bridge, and then shot him dead after some chat with the appellant and Sekandar Sikdar and then threw the corpse on to the river. This witness also put further weight to prosecution claim that the appellant had a decisive role in the formation of the so-called Peace Committee and the Rajakar outfit at Parerhat.

P.W. 7 also deposed that he was yet another person who claimed to have had seen the incident of taking away of Kutti and Mofizuddin Poshari and the killing of Kutti by the Paki soldiers on Parerhat bridge after discussion with and in the presence of the appellant. His version was no different from that of P.W.6 on basic terms.

This witness remained unshaken in the face of strenuous cross-examination. P.Ws. 10, 11 and 12 also deposed on this charge, fully corroborating the depositions of P.Ws. 6 and 7.

Prosecution also examined P.W. 28, the I.O. on various aspects covering all the charges, inclusive of the instant charge, who during his deposition, so far as the charge under consideration in concerned, elaborated at length why Abdul Latif Howladar, Ayub Ali Howladar, Shahidul Islam Selim, Md. Mostafa, Sitara Begum and Rumi Begum, could not be produced to testify.

He also remained unmoved under severe cross-examination.

On the first part of Charge No. 8, i.e. the alleged killing of Ibrahim Kutti, defence side adduced 3 witnesses. Of them D.W.2 stated that in the middle of the month of Aswin of the Bengali Calendar, a big bang shortly before the time for morning prayer, attracted his attention. After saying his prayer he emerged out and kept walking northward and noticed one boat carrying Ibrahim Kutti's corpse, plying from the north towards the south. Ayub Ali Chowkidar, Kalam Chowkidar, Hakim Munshi, Danesh Molla, Moslem Maulana, Ruhul Amin and Momen Rajakar were also in the boat, in which Raju Howladar's wife and son Shaheb Ali were also present, but Shaheb Ali was subsequently killed by the Paki soldiers. He also stated no Paki soldiers or Razakars went to Halim's house in 71. D.W. 7 stated during his deposition that towards late night he noticed a big bang, after which he noticed hue and cry in Azhar Ali Howladar's house. As he reached home, at his father's suggestion they both proceeded towards Azhar's house, but from behind a tree at Azhar's yard, he saw Ayub Ali, Kalam Chowkidar, Hakim Munshi, Mannan and Ashraf Ali hauling Kutti's corpse canal ward and behind them Danesh Molla, Sekandar Sikdar, Moslem Maulana, Ruhul Amin and Mumin were pulling Shaheb Ali and his mother towards Parerhat with their hands tied. Having advanced a bit, this witness saw Kutti's corpse being boarded on a boat, taken towards Parerhat. He then went to the house of Shaheb Ali and found Kutti's wife, Momtaz, rolling and crying. About the blood in Kutti's wife's hand, this witness was told by the latter that the bullet that killed Kutti also hit her hand. At around 11.00 a.m. he came to know that Kutti's corpse was kept tied with a boat by a bridge and learnt the day after that Shaheb Ali was also killed by the Paki army.

D.W. 11 testified to the effect that he got awakened by a big bang seconds before the morning prayer. After coming out of the mosque, he went to the Canal side and saw Danesh Molla, Moslem Maulana, Sikandar Sikdar, Ruhul Amin and Mumin proceeding towards Parerhat taking with them rope tied Shaheb Ali and his mother, and 5 minutes thereafter he saw a boat loaded with Ayub Ali Chowkidar, Kalam Chowkidar, Abdul Hakim Munshi, Abdul Mannan, Ashraf Ali, taking Kutti's corpse towards Parerhat. He then went to Azhar Howladar's house with some others, heard others saying that Razakars have killed Azhar's son-in-law and have taken away his wife and son. He also deposed to having seen Kutti's wife with her right hand bandaged, who and others said that she has suffered injury when Kutti was killed.

So, his version differs from that of D.W.7 on some decisive aspects in that while according to him two sets of people, one taking Shaheb Ali and his mother, and another taking Kutti's corpse by boat, both proceeding towards Parerhat, what D.W.7's version was that there was one set of people who were taking with them in one boat Kutti's dead body, Shaheb Ali and his mother.

They also differed in that while D.W.7 said he saw blood in Kutti's wife's hand, D.W. 11 saw her hand bandaged. This bandage story, in the context of 1971 is undoubtedly incredible, particularly given the narrow time gap. It is also beyond comprehension that Momotaz would make the sort of reply to D.W.7 as he stated during his deposition, when she was in a state of bereavement which must have jolted her following her husband's killing.

This witness admitted to be a functionary of Jamat-e-Islami.

One Masum Sayedee (D.W.13), a son of the appellant, filed a series of documents in support of the defence case, yet, another document of much

greater importance, i.e. document that bears Exhibit Mark A, was filed by another D.W. i.e. D.W.11, while that document, for reasons stated below, was supposed to have been filed by D.W.13.

Ext. A purports to show that Momtaz, widow of slain Ibrahim Kutti, filed a First Information Report (F.I.R.) on 16th July, 1972, implicating some 13 people of killing her husband, in which appellant's name was not scripted. Story contained in the so-called FIR was to the effect that those named in the FIR formed an unlawful assembly and attacked Kutti's house in the morning and shot him dead. Not the original, but a photostate copy of the so-called FIR was produced at the hearing stage. It shows that a certified copy of the so-called FIR was obtained in 1972, yet it was produced in the Court in October 2011. The so-called document also revealed overwriting on the dates on some pages. During cross-examination D.W. 11 failed to say whether the so-called certified copy filed by him and the photocopy filed at the time of the hearing were of the same origin or not. He also failed to identify the source of the so-called document and also admitted that some words were cut without having counter signatures on those areas. He could not say who obtained the certified copy and the time of obtainment. He admitted that the so-called document was in D.W.13's custody and indeed D.W.13 was the appropriate persons to answer all questions on this so-called document.

Clearly the question as to why D.W.11, rather than D.W. 13 filed this document has remained unanswered when it is D.W.13 who filed all other documents. This fact by itself shed thick cloud on the authenticity of this document.

Prosecution filed an application before us while the appeal hearing was in progress asking us to ignore Ext. A and its contents. The prosecution by the said application asserted that to ascertain the genuineness of the so-called document at Ext.A, the learned Attorney General in company of his colleagues Mr. Biswadev Debnath and Mr. Bashir Ahmed, a Deputy and an Assistant Attorney General respectively, visited Pirojpur Police Station on 22nd September, 2014 but the Officer-in-Charge therein failed to locate the so-called FIR or any trace that of, which propelled the learned AG to move on to Barisal, which was the district head quarter at the time in question as Pirojpur did not emerge as a district by then, with the hope to locate any trace of the document or its periphery at the Courts record room, but was told by the record keeper that unless the Special Tribunal number was supplied, the record could not be traced. That took the learned AG to visit Barisal Nazarat on 1st April, 2014 and undertook extensive search at the Nazarat Office but in vain as he could find no trace of any document of alleged case which could have given rise to Pirojpur P.S. Case No.9 dated 16.07.1972. On perusing the Special Tribunal Case Registrar, the learned AG found that the record in respect to the Registration of Pirojpur Special Cases No.2 of 1974 to Special Cases No. 8 of 1976, but could not find any trace of Pirojpur Case No.9 dated 16th July, 1972 amongst those cases. The prosecution application also figured the list of those cases alongside the names as the accused but none of the persons purportedly shown in the so-called FIR is in there. It is further stated in the prosecution application that the learned AG was told that if Momtaz Begum really filed any FIR on her husband's killing, the case would have been transmitted to Barisal for trial as the same would have attracted President's Order (P O) 8 of 1972 and the names

which are purportedly indexed in the so-called FIR, would have been in the entry register if any case was really filed and sent to Barisal for trial. The prosecution application alleged that the document is a forgery, framed by the appellant's afore named son, Masum Sayedee, the D.W. 13, who did so to create a state of obfuscation on Kutti murder.

D.W. 13, during cross-examination stated that he obtained the so-called document from his now deceased elder brother, with whom he had no discussion about this document and that his brother might have spoken to Sitara Begum, and then said Momtaz may have taken the copy from her mother and then handed the same to his brother. He failed to state how long the copy was with Sitara, who procured the certified copy and admitted that initials and rubber stamps of the Sub-Divisional Magistrate was missing at the reverse pages of the so-called document, but only a round seal was affixed.

Charge -10

Prosecution examined P.Ws. 1, 4, 5, 9, 12 and 14 and put forward recorded statements of Abdul Latif Howladar (Ext. 258) Sukha Ranjan Bali (Ext. 260) and Mukunda Chakraborty (Ext. 269)? under section 19(2) of the Act.

P.Ws. 1, 5 and 9 claimed to have watched the occurrence by themselves. P.W.1's version was that on 2nd June 71, he was told by one Khalilur Rahman that the cronies of Rajakar Delwar Hossain Sayedee have compiled a list of the leaders of Awami League and Mukti Bahini who were under this witness' shelter. On being so informed, P.W.1 removed those under his sanctuary to a safer place, but around 10.00 a.m. members of Peace Committee and the Rajakars headed by Danesh Molla, Sikandar Sikdar, Delwar Hossain Sayedee attacked Hindu owned houses at Umedpur village and torched them. The houses

were those of Chitta Ranjan Talukdar, Johor Talukdar, Bisabali, Sukur Ali, Amil Mondal and others. He went on to say that as Bisabali was unwell, he could not run away and was rounded up, fastened with a coconut tree and then, was shot dead by a Rajakar who did so at the appellant's order. He claimed to have been a Freedom Fighter (FF) who supplied information to FFs Sundarban Camp.

He remained unmoved during tooth and nail cross-examination.

P.W.4 stated that the appellant and his accomplices looted houses of the Hindus, Freedom Fighters, Awami belongers. By hiding himself behind a bush, he saw the appellant and his cronies committing these atrocities. He also affirmed that the Rajakars torched 22 houses at Umedpur, tormented Bishabali and that after some utterances by the appellant, one Rajakar shot Bishabali dead. He could not be shaken by cross-examination. His deposition fully tallied with that of P.W.1.

P.W.9 who also claimed to have been a direct spectator of the gruesome events, asserted that on 2nd June 71, at around 10.30 a.m. the appellant along with his cohorts and Paki soldiers, entered into Umedpur village which he saw from inside a jungle where he sheltered himself. He saw them looting Hindu houses, setting 18/20 ablaze, catching Bishabali and the killing of the latter by a Rajakar after the appellant chatted with Paki army and then ordered his cohorts to kill Bishabali.

Defence attempt to shake him up by cross-examination ended in vain.

It is to be noted that on the torching of the houses at Umedpur and the killing of Bishabali, the versions put forward by all the three PWs. were virtually identical.

P.W.14, another claimed eye witness, stated that he saw the appellant and others to enter into his house, looting items from therein and put the house ablaze and after emerging thence they went to Umedpur Hindu area. He saw this from a safe sanctuary. He also said that he heard it that the raiding team then burnt Hindu houses and killed people at the Hindu area. He, however, did not depose on Bishabali killing.

By recorded statements, Shukha Ranjan Bali, Mukunda Chakraborth and Abdul Latif Howladar narrated the same story on Bisha Bali's killing and houses torching as P.Ws. 1, 5 and 9 did in their oral testimony, which have already been recorded above.

The I.O., P.W. 28 placed, during his testimony, cogent reasons for the prosecutions inability to produce fifteen people including people that were meant to testify on this charge, before the Tribunal in his attempt to justify production of recorded statement of these people under Section 19(2) of the Act. He said that although he recorded their statements at the investigation stage, they could not be produced as they were scared of reprisal and stayed beyond the I.O.'s reach when the latter or his colleagues went to those people with the Tribunal's process. He went on to state that when he approached Sukha Ranjan Bali's residence carrying the process along with P.W.3, Bali could not be found, and his wife and daughter turned down this witness' request for supply of information on Sukha Ranjan's whereabout though this witness stayed there for one and half an hour. He stated under cross-examination that he found Shukha Ranjan's wife and daughter in the earlier's house. He said producing fifteen witnesses before the Tribunal was expensive, time consuming and impossible

and he brought these facts to the Chief Prosecutor's knowledge. He mentioned the dates on which statements of different people were recorded.

He said the first time he came to know about the threats the witnesses were inundated with was when Manik Poshari, P.W.6 intimated him of such threats on 18th August, 2010. He warned P.W.6 and other witnesses to maintain caution and asked the Officer-in- Charge of the relevant police station to look after the threatened witnesses.

About Shukha Ranjan Bali, this witness added that he vested upon the Officer-in-Charge of Indorkani Police Station the responsibility to produce Shukha Ranjan Bali before the Tribunal and asked latter's daughter to lodge a general diary with the same police station and the latter, named Mallika Rani Mondal, obliged by lodging a diary containing information on Sukha's missing, which was registered as Indorkani P.S. G.D. No. 773 dated 25.02.2012.

This witness also stated that he recorded statements made by Mukunda Chakraborti and as he died subsequently, his statements were adduced pursuant to section 19(2) of the Act. About Latif Howlader, his statement under cross was that he recorded this person's statement on 19th August, 2010 at a local school at Parerhat. At a later date he went to Latif Howladar's house along with Mahbubul Alam Howladar (P.W.1) and found Latif's wife therein. Neighbours also gathered around, but nobody could say anything on Latif's whereabout and as such he asked the local police to try to trace Latif. Police duly sent a report to him. He went to Latif's house twice. Mahbubul Alam Howladar was not with him on the second occasion, but a police Sub-Inspector named Abdul Malek Khan accompanied him and during the second visit also he found in the house

none other than Latif's wife, who intimated that Latif was not home. Neighbours also could say nothing.

This PW was extensively and intensively cross-examined for as many as 47 days, but without being shaken.

As a defence witness, D.W.9 said he went to see her ailing aunt at Umedpur village towards the middle or later part of the Bengali month of Jaistha and in the morning after the day of his arrival saw people terrified about the news of Paki soldiers arrival. He, along with some others, saw some 15 / 16 Paki soldiers along with Moslem Moulana, Danesh Molla, Sekandar Sikdar, Asmat Munshi and others transgressing onto Hindu Para, saw flames emerging from the houses at that area, he heard from one of his companions, named Afzal that Bishabali was hauled by the invaders towards the north, heard on the proceeding day that all the people taken by the foraying soldiers and Rajakars were killed on the bank of river Baleshwar.

Story narrated by this defence witness goes hand in gloves with that given by the P.Ws., except that he excluded the appellant from the list of the invaders.

He admitted to be an activist of Bangladesh Nationalist Party, (BNP) the political party which formed alliance with a number of other parties, including Jamat-e-Islami, the party of the appellant's belongings, to form government. It is also interesting to note that he is not a local of the village concerned. He also confirmed that he found no interest in the visiting investigating team. He can most aptly be termed as a "chance witness".

The defence case on this charge is mainly founded on alleged discrepancies, to be addressed later.

Charge-11

P.Ws. 1, 5 and 17 were examined to take home this charge, while Exts. 11 was also adduced.

P.W.1 said that the appellant being ganged up with others went to his house and intimidated his brother Abdul Mazid to make his brother (i.e. P.W.1), Awami League activists and Freedom fighters available to him, and then tormented him as he refused to heed to this intimidation and also looted articles from his house. He admitted under cross-examination that he was not home.

P.W.5 deposed as a hearsay witness on the looting of Mahbubul Alam's house.

Charge-14

Only P.W.23 deposed for this charge and stated that some people (naming them) including "Delwar " formed the so-called Peace Committee. "Delwar" had a small shop at that time. He began to identify himself as "Delwar Sikdar" afterwards. He went on to say that one day some Rajakars arrived at his house at 4.30 p.m., but he did not know who they were as he was not home, but his wife later told him that one who converted him (P.W.3) to Islam, came. She asked the deponent to get away and escape. According to this witness his wife told him that she had been raped and was, as such, in severe abdominal pain. He continued to say that some Hindus, inclusive of himself were converted to Islam. Another one, named Krishna Shaha, was not spared even after conversion to Islam: he was done to death. It is the appellant that converted him, who warned this witness that he would be killed if failed to convert himself to Islam. After liberation he however, returned to his original faith. He added that some 4 / 5 months afterward, his wife gave birth to a daughter, but that sparked scandalous gossips as to the paternity of the child for which, at the advice of his wife's

brother, she migrated to India to be spared of the rumour. They never met again. He was quite adamant to deny defence suggestion that his wife moved to India because of bad blood with him.

Charge -16

P.W. 13 was the prime witness for this charge who stated that he was 27 years of age in '71, that one day in 71 Delwar Hossain Sayedee arrived at the deponent's house with some Rajakars, looted the house and took away his three sisters, named Mohamaya, Annya Rani and Komola Rani and then Delwar Hossain Sayedee and the Rajakars took those sisters to the Paki soldiers camp at Pirojpur, where Paki soldiers raped them and released them after three days. A few days later Sayedee converted this deponent's parents and siblings to Islam, being ashamad of which, everyone of his family, except himself, left for India.

Statement of Azit Kumar Shill (Ext. 264) produced under Section 19(2) of the Act, is to the effect that the appellant facilitated the act of abduction as well as of handing over of these three girls to the Paki soldiers who raped them.

P.W. 28, on adducing Ext.264 said that Ajit Kumar Shill gave in to his family's pressure against giving evidence and that Shills son told P.W. 28 (I.O.) that his father would face death and he would himself lose his job if his father deposes. This witness refuted defence suggestion that Ajit Shill did not actually disappear or slip into hiding. The I.O. (P.W. 28) visited Shil's house more than once but could not trace him and that his wife and son refused to disclose his whereabout.

The defence argued that the rape story is devoid of credence as the girls were no older than 5-7 years. They developed this argument on the claim that as P.W. 13 himself was hardly eight at the relevant time and thus, sisters younger

to him could not have been older than 7. For this they relied on Ext.R, i.e. P.W. 13's national identity card, but P.W. 13 insisted that his date of birth was wrongly scripted in his national identity card, and that he was 27 years of age in 1971.

Curiously enough this positive verbal assertion of P.W. 13 on his age when he deposed, was not challenged by the defence and as such it remained beyond qualm. This remains to be noted that as there was no formal system of birth registration in Bangladesh like in the developed countries, dates figured in such document as national identity cards, introduced only a couple of years ago, registering as voters people aged 18 or above, can not be held to have strong presumptive value in our society. In any event P.W.13 by his verbal and un-challenged testimony must have rebutted any possible presumption. The truth is that the dates of birth scripted on such documents are mostly based on guesswork or as put in by those officials who go to register them. We take judicial notice of these facts. We are aware that two Supreme Court Judges have respectively been described as a contractor and social worker.

If he was 27, his younger sisters were adults in 1971. Even if it is taken for granted that they were below 10, that can not, by itself, be taken to preclude the allegation of rape. Rapes committed on girls aged 5 is not uncommon. A 1971 genocide researcher, Shara Latch, asserted in her work (reproduced below) that girls of such ages were raped.

P.W. 13 remained static during lengthy and skilful cross-examination. D.W. 3 also stated that he heard about it, excluding the appellant though.

Although P.Ws. 1 and 4 did not specifically depose on the abduction and rape of these 3 girls, they did nevertheless, depose on mass raping by Paki

soldiers with direct assistance of the native collaborators, a historical fact known to all, quite worthy of judicial notice. Various research works, reproduced below also confirm this.

Charge-19

P.W. 2 (an F F) testified that members of the (so-called) Peace Committee forced 50 / 60 of Hindus (naming 6) in their locality to be converted to Islam, forced them to say prayers in the mosque and to learn Suras in Arabic. According to him they returned to their religion of birth after Liberation. This witness confirmed that the appellant was one of those who formed the (so-called) Peace Committee in the area concerned, while Golam Azam was it's founder at the national level.

P.W. 3 asserted that the appellant, after detaining some pious Hindus forced them to be switched to Islam, to wear tupees, say prayers at the mosques, were renamed with Arabic vernacular but that they returned to their own theosophy after liberation.

This witness also could not be toppled by cross-examination.

According to P.W.4 the appellant forced Vhanu Shaha's father and brother to become Muslims, besides the fact that he also raped Vhanu Shaha. They were forced to say prayer in the local mosque.

He also firmly withstood vigorous cross-examination.

P.W. 13, who claims to have himself been converted, stated that it was the appellant who coerced him to become a Muslim and that the chain of coerced convertees included his parents, and siblings. He continued to say that his parents and siblings made moonlit flit to India while he stayed back in soltitude. Naming some, he added that Sayedee was instrumental to converting around 100

/ 150 Hindus to Islam against their will, he was renamed as Abdul Gani and that Liberation enabled him to get back to his own belief.

Defence could extract nothing in their favour by extensively cross examining him.

P.W. 23, who deposed for charge No. 14 also to substantiate allegation of rape of his wife by the appellant, on this charge deposed to say that though Krishna Shaha and Ganesh doctors were also forcibly converted, Krishna could not escape the scourge of the Rajakars: he was killed nevertheless. Those converted were given Arabic names. He was told that conversion was the only way to be spared of killing and that the convertees reverted to their parental faith when congenial circumstances resumed on Liberation.

He also remained firm throughout the period of cross-examination.

Ajit Kumar Shill, who, as described above in regard to Charge No.16, could not be produced before the Tribunal for reasons narrated above, included in his statement (Ext. 264) facts as to forcible conversion as well, inclusive of his own subjection to coercive conversion. He stated that on a day in late June, Sayedee and other Rajakars arrived at his house and put pressure on him and members of his family to bear to embrace Islam, compelled them to go to Parerhat Mosque and forced them to recite Kolema under threat of death, to wear tupi and take tasbi. Naming some 11 people, he stated that Rajakars kick converted some 100 / 150 Hindus to Islam and that it is the appellant who administered namaj in the mosque. He also said that he was given the Arabic name of “Sultan”.

Whither Wide-Spread; Systematic

As stated above, of the two prong attack on the Tribunals verdict, the law point onslaught was to the effect that to attract Crimes Against Humanity, it was incumbent upon the prosecution to establish that the alleged attack was on civilian population, was systematic and widespread.

The appellants team reminded us that neither the Tribunal below nor are we are concerned with Penal Code offences, but with specialised offences triable only under the International Crimes (Tribunal) Act, 1973, insisting that rules and decisions of UN sponsored tribunals and the provisions outlined by the principles of public International Law are to be followed.

At the very incept, it must be reminisced that the same argument was proffered by the appellant sides in the very first appeal that came up before us against the conviction and the sentence that was passed under the Act. It was the case of Abdul Quader Molla-V-The Chief Prosecutor, **Criminal Appeal No.25 of 2013.**

In view of the appellant's assertion in that case we sought amicus from 7 luminaries of the Supreme Court Bar, who placed comprehensive verbal and written submission and opinions.

After considering their in-depth, well elaborated and well researched submissions and similarly well endowed articulation of the learned Attorney General, we concluded without any equivocation whatsoever that notwithstanding the nomenclature of the Act, this is essentially a munical legislation of Bangladesh, whose provisions are to be construed by application of our domestic rules, native precedents and that although we may take account of case laws developed by UN Sponsored Tribunals, they are by no means binding but may simply be considered in the same way as we consider such

foreign decisions which only have persuasive authority. We also ordained with no unclear term that Customary International Law provisions can be invoked only and only if they are not in conflict with our municipal jurisprudence.

Now, Crimes Against Humanity has been defined by Section 3(2)(a) of the Act as having within it the crimes of murder, extermination, enslavement, deportation, imprisonment, abduction, confinement, torture, rape or other inhumane acts.

It is axiomatic that the component crimes that form parts of the Crimes Against Humanity, such as murder, rape etc. are well defined by our municipal legislations and case laws and it is not essential to borrow overseas persuasive authorities to locate definitions, as it was held in Eichman's case - 1LR 36, 5, 18, 227 342 (biblio)?

While the Section concerned requires the proscribed acts to be committed against "any civilian population", there is nothing whatsoever in it to even imply that the attack has to be "widespread and systematic" or "widespread or systematic".

We are aware that Nuremberg chartered required the attacks to be "widespread or systematic" and in similar vein, statutes of modern UN sponsored ad-hock tribunals, set up for trying and punishing those accused of Crimes against Humanity, impose upon the prosecution the additional burden of substantiating the facts that the attacks were not only directed against civilian population but was also systematic or (sometimes "and) widespread.

But, since these provisions are not figured, and, as such are at odd with the provisions in our Act, they can not be embroid into our municipal system.

Even then, the clear finding of the Tribunal was that the attacks were indeed "systematic and widespread" any way.

Given the proven fact that the attacks were not in isolation like ordinary Penal Code offences, but was part of an orchestrated act aimed to defuse and frustrate our Glorious War of Liberation, it goes without saying that the attacks were obviously systematic and also widespread as attacks on the pro-liberation people spread throughout Bangladesh in a systematic manner. So, once it is proved, as it has no doubt been, that the accused persons acted as auxiliary outfits for the Pakistani occupying forces in order to thwart our War of liberation, nothing more is needed to prove the systematic and widespread character of the attack as we are quite entitled to have judicial notice of it. So, though the attack need not be proved to be wide spread and systematic, nevertheless, they were so.

Admissibility of Recorded Statements

Mr. Shajahan, the learned Advocate for the petitioner in launching the law point attack also tried to assail the admissibility of recorded statement, which is, of course fact dependant aspect and is as such a mixed question of fact and law.

It is not in qualm that Section 19(2) of the Act equips the Tribunal with the discretion to receive in evidence any statement of a witness which a Magistrate or an Investigation Officer recorded if such a witness cannot be produced to depose without delay or expense which the Tribunal considers unreasonable.

What the appellant's side, without questioning the ambit of Section 19(1), contended is that facts which are required to be proved to ignite this discretion, never existed.

In legal jargon, these facts are known as jurisdictional facts.

The prosecution on 20th March, 2012 filed an application to the Tribunal with a prayer that as the people listed therein (46 altogether) could not be produced before the Tribunal for reasons stated against their names, their statements, recorded by an I.O., under power conferred by Section 8(6) of the Act, be admitted as evidence pursuant to discretion conferred by Section 19(2) of the Act. Although the list contained 46 names, statements of 15 only could be adduced eventually, as the Tribunal allowed application for those 15 only. They are named below and the reasons furnished for the prosecution's inability to produce them are narrated against their names.

These fifteen people are;

(1) Ashish Mondal-Ext. 254

(2) Sumit Rani –Ext. 255

(3) Samar Mistiri – Ext. 256

(4) Surendra Mondol – ext. 257

(5) A. Latif Howladar – Ext. 258

(6) Anil Mondol – Ext. 259

(7) Sukh Bali – Ext. 260

(8) Selim - Ext. 261

(9) Ayub Haldar – Ext. 262

(10) Usha Malakar –Ext. 263

(11) Ajit Shill –Ext. 264

(12) Rani begum –Ext. 265

(13) Sitara Begum – Ext. 266

(14) Md. Mostafa – Ext. 267

(15) Gonesh Shaha – Ext. 268

Of them Usharani Malakar (Ext. 263) was at the top of the list, about whom it was stated that she was ill with amnesia and may face death risk if made to travel.

About Sukha Ranjan Bali (Ext. 260) it was claimed that he has been out of trace for the preceding 4 months.

On Ashish Kumar Mondal (Ext. 254), Sumati Rani (Ext. 255), and Samar Mistiry (Ext. 256) the claim was that they also have been out of trace since February 2012, and that it has come to the prosecution's knowledge that these people have surreptitiously fled to India. On Ganesh Chandra Shaha - (Ext. 268), Shahidul Islam Khan Selim – (Ext. 261), Ayub Ali Howladar- (Ext. 262), Sitara Begum – (Ext. 266), Rani Begum - (Ext. 265), Md. Mostafa – (Ext. 267), Abdul Latif Howladar – (Ext. 258), Ajit Kumar shil- (Ext. 264) it had been asserted that some armed terrorists of Pirojpure visited these potential witnesses' home with threat, compelling them to go into oblivion. They were all eye witnesses.

The only person that could and did offer factual klidoscopy was the Investigation Officer himself, who recorded those statements. After offering explanation, P.W. 28 was very extensively cross-examined but nothing favourable could be extracted by the defence through the said exercise.

Under cross-examination P.W.28's version on Ajit Kumar Shil (Ext. 264) was that he visited Shil's house twice but could not find him. On his second visit to Shil's house, his son, on being asked, could not disclose his father's whereabout and that having had discussion with Shil's wife and son, he understood that Shil has crawled into hiding out of fear. They (his wife and son)

did not disclose his whereabout despite repeated requests, though they were possibly aware of his whither. He directed a local police officer and the Officer-in-Charge of the local P.S. to intimate him immediately on being aware of Shil's location. It has been reported to him that Shil's family put pressure on him to refrain from giving evidence in this case. His son told the I.O. that his father would be killed if he deposed and the son would himself also lose his job in a private shop at Parerhat.

On Latif Howladar (Ext. 258) P.W.28 said he went to Latif's house with Mahbub Alam Howladar (P.W.1) and stayed for half an hour, met his wife and saw his neighbours and asked them about Latif's whereabouts, but they failed to say anything, save that he is some times seen home. He asked the local police to report on Latif's whereabouts and they obliged. During his second visit Mahbubul Alam did not accompany him, but a police sub-Inspector did. During that visit all that Latif's wife said was that her husband was not home. Neighbours also could say nothing.

On Ayub Ali Howlader, this witness said that he first met Ayub on 19th August 2010, at Parerhat Rajluxmi School and then met him for the second time on 6th April, 2011 at Pirojpur Circuit House, went to his house with Tribunal's process once only, but could not find him home and spoke to his daughter who said that her father has been facing threats wherefor he is petrified. She also requested this witness (I.O.) not to call her father to depose. She said two people called at their house to convey the threat. This witness added that having been given the identity of the threat mongers, he asked the local police to proceed with action.

On Usha Rani Malakar (Ext.263) this witness said that when he went to her house with Court's process, having spoken to her neighbours he was convinced that Usha was unwell to the extent of being immobilised. He said he first met Usha and recorded her statement on 20th August 2010, and that he was not aware of Usha's ailment before recording her statement. When an alleged picture of a woman who was projected as Usha Malakar in a T.V. Channel named Diganta was shown to him, this witness said he finds no similarity between Usha's picture he snapped and the one shown by Dignata T.V. Channel. It is to be noted that Diganto TV is in fact a Jamat channel, described below at length.

On Kazi Shahidul Islam Khan Selim (Ext. 261), this witness had this to say: he first met Selim on 18th August, 2010 and then on 6th April, 2011, he went to his house to serve Court's process once and sent people 3 / 4 times. When he went with the Court's process, this witness was not there, but his daughter was very cross and said her father has been beaten up for agreeing to be a witness, her studies has virtually come to halt, and insisted that her father will not go to depose. She also said that her father lodged a case after being beaten. This witness confirmed having seen the documents of that case, filed with Pirojpur Police Station.

On Sitara Begum (Ext. 266) this witness's version was that he himself did not go to her place with the Tribunal's process, but people (a Sub-Inspector) engaged by the Police Super of Pirojpur went there and the O.C. of Indurkani P.S., repeatedly informed him of her untracibility.

On Rani Begum (Ext. 265) and Md. Mostafa (Ext. 267) this witness expressed that Police Sub-Inspector Abdul Malek Khan, who went to their

houses with Tribunal's process informed him that they could not be tracked. He added that Sub-Inspector Malek Khan informed him that he searched many houses at Nalbunia village to find out these three people but in vain. (i.e. Sitara Begum, Rani Begum and Md. Mostafa).

On Shukha Ranjan Bali (Ext. 260) this witness said that he recorded Sukha's statement on 20th August, 2010 and went to Sukha's house with the Tribunal's process once, along with Mizanur Rahman Talukdar (P.W.3) and found Sukha's wife and daughter home. Neighbours crowded the venue as well. He stayed there for one and half an hour. He called at Parerhat Police Camp and then tied the O.C. of Indorkani P.S. with the responsibility to produce Sukha before the Tribunal and also advised Sukha's daughter to file a general diary with the Police and his daughter, Monica Rani Mondal, filed a diary (giving the number) on Sukha's untracibility. One Osman Gani, a Sub-Inspector was assigned to inquire into the matter as reported in the general diary and, to this witness' knowledge, the matter was still under investigation.

On Ashis Kumar Mondal (Ext. 254) Sumati Rani Mondol (Ext. 255) and Samar Mistiri (Ext. 256) this witness stated that he recorded their statement on 20th September, 2010 on their first meeting. He went on saying that he did possibly carry the Tribunal's process for these three people together and that once he went to their place himself with a Police Sub-Inspector of Pirojpur Sadar Police Station.

On Ayub Howladar, P.W. 28 further stated that he has come to know that Ayub has gone beyond sight, apprehending reprisal from the accused's side, adding that police personnel went to his place but to no effect. He further stated that when he first travelled with process to their (Sitara Rani and Mostafa

Howladar), place, he only found Sitara and that those who went their to bring those witnesses subsequently, found none and learnt from the locals that they had gone into cladestinity. He added that by Usha Malakar's illness he meant her amnesia and serious deterioration of physical health, which worsened at the time of the submission of his report and denied the suggestion that his assertion that her journey to the Tribunal may endanger her life, was not a genuinely held one.

He refuted the suggestion that his report on the disappearance of Ashish Kumar Mondol, Sumati Rani Mondal and Samar Mistiry was not based on truth. He also discarded the suggestion that the report to the effect that these three people (Ashish, Sumati and Samir Mistiry) possibly fled to India, is not impregnated with truth.

He said the deponent of Ext. 269, named Mukunda Chakraborthy, who was examined at the investigation stage, died afterwards.

Reasons for Endorsing Admission of Recorded Statements

The I.O., who deposed as P.W. 28, was, as is to be seen below, extensively and indeed, intensively cross examined about these deponents on the reason for the prosecution's inability to produce them before the Tribunal, but he could not be shaken.

Reasons proffered and explanations tabled, appeared satisfactory to the Tribunal below, and I, for myself, having perused the evidence on record, find no reason whatsoever, to hold otherwise. In this regard I take notice of the following facts;

(a) one Mostafa Hawlader, who testified for the prosecution as P.W.8 was brutally assaulted on 08.12.2013 who, then

succumbed to the injury on 09.12.2013, a fact that was widely reported by Bangladesh media, which, we can unhesitantly take judicial notice of. A criminal case was filed on 9.12.2013 (Jianagar P.S. Case No. 3 dated 9.12.2013), in consequence, about which the charge sheet (C.S. No.1, dated 4.1.2015) on 4.1.2015 impleading 6 accused has already been filed. The case is now pending.

(b) the appellant was twice elected to the Parliament from Pirojpure, and his sons are very influential and widely feared people in the vicinity. One of them has recently been elected to the local civic body.

(c) a wild ghostly and bizarre fairy tale like story, grotesque though, circulated on the day the Tribunal's judgment was delivered, that the appellant was seen in the moon, resulted in the killing of few dozens of innocent people and injury of a number of police personnel.

Hearsay

Mr. Shajahan repeatedly complained that the Tribunal below erred in admitting hearsay evidence.

Without any insinuation I only wish to express my surprise as to how Mr. Shajahan could be oblivious of the express provision in the Act which stipulates that the tribunal shall not be bound by technical rules of evidence and may admit any evidence which is deemed to have probative value, and of the express provision in Rule 56 (2) which confers discretion on the Tribunals to accord due consideration to hearsay evidence

Again, it is not only our Act, hearsay evidences were admissible in the IMT in Nuremberg and Tokyo Tribunal as well as by other national tribunals such as US Military Tribunal in Nuremberg and Soviet Tribunals and the British Tribunal that tried war criminals before as well after the hostility ended in 1945.

Statutes of modern UN sponsored tribunals such as ICTY, ICTR, SCSL, STL and even that of International Criminal Court (ICC) do not proscribe hearsay evidence for very cogent reasons. The very nature of the crimes concerned and the manner of their commission are such that credible hearsay evidence are indispensable.

Although there is no rule governing the admissibility of hearsay evidence before the ICTY, ICTR and SCSL, the Trial Chambers of all these tribunals have refrained from adopting a practice to exclude all hearsay evidence. There is no rule declaring hearsay rule per se inadmissible. General scheme for admissibility of evidence set out in Rule 89 for ICTY, ICTR and SCSL has guided the chambers in their deliberation on hearsay evidence.

In Prosecutor-v-Galic, the Appeals Chamber of ICTY defined the scope of admissibility of hearsay evidence pursuant to Rule 89(1) saying that the said Rule "permits the admission of hearsay evidence in order to prove the truth of such statements rather than merely the fact that they were made. According to that decision a hearsay evidence may be oral i.e. where someone else had told him something out of Court or in black and white, for example when an official report, written by someone who is not called as a witness, is tendered in evidence. The Appeal Chamber expressed that Rule 89(c) clearly encompasses both these forms of hearsay evidence" (Decision on Interlocutory Appeal, June 7, 2002). The Trial Chamber of ICTY expressed in Prosecutor –v-Tadic on a

defence motion on hearsay (5th August 1996), "out of Court statement that are relevant and found to have probative value are admissible".

The same position was taken by the Trial Chamber of ICTY in Prosecutor-v-Blaskic, while deciding on the standing objection of the defence to the admission of hearsay evidence with no inquiry as to its reliability. (January 21, 1998).

It was held that hearsay evidence must have indicia of reliability in order to be admissible: reliability is not merely a matter of going to the weight of the evidence.

Similar view was also expressed in Prosecutor-v-Natelic and Martionovic, ICTY Appeal judgment, May 3, 2006, para 217 and 516, Prosecutor-v-Aleksovski, decision on prosecutor's appeal on admission of Evidence, 16th February 1999, para 15, Prosecutor-v-Milosevic, decision on testimony of defence witness, Dragan Jasovic, April 15, 2005, page – 4, Prosecutor-v-Mihitino Vic, decision denying prosecution Second Motion for admission of evidence pursuant to Rule 92, (13th September 2006, para 5,)? Prosecutor-v-Prlic, decision on appeals against decision admitting transcript of Jadranko Prlics questioning into evidence, (23rd November, 2007, para-52).

It has been held by all these tribunals that hearsay evidence can be admitted to prove the truth of its contents, and the fact that it is hearsay does not necessarily deprive the evidence of its probative value and that the chamber must be satisfied of its reliability given the context and character of the evidence for it to be admitted (Prosecutor –V- Aleksovski- ICTY, decision on Prosecutor's appeal on admissibility of evidence, 16th February 1999, para – 15, Prosecutor-v-Semanza, decision on the defence motion for exclusion of

evidence on the basis of violations of the rules of evidence, Res Gestae Hearsay and violation of the Statute and Rules of the Tribunals, 23rd August 2000.

In the case of notorious Milosevic, though the Appeal Chamber of ICTY held that hearsay evidence will usually be given less weight than that given to the testimony of a witness who has given it under a form of oath and who has been cross examined, it nevertheless also stated, "it depends upon infinitely variable circumstances of the particular case …..". (Prosecutor –V – Milosevic, decision on admissibility of Prosecution Investigator's evidence, 30th September 2002, para 18.

ICTY Chamber also made it abundantly clear that the right to cross examination incorporated as part of the fair trial provisions of Article 21(4)(e) Statute and Article 20(4)(e) of ICTR statute "applies to the witness testifying before the Trial Chamber and not to the initial declarant whose statement has been transmitted to this Trial Chamber by the witness" (Prosecutor –v- Blaskic, decision on standing objection of the defence to the admission of hearsay with no inquiry as to its reliability, 21st January 1998, para 29).

The SCSL in Prosecutor-v-Brima (decision on joint defence evidence to exclude all evidence from witness, 24th May 2005, para 12) observed "it is now well settled in the practice of international tribunals that hearsay evidence is admissible". It went on to say, "the probative value of hearsay evidence is something to be considered by the Trial Chamber at the end of the trial when weighing and evaluating the evidence as a whole, in light of context and nature of the evidence itself, including the credibility and reliability of the relevant witness".

The Appeal Chamber in Prosecutor-v-Norman, (Fofana appeal against bail refusal, 11th March 2005, para 22) held that the relevant rule has conferred a broad discretion upon the tribunals to admit hearsay evidence.

Even the East Timore's Special Panel for serious Crimes held hearsay evidence to be admissible, though hearsay upon hearsay will deserve little weight (Prosecutor-v-Marques, 11th December 2001).

The ICC in Prosecutor-v-Katanga of Ngudjolo (decision on the confirmation of charges, 30th September 2008, ICC-01/04-01/07-717, para 137) held that though any challenge on hearsay evidence may affect its probative value, it may not affect its admissibility.

ICC further stated in that case that hearsay is admissible even if the source of the evidence is anonymous.

Whilst relying on ECHR jurisprudence propounded in Kostovski-v-The Netherlands, judgment delivered on 20th November 1989, the pre-trial Chamber of ICC, in Prosecutor-v-Katanga of Ngudjolo, supra, reiterated previous finding of the Pre-Trial Chamber in Prosecutor –v-Labanga that there is nothing in the statute or the Rules which expressly provides that the evidence which can be considered hearsay from anonymous sources is inadmissible per se. In addition, the Appeals Chamber has accepted that, for the purposes of the confirmation hearing it is possible to use items of evidence which may contain anonymous hearsay, such as redacted versions of witness statement. (Prosecutor-v-Labanga ICC-01/04-01/06-803, para 101). The Pre-Trial Chamber further stated that the probative value of anonymous hearsay evidence will be determined in the "light of other evidence".

The International Military Tribunal in Nuremberg allowed the use of hearsay evidence through affidavits, but it also required that any such affiant to be available for cross examination.

Its charter, developed under the Moscowc Declaration 1943, provided for a criminal procedure that was closer to civil law than to common law with wide allowance for hearsay evidence.

The London Charter enunciated simple evidentiary rule repeatedly propounded in the US internal position papers, reading;

> "The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure and shall admit any evidence which it deems to have probative value" which stands virtually reproduced in Section 19(1) of the Act.
>
> (our provisions are not dissimilar)

Hearsay under Various Domestic Laws

English Common Law provides several exception to Hearsay Rules and the one that is of greatest relevance to the present issue is the doctrine of "Res Gestae" which makes a hearsay evidence admissible if the original declarant makes the statement to the Court's deponent soon after the occurrence of the event.

US Law

Under US Federal Rules of Evidence, statements which would ordinarily be inadmissible under the hearsay rules, will nonetheless be admissible if they fall within a defined exception. Clause 804 of the Federal Rules, which is

similar to Rule 89(c) of the ICTY, ICTR Rules, confers wide power upon the Federal Courts to determine issues of admissibility.

In Handi –v-Rumsfeld the US Supreme Court indicated that hearsay evidence may be permissible in cases involving enemy combatants, expressing;

> "Hearsay, for example, may need to be accepted as the most reliable available evidence from the government in such a proceeding. Likewise, the Constitution would not be offended by a presumption in favour of the government's evidence, so long as that presumption remains rebuttable one and fair opportunity for rebuttal were provided".

Professor David Weissbrodt's remark on application of hearsay evidence by international crimes tribunals are, as below;

> "International Courts usually admit hearsay evidence. The hearsay rule is characteristic of common law systems. In civil law systems, where there is no jury and the Judge conducts the fact finding process, out of Court statements are usually admitted when relevant. International Criminal Courts have borrowed their rules of evidence from both common law and Civil law system, but usually favour admissibility of all evidence".

On the basis of the above analyses, it can be undistortedly stated that the hearsay evidence that attracted Mr. Shajahan's counterveiling thoughts were, in my view, such which would have been admissible with similar weight by the modern ad-hock International tribunals, the ICC and of course by the IMT. In

fact some of the hearsay evidences would be admissible even under the "Res-Gestae" exception and clause 804 of the US federal Rules.

Sukha Bali Episode

Three more areas of Mr. Shajahan's attack that need to be adressed are (i) Sukharanajan Bali episode (ii) Momtaz Begum's so-called FIR, and (iii) alibi evidence.

Sukharanjan Bali, as records reveal, a sibling of slain Bishabali, is according to the prosecution, an eye witness to his brother's killing and that the I.O. during the investigation stage recorded his statement, but as the time for his deposition neared, he went into oblivion. None could trace him or could indicate his whereabouts and in the back drop of that scenario, the prosecution apprehending on well trenched ground that he may not show up to depose before the Tribunal because of threat from the appellant's side, included his name also in their Section 19(2) application marking his recorded statement as Ext. 260. This document i.e., his recorded statement was admitted by the Tribunal pursuant to Section 19(2) of the Act, along with the recorded statement of 14 others.

Mr. Shajahan drew our attention to a CD (Marked as Ext….?), which, he claims to contain recorded version of a television programme aired by a TV Channel, named Diganto TV. Mr. Shajahan claimed that Sukha Ranjan Bali expressed disclaimer on what the prosecution has been showing as his statement to the I.O.

The learned Attorney General vehemently resisted this claim asserting that such a record can not be trusted at all because voice can definitely be engineered and super imposed. He also asked us to take judicial notice of the

fact that to everyone's knowledge Diganto TV. is in fact a Jamat channel and also that its credibility is virtually zero. He also reminded us that by televising a programme like this, on a sub-judice matter, Diganto TV. has in fact tried to influence the judicial process for which it is liable to be punished.

I could not agree more.

There is no scientific doubt that the image and voice in a projection like this can very conveniently be doctored, distorted and superimposed. If the personnel of the TV Channel who organised and conducted the programme were examined, only then some probative value could be attributed, but that was not done.

Most importantly this Diganto TV was, to everyone's knowledge, a channel of Jamat-e-Islami, the Islamist party of the appellant and that this channel is attributed with very shallow credibility. A fact, of which we take judicial notice, is that after the law enforcers on 5th May, 2013 dispersed the violent gathering of some Islamic fundamentalists, this very channel, in utter derogation of the truth and by resorting to full bloom falsehood, reported that several thousand people were killed during the police operation, though all credible media and other reliable sources confirmed beyond any shadow of doubt that the report contained a pack of lies from top to the toe. Nobody could ever bring any iota of evidence to substantiate such a wild tail tell.

We are also in wholesome agreement with the learned AG's view that Diganto TV has definitely proved its malafide and ulterior motive by purporting to project a programme on a matter that was sub-judice, which was certainly aimed to cause a deviation in the course of justice.

If Sukha Ranjan Bali wished to say anything he could have done so before the Tribunal, not in a TV channel. If he was able to appear before a TV channel, what could have stopped his passage to the Tribunal Diganto's role was, if it really televised such a programme, contemunous and punishable as the matter was sub-judice. The record shows that Diganto televised another programme purportedly projecting a woman with the pretence that she was Usha Malakar, another person whose recorded statement was adduced. The investigating officer as P.W.28 flatly stated that the woman projected by Diganto TV as Usha Malakar did not bear resemblance with the Usha Malakar he interviewed.

Mr. Shajahan also submitted that on 5th November 2012, Shukha Ranjan Bali came to the Tribunal to depose for the accused but he was abducted from the Tribunal's entry gate.

I find this submission a bizarre one for the following reasons;

(i) Tribunals record reveal, and it is an admitted fact, that 5th November was fixed for the legal argument of the parties and legal submission was in fact placed on that date and hence, no question of giving evidence on that date could arise as in law there existed no scope for doing so.

(ii) no evidence was adduced to substantiate the abduction story.

A writ of habeas corpus, though filed, was subsequently not pressed and was hence rejected.

I find this story as pantomimic as the story televised by Diganto and also the hellowinic story that the appellant was sighted in the moon.

Tribunal record further reveals that on 22nd November 2012, the defence asked the Tribunal to list Sukha Ranjan Bali as a defence witness and to issue

witness summons accordingly. The Tribunal expressed that it would not issue witness summons but if a person wishes to depose for the defence he could do so. Sukha Ranjan Bali however, never turned up.

The Tribunal also warned, and did so quite assudiously, that it was not open to one party to approach any witness of the other side as in that way witnesses could be influenced.

Since it is the appellant's assertion that Sukha was abducted, the onus lay squarely on that side to substantiate that assertion because of the universally recognised rule of evidence that one who affirms, must prove.

I would like to iterate that Section 19(2) would apply even if Sukha Bali was indeed abducted so long it remain unproven that the State had a role on such an alleged action.

Discrepant Evidence

On factual side, Mr. Shajahan's greatest emphasis was on what he called discrepancy in testimony.

He tried to have us to accept that those who deposed before the Tribunal, did not say many of those things when they were examined by the I.O. during the investigation stage.

Under our general criminal procedural law, i.e., Cr.P.C. Section 161 provides for the recording of statements from potential witnesses by the I.O's. Although those statements do not form parts of evidence, they do nevertheless have great evidentiary significance in that the defence can under Section 162 Cr.P.C., read with Section 145 of the Evidence Act, 1872, use such statements to prove that as deposition made by a prosecution witness in Court is discrepant

with the statement he made to the I.O. at the investigation stage, they should not be treated with credence.

Although provisions of both Cr.P.C. and Evidence Act have been explicitly excluded by the Act, sanctity of statements made to the I.O. is still of great relevance in that discrepancies in the statement of a witness at different stages on the same fact is bound to dent his credibility.

Positions taken by UN tribunals on previous inconsistent statement are as follows:

ICTY in two oral decisions (Trial Transcript of April 2, 2003 page 17931 and Trial Transcript of April 15, 2003, page 16480 the Trial Chamber in Simic etal), held that prior inconsistent statement could not be put to witness either to impeach the witness or to refresh his memory. The Trial Chamber relied on Prosecutor-V-Milosevic's decision on limiting admissibility of this very special type of hearsay evidence. However, the Appeal Chamber reversed this view (Prosecutor-V- Simic etal, May 23, 2003). The same Trial Chamber, subsequently held in Prosecutor-V-Lima, (April 25, 2005) that prior inconsistent statement can be admitted as substantive evidence if relevant and probative. The ICTR has acknowledged that prior inconsistent statements are generally admissible in International Criminal trials as a means to impeach a witness' credibility. (Prosecutor-V-Niyitegeka, Appeal Chamber judgment, July 9, 2004), and Prosecutor-V- Akayesho, Appeal Chamber Judgment, June 1, 2001).

Prior statements are admissible as exhibits on which witness can be asked to explain inconsistencies, and can be factors for determining the credibility of a witness.

SCSL also accepts prior inconsistent statements may be used and admitted into evidence to impeach credibility of a witness (Prosecutor-V-Norman etal, oral decision, July 16, 2004, page 8/9). The witness may be asked to confirm the statement and be cross-examined. Unlike ICTR, ICTY and SCSL. Position of ICC's is at variance in that there is no provision that specifically deals with admissibility of prior statements. Its Rules enable the parties to use prior recorded statements in two distinct situations: (i) where witness does not testify in Court and both parties had the opportunity to examine the witness during the recording of the prior statement, (ii) where the witness testifies in Court and he consents to the use of prior recorded statement and the parties and the Chamber had the opportunity to examine the witness during the proceedings.

In our jurisdiction, in any trial, exclusion of Cr.P.C. and Evidence Act provisions notwithstanding, such variant statements may take three forms, namely (a) contradiction, (b) discrepancies, (c) omissions.

Contradiction obviously carries sinstar significance. If a witness says during his testimony in Court that he saw A to kill C, but said on an earlier occasion, whether when making Section 161 statement or not, that he saw B to kill C, that would be a directly contradictory statement and even common sense would dictate to place no reliance on such a piece of testimony.

If two versions are discrepant with one another, weight to be given to the discrepancy must depend on the nature and the extent of discrepancy. If it goes far enough to be closer to a contradiction, it may be given same weight as is given to a contradiction. Oxford Dictionary defines discrepancy as "(1) Failure to correspondent, (2) inconsistency".

A mere omission stands on a different footing altogether. The phrase "omission" is defined by Oxford Dictionary as "(1) the act or an instance of omitting or being omitted, (2) something that has been overlooked". Even though there is judicial pronouncement to the effect that omission may, depending on its nature and extent, at times, be at par with contradiction, in general parlance, a mere omission can not and should not be equated with contradiction or even discrepancy. To be "contra" – "diction", there has to be a "diction" which connotes that there can be no question of "contradiction" if there is no "diction". It is "diction" which is generally missing in "omissions".

Multiples of reasons can be attributed as to why omissions take place while making statement to an I.O. The most important is the surrounding atmosphere. When a person deposes in a Court of law or a Tribunal, he is certainly much more cautious and assiduous than when he makes a statement in an informal surrounding to an I.O. He can not be expected to apply same degree of exactitude when he speaks to a police officer informally. So, unless an omission hits the very root of a substantive fact, i.e., puts things topsy turvy, it can not be treated as mutually carnivorous.

Bare Omission Distinguished.

Some observations recorded in the judgment of A.H.M. Shamsuddin Choudhury, J. in Quader Molla-V- The Chief Prosecutor, supra, in this regard are reproduced below;

There are high preponderant authorities to support this contention.

In **Md. Ibrahim Hossain –Vs- The State** (**14 BLD (AD) 253),** the Appellate Division emphasised that benefit of doubt can not be given for minor omissions.

In **Ezahar Sepai –Vs-The State** (**7 BCR (HC) 220),** the High Court Division held that mere omission to give details of occurrence does not discredit a witness, whose testimony has otherwise been substantially corroborated.

Indian Supreme Court in a plentitude of decisions underscored the insignificance of such previous omissions which can not amount to contradictions on material points.

In **Tahsildar Singh and another-v-The State of Uttar Pradesh, (1959 SCR Scrip (2) 875),** during a murder trial the Session's Judge turned down a defence prayer, seeking allowance to cross examine a prosecution witness on his previous statement to the I.O. The convict, who was sentenced to death, appealed, fiercely contending that the trial judge by rejecting the said prayer, erred in law.

The High Court agreed that the omissions on which the defence wished to cross examine the witness, amounted to contradiction and that the Judge below was wrong in disallowing the defence to cross examine the prosecution witness, but nonetheless, turned down the defence application holding that no prejudice had been caused to the appellant by the disallowance of cross examination in respect to omissions. The appellant also prayed that the witness be summoned to reply to those questions. The High Court rejected that prayer, dismissed the appeal and affirmed the conviction and the sentence.

The Indian Supreme Court, however, in affirming the conviction and the sentence, over turned the High Court's view that the omission amounted to contradiction or that the trial judge was wrong in not allowing the defence to cross examine the witness.

The Indian Supreme Court came up with the conclusion that statement to the I.O. could be used under Section 162 of the Code of Criminal Procedure only for the purpose of contradicting a statement in the witness box under the second part of Section 145 of the Evidence Act, but it could not be used for the purpose of cross examining the witness under the first part of Section 145. The Supreme Court also emphasised the incorrectness of the view that all omissions in regard to important features of the incident, which were expected to be included in the statement made before the police, should be treated as contradiction, observing further that an omission in making a statement to the I.O. could be used as a contradiction only if (I) it was necessarily implied from the recital or recitals found in the statement (II) it was a negative aspect of a positive recited in the statement or (III) when the statement before the Police and that before the court could not stand together, and that was for the trial judge to decide in each case, after comparing the part or parts of the statement recorded by the police with that made in the witness box, whether the recital intended to be used for contradiction, was of one of the nature indicated above.

The Supreme Court cited with approval the observation of the trial court which, is reproduced below; “Therefore if there is no contradiction between his evidence in court and his recorded statement in the diary, the latter can not be used at all. If a witness deposes in court that a certain fact existed but had stated under section 161 Cr.PC, either that fact had not existed or that the reverse and irreconcilable fact had existed, it is a case of conflict between the deposition in the court and the statement under Section 161 Cr.P.C and the latter can be used to contradict the former. But if he had not stated under Section 161 anything about the fact, there is no conflict and the statement can not be used to contradict

him. In some cases an omission in the statement under Section 161 may amount to contradiction of the deposition in Court. They are the cases where what is actually stated is irreconcilable with what is omitted and impliedly negatives its existence"

In illustrating that the question is one of fact, the Supreme Court insisted that the word contradiction is of such wide connotation that it takes in all material omissions and a court can decide whether there are such omission as to amount to contradiction only after the question is put, answered and the relevant statement or part of it is marked, and, therefore, no attempt should be made to evolve a workable principle but the question must be left out large to be decided by the judge concerned on the facts of each case.

To illustrate the factual and conceptual difference between "an omission" and a "contradiction", **Burn J of Madras High Court in re-Ponnusami Chetty (ILR 1933 Mad. 475) stated,**

"Whether it is considered as a question of logic or language, "omission" and "contradiction" can never be identical. If a proposition is stated, any contradictory preposition must be a statement of same kind, whether positive or negative. To "contradict," means to "speak against," or in one word, "to gainsay." It is absurd to say that you can contradict by keeping silent. Silence may be full of significance, but it is not a "diction" and therefore it can not be "contradiction" considering the provision of S. 145 of the Evidence Act."

In reiterating the above cited view, Mockett J of the Madras High Court in re-Guruva Vannan, (ILR 1944 Mad. 897) made the fallowing observation, "I respectfully agree with the Judgment of Burn J in Punnasami Chetty-v-Emperor in which the learned Judge held that a statement under Section 162 of the Code

of Criminal procedure can not be filed in order to show that a witness made statements in the witness box, which he did not make to the police, and that bare omission can not be a contradiction."

The learned Judge points out that, whilst a bare omission can never be a contradiction, a so-called omission in "a statement may some times amount to a contradiction, for example, when to the police three person are stated to have been the criminals, and later at the trial four are mentioned".

Despite Mr. Shajahan's valiant attempt to project those omissions as contradiction, I do not find them as anything more than mere omissions, i.e., devoid of "dictions" and hence not "contra-diction".

So, following the high profile authorities figured above, I am not swayed to be at one with Mr. Shajahan's submission that the prosecution witnesses' version should be discarded.

Mr. Shajahan, in his written submission, tried to put on high profile some discrepancies such as on the time of the formation of the so-called Peace Committee and Rajakar outfit, the date of establishment of Sundarban Camp, whether Rajakars were in Khaki Uniform, whether the fire was seen at 11.00 / 12.00 a.m. or a 3.00 p.m. as was stated in the charge, the time of establishment of Paki army camp at Parerhat, whether P.W. 2 returned to Parerhat on 8th the December 1971 or 18th December. These so-called discrepancies, if they be termed as such at all, must be treated as no more than "tin pot" discrepancies, particularly having regard to the time gap of more or less 4 decades between the event and the date of deposition, and also having regard to the fact that there is no divergence on the substantive facts.

Mr. Shajahan also drew our attention to the depositions of P.Ws. 1, 5 and 9 on the killing of Bishabali, and submitted that their versions were at variance in that while P.W.1 said that Delwar Hussain Sayedee uttered in ordering form that since (Bishabali) had been caught, he be shot dead, P.W. 5 said that at that time Delwar Sikdar uttered something in Urdu after which a Rajakar shot him (Bali) dead, and P.W.9 said that at that point Mr. Sayedee said kill the "Shala" (a word which literally means wife's brother though, is often used as a vulgar word in Bengali).

I am afraid, I find little discrepancy in these versions. On the contrary they are virtually same on the focal point. It appears that each witness reproduced (after 4 decades) parts from the totality of appellant's utterances. They are definitely not mutually destructive, but rather mutually supportive and supplementary. They go to prove distinctively that Bishabali was killed after the appellant verbally so ordered.

It is also to be noted that even the versions advanced by the defence witnesses on the manner of Bishabali's killing was no different, the only difference being exclusion of the appellant's name.

Kutti Killing & Ext. A

This leaves me with the job of addressing the issue revolving round the killing of Ibrahim Kuthi and the defence adduced document exhibited as Ext.-A, and of course the alibi issues.

My learned brother Surendra Kumar Sinha, J. expressed the view that the appellant is entitled to benefit of doubt on this charge.

On Kutti killing, as stated earlier, the defence submitted the said document to show that Kutti's wife, Momtaz Begum, lodged an FIR with the

Pirojpur P.S. as early as in 1972 alleging that Kutti was killed by some (named) people which list of names did not include that of the appellant.

Evidence pertaining to Kutti killing and facts surrounding the text scribed in Ext. A document have been figured in some details when I discussed Charge No.8.

The allegation in the projected FIR was that the persons allegedly named therein formed on "unlawful assembly" and attacked Kutti's house and shot Kutti to nihility.

On the factual matrix, I whole heartedly concur with my learned brother Surendra Kumar Sinha, J's view that at the time of our Glorious Liberation War in 1971 killing by the Razakars in concert with Paki Soldiers in such a manner i.e. by forming unlawful assembly, was absolutely out of perception. I am also fully consensual with my said learned brother's view that Kutti having been a domestic help only of Manik Poshari would not be killed by an unlawfully assembly and that the whole story is a cooked up one and that the document is a framed one impregnated with a cock "n" bull story. I lend my wholesome support to my brother's expressions, which reads: "The nature of the allegation itself shows that this FIR was created by introducing a manufactured story with a view to create confusion regarding Delwar Hussain Sayedee's complicity in the incident of murder ……"

I take account of the following facts with utmost concentration;

(1) although the photocopy of the alleged certified copy (not the original) purportedly reveal that the certificated document was procured in 1972, it was produced before the Tribunal on 20th October 2011 at the hearing stage.

(2) It was not produced by D.W. 13, but by another one i.e. D.W. 11, although D.W.11 himself stated that he obtained it from D.W.13.

(3) D.W.11 remained unexplicit, when asked during cross-examination, as to whether the certified copy filed by him and the photocopy filed during the proceeding, is same or not,

(4) he failed to disclose whence the so-called document emanated,

(5) he was unable to say who procured this so-called document, and the time of its procurement,

(6) he admitted that in the first page of the so-called document a couple of words were cut without counter signatures needed to validate those cut words,

(7) signs of interpolation on the dates and some pages are quite conspicuous, a fact that has been admitted by D.W.11.

In view of above, I do indomitably concur with Surendra Kumar Sinha, J's observation, which reads, "This ……. speaks a volume about the genuineness of this certified copy and the purpose for filing it through D.W.13, who produced all documents for the defence except Ext.A without giving any explanation".

My learned brother Surendra Kumar Sinha, J. also expressed, "This exhibit A is a forged one is also apparent from the statement of D.W. 13, who stated in the course of cross-examination that he got exhibit A from his elder brother; that he had no talk with his brother about it before his death; that his brother might have talked with Sitara Begum …… He could not say how long it was with Sitara Begum. He could not say who obtained the certified copy, ……. He admitted that at the back side of the pages of exhibit A no initial or the sub-Divisional Magistrate, Pirojpur was given and that only a round seal

of the sub-Divisional Magistrate was engrafted. From the above statements of this witness it is proved beyond doubt that this Ext. A is a forged one and this is why P.W. 13 did not exhibit A in the Tribunal".

I can not agree more. D.W. 13's explanation, if it is labelled as explanation at all, is purely and simply flabberglasting, least said. It is simply slighting, it is disparasing.

I for myself, keep wondering how on earth the contents of this visibly forged document be blessed with any degree of credence by any judicial forum.

However, I am afraid, I find it impossible and implausible to agree with my learned brother Surendra Kumar Sinha, J's conclusion, which reads, "We have no option other than to give the accused benefit of doubt". In my understanding this conclusion can not go hand in gloves with the clear, and, in my view, congruous finding that Ext.A is proved to be a forgery beyond doubt. I find these two diametrically apposing, and indeed, mutually annihilating views, totally irreconcilable particularly when my learned brother expressed in the same paragraph; "although we find Ext. A is apparently a forged FIR".

How can we say in one breath "we find Ext. A apparently a forged FIR", and in another breath "the prosecution failed to produce relevant record at the trial stage to show that Ext. A was a forged one …".

If we deem it forged, how can we say prosecution failed to show it is forged?

I find my learned brother Surendra Kumar Sinha, J.'s two types of mutually destrictive and contradictory views rather paradoxical. In my introspection these two typs of built in conflicting views are totally irreconcilable.

I can not, with due respect, be a party to a finding on law that the onus was upon the prosecution to prove forged character of the deed when it is the defence side which tried to rely on it. Such a legal finding, in my view, would be tantamount to go against the universally recognised doctrine that "one who affirms, must prove".

Clearly the purported document was adduced by the defence with a claim that the wife of Slain Kutti in her FIR named people other than the appellant as the killer. This plea was put forward with a view to thwart the prosecution claim that it was Moulana Sayedee who was the killer. So, axiomatically the onus lay squarely upon the defence to substantiate their claim, which necessitated proving the genuineness of the FIR. Question of prosecution's duty to prove the document as forged would have arisen only if the defence could prima facie establish genuineness of the document. Hence, when the document was found by my learned brother as "apparently a forgery", it was otiose to require the prosecution to prove forgery.

The situation is no different from that when defence takes an alibi plea. As it is incumbent upon the defence to substantiate an alibi plea, so it is also incumbent upon him to prove the genuineness of the FIR when he takes a pleas that in a previously filed case he was not named.

To further consolidate my view that I am unable to support Surendra Kumar Sinha, J's conclusion that the appellant should be allowed benefit of doubt, I am reproducing verbitame, hereinbelow, all his findings on Ext. A, which, in my view, is irreconcilable with his conclusion; that the appellant should be given benefit of doubt.

(1) “So the defence came out with an imaginary story. The nature of the allegation itself shows that this FIR was created by introducing a manufactured story with a view to create confusion about Delware Hussain Sayedee’s complicity in the incident of murder”.

(2) “We also noticed interpolation on the date and on some pages”.

(3) “He (D.W.11) admitted that in the first page of the certified copy two words are found cut and there is no counter signatures against those cut marks”.

(4) “This explanation speaks volume about the genuineness of the certified copy and the purpose for filing it through D.W.11 despite that it was handed over by D.W. 13 who produced all documents for the defence except Ext.A without giving any explanation”.

(5) “On a close scrutiny of the copy of Exhibit A produced for our inspection, we found interpolation and D.W.11 also admitted the same. We fail to understand why prosecution has not taken any step for expunging this exhibit from the evidence on the ground that it was a forged document”.

(6) “This exhibit is forge one is also apparent from the statement of D.W.13”.

(7) “From the above statement of this witness it is proved beyond doubt that this Ext.A is a forged one and that is why D.W.13 did not exhibit ext. A in the Tribunal”.

(8) “although we find Ext. A is apparently a forged FIR ….”.

(9) "The evidence on record sufficiently indicated that the accused was very much involved in all the atrocities perpetrated at Parerhat …..".

The finding; "it is proved beyond doubt that this Ext.A is a forged one", can not in my view, can not lead to the conclusion; "the appellant should be afforded the benefit of doubt"?

There is no doubt that the defence weakness may not by itself result in prosecution's success as the legal position is that it is incumbent upon the prosecution to prove the charges beyond reasonable doubt. The question is has the prosecution succeeded to discharge this burden.? Factual analyses based on combing of evidence as recorded in the preceding areas go a long way to lend full weight to the view that prosecution has bagged sufficient scores to discharge this onus beyond reasonable doubt by adducing ocular and documentary evidences on Kutti killing charge. As stated above, the witnesses could not be trumbled by cross-examination. In fact Surendra Kumar Sinha, J. also came to the same conclusion on prosecution's success as is reflected from his observation, which reads, "The evidence sufficiently indicated that the accused was very much involved in all the atrocities perpetrated at Parerhat".

It is not a case of relying on the weakness of the defence. It is a case where in an attempt to rebut proved prosecution case, the defence adduced a document, which is deemed by Surendra Kumar Sinha, J. is "proved beyond doubt" "is a forged one", which is my finding to.

The prosecution duly proved its case. To create an obfuscation on the prosecution case the defence purportedly adduced Ext.A. When we hold that

document as a forgery there can be no question of giving the defence benefit of doubt.

I am hence, fully swayed to the conclusion that the Tribunal below made no error in tying the appellant with Kutti killing responsibility.

Alibi

Mr. Shajahan's emphasis on this aspect of defence case was quite fervent. The reason for Mr. Shajahan's tooth and nail effort is understandable. If it stood proved that the appellant remained away from Pirojpur until July 71, as the alibi witnesses claimed, he can not be guilty of any of the charges, as all the alleged offences took place in May '71.

Although the standard of proof for the prosecution is "beyond reasonable doubt", pleas, taken by the defence, including the plea of alibi, is generally to be proved with civil standard i.e. with preponderance of probability. To substantiate his claimed absence from Pirojpur and transient stay in Jessore upto mid July '71, the appellant (as accused) examined some five witnesses namely D.Ws. 4, 6, 8, 12 and 14. He also relied on some documents in this regard.

? D.W. 4 claiming to be a Jessore resident deposed that his parents were residing at House No.A/185, Jessore New Town,? during the early part of 1971; that adjacent to their house was house No.184, where Shahidul Islam, a primary teacher had resided and contiguous to that house was house No. 183, where another school teacher had resided and next to that one was house No. 182, where Delwar Hossain Sayedee with his family had resided till the last part of March, 1971; after the Pakistani occupation army pounded on the civilians and started shelling from Jessore Cantonment, many families began to desert Jessore town for safety; at that time the above four families left Jessore on 3rd or 4th

April for Sheikhhati; they stayed there for one night and then moved to Dhanghata village in Abul Khayer's maternal uncle's house where they stayed 7/8 days, and thereafter, it was decided after discussions away the members of those families, that his family and the family of Shahidul Islam would take shelter in India and the residents of house No. 183 would stay in Abul Khair's maternal uncle's house and that Sayedee would stay in the house of the Pir of Mohiron village.

In the course of cross-examination, he expressed his ignorance about Sayedee's village home. This statement raised suspicion about his claim that he was a neighbour of Delwar Hossain Sayedee and resided at New Town, Jessore, and that after the Pak army started shelling the town, his family left Jessore Town with Sayedee's family to take shelter at Sheikhhti. According to him, he was so close with Sayedee that during the crucial period of the liberation struggle his family chose to move to a safe place with Delwar Hossain Sayedee's family and stayed with them jointly at Dhanghata village for 7/8 days in the same house. It was natural under such circumstances to expect of him to know about Sayedee's village home and also to know about Sayedee's profession. It is pertinent to note that according to this witness, his family and the family of Shahidul Islam left for India for safety as they deemed remote villages of Jessore unsafe, while Sayedee chose to stay at his Pir's house. This also is bound to trigger suspicion, inasmuch as, if Delwar Hossain Sayedee had realized that the atmosphere then prevailing at Jessore town was not congenial because of shelling by Pak army, it was natural that he would have returned to his own home instead of moving from one place to another for shelter. According to this witness, accused Delwar Hossain Sayedee was not

apprehensive of the Pakistani army's brutality, he was apprehensive of army's shelling. This witness was the third child of his parents who took his SSC examination in 1972. So he was in his early teens at the time under consideration. In the course of cross-examination he stated that Sayedee with his two children, wife and domestic help resided as neighbour and that he was then performing wajmahafils. It is hard to accept that the person who knew nothing about the appellant's village home knew so much about the latters vocation. So, the story introduced by this witness appears to be superficial and incogitable.

His assertion that the appellant had two children is also at odd with the statement the appellant recorded on the document he had to fill in to contest Parliamentary election, which reveal that at that time he had 1 son only. The address he supplied is also discrepant.

D.W.6 claimed to be resident of Bagharpara, Jessore. He stated that during the period between 1969 and 1970, Sayedee was delivering religious speeches at village Dohakola under Bhagarpara police station; that in 1971, he was nursing garden and looking after his cultivation; that he was acquainted with Sayedee through religious congregations; that Sayedee was staying at Jessore town by renting a house and in the later part of March, 1971, when the people were leaving Jessore town for safety and security, Sayedee with his family took shelter in the house of Pir Sadar Uddin of Mohiron village towards mid April; that he stayed there for two weeks and thereafter, Sayedee went to his house as the Pir Hujur requested him to take Sayedee on the plea that besides being a big family, some relations of the Pir also took shelter in his house for which it was difficult on the part of Pir Hujur to accommodate Sayedee; that Delwar Hossain Sayedee stayed with him for about two and half months, and

towards mid July, Sayedee left for his village home with his family. In the course of cross-examination, he admitted that Sayedee was arrested after the liberation war and before 15th August, 1975, but he could not say for what reason; he added that he studied at Kowmi Madrasha up to Behesti Jessore; that he knew from the print media that cases relating to arson, rape, killing of innocent persons were pending against Sayedee; that he heard before the filing of the present case that Sayedee was involved in similar nature of offences and that during the period of war of liberation anti-liberation elements were residing at his locality. He denied the defence suggestion that after the war of liberation, Sayedee took shelter at his house and that as he was an activist of Jamt-e-Islami and that he was deposing falsely to save Sayedee.

I notice contradiction between his version and those of P.W.4.

D.W.8 claims he is a resident of Mohiran, Jessore, who stated that Sayedee was residing at New Town, Jessore in 1969-70 by hiring a house and he was then attending wajmahafils and when the army started shelling Jessore town in 1971, Sayedee left the town and took sanctuary at the house of Sadaruddin of Mohiron village in mid April, 1971 and after staying there for 15 days as per request of Pir Hujur, P.W. 6 Rawshan, took him at his house in the early part of May where he stayed for two and half months and towards mid July Sayedee left for his home. He admitted that he is a supporter of Jamat-e-Islami.

D.W.12 a claimed resident of Bamonpara, Jessore stated that in 1971, he was 11 years of age and he is the son of Md. Shahidul Islam, who was a resident of house No. 184, Jessore new Town; that Sayedee used to give religious speeches at Jessore, who was then residing at house No. 182 as tenant; that after 25th March, as there was mortar shellings from Jessore Cantonment towards

Jessore town, his father and other neighbours, including Sayedee got locked up in discussions on leaving Jessore town and thereafter they jointly left for Sheikhhati village on 4th April, spent the night at Joynul Abedin's house and on the following day, moved to Abul Khayer's maternal uncle's house at Dhanghata village where they stayed for 7/8 days and then they decided to move to other places when Delwar Hossain Sayedee told that he would move to Mohiron Pir's house, and then his father and Hazrat Ali left for India.

In the course of cross-examination, he made inconsistent statements as regards his claim that his father purchased the house in which they stayed at Jessore town as neighbour of Sayedee. He admitted that Sayedee was a resident of Pirojpur. He stated that he heard about the case pending against Sayedee for committing offences of Crimes against Humanity, but according to him before 2000, he did not hear any such allegation and that those allegations were untrue. He denied the prosecution suggestion that he being an activist of Jamat-e-Islami was deposing falsely. He being barely a boy of 11 at that time, as per his admission, it was not at all believable that he would know so meticulously about the discussions and the decision taken by the elders of alleged four families to move to a safer place unless he was tutored.

D.W.14, a claimed resident of Mohiran, Bagharpara stated that Delwar Hossain Sayedee was staying at New Town, Jessore in 1970-71 by renting a house; that at that time he was involved in delivering speeches at religious congregations; that when shelling commenced from Jessore Cantonment, Sayedee took shelter at Sadaruddin's house with his family towards mid May, 1971: Delwar Hossain Sayedee thereafter took shelter at the house of Roushan Ali as directed by Pir Shaheb; Delwar Hossain Sayedee stayed at Roushan Ali's

house for two and a half months, and then his brother took him to his village home.

Under cross-examination, he stated that he was then studying at Paddabila Union Aliya Madrasha and that during the period of war of liberation, his Madrasha was completely closed. In reply to an another question he stated that he did not hear that Pak-occupation army, Al-Badar, Razakars and Peace Committee members committed mass killing, rape, looting, arson in 1971; that he had no idea about those atrocities; that when the trial before the Tribunal was proceeding, Delwar Hossain Sayedee's elder son came to the Pir Saheb's house, and told those gathered in that house that during the war of liberation his (Sayedee's son's) father was staying in that locality and that it is as per Sayedee's son's version that he was deposing before the Tribunal. He admitted that at the assertion of Sayedee's son that Sayedee was staying at his village, he deposed to that fact. It goes without saying that he could not known that Sayedee was staying at Jessore town unless he was tutored.

The question is, how can any reliance be placed on the testimony of a person (i) who admits that he had deposed as per the version narrated by the accused's son, clearly conveying the view that he said whatever he heard from the accused's son, (ii) when he said that he did not hear that Paki-occupation army, Al-Badre, Razakars and Peace Committee members committed mass killing, rape, looting, arson etc. This really is incredible. It is impossible to accept that a person who claims to have been in existence in 1971 did not hear of these atrocities although the whole world knows of it. This suggests that this witness was either flatly lying or he was too young to know about it. In deed the earlier one is more likely because those who were too young in 71 or even born

after 71 are fully conversant with these facts. Even those who supported Pak stand would not deny these, though they may procreate their idiosyncratic reasons to justify these.

According to D.W. 14, Sayedee went directly from Jessore town to Pir Sadaruddin's house in the month of May, which statement is in sharp contrast with those of D.W.4, 6, 8 and 12. D.W. 4 stated that Delwar Hossain Sayedee left Jessore town on 3rd or 4th April and stayed for one night at Sheikhhati village and then he stayed in the house of Abdul Khayer's maternal uncle's house for 7/8 days at village Dhanghata. D.W.6 stated that Sayedee took shelter at Morihon village in mid April whereas D.W. 12 stated that on 4th April Delwar Hossain Sayedee took shelter in the house of Joynul Abedin. D.W.6 stated that after the Paki occupation army started shelling, Sayedee took shelter at Pir Sadar Uddin's house towards mid April. We find from the above analyses of the evidence that the witnesses furnished mutually annihilating versions.

D.W. 12 was a boy of 11. So, it was not believable that he would be able to know so elaborately the discussions of the elders of the four families. Though D.W.4 claimed that he was a neighbour of Sayedee, he had no idea about Sayedee's village home which proved that he was making tutored story. D.W. 12 unwrapped a totally different tale contradicting D.Ws. 6 and 8 as regards the house at which they stayed after they left Jessore. He stated that they stayed one night in the house of Joynul Abedin and on the following day they moved to the house of Abul Khair' maternal uncle at Dhanghata, and stayed there for 7/8 nights, whereas D.W. 4 stated that they stayed at Sheikhhati one night. D.W.6 stated that Sayedee with his family took shelter in the house of Pir Sadar Uddin after coming from Jessore and then he shifted to the house of Roushan Ali. D.W.

8 stated that Sayedee stayed at Sadar uddin's house till mid April and then he moved to Roushan Ali's house in the first part of May, 1971. According to D.W.4, Sayedee stayed at Dhanghata till 12th April, 1971 and then he went to Pir's house on the same day where he stayed for 8/9 days i.e. till 20th April, 1971 whereas, according to D.W.6, Sayedee went to Pir's house on 15th April. Thus, his stay therein pervaded till 30th April, whence he shifted to P.W. 6's house whereas according to D.W. 8, Delwar Sayedee took shelter in Pir's house after coming from Jessore town and he did not stay at any other houses during the intervening period. According to D.W. 12, Delwar Sayedee spent the first night at Jainul Abedin's house at Sheikhati village whence he shifted to Abul Khair's maternal uncle's house on 5th April where he stayed for 7/8 days, which means he stayed there till 12th or 13th and then he went to Pir's house. He did not say that Delwar Sayedee took shelter in the house of D.W.6, notwithstanding that D.Ws. 6 and 8 asserted that Sayedee stayed in D.W. 6's house till 28th April. Again, while D.W. 14 stated that Sayedee made ingression into Pir's house in mid 28th April, D.W. 14 stated that Sayedee went to Pir's house in mid May, 1971 and stayed there for 15 days and then Delwar Hossain Sayedee moved to D.W. 6's house on 1st June, 1971, stayed therein for two and half months, so it was till 15th August, 1971 that he stayed there. This assertion is visibly unharmonious with the claim that the appellant went to Pirojpur in mid July, 1971.

D.Ws. 4, 6, 8 and 12 did not say that Sayedee left for Pirojpur with his bother, but P.W. 14 introduced this different story. D.W.14's admission under cross-examination is that Delwar Hossain Sayedee's elder son went to Pir Saheb's house and asserted that his father was in Jessore at the period in

question and requested the local people to so depose, who obliged. So, their versions were the echogramme of what the appellant's son said. This bit of evidence is, by itself, enough to dismantle the testimony of all those who deposed on the appellant's alibi.

The above discussion depicts the pitiable quality of the defence witnesses who deposed to support the alibi plea. If these witnesses are to be believed, the history of our liberation struggle would have to be re-written. There is no doubt that these witnesses believe in the ideology of what Delwar Hossain Sayedee does.

Pirojpur Councils Book

Mr. Shajahan also wasted no time to try to have us to accept that his client was not in the list of Rajakars and anti liberation instrumentalities, compiled by the Pirojpur District Council.

The book was published in 2007 by the District Council authorities, not by any independent author or publisher. The truth has it that after the gruesome murder of the Founding Father of the Nation, Bangabandhu Sheikh Mujibur Rahman on 15th August 1975, General Ziaur Rahman, who according to the statements of two of the killers Col. Faruk and Col. Rashid (Col. Faruk-V-The State, special Edition)?, and one of his close associates, Barrister Maudud Ahmed (as written in his book "Democracy and the Challenge of Development"), had a role in the despicable killing, assumed state power illegally by usurpation (confirmed by this Division in the 5th and 7th Amendment cases), though initially Khandakar Mosharraf, a national traitor was projected as the fore runner for strategic reasons.

Soon after the gobbling of the State power through barrels of guns, Ziaur Rahman unmasqued his true pro-Pakistani colour by doing everything possible under the sky to reverse the tide of history heralded by our Glorious War of Liberation in 1971.

General Zia's ascendancy to power as a top brass in the army after the 15th August marked the beginning of the anti-Liberation quizlings return to fortune in the land they fought to resist the creation of and the land they were ejected from after we achieved our Glorious Liberation in 1971.

As Gen Zia gradually tightened his hold and transformed himself into a political leader, he introduced his own style of politics-which appeared as a blessing for the anti-Liberation and religion – based political parties.

In his efforts to consolidate his position in politics, Zia did not hesitate to make anti-liberation leader Shah Azizur Rahman a Minister in 1978 and then the Prime Minister the following year, a fact that is looked at as an affront to the memory of 3 million people who embraced martyrdom during our Liberation War.

In 1978, Zia also made Abdul Alim a minister. Alim was convicted of Crimes Against Humanity in 2013. The list of those Rajakars who were elevated to honour through induction into Zia's government also included Col. Mostafiz, Sulaiman, Abdur Rahman Biswas (who was even made the Head of the State later), and so on.

This military ruler also picked Justice Abdus Sattar as his Vice President. Sattar had worked as Pakistan's Chief Election Commissioner after the independence of Bangladesh and returned to Bangladesh much later. After Zia's

assassination, Sattar kept on pursuing Zia's foot steps and appointed Shah Aziz as the Prime Minister again in 1981.

Gen Zia amended the Constitution through martial law edicts in 1977 lifting a constitutional ban on religion-based politics. This opened the door for anti-Liberation political parties including Jamaat-e-Islami to resume activities in independent Bangladesh. Jamaat and some other parties had been constitutionally banned after the country's independence for their role against the country's Liberation War in 1971.

In addition, the Collaborators Order of 1972 was earlier repealed in the interest of anti-Liberation politicians as the law had disenfranchised those parties and politicians who had opposed the birth of Bangladesh.

Eminent political scientist Rounaq Jahan in her latest book "Political Parties in Bangladesh" analysed that these leaders then became Zia's political allies and gradually became rehabilitated in Bangladesh politics".

Around 11,000 alleged collaborators who were detained under the Collaborators Order were also released by Gen Zia.

Even Barrister Moudud Ahmed, who was an influential leader and a Minister in Zia's Government had to admit in his book, "Democracy and the Challenges of Development", that those Zia attracted into his fold included Collaborators, touts, opportunists and sycophants as well.

One Captain Nurul Huq, who was a very ardent associate of General Ziaur Rahman and remained so throughout the period of the latter's reign, also, quite candidly unfolded the truth as to General Zia's fascination for the anti Liberationists. In his memoir, titled "High Tide, High Time", Captain Huq wrote;

"In the Barisal trip including the 'infamous madrasah", Enayetullah Khan and I accompanied the President. Enayetullah vehemently opposed the President's visit to the madrasah as the moulana had a number of war crimes against him. The moulana in a melodramatic way applogised in his speech for the war crimes and Zia looked at us with a satisfied look as these anti-liberation elements would become the major spokesmen against the Awami League identified as our only political rival. I think with the induction of the moulana on our side, we sowed the seeds of rehabilitation of the anti-liberation forces. (Page-133)

"Ata Khan from Nawabganj had some good hold but Alhajj Shamsul Haq (Major Dalim's father) was not a very suitable candidate. I was asked by the Vice President to work for Shamsul Haq which I did. In every meeting where his workers could not muster a big audience, he always introduced himself as Major Dalim's father which I thought was both comical and sad and henceforth, I addressed him as "Al Hajj Dalim's father".(Dalim was convicted for killing Bangabandhu. Zia's appearing attitude toward his father in law speaks a volume as to his connivance with Bangabandhu killing). (Page-157)

"We had identified the Awami League as our only political rival and to tackle them in the BNP, there were inclusions of known collaborators (Razakars) as they were most vocal against the Awami League. Even in the national election, Sabur Khan's Muslim League and IDL of Moulana Rahim were virtually the "B Team" of BNP. In the process, we earned a bad name as being the rehabilitators of Razakars. I did not relish it much but for the sake of the party's interest kept quiet but not quite aloof. After the sudden death of

Mashiur Rahman (Jadu Bhai), there was no other option but to make Shah Aziz the Prime Minister and the Leader of the House". (Pages-161-162)

During Gen Zia's regime, anti-liberation politicians were given important positions in the government, who recruited scores of anti liberation people into the countries beaurocracy. Many buildings, including the ancestral house of Suchitra Sen, the all time Mega Star of Bengali filmdom, who occupies a very special space in the minds of the Bengali people, were allotted to anti liberation outfits. (Suchitra case ……)

Anti Liberation people were kept in the helm of affairs even after Ziaur Rahman was himself assassinated.

Many anti liberationists, who were street traders in '71, turned billioniars with the blessings of Zia regime. Gen. Zia wiped out as many relics of Liberation War as he could including the immortal Joy Bangla slogan, which was the signature tune of our Liberation War, which kept the nation awake during our dreamed War, turning the consecrate Suhrawardi Uddyan into a Shishu Park with the obvious idea of annihilating the memory of Pakistani soldiers' surrender to the combined forces composed of our Freedom Fighters and the Indian army, and also to erase the memory of Bangabandhu's historic 7th March speech which was delivered from that Uddyan. Innumerable Liberation Warriors were killed through Kangaro trials during that period. Indira Mancha from Suhrawardi Uddyan, which was erected in recognition of Srimoti Indira Gandhi's and Indian people's contribution to our Liberation War, was dismantled. Secularism, one of the ideals of Liberation War, was erased from our sacred Constitution.

Bangabandhu's photograph could not be displayed nor could the people listen to his 7th March speech. Attempts were made to wipe out the memory of this Architect of the Nation.

Many ingenious authors including Major Rafiqul Islam, Bir Uttam, Mr. Shahriar Kabir, Prof. Muntasir Mamoon, Kazi Faruk etc. have described how Gen. Zia formed a government with those that were overtly opposed to our Liberation. In fact all anti Liberationist from such political parties as Muslim League, Jamat Nizam Islam, Nizami Islam and other Islamist and pro-Pakistani parties, who actively participated in anti Liberation move and, were pathologically anti Indian and of communal disposition, found in General Zia a messiah, who resurrected them from placidity and virtually re-incarnated them with full virility. This period represents the darkest era of our history, when attempts were underway to venomise the ideals of our Liberation War with infernal fangs. His Paki appeasement policy was so conspicuously obsequious that during his rule and also rule by his successors, it was hardly ever said by government functionaries or media that it was the Paki occupying forces that our valiant Freedom Fighters fought to eject them from our soil with the help of Indian people, government and the army. Weeds of communal divisions were also planted.

His killing paved way for another anti liberationist, Justice Sattar to be in power. Such anti liberationists' succession continued incessantly for quite a time during which such notorious anti liberationist as Abdur Rahman Biswas, Col. Mostafiz, Jamaat Leaders like Abdul Quader Molla, Kamaruzzaman, and even the present appellant directly occupied the power hub, while such other anti

liberationists like Golam Azam, the founder of so-called Shanti Committee, and the present appellant himself steered the State machinery.

The book Mr. Shajahan relied on, was written at a time when not only the pro-Pakistani thoughts established by Ziaur was prevalent but the appellant himself and his political party was firmly in the grip of power. He wielded enormous degree of influence. It is therefore no wonder that a well known Razakar as the appellant was, had not been named in that book. The Tribunal below, as such, was perfectly on the right track to discard the text therein.

Why Capital Punishment?

To locate an appropriate answer to the question figured above, it is incumbent to analyse sentencing principles.

Modern Sentencing Principle Generally

As prof Andrew Ashworth, Vinerion Professor of English Law at Oxford, observed, "there is no doubt that the task of sentencing imposes a great burden on the Judges and that many of them say that it is the hardest and most disturbing of judicial tasks.

"(Sentencing and Criminal Justice: Prof Andrew Ashworth, 3rd Edition page 415). In similar vein Lord Bingham CJ also observed that the problem of dealing with cases which are on the borderline of the custody threshold as "one of the most elusive problems of criminal sentencing". (R-V-Howells, 1999 1 WLR-307)

The principal sources of English sentencing law are legislation, and judicial decisions. In a less formal sense the work of some academic lawyers may be regarded as a source. The leading writer is Dr. David A Thomas of

Cambridge University, whose commentaries is often cited by the Court of Appeal with approval.

In England, where most of the statutes, fixing maximum penalty only, leave it to the Courts' discretion to award appropriate sentence, the Court of appeal has laid down guidelines in several cases.

But many senior judicial personages at the top of the judicial higherarchy have expressed loath against "copy cat" followance of guideline tariffs expressing that sentence in each case should be based on the facts and circumstances peculiar to it.

During an extra judicial speech Lord Taylor, CJ. expressed that guideline cases merely set the general tariff, but the Judges are free to determine the sentence on the basis of the facts and circumstances of the particular case (Taylor 1993, page 130).

The test according to Lord Taylor, C.J. is "Whether public confidence in criminal Justice could be maintained if the public were aware of the circumstances of this case and the sentence which was passed" (AGs Reference No.15 of 1992 14 Cr. A P R (S) 324).

Lord Lane, CJ in Mussel (1990 12 Cr. App. R. R(s) 607) observed that each offence has to be judged individually.

Speaking extra judicially he expressed "Sentencing consists in trying to reconcile a number of totally irreconcilable facts. The Judges get very little help in this difficult matter".

(HL Deb Vol 486 col 1295).

Prof Ashworth interpreted this observation, stating; “But the great difficulty of decision in sentencing is that there are so many, often, conflicting points to be taken into account”.

Supporting Lord Lane’s view that “sentencing is not a science” (Oxford Pilot Study 1984 P-64) Ashworth observed that “maximum discretion should be left to Court and any encroachment on this is likely to lead to injustice”.

Dr. David Thomas QC, who according to some Court of Appeal Judges made major contribution to revolutionise sentencing practice in the UK, expressed that a decision making sequence should be the basis of sentencing. According to him the Court should first decide between a “tariff sentence” based on general deterrence or proportionality and an individualised sentence, usually based on rehabilitative or incapacitative consideration. (Thomas 1979 page 11)

Prof Ashworth suggested that four groups of factors, listed below may be identified;

(i) views on the fact of the case

(ii) views on the principle of sentencing

- (a) views on the gravity of the offence
- (b) views on the aims, effectiveness and relative severity of the available types of sentence
- (c) views on general principle of sentencing
- (d) views on the relative weight of aggravating and mitigating factors

(iii) views and crimes and punishment

- (a) views on the aims of sentencing
- (b) views on the causes of crime

(c) views on the function of Courts in passing sentence

(iv) Demographic feature of sentence

(a) age

(b) social class

(c) occupation

(d) urban or rural back ground

(e) race

(f) gender

(g) religion

(h) political allegiance

According to Durkhein, sentencing has an expressive function and the best punishment is that which puts the blame in the most expensive but least costly form possible (quoted in Garland 1990 P 46, Ashworth page 61).

The Supreme Court of Victoria in Williscraft (-V-R (1975 229) observed, "The purpose of punishment are manifold and each element will assume a different significance not only in different cases but in individual commission of each crime ..... ultimately every sentence imposed represents a sentencing Judge's instinctive synthesis of all the various aspects involved in the punitive process".

Usual Five Rationales:

In the UK, USA and some other countries within the common law area five rationales are prevalent, which are

(a) Deterrence

(b) Rehabilitation

(c) Incapacitation

(d) Desert

(e) Restoration

Deterence is also described as “consequentialist” in the sense that it looks to the preventive consequences of the sentence.

Use of fear and threat works in advancing it.

It can be individual or general.

Jeremy Bentham, pivolal proponent of this concept thought punishment might be justified if the benefits in terms of general deterence outweighs the pain inflicted on the offender and sentences should hence be calculated to be sufficient to deter others from committing this kind of offence.

HLA Hurt argued that general justification justifying aim of punishment must be found in the prevention and control of crime (Hurt 1968), and the sentence should be proportionate to the seriousness of the offence.

Incapacitation: Is that type of sentence rationale by which the offender is rendered incapacitated, that is, to deal with them in such a way as to make them incapable of offending. Capital punishment and severing of limbs can be included as incapacitative punishment, which are irreversible. (Capital punishment or severance of limes are not permissible in the UK)

Just Desert

Desert theory is the modern form of retributive philosophy, and like retributism, it has various shades and hues.

Andrew Von Hirsh, the leading proponent of this doctrine, who authored, “Doing Justice” in 1976 in the United States, opined that punishment has a twin justification, one of which is founded on the intuitive connection between desert

and punishment, while the other one has underlying need for general deterence as its launching pad.

The main thrust and chief contribution of desert theory is to the quantum of punishment where proportionality is the touchstone, which is either ordinal or cardinal. While ordinal proportionality is concerned with the relative seriousness of offences among themselves, cardinal proportionality relates the ordinal ranking to a scale of punishments and requires that the penalty should not be out of proportion to the gravity of the crime.

It is the general perception that the rhetoric of desert is likely to lead to greater severity of penalties.

It is said to be based on the intuition that punishment is an appropriate or natural response to offending.

Cafeteria approach is the one where the sentencer selects the sentence as this to be most appropriate to each individual case. This allows the sentencer to pursue his own idiosyncratic approach. This is obviously at odd with the rule of law and substitutes for it the rule of individual judges.

Hybrid approach, first declaring a primary rationale and then allowing it to be trumped by other rationales, has been hailed as a step forward to ensure consistency.

Sweden adopts “desert” as the primary rationale.

Just Desert in UK

UK’s criminal Justice Act, 1991 the very first UK legislation to lay down sentencing principles on statutory ironshed was intended to embody desert as the primary rationale, including incapacitation (through custodial sentence) in

appropriate cases. S. 2 of the Act states that the length of a custodial sentence should be commensurate with the seriousness of the offence.

Dr. David Thomas added that it is a largely irrelevant exercise in "teaching grandmother to suck eggs", that the principle of "just desert" is not new: it has been the basis of judicial practice in the use of custodial sentence for years".

Dr. Thomas in his path breaking book on the principle of sentencing described the tariff "as being sustained by a mixture of deterrent and desert principle: proportionality plays some part: but the judges selects a tariff sentence where he imposes, usually in the name of general deterrence, a sentence intended to reflect the offenders' culpability" (Thomas 1979 page 8).

Lord Taylor CJ expressed, "the purpose of custodial sentence must primarily be to punish and to deter. Accordingly the phrase "commensurate with the seriousness of the offence" must mean commensurate with the punishment and deterrence which the seriousness of the offence requires" (Re Cunningham 1993 14 Cr. A.R. (s) 444).

Part of the white paper that preceded the enactment of the Criminal Justice Act, 1991, described by Dr. David Thomas as a new legislative framework for sentencing based on the seriousness of the offence or "just desert", is reproduced below:

> "If the punishment is just and in proportion to the seriousness of the offence, then the victim, the victims' family and friends and the public will be satisfied that the law has been upheld and there will be no desire for further retaliation or private revenge". (White paper 1990 para 2.3)

1991 Act, mandates that the sentence shall be based on the primary rational of "Just desert".

As Ashworth states (Page 93, third edition) proportionality "has always played some role in English sentencing, and it continues to do so".

Penal law of Finland provides that punishment shall be measured so that it is in just proportion to the damage and danger caused by the offence and to the guilt of the offender manifested in the offence.

Sweedish Criminal Code provides that sentences should be based on the penal value of the offence and the penal value is determined with regard to the harm, the conduct involved.

Ordinal Proportionality

The principle that a much harsher sentence is appropriate, considering the offence seriousness based on ordinal proportionality and just desert, has been reflected in the English Court of Appeal's judgment in Re Al-Banna (1984 6 Cr. APR (S) 426), where sentences of 30 and 35 years were held to be appropriate on a convict who only attempted to assassinate a foreign ambassador assigned to the UK, rejecting the argument that had the attempt succeeded, the appellant would only have been subject to recommendations to serve a minimum of 20 years for murder, holding that minimum recommendations of 30 to 35 years would have been appropriate for a political assassination, suggesting that this was treated as equivalent to a case of aggravated murder deserving no discount for the fact that it was a mere attempt rather than the completed crime.

Decision in Re Hindawi (1988 10 Cr. APPP R (s) 104) divulges an instance of harsher sentence, apparently on application of "Just desert" rationale, taking into account the principle of ordinal proportionality in weighing offence

seriousness and the offenders culpability. In that case the offender placed a bomb in a bag, his pregnant girl friend, who was about to board an aircraft having 370 passengers, was carrying. He was sentenced to serve 45 years in prison and the Court of Appeal in declining to reduce the sentence, expressed, "it is no thanks to this applicant that this plot did not succeed in destroying 360 or 370 lives".

In the country where a sentence of 15-20 years for actual murder is ordinarily passed, 45 year's sentence for attempted murder divulges how harsh the sentencer can be applying "Just desert".

These two decisions are glaring examples of the harshness of the sentence based on just desert.

According to Ashworth the terrorist element in both cases overshadowed other considerations in the Judges' minds. Ashworth expressed "it may be said sweepingly that political or terrorist killings are viewed as most serious".

SENTENCING FOR RAPE

According to Ashworth, the features of many rapes are severe emotional and psychological trauma, sometimes involving fear of pregnancy and sexually transmitted diseases and continuing sense of insecurity. Most rapes involve violence or threat thereof and other sexual indignities. The offence, in Hirsh and Jareborg's terms, poses a threat to physical integrity, which is compounded by humiliation and deprivation of privacy and autonomy. The typical effect on the victim is minimal well being and the culpability is generally high.

INDIVIDUAL CULPABILITY

While offence seriousness is one of the elements of proportionality, culpability of the individual offender is the other principal dimension of offence seriousness.

Von Hirsch expressed harm and individual culpability as under;

> "Harm refers to the injury done or risked by the criminal act. Culpability refers to the factors of intent, motive and circumstances that determines how much the offender should be held accountable for his act. Culpability, in turns, affects the assessment of harm. The consequences that should be considered in ganging the harmfulness of an act should be those that can fairly be attributed to the actors choice" (Von Hirsch 1986 P-64-65).

As Benthan proffered centuries ago, the longer the offender continued under the influence of antisocial motives, the more convincing is the evidence that he has rejected social motives (Benthan 1789 ch X, para 42), and hence is Tom Hadden's argument that Court in deciding on the sentence should be required to determine issues such as premeditation or impulse at trial (Hadden 1968 P 534).

Aggravating and Mitigating Circumstances

The 1991 Act placed these pre-existing practices on statutory foundation.

English judiciary has treated (a) offences by groups or gang, (b) offences against young, elderly or otherwise vulnerable victims, (c) offences involving the abuse of trust or authority, (d) offences involving planning or organisation, (e) offences involving political murder or attempted murder or terrorism oriented offences (Al-Banna, re-Hindwai, supra), as aggravating offences.

Greater culpability is the answer where the offender commits an offence against a vulnerable victim such as an old, very young, disabled etc (re: Allen and Bennet 1988 10 Cr. App. R. (S) 466).

The Floud Committee included grave harm to justify additional imprisonment in such offences which lead to death, serious bodily injury, serious sexual assault, severe or prolonged pain or mental distress, (Floud and Young 1981 P 118-119).

In re-Fowcet (1995 16 Cr. App. R (S) 55) the Court of Appeal observed that some factors, such as irrationality of the behaviour, the selection of vulnerable persons or a particular class of person or target, unusual obsession or delusions, will naturally assume prominence.

In 1993 Practice Direction, the Lord Chief Justice stated that Judges should specify the period to be served in all but very exceptional cases which are so serious that the Judge believes that the offender should be detained for his natural life (1993 96 Cr. App. R 397).

In the UK notion of general deterrence, which is different from individual deterrence, is often invoked to justify severe sentence for crimes of high seriousness.

Public Opinion Matrix: UK

Lawton LJ in re: Bradbourne (1985 7 Cr. APP. R (S) 180) stated, “the correct approach was to ask whether this was the kind of offence which would make right thinking members of the public, knowing all facts, feel that Justice had not been done by the passing of any sentence other than a custodial one”.

Lord Taylor CJ, repeating the “right thinking public approach” expressed that the right thinking public test should be used by Courts when applying the relevant provision of this 1991 Act (re: Cox 1993 14 Cr. APP. R (S) 479).

This test had been followed by the Court of appeal in scores of cases, high water mark of which was reflected in the observation of Hirst LJ in Keogh (1994 15 Cr. APP. R (S) 279) to the effect that in the climate of opinion that prevailed at the relevant time in relation to that offence the right thinking test was satisfied, although custodial sentence was passed for an offence involving 35.00 pence only.

Lord Bingham in re-Howell (1999 1 Cr. APP. R (S) 335) observed, “Courts cannot and should not be unmindful of the important public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system”.

In that case Lord Bingham listed premeditation as an aggravating factor and guilty plea, provocation as mitigating circumstances.

In re-Roche (1999 2 Cr. APP. R (S) 105 Lord Bingham stated that the Courts can never ignore the public interest element of certain offences.

In R Vs. Howells (1999) 1 WLR 307, Lord Bingham, CJ commented “Courts should always bear in mind that criminal sentences are in almost every case intended to protect the public, whether by punishing the offender or reforming him, or deterring him and others, or all of these things. Courts cannot and should not be unmindful of the important public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system”.

Ashworth expressed that while the offenders should be able to know the reasons for sentences imposed upon them, the public also has an interest in knowing them. (Page 305, third edition).

Victim's Role

A UK Government document titled "Victim's Charter" (1996) sets out what the victims may legitimately expect from the Crown Prosecution Service, Police and other public services.

The Australian State of Victoria passed a legislation titled "Sentencing (Victim Impact Statement) Act," 1994 in order to clearly bring attention to the Court the consequences of offences and to give victims some involvement in the sentencing process. (National Standard 2000).

Ashworth relying on the Court of Appeal's observation in Billam (1986 82 APP. R 347) to the effect that great trauma resulting from rape is an aggravating factor, expressed that in so far as such effects are relevant to sentencing, it seems to follow that accurate and up-to-date information should be made available to the Court. (page 319, third edition).

Some States in the US provides victims with a right of allocation, allowing them to make statement in Court in relation to sentence.

UK's Act of 2003, Purposes of Sentencing

By Criminal Justice Act, 2003, the objectives of sentencing have been enshrined in statute for the first time: S 142 (1) of the said Act describes the purposes of sentencing, to which 'any court dealing with an offender in respect of his offence must have regard' as:

(a) the punishment of offenders,

(b) the reduction of crime (including its reduction by deterrence),

(c) the reform and rehabilitation of offenders,

(d) the protection of the public, and

(e) the making of reparation by offenders to persons affected by their offences.

Halliday Report

In July 2001, John Halliday's Report of the Review of the Sentencing Framework for England and Wales: the precursor the 2003 Act, (the Halliday report) was published.

The Report concluded that the principles that severity of sentence should be 'proportionate' to the seriousness of criminal conduct, and that imprisonment should be reserved for cases in which no other sentence will do, both remain valid. Thus, the Report says that the principle of 'just deserts' should be retained (so that the sentence ought to be commensurate with the seriousness of the offence).

The Report also recommended that guidelines be created to help sentencers match the severity of sentence with the seriousness of the offence.

The Report called for the general principles of sentencing to be set out in statute. It identified the key principles as being that:

- the severity of the sentence should reflect the seriousness of the offence (s), and the offender's criminal history;
- the seriousness of the offence should reflect the harm caused, threatened or risked, and the offender's degree of blame in committing the offence;
- the severity of the sentence should increase as a consequence of sufficiently recent and relevant previous convictions;

…. The Report proposes that, in future, sentencing should be based on 'limited retributivism'. This means that the limits of punishment (the punitive envelope) would be shaped by "desert" while the content of the envelope would be determined according to utilitarian objectives. In principle, the pursuit of such a strategy is intellectually defensible.

Rather than widening the remit of the Sentencing Advisory Panel, the Criminal Justice Act 2003 created a new body, the 'Sentencing Guidelines Council', which (working alongside the Panel) took over responsibility for issuing guidelines on sentencing matters. The Council is chaired by the Lord Chief Justice and comprises seven other 'judicial members' and four 'non-judicial members'.

The Council works alongside the Sentencing Advisory Panel, whose continued existence is confirmed by s 169(1).

In December 2004, the Sentencing Guidelines Council issued guidance on the concept of seriousness.

The sentencer must start by considering the seriousness of the offence.

A court is required to pass a sentence that is commensurate with the seriousness of the offence. The seriousness of an offence is determined by two main parameters; the **culpability** of the offender and the **harm** caused or risked being caused by the offence. …

Four levels of criminal culpability can be identified for sentencing purposes:

Where the offender:

(i) has the **intention** to cause harm, with the highest culpability when an offence is planned. The worse the harm intended, the greater the seriousness.

(ii) is **reckless** as to whether harm is caused, that is, where the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people.

(iii) has **knowledge** of the specific risks entailed by his actions even though he does not intend to cause the harm that results.

(iv) is guilty of **negligence**.

Factors indicating a more than usually serious degree of harm:

* Multiple victims

* An especially serious physical or psychological effect on the victim, even if unintended

* A sustained assault or repeated assaults on the victim

* Victim is particularly vulnerable

* Location of the offence (for example, in an isolated place)

* Offence is committed against those working in the public sector or providing a service to the public

* Presence of others e.g. relatives, especially children or partner of the victim

* Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)

* In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the

theft of equipment causes serious disruption to a victim's life or business).

The Sentencing Thresholds

Assessing the seriousness of an offence is only the first step in the process of determining the appropriate sentence in an individual case. Matching the offence to a type and level of sentence is a separate and complex exercise assisted by the application of the respective threshold tests for custodial and community sentences.

* the court first has to decide what sentence is appropriate given the seriousness of the offence committed by the defendant;

* the court then goes on to consider whether that sentence should be reduced in the light of any mitigating circumstances which relate to the defendant.

Thus, the court looks first at the offence and then at the offender. Section 143(1) of the Criminal Justice Act 2003 states that:

In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.

In other words, the starting point is to consider the harm that was actually caused and the harm that the offender intended to cause.

In assessing seriousness where there is more than one offence, the court looks at the seriousness of the combination of associated offences. Section 161(1) of the Powers of Criminal Courts (Sentencing) Act 2000 provides that an offence is associated with another offence (which we may call the main offence).

Murder is punishable with imprisonment for life: such a sentence is mandatory. There are several offences (such as manslaughter, rape, inflicting grievous bodily harm with intent, and robbery) which may result in a life sentence.

Under s 269(2), a court passing a mandatory life sentence must make an order specifying a period of time the prisoner must serve before the Parole Board can consider release on licence under the provisions of s 28 of the Crime (Sentences) Act 1997 (often called the 'minimum term').

However, under s 269(4), where the offender was aged 21 or over at the time of the offence, and the court takes the view that the offence is so serious that the offender ought to spend the rest of his life in prison, the court must order that the early release provisions are not to apply.

Schedule 21 provides that where the offender was aged 21 or over when he committed the offence, the appropriate starting point is a 'whole life order' if the court considers the seriousness of the offences is 'exceptionally high'.

Sentencing Practice: India

All that the Indian Penal Code, enacted by the imperial Parliament in Westminster in 1860 for the whole of undivided India, states is, "Whereas it is expedient to provide a general Penal Code for India: It is enacted as follows:-"

So, it indicates nothing as to the penological object or purpose of the enactment.

The adjective law, i.e. the Code of Criminal Procedure (Cr.P.C.) 1973, like its repealed predecessor, also lays down nothing like what the UK's Criminal Justice Act, 1991, Criminal Justice Act, 1993 or Criminal Justice Act, 2003 had done to lay down sentencing objectives and policies.

However, observations recorded by Indian Supreme Court from time to time supply decisive information on the object, and purpose of punishment and the principles of sentencing they follow.

Prof Salmond's globally acclaimed propoundment that a crime is an act that is deemed by law harmful not merely for the individual victim but for the society as a whole, has althrough been adhered to by the Judges in India.

Ashworth's observation, "The fundamental reason for having a system of criminal law is to provide a framework for the state punishment of wrongdoers and thereby preserve an acceptable degree of social order" ("Ashworth, Belief, Intent and Criminal Liability" Oxford Essams in Jurisprudence (1987) P.1.) is also strictly followed.

Five objectives outlined in UK's Criminal Justice Act, 2003 such as (1) punishment of the offender, (2) reduction of crime, (3) reform, (4) protection of society, (5) reparation to victims, are also give effect to.

Through scores of decisions the Indian Supreme Court made this clear, while also emphasising that as crime is a "pathological aberration", a criminal can nevertheless, in appropriate cases be redeemed and the state has to rehabilitate him (Md. Giasuddin –V-State of AP AIR 1977 SC 1926), thereby advanced the rationale of reform and rehabilitation, but only where appropriate. Similarly, in Prakash –v-State of MP the Indian Apex Court expressed, "It is the result of the recognition of the doctrine that the object of the criminal law is more to reform the individual offender than to punish him".

The case of **State of Jharkhan – V- Saiyed Rizwan (2003 AIR Jhar HCR 513),** is one of a few cases where applying the "reform" rational, death sentence was commuted to life imprisonment on ground that probabilities of

reform could be seen, in a situation where the convict with her husband killed her parents, brother and grandmother, whose corps were kept in hiding, with a motive to misappropriate their property.

The decision in the case of **Omprokash – V- State of Haryana (AIR 1999 S.C. 1332)** provides yet another example of Indian Supreme Court's adherence to the "reform" rationale in sentencing policy. In that case the convict killed seven persons of a family, who tried to encroach upon the earlier's property. The convict intimated the police several times but in vain and then finally killed them.

In commuting the death sentence the Apex Court took notice of those facts.

In Public Prosecutor – V- Pothuraju Norosimharao (2003 Cr.L.J. NOC 229) also the Court followed "reform and rehabilitation" rationale and commuted death sentence because the prosecution failed to prove that the accused was a threat to society and was not amendable to reformation.

In that case the accused committed murder by pouring acid on his near relatives due to some family dispute.

In Nadella Venkata Krishna Rao-v-State of AP the same Court expressed that the whole goal of punishment is curative and that accent must be more on rehabilitation rather retributive punivity inside the prison.

But these refers to cases where reformation is possible. So, the Supreme Court also observed that "social defence is the criminological foundation of punishment" and that the Courts should not confuse between correctional approach to prison treatment and nominal punishment verging on decriminalisation of serious social offences and that soft sentencing justice is

gross injustice where many innocents are the potential victims" (**Madhab Hayawadanrao Hoskot-v-State of Maharastra (AIR 1978 S.C. 1548)**

Ramdeo Chauhan –V- State of Assam (2000 7 SCC 455) is a case where the retributive rationale with incapacitating consequence was certainly applied as the Supreme Court expressed that it is true that in a civilised society a tooth for tooth and a nail for nail or death for death can not be the rule but it is equally true that when a man becomes a beast and menace to the society, he can be deprived of his life, adding that the crime committed by the appellant was not only shocking but it had also jeopardised the society and the murder committed by him was most cruel, heinous, and dastardly and hence his young age at the time of the commission of the offence could not be considered.

In this case the appellant inflicted multifarious injuries on each victim that included a female baby and two helpless women, who fast asleep when killed.

It expressed that while the classical principles of retribution, deterrence, prevention and rehabilitation is in the vogue, a Judge, while considering the award of sentence, must bear in mind these principles and see with reference to the facts of the particular case as to which of them has greatest importance in the case and that the quantum of punishment should be such as deserved for the offence, no more, no less, **(State of MP-v-Ganga Singh 1987 Cr. L. J 128).**

It did also endorse the "Just desert" rationale (without naming it), stating that sentencing the guilty is most important, albeit a difficult chapter in trial, and that while retributive and denunciatory theories have lost their potency in the civilised nations, deterrent and preventive sentence is often necessary in the interest of the society (Saradhar Sahu-V- State of Orissa 1985 Cr.L.J. 1591). In a case of brutal murder, the same Supreme Court, before whom the propriety of

death sentence was questioned, held, confirming death sentence, that failure to impose death sentence in such grave cases would bring to naught the sentence of death provided by section 302 of the Penal Code and that the Courts duty is to impose proper punishment depending on the degree of criminality and desirability to impose such punishment. (Asharfi Lal-V-State of UP, AIR 1987 SC 1721), and thereby followed the mixture of just desert (without naming it) and general deterrence rationale.

In that case the doctrines of proportionality (touch stone of just desert, supra,) and commensurability were also taken account of having regard to social necessity. In similar vein in Mahesh -v- State of MP (AIR 1987 SC 1346) the Indian Apex Court observed, “It will be a mockery of Justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give lesser punishment for the accused would be to render the justicing system of the country, suspect. The common man will lose faith in Courts. In such cases he understands and appreciates the language of deterrence more than the reformative Jargon”.

By applying the rationale of general deterrence, and public confidence test, the Supreme Court in a road accident case, enhanced the sentence of fine, observing that consideration of undue sympathy in such cases will lead to miscarriage of justice and undermine pubic confidence in the efficacy of the criminal judicial system (State of Karnataka-v-Krishna alias Raju, AIR 1987 SC 861).

Application of the mixture of just desert (without naming) and general deterrence rational touching upon proportionality and commensurability

recorded a high water mark in Machhi Singh-v-State of Punjab (1983 SCc (3) 470) where the community's response was profiled high.

Indian Courts also heavily rely on "aggravating and mitigating" circumstances as are reflected in innumerable decisions of which the cases of Bachan Singh-v-State of Punjab (1980 (2) SCC 684) and Swamy Shraddananda –v-State of Karnataka (2008 (13) SCC 767) deserves specification.

Describing that a Crime does not only affect the victim, but the conscience of the entire nation, it has been stated that the second aim of punishment is to open the eyes of the would be criminals that they would be dealt with likewise in case they dare to commit in similar crimes (surely general deterrence).

To emphasise the doctrine of commensurability, the Indian Supreme Court in Satwant Singh-V-State of Punjab, (AIR 1960 SC 266) expressed that the measure of punishment to be awarded upon conviction for an offence has to be commensurate with the nature and seriousness of the offence and that if the accused is unable to show that the sentence imposed upon him is not in any way excessive, the fact that a co-accused charged with abetment of the same offence, received a lighter sentence is not a relevant circumstance.

In numerous pre April 1974 (when new Cr.P.C. come into force) cases the Indian Supreme Court reiterated the view that in imposing sentence the main consideration should be the character and magnitude of the offence, but the Court cannot lose sight of the proportion which must be maintained between the offence and the penalty and the extenuating circumstances that may exit. The Court should also take account of the circumstances under which they were committed, degree of deliberation shown by the offender, provocation, offenders

antecedents, that is while the sentence should be adequate to the offence, they should not be excessive either. (Adamji Umer Dolal-V-State of Bombay, AIR 1952 SC 14, Roghunath –V-Paria (AIR 1967 Goa 95, Sham Sundar-V-Puran AIR 1991 SC 8), by

It also ordained that a Court should weigh the sentence with reference to the crime committed and the circumstances of the case and not with reference to what may happen subsequently.

With regard to the quantum of punishment to be awarded to persons found guilty of offences dealt with in IPC, CrPC confers a wide discretion by prescribing the maximum punishment and in some cases both the maximum as well as the minimum punishment for the offence. Though no general guidelines are laid down, punishment should be commensurate with the gravity of the offence having regard to the aggravating and mitigating circumstances vis-á-vis an accused in each case. In such situation, the obligation of the court in making the choice of death sentence for the person who is found guilty of murder becomes more onerous indeed. **(Para 15); State of Punjab-v-Manjit Singh, AIR 2009 SC 2888.**

Ramdeo Chauhan –V- State of Assam (2000 7 SCC 455) is a case where the retributive rationale with incapacitating consequence was certainly applied as the Supreme Court expressed that it is true that in a civilised society a tooth for tooth and a nail for nail or death for death can not be the rule but it is equally true that when a man becomes a beast and menace to the society, he can be deprived of his life, adding that the crime committed by the appellant was not only shocking but it had also jeopardised the society and the murder committed

by him was most cruel, heinous, and dastardly and hence his young age at the time of the commission of the offence could not be considered.

In this case the appellant inflicted multifarious injuries on each victim that included a female baby and two helpless women, who were fast asleep when killed

To sum up, all the rationales a developed judicial regime apply, namely (1) general deterrence (2) individual deterrence (3) Just desert (in the form of retribution or otherwise (4) incapacitation and (5) rehabilitation, are followed by Indian Courts, notwithstanding absence of statutory guidelines like the UK's Criminal Justice Acts of 1991, 1993 and 2003.

Thus, Mohammad Shamim, in his treatise, "Capital Punishment" (1989 Cr.L.J. 52 (Journal), has stated (in the context of India) that there are four aims of punishment, namely (a) deterrent (b) preventive (c) retributory (d) reformative.

These four rationales have also been judicially expressed by the Indian Supreme Court in State of MP –v-Ganga Singh (1987 Cr.L.J. 128).

Bangladesh Practice

Like India, we also inherited the British made Penal Code and the Cr.P.C., none of which lay down any sentencing rationale, yet like Indian Courts, ours also apply most of the recognised sentencing rationales used in the UK or so. Wide discretion in the sentencing statutes enables the Judges to apply these rationales. The rationale of individual as well general deterrence (naming it) singularly and often in conjugation with "just desert" (without naming) play a very important role in our sentencing practices as are vindicated by a catena of Supreme Court decisions. The idea that primary purpose of penology is to deter

the offender as well as others from prolifering criminal acts remain vigilantly awaken in the minds of the sentencing Judges.

Following observations made by the Appellate Division in Major Bazlul Huda and others –V- The State (Appellate Division Cases, Special Edition) reveal that the general deterrence as well as just desert rationale were applied, keeping in mind, proportionality, the touchstone of Just desert rationale, without however, ignoring the necessity of balancing the aggravating and mitigating circumstances, as well as the public confidence aspect;

(a) "Justice is related to law and justice differs from benevolence, generosity, gratitude, friendship and compassion. Justice consists of maintaining the societal status quo" (surely implied general deterrence);

(b) The Appellate Division also cited with approval the Indian Supreme Court's following observation, which is surely based on "just desert" rationale (as modern version of retributiveness);

> "The manner in which mercilessly she was attacked by these two persons on whom the confidence was reposed to give her protection repels any consideration of reduction of sentence. …… does not deserve any leniency in the matter of sentence. In our opinion, the sentence awarded …… appears to be just and proper".

(c) "Accordingly I find (per ? J) that the accused person including the appellants in a planned manner committed the heinous crime with their knowledge of the consequence and therefore they do not deserve any

special sympathy in awarding the sentence" (Just desert, retributiveness, proportionality commensurability)

(d) "Murder of innocent unarmed men and women and children is the greatest sin in Islam and also in other religion and a great crime against civilisation and mankind. In Islam death is the only punishment for murder" (surely indicated retribution: just desert), (Per Md. Abdul Aziz, J.)

(e) "…. the accused appellants committed gruesome murder of the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman and members of his family ….. Facts reveal that it is a premeditated, well thought design to eliminate the entire family of the Father of the Nation. ….. since the accused appellants committed a heinous crime, they do not deserve any sympathy …… in getting commutation of death penalty. (per Md. Mozammel Hossain, J) (surely indicating retributive, Just desert rationale with its touchstone, proportionality and commensurability).

(f) By citing with approval Indian Supreme Court's following observation, Sinha J surely indicated retributivism: Just desert rationale; coupled with public response test.

> "In the opinion of many for the inevitability of death penalty, not only by way of deterrence, but as a token of emphatic disapproval by the society".

(f) "On consideration of brutality in the commission of the offence, the appellants and other co-accuseds do not deserve any leniency in the matter of sentence: The appellants failed

> to make out a case of mitigating circumstance to commute their sentence".

ABM Khairul Haque, J. (in the High Court Division) on the sentence, recorded the following observation;

> "In this case 11 (eleven) innocent persons were brutally and diobolically murdered. Sheikh Mujibur Rahman, the then President of Bangladesh, became a target of a vicious intrigue and was murdered by a handful of disgruntled army officers, some of them were dismissed. With him 10 (ten) other persons including 3(three) ladies and 1(one) little boy, were also murdered. The manner in which they were so brutally and mercilessly murdered repels any consideration of reduction of sentence. As such, none of the accused deserve any leniency in the matter of sentence". (surely meant retribution)

The above observation, alongside the confirmation of death sentence, which remained undisturbed by the Appellate Division, is only consistent with retributory rationale with the touchstone of proportionality.

In Abed Ali –V-State (42 DLR AD 171) our Appellate Division considered mitigating and aggravating circumstances and considering proportionality concept, refused to commute death sentence, stating that claimed extenuating factor in the form of provocation remained unproven.

The Appellate Division's decision in Abul Khair-V-The State (44 DLR AD 225) also reveal that our Courts consider mitigating and aggravating circumstances in determining the sentence where statute allows discretion.

Our law also permits restoration and rehabilitation both for juvenile as well as adult offenders. The children's Act, as amended in 2013 allows restorative rationale while the Probation of the Offenders Ordinance (XLV) of 1960, allows this rationale for both Juveniles and adults .

Under Ordinance XLV of 1960, if a person (irrespective of age) without previous conviction, is convicted of an offence punishable with no more than two years imprisonment, a Court can pass a probation order in the alter of inflicting punishment, or to discharge him after admonimation, or subject to condition of signing a bond, when probation order appears appropriate.

So, through a chain of high preponderant judicial pronouncement, as well as by such statutory commandments as the Probation Ordinance and Children's Act, Bangladesh Judicial System apply all the sentencing rationales that are in prevalence in the developed judicial regimes, such as (i) deterrent, both individual and general, (2) just desert (retributive or not), (3) resorative and rehabilitory (through statutory mandate). And, in applying these sentencing rationale the Courts take account of the principles of proportionality, commensurability, aggravating and mitigating circumstances as are done in other developed judiciaries.

Retribution in Practice

Relevant passages from some decisions pronounced by our Appellate and the High Court Divisions, which are reproduced below, do reveal that as in India, Pakistan, Sri Lanka and indeed most other countries, whether they follow common law or civil law, retribution and general deterrence rationale are more appropriate in awarding sentence to a person guilty of such felony as murder, rape, arson etc.

"The High Court Division on consideration of the evidence found that the petitioner had killed two victims without any provocation whatsoever and the killing was result of pre-meditation and that the petitioner who has taken two lives should give his own life and rejected the plea of commutation of death sentence to imprisonment for life on the ground that petitioner was in death cell for about 3 years" **(18 BLD 605)**.

"On going through the materials on record and the impugned judgment, we find no illegality therein to interfere with the same. We also find no ground to commute the sentence as there is no extenuating circumstance for the same". **(Mofazzal Hossain Pramanik-V- State, 6 BLC (AD) 96).**

"In a case like the present where a number of persons inflict a large number of injuries with the intention of causing death so that each is contributing towards the death of the deceased, it is not necessary for the purpose of imposing the maximum penalty to determine who gave the fatal blow. In such a case all those accused to whom the Court attribute the intention of causing death in a brutal manner, should (in the absence of some other circumstance justifying the imposition of the lesser penalty) be awarded the maximum penalty. **/ (Fateh Khan and others –V – State, 15 DLR (SC) 5).**

"There being no extenuating circumstance, the sentence of death imposed on the condemned convict by the learned Sessions Judge, Munshiganj, was the only sentence that could be imposed" **(The State-V – Siddiqur Rahman, 2 BLC (HC) 145).**

Application of retributive rationale is clearly implied in this judgment.

In Abed Ali-V-State (42 DLR (AD) 171), the Appellate Division approved the following observation of the convicting Court; "He committed

gruesome murder of 2 young men and attempt on third who however narrowly escaped. He is neither old, nor teenager and under circumstance I do not find any extenuating circumstance to save the accused from gallows. He came with a pre-determined and calculated intention to commit murder and with that end in view accosted the informant and his brothers who were unarmed and taken off / guard. We have nothing in the circumstance of the case and in the conduct of the accused to take a lenient view in the matter of the sentence inspite of our very best concur to temper Justice with mercy".

This is yet another judgment which shows that retribution morale dominated minds of the Judges.

The following observation of the Appellate Division in the case of **Dipok K Sarkar –V- State (40 DLR (AD) 139)** also suggest that retributive rationale is to be followed but the principle of commensurability must be the basis; "It is not certainly our purpose to say, however, that killing of wife by husband is to be viewed by some other standard while considering the offence of murder, but as in all other cases the circumstances attending the crime have to be taken notice of for inflicting the proper punishment prescribed under the law".

Sentencing Practices in Crimes Against Humanity Cases Oberseas

With the onset of the 2nd World War, the idea the responsibility of war criminals found expression in many international instruments.

In October 1943 the leaders of three powers published the declaration on responsibility of the Hitlerites for the atrocities committed, where it was said that the guilty will be tried on the spot by the peoples who had suffered violence in their hands. The declaration read,

> "Let those who have hitherto not imbued their hands with innocent blood beaware lest they join the ranks of the guilty, for most assuredly the three allied powers will pursue them to the uttermost ends of the earth and will deliver them to their accusers in order that Justice may be done (The Nuremberg Trial Vol. 1 P 17-21)." (This declaration surely indicated retirbutivism).

These Declaration, signed in Teharan guided the International Military Tribunal at Nuremberg, (IMT) whose charter enunciated the basic indicia of crimes against peace.

Although the theme of International Criminal Law and Courts were within the contemplation of Hugo Grotius, (1625) the recognised patriarch of international law, with the formulation of the Nuremberg Charter a new generis of crimes known as War Crimes and Crimes against Humanity came to the vogue, initially under public international law though.

Nuremberg trial was the first historical precedent for bringing to trial and punishing the most dangerous of them who committed War Crimes and Crimes against Humanity.

On 8th August 1945 the agreement between the Governments of the designated states was signed and the Nuremberg Charter was ratified.

Although crimes and punishment for murder, rape, arson, unlawful confinement had been in existence even before the Nuremberg charter, crime against Humanity, comprising murder, rape, arson, unlawful confinement etc emerged as a new concept which also permeated into the municipal law of several countries subsequently.

(Declaration signed by Three Powers, (Nuremberg Trial Vol. 1 P 21).

Although co-ordinating the actions of the members of the Tribunal was not an easy task for not only the socio political but also the legal systems of the four Powers were unidentical, nevertheless, the jurists of four countries found in each instance mutually acceptable solutions, by forging a singular, in many ways, unique, procedural formula, quite effective as they all shared the common will of punishing the perpetrators harshly. (surely applying retributism)

So, the IMT widely resorted to the Soviet principle of an active Court, allowed cross examination which is more characteristic of Anglo-Saxon Law. Assessment of evidence in accordance with the inner conviction of the Judges.

Although the sentencing rationale applied by 1TM has not been spelt out in black and white, the language used in the 1943 Declaration, part of which has been reproduced above, along with other expressions that found places in other declarations, reproduced below, make it abundantly clear that retribution and just desert conjugated with general deterrent rationale played the dominant part.

That they emphasised “retribution” as the foremost is reflected from the following passages, which found place in different declarations and statements;

> “The War criminals will be sent back to the countries in which their abominable deeds were done in order that they may be Judged and punished according to the laws of the liberated countries and of the free governments which will be created therein”(Declaration on the responsibility of the Hitlarites for the atrocities committed 1943).

The Soviet Union, advocated the principle that “severe punishment must overtake all who are guilty of these most atrocious crimes against culture and humanity. (lbid P = 87).

Molotov expressly and publicly promised that the Soviet nation "would never forgive the atrocities, rape, destruction and mockery which the bestial bands of German invaders have committed and are committing against the peaceful population of our country "(lbid P-87, statement p-16).

Molotov's statement clearly indicates that he meant retributive punishment.

Encouraged by the Soviet example, the London representatives of the Captive European States, who met at the conference of January 13, 1942 at the palace of Saint-James, issued a declaration to the effect that they "place among other principal war aims, the punishment through the chanel of organised justice of those guilty or responsible for these crimes whether they have ordered them, perpetrated them or in any way participated in them". (Text of Resolution on German War Crimes signed by Representatives of Nine Occupied Countries: Voices of History 1942-1943 by F Watts, New York 1943 page 33).

This text also indicate that the allied countries meant retributive punishment through the chanels of organised justice.

Molotov repeated his pledge, stating "Hiltar's government and its accomplices will not escape severe responsibility and deserved punishment for all their unparalleled crimes perpetrated against the peoples of the USSR and all freedom loving people. "(Vneshniaia Politika). Again, the flavour of Retributive and "Just Desert" rationale is apparent from Molotov's statement.

The British Prime Minister, Winston Churchill on 8th September 1942 made the following statement in British Lower House;

> "I wish most particularly to inform his Majesty's Government and the House of Commons with the Solemn words which were

> used lately by the President of the United States, namely, that those who are guilty of the Nazi Crimes will have to stand up before tribunals in every land where their atrocities have been committed in order that an indelible warning may be given to future ages, and the successive generations of men may say, " So perish all those who do the like again". (The Nuremberg Trial and International Law. Page-14)

The voice of the British Prime Minister, who had a pivotal role in setting the IMT into motion, is easily discernable to the thesis that he also meant retributive punishment with element of general deterrence.

President Roosevelt of the United States also, by his reply dated 21st August 1942, to the representatives of the Governments in exile, associated himself with the idea of judicially administered retribution. (Nuremberg Trial and International Law page- 15)

Molotov advanced an additional suggestion stating;

> "The Soviet Government considers it essential to handover without delay for trial before a special international tribunal and to punish according to all the severity of criminal law, any of the leaders of Fascist Germany who in the course of the war have fallen into the hands of states fighting against Hitlerite Germany". (lbid page 52-54).

The phrase "punish according to all the severity" can not be misunderstood as regards the applicable sentencing rationale.

Joseph Stalin, who had a prime role in setting up the IMT, delivered a speech on 6th November 42, part of which is reproduced below, which divulge that retributory sentence was contemplated;

> "Let these butchers know that they will not escape responsibility for their crimes or elude the avenging hand of the tormented nations" (War Speeches p-48).

The words "avenging hand" keep no room for qualm on the theme that retributive punishment was meant.

On 19th April 1943, the Soviet Presidium passed a decree prescribing that German-Fascist criminals guilty of grave crimes against Soviet citizens were to be punished with death by hanging and their accomplices with hard labour.

Between July 14th and 16th 1943, eleven Soviet citizens were tried pursuant to the aforementioned decree under the Soviet municipal law for atrocities committed in Soviet Union in collaboration with the German occupation authorities, and eight of them were sentenced to death notwithstanding their guilty plea. The punishment awarded was obviously retributive. This was the first instance of a trial of this kind for crimes connected with the 2nd World War. (Trial in the case of atrocities by German-Fascist invaders and their accomplices on the territory of the city of Krasnodar and the Krasnodar region during their temporary occupation – Moscow 1943) and also New York Times 30th July 1943 P-5).

Barely a week after the release of the Moscow Declaration, Stalin on 6th November 1943 stated;

> "Together with our Allies, we must adopt measures to ensure that all the fascist criminals responsible for the present war and

> the suffering of the people, should bear stern punishment and retribution for all the crimes perpetrated by them no matter in what country they may hide" (War Speech P 82)
>
> Here the word "retribution" was actually used.

This statement was adopted by the "Commission on the Punishment of War Criminals of the London International Assembly. (History of the United Nations War Crimes Commission and the Development of the Laws of War, London 1948 page -100-1001).

Immediately after the cessation of the 2nd War, a series of public trials were conducted in Kiev, Minsk, Riga, Leningrad, Smolensk, Briansk, Velikie Luki and Nikolaev and death sentences were meted liberally. (Pravda, December 16-21, 1945, New York Times, 30th December 1945 P-6 and January 6th 1946, P-4, New York Times, 31st December 1945, Pravda, 27th December 1945 P-3).

Rome Statute

With a view to set up a permanent International Criminal Court, a draft statute was adopted by an assembly of states in July 1988, known as Rome Statute. Jurisdiction of the International Criminal Court (ICC) commenced on 1st July 2002, with its office in Hague.

On sentencing, the statute of the Court states, "In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factor as the gravity of the crime and the individual circumstances of the convicted person".

Rule 145 of the ICCs Rule of Procedure states, "In its determination of the sentence .... the Court shall: (a) Bear in mind that the totality of any sentence of imprisonment and fine ..... must reflect the culpability of the convicted person:

(b) Balance all relevant factors, including any mitigating and aggravating circumstances both of the convicted person and the crime:

(c) In addition .... give consideration, inter alia, to the extent of the damage caused, in particular, to the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime: the degree of participation of the convicted persons, the degree of intent: the circumstances of manner, time and location: and the age education, social and economic condition of the convicted person.

The Rules listed the following factors as constituting aggravating circumstances:

(i) Any relevant prior conviction

(ii) Abuse of power in official capacity

(iii) Where the victim is particularly defenceless

(iv) Commission of the crime with particular cruelty or where there were multiple victims

The convicted persons diminished mental capacity or duress; his conduct after the act, including any efforts to compensate the victims and any co-operation with the Court have been listed as mitigating circumstances.

Article 77(1)(a) of the Rome Statute provides that a determinate sentence for a term not exceeding 30 years may be imposed while Article 77(1)(b) says that in case of extreme gravity, and where the individual circumstances of the convicted person so warrant, a maximum of life sentence may be imposed.

It is clear from the language used in the statute of Rome and the Rules on sentencing that retribution with the touchstones of proportionality, and general deterrence are amongst the applicable rationale.

Ad-Hock UN Sponsored Tribunals

Statutes of ad-hock tribunals set up by the Security Council of the United Nation for the trial and punishment of perpetrators of Crimes against Humanity at various dates during the decade of 1990, named (1) International Criminal Tribunal for former Yogoslavia (ICTY), (2) International Criminal Tribunal for Rwanda (ICTR), International Criminal Court set up under the United Nations Transitional Administration for East Timor (UNTAET), special Court for Sieraleon, (SCSL), the Extra-Ordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes committed during the period of the Democratic Kampuchea (EGGG), stipulate similar provision on sentencing.

As the statutes of none of the tribunals named above, detailed the object and purpose of sentencing, in discerning the aims of sentencing, the ad-hock Tribunals have looked at the statements made by member states of the Security Council at the time of their establishment and at the jurisprudence the tribunals expounded in the cases like Prosecutor – V- Erdemovic, ICTY Sentencing Judgment, 19th November 1996, para 57), Prosecutor –V- Tadic (ICTY 11 Nov 1999, para 7), Prosecutor –V-Kambanda (ICTR 4 Sept, 1998 para-19), International Criminal Courts, 2009, para 18-39).

Sentencing aims of the tribunals have been held to be deterrence, protection of society, reprobation, retribution, which are consonant with the Security Council's general aim.

In Prosecutor-V-Joni Marques el at (11th December 2001 para 979) the Trial Panel for Serious Crimes in East Timor held that the penalties imposed by the panel were intended as retribution and as deterrence "namely to dissuade for ever others who may be tempted in future to perpetrate such atrocities by

showing them that the international community shall not tolerate such serious violation of law and human rights".

Judge Mumla noted in her separate opinion in Deronjic that Deterrence seeks to prevent future criminal behaviour - either in preventing the individual from committing a crime again (specific deterrence) or by sending a signal to would be criminals that a sanction can be imposed (general deterrence). Retribution emphasises that punishment should be proportionate to the crime committed. Its focus is not on a social value in punishing the individual, but on issuing a sanction because the offence merits penalty (Prosecutor –V- Todorovic, ICTY 31 July 2001 para-30) (Prosecutor-V- Aleksovski ICTY, March 24, 2000 para-185) (Prosecutor –V- Mucic it at ICTY 8th April 2003, para 86) (Prosecutor –V- Tadic ICTY 26 January 2000, para-48).

In Erdemovic, the Trial Chamber referred to what it regarded as the only precedence in International Criminal Law, namely the sentencing practice from the Nuremberg and Tokyo Tribunals. After reviewing these, the Trial Chamber concluded that the declarations and judgments of these International Tribunals indicate that sentencing is directed towards retribution and deterrence. (Prosecutor-V-Erdemovic, ICTY 29th Nov 1996 para-5).

The Trial Chamber in Prosecutor -V- Furundzija ICTY, 10th December 1998 para-288) stated; "it is the mandate and the duty of the International Tribunal in contributing to reconciliation to deter such crimes and combat impunity. It is only right that "peniture quia peccatur" (the individual must be punished because he broke the law) but also "punilur ne peccatur" (he must be punished so that he and others will not break the law). The Trial Chamber

accepts that two important functions of punishment are "retribution and deterrence".

In Aleksovski, the Appellate Chamber cautioned that retribution should not be "understood as fulfilling a desire for revenge but as truly expressing the outrage of the international community at these crimes". (Prosecutor-V-Aleksovski, ICTY 25th June 1999, para 185).

In Kambanda, the Trial Chamber stated, "It is clear that the penalties imposed on accused persons found guilty by the Tribunal must be directed, on the one hand, at retribution of the said accused, who must see their crimes punished and over and above that on the other hand at deterrence, namely dissuading for good those who will attempt in future to perpetrate such atrocities by showing them that the international community was not ready to tolerate the serious violations of international humanitarian law and human rights". (Prosecutor-V-Kambanda ICTR 4th Sept 1998 para-28).

In Krnojelac, the Trial Chamber expressed, "Retribution was to be interpreted as "punishment of an offender for his specific criminal conduct and general deterrence as "general sentencing factors which form the backdrop" against which an accused should be sentenced (Prosecutor-V-Krnojelac, ICTY, 15th March 2002, para-508).

Death Sentence Generally

The question of the desirability of death sentence is presently a subject of extensive international debate. There are strong arguments from both sides of the fence. Those who are in favour of retaining this age old sentence believe that this prove greater protection to the society as it acts as a more effective general deterrent conveying signal to others that they would face the same eventuality

should they dare committing death penalty attracting crimes and also that this form of incapacitation is a desirable form of retribution in more gruesome and frenzied cases.

Those, who, speak from the other side of the wall, assert that death sentence is an archaic, old fashioned device which has out runned its span, that it is an inhuman and cruel system which can not survive in the present days, that one wrong can not be quelled by another one.

Advent of the 20th century marked an upsurge in the demand for its abolition, terming it inconducive to human dignity and that it does not reduce crimes.

Abolitionists' view is often more ethical than legal and it would be wrong to say that their view was or has been universally endorsed.

Strongest argument of the abolitionist is based on the theme that once executed, the sentence is irreversible.

Death Sentence is no doubt mecaburous but as Tanzanian Court of Appeal in Mbusvv-V- The Republic (30th January, 1955), quite aptly observed that the mandatory death penalty; while cruel and degrading, was none the less constitutional: it was a reasonable and necessary measure to protect the right to life of law abiding citizens.

The fact that good number of countries could not be persuaded to swing to the abolitionists club vindicate the claim that it is not generally accepted that death penalty experiment has failed. Some 58 countries have still remained in the retentionist enclave while 35 others, though have been maintaining moratorium on death penalty, do in law, retain death sentence (Penal Reform International: 2014). In fact Jamaica, Papua New Guinea, Srilanka have restored

death sentence, turning around previously imposed moratorium for cogent reasons. Philippines suspended it twice since 1987.

One of the abiding arguments against the death sentence is the fallibility of the human justice which may result in the execution of people innocent.

Though all West European countries along with the old Commonwealth have abolished capital punishment, it still reigns unhindered in many countries with proven success in reducing crime levels . 32 of the 50 component states of the United States of America are in the list of the retentionists. Staticts reveal that in those of US States where death sentence are prevalent, major crimes are relatively less frequent.

Malaysia, which has attained an acclaimed sophistication in the progression of democratic order, prescribes mandatory death sentence for murder and drug offences. Most of the far eastern democracies, inclusive of Philippines, Indonesia, and Thailand maintain death sentence for drug peddling. Middle east countries, inclusive of Iran, do not only retain capital punishment, but practice it day in, day out.

Although the United Kingdom had abolished death sentence generally, ostensibly after subsequently emerged evidence showing that some executed people were actually innocent, death sentence for certain very limited offences involving the monarch and the kingdom, are still in its book.

While there can be no qualm on the theological doctrine that taking of life is within the exclusive and unfettered domain of the Creator, yet if we meticulously follow the creator’s Oracles, it become obvious that the Creator allowed the human being to pass death sentence on those guilty of repulsive felonies.

With the sole exception of Budhism, all major religions endorse capital sentence for described offences.

UN and International Law on Death Sentence

Public International law does not prohibit death penalty. Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that death penalty may be imposed only for the "most serious crimes".

Countries that retain death penalty are required to observe a number of restrictions and limitations on its use.

The UN safeguards (ECOSOC- safeguards) for cypilet connections require clear and convincing evidence leaving no room for an alterative explanation of the facts and their must be a right to appeal to a higher Court. The rules require that such capital case is carefully scrutinised by domestic Courts for defoliating possibility of error.

The UN Human Rights Committee has interpreted 'most serious crimes' not to include economic offences, embezzlement by officials, robbery, abduction not resulting in death, apostasy and drug related crimes. It has also excluded political offences, expressing particular concern about 'very vague categories of offences relating to internal and external security, vaguely worded offences of opposition to order and national security violations and 'political offences.

The UN Commission on Human Rights, a subsidiary body of the UN Economic and social Council (ECOSOC) , replaced by the Human Rights Council in 2006, interpreted 'most serious crimes' as not including non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults.

Safeguard 1 of the 1984 UN Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty also provides that in countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.

The UN Special Rapporteur on extrajudicial summary or arbitrary executions stated in his 2012 report to the UN General Assembly that the death penalty should only be applied for offences of intentional killing, based on the practice of retentionist states and the jurisprudence of UN and other bodies.

Although Rome Statute does not allow ICC to pass death sentence, it does nevertheless, recognise death sentence by allowing member states to pass death sentence upon those accused of War Crimes and Crimes against Humanity if such sentence is permissible in the given states.

Its statute does, therefore, allow member states to pass death sentence on those found guilty of crimes against humanity when the national Courts in those states assume jurisdiction.

The argument that the death penalty has a strong deterrent effect on crimes, especially serious violent crimes, plays an important role in the debate in retentionist states. Often, it is the primary reason why the public and politicians shy away from abolition.

The argument assumes that would-be criminals consider the full range of consequences of committing a criminal act, anticipate getting caught, and decide not to undertake the criminal act because they have a strong belief that if caught, they will be sentenced to death.

Governments in retentionist states often invoke the argument that public opinion favours death penalty, and therefore they cannot abolish it.

Although Article 6 of the Civil Covenant is worded in a way which has led the Human Rights Committee to believe that it strongly suggests the desirability of abolition, the second optional protocol to the Civil Covenant – the treaty by which states can solemnly pledge themselves to abolish capital punishment, has not attracted many signatories. (The Second optional Protocol to the ICC PR)

The UN Human Rights Committee held that while execution in a gas chamber is cruel, killing by a lethal injection is not.

Amnesty and Prison Reform International Report

According to the 2013 death penalty report of Amnesty International (A 1), of 198 states and territories in the world, 58 retains death penalty. 98 are abolitionist for all crimes, 7 are abolitionist for ordinary crimes (retaining death sentence for exceptional circumstances, such as crimes at war time).

This reveals that 29% retain death penalty, 49% abolitionist for all crimes, 4% abolitionist for ordinary crimes.

Of 50 component states of the USA, 32 do not only maintain death sentence, but, according to 2013 A 1 report, the USA ranks 5th in the list of world's most prolific executionist states, with China in the top, followed by Iran, Iraq, Saudi Arabia.

Of 53 countries within African Union, 38 retain capital punishment.

In the USA, support for the death penalty was at 60 per cent in October 2013.

The United States itself executed a Paraguayan in violation of an ICJ order in the case of Paraguay –V- US (1998), (Paraguay V Greece) (Angel Breand case US Supreme Court 14th April, 1998).

In that case the Governor of Vengeance as well as the Supreme Court turned down US President Clinton's request to stay the execution in compliance with the ICJ request. The Supreme Court decided to turn down President Clinton's request by 6-3 majority. A sereton named Jesse Helas condemned the President's request as "Surendering US soueregnty". In the La Grand case V. the ICJ in 2001 (ICJ decision, 27 June 2001).

Russian Republic has retained death sentence in law (maintains moratorium though) with such former component units of now dissolved Soviet Union as Belarus, Kazakhstan (retentionist for non-ordinary crimes, Tajikistan (maintains moratorium).

Debates on the reinstatement of the death penalty occasionally resurface in Russia when a terrorist attack or other very serious offence occurs (such as a severe crime against children). The idea of reversing moratorium on death penalty for those convicted of terrorist acts, received significant public coverage following the Moscow Metro bombings in March 2010, and similar calls were made following the Volgograd attack in December 2011.

Russia has had a moratorium in place since 1999; however, officials show a reluctance to proceed to full abolition in law, citing continuing widespread support for the death penalty. The number of people in Russia, supporting the death penalty in 2014 stood at 52 %.

33 countries, and territories prescribes death penalty for drug offences and of these 33, death sentence is mandatory in 13 countries, of which Thailand,

Malaysia, Bahrain needs specification. In Morocco and Yemen death sentence can be passed for 361 and 315 offences respectively. In Saudi Arabia death penalty can be passed for a wide range of offences.

Singapore permits mandatory death sentence for a number of crimes including drug related ones.

Mandatory death sentence also exists in Trinidad and Tobago, Japan, Kenya. Many of those countries which started moratorium, reverted back to original stance after some bitter events compelled them to make the somersault.

For example, in 2012 the Gambia resumed executions after nearly 30 years of de facto moratorium, and Taiwan resumed executions in April 2009 after a five year suspension. In 2014, Indonesia resumed executions after four years, Kuwait after seven years and Nigeria after eight years. Pakistan is seriously considering reversal of moratorium in the wake of incessant of terrorist attacks.

Although Algeria has not carried out any execution since 1993, death sentences still continue to be passed. At least 40 death sentences were pronounced in 2013 in that country.

In Uganda, according to a baseline survey report prepared by the Steadman Group in 2008, 90 per cent of the surveyed population had some awareness about the death penalty, with 58 per cent in support of it.

In Belarus argument for death penalty has been that the public still supports capital punishment. In a 1996 national referendum, 80.44 per cent of Belarusians voted against the abolition.

In Kazakhstan a former component of the Soviet Union, (where the survey focused specifically on the death penalty for terrorism related offences)

41 per cent supported maintaining the current moratorium while 31% wanted to resume executions and a total of 72 per cent were against abolition.

Supporters of the death penalty frequently air their views in the name of the victims, arguing that victims of violent crime and their loved ones have a right to see 'justice carried out' through the execution of the perpetrators.

Death Sentence: Indian Context

Since the eclipse of the British suzerainty in 1947, Indian law and practice on death sentence went through periodic evolution.

While Section 302 of the substantive law, i.e., the Penal Code has remained static in allowing discretion in imposing either death sentence or life imprisonment, the abjective law, i.e., the Code of Criminal Procedure (Cr.P.C.) made all the differences.

Uptil 1955, death sentence was the rule while life imprisonment stood as exception, because the British made Cr.P.C. of 1898, required the Court concerned to assign reason when it opted not to pass death sentence.

During the period between 1955 and April 1974, the amended Cr.P.C. removed the requirement of assigning reason in either case, leaving it to the Court's discretion, and the judicial view was that death sentence remained the Rule while life term, an exception.

In 1973, Indian Parliament resolved to deface the made in UK Cr.P.C. and instead go for a home baked one. Under the new Cr.P.C. (of 1973) regime a Court in passing a death sentence is obliged to assign "special reason" (Section 354(3).

Indian Supreme Court maintains that the implication of the new regime is that life imprisonment is now the rule and death sentence exception (Abraham-v-State of MP, AIR 1976 S.C. 2196).

Indian Parliament, however, found no reason to abolish death penalty, and tacitly lent support to the view, Lord Macaulay's team expressed, when they inserted Section 302 in the draft Penal Code in 1860, which was in following terms;

> "First among the punishment provided for offences by this case stands death. No argument that has been brought to our notice has satisfied us that it would be desirable wholly to dispense with this punishment. But we are convinced that it ought to be very sparingly inflicted; and we propose to employ it only in cases where either murder or the highest offence against the state has been committed".

Indian Supreme Court also rejected the contention more than once that death sentence is ultravires the Constitution (in Jagmohan-v-State, AIR 1973 S.C. 947, before 1973 Cr.P.C. and in Bachan Singh-v-State of Punjab, AIR 1980 S.C. 898, Alauddin Miah-v-State of Bihar, AIR 1989 S.C. 1456, Swami Sharddananda (2)-v-State of Karnataka, (2008) 13 S.C.C. 767, (post 1973 Cr.P.c.)

In interpreting Section 354(3) of the new Cr.P.C. Indian Supreme Court ordained in Bachan Singh-v-State of Punjab (1980) 2 S.C.C. 684 that the new Cr.P.C. means that death sentence can only be imposed in "rarest of the rare cases".

Until 01.04.1974 the law as regards sentencing a person found guilty of murder, was no different from ours.

In propounding the "rarest of rare" theory a Constitution Bench of the Indian Supreme Court, rejecting however the plea that the law allowing death sentence was repugnant to constitutional mandate, expressed in Bachan Singh – V-State of Punjab (1980 2 SCC 684) that legislative policy in Section 354(3) of the 1973 Code is that for a person convicted of murder, life imprisonment is the rule and death sentence, an exception, and mitigating circumstances must be given due consideration. The Supreme Court also ordained that a balance between aggravating and mitigating circumstances must be struck.

"Rarest of rare" theory came up for Supreme Court's holistic scrutiny shortly after that Court innovated this principle in Bachan Singh in 1980. It was the hall mark case of Manchi Singh-V-State of Punjab (1983 3 SCC 470). In elaborating this theory the Supreme Court surmoned that for practical application the "rarest of rare" principle must be read and understood in the background of the five categories of murder cases enumerated in it, and thus finally standardised and classified the cases, from which two Constitution Benches, (in Jagmohan and Bachi Singh) resolutely refrained from in the past.

In quick succession Machhi Singh-V-State of Punjab came up before the Indian Supreme Court with an inundation of onerous task of penological dissection on sentencing in murder cases. Unlike Bachan Singh, vires of death sentencing provision was not challenged, it was a normal appeal case.

In Manchi Singh, affirming capital punishment, the Supreme Court put itself in the position of the community and observed that though the community revered and protected life because the very humanistic edifice is constructed on

the foundation of reverence for life principle, it may yet withdraw the protection and demand death penalty (page 487-89, para 32-37), keeping, nevertheless, in mind, the "rarest of rare matrix propounded in Bachan Singh. The Apex Court observed,

> "32. It may do so in rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the Judicial Power Centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti social or abhorrent nature of the crime, such as, for instance: 1. Manner of commission of murder.
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> 33. When the murder is committed in an extremely brutal, grotesque, diobolical, revolting or dastardly manner so as to arose intense and extreme indignation of the community. For instance,
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> i) when the house of the victim is set aflame with the end in view to roast him alive in the house,
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> ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death, iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.
>
> 11. Motive for commission of murder

34. when the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward, (b) a cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-avis whom the murderer is in a dominating position or position of trust, or (c) a murder is committed in the course of betrayal of the motherland.

111. Anti Social or socially abhorrent nature of the crime.

35. (a) when murder of a member of a schedule cast or minority community etc is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of “bride burning” and what are known as “dowry deaths” or when murder

is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV) Magnitute of Crime.

36. when the crime is enormouse in proportion. For instance when multiple murders, say all or almost all the members of a family or large number of persons of a particular caste, community or locality are committed.

V. Personality of victim of murder;

37. when the victim of murder is (a) an innocent child who could not have, as has not provided even an excuse, much less, a provocation for murder

(b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-à-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons".

It will emerge from the following discussions that the number of "rarest of rare' case have by no means remained in shallow captivity. The list is quite a flared one.

The Proliferated List

Following are what the Indian Supreme Court observed while sentencing those found guilty of murder: and deciding whether the case fits into the rarest category or not.

While deciding whether case falls within the rarest of rare cases category, the judges applying the law must also be alive to the needs of society and the damage which can result if a ghastly crime is not dealt with in an effective and proper manner. (Para 25). ***Maya Kaur Baldevsingh Sardar v. State of Maharashtra,*** **(2007) 12 SCC 654**.

Since the legislature in its wisdom though that in some rare cases it may still be necessary to impose the extreme punishment of death to deter others and to protect the society under section 354(3) CrPC the judge may visit the convict with the extreme punishment provided there exist special reason for so doing. ***Allauddin Mian v. State of Bihar,*** **AIR 1989 SC 1456.** ***Haru Ghosh v. State of W.B.*** **(2009) 15 SCC 551. (Death sentence confirmed)**

Whether a case falls within the rarest of the rare case or not, has to be examined with reference to the facts and circumstances of each case and the court has to take note of the aggravating as well as mitigating circumstances and conclude whether there was something uncommon about the crime which renders the sentence of imprisonment for life inadequate and calls for death sentence. (Paras 90 and 91). ***Dara Singh v. Republic of India,*** **(2011) 2 SCC 490.**

Principle application of the rarest of rare dictum does not come in the way of individualised sentencing. With necessary room for sentencing, consistency has to be achieved in the manner in which the rarest of rare dictum has to be applied by courts. Bachan Singh expressly barred one-time enunciation of minute guidelines through a judicial verdict. But at the same time, it actively relied on judicial precedent in disciplining sentencing discretion to repel the argument of arbitrariness and Article 14 challenge. Sentencing discretion is also a kind of discretion and it shall be exercised judicially in the light of the precedents. (Paras 90 to 92). ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra,* (2009) 6 SCC 498**.

To kill is to be cruel and therefore, all murders are cruel, yet such cruelty may vary in its degree of culpability and it is only when culpability assumes the proportion of extreme depravity that special reasons can legitimately be said to exist. (Para 16)

***State of Punjab v. Manjit Singh,* AIR 2009 SC 2888.**

Prima facie, a dangerous criminal who has indulged in the killing spree in an extremely brutal and horrendous manner to achieve his own selfish gains or to satisfy his physical lust or to disrupt the public order and peace, should be considered to be a menace to society and he be subjected to the extreme punishment of death. The justification behind death sentence is to respect the collective conscience of the society in relation to crimes of extreme brutality and terrorism and to impart security to the society. The element of deterrence is of course inherent in it. As pointed out in Allauddin Mian case death sentence serves a threefold purpose: (i) punitive, (ii) deterrent, and (iii) protective. (Para 15).

A holistic view has to be taken on the facts presented in each case. (Paras 16 and 15). ***Gyasuddin Khan v. State of Bihar,*** **AIR 2004 SC 210.**

Confirming death sentence,

Held:

For deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced in a dispassionate manner and discretionary judgment has to be exercised by the court in the particular circumstances of the case. Punishment must also respond to the society's cry for justice against the criminal. While considering the punishment to be given to the accused, the Court should be alive not only to the right of the criminal to be awarded just and fair punishment by administering justice tempered with such mercy as the criminal may justly deserve, but also to the rights of the victims of the crime to have the assailant appropriately punished and the society's reasonable expectation from the Court for the appropriate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused.

The accused was in full senses and had committed the murders of four close relatives one after the other and also attempted to commit murder of his brother's wife and daughter in a cool and calculated manner. He did not even feel remorse. Such murders and attempt to commit murders in a cool and calculated manner without provocation cannot but shock the conscience of the society which must abhor such heinous crime committed on helpless innocent persons. In the facts and circumstances of the case, the crime committed by the

accused falls in the category of rarest of rare cases for which extreme penalty of death is fully justified. ***Surja Ram v. State of Rajasthan***, **AIR 1997 SC 18.**

Justifying death sentence, Indian Supreme Court held that the choice as to which one of the two punishments provided for murder is the proper one in a given case will depend upon the particular circumstances of that case and the Court has to exercise its discretion judicially and on well-recognised principles after balancing all the mitigating and aggravating circumstances of the crime. The Court also should see whether there is something uncommon about the crime which renders sentence of imprisonment of life inadequate and calls for death sentence.

Individual part played by the accused may assume some importance in some cases, but in an organised crime that kind of enquiry may not be relevant for the purpose of finding out the special reasons.

He brutally murdered six persons. The crime indulged was gruesome, cold-blooded, heinous, atrocious and cruel and he has proved to be an ardent criminal and thus a menace to the society. It is an exceptional case where the crime committed by him is so gruesome, diabolical and revolting which shocks the collective conscience of the community, **Shankar v. State of T.N. (1994) 4 SCC 478.**

Death Penalty is to be upheld in a case where the accused, members of a Gang, caused death of 22 persons and injuries to several others by blasting of landmines, **TADA, 1987, Ss. 3, 4 and 5 – CrPC, 1973, Ss. 386 and 377**

The grant of life imprisonment is the rule and death penalty an exception in the rarest of rare cases by stating “special reasons” for awarding it, but at the same time the punishment awarded must be commensurate with the crime

committed by the accused. The power to enhance death sentence from life should be very rarely exercised and only for strongest – possible reasons and not only because the appellate court is of that view. The question of enhancement of sentence to award death penalty can, however, be considered where the facts are such that to award any punishment less than the maximum would shock the conscience of the court.

The court has to consider the nature of the crime as well as the accused. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. In many cases the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. (Paras 23, 29 and 32)

The appellants are members of a notorious gang. They must have anticipated that their activity would result in elimination of a large number of lives. As a result of criminal activities, the normal life of those living in the area has been totally shattered. It would be mockery of justice if extreme punishment is not imposed. There can hardly be a more appropriate case than the present one to award maximum sentence. The Court has to perform this onerous duty for self-preservation i.e. preservation of persons who are living and working in the area where the appellants and their group operate, ***Simon v. State of Karnataka*****,** (**2004) 2 SCC 694. (Sentence enhanced to capital one)**

When the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-á-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course of betrayal of the motherland.

(3) When murder of a member of a Schedule Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of ‘bride burning’ or ‘dowry deaths’ or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-á-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community. (Para 23)

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so, ***Lehna v. State of Haryana,*** **(2002) 3 SCC 76: 2002 SCC (Cri) 526. (Death sentence confirmed)**

In order that the sentence may be properly graded to fit the degree of gravity of each case, it is necessary that the maximum sentence prescribed by law should be reserved for 'the rarest of rare' cases which are of an exceptional nature. Sentences of severity are imposed to reflect the seriousness of the crime, to promote respect for the law, to provide just punishment for the offence, to afford adequate deterrent to criminal conduct and to protect the community from further similar conduct. It serves a threefold purpose (i) punitive (ii) deterrent and (iii) protective. The court must not only look to the crime and the victim but also the circumstances of the criminal and the impact of the crime on the community, ***Allauddin Mian v. State of Bihar,*** **AIR 1989 SC 1456. (Death sentence confirmed)**

The fact that murders in question were committed in such a diabolic manner while the victims were sleeping, without any provocation whatsoever from the victims' side indicates the cold-blooded and premeditated approach of the accused to cause death of the victims. The brutality of the act is amplified by the grotesque and revolting manner in which the helpless victims have been murdered which is indicative of the fact that the act was diabolic of the most superlative degree in conception and cruel in execution and that both the accused persons are not possessed of the basic humanness and completely lack

the psyche or mindset which can be amenable to any reformation. If this act is not revolting or dastardly, it is beyond comprehension as to what other act can be so. In view of these facts, there would be failure of justice in case death sentence is not awarded in the present case as the same undoubtedly falls within the category of the rarest of the rare cases and the High Court was not justified in commuting death sentence to life imprisonment. (Para 66). **Ram Singh v. Sonia, AIR 2007 SC 1218. (Death sentence confirmed)**

In a case where 13 members of his family, including small kids were killed for a flimsy reason, when victims were sleeping at the time of attack, it was not a fit case where death penalty could be commuted to life imprisonment (Para 8). **Gurmeet Singh v. State of U.P., (2005) 12 SCC 107: (commutation reversed)**

Where the accused, a paying guest, brutally murdered three innocent defenceless children and caused injuries to all other helpless inmates of the house without provocation or reason for committing this ghastly act at a time when children would have been sleeping and would not have been in a position to defend themselves death sentence is proper. Considering the brutality, diabolic, inhuman nature and enormity of the crime (i.e. multiple murders and attacks), the mindset of the accused could not be said to be amenable to any reformation –Therefore, it came under the rarest of rare case where not awarding a death sentence would have caused a failure of justice – Death penalty confirmed, **Prajeet Kumar Singh v. State of Bihar, (2008) 4 SCC 434.**

A case where the appellant amputated hands of the deceased, severed his head from the body, carried it through the road to the police station by holding it in one hand and the blood-dripping weapon in the other hand falls within the

category of rarest of rare cases- In view of aggravating circumstances of the case the fact that the appellant was a young man having three unmarried sisters and aged parents would not justify lesser punishment. **(Death sentence affirmed)**

Mahendra Nath Das v. State of Assam, AIR 1999 SC 1926.

A case of murder of 5 persons, an old man of 75 years, a woman aged 32 years, two boys aged 12 years and a girl aged 15 years, at night when they were asleep by inflicting multiple injuries to wreak vengeance –Lower part of the body of the girl denuded in a ghastly and barbaric manner can be termed as rarest of the rare cases. **State of U.P. v. Dharmendra Singh, AIR 1999 SC 3789. (Death sentence affirmed)**

Death sentence, is, justified for causing death of a 14-year-old girl after luring her into the house for committing criminal assault**. Nathu Garam v. State of U.P. (1979) 3 SCC 366.**

Death sentence justified as "Rarest of the rare" case when two appellant accused giving chase to the deceased persons and butchering five of them with axes and other weapons in a very dastardly manner and after killing three adults, entered into the victims' house and killed two children who in no way were involved with the alleged property dispute with the appellants, as if to exterminate the entire family. **(Paras 5 and 6), Karan Singh v. State of U.P., (2005) 6 SCC 342. (Death Sentence affirmed)**

In a case where entire family was wiped out – Five persons had lost their lives while sole surviving lady has to lead life with 70% burn injuries, death sentence is the proper penalty as the murderer was committed in a cruel, grotesque and diabolical manner : and closing of door was the most foul act, by which accused actually intended to burn all persons inside the room and

precisely that had happened –Deceased B who managed to come out was almost beheaded –Accused had gone to place of occurrence well prepared carrying jerry cans containing petrol, sword and also a pistol with two bullets which showed his premeditation and cold-blooded mind. **Sunder Singh v. State of Uttaranchal, (2010) 10 SCC 61. (Death Sentence affirmed)**

The offence conceived and initiated with deliberation with the object of slaughtering a defenceless woman **-** Death sentence is proper sentence. **Rama Shankar Singh v. State of W.B., AIR 1962 SC 1239.**

When offence of murder brutal, conceived and executed with deliberation upon a defenceless old woman – Death sentence, is proper. **State of U.P. v. Deman Upadhyaya, AIR 1960 SC 1125**.

In a triple murder case -Sentence of death is to be the only appropriate sentence which a court of law could pass. **Gulab Singh v. State of M.P., Cr. A. No. 45 of 1957.**

In a case of premeditated and well-planned murder, where death was caused by strangulation of four children and a woman, where the appellant killed woman with whom he lived as husband and wife, a woman who was deeply in love with him and where the appellant not only killed two children of the deceased, born from her first husband but had also killed his own two children –All four children and the woman were brought near a pond in a planned manner, strangulated to death and dead bodies of the children thrown into a pond to conceal the crime –Appellant not only killed woman but crushed her head to avoid identification, the crime has been committed in a beastly, extremely brutal, barbaric and grotesque manner which has resulted in intense and extreme indignation of the community and shocked collective conscience of

society, death is proper sentence. **Sudam v. State of Maharashtra, (2011) 7 SCC 125.**

Award of death sentence was justified in a Cold-blooded murder case- Presence of several aggravating circumstances –No mitigating circumstance – Offence committed in pre-planned manner in broad daylight- Two victims (including a boy, aged six years) burnt to death by locking the house from outside –Third victim cut into pieces – Offence committed in most barbaric manner to deter others from challenging the supremacy of the appellant in the village- Absence of any strong motive –Victims did not provoke or contribute to the incident –Appellant was leading the gang –He had no repentance for the ghastly act he committed the entire incident shocked the collective conscience of the community, there was no mitigating circumstance to refrain from imposing death penalty –(**Para 18). Holiram Bordoloi v. State of Assam, AIR 2005 SC 2059.**

The object and function of criminal law, need for imposition of appropriate sentence, extent of adherence to principle of proportionality while sentencing, requirement for delicately balancing the aggravating and mitigating factors and circumstances in which crime committed and guidelines related to imposition of death sentence, restated –Murder of six members of a family, including helpless women and children, committed in a brutal, diabolic and grisly manner-Crime being one of enormous proportion which shocks conscience of law, death sentence as awarded to respondent –accused S and V on conviction was appropriate and High Court ought not to have altered it, **State of U.P. v. Sattan, (2009) 4 SCC 736.**

In Kehar Singh-V-Delhi Administration (AIR 1988 S.C. 1883), ie Indira Gandhi murder case, the Apex Court confirmed the death sentence awarded by the Trial Court and maintained by the High Court of three appellants for entering into conspiracy and committing murder of SMT. INDIRA GANDHI . The Court held that the murder of Mrs. Gandhi by the security guards is one of the rarest of the rare cases in which extreme penalty of DEATH is called for the assassin and his co-conspirators, it is a gruesome murder committed by the accused who were employed as security guards to protect the Prime Minister. The manner in which Mrs. Gandhi was mercilessly attacked by her own security guards on whom the confidence was reposed to give her protection repels any consideration of reduction of sentence. Even the conspirators (Kehar Singh and Balbir Singh) who inspired the persons do not deserve any leniency in the matter of sentence, it is a gruesome murder.

In Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid – V-State of Moharastra, (Criminal Appeal No. 1899-1900 of 2011**),** i.e. the sensational Mumbai Hotel Bombing case, the Supreme Court of India upheld the death sentence for Ajmal Kasab, the only terrorist caught alive during the 26 /11 Mumbai terror bomb attacks in 2008 which caused death of 7 people and maiming of several others. Kasab wanted his death sentence, handed to him by the Bombay High Court, to be commuted to life imprisonment.

The appellant, Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid, who was a Pakistani national, earned for himself five death penalties and an equal number of life terms in prison for committing multiple crimes of a horrendous kind in India. Charges against him included those of collecting arms with the intention of waging war against the Government of India; waging and

abetting the waging of war against the Government of India; commission of terrorist acts; criminal conspiracy to commit murder; abetment; abduction for murder; with an attempt to cause death or grievous hurt; and causing explosions etc. He was found guilty of all these charges and was awarded death sentence on five counts, life-sentence on five other counts, as well as a number of relatively lighter sentences of imprisonment for the other offences.

The Supreme Court in refusing to commute death sentence, made the following observations;

> "Mr. Ramachandran next submitted that the High Court has committed a serious error in balancing the aggravating and the mitigating circumstances against the appellant. … …. … Further, the High Court wrongly held the appellant "individually responsible" for the murder of seven (7) persons, including Amarchand Solanki. … … … Mr. Ramachandran submitted that the strongest reason for not giving the death penalty to the appellant was his young age; the appellant was barely twenty-one (21) years old at the time of the commission of the offences. ….. …. It is indeed correct that the appellant is quite young, but having said that one would think that nothing was left to be said for him. Mr. Ramachandran, however, thinks otherwise and he has many more things to say in the appellant's favour. Mr. Ramachandran submitted that the Court cannot ignore the family and educational background and the economic circumstances of the appellant, and in determining the just punishment to him the Court must take those, too, into account. The learned Counsel submitted that here is

a boy who, as a child, loved to watch Indian movies. But he hardly had a childhood like other children. He dropped out of school after class IV and was forced to start earning by hard manual labour. Soon thereafter, he had a quarrel with his father over his earnings and that led to his leaving his home. At that immature age, living away from home and family and earning his livelihood by manual labour, he was allured by a group of fanatic murderers seemingly engaged in social work. He thought that he too should contribute towards helping the Kashmiris, who he was led to believe were oppressed by the Indian Government. Mr. Ramachandran submitted that, seen from his point of view, the appellant may appear completely and dangerously wayward but his motivation was good and patriotic. Mr. Ramachandran further submitted that once trapped by Lashkar-e-Toiba he was completely brain-washed and became a tool in their hand. While executing the attack on Mumbai, along with nine (9) other terrorists, the appellant was hardly in control of his own mind. He was almost like an automation working under remote control, a mere extension of the deadly weapon in his hands.

Mr. Ramachandran submitted that, viewed thus, it would appear wholly unjust to give the death penalty to the appellant. The death penalty should be kept reserved for his handlers, who, unfortunately, are not before a court till now.

If the submission of Mr. Ramachandran is taken one step further it would almost appear …… that all those who were killed

or injured in Mumbai were predestined to be visited by his violence. We have no absolute belief in the philosophical doctrine of predetermination and, therefore, we are completely unable to accept Mr. Ramachandran's submission. In this proceeding before this Court we must judge the actions of the appellant and the offences committed by him as expressions of his free will, for which he alone is responsible and must face the punishment.

We are unable to accept the submission that the appellant was a mere tool in the hands of the Lashkar-e-Toiba. He joined the Lashkar-e-Toiba around December 2007 and continued as its member till the end, despite a number of opportunities to leave it. This shows his clear and unmistakable intention to be a part of the organization and participate in its designs. Even after his arrest he regarded himself as a "watan parast", a patriotic Pakistani at war with this country. Where is the question of his being brain-washed or acting under remote control? We completely disagree that the appellant was acting like an automaton. During the past months while we lived through this case we have been able to make a fair assessment of the appellant's personality. It is true that he is not educated but he is a very good and quick learner, has a tough mind and strong determination. He is also quite clever and shrewd. Unfortunately, he is wholly remorseless and any feeling of pity is unknown to him. He kills without the slightest twinge of conscience. Leaving aside all the massacre, we may here refer only to the casualness with which the appellant and his associate Abu

Ismail shot down Gupta Bhelwala and the shanty dwellers Thakur Waghela and Bhagan Shinde at Badruddin Tayabji Marg; the attempt to break into the wards of Cama Hospital to kill the women and children who were crying and wailing inside; and the nonchalance with which he and Abu Ismail gunned down the police officer Durgude on coming out of Cama Hospital.

The saddest and the most disturbing part of the case is that the appellant never showed any remorse for the terrible things he did. … … … Fidayeen like him and follow him in his deeds. Even in the course of the trial he was never repentant and did not show any sign of contrition. The High Court, too, has noticed that the appellant never showed any remorse for the large-scale murder committed by him. … …. … The alternative option of life sentence is thus unquestionably excluded in the case of the appellant and death remains the only punishment that can be given to him".

Mockery of Justice if No Extreme Penalty

The Indian Supreme Court have in a number of cases, placed emphasis on the public confidence issue, to justify death sentence, which, as stated earlier, can not be enveloped under any rationale other than retribution and/or general (as opposed to specific) deterrence as an amalgamation of both in deserving cases. Thus in **Mahesh –V-State of MP (AIR 1987 SC 1346),** the Supreme Court, while refusing to interfere with death sentence, expressed, "it will be a mockery of Justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give lesser punishment to

the accused would be to render the justicing system of the country suspect. The common man will lose faith in Courts. In such cases, he understands and appreciates the language of deterrence more than the reformative Jargon".

In Mangal Singh-V- State of UP, AIR 1975 SC 76, the Supreme Court deemed appropriate a death sentence passed on a convict, in the absence of extenuating circumstances, who killed a woman who was alone in the house by inflicting several brutal injuries.

In Siddik Singh and Pritam Singh –V-State of Maharastra (1993 Cr. Law. Journal 2919 (Bom), the Supreme Court described imprisonment for life as a dilution of sentence that would be a case of misplaced sympathy and gross miscarriage of justice in a situation when an army officer raped and killed a child picked up from a brothel, stating that it was a fit case for extreme penalty.

A case where the convict committed cold blooded gruesome murder of his niece, and nephew, aged 4 years and 13 months respectively, and mercilessly assaulted his sister-in-law causing serious injuries to her, was described to be a rarest of the rare justifying death penalty.

In Re: Baskar (1991 Cr. Law Journal) (Mod), the Supreme Court expressed that when murder has been planned beforehand and has been committed with cruelty or for a sordid purpose, and without the least trace of any spirit of fair play or sportsmanship without giving a chance to the victim, it should necessarily be punished with the extreme sentence.

In Shomkar –V-State of Tamil Nadu (1995 AIR SC W 2083), in a case where six persons were murdered by indulging upon organised criminal activity, where the High Court deemed it as a rarest of the rare case, the Supreme Court affirming death sentence of the two convict expressed; "It can not be said that

since it may not be possible to eradicate the crime itself, the criminals cannot be awarded death sentence though warranted by law".

A case where a domestic servant killed three members of a family with intention to rob, was considered as a "rarest of the rare" as the motive for the crime was heinous, committed in a cruel and diabolical manner, in cold blood. **(Arjun-V-State of Rajsthan, AIR 1994 SC 2507).**

The Apex Court termed as rarest of the rare a case where 5 members of a family, including a woman, while asleep, were killed 53 were injured, the lower part of the body of one victim was denuded where a single blow was enough to kill them.

In view of the manner and the multiplicity of the blow the Court was swayed to the conclusion that the accused was geared to kill as many people as possible irrespective of whether they were the cause of his vengeance or not, that his acts showed an element of perversity, which was manifested by the brutal and diabolic nature of the attack on infirmitised and vulnerable victims (**State of Uttar Prodesh-V-Dharmendra Singh, AIR 1999 SC 3789).**

A case where, to take revenge based on the suspicion that the accused's brother was killed by the victim family, fired six persons including two children, and rejoiced the killing afterwards, the Supreme Court affirmed death sentence terming the case as "rarest of the rare" (**Shobit Chamar-V-State of Bihar, AIR 1998 S.C. 1693).**

The case of Additional Sessions Judge, Guntar Reference **Officer-V-Gantela Vijayavardhan Rao (1969 Crl. L. J. 703)** is one where the Courts observation suggests that the specific deterrence rational was applied in affirming capital punishment, holding that it was a rarest of rare case.

In this case the accused sprinkled petrol in a bus, while the co-accused ignited it, killing some 23 passengers.

The case of Re Deivendran also was treated as a "rarest of the rare" where the accused in a ruthless manner planned to annihilate anyone that would come in his way while committing robbery. **(1996 Gr.L.J 2209 Mad).**

A case where the accused after raping a girl, aged 7, killed her and then threw the corps away to destroy evidence was also described as "rarest of the rare" where extreme sentence was deemed appropriate as it would not only deter others from committing such crime but would also give emphatic expression to society's abhorrence of such crime. (**Kamta Tewari-V-State of MP AIR 1996 S.C. 2800).**

In **Suraya Ram-V-State of Rajsthan (1997 Cr.L.J. 51 SC)** also the Apex Court came up with the finding that the case where the accused committed cold blooded murder of his brother, brother's two minor children and aunt in a calculated manner, embraced the "rarest of rare" concept.

Death sentence was affirmed in **State –V-Vinayak Shivaji Rao Pol (1998 Crl.L.J. 306 Bom)** and the same was described as "gravest of the grave' and "rarest of the rare", where the accused formed unlawful assembly and indulged in mass killing, following the assassination of Prime Minister Mrs. Indira Gandhi.

In a case where the accused armed with sharp edged weapon entered the house of the deceased and mercilessly butchered four persons, including an innocent child and a helpless old lady, the Court held that no leniency or mercy was to be shown and death penalty was proper as it was a "rarest of rare" case. **(Pandi-V-State, 1998 Cr.L.J. 3305 A II).**

Where the accused raped and killed a one and a half year girl in his room, the Court described the case as "rarest of the rare". **(Mohd Chaman –V-State, 1998 Cr. L. J. 3739 Del).**

Where the accused failing to rape his maternal sister in the face of her resistance, killed the maternal sister and her mother, the Court considered it as being within the "rarest of the rare" category, **(State of Punjab -V-Kuliwinder Singh, 2005, Cr. L. J. 3937 P& H).**

In Nirmal Singh-V-State of Haryana, 1999 AIR 1221 SC, the Supreme Court of India confirmed the death sentence of one of the accused whose act was described as brutal, in a situation where the accused, having been convicted of rape and sentenced to ten years R.I., as an act of revenge, killed five members of the family of a person who deposed against him in the rape case.

In a case where the accused after committing rape and murder threw the dead body in a septic tank, the Supreme Court affirmed the view that the act of the accused was so brutal and carried out in such a demonic manner that nothing less than death sentence could meet the ends of Justice**. (State of MP -V-Molai, 2000 Cr. L. J. 392 SC).**

The main assailants of the then India premier Sree Rajib Gandhi, who killed the latter following a conspiracy to that effect, were awarded capital punishment as the gruesome event was treated as rarest of the rare and the mere fact that one of the convict was a woman and mothered a child while in custody was not considered as an extenuating factor.

An accused who brutally sacrificed a boy at the instruction of a tantrik for being blessed with a son and golden pat, was held to have been rightly

condemned with capital punishment as his acts was rightly categorised as “rarest of the rare”, because of the brutal and the diabolic nature of the crime.

Indian Supreme Court’s judgment, confirming death sentence passed upon one Afjal Kasab, the notorious terrorist who was one of those responsible for terrorist bomb attack in a Bombay hotel, killing several people, is one of the recent examples of Indian Apex Courts approval of extreme penalty.

Capital Sentence: Bangladesh Perspective

Bangladesh, like its neighbours and majority of the commonwealth members, retain capital punishment, though it is limited to capital offences only. Bangladesh general law, as it stands today, is slightly at variance with that in India in that a sentencing Court in Bangladesh must assign reasons whether it awards death sentence or the alternative sentence of imprisonment for life, while in India, only death sentences must be justified by special reasons.

General substantive legislation i.e. the Penal Code fixes the penalty that can be awarded, while the general procedural legislation i.e the Code of Criminal Procedure (henceforth Cr.P.C.) law down the procedure to be followed in sentencing a person convicted of an offence punishable under a penal provision of the Pena Code.

Cr. P.C. does not lay down sentencing polices. However, section 367 (5) (as amended) provides that where the Court condemns a convict with death sentence or in the alternative awards imprisonment for life or for a tem of years, the Court shall state reasons for the sentence awarded. No sentencing section in the Penal Code specify any particular sentence. They do, instead specify the maximum sentence, often with alternative, whether custodial or not, and thereby equip the Court with a great deal of discretion.

As death sentence in Bangladesh under the Penal Code is not mandatory and alternative sentence of life imprisonment can, at the discretion of the Court, as discussed above, under the heading "sentencing principles in Bangladesh", be awarded, only in appropriate cases of murder, where aggravating factors outweigh mitigating factors, such as provocation etc. are absent death sentences are passed at the Courts' discretion. Our Courts apply general deterrence, retribution, commensurability, proportionality rationales, motive, personal circumstances of the convict. Antecedent facts leading to the commission of the offence, play decisive role in the determination of sentence. Thus the Appellate Division in **Nowsher Ali – V- State (39 DLR (AD) 194) and Dipok Kumar Sarkar –V-State (40 DLR (AD) 139)** commuted death sentence in wife killing cases because the couple's union were not "blissful" and were rather "rancorous".

Death sentences are however deemed appropriate when the convict act in cold blood without provocation, which are so heinous that arouse judicial indignation.

Apart from the cases of murder, which are punishable under section 302 of the Penal Code, capital punishment can be awarded for gang rape, trafficking of children, women, for seriously injuring a child or a women by acid throwing under a special legislation called Women and Children Cruelty Act, 2013. While exercising their discretion, take account of all those factors as they take in sentencing a murderer under the Penal Code provisions.

Death Penalty by Allied Nations Pre and Post IMT

Before and after the IMT's trial at Nuremberg, Allied Powers sentenced several thousand Nazi criminals in those area of Germany they

respectively occupied. Of those several hundreds were sentenced to death. In the American occupied zone in Nuremberg and Dachon, some 450 people were sentenced to death by the American tribunals.

The war tribunals of France which administered Justice in its zone of occupation heard the cases of 2107 Nazi War criminals. The activities of the French tribunal differed in that they issued several hundred sentences in absentia, including Klaus Barbie, who was, years later apprehended and dealt with.

Dic Welt stated, “The French Judicial authorities were guided by a gross stereotyping. They sentenced to death in absentia many hundreds of soldiers of the German Wchrmacht for the reason alone that their units took part in execution by firing squad of the fighters of the French resistance. (Dentsche Richterzeitsch rift 1971 Noz p- 85 ff. Die welt, July 10 1974 P-13).

Military tribunals were also established in the British Zone of occupation. In contrast with other zones, in the British zone the Special Crown Act of 14th January 1946 was considered the basic normative act for the prosecution and punishment of the Nazi perpetrators of Crimes against Humanity. The British tribunals based thereon their operations, procedural principles and pronouncement of verdicts. They treated the decisions of the IMT not as irrefutable proof, but only as arguments along with other facts and circumstances. As opposed to the tribunals of other occupying powers, the British Courts consisted of non-professional jurists and they convicted 1085 Nazi accused, of whom 240 were sentenced to death. On some points the British tribunal disregarded IMT principles.

The East European socialist block waged a consistent policy of prosecuting and punishing Nazi accused.

During June 1946 and August 1948 period the Supreme Peoples Tribunal of Polland heard cases of those Nazi personnel who perpetrated Crimes against Humanity on the German occupied territory of Polland. Many of the accused were sentenced to death.

The German Democratic Republic sentenced some 12828 Nazi accused, under their national legislation which were enacted to bring their national law in conformity with the demands of international law. Their special part of the Criminal Code of 1968 contains sanctions for criminal responsibility for crimes against peace, war crimes and crimes against humanity.

Prosecution continued to be waged by the military tribunals of the occupation authorities in their respective zones.

Six branches of American military tribunals started operation in Nuremberg (The materials of the trial are published in Niurnberg skii protsess. Sbornik materialov (The Nuremberg Trial of Major War Criminals, collection of materials in 3 volumes) Moscow: Yurizdat 1966.)

From 1947 to 1949 twelve trials took place. The first one dealt with 23 Nazi doctors, the second one was the case against Field Marshal Mitch, the 3rd was the case against 16 Leading Nazi Jurists and the President of the special courts, the fourth involved war crimes, crimes against humanity and membership of criminal organisation, SS.

The US military tribunals through these 12 trials heard the cases against 185 Nazi accused, four of which committed suicide, cases against four were dismissed owing to illness, thirty five were acquitted, capital punishments

were meted to 24 persons in the doctors cases, in the case of Pohl and in the case against Einsatzgmppen, nineteen were sentenced to suffer life imprisonment, and the others were saddled with various terms. Three were found guilty for belonging to criminal organisations namely SS.

The most important aspect appears to be the practice of the US military tribunals that attests to the concurring, uniform understanding and application of the Nuremberg law. If we consider as its basic source the London Agreement, together with the charter of the IMT, its Verdict and Law No 10 of the Allied control Council of December 20, 1945, supplementary thereto.

It is clear from the sentences awarded that retribution, proportionality and general deterrence were the rational the tribunals of the Allied Powers used.

Large scale death sentence definitely vindicates this argument.

Authors with Notoricly on Death Sentence

Sir Geoffrey Robertson Q.C. states "despite the clear modern trend in state practice towards abolition there is still not sufficient consensus for execution to be prohibited as a matter of customary International Law". (Page 141, Crimes Against Humanity, Penguin, 3rd Edition, April 2006).

While Sir Geoffrey has expressed his disavowance for capital punishment in other parts of his book "Crimes Against Humanity", supra, he has nevertheless stated at page 144, "Murder is the Crime for which it (death sentence) is most commonly and most appropriately (in the retributive sense) inflicted, although murders vary so much in heinousness (from enthensia and domestic crimes of passion to contract killing and hostage executions) that any automatic infliction of death sentence on all murders, or all murders within a

defined category, is contrary to International Law prohibitions on arbitrary and inhuman treatment".

The phrases "most appropriately" is significant. It suggests that subject to the reservation he expressed, including on auto infliction, he deems death sentence "most appropriate in the retributive sense in murder cases.

At page 145 he states, "The only other serious crimes for which that penalty can be justified are those assumed to involve indirect taking of life, such as by peddling heroin or by serving an enemy".

So, in his view death penalty may also be justified in these situations as well, and as such, his opposition to death sentence is not absolute, but conditional.

Privy Council on Death Sentenced

The most important case on which the Privy Council advised the British monarch on death sentence is that of Part and Morgan –v-Jamaica, an appeal against the decision of Jamaica's top Court, in which case the P.C. advised that no execution can take place within the P.C's jurisdiction of prisoner's who are still alive more than five years after the sentence was passed.

Thus, while the P.C. ordained against execution of a prisoner who was sentenced more than five years back, it did not, as such, out law death penalty (Prat and Morgan –V-AG of Jamaica, 1994, 2 AC 1). In Patrick Reyes-v-The Queen (2000 UK PC 11), the P.C. struck down mandatory death sentence in the Commonwealth Caribbean on the ground that it is inhuman and degrading to impose the most severe punishment without considering factors which might mitigate culpability. Again there who no general proscription of death sentence, where that sentence is not mandatory.

The US Supreme Court

US Justice Harry Blackmun in Callins –v- Collins (1994) observed, "I feel mentally and intellectually obliged simply to concede that the death penalty experiment has failed".

That statement notwithstanding, death penalty does not only survive in 32 of 50 US states, but according to latest Amnesty International Report the United States of America is fifth in the list of World's top death sentencing nations.

According to the Amnesty report some ……. people were sentenced to death in the year 2014. Abolitionists argue that the US for all its executions, still has the highest murder rate in the industrialised world, while the retaintionists argue that the rate would be even higher without death penalty.

In Furman-v-Georgia (US Supreme Court, 1972) though the US Supreme Court came very close to abolish capital punish, nevertheless refrained from doing so. In that case a Judge remarked, "Death sentences are cruel and unusual in the same way that being struck by lightening is cruel and unusual". This observation was based on the theme that the principle of equality does not operate in picking and choosing those sentenced to death.

It is to be noted that the US public opinion favour death sentence by majority like in many other countries.

Conclusion on the Sentence

Before concluding I would echo Justice Jackson's following passages;

> "If you are to say of these men that they are not guilty, it would be true to say there has been no war, there are no slain, there has been

no crime. (Law as Literature, Bodley Head publication 1961, page-74)".

Having analysed in depth the sentencing policy and practice prevalent in various jurisdictions, I am astutely conviced that the extreme sentence is the only appropriate one that would be conducive to the ends of justice, so far as charges No.8 and 10 are concerned.

In arriving at this conclusion I have taken into account the following aspects:

(a) Just desert rationale with the touch stone of proportionality and offence gravity

(b) General deterrence rationale with a view to deter likely future adventurists

(c) Aggravating and mitigating circumstances

(d) Victims' interest

(e) Public opinion and public confidence criteria

I have also very elaborately scanned the Indian Suprem Court's view on "rarest of rare" concept, although our legislative scheme does not warrant that, and having done so, I am fully satisfied that the case in hand definitely falls within the "rarest of rare" group any way. It does surely fit into the guidelines the Indian Supreme Court laid down in Machi Singh, supra. Horror and the ramification the appellant's acts generated were far worse than those of Azmal Kasab, supra. Indeed his acts caused much more pain and suffering to the victims and the community, and were more savage, ruthless, brutal and heinous than many Indian cases which attracted "rarest of rare" metaphysic.

I have also taken account of the totality of all the offences the appellant has been found guilty of, as has been done in other jurisdictions, supra.

I have also given utmost importaance to the intention of the legislators, who in their wisdom put “death sentence” at the tap and than commanded that sentence should reflect the gravity of the offence.

The Criminal Appeal No.39 of 2013 is disposed of in the following terms:

> Appellant-Allama Delwar Hossain Sayedee (Crl. A. No. 39 of 2013) is acquitted of charge Nos. 6, 11 and 14. Appellant-Allama Delwar Hossain Sayedee is sentenced to 10(ten) years rigorous imprisonment in respect of charge No.7. Appellant-Allama Delwar Hossain Sayedee’s death sentence in respect of charge No.8 is affirmed. Appellant-Allama Delwar Hossain Sayedee’s death sentence in respect of charge No.10 is also affirmed. Appellant – Allama Delwar Hossain Sayedee is sentenced to imprisonment for life i.e. rest of his natural life in respect of charge Nos. 16 and 19.

Nuremberge Tribunal’s Chief Proscutor, Justice Jackson, while addressing the Tribunal said, “If you are to say of these men that they are not guilty, it would be true to say there has been no war, there are no slain, there has been no crime.” (Law As literature page 74: Bodley Head: 1961 Publication).

In chorus with Jutice Jackson I would also insist that if we are to accept the defence plea that Delwar Hossain Sayedee has committed no offence, it would be tantamount to saying that there was no genocide by the Paki army and their native stooges i.e. Rajakars, Al-Badars, Peace Committee Members, in Bangladesh in 1971, and there was no wide spread mass and incessant raping of Bengali women by the Pakis and their local cronies, and to accept that, would

mean denying what the whole world knows and expressed as Gospel Truth, the fact that one of the worst genocide in the history of man kind, took place in Bangladesh in 1971.

According to a Paki General's own version the geneocide that was perpretated on even the first night, was worse than the Jalianwala Bagh massacre and the genocide Gengiss Khan committed in Iraq, when according to Shahriar Kabir (quoting overseas journalists), a researcher on this subject, on that night alone, some 1,00000 unarmed people were slained. Through the period 3 million Bengalis were grusomely killed and no less than two hundred thousand (2 lacs) women, many of whom ended their lives in sui-cide, were ravished, and in excess of ten million people were forced to take sanctuary in India, and Delwar Hossain Sayedee as evidences reveal, was a direct functionary in all these reproachable, loathsome and deplorable felonies. He was also a party to the diobolic effort to throatle the nationalistic aspiration of the people of this land, based on Benglai Nationalism, founded on secular, anti communal principles. His offences, as we can see from the proven evidence, was no less heinous than those others , sentenced to death for committing simila offences against humanity, and hence there exists no reason whatsoever, why a sentence, lesser than death sentence, should be inflicted on him. In my view his culpablity was even worse. Even after liberation he made all contrivances to kill our Bengali nationalistic sentiment and tried to import Paki nationalism and tried, with other anti Liberation elements, to make Bangladesh part of Pakistan, and spread the ideas of communalism.

Sparing Delwar Hossain Sayedee of the gallow, would, in my view,be affromtive to those three million martyers who had to shed their lives to

emancipate us from Paki colonial yoke and those over two hundred Biranganas, who suffered sexual atrocities of the most repressive and violant nature , of the proportion, the world has not seen many times.

So far as the Appeal No. 40 of 2013 is concerned, I agree with the Judgment and Order Surendra Kumar Sinha, J. has passed.

J.

COURTS ORDER

The Criminal Appeal No.39 of 2013 is allowed in part by majority.

The Criminal Appeal No.40 of 2013 is allowed in part by majority.

Appellant- Allama Delwar Hossain Saydee (in Crl. A. No.39/13) is acquitted of charge Nos.6, 11 and 14 and part of charge No.8 by majority.

Appellant-Allama Delwar Hossain Saydee is sentenced to 10(ten) years rigorous imprisonment by majority in respect of charge No.7.

Appellant-Allama Delwar Hossain Saydee's sentence in respect of charge No.8 is altered to 12(twelve) years rigorous imprisonment by majority.

Appellant-Allama Delwar Hossain Saydee's sentence in respect of charge No.10 is commuted to imprisonment for life i.e. rest of his natural life by majority.

Appellant-Allama Delwar Hossain Saydee is sentenced to imprisonment for life i.e. rest of his natural life in respect of charge Nos.16 and 19 by majority.

CJ.

J.

J.

J.

J.

The 17th September, 2014

Mohammad Sajjad Khan

APPROVED FOR REPORTING