

International Crimes Tribunal-1 [ICT-1]

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

Old High Court Building, Dhaka, Bangladesh

ICT-BD [ICT-1] Case No. 01 of 2018

[Arising out of compliant register serial no. 67 dated 18.4.2016]

[Charges: Participating, committing, aiding and contributing the commission of offences constituting crimes against humanity and genocide as specified in section 3(2) (a)(c)(g)(h) of the Act No. XIX of 1973]

Present:

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member

Chief Prosecutor

Vs.

Md. Mahbubur Rahman @ Mahbub @ Mahebul

For the Prosecution:

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Rana Das Gupta, Prosecutor

Mr. Zead-Al-Malum, Prosecutor

Mr. Hrishikesh Saha, Prosecutor

Ms. Rezia Sultana, Prosecutor

Ms. Sabina Yesmin Khan, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

Mr. Sheikh Mosfeq Kabir, Prosecutor

For the Accused:

Mr. Gazi M.H Tamim, Advocate, Bangladesh Supreme Court:
State Defence Counsel For accused Md. Mahbubur Rahman @
Mahbub @ Mahebul

Date of delivery of Judgment: 27 June, 2019

JUDGMENT

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

I. Introductory Words

1. Accused Md. Mahbubur Rahman @ Mahbub @ Mahebul has been indicted and tried for the atrocious criminal activities constituting the offences of ‘genocide’ or in alternative the offences as ‘crimes against humanity’ committed in the localities under Police Station- Mirzapur of District- Tangail and Naryanganj in 1971, during the war of liberation of Bangladesh.

2. Accused Md. Mahbubur Rahman @ Mahbub @ Mahebul has been prosecuted for the arraignments narrated in three [03] charges. Event narrated in charge nos. 01 and 03 happened in the localities under police station- Mirzapur of District Tangail. Event of attack as narrated in charge no.02 is alleged to have been carried out at Khanpur, Naryanganj. All the events as arraigned in three charges

were calculated to cripple the Hindu community, prosecution alleges.

3. The case in which we are going to render judgment is swallowed by distinctive trait of attacks directing Hindu population of Mirzapur of District Tangail as the gang of perpetrators in execution of its designed plan and agreement first attacked the Bharateswari Homes , Kumudini Hospital-- institutions of 'Kumudini Welfare Trust', ran by Danabir Ranada Prasad Saha [popularly known as philanthropist RP Saha] intending to single him out, in addition to annihilation of civilians of the localities because of their membership in Hindu religious group.

4. Indisputably RP Saha, a philanthropist and a great charity donor devoted his life and wealth he achieved for the wellbeing of society and humankind. In addition to RP Saha, his son Bhabani Prasad Saha and a large number of civilians belonging to Hindu religious group of the localities under Mirzapur police station were brutally wiped out by launching widespread attacks , in 1971 during the war of liberation—the charges framed arraigned.

5. The case involves prosecution of sole accused Md. Mahbubur Rahman @ Mahbub @ Mahebul allegedly responsible for the offences committed in gross violations of International

Humanitarian Law in 1971, during the war of liberation. It has been alleged in charge nos. 01 and 02 that Wadud Moulana[now dead] the father of the accused Md. Mahbubur Rahman @ Mahebul and Abdul Mannan[now dead], the brother of the accused too actively participated, being part of the enterprise in accomplishing the crimes arraigned

6. Prosecution avers that in 1971 the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul got himself enrolled as a member of locally formed Razakar Bahini, an 'auxiliary force' created aiming to collaborate with the Pakistani occupation armed force in carrying out its criminal activities intending to liquidate the pro-liberation Bengali civilians, civilians belonging to Hindu religious group, intellectuals and persons significantly engaged in promoting socio-economic and educational development of Bengali nation, in furtherance of policy and plan.

7. The trial took place in presence of the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul. Pursuant to issuance of production warrant the prison authority has produced the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul today before this Tribunal [ICT-1].

8. Now, having considered all of the evidence presented in course of trial, along with the submissions advanced during summing up on part of both sides the Tribunal [ICT-1] is now moving to deliver and pronounce its judgment for the prosecution of individual accused Md. Mahbubur Rahman @ Mahbub @ Mahebul who allegedly incurred liability for the accomplishment of serious offences as enumerated in the International Crimes (Tribunals) Act, 1973 committed in grave violation of international humanitarian law and laws of war in the territory of Bangladesh in 1971, during the war of liberation.

9. Having authority under section 10(1) (j), section 20(1) and section 20(2) of the International Crimes (Tribunals) Act, 1973[Act No. XIX of 1973] this ‘Tribunal’ known as International Crimes Tribunal-1 [ICT-1] thus hereby renders and pronounces the following unanimous judgment.

II. Formation and Jurisdiction of the Tribunal

10. The Statute known as The International Crimes (Tribunals) Act, 1973 [Act No. XIX of 1973], an *ex-post facto* legislation was enacted in our sovereign parliament and it is meant to prosecute crimes against humanity, genocide and system crimes perpetrated in violation of international humanitarian law and the laws of war. Prosecuting and trying internationally recognised crimes under such

legislation is fairly permitted. The Act of 1973 does have the merit and means of ensuring the universally recognized standard and safeguards. And it is being maintained duly at all stages of proceedings before the Tribunal.

11. We reiterate too that the Act of 1973 has been enacted to prosecute, try and punish not only the 'armed forces' but also the perpetrators who belonged to 'auxiliary forces'--- Razakar Bahini or Al-Badar Bahini , or who committed the offence in the capacity of an 'individual' or a 'group of individuals' or 'organisation'. It is manifested from section 3(1) of the Act of 1973 that even any person (individual), if he is *prima facie* found accountable either under section 4(1) or 4(2) of the Act of 1973 for the perpetration of offence(s), can be prosecuted and tried under the Act of 1973.

III. Historical backdrop and Context

12. The offences for which the accused person has been indicted were 'system crimes' or 'group crimes' and not isolated crimes. Those are recognized as international crimes as the same happened in war time situation, in violation of laws of war and customary international law. The events narrated in the charges framed just formed part of appalling atrocities directing civilian population, Hindu civilians which constituted the offences of 'genocide' or in the alternative offences of 'crimes against humanity' , committed in

the territory of Bangladesh, in 1971 during the nine-month bloody war of liberation.

13. In portraying the historical background, in succinct, that ensued the war of liberation of the Bengali nation in 1971 we reiterate that in August 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

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

15. The history goes on to portray that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation became the majority party of Pakistan. But deliberately defying the democratic norms Pakistan Government did not care to respect this overwhelming majority. As a result, movement started in the

territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation in his historic speech of 7th March 1971, called on the Bangalee nation to struggle for independence.

16. In the early hour of 26th March, following the onslaught of “Operation Search Light” by the Pakistani Military on 25th March, Bangabandhu Sheikh Mujibur Rahman the Father of the Nation declared Bangladesh independent immediately before the Pakistani authorities arrested him.

17. In the War of Liberation that ensued in 1971, all people of the then East Pakistan unreservedly supported and participated in the call to make their motherland Bangladesh free but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat-E-Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Convention Muslim League joined and/or culpably collaborated with the Pakistani occupation army to aggressively resist the conception of independent Bangladesh and most of them got engaged in committing and facilitating as well the untold atrocious activities directing the pro-liberation civilian population and Hindu civilians, to further the policy and plan of annihilating the dream of self-determination of the Bengali nation.

This is now a settled history of which this Tribunal takes judicial notice as permitted by the Act of 1973 and the ROP.

18. History testifies that the Pakistani occupation army started its monstrous 'mayhem' since 25 March 1971 intending to liquidate the pro-liberation Bengali civilians, to resist their aspiration of self determination. And at a stage, *para militia* forces like Razakar Bahini, Al-Badar were formed of pro-Pakistan Bengali civilians who got engaged in providing substantial contribution and facilitation to the Pakistani occupation army in conducting systematic and widespread attack throughout the territory of Bangladesh, directing non-combatant pro-liberation civilian population.

19. Grave and recurrent horrific atrocities committed directing the Bengali civilians in the territory of Bangladesh starting since 25 March 1971 did not thrive to foil the highest sacrifice to which the nation always pays tribute and homage to the blood of millions of patriotic martyrs and innocent defenceless people.

20. It is now an undisputed history that the local collaborators especially belonging to auxiliary forces actively and culpably assisted the Pakistani occupation army in accomplishing their policy and plan of annihilating the pro-liberation Bangalee

civilians. The local collaborators truly had acted as notorious traitors. It is now a settled history which needs no further document to prove.

21. In 1971, the Pakistani occupation army had no companion in Bangladesh—except a few traitors who took stance against the war of liberation and they belonged to the ideology of pro-Pakistan political parties, e.g Muslim League, the Convention Muslim League, the Jamaat-E-Islami [JEI] and the Nezami-i-Islami. Forming Razakar, Al-Badar-- *para militia* forces was intended to collaborate with them and the Pakistani occupation armed force-- it is now settled history.

22. Prosecution avers that accused Md. Mahbubur Rahman @ Mahbub @ Mahebul being a potential member of locally formed Razakar Bahini, a militia force did not keep him distanced from the strategy of JEI to further the policy and plan of the Pakistani occupation army in carrying out barbaric atrocities against the non-combatant pro-liberation Hindu civilians that resulted in commission of offence of ‘genocide’ enumerated in the Act of 1973, in grave breach of Genocide Convention, 1948.

23. The author of the book titled '**History of the Liberation War**', citing **Jagjit Singh Aurora** states an statistics showing the strength

of locally formed para militia and other forces intending to provide collaboration with the Pakistani occupation army in 1971--

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

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

24. The ‘aggression’ that resulted in untold abuse of civilians’ rights and their indiscriminate killings in the territory of Bangladesh started with launching the ‘operation searchlight’ was in grave breaches of Geneva Convention 1949 and Genocide Convention, 1948. After the ‘operation search-light’ on the night of 25^h March 1971 ten million of Bengali civilians were forced to deport under the horrors of dreadful violence and brutality spread over the territory of Bangladesh.

25. The incalculable atrocious resistance on part of thousands of local collaborators belonging to Razakar Bahini, Al-Badar Bahini could not impede the nation’s heroic voyage to freedom. Undeniably, the ways to self-determination for the Bangalee nation

was strenuous, swabbed with enormous blood, struggle and immense sacrifices.

26. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination and for achieving independent motherland. The nation shall remain ever indebted to those best sons and daughters of the soil who paid supreme sacrifices for an independent motherland – **Bangladesh.**

IV. Brief Account of the Accused Person

27. Before we start adjudication of indictments brought and accountability of the accused for the crimes alleged we consider it relevant to focus on the brief account of the accused person which is as below:

(i) Md. Mahbubur Rahman @ Mahbub @ Mahebul

Accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, the son of late Abdul Wadud @ Wadud Moulana and Hosne Ara Begum of village-Bairatipara, Baimhati under Mirzapur Municipality, Police Station- Mirzapur of District Tangail was born in June 17, 1947. He studied up to SSC. In 1971, his father was the Chairman of Mirzapur Thana Peace Committee. The accused was associated with the politics of Jamaat-E-Islami since prior to the war of liberation and maintained close affiliation with the Pakistani occupation army in 1971 in accomplishing horrific crimes directing

Hindu religious community, in exercise of his membership in locally formed Razakar Bahini, prosecution alleges.

V. Procedural History of the Case

28. The Investigation Agency of the Tribunal constituted under the Act of 1973 initiated the task of investigation pursuant to compliant register serial no. 67 dated 18.4.2016, in respect of commission of prohibited and criminal acts constituting the offences enumerated in section 3(2) of the Act of 1973 allegedly perpetrated by the accused, his accomplices and Pakistani occupation army.

29. On prayer of the IO, through the chief prosecutor the Tribunal ordered to produce the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul as he was detained in connection with Mirzapur Police station case no.05 dated 12.7.2016 under section 15(3) and 25-D of the Special Powers Act, 1974, before the Tribunal on 07.11.2016

30. On production of the accused as ordered the Tribunal sent him to prison by its order dated 07.11.2016, showing him arrested in connection with this case, for the purpose of effective and proper investigation.

31. The Investigation Officer [IO], submitted report together with documents and materials collected and statement of witnesses, on wrapping up of investigation, before the Chief Prosecutor on 02.11.2017.

32. The Chief Prosecutor, on scrutinizing the report and documents submitted therewith by the Investigation Agency, after completion of investigation, submitted the 'Formal Charge' on 11.01.2018 under section 9(1) of the Act of 1973 before this Tribunal alleging that the accused Md. Mahbubur Rahman @ Mahub @ Mahebul had committed the offences of 'genocide' and 'crimes against humanity', by participating, aiding, abetting, facilitating and also for complicity in accomplishing such crimes directing non-combatant Hindu civilians including a prominent philanthropist Danabir Ranada Prasad Saha [RP Saha] and his son, violating international humanitarian law as narrated in the formal charge during the War of Liberation in 1971 around the localities under the Police Station- Mirzapur of District-Tangail and also by launching attack at the residence of Danabir Roy Bahadur Ranada Prasad Saha [RP Saha] situated at Sirajdikhan Road, Khanpur of Naryanganj town.

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

34. Mr. Gazi M.H Tamim, Advocate has been appointed the state defence counsel, at the cost of the Government, to defend the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul as he did not engage any counsel to defend him.

35. Then on 11.03.2018 hearing on charge framing matter took place when both sides advanced their respective submission, drawing attention to the formal charge and documents submitted therewith.

36. Next, Tribunal rendered its order on 28 March, 2018 framing charges against the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul who pleaded not guilty when the charges so framed was read over and explained to him in open court. With this trial commenced.

37. Prosecution started examining witnesses on 29.05.2018. In all 15 witnesses have been examined including IO and one formal

witness. The phase of examination of prosecution witnesses ended on 13.02.2019.

38. Defence declined to adduce and examine witness. Besides, it appears that defence did not submit any list of witnesses along with documents, if any, which the defence intended to rely upon, as required under section 9(5) of the Act on or before the date stipulated in the order framing charges.

39. On closure of summing up [argument] on 24.04.2019 the case was kept in CAV [for delivery and pronouncement of judgment]

VI. Summing up by the Prosecution

40. Mr. Rana Das Gupta the learned prosecutor started placing argument by submitting that the Pakistani occupation army got stationed in Tangail on 3rd April 1971 , after the ‘Operation Search Light’ carried out in the early hour of 26th March 1971. Afterwards, first peace committee was formed which then taking stance in support of the Pakistani armed force helped and contributed in forming local Razakar Bahini to which accused Md. Mahbubur Rahman @ Mahub @ Mahebul was a notorious member.

41. In addition to some documentary evidence oral testimony tendered depicts too that the accused, in exercise of his membership

in Razakar Bahini used to carry out atrocious activities around the locality of village-Mirzapur and neighbouring villages in collaboration with the Pakistani occupation army and it remained unshaken, the learned prosecutor added.

42. The learned prosecutor further submitted that the book titled *৩১ গি হযিৱাখিৱ তক তক্ৱ-ৱাও* published in 2010, edited by Rishad Ahmed [**Book's page 96 , Prosecution Documents Volume page-25**], and a 'list of Razakars' prepared by War Crime Facts Finding Committee [**Prosecution Documents Volume page 37-41**] also demonstrate beyond reasonable doubt that the accused Md. Mahbubur Rahman @ Mahub @ Mahebul was a potential Razakar and his father Wadud Moulana was the Chairman of local peace committee and also had affiliation in Tangail District Peace Committee.

43. The learned prosecutor also submitted that almost all the P.W.s have testified that the accused belonged to Razakar Bahini and they knew him since prior to the events as he used to carry out prohibited activities around the locality, carrying arms with him. Defence could not refute it in any manner by cross-examining the P.W.s and there has been no reason to disbelieve the P.W.s.

44. In respect of the arraignments brought in three charges framed the learned prosecutor drawing attention to the evidence tendered submits that the victims of all the events were the members of Hindu religious group; that the accused, his father[now dead], brother[now dead] , cohort Razakars actively participated and contributed in committing the brutal mass killings; that the attacks as narrated in charge nos. 01 and 03 were carried out at Mirzapur the native village of RP Saha and the attack as arraigned in charge no.02 was conducted by launching attack at the house of RP Saha in Naryanganj, in continuation of the attack arraigned in charge no.01. However, the matters raised in course of summing up on part of the prosecution may be well addressed in adjudication of each charge.

VII. Summing up by the state defence counsel

45. Mr. Gazi M.H. Tamim the learned state defence counsel submits that prosecution failed to prove accused's affiliation in locally formed Razakar Bahini by any reliable evidence; that in 1971 during the war of liberation the accused rather took stance in favour of the war of liberation and thus he was handed over to Pakistani occupation army by his father Wadud Moulana; that on getting release from jail in November 1971 he joined the war of liberation.

46. The learned state defence counsel further submits that the accused could have been prosecuted immediately after the independence achieved under the Collaborators Order 1972, if really he had involvement in committing alleged crimes and that now unusual delay in prosecuting him creates doubt as to truthfulness of his complicity and involvement with the alleged offences.

47. The learned state defence counsel next questioning credibility of witnesses submits that they did not know the accused beforehand and they had no opportunity of seeing the accused accompanying the group in launching alleged attacks as narrated in three charges and that the testimony of witnesses suffer from inconsistency and improbability. However, detailed argument advanced on each charge may be well addressed at the time of adjudicating the arraignments.

VIII. Whether the accused belonged to Razakar Bahini and Objective of forming Razakar Bahini

48. The Act of 1973 permits to prosecute even an 'individual' for the commission of any of offences enumerated in section 3 of the Act. However, the accused is alleged to have had membership in Razakar Bahini, an auxiliary force formed at Mirzapur, Tangail.

49. In the case in hand, prosecution alleges that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, in exercise of his infamous affiliation in locally formed Razakar Bahini, got engaged in carrying out atrocious activities constituting the offence of 'genocide'.

50. Mr. Rana Das Gupta the learned prosecutor submits that the facts unveiled from oral testimony of prosecution witnesses unerringly depict that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul was a notorious Razakar at Mirzapur; that the documentary evidence collected during investigation as well substantiates this fact.

51. Tribunal notes that long four and half decades after the atrocities committed in 1971 it was indeed a challenge to collect sufficient documented evidence to substantiate this crucial issue.

The Appellate Division in the case of *Delwar Hossain Sayedee* observed that --

“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.

[Criminal Appeal No. 39-40 of 2013, Judgment 17 September 2014, Surendra Kumar Sinha, J. Sayedee Judgment, page 43]

52. However, in the case in hand, prosecution relied upon oral and documentary evidence as well intending to make this matter proved. At the outset let us eye on the documents relied upon by the prosecution.

53. It transpires that the book titled **৩৭১ গি হযিবিখি৩৩ তক তক৩৩** published in 2010, edited by Rishad Ahmed [**Book's page 96 , Prosecution Documents Volume page- 25**], and a 'list of Razakars' prepared by 'War Crime Facts Finding Committee' [**Prosecution Documents Volume page 37-41**] also demonstrate beyond reasonable doubt that the accused Md. Mahbubur Rahman @ Mahub @ Mahebul was a potential Razakar and his father Wadud Moulana was a member of peace committee and also had affiliation in Tangail District Peace Committee.

54. The learned state defence counsel Mr. Gaji M.H Tamim questioning the authoritativeness of the documents relied upon by the prosecution submitted that the same are not reliable as the

authors of those documents have not been examined by the IO and as such the same do not carry any value.

55. We do not find reason to concede with the above submission. First, those two documents are found to have been published long before the investigation against the accused commenced under the Act of 1973. Thus, it cannot be said that those have been prepared for the purpose of accusing the accused Md. Mahbubur Rahman @ Mahbubur @ Mahebul in this case. Second, there has been nothing to show that the accused had made any attempt to dissent the information contained in those documents, by making any statement defying such information.

56. History says that parallel forces and organizations like Razakar Bahini, Al-Shams, Al-Badar Bahini, and Peace Committee were formed to act as auxiliary forces of the Pakistani occupation armed force in perpetrating horrendous atrocities in the territory of Bangladesh in 1971 during the war of liberation. The members belonging to those auxiliary forces enthusiastically used to provide moral supports, assistance and substantially contributed and also physically participated to the commission of prohibitory acts directing non-combatant civilian population constituting the offences of crimes against humanity and genocide.

57. In the case in hand, what the oral testimony tendered transpires in respect of membership of the accused persons in locally formed Razakar Bahini? It appears that many of prosecution witnesses, in course of attacks, had natural occasion of seeing the accused accompanying the group of attackers at the crime sites. Being the locals naturally it was practicable of being aware which Razakars, after forming Razakar Bahini in Mirzapur used to carry out prohibited acts directing defenceless civilians of the localities.

58. The role the accused played in accomplishing crimes alleged may be well resolved at the time of adjudicating the charges. But now this uncontroverted fact lends assurance to the fact that not in capacity as an individual but by virtue of membership in Razakar Bahini the accused was with the criminal squad when it moved to crimes sites.

59. P.W. 03 Biswas Durlav Chandra is a freedom fighter. His testimony demonstrates that after the Pakistani occupation army got stationed in Tangail by setting their camp at circuit house on 3rd April, 1971 Peace Committee was formed under the headship of Moulana Wadud and his two sons Abdul Mannan [now dead] and accused Md. Mahbubur Rahman @ Mahbub started moving around the localities carrying arms with them, and making the innocent

civilians particularly belonging to Hindu community scared and used to commit looting.

60. The above piece of crucial fact could not be impeached by the defence in any manner. Why the accused and his brother Mannan [now dead] started moving around the localities carrying arms with them? In exercise of what capacity the accused and his brother got engaged in committing such prohibited activities around the localities, carrying arms with them?

61. Taking the testimony of P.W.03 into account we may safely deduce that not as an individual but in exercise of affiliation in Razakar Bahini the accused was seen very often moving around the localities carrying arms with him. We reiterate that it is a fact of common knowledge that Razakar Bahini was an armed *para militia* force which was created for ‘operational’ and ‘static’ purpose of the Pakistani occupation army and it acted under the government management.

62. Another crucial fact is relevant to resolve the issue of accused’s membership in locally formed Razakar Bahini. Mannan [now dead] the brother of the accused was a Razakar— defence does not seem to have disputed it. Thus, it is quite believable that after forming peace committed under headship of Moulana Wadud his two sons

including the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul got affiliated in locally formed Razakar Bahini and they achieved notoriety on account of the prohibited acts they started carrying out around the localities.

63. It has been consistently corroborated by P.W. 11 Abul Kalam Azad Bir Bikrom that on 3rd April, 1971 Pakistani occupation army got stationed in Tangail and afterwards Peace Committee was formed in Mirzapur under the leadership of Moulana Wadud who was also a member of Tangail district peace committee. P.W.11 also stated that Mahbub and Mannan [now dead] the sons of Peace Committee Chairman Moulana Wadud @ Wadud Moulana were infamous Razakar in Mirzapur. Defence could not controvert this pertinent fact.

64. It emerges that the victims and sufferers of atrocities of which the accused has been indicted have unequivocally testified that in 1971 the accused was known as a Razakar and such testimony could not be impeached by the defence.

65. It appears that intending to negate the fact that the accused belonged to locally formed Razakar Bahini defence put conflicting suggestion, as defence case, to some witnesses. Once it suggests that the accused was 10 years old in 1971 and next it suggests that

in August, 1971 Wadud Moulana himself handed over his son Mahbubur Rahman to Pakistani occupation army and Mahbubur was kept in jail till end of October, 1971; that during the war of liberation, after Wadud Moulana was killed by the freedom-fighters accused Mahbubur Rahman got release from jail and then he [accused] joined the war of liberation.

66. The above claims agitated on part of defence remained totally unsubstantiated. Additionally, glaringly contradictory suggestion has been put to the prosecution witnesses as defence case intending to negate prosecution's claim.

67. First, the photocopy of information collected from NID database of the Election Commission Secretariat [**Prosecution Documents Volume page-48-49**] goes to show that date of birth of the accused is 17.06.1947. Information contained in the NID database is supposed to have been provided by its holder and not anybody else. Defence does not contend that such information in respect of accused's date of birth as contained in his NID database was untrue or incorrect.

68. Second, if really the accused was 10 years old in 1971 it is not at all believable that the accused was handed over to Pakistani occupation army by his father Wadud Moulana and was kept in jail

till October 1971, and later on, on getting release, after his father was killed the accused joined the war of liberation.

69. Third, defence has not initiated any effort as permitted under the Act of 1973 to substantiate such specific defence case by adducing evidence. It is to be noted that mere putting defence case in the form of suggestion put to prosecution witness is not at all persuasive to negate prosecution's contention, when it is found proved.

70. Rather, efforts made on part of the defence seem to be futile which are not persuasive to negate prosecution's contention. Besides, in absence of any credible evidence we are not convinced with the defence claim agitated, particularly when prosecution has been able to prove by adducing reliable documentary and oral evidence that accused Md. Mahbubur Rahman @ Mahbub @ Mahebul was a member of Mirzapur Razakar Bahini.

71. What was the objective of forming such *para militia* force in war time situation? Of course, intention was not to protect lives and properties of civilians. Rather, it is undeniable that the Razakar force had acted in furtherance of policy and plan of Pakistani occupation army and in so doing it had carried out recurrent atrocities committed in a systematic manner throughout the

territory of Bangladesh in 1971. Pro-liberation civilians, freedom fighters, intellectual group, Hindu community were their key targets.

72. The protected persons staying in the territory of Bangladesh in 1971 had to experience dreadful and untold experience of criminal acts done even by the Razakar Bahini alone as its loyalty to Pakistani occupation army together with extreme antagonistic mindset to the war of liberation made them culpably enthused in launching attack directing civilian population and protected groups.

73. The above deliberation reflecting the objective of forming Razakar Bahini impels an unerring conclusion that the Razakar force formed in Mirzapur of District Tangail was also not beyond the purpose of creating such a para *militia* force as the accused, as its member has been indicted to collaborate with the Pakistani occupation army in allegedly carrying out criminal activities in 1971.

74. The documentary evidence together with the facts divulged from oral testimony makes it well proved that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul was an infamous member of Razakar Bahini formed in Mirzapur, Tangail.

75. Wadud Moulana the father of the accused was a potential peace committee member, prosecution alleges. Defence does not dispute it. Rather, specific defence case as suggested to witnesses that during the war of liberation Wadud Moulana was killed by the freedom-fighters, for his cruel and prohibited activities directing pro-liberation civilians.

76. Besides, the documents together with the defence suggestion put to prosecution witnesses affirms the conclusion that Wadud Moulana was affiliated in locally formed peace committee.

77. Burden squarely lies upon the prosecution to prove what it asserts positively. Success or failure in proving defence case does not affect the merit of the prosecution case in any manner. We are of the view that defence attempted to negate the prosecution averment by making futile effort, putting conflicting suggestion to prosecution witnesses.

78. Rather, rational evaluation of evidence and context demonstrates that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul actively accompanied the group of attackers formed of Pakistani occupation army, Razakars not as an individual but in exercise of his membership in locally formed Razakar Bahini, in launching attacks alleged.

79. P.W.03 and P.W.11 are valiant freedom fighters. Naturally, they had mechanism of getting information about the atrocious activities carried out around their localities and the persons engaged therewith. We do not find any reason keep aside their testimony so far as it relates to affiliation of the accused in locally formed Razakar Bahini. Besides, their testimony together with the documentary evidence, as discussed above and other facts unveiled forces to indisputable conclusion that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul was a member of locally formed Razakar Bahini and used to keep himself culpably engaged in carrying out atrocious activities, being active part of the criminal enterprise formed of Pakistani occupation army, Razakars, his father Wadud Moulana and his brother Mannan.

80. It stands unshaken too that Mannan the brother of the accused Mahbub @ Mahebul was also affiliated in locally formed Razakar Bahini. All these together with the facts as discussed above indisputably lend assurance as to accused's affiliation in Razakar Bahini.

81. In cross-examination of P.W.13, a freedom-fighter and an elected Member of the Provincial Assembly in 1970 it has been affirmed that the accused was arrested in connection with a case under the Collaborators Order, 1972. P.W.13 could not say the fate

of such prosecution. There has been no document before us in relation to such prosecution. However, this affirmed fact too lends assurance that the accused had affiliation in auxiliary force by virtue of which he was engaged in committing atrocious activities.

82. In absence of anything contrary, it may thus be justifiably concluded, taking the fact into account that Wadud Moulana the father of the accused was a mighty member of Mirzapur Peace Committee and Mannan the brother of the accused was associated in Razakar Bahini the accused Md. Mahbubur Rahman @ Mahub @ Mahebul too did not keep him distanced from being affiliated in Razakar Bahini.

IX. Does Unexplained Delay frustrate prosecution case?

83. The learned state defence counsel Mr. Gazi Tamim attacking the truthfulness of arraignments brought agitated the question of delayed prosecution. The learned state defence counsel submits that the accused could have been prosecuted and tried for the alleged offences immediately after the independence of Bangladesh, under the Collaborators Order, 1972; that non-initiation of any prompt prosecution for the alleged offences creates doubt as to truthfulness of accused's involvement and alleged participation to the commission of alleged crimes.

84. Mr. Gazi M.H Tamim the learned state defence counsel in advancing summing up also argued the accused contested in local government election for thrice, after independence which indicates that he was not a wanted person and thus had no involvement with the commission of offences alleged.

85. In reply to this legal aspect Mr. Rana Das Gupta, the learned prosecutor submits that adverse situation existed after the brutal assassination of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman did not allow to respond the cry of the nation and that mere delay is not a clog in prosecuting an individual for the offences enumerated in the Act of 1973 and that non-prosecution of the accused under the Collaborators Order 1972 for the offences of which he is arraigned does not make him absolved of liability for which now he is being prosecuted and tried under the Act of 1973.

86. Tribunal notes that the above legal aspect had already been resolved in some cases already disposed of by the Tribunal-2. However, in the case in hand, at the outset we deem it indispensable to address the legal aspect i.e. 'delayed prosecution', advanced on part of the defence.

87. Tribunal reiterates that after the dark history of brutal assassination of Bangabandhu Sheikh Mujibur Rahman and his

family on 15 August 1975 the process of prosecuting and trying the offenders for the offences under the Collaborators Order 1972 got halted and legislation was repealed on 31.12.1975. Military usurpers started ruling the country, derogating the constitution. Democracy remained halted till 1991 and also till 2009 there was no favourable situation, no strong political will and no consensus to prosecute the offenders for the crimes enumerated in the Act of 1973.

88. In post conflict societies, peace only comes with justice. The entire nation wanted to come out from the culture of impunity. For without prosecutions, there would be no healing. But no judicial forum under the Act of 1973 could be formed due to military regimes followed by the killing of the Father of the Nation. Inaction on part of the military rulers who captured state power rather added endorsement to the culture of impunity.

89. At a stage, military usurper started rehabilitating the local collaborators who actively participated to the commission of mass atrocities, genocide and crimes against humanity in 1971 in the territory of Bangladesh. Nation experienced grave inaction to prosecute and try the offenders of mass atrocities.

90. Thus, we are not agreed with the submission agitated by the learned state defence counsel. Mere delayed prosecution by itself does not diminish the guilt, if proved and there has been no statutory limitation in prosecuting and trying the accused for offences of which he is now arraigned. We recall the categorical and reasoned observation of the **ICT-2** made in the case of **Abul Kalam Azad** that --

From the point of morality and sound legal dogma, time bar should not apply to the prosecution of human rights crimes. Neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity. Article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968 provides protection against even any statutory limitation in prosecuting crimes against humanity, genocide etc. Thus, criminal prosecutions are always open and not barred by time limitation. [**A.K. Azad judgment: ICT-2 para 43**]

91. We find substance in what has been argued by the learned prosecutor, on this aspect. In earlier cases both the Tribunals rendered reasoned view in this regard. There is no limitation in bringing criminal prosecution, particularly when it relates to ‘international crimes’ committed in violation of customary international law. We also recall the observation made by the **ICT-2** in the case of **Abdul Quader Molla which is as below:**

“Crimes against humanity and genocide, the gravest crime never gets old and that the perpetrators who are treated as the enemies of mankind will face justice. We should not forget it that the millions of victims who deserve that their tormenters are held accountable; the passage of time does not diminish the guilt.....Justice delayed is no longer justice denied, particularly when the perpetrators of core international crimes are brought to the process of justice.....However, there can be no recognised theory to insist that such a ‘system crime’ can only be pursued within a given number of years. Therefore, delayed prosecution does not rest as a clog in prosecuting and trying the accused and creates no mystification about the atrocities committed in 1971.”

**[ICT-BD-2: ICT-BD Case No. 02 of
2012: The Chief Prosecutor Vs. Abdul
Quader Molla:05 February, 2013]**

92. Thus, mere delayed prosecution does not diminish the truthfulness of arraignment of committing crimes, in violation of customary international law and the laws of war. Therefore, justice delayed is no longer justice denied, particularly when the perpetrators of core international crimes are brought to the process of justice. And delayed prosecution does not at all rest as a clog in trying the accused and creates no mystification about the atrocities committed in 1971, during the war of liberations.

X. Applicable laws

93. The proceeding before the Tribunal is guided by the International Crimes (Tribunals) Act 1973, the Rules of Procedure 2012 formulated by the Tribunal under the powers given in section 22 of the Act. Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872.

94. Tribunal is authorized to take judicial notice of fact of common knowledge which is not needed to be proved by evidence [Section 19(4) of the Act]. The Tribunal shall have discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)]. The defence shall have liberty to cross-examine prosecution witness

questioning his credibility and to take contradiction of the evidence given by him [Rule 53(ii)]. Cross-examination is thus significant in confronting evidence.

95. The Act of 1973 provides right of accused to cross-examine the prosecution witnesses. The Tribunal may receive in evidence statement of witness recorded by Magistrate or Investigation Officer only when the witness who has subsequently died or whose attendance cannot be procured without an amount of delay or expense which the Tribunal considers unreasonable [Section 19(2) of the Act]. But in the case in hand, prosecution has not prayed to receive any such statement of any witness in evidence. The defence enjoyed the right to cross-examine prosecution witnesses.

96. The Act of 1973 and the Rules (ROP) have adequately ensured the universally recognised rights of the defence. Additionally, the Tribunal, in exercise of its discretion and inherent powers as contained in Rule 46A of the ROP, has adopted numerous practices for ensuring fair trial by providing all possible rights of the accused.

97. Since the Act of 1973 is meant to prosecute and try the persons responsible for the offence of genocides and crimes against humanity, committed in violation of customary international law,

the Tribunal however is not precluded from seeking guidance from international reference and relevant jurisprudence, if needed to resolve legal issues related to charges and culpability of the accused.

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

98. The Tribunal notes that in the case in hand, evidence produced by the prosecution in support of respective arraignments was mainly testimonial. Some of prosecution witnesses allegedly directly experienced facts intimately related to the dreadful events as narrated in the charges. Tribunal in search for the truth duly weighed value, relevance and credibility of such testimonies in a most dispassionate manner, keeping in mind that the accused is presumed innocent till he is found guilty.

99. The Tribunal notes that context of committing crimes alleged which are internationally recognised crimes and totality of its horrific profile naturally left little room for the people or civilians to witness the entire event of attack. Due to the nature of international crimes, their chaotic circumstances, and post-conflict instability, these crimes are usually not well documented by post-conflict authorities.

100. For the reason of lapse of significant passage of time, it may not always be reasonable to expect the witness to recall every detail with precision. However, in the case in hand, prosecution depends mainly on testimony made by the witnesses before the Tribunal.

101. It is to be noted that in particular when the Tribunal acts on hearsay evidence, it is not bound to apply the technical rules of evidence. Rather, the Tribunal is to determine the probative value of all relevant evidence admitted. Hearsay evidence, in a trial under the Act of 1973, is not inadmissible *per se*, but that such evidence should be considered with caution and if it carries reasonable probative value.

102. Next, the established jurisprudence is quite clear that corroboration is not a legal requirement for a finding to be made. “Corroboration of evidence is not necessarily required and a Chamber may rely on a single witness’ testimony as proof of a material fact. As such, a sole witness’ testimony could suffice to justify a conviction if the Chamber is convinced beyond all reasonable doubt.” [Nchamihigo, ICTR Trial Chamber, November 12, 2008, para. 14].

103. However, Onus squarely lies upon the prosecution to establish accused’s participation and complicity forming part of attack

resulted in commission of the offences in question as enumerated in section 3(2) of the Act of 1973 for which he has been arraigned. In the case in hand, most of the prosecution witnesses have testified the acts, conduct of the accused claiming him as a member of locally formed Razakar Bahini.

104. Finally, we unanimously prefer to pen our view that it would be appropriate and jurisprudentially logical if, in the process of appraisal of evidence, we separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon. It is sound commonsense to refuse to apply mechanically, in assessing the worth of necessarily imperfect human testimony, the maxim: *"falsus in uno falsus in omnibus"*.

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

106. Keeping the above inevitable settled perspectives in mind now let us move to the task of adjudication of charges framed, on appraisal of evidence presented by the prosecution.

XII. Adjudication of Charges

Adjudication of Charge No.01

[Event no.01 as narrated in page nos. 20-27 in the formal charge]

[Offences of ‘genocide’ or in the alternative the offences of ‘confinement’, ‘abduction’, ‘torture’ and ‘murder’ as crimes against humanity]

107. Charge: That on 07 May, 1971 at about 02:00/02:30 P.M a group formed of 15/20 Razakars , about 60 Pakistani occupation army being accompanied by the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, his father Abdul Wadud @ Wadud Moulana[now dead], the then Thana President of Peace Committee, his brother Razakar Md. Abdul Mannan [now dead] led by Captain Ayub by launching attack at ‘Kumudini Complex’ at Baimhati village under Police Station-Mirzapur of District Tangail started searching for ‘Danabir’ R P Saha the founder of the Complex and his son Bhabani Prasad Saha @ Rabi intending to liquidate them. But finding them not available there the accused Razakar Md. Mahbubur Rahman @ Mahbub @ Mahebul and his accomplices started humiliating the doctors, nurses, teachers, students and employees of the Complex.

Then in conjunction with the attack accomplice Razakars of the accused including Md. Abdul Mannan[now dead] and a group of Pakistani occupation army attacked Hindu dominated localities of

villages Baimhati, Andhara and Sarishadair and keeping the Kumudini Complex under their surveillance the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, his father Wadud Moulana[now dead], accomplice Razakars and army men moved towards the house of R P Saha at village Mirzapur, crossing the river Louhojong with intent to destroy, in whole or in part, the Hindu religious group including Danabir Ranada Prasad Saha[RP Saha] and his family inmates, by launching attack.

In conjunction with the above phase of attack the accused , his accomplice Razakars and army men looted households , destroyed 200/250 houses by setting those on fire and unlawfully detained 33 civilians belonging to Hindu religious group and made them stand in a line on the bank of a big ditch, west to the house of R P Saha. Then the accused and his accomplice Razakars including his father [now dead], brother [now dead] identifying them as ‘enemies of Pakistan’ instigated the Pakistani occupation army to kill them.

Then on instigation of the accused and his accomplice Razakars, the Pakistani occupation army gunned down **33 Hindu civilians** -- (1) Kamal Saha, (2) Madhusudan Saha, (3) Subhash Saha, (4) Uma Charan Saha, (5) Dharendra Nath Saha, (6) Gadadhar Saha, (7) Keru Shil, (8) Ranglal Saha, (9) Dwijendra Saha, (10) Sudam Chandra Saha, (11) Ranjit Saha @ Dulal, (12) Jugal Chandra

Banik, (13) Gopal Chandra Banik, (14) Ganesh Chandra Banik (15) Mangal Chandra Saha, (16) Subhash Chandra Saha , (17) Bhaduri Sutradhar , (18) Ram Chandra Saha, (19) Supati Banik, (20) Swapan Saha, (21) Ananda Saha, (22) Narayan Mandal, (23) Bakul Saha, **of village Mirjapur** under Police Station- Mirzapur of District Tangail , (24)Ganga Charan Karmakar **of village Andhara** under Police Station- Mirzapur of District Tangail, (25) Ranjit Saha, (26) Ganesh Chandra Mandal, (27) Nitai Mandal, (28) Bholanath Mandal, (29) Kandu Gope, (30) Chan Mohon Saha **of village Sarishadair** under Police Station- Mirzapur of District Tangail, (31) Sadhu Mali, (32) Ranjit Saha, (33) Nagina Basfair **of village Baimhati** under Police Station- Mirzapur of District Tangail to death. Popy Saha [05] and Biswarup Saha [01], the daughter and son of Sudhan Chandra Saha, one of victims got injured with gun fire.

Therefore, the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul participated, substantially abetted and facilitated the actual commission of the offence of ‘genocide’ as specified in section 3(2) (c)(g)(h) read with section 4(1) of the International crimes(Tribunals) Act, 1973 or in the alternative for participating, substantially abetting and facilitating the actual commission of the offences of ‘confinement’, ‘abduction’, ‘torture’, 'looting', 'arson' , 'other inhumane acts' and ‘murder’ as crimes against humanity as

specified in section 3(2)(a)(g)(h) read with section 4(1) of the International crimes(Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act of 1973.

Evidence of Witnesses examined

108. This charge involves systematic attack at Kumudini Complex in Mirzapur that allegedly resulted in humiliation, serious mental harm and molestation to the nurse, teachers, female students and employees of Bharateswari Homes, Kumudini hospital and mass killing of 33 Hindu civilians[as listed in the charge framed], the residents of village-Mirzapur and adjacent Hindu dominated vicinities. The attack allegedly continued for hours together and happened in day time. Prosecution intending to substantiate the arraignment brought in this charge relies upon nine [09] witnesses i.e P.W.01-P.W.06 and P.W.09, P.W.11 and P.W.12. Of them some are direct witnesses to facts pertinently chained to the attack. Before weighing their evidence first let us see what they have testified before the Tribunal.

109. P.W. 01 Protiva Mutsuddi [83/84] is from village-Pahartoil, Post office- Mohamuni under police station-Raujan of District Chittagong. In 1971 she had been working as the principal of Bharateswari Homes located at village-Baimhati under police

station Mirzapur. She is an eye witness to facts crucially related to the events of attack arraigned.

110. In addition to what she experienced in respect of the events P.W.01 made narrative related to the Kumudini Welfare Trust and RP Saha, the architect of this institution. She also stated a brief profile of herself as well.

111. P.W.01 stated that she did not get married. Kumudini Welfare Trust is childlike and everything to her. She did her post graduation from University of Dhaka in 1959 on Economics. She was first elected Vice-President of Women's Hall (now Rokeya Hall) of Dhaka University. Then she did B.Ed. [Bachelor of Education] from Mymensingh Women Teachers Training College. She was General Secretary of Students Committee of the college. In 2002 she has been awarded prestigious '**Ekushe Padak**' (the second highest civilian award in Bangladesh) as an educationist.

112. P.W.01 next stated that she is now a director of 'Kumudini Welfare Trust of Bengal'. The by-law of the trust was written by Hossain Shaheed Sohrawardi. After finishing her education, she worked as head mistress in Cox's bazaar Girls High School and Joydevpur Girls High School for couple of years. In 1963 she joined in Bharateswari Homes as a lecturer and since 1963 to 1965

she worked as its acting Principal. Then since 1968 to 1998 she worked as its Principal and went on retirement in 1998. In 1985 she started working as director of 'Kumudini Welfare Trust of Bengal' and till today she has been working in such capacity.

113. P.W.01 went on to state too that the focus of 'Kumudini Welfare Trust of Bengal' is education and health. **Danabir** [The Great Philanthropist] Ranada Prasad Saha is its founder. Bharateswari Homes, Kumudini Hospital, Kumudini Women's Degree College and Debendra College, Manikganj are under the Trust. *Danabir* Ranada Prasad Saha [He will be mentioned R P Saha hereinafter] experienced death of his mother. She died of tetanus during childbirth without any treatment. He could not pursue education. He used to work as a nurse during the First World War. Then he worked in railway department. Subsequently, in business he profited profoundly and spent his fortune in humanitarian causes. That's why people termed him '**The Great Philanthropist**'. The British Government recognised him awarding title '**Rai Bahadur**' (a title of honour which was conferred to individual for their exceptional lifelong service in British India). *Sher-E-Bangla* (Tiger of Bengal) A. K. Fazlul Haque, Hossain Shaheed Sohrawardi and *Mazlum Jananeta* [Leader of the Oppressed] Abdul Hamid Khan Bhasani adored R P Saha so very

much. Bangabandhu Sheikh Mujibur Rahman respected R P Saha and addressed him as '*dada*' (elder brother).

114. P.W.01 next stated that everybody of Kumudini Trust addressed R P Saha as '*Jethu Moni*' (Uncle). He was not involved with politics. After the establishment of Kumudini Hospital, he donated Red Cross 2,50,000 taka at a time for their humanitarian work.

115. P.W.01 also stated that after Indo-Pakistan War of 1965, the then East Pakistan Governor Monaem Khan declared 'Kumudini Welfare Trust of Bengal' as enemy property and conspired against RP Saha. That left his activities increasingly narrowed. All institutions ran on free service and thus those organizations faced economic constraints. P.W.1 experienced such when she had been serving as the Principal of Bharateswari Homes. At that time Moulana Wadud [father of the accused] of Mirzapur was bitterly against of R P Saha's philanthropic efforts.

116. In 1971, during the Liberation War, Abdul Wadud alias Wadud Moulana (now dead) became chairman of Mirzapur Thana Peace Committee. His two sons Abdul Mannan [now dead] and Mahbubur Rahman @ Mahbub @ Mahebul were infamous Razakars. They always used to carry arms with them.

117. In April 1971 R P Saha was almost 74/75 years old. At that time he was suffering from fever and breathing problem. At that time instead of his home in Naryanganj, he was staying at his native village in Mirzapur.

118. P.W.01 next stated that at the end of April [1971] Governor Tikka Khan invited R P Saha to meet him. He went to Governor House with his son Bhabani Prasad Saha Rabi and Superintendent of Kumudini Medical College Hospital Dr. Hafizur Rahman. R P Saha used to address her [P.W.01] '*Maa*' (Mother); most of the time she used to stay in his house and thus she knew the internal history. Tikka Kahn quizzed them on many matters and then allowed them to go back. As soon as they reached to the gate of the Governor House, Pakistani army men took away R P Saha and his son Bhabani Prasad Saha in the name of interrogation. P.W.01 stated that Dr. Hafizur Rahman shared this with them when he came back to Mirzapur. Afterwards, RP Saha's daughter Joyapati contacted Lieutenant Colonel Kayani, who happened to be the Principal of Mymensingh Cadet College. Lieutenant Colonel Kayani informed that R P Saha and his son were kept in an Army Camp.

119. P.W.01 also stated that on 5th May, 1971 members of Pakistani occupation army had left R P Saha and his son in front of his house

in Naryanganj. On the same day, he [RP Saha] came to Mirzapur and consoled the P.W.1 and other staff members. The next day, he had talk with the villagers, made them comforted and had lunch with doctors, nurses, teachers and students in Nut temple. On 7th May, 1971 R P Saha went to his Naryanganj house with his son Rabi.

120. The above narrative made by P.W.01 was the backdrop of the event of attack. Now, let us see what the P.W.01 stated in relation to the atrocious activities arraigned in charge no.01.

121. P.W.01 stated that on 07th May, 1971 at around 02.00/02.30 P.M she had been at the quarter of Mrs. Joyapati at Kumudini Complex when she heard the sound of gun firing from the end of the road in front of Kumudini Hospital. With this she moved to Bharateswari Homes and Mrs. Joyapati went to Kumudini Hospital wherefrom she came back to Bharateswari Homes, as told by Dr. Hafizur Rahman.

122. What the P.W.01 watched when she remained at Bharateswari Homes? P.W.01 stated that remaining stayed on the first floor of Bharateswari Homes they saw Wadud Moulana, his two sons Abdul Mannan [now dead] and Md. Mahbubur Rahman @ Mahub

@ Mahebul[accused] being accompanied by the Pakistani occupation army, 20/30 Razakars and members of Peace Committee entered into the premises of Kumudini Hospital. Members of Pakistani occupation army came there by jeeps. Wadud Moulana, his two sons Abdul Mannan [now dead] and Md. Mahbubur Rahman @ Mahub @ Mahebul escorted the troops.

123. P.W.01 next stated that she saw the gang accompanied by accused coming at Bharateswari Homes. P.W.01 heard from Dr. Hafizur Rahman that accused and his father and brother kept mum when army men started uttering racial slur [Malaun, Hindu] against him.

124. P.W.01 also stated that Pakistani army men slighted Dr. Hafizur Rahman uttering racial slur [Malaun, Hindu] against him when he came out of the Hospital. When he told that he was a Muslim, Wadud Moulana, his two sons Mannan and Mahub kept mum. Dr. Hafizur Rahman shared this with them later on, P.W.01 stated.

125. What happened next? P.W.01 stated that then Wadud Moulana and his sons entered inside Bharateswari Homes along with Pakistani occupation army, battering the guard Jahur and at that time having seen Mrs. Jayapati on the ground floor, Captain of

Pakistani army wiped up her mark of red vermilion by gun, attacked her with unspeakable, dirty slang, ordered not to perform ritual to deities and termed R P Saha as 'Miscreant'. Then the Captain used unutterable words against her and the Vice-Principal of Bharateswari Homes.

126. P.W.01 also narrated that then the Captain of Pakistani Army ordered the girls [students of Bharateswari Homes] to come down. But they did not respond and with this the accused and his cohort Razakars dragged down girls of Bharateswari Homes, behaved indecently, molested them and made them stood in a line. The girls were asked to tell their names but being panic-stricken they remained mum. At that time local Officer-in-Charge of Police intervened and said that most of the girls of the Homes were Muslims. Next, keeping the Hospital and Bharateswari Homes guarded by some Razakars and peace committee members Wadud Moulana, his two sons[including the accused] and Pakistani occupation army men being divided in groups had launched attack at surrounding Hindi dominated vicinities.

127. What the P.W.01 stated in respect of the second phase of the attack? P.W.01 narrated that they then took refuge on different floors of Bharateswari Homes. She [P.W.01], Mrs. Jayapati, Mrs.

Sreemoti [P.W.02: R P Shaha's daughter-in-law] came to first floor of the building wherefrom they saw smoke from the end of different villages including Mirzapur and heard piercing screaming. At around 05:00/05:30 P.M. they saw the perpetrators making many people stood in a line on the bank of the river Louhojong adjacent to boundary wall of RP Saha's house. They also saw Wadud Moulana and his two sons hinted something to the Pakistani army men and then the army men gunned the civilians made there stood in a line to death. Then accused Mahub and his cohort Razakars dragged the dead bodies in a ditch and at the time of moving back they burnt down the houses of many civilians including Rishikesh Saha, Madhusudan. P.W.01 also stated that the river Louhojong was not so broad; RP Saha's house and neighbouring vicinities could be visibly noticed even from the building of Bharateswari Homes.

128. P.W.01 next stated that on the same day at 09:00 P.M she along with others moved to the ditch, adjacent to RP Saha's house where they found dead bodies of Mongol Kerani, Madhusudan, Sadhu Mali, Nagina Busfoir, Ranjit Saha, Supati Banik and many more. Numbers of dead bodies were 32/33. All of them were Hindu and she knew most of them.

129. In the cross examination P.W.01 stated in reply to defence question that she knew Mahbubur Rahman and Abdul Mannan, the two sons of Moulana Abdul Wadud since 1963; that prior to 1971 she had affection for accused Mahub and Mahub too used to respect her; that RP Saha's house was adjacent to the river Louhojong, south to the Kumudini Complex; that after independence no case was lodged either on behalf of his[RP Saha] family or Kumudini Complex. Furthermore, P.W.01 stated that she had no idea about the whereabouts or profession of accused Mahub; that she did not know anybody of Peace Committee of Tangail except Moulana Wadud.

130. P.W.01 denied the defence suggestions that she did not see the event she testified; that the event she narrated did not happen; that she did not know the accused person beforehand; that the accused person did not belong to Razakars; that the accused was a 10 years old boy in 1971 and that what she testified was untrue and tutored.

131. P.W.02 Sreemoti Saha [68] is a resident of village- Mirzapur under police station- Mirzapur of District Tangail. She is the daughter-in-law of *Danabir* [The Great Philanthropist] Ranada Prasad Saha. P.W.02 has been working as a director of Kumudini Welfare Trust. She was awarded '**Begum Rokeya Padak**' [a prominent award given by the Government of Bangladesh that

recognizes path breaking contribution related to women's issues], in 2006 for her exceptional achievement in empowering women in socio-economic perspective. She got married with Sri Bhabani Prasad Saha @ Rabi Saha on 11th May, 1967. Their only son was born on 26th March, 1968.

132. P.W.02 is a direct witness to the facts crucially linked to the event of attack as arraigned in charge no.01. She also testified what she heard about the event that resulted in wiping out RP Saha, her[P.W.02] husband Sri Bhabani Prasad Saha @ Rabi Saha and three others taking them away forcibly from RP Saha's house in Naryanganj, as arraigned in charge no.02. Now, let us first see what the P.W.02 testified in respect of the event as arraigned in charge no.01.

133. P.W. 2 stated that during the Liberation War, all of her family inmates [husband, son and father-in-law] had been staying at their home in Mirzapur. Her father-in-law was being called by the Governor of [then] East Pakistan General Tikka Khan on 29th April, 1971. On that very morning her father-in-law, her husband and the Superintendent of Kumudini Hospital Dr. Hafizur Rahman [now dead] moved to Dhaka and they met General Tikka Khan. During their departure, after meeting, an army vehicle prevented them in front of the gate and knowing their identity they took them

away. However, they allowed Dr. Hafizur Rahman to walk free and he came back to Mirzapur. At that time her father-in-law was 75/76 years old and her husband was 24 years old.

134. P.W.02 next stated that seven days later, on 5th May [1971] her father-in-law and husband came back as the Pakistani occupation army had left them at their house in Naryanganj and on the same day at about 05:00 P.M they came to Mirzapur. Her [P.W.02] father-in-law [RP Saha] coming to Mirzapur village along with them made all the villagers relieved saying not to quit village.

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135. In respect of the event of attack [as arraigned in charge no. 01] P.W.02 stated that on 07th May, 1971 in the morning her [P.W.02] father-in-law [RP Saha] and her husband moved to own residence at Khanpur, Naryanganj. On the same day, around noon, she herself, her mother-in-law [now dead], her elder sister-in-law Bijoya Showkat Ali Khan [now dead], Mrs. Joyapati [now dead], Protiva Mutsuddi [P.W.01], Ms. Hena and Mrs. Salma Rahman [now dead] had been at the quarter of her [P.W.02] youngest sister-in-law Joyapati [now dead] in Kumudini Hospital Complex when they heard the sound of gun firing from the end of the road in front of the hospital. With this Joyapati and Protiva Mutsuddi came out of the quarter and afterwards they all gathered on the first floor of Bharateswari Homes wherefrom they saw Wadud Moulana, his two

sons Abdul Mannan [now dead], accused Md. Mahbubur Rahman @ Mahebul standing in front of Library of Kumudini Hospital, being accompanied by Pakistani occupation army and cohort Razakars. Wadud Moulana was the chairman of peace committee and a leader of Razakars. Then they [the gang] moved to Bharateswari Homes, they battered Zohur, the guard of Bharateswari Homes. Seeing this Mrs. Joyapati, Principal Protiva Mutsuddi, Vice-Principal Salma Rahman and Ms. Hena came to downstairs when a captain of Pakistani army fixing the gun on Mrs. Joyapoti's forehead wiped up her red vermilion and threatened not to go with religious activities and also termed R P Saha as 'miscreant'.

136. What happened next at Bharateswari Homes, in conjunction with the attack? P.W.02 stated that staying on the first floor she saw Moulana Wadud, his two sons Mannan, accused Mahub and their accomplice Razakars dragging out all girls of Bharateswari Homes, causing molestation to them and asking their identity. Later, keeping Kumudini Complex cordoned off by few Razakars the gang headed towards village-Mirzapur and its neighbouring villages. Next, they heard screaming and saw conflagration from the end of those villages.

137. In respect of the ending phase of the criminal mission P.W.02 stated that at about 05:00/05:30 P.M she saw Pakistani army and Razakars including accused gunning down numerous people to death after making them stood in a line beside a ditch in front of the boundary wall of their[P.W.02] house. Then they committed looting in different houses. After the gang had left the site they, crossing the Louhojong river which was about 100 hands [02 hands equal to 01 yard] wide moved to the ditch adjacent to their house where she found dead bodies of 30/35 civilians. Among them many were employees of the hospital and others were known villagers including Mongol Chandra Saha, Kamal Saha, Bhushan Mondol, and Nagina Busfoir. Then returning back to Hospital Complex she [P.W.02] heard from Dr. Hafizur Rahman that Pakistani occupation army and Razakars carried out wide-ranging search of RP Saha and his son Bhabani Saha in hospital[in conjunction with the first phase of the attack].

138. In respect of reason of knowing the accused P.W.02 stated that accused Md. Mahbubur Rahman @ Mahbub used to move very often through their house and thus she knew him beforehand; that she also knew accused's father Wadud Moulana.

139. After narrating the two events of attack as arraigned in charge nos. 01 and 02. P.W.02 finally claimed justice for what happened

to her family in 1971 and at this stage, she [P.W.02] broke down into tears and sobbed uncontrollably.

140. In the cross examination, in reply to defence question put to her P.W.02 stated that the accused was a resident of village-Baimhati, alongside Kumudini Hospital; that after the independence she was working as a director of Kumudini Welfare Trust and that she heard that during the Liberation War freedom-fighters captured Wadud Moulana and gunned him down to death and his another son Mannan [now dead] was also seriously beaten by the freedom-fighters; that Mannan[brother of accused] was about 30 years old in 1971 and that they did not initiate any case over the event she narrated

141. Defence categorically suggested, as defence case, to the P.W.02 that in August, 1971 Wadud Moulana himself handed over his son accused Mahbubur Rahman to Pakistani occupation army and Mahbub was kept in jail till end of October, 1971; that during the war of liberation, after Wadud Moulana was killed by the freedom-fighters accused Mahbubur Rahman got release from jail and then he[accused] joined the war of liberation. P.W.02 blatantly denied all these defence suggestions put to her.

142. P.W. 03 Biswas Durlav Chandra [67/68] is a resident of village-Bawar Kumarjani, under police station-Mirzapur of District Tangail. In 1971 he was a student of second year of H.S.C in Tangail Karatia Sadat College. He is a freedom fighter. Now he is elected Commander of Mirzapur Thana Muktijodhdha Sangsad. He testified some crucial facts, in addition to facts materially related to the event he experienced.

143. Before testifying what he experienced about the event of attack P.W.03 stated that on 3rd April, 1971 Pakistani occupation army got stationed in Tangail by setting their camp at circuit house. Then Peace Committee was formed under the headship of Moulana Wadud and his two sons Abdul Mannan [now dead] and Md. Mahbubur Rahman @ Mahbub[accused] used to move around the locality carrying arms with them, make the innocent civilians particularly belonging to Hindu community scared and commit looting.

144. In respect of a fact that occurred before the event arraigned in charge no.01 P.W.03 stated that he came to know from people that on 29th April R P Saha, his son Bhabani Prasad Saha Rabi and Superintendent of Kumudini Medical College Hospital Dr. Hafizur Rahman went to the Governor House to meet Tikka Khan. R P Saha and his son were taken away by Pakistani army when they

came out from the Governor House. Dr. Hafizur Rahman came back Mirzapur and disclosed it which made the minority community of Mirzapur panicked.

145. P.W.03 next stated that possibly on 05th May [1971] he came to know from villagers that R P Saha and his son returned back to Mirzapur. Then he [P.W.03] and neighbouring people moved to meet Ranada Prasad Saha [RP Saha] when he made them relieved saying nothing would happen in Mirzapur. With this they, particularly the people of Hindu community became comforted.

146. In respect of the event of attack P.W.03 stated that on 07th May, 1971 he [P.W.03] heard that R P Saha and his son went to their residence at Khanpur, Naryanganj. On that day he went to Mirzapur *hut* (weekly farmer's market) and about 02:30-02:45 P.M came to know that local Razakars, Peace Committee members and the Pakistani occupation army had launched attack at Kumudini Hospital. Having heard it, many of them started moving towards Kumudini Hospital. But seeing the army men and Razakars standing in front of the gate of the hospital, he went into hiding inside a bush, east to the Hospital.

147. P.W.03 went on to narrate that remaining in hiding he saw Pakistani occupation army being guided by Wadud Moulana and

Razakars started looting at village- Mirzapur and its neighbouring villages-Andhra, Sorishadair, Baimhati and Kanthalia and also could hear piercing outcry from the end of those villages and saw the residents of those vicinities running.

148. P.W.03 also stated that he had been inside the hiding place inside the bush till the army and Razakars had left the site at about 05:30 P.M when he heard indiscriminate gun firing from the end of village- Mirzapur, about 200 yards far from the hiding place and such gun firing continued for about half an hour.

149. In respect of reason of knowing the accused P.W.03 stated that accused Mahbub , his brother and father Wadud Moulana were the local residents and thus he knew them since prior to the war of liberation. Freedom-fighters detained Wadud Moulana in the first part of November, 1971 and killed him for his activities he did. He [P.W.03] went to India at the end of June, 1971 to join the war of liberation. The people of minority community of the locality being sacred had to take refuge at different places, after the event.

150. On cross-examination, in reply to defence question put to him P.W.03 stated that accused's house was about one and half-two kilometers far from their house; that he could not say whether any case was lodged earlier over the event against the accused.

151. P.W.03 denied the defence suggestion put to him that the accused joined the war of liberation after his father died; that the accused and his two brothers used to oppose the activities of their father; that the accused was not a Razakar and that what he testified was untrue and out of rivalry as the accused contested in Mirzapur Municipality Mayor election against him [P.W.03] and that he did not see or hear what he testified implicating the accused.

152. P.W. 04 Krishna Gopal Saha [62/63], a resident of village- Mirzapur, under police station- Mirzapur of District Tangail is the son of victim Madhusudan Saha. In 1971 he was a student of class VIII. He is a direct witness to the facts crucially chained to the event of attack that resulted in killing a large number of Hindu civilians of the localities as arraigned in this charge no.01.

153. P.W.04 stated that on 07th May, 1971 at about 03:00-03:30 P.M. he saw some Razakars and Pakistani occupation army coming towards their house and with this he went into hiding inside a bush nearer to their house wherefrom he saw the Razakars and army men entering into their house. Few minutes later, he saw Moulana Wadud, his two sons Abdul Mannan [now dead] and Md. Mahbubur Rahman alias Mahebul along with Pakistani occupation army and Razakars taking away his [P.W.04] father Madhusudan Saha and his brother Subhash Saha on forcible capture.

154. P.W.04 also stated that remaining inside the hiding place he could hear loud screaming of villagers, saw the army men and Razakars setting houses of their own and Rishikesh Saha, Dinabondhu Saha and Haridas Saha's on fire. Afterwards, at about 05:00-05:30 he heard random gun firing from the west end and then he came out from the bush when the army men and Razakars had left the site.

155. P.W.04 next stated that he came to know from people that Pakistani army and Razakars committed looting and burnt down houses on fire in Hindu dominated villages- Mirzapur, Andhra, Sorishadair, Baimhati and Kanthalia village; that his captured father, brother and other Hindu people were gunned down to death at the place adjacent west to RP Saha's house at Mirzapur making them stand beside a big ditch and bodies were dumped in the said ditch.

156. P.W.04 also stated that then he and other villagers rushed to the place west to RP Saha's house where they found bullet hit dead bodies of his father, brother, their neighbours namely Kamal Chandra Saha, Uma Charan Saha, Dharendra Nath Saha, Goda Dhar Saha and many others lying in the ditch.

157. On the same day he [P.W.04] also heard that the accused Md. Mahbubur Rahman alias Mahbub alias Mahebul, his father Thana Peace Committee Chairman Wadud Moulana [now dead], his brother Razakar Md. Abdul Mannan [now dead] being accompanied by Pakistani occupation army had launched attack at Kumudini Complex, just before conducting attack at their village, intending to search for R P Saha and his son Bhabani Prasad Saha alias Rabi. But being failed to get them on hand, they humiliated doctors, nurses, and teachers and assaulted and molested the female students of the Bharateswari Homes. P.W.04 finally stated that he knew the accused, his father and his brother beforehand as they were from their neighbouring village.

158. In the cross examination he stated that after the Liberation War the accused used to stay at his own home; that no complaint was initiated earlier over the event against the accused; that he could not state the name of other Razakars but the accused and that he heard that in 1971 during the war of liberation Moulana Wadud was killed by the freedom-fighters.

159. P.W.04 denied the defence suggestions put to him that the accused had conflict with his father and brother Mannan as he [accused] took stance in favour of the war of liberation and thus his [accused] father sent him [accused] to jail and that what he testified

was untrue and tutored by Pulok Sarker who was a contestant in union council election against the accused.

160. P.W. 05 Tarapada Saha [64/65], a resident of village-Mirzapur, under police station-Mirzapur of District Tangail is the son of one victim Godadhar Saha. In 1971 he was 17/18 years old and an examinee of Secondary School Certificate (SSC). He is a direct witness to the central facts relating to the attack that resulted in his father's killing along with numerous Hindu civilians, on forcible capture.

161. P.W.05 stated that on 07th May, 1971, around 02:00 noon, he went to his father's shop, on the south bank of the river Louhojong and sent his father to home to have lunch. One hour later he came to know from people that Pakistani army's vehicles arrived on the bank of the river. With this he came out of the shop and saw the army men getting down from army vehicles when one wearing Panjabi-Pajama and another wearing shirt-pant were giving direction to Pakistani army men.

162. What the P.W.05 experienced next? P.W.05 stated that then he saw the army men and their accomplices being divided into groups started moving towards east, west and south. One group moved to Mirzapur. He [P.W.05] then rushed to home, keeping the shop

closed and shared the event to his father. His mother, sister and he then went into hiding inside a jute field, 60/70 hands south to their home, as told by his farther.

163. P.W.05 next stated that after some time, he saw, remaining stayed in the hiding place, Razakar Mahbub [accused] along with cohort Razakars and army men entering into their house and then they were taking away his [P.W.05] father Godadhar Saha, on forcible capture towards west. He saw many houses of their villages on fire, also heard thunderous screaming of people. One hour later, around 05:00/05:30 evening, he heard sound of random gun firing. Few minutes later, he came out of the hiding place, after the army and Razakars had left the site.

164. P.W.05 next stated that coming back home he saw the houses of Rishikesh Saha, Madhusudan Saha, and Haridas Saha ablaze. He came to know from others that his [P.W.05] father along with others was gunned down to death taking them near R P Saha's house.

165. Could P.W.05 locate his father's dead body? P.W.05 stated that he moved to the south of RP Saha's house where he found 33 bullets hit dead bodies lying in a ditch. He identified his father's

dead body. He also identified dead body of his uncle Madhusudan Saha, Subhash Chandra Saha, Kamal Saha.

166. In respect of the first phase of attack launched at Kumudini Complex P.W.05 is a hearsay witness. P.W.05 stated that he came to know from people that Pakistani occupation army and Razakars being accompanied by peace committee chairman Wadud Moulana[now dead], his son Mahebul @ Mahbub, Razakar Abdul Mannan[now dead] on that day, around 02:00 noon by launching attack at Kumudini Complex searched for R P Saha and his son Bhabani Prasad Saha alias Rabi. But being failed to get their trace there, they humiliated doctors, nurses, female students and employees of the Homes.

167. P.W.05 stated that he heard too that on that day the Razakars he named and the army men carried out looting and burnt down houses on fire in Hindu majority villages namely Mirzapur, Andhra, Sorishadair, Baimhati and Kanthalia village and in conjunction with such attack they gunned down Hindu civilians to death taking them, on forcible capture, near a ditch west to RP Saha's house. Finally, the P.W.05 stated that he knew the accused Mahbub, his father and brother before hand as they were the residents of their neighbouring village-Baimhati.

168. On cross-examination, in reply to defence question put to him P.W.05 stated that he heard that during the war of liberation, Wadud Moulana killed by the freedom-fighters; that accused Mahub @ Mahebul contested twice in UP election; that in 1971 accused was affiliated with Muslim League [a pro-Pakistan political party]; that there had been a jute field south to their house; that they did not initiate any case earlier over the event he testified.

169. P.W.05 denied the defence suggestions put to him that the accused was not a Razakar; that no event he testified happened; that the accused was not involved in alleged event; that he did not see and hear what he testified and that what he testified was untrue and tutored.

170. Defence however, does not seem to have made any effort to refute the practicability of seeing the act of forcibly taking away his [P.W.05] father and finding 33 bullets hit dead bodies of Hindu civilians in a ditch south to the house of RP Saha. Even this crucial fact does not appear to have been denied categorically, in cross-examination.

171. Defence failed to taint the truthfulness of the sworn version of P.W.05, the son of one victim, who is a direct witness to facts

significantly chained to the attack and accused's role and participation in accomplishing the purpose and intent of the criminal squad.

172. P.W. 06 Saha Pran Gopal [63/64] is a resident of village- Andhra, under police station- Mirzapur of District Tangail. In 1971 he was 15/16 years old and a student of class IX in Mirzapur Sodoy Krishna High School. He is a hearsay witness.

173. P.W.06 stated that on 07th May, 1971 at around 02:30/03:00 P.M had been at home when he saw many houses of their village and also of neighbouring villages Mirzapur, Kathalia, Baimhati, and Sorishadair ablaze till 05:00 P.M. He heard that a group formed of Pakistani army, Razakars, peace committee chairman Wadud Moulana, accused Razakar Mahbub and his brother Razakar Mannan [now dead] had launched attack at that village.

174. P.W.06 next stated that at about 05:00/05:30 P.M he heard indiscriminate gun firing and screaming of people from the end the native home of RP Saha. Then he went to the place west to R P Saha's house, after the gang had left the site and found bullet hit blood stained dead bodies of 33 Hindu civilians. Many of them were their neighbours and thus he could identify them.

175. P.W.06 also stated that he heard from the people gathered near the dead bodies that Razakars he named and army men, on the same day, searched for R P Saha and his son Bhabani Prasad Saha alias Rabi at Kumudini Complex. But being failed to get them they humiliated doctors, nurses of the hospital and teachers and the female students of the Homes.

176. On cross-examination P.W.06 stated in reply to defence question put to him that he heard that Wadud Moulana [father of the accused] used to cause torture to people and thus he was killed by public and that the accused did not continue staying at his home after independence.

177. P.W.06 denied the defence suggestions put to him that the accused was a student of class VI in 1971; that the accused used to work in favour of the war of liberation which was not liked by his father and brother Mannan and thus he was sent to jail by his father; and that what he testified implicating the accused was untrue and tutored.

178. P.W. 09 Anil Kumar Saha [64/65] is a resident of village-Mirzapur, under police station-Mirzapur of District Tangail. In 1971 he was 16/17 years old. He is the son of one victim Haridas Saha.

179. P.W.09 stated that on 07th May, 1971, Friday he had been at home. The event of attack was carried out on that day at their village-Mirzapur in between 03:00 P.M and 05:00 P.M. The accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, his father Abdul Wadud @ Wadud Moulana [now dead], his brother Razakar Md. Abdul Mannan [now dead] being accompanied by 20/30 Razakars, Pakistani occupation army carried out attack at Hindu dominated localities of villages- Baimhati, Andhara, Sarishadair, Durgapur, Kanthalia looted households, destroyed 200/250 houses by setting those on fire, gunned down 33 innocent Hindu civilians to death on the bank of a big trench, west to the house of R P Saha. At that time he [P.W.09] had been at home and heard gun firing from the end of RP Saha's house.

180. P. W.09 stated too that he heard random gun firing from the end of RP Saha's native home, remaining stayed at home. On the following day he moved to the killing site where he found some dead bodies still lying there and also saw the people burying some dead bodies.

181. On cross-examination, P.W.09 denied the defence suggestions that the accused was not a Razakar; that the accused was a man of having stance in support of the war of liberation; that he was not

involved in the event he testified; and that what he testified implicating the accused was untrue and tutored.

182. P.W. 11 Abul Kalam Azad Bir Bikrom [66/67] is a resident of Holding- 909, Par Dighulia, under police station- Tangail Sadar of District Tangail. In 1971 he was 19/20 years old and as student of first year of BA, in Karatia Sadat College. He is a valiant freedom fighter. He is a hearsay witness, in respect of the event of attack arraigned in this charge no.01

183. P.W. 11 Abul Kalam Azad Bir Bikrom is a gallant freedom fighter. He also came to know from the source of their company that on 07th May, around noon, a criminal squad formed of Pakistani occupation army, Razakars, Wadud Moulana and his two sons by launching attack at Hindu dominated village- Mirzapur and adjacent vicinities carried out looting, burning down houses and detained 33 Hindu civilians who were gunned down to death near a big trench, adjoining to RP Saha's native home.

184. P.W.11 participated in the Liberation War under Bangabeer Abdul Kader Siddique, as regular force under company commander Abdul Gafur Bir Protik. He [P.W.11] was the Commander of 'Suicide Squad' of the Company. Now he is the Deputy Commander of Tangail Muktijodhdha Sangsad.

185. Before testifying the facts related to the event of attack as arraigned in charge no.01 P.W.11 stated that on 3rd April, 1971 Pakistani occupation army got stationed in Tangail by setting their camp in Tangail Circuit House. Then Peace Committee was formed in Mirzapur under the leadership of Moulana Wadud who was also a member of Tangail district peace committee. P.W.11 also stated that Mahub and Mannan [now dead] the sons of Peace Committee Chairman Moulana Wadud @ Wadud Moulana were infamous Razakar in Mirzapur.

186. What the P.W.11 heard in respect of the event of attack constituting the offences of which the accused has been indicted? P.W.11 stated that during the Liberation War he came to know from the source of their company and other sources as well that on 07th May, 1971 Friday in between about 03:00/03:30 P.M and 05:00/05:30 P.M a group formed of Pakistani occupation army, Razakars, Wadud Moulana and his two sons by launching attack at Hindu dominated village-Mirzapur and adjacent vicinities carried out looting households, burning down houses and detained 33 civilians belonging to Hindu religious group and gunned them down to death taking on the bank of a big ditch, nearer to RP Saha's house.

187. On cross-examination P.W.11 stated in reply to defence question that he could not say whether Wadud Moulana had any other son excepting the two sons. P.W.11 denied the defence suggestion that the accused was not a Razakar; that the accused was sent to jail by his father as he took stance in favour of the war of liberation and that he did not hear what he testified.

188. P.W. 12 Razib Prasad Saha [50] is a resident of village- Mirzapur under police station- Mirzapur of District Tangail and 72, Siraj-ud-doula Road, Khanpur, police station- Naryanganj of District Naryanganj. He is now the Managing Director of Kumudini Welfare Trust. The founder of Kumudini Welfare Trust Rai Bahadur Ranada Prasad Saha [RP Saha] is his grandfather. During the Liberation War, he was three years old.

189. P.W.12 is a hearsay witness. He stated that he came to know from his senior family inmates, his mother Sreemoti Saha [P.W.02], Aunt Mrs. Joyapati and Bijoya Khan, Aunt Protiva Mutsuddi [P.W.01] that in 1971 during the Liberation War his grandfather, father, employees of Kumudini Welfare Trust, students, innocent people and numerous civilians of Hindu community were killed and tortured by local Razakars in collaboration with the Pakistani occupation army and their accomplice Razakars.

190. P.W.12 also stated that he heard too that on 29th April his grandfather R P Saha, his father Bhabani Prasad Saha Rabi went to Governor House in Dhaka as called; that after they came out they were taken away by Pakistani occupation army from in front of the gate of the Governor House. Five-six days later, they were made dumped in front of their home at Khanpur, Naryanganj and they then came to Mirzapur on the same day and two days later, on 07 May[1971] they again went back to Khanpur, Naryanganj .

191. What the P.W.12 heard in respect of the event of attack at Kumudini Complex as arraigned in charge no.01? P.W.12 stated that he heard that the then Thana Peace Committee Chairman Abdul Wadud @ Wadud Moulana [now dead], his son Md. Mahbubur Rahman @ Mahub @ Mahebul, and another son Razakar Md. Abdul Mannan [now dead] accompanied the group formed of Pakistani occupation army and Razakars in launching attack at Kumudini Complex in causing persecution to the employees, teachers and students. Then the gang crossing the river Louhojong [200/250 hands wide] moved to their village-Mirzapur and neighboring villages, looted households, destroyed 200/250 houses by setting those on fire and detained 33 civilians belonging to Hindu religious group and gunned them down to death taking them on the bank of a big ditch alongside their house. Many of

Hindu civilians so annihilated were the employees and officials of Kumudini Complex.

Finding with Reasoning on Evaluation of Evidence

Prosecution argument

192. Mr. Rana das Gupta the learned prosecutor submits that the event of attack as arraigned in this charge no.01 was chiefly calculated to wipe out Ranada Prasad Saha [RP Saha], a prominent philanthropist perceiving him the leading person of the Hindu community. But finding him not available at Bharateswari Homes, an institution run by RP Saha the gang of attackers inflicted serious abuse and molestation causing serious mental harm to girls, employees and women of Bharateswari Homes; that in continuation of attack the gang then carried out attack at villages surrounding to Bharateswari Homes that resulted in killing of 33 Hindu civilians, devastating activities of civilians' property. Aggression was not only against the Hindu civilians but also against the institutions built up by RP Saha for the cause of well being of humanity. Specific intent of the gang was to destroy the Hindu community either whole or in part, constituting the offence of 'genocide', the learned prosecutor added.

193. Learned prosecutor next submits that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul knowingly and sharing

intent of the troops accompanied them to the crime sites and by his explicit and culpable act and conduct participated, aided, abetted, substantially contributed to the actual commission of the crimes; that not only the accused but his father Wadud Moulana a potential member of local peace committee and his brother Abdul Mannan a local notorious Razakar also were with the gang, sharing intent.

194. Mr. Rana Das Gupta, the learned prosecutor next submits that the arraignment brought in this charge rest upon testimony of 09 witnesses who have been examined as P.W.01, P.W.02, P.W.03, P.W.04, P.W.05, P.W.06, P.W.09, P.W.11 and P.W.12. Of them P.W.01, P.W.02, P.W.03 are key witnesses who had opportunity of watching facts materially related to both phases of the event of attack that eventually resulted in killing 33 Hindu civilians. Unshaken testimony of these PWs shall patently demonstrate accused persons' culpable and active role which substantially facilitated the criminal enterprise to which he was conscious part in accomplishing crimes directing Hindu population. Defence could not bring anything to negate accused's participation in accomplishing the crimes, by cross-examining the P.W.s.

Defence argument

195. On contrary, **Mr. Gazi M.H Tamim** the learned state defence counsel submits that the accused has been prosecuted on untrue

allegation of involvement in committing the crimes of which he has been indicted in charge no.01; that no case was lodged on the alleged event against the accused instantly after independence; that delayed prosecution creates doubt as to truthfulness of accused's engagement in committing alleged offences; that seeing the accused with the gang of attackers as testified by the P.W.s was not practicable; that seeing the alleged criminal activities carried out at villages remaining stayed on the first floor of Bharateswari Homes as testified by P.W.01 and P.W.02 was improbable.

196. The learned state defence counsel next submits that rather, the accused joined the war of liberation in the month of November, 1971, after his father was killed by freedom-fighters for his notorious activities, in exercise of his affiliation in local peace committee; that the accused contested in local government election, after independence, and that he has been falsely implicated in this case out of rivalry, the learned defence counsel added.

197. On eying to the indictment it transpires that the event of abominable attack as arraigned in this charge no.01 was carried out in two phases and on the same day, by the same criminal enterprise to which the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul was an active part.

198. It is alleged that the gang of perpetrators initiated the criminal mission by conducting its attack first at Kumudini Complex and then it moved to the other bank [south bank] of the river Louhojong in Mirzapur. In addition to looting and destructive activities, 33 civilians of Hindu community forcibly captured from Hindu dominated vicinities under Mirzapur police station were killed taking them at the place adjoining to RP Saha's native home at Mirzapur, the charge framed alleges.

199. It transpires that none of witnesses examined in support of this charge had opportunity of seeing both phases of attack, all criminal activities carried out and act of killing the detained Hindu civilians. The learned prosecutor Mr. Rana Das Gupta argued that it would appear that some of witnesses testified facts crucially related and chained to the commission of principal crimes and accused's participation therewith.

200. In respect of issue on delayed prosecution as agitated by the learned state defence counsel we have already rendered our reasoned finding in the preceding deliberation. We just reiterate that there has been no statutory limitation in prosecuting and trying the accused for offences which are known as system crime or group crime of which he is arraigned.

201. In the case in hand, all the arraignments brought in charges rest chiefly on oral testimony. Prosecution is burdened to prove the accusation brought, by adducing credible evidence, oral or documentary. However, prosecution requires proving that—

(i) A group formed of Pakistani occupation army , Razakars being accompanied by accused Mahbubur Rahman @ Mahebul first launched attack at Kumudini Complex on 07th May at about 02:00 P.M;

(ii) the female students of Bharateswari Home, nurses, employs and others were made mentally harmed, seriously humiliated and molested showing hatred to Hindu religion, in conjunction with the attack at Kumudini Complex;

(iii) the key purpose of the gang in attacking Kumudini Complex was to secure unlawful capture of RP Saha;

(iv) the gang then moved to Mirzapur, on the other bank of the river Louhojong where it deliberately and violently carried out looting, burning down civilians' property, forcible capture of Hindu civilians;

(v) 33 detained Hindu civilians were killed taking them near a big stench adjacent to RP Saha's native home;

(vi) specific intent of the gang of attackers was to destroy Hindu religious group of the locality of Mirzapur, either whole or in part;

(vi) accused Mahbubur Rahman @ Mahebul was consciously with the genocidal gang, sharing the specific intent and knowing the consequence; and

(vii) accused Mahbubur Rahman @ Mahebul actively aided, abetted, substantially contributed and participated in accomplishing the crimes with genocidal intent, in exercise of his affiliation in locally formed Razakar Bahini.

202. Tribunal notes that identity and competence of a witness play a decisive role in resolving the question of his or her credibility. In the case in hand, it transpires from the arraignment brought in charge no.01 that the first phase of attack was launched at Kumudini Complex, Mirzapur. The next phase of attack was conducted at village-Mirzapur, the native village of RP Saha and surrounding Hindu dominated vicinities that resulted in mass killing of 33 Hindu civilians, the charge framed arraigns. The entire attack continued for couple of hours and it happened in day time. Both the phases of attack were chained together, it appears.

203. Bharateswari Homes is an educational institution of the Kumudini Welfare Trust. Danabir Ranada Prasad Saha [RP Saha] a notable philanthropist was the key person of the Trust. On his assiduous contribution and innovation the institutions including hospital of the Kumudini Welfare Trust came into light. Contribution of RP Saha was aimed to develop the society, promote women education and for the well being of humankind, irrespective of race and religion. RP Saha toiled persistently for causing

advancement of women education and social development, in his whole life. His noble deeds made him recognized in home and abroad. All these are undisputed.

204. P.W.01 Protiva Mutsuddi who testified the facts related to both phases of attack is a pertinent witness. In addition to describing what she observed, in conjunction with the attack P.W.01 also narrated a portrayal of RP Saha's contribution as she has been attached with the institution of Kumudini Welfare Trust since 1963. Thus, let us first eye on what the P.W.01 stated in respect of her own affiliation in Kumudini Welfare Trust and indefatigable contribution laid by RP Saha in establishing and advancing the institutions.

205. Testimony of P.W.01 Protiva Mutsuddi demonstrates that she joined in Bharateswari Homes as a lecturer and since 1963 to 1965 she worked as an acting Principal. Then since 1968 to 1998 she worked as its Principal and went on retirement in 1998. P.W.01 thus seems to have dedicated her education and philosophy for the cause of institutions run under the Kumudini Welfare Trust. In 2002 she has been awarded prestigious '**Ekushe Padak**' [the second highest civilian award in Bangladesh] as an educationist. Naturally, she is fairly acquainted with the Trust and its key contributor RP Saha. Her [P.W.01] testimony and narrative she

made in Tribunal must carry value in resolving facts related to the event of attack

206. It has been unfolded too from the unimpeached narrative of P.W.01 that Wadud Moulana was extremely antagonistic and aggressive to RP Saha and his noble deeds which were meant for wellbeing of society and humanity. Version of P.W.01 depicts that after Indo-Pakistan War of 1965, the then East Pakistan Governor Munaem Khan declared 'Kumudini Welfare Trust of Bengal' as enemy property and conspired against RP Saha which made his activities increasingly lessened that resulted in economic constraints in running all institutions on free service basis . At that time Moulana Wadud [father of the accused] of Mirzapur was bitterly against of R P Saha's philanthropic efforts.

207. Such adverse state of affairs was experienced by P.W.1 as at that time she had been serving as the Principal of Bharateswari Homes. Defence does not appear to have made any effort to refute this crucial fact which was related to the context of antagonistic thoughts and attitude that Wadud Moulana had against RP Saha and the institutions under the Trust.

208. Thus, prior intense hostile attitude to RP Saha and his institutions, as divulged above together with the policy and plan of

Pakistani occupation army significantly imbued Wadud Moulana and his two sons including the accused Mahbubur Rahman @ Mahebul to get engaged in launching attack, being active part of criminal enterprise formed of Pakistani occupation army --- it may justifiably be deduced.

209. It may also be unerringly inferred from the facts and circumstances unveiled from corroborative testimony of P.W.01 and P.W.02 that the ready and key goal of such attack at Kumudini Complex and Bharateswari Homes was to secure unlawful capture of RP Saha. But the troops accompanied by the accused, his father and brother [both are now dead] did not find him on hand there and then they first started carrying out prohibited acts including act of coercing the girls of the Bharateswari Homes, molestation of female students and abusing acts and utterance. Such acts caused serious mental harm to girls and female students.

210. It remains undisputed that just few days prior to the event of attack launched at Kumudini Complex RP Saha and his son met Tikka Khan at Governor House in capital city of Dhaka, on call and they were picked up by some army men when they came out of the Governor House.

211. There has been no direct evidence before us as to why RP Saha and his son had to meet Tikka Khan at the Governor House and why they were picked up by army men when they came out therefrom. But testimony of P.W.01 demonstrates that Dr. Hafizur Rahman shared this fact with them when he came back to Mirzapur. Afterwards, RP Saha's daughter Joyapati contacted Lieutenant Colonel Kayani, who happened to be the Principal of Mymensingh Cadet College. Lieutenant Colonel Kayani informed that R P Saha and his son were kept in an Army Camp. This piece of unshaken version leads to the presumption that RP Saha and his son were so taken away for grilling at army camp.

212. It is not known why RP Saha and his son got released later on. But however, it may be inferred that the Pakistani army men who took them away had no intention of wiping them out, for reasons best known to them. Purpose was to collect information by interrogation, without causing any harm, it may be justifiably presumed too.

213. It may also be inferred too that RP Saha and his enduring contribution for the cause of wellbeing for mankind was not unknown to Tikka Khan and also to the army men who picked them up and later on had left them at their house in Narayanganj as well. Thus, it may be presumed that RP Saha's internationally known

philanthropic profile was the reason of setting him and his son at liberty.

214. Intention of the army men who so picked up RP Saha and his son when they came out from the Governor House obviously was not to wipe them out even for the reason of their membership in Hindu religious group. It may be inferred too that at Governor House RP Saha and his son was not subjected to any harm, mental or bodily. Rather, it is evinced that returning back home in Naryanganj RP Saha came to his native village-Mirzapur and made the villagers relieved saying that no harm would be caused to them.

215. From the above it may be deduced irresistibly that Pakistani occupation army stationed in the capital city of Dhaka were not aggressive to RP Saha. But RP Saha became the prime prey of a group of army men stationed in Mirzapur, Tangail and their notorious local collaborators including the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, his father and brother Mannan.

216. Facts and circumstances as have been unfolded from uncontroverted testimony of P.W.01 and P.W.02 that on intense instigation and approval of the local Razakars including the accused Mahbubur Rahman @ Mahebul, his bother Razakar Mannan and his father notorious chairman of local peace committee Moulana

Wadud participated in the designed violent attack which was conducted first at Kumudini Complex.

217. What happened in conjunction with the first phase of attack launched at Bharateswari Homes? What was the goal of conducting such systematic attack? It stands proved from consistently corroborative testimony of P.W.01 and P.W.02, two direct witnesses that the accused Mahbubur Rahman @ Mahebul and his father Wadud Moulana [chairman, Mirzapur peace committee] and brother Mannan [both are now dead] visibly, being part of the criminal enterprise approved, encouraged and instigated the troops in carrying out vulgar prohibited and abusing activities to the female students, nurses and others at Kumudini Complex which caused serious mental harm to them.

218. P.W.01 saw the gang accompanied by the accused coming at Bharateswari Homes. P.W.01 heard from Dr. Hafizur Rahman that accused and his father and brother kept mum when army men started uttering racial slur [Malaun, Hindu] against him.

219. From testimony of P.W.01 we got it proved that Wadud Moulana and his sons moved to Bharateswari Homes along with members of Pakistani occupation army. They threatened the female students and women of Bharateswari Homes not to perform ritual

to deities and termed R P Saha as 'Miscreant'. All these happened in presence of accused, his father and brother and on their explicit endorsement. In this way the accused substantially assisted the gang in carrying out prohibited and coercing acts at Kumudini Complex, sharing common intent.

220. P.W.01 also narrated that one captain of Pakistani army ordered the girls [of Bharateswari Homes] to come down. But the management authority of the Homes did not consent. Then the accused and his cohort Razakars dragged down all girls, behaved indecently, molested them and made them stood in a line. The girls were asked their names but being panic-stricken they could not say anything. At that time local Officer-in-Charge of Police intervened and said that most of the girls of home were Muslims. Subsequently, keeping the Kumudini Hospital and Bharateswari Homes area under guarded by some Razakars, the gang moved towards Mirzapur, on the other bank of the river Louhojong.

221. The act of dragging down the girls, behaving indecently and causing molestation to girls obviously were prohibited acts which inflicted immense mental harm, trauma and coercion. Intention and purpose of such criminal activities was to spread terror and coercion to materialize the principal goal and intent of the mission.

222. By such act of aiding and abetting the accused and his accomplices consciously and knowing the consequence participated in carrying out attack at Kumudini Complex, sharing intent of the troops. In this regard we recall the observation of ICTR Appeal Chamber in the case of *Muvunyi* that --

“An accused may be convicted of aiding and abetting when it is established that his conduct amounted to tacit approval and encouragement of the crime and that such conduct substantially contributed to the crime.

[Muvunyi, ICTR Appeal Chamber, August 29, 2008, para. 80]

223.. It stands proved from uncontroverted testimony of P.W.01 that in conjunction with the attack at Bharateswari Homes, the Officer-in-Charge [of police station] told the army men in presence of accused, his father and brother that most of the female students, dragged out to downstairs were Muslims. Presumably, the OC intended to keep the girls unharmed and safe by such utterance when the accused, his brother and father remained mum. Such omission or culpable conduct of accused, his brother and father was rather intended to explicitly endorse the act of causing further harm to those girls dragged out to the ground floor of the Complex, it may be lawfully inferred. Such act of approval on part of the accused rather encouraged the squad to go ahead with criminal

activities at Bharateswari Homes causing serious mental harm to girls.

224. At the same time, it has been proved beyond reasonable doubt from the facts unveiled that accused Md. Mahbubur Rahman @ Mahebul was present with the gang not as a mere spectator but knowing consequence and sharing intent of the gang and the key intent was to secure unlawful capture of RP Saha and his son Bhabani Saha which would not have been possible without effective assistance of accused, his father, brother and their cohort Razakars.

225. Thus, it is hard to believe that the accused remained stayed with the criminal enterprise at the time of launching attack at Kumudini Complex for any holy purpose and as mere spectator. Rather, the accused is found to have had active and physical participation in accomplishing criminal acts conducted at the Complex, in conjunction with the first phase of attack.

226. Testimony of P.W.02 demonstrates too that immediate after the criminal mission ended, she [P.W.02] heard from Dr. Hafizur Rahman that the accused, his cohorts and army men carried out extensive search of RP Saha and his son Bhabani Saha, in

conjunction with the attack at hospital [Kumudini Hospital].
Defence could not controvert it in any manner.

227. In view of above it may be unerringly deduced that launching attack at Kumudini Complex was readily intended to wipe out RP Saha and his son Bhabani Saha, perceiving them to be the leading persons of the local Hindu community, although RP Saha devoted his life and the wealth he achieved for the cause of wellbeing of humanity and mankind, irrespective of race and religion. By launching calculated attack the perpetrators intended not only to destroy the local Hindu community but to cause devastation of the institutions of Kumudini Welfare Trust which were on enduring advancement by virtue of RP Saha's persistent noble deeds.

228. What happened next, in conjunction with the second phase of attack? It is found from testimony of P.W.01 that after the gang moved towards Mirzapur, on the other bank of the river Louhojong Mrs. Joyapati [R P Shaha's daughter], Mrs. Sri Moti [R P Shaha's daughter- in- law] and she [P.W.01] moved to first floor of the building [of the complex] wherefrom they could see smoke from the end of different villages and heard screaming.

229. The above unshaken version goes to prove that immediate after the criminal enterprise had left the Kumudini Complex it

started carrying out devastating activities at the vicinities located on the other bank [south bank] of the river Louhojong.

230. It is found from unimpeached version of P.W.01 that before the gang moved to Mirzapur village, Kumudini Hospital, Bharateswari Homes area was kept guarded by the Razakars and Wadud Moulana, his two sons being part of the divided groups had launched attack at Hindu dominated villages. Defence could not refute it. Thus, it has been proved that the accused remained actively stayed with the squad and participated also in the next phase of attack at village-Mirzapur and Hindu dominated neighbouring vicinities.

231. P.W.01 and P.W. 02 saw the accused actively participating in accomplishing the mass killing. It was practicable of seeing it even from Bharateswari Homes as the killing site was adjacent to RP Saha's native home which could be noticed even from the Bharateswari Homes located on the north bank of the river Louhojong. The river was not much broad as testified by the witnesses. Defence could not impeach it.

232. Facts unveiled force to deduce that the criminal mission did not get halted just by launching attack at Bharateswari Homes of Kumudini Complex. The criminal gang formed of Pakistani

occupation army, accused, and his father Wadud Moulana, brother Mannan and cohort Razakars continued their designed mission till 05:00-05:30 P.M. by accomplishing killing of a large number of Hindu civilians and burning down civilians' property of villages surrounding to the Bharateswari Homes.

233. P.W.02 heard from Dr. Hafizur Rahman that Pakistani occupation army and Razakars carried out wide-ranging search of RP Saha and his son Bhabani Saha in hospital, in conjunction with the first phase of the attack.

234. It stands proved that the gang in conjunction with the next phase of attack targeted the Hindu dominated vicinities which fairly leads to the inference that Hindu civilians were their target and in execution of 'specific intent' the gang first attacked the Kumudini Complex intending to secure capture of RP Saha, the leading person not only of Hindu community but a person who was engaged to go on with glorious contribution to mankind and humanity.

235. In addition to seeing the act of launching attack at Mirzapur and its adjacent vicinities, remaining in hiding inside a bush P.W.03 Biswas Durlav Chandra also stated that he saw Wadud Moulana and his two sons the accused Mahbub @ Mahebul and Mannan

[now dead] accompanying the troops when they moved back. It gets corroboration from the facts unveiled in testimony of P.W.01, P.W.02, P.W.03, P.W.04 and P.W.05. This unshaken version of P.W.03 proves that the accused was with the group of attackers when it carried out atrocities at Mirzapur and surrounding vicinities.

236. Obviously the accused did not remain stayed with the squad as a mere spectator. It is found from testimony of P.W.03 that Wadud Moulana and his two sons Abdul Mannan [now dead] and Md. Mahbubur Rahman @ Mahbub[accused] used to move around the localities carrying arms with them , make the innocent civilians particularly belonging to Hindu community scared and commit looting.

237. The above piece of version is not directly linked to the event of attack. But it mirrors grave notoriety the accused achieved by his unlawful and prohibited acts in 1971 which strengthens participation of the accused and his father and brother, also in conducting the second phase of attack which resulted in mass killing targeting Hindu population.

238. P.W.03 heard indiscriminate gun firing at about 05:30 from the end of village- Mirzapur, which continued for about half an

hour. It proves that the criminal mission ended with indiscriminate killing of numerous Hindu civilians. All the victims belonged to Hindu religious group—defence does not dispute it.

239. The attack was gravely devastating and extremely detrimental to the livelihood of Hindu population of the crime vicinities as it has been found from testimony of P.W.03 that the people of minority community of the locality being scared had to take refuge at different places, after the event.

240. He [P.W.03] later on coming out of the bush moved to Mirzapur village where he found many bullet hit dead bodies lying behind the boundary wall of RP Saha's house and he could identify the dead bodies of his two classmates Kamal Saha and Suvash Saha. It is not at all disputed.

241. Thus, it stands proved that the victims were brought at the place behind the boundary wall of RP Saha's native home on forcible capture. All the victims belonged to Hindu religion. It would not have been possible to identify and select the victims without substantial contribution and facilitation of the accused and his cohort Razakars, the local collaborators of Pakistani occupation army.

242. P.W.04 knew the accused beforehand as he was a resident of their neighbouring locality. P.W.04 witnessed the squad accompanied by the accused, his father brother and cohort Razakars, from a close distance, taking away his [P.W.04] father and brother who were eventually shot to death. P.W.04 sustained untold trauma and thus he too is a victim of the militia violence. His testimony does not depict any contradiction or sign of uncertainty.

243. Direct testimony of P.W.04 demonstrates that the accused Mahbub actively participated in effecting forcible capture of Hindu civilians, including his [P.W.04] father and brother. Not only that, the accused physically participated even in gunning down the detainees to death after they were brought at the killing site, adjacent to the wall of RP Saha's native home, as found proved from evidence of P.W.01 and P.W.02.

244. There has been nothing to affect the credibility of P.W.04. Rather, his corroborative evidence proves that the accused actively and physically participated in causing unlawful capture of victims leading to their brutal killing. This pertinent fact gets corroboration from evidence of P.W.05, a direct witness to facts related to the atrocities carried out.

245. P.W. 05 Tarapada Saha, a resident of village- Mirzapur, under police station-Mirzapur of District Tangail is the son of one victim Godadhar Saha. He had occasion of observing crucial facts materially related to the attack and accused's participation in accomplishing the criminal mission.

246. In context of the pattern of the violent and widespread attack no one had opportunity to see the entire attack leading to the commission of the killing. But the P.W.05 sustained traumatic experience as he, remaining in hiding inside a jute field saw the gang accompanied by the accused taking away his father on forcible capture. This crucial fact itself is sufficient to connect the accused with the perpetration of the principal crime even, as a perpetrator.

247. P.W.05 is the son of one victim. It is found proved that he saw the gang accompanied by the accused taking away his father and later on discovered his father's bullet hit body lying in the ditch nearer to the house of RP Saha. His [P.W.05] testimony also demonstrates that in conjunction with the attack the perpetrators had carried out the act of arson at many houses of their villages under attack when he [P.W.05] also heard thunderous screaming of people.

248. Since it stands proved that the accused Mahbubur Rahman@ Mahebul was with the squad when the father of the P.W.05 was forcibly taken away it may be lawfully deduced that the accused Md. Mahbubur Rahman @ Mahub @ Mahebul himself too was actively and culpably engaged in accomplishing the phase of killing of detained Hindu civilians.

249. Hearing indiscriminate gun firing one hour later of taking away the father of P.W.05 on forcible capture as testified by P.W.05 indisputably proves the fact of gunning down his [P.W.05] father and other detainees to death.

250. In context of untold havoc of the violent and abrupt attack it was not natural and possible for mass people of the crime sites to witness all the acts carried out by the perpetrators. It may be justifiably presumed that most of the civilians around the crime sites, being scared, opted to go into hiding to escape and some could not. Even in such a situation full of horror some persons might have had opportunity to experience the event and criminal acts including the presence of the accused as a co-perpetrator with the gang at crime sites. It was quite practicable.

251. In the case in hand, unimpeached testimony of P.W.03, P.W.04 and P.W.05, the residents of crime villages demonstrates

that the accused accompanied the gang at the crime sites. P.W.04 saw the gang accompanied by the accused taking away his father and brother who were eventually shot to death.

252. The gang also carried out destructive activities in the localities under attack. It stands proved too from evidence of P.W.05 and the other witnesses who even remaining stayed at Kumudini Complex observed the crime localities ablaze and heard horrifying screaming of people from the end of those localities.

253. Defence failed to taint the truthfulness of the sworn version of P.W.05, the son of one victim Godadhar Saha, who is a direct witness to facts significantly chained to the attack and accused's role and participation in accomplishing the purpose and intent of the criminal squad.

254. It has been found proved that the accused was associated with the politics of Muslim League, a pro-Pakistan political party. P.W.05 affirmed it in reply to defence question put to him. Be that as it may, it is not at all believable that in 1971 accused was a minor boy or the accused was sent to jail by his father for the reason of the stance he took in support of the war of liberation or after killing his father Wadud Moulana in October 1971 he [accused] joined in war of liberation in November 1971, on getting

release from jail. This unsubstantiated defence case is full of absurdity, in view of proved facts.

255. It is quite curious to note that defence made a futile effort to hide the identity of accused and also his affiliation in Razakar Bahini by asserting implausible and conflicting defence cases. Besides, defence did not opt to adduce witness and evidence in support of any of such defence cases.

256. Uncontroverted sworn narrative made by P.W.06 demonstrates that he saw the arrival of the squad being accompanied by some civil dressed persons at the relevant time when he had been at his father's shop, on the south bank of the river Louhojong. P.W.06 also saw the gang moving towards east, west and south, being divided into groups. Defence could not shake it in any manner.

257. The above fact as unveiled from evidence of P.W.06 forces to the conclusion that on arrival on the other bank of the river Louhojong the squad started launching next phase of attack.

258. Mr. Gazi M.H Tamim the learned state defence counsel in advancing summing up argued that the accused contested in local government election, after independence which indicates that he

had no involvement with the commission of offences alleged or any criminal activities.

259. We are not agreed with the above submission. The Tribunal notes that act subsequent to the commission of the offence cannot make an accused exonerated if it is proved that he participated in accomplishing the crimes of which he is arraigned. Such subsequent act or status of accused does not make the horrendous episode of mass atrocities directing the Hindu civilians constituting the offence of genocide untrue or gives immunity to the accused.

260. Tribunal further notes that one's guilt is not diminished for the reason of his subsequent deeds. Thus, the above defence submission does not make space of creating doubt of any degree as to accused's involvement with the mass killing, particularly when his participation in committing the crimes in question has been proved.

261. P.W. 06 Saha Pran Gopal is a hearsay witness. His uncontroverted testimony depicts too that at the relevant time he observed many houses ablaze and heard intense screaming of people when he had been at home and at about 05:00 P.M he also heard random gun firing from the end of native home of RP Saha.

Later on, P.W.06 found bullet hit dead bodies of 33 Hindu civilians including their neighbours lying there.

262. The above uncontroverted version of P.W.06 also gets corroboration from evidence of direct witnesses, the residents and sons of some of victims. Additionally, testimony of P.W.06 proves the fact that the gang had carried out grave devastating activities by burning down houses of Hindu civilians and the 33 detainees were annihilated taking them to the killing site on forcible capture.

263. Thus, what the P.W.06 experienced, in conjunction with the attack was indisputably linked to the massacre which does not seem to have been specifically denied even in cross-examination of P.W.06. Besides, this piece of version gets corroboration from the facts testified by P.W.01, P.W.02, P.W.03, P.W.04 and P.W.05, the direct witnesses.

264. Defence suggests P.W.06 that in 1971 the accused was a student of class VI i.e. he was a minor boy. At the same time defence suggests that the accused was sent to jail by his father for the stance he took in favour of the war of liberation. First, it is not believable that a minor boy was sent to jail by his father. Second, no attempt has been made by the defence to make it established by

adducing evidence. Such defence case could not be substantiated by adducing any kind of evidence.

265. It appears from testimony of P.W.09 that he himself did not see the gang launching attack. At the relevant time he had been at own home. But he however heard gun firing in evening from the end of RP Saha's home and on the following day on visiting the killing site, adjacent to RP Saha's house he found numerous dead bodies of Hindu civilians lying there.

266. The above two facts as testified by the P.W.09 are materially related to the attack which ended in mass killing. Extremely horrific situation created by launching organised attack naturally did not leave space for all the people of observing the violent and systematic attack, we have already viewed it. Defence could not controvert the fact of hearing gun firing in evening from the end of RP Saha's home and later on, finding numerous dead bodies of Hindu civilians at the place adjacent to RP Saha's house as testified by P.W.09 in any manner. Presumably, P.W.09 heard later on that accused, his father and brother accompanied the criminal gang.

267. Defence however, does not seem to have even denied the fact of carrying out killing 33 Hindu civilians taking them near a ditch, adjacent to RP Saha's native home at Mirzapur, at the relevant time

and carrying out looting and burning down civilians' property, in conjunction with the attack as testified by the P.W.09.

268. P.W.12 is another hearsay witness. He is the son of Bhabani Prasad Saha, the son of RP Saha. In 1971 he was just three years old. He came to know the events, when he grown up, from his senior family inmates, his mother Sreemoti Saha [P.W.02], Aunt Mrs. Joyapati and Bijoya Khan, Aunt Protiva Mutsuddi [P.W.01]. It is quite natural of knowing how the Kumudini Complex, Mirzapur village and neighbouring localities had to face violent attack in 1971 and also how his father and grand-father were taken away on forcible capture from their residence at Khanpur, Naryanganj.

269. Hearsay testimony of P.W.12 gets corroboration from other witnesses, particularly the direct witnesses. We do not find any reason to deduce that P.W.12 has testified untrue narrative. His hearsay testimony does not need to be kept aside from consideration as the same is not anonymous. He heard the event from them who had occasion of observing and experiencing the same.

270. P.W.11 is a valiant freedom fighter. He too heard the event from one of his sources. First, the arraignment brought does not rest

solely on testimony of P.W.11. Second, hearing the event from a source as testified by P.W.11 was quite likely. Third, what the P.W.11 testified seems to have been corroborated by evidence of other witnesses including some direct witnesses. Thus, his hearsay testimony deserves consideration. Defence failed to taint credibility of P.W.11, by cross-examining him.

271. In addition to P.W.04 and P.W.05 the residents of the crime villages P.W.01 also claims to have observed some crucial facts chained to the massacre carried out in course of the second phase of the attack. Was it practicable of seeing the attack or activities the gang had carried out at Mirzapur and its adjacent vicinities as testified by P.W.01?

272. Louhojong River was about 100 hands [50 yards] wide. We got it proved from testimony of P.W.02. It is undisputed that the Kumudini Complex was on the north bank of the river Louhojong and RP Saha's native home situated on the another bank of this river and the ditch besides which the detained Hindu civilians were gunned down to death was adjacent to boundary wall of RP Saha's home.

273. It transpires that in conjunction with the second phase of attack P.W.01 saw that on indication of the accused and his father

and brother the army men shot the detained Hindu civilians to death which took place near a ditch adjacent to RP Saha's house. Seeing it remaining stayed at Bharateswari Homes was quite practicable. There has been no reason to deduce that P.W.01 made an untrue version about watching the accused substantially facilitating the squad in accomplishing the killing. Rather, the act of accused as unveiled from testimony of P.W.01 forces to an unerring conclusion that the accused, sharing specific intent, knowingly and consciously participated in executing the mass killing, the criminal design of the gang.

274. Gravely panicking and coercing situation naturally did not allow all the people to see the act of carrying out killing of defenceless Hindu civilians. We are to see whether the proved facts experienced by the witnesses justifiably connect the accused as an active part of the gang of attackers even with the next phase of attack that resulted in large scale killing.

275. We have found it proved from testimony of P.W.02 that keeping the Bharateswari Homes under guarded by some Razakars the gang being divided in groups moved to the adjacent vicinities and instantly after they moved the houses were seen ablaze and loud screaming could be heard from those surrounding villages.

276. It may thus be irresistibly deduced that none but the group formed of army men accompanied by the accused and his cohort Razakars had launched attack at those villages where the barbaric massacre was conducted deliberately, in execution of plan and with 'specific intent'.

277. On totality of evidence we arrive at unerring conclusion that 'specific intent' of the enterprise was to destroy the substantial part of Hindu community of the locality under Mirzapur of District Tangail. In accomplishing such intent the gang of perpetrators first attacked at Bharateswari Homes chiefly to get RP Saha captured. Finding him not available there the gang became more aggressive. It abused and molested the girls and female students and then headed to surrounding villages targeting Hindu community.

278. It was not practicable for the Pakistani occupation army to identify the location and select the civilians to make target of the systematic attack. Indisputably the troops had to go on with the attack on active assistance and contribution of the accused and cohort Razakars. All the victims belonged to Hindu religion. The perpetrators targeted and selected them because of their membership in Hindu religion.

279. To establish individual criminal responsibility of an accused the matters to be demonstrated that (i) the accused participated by his conduct which contributed to the commission of an illegal and prohibited act, and (ii) the accused had knowledge or intent of the squad, that he was aware of his participation in accomplishing a crime. Thus, all the members of the group are equally responsible for the upshot of the violent attack they conducted, in furtherance of the common design as they all knew the consequence of the acts carried out, in conjunction with the attack. It is now settled jurisprudence. What we see in the case in hand?

280. The prohibited acts and extreme abuse done during the first phase of attack at Bharateswari Homes were also caused serious mental and bodily harm to members of Hindu religious group—a protected group. RP Saha used to work irrespective of race and religion aiming to wellbeing of mankind and to develop women education. But the gang of perpetrators chiefly intended to wipe him out and also to persecute the members of Hindu community of the localities under Mirzapur. The entirety of facts unveiled leads us to conclude that the ‘specific intent’ of the gang was to cause substantial destruction of the Hindu religious group of the localities under Mirzapur police station.

281. It has been found proved that the crime villages including the village-Mirzapur were Hindu dominated localities and the criminal squad had carried out deliberate attack at those vicinities. Defence could not refute it in any manner. Thus, the attack was purposeful and it was against the civilian population belonging to particular religious group, it stands proved. We reiterate that the notion of 'attack' embodies the organized acts done purposefully which is detrimental to the wellbeing and fundamental rights of a civilian population and the notion of 'population' need not be the entire population of particular vicinity.

282. The killing a large number of unarmed Hindu civilians was accomplished during the second phase of attack, on the same day and by the same squad. In war time, horrific situation reigned by deliberate attack did not allow the people to see the massacre being a bystander. Rather, in such situation the people opted to escape, by going into hiding wherever he or she could.

283. Besides, it is not required to show which member of the group actually perpetrated the act of killing. In the case in hand, it stands proved that the accused was with the gang till it moved to the crime villages, surrounding to Bharateswari Homes. That is to say, the accused did not keep him distanced from the gang even when it

carried out next phase attack that resulted in killing a large number of Hindu civilians.

284. Notorious affiliation of the accused in locally formed Razakar Bahini, profile and activities of his father Wadud Moulana [now dead] and brother Mannan [now dead] who too were with the squad must prompt even a person of reasonable prudence that the accused sharing specific intent of the gang actively and knowingly accompanied the gang to those villages to assist and substantially contribute to the actual accomplishment of barbaric killing of numerous Hindu civilians. Besides, it has been proved that the accused physically participated in effecting selected Hindu civilians and causing death of some of victims by gun shot.

285. What was the ‘intent’ of such mass killing of a particular protected group? Intent cannot be tangible and it cannot be proved by direct evidence. In the case in hand, specific intent was destructive and discriminatory. In this regard we may eye on the observation of **ICTR Trial Chamber** in the case of *Nchamihigo* which is as below:

“In the absence of direct evidence, the following circumstances have been found, among others, to be relevant for establishing intent: the overall context in which the crime occurred, the systematic

targeting of the victims on account of their membership in a protected group, the fact that the perpetrator may have targeted the same group during the commission of other criminal acts, the scale and scope of the atrocities committed, the frequency of destructive and discriminatory acts, whether the perpetrator acted on the basis of the victim's membership in a protected group and the perpetration of acts which violate the very foundation of the group or considered as such by their perpetrators.

[Nchamihigo, (Trial Chamber), November 12, 2008, para. 331]

286. The accused Md. Mahbubur Rahman @ Mahbubur @ Mahebul was a notorious Razakar; we have already got it proved. The accused has been indicted for the offence of 'genocide'. We are to resolve whether the intent of the perpetrators was to annihilate large number of civilians only to belonging Hindu religious group and why.

287. 'Specific intent' to destroy a group, either whole or in part is a key element to constitute the offence of 'genocide'. Such specific intent is not a matter to be proved by direct evidence. The offence of 'genocide' which is a subset of crimes against humanity requires

‘specific intent’ to destroy the group it attacked, either whole or in part. Intent is a mental factor which is hard, even impracticable, to determine and as such, it may be proven through inference from a certain number of facts unveiled and pattern and magnitude of attack.

288. What we see in the case in hand? It stands proved that 33 civilians of Hindu religious group of village Mirzapur and its surrounding vicinities were annihilated, bringing them near a big trench adjacent to the native home of RP Saha, on forcible capture.

289. Large scale killing with intent to destroy the local Hindu community, either whole or in part thus constituted the offence of ‘genocide. It is to be noted that destruction of a group does not mean its total destruction. Substantial destruction is sufficient to infer the intent of the perpetrators.

290. It is true that those 33 civilians did not form the total Hindu population of the vicinities under attack. But it was a large and selected number of Hindu civilians indeed. Presumably, the perpetrators picked up 33 Hindu civilians to wipe them out which suggests the conclusion that intention was to leave vicious impact upon the survived of Hindu religious group as well.

291. The factual scenario unveiled in the case in hand does not rule out that the attack was carried out with ‘genocidal intent’, pursuant to the common purpose of the JCE. It has been observed by the ICTY Appeal Chamber in the case of **Krstic** that --

“The inference that a particular atrocity was motivated by genocidal intent may be drawn, moreover, even where the individuals to whom the intent is attributable are not precisely identified. If the crime committed satisfies the other requirements of genocide, and if the evidence supports the inference that the crime was motivated by the intent to destroy, in whole or in part, a protected group, a finding that genocide has occurred may be entered.[*Krstic ICTY Appeal Chamber, Judgement, para. 34.*]

292. In the case in hand, it stands proved that 33 Hindu civilians were wiped out by conducting coordinated attack at Mirzapur and neighbouring localities. Grave destructive activities too were carried out, in conjunction with the attack intending to cripple the normal livelihood of Hindu population of the localities. It is a patent reflection of ‘specific intent’ full of aggression of attackers. Untold and immense mental harm was caused to the rest of Hindu

community, by such deliberate criminal acts. Defence could not controvert it.

293. Thus, the only reasonable conclusion is that the criminal gang accompanied by the accused perpetrated the killings possessed the intent to destroy, in whole or a substantial part, the Hindu religious group of particular geographical area. The arbitrary act of torching numerous houses and looting cumulatively demonstrate the specific intent of the attackers. In accomplishing such specific intent the perpetrators selected a large number of civilians because of their membership in a specific community, the Hindu religious group.

294. The cumulative effect of large scale killing and disparaging activities indisputably caused serious mental harm even to the survived members of Hindu community which inevitably imprints an unmistakable notion that the aim and intent of the perpetrators was to destroy the 'Hindu group or community', in part. It is true that not the entire Hindu community of the village Mirzapur and adjacent vicinities was annihilated. But killing 33 civilians targeting the Hindu religious group of crime villages by itself is rather patently emblematic of the overall Hindu community.

295. Thus, even targeting part of the community qualifies as 'substantial', for the propose of inferring the 'genocidal intent'

which has been patently mirrored in the case in hand. Merely the number of individuals belonging to Hindu religious group annihilated cannot be the lone prerequisite for an inference as to constitution of ‘genocidal intent’.

296. Such selective annihilation of large number of members of a protected group indisputably depicts that the intent of perpetrators was to ‘destroy the group’, either whole or in part which constituted ‘genocidal intent’ of the criminal squad. This view finds support from the observation of **ICTY** in the case of **Jelisić** which is as **below:**

“Genocidal intent may therefore be manifest in two forms. It may consist of desiring the extermination of a very large number of the members of the group, in which case it would constitute an intention to destroy a group *en masse*. However, it may also consist of the desired destruction of a more limited number of persons selected for the impact that their disappearance would have upon the survival of the group as such. This would then constitute an intention to destroy the group “selectively”.

**[Jelusic, ICTY Trial Chamber, 14
December 1999, para, 82]**

297. Offence of ‘genocide’ is a coordinated attack against human multiplicity of a targeted group aiming to cause grave destructive effect on the group. In the case in hand, mere annihilation of members of the Hindu religious group was not the objective of the attack. Rather, intent of the perpetrators by launching such horrific attack was to leave an abominable destructive effect upon the survived members of the group and thus it is sufficient to infer that ‘specific intent’ of the gang was to destroy the Hindu community of particular vicinities, in whole or in part.

298. In the case in hand, it stands proved that the accused Md. Mahbubur Rahman @ Mahbubur @ Mahebul did not keep him distanced even in course of the second phase of the attack that resulted in selective killings of 33 Hindu civilians. Obviously he was not with the gang as a mere spectator. He was a notorious Razakar. Not only the accused but his father a potential chairman of local peace committee, accused’s brother Mannan belonging to Razakar Bahini and cohort Razakars were with the gang chiefly formed of Pakistani occupation army. They all including the accused remained stayed with the criminal enterprise till the killing mission accomplished, to further the common purpose of the criminal mission.

299. It has been proved beyond reasonable doubt that the act of forcible capture of Hindu civilians, devastating activities and killings were carried out at Mirzapur and adjacent vicinities for couple of hours. All these crucial facts and circumstances forming part of collective criminality together constituted the ‘genocidal intent’ of the criminal gang, we decisively conclude. **ICTR Appeal Chamber** observed in the case of **Nahimana, Barayagwiza and Ngeze** that --

“The jurisprudence accepts that in most cases genocidal intent will be proved by circumstantial evidence. In such cases, it is necessary that the finding that the accused had genocidal intent be the only reasonable inference from the totality of the evidence.”

[Nahimana, Barayagwiza and Ngeze, (Appeals Chamber), November 28, 2007, para. 524]

300. Thus, we are forced to conclude that the accused knowingly and consciously facilitated and aided in accomplishing the purpose and plan of the gang, in exercise of his infamous association in Razakar Bahini, a para militia force created to provide static support to Pakistani occupation army.

301. It may be justifiably inferred too that it would not have been possible to locate and identify the Hindu dominated vicinities and the 33 Hindu civilians. Their local collaborators including the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul had played culpable and active role in this regard. In this way, the accused encouraged, assisted and provided moral support in perpetrating the brutal large scale killing of Hindu civilians--- facts and circumstances divulged lead to this unerring conclusion. In this regard we recall the observation of ICTR made in the case of **Nahimana** which states that--

“Encouragement” and “moral support” are two forms of conduct which may lead to criminal responsibility for aiding and abetting a crime. The encouragement or support need not be explicit; under certain circumstances, even the act of being present on the crime scene (or in its vicinity) as a “silent spectator” can be construed as tacitly approving or encouraging the crime. In any case, this encouragement or moral support must always substantially contribute to the commission of the crime.”

[Nahimana, Case No. ICTR-01-68-T, ICTR, 30 December 2011, para , 826]

302. Conscious presence with the squad and act and conduct of the accused, in course of the attack tantamount to state that the accused was not remained ignorant of the racial, religious or political identity of the victims. Rather, it may be justifiably inferred that the accused and his cohort Razakars played substantial role in getting the victims selected and targeted, on ground of their membership in Hindu religious group. It is also a proof of ‘specific intent’ of the criminal gang to destroy the Hindu religious group.

303. Discriminatory and destructive act and conduct of the accused, an active part of the enterprise and the scale of the horrific atrocities collectively prove that the accused knowingly participated and facilitated in accomplishing the criminal mission, sharing the genocidal intent of the gang. This view finds back up from the legal proposition evolved in ICTR in the case of **Bizimungu** which is as below:

“In the absence of direct evidence, a perpetrator’s intent to commit genocide may be inferred from relevant facts and circumstances that lead beyond any reasonable doubt to the existence of the intent. Factors that may establish the specific intent include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed,

the systematic targeting of victims on account of their membership in a protected group, or the repetition of destructive and discriminatory acts [Bizimungu , ICTR, Case No. ICTR-99-50-T, 30 September 2011, para 1958]

304. In the case in hand, it stands proved that the accused person in exercise of his notorious affiliation in locally formed auxiliary force, a *para militia* force consciously aided, abetted, facilitated and substantially assisted the gang of Pakistani occupation army in carrying out the attack at villages under Mirzapur police station of District Tangail directing the Hindu community and thus he incurred liability even for the actual commission of crimes for which he has been arraigned in charge no.01.

305. Act of accomplishing large-scale killing of Hindu civilians of rural areas would not have been possible without the active assistance and contribution of the accused person belonging to auxiliary force. His presence at the crime sites with the gang of army men indisputably had impact and causal link in targeting the civilians and thus the accused knowingly aided and assisted to execute the murderous enterprise. In this regard we recall the observation of **ICT-BD-1** in the case of **Shamsuddin Ahmed and 04** others which are as below:

“Presence of the accused persons in the crime-site, combined with their membership in local Razakar Bahini and their knowledge of the criminal enterprise are considered sufficient to find them guilty for the crimes committed by the enterprise. Accused may be said to have aided and abetted in accomplishing the principal offence if it is found that he accompanied the group at the crime site ‘knowing the intent’ of the perpetrators belonging to the group. Act of accompanying the group ‘sharing intent’ in perpetrating the principal offence makes an accused part of the criminal enterprise.”

[ICT-1, ICT-BD Case No.01 of 2015, the Chief Prosecutor vs. Shamsuddin Ahmed and 04 others, Judgment: 3 May, 2016]

306. It has been jurisprudentially settled that those who make their contribution with the shared intent to commit the offence can be held ‘equally liable’, regardless of the level of their contribution to its commission. In the case in hand, the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul thus being active part of the criminal enterprise is found to have had acted together and in concert with each other, in the implementation of a common objective, being culpably enthused. In this way the accused aided

and abetted by providing act of ‘assistance’ in either physical form or in the form of moral support.

307. Totality of evidence tendered impels the conclusion that the accused substantially contributed to the gang, knowingly and sharing its common intent. Thus, the accused participated in committing the collective killing. It has been observed by the **ICTR Trial Chamber** in the case of **Mpambara** that—

“The actus reus of the offence is that the perpetrator participates with others in a collective or ongoing mass killing event.”

[Mpambara, ICTR Trial Chamber, September 11, 2006, para. 9]

308. It is not required to show that the accused was the lone actual offender in carrying out mass killing. Participation in a joint criminal enterprise made him equally liable as a co-perpetrator. This view finds support from the observation of the **ICTY Trial Chamber** in the case of *Vasiljevic* which is as below:

“If the agreed crime is committed by one or other of the participants in a joint criminal enterprise such as has already been discussed, all of the participants in that enterprise are equally guilty of the

crime regardless of the part played by each in its commission.”

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

309. The devastating pattern of the attack, number of the members of the group clearly indicates that the intent of the perpetrators was to cause annihilation of civilians on ‘massive scale’. It is now jurisprudentially settled that those who make their contribution with the shared intent to commit the offence cannot absolve liability, regardless of the level of their contribution to its commission.

310. Perceptibly, keeping eyes on the objective of forming Razakar Bahini in 1971, we may safely conclude that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul belonging to local infamous Razakar Bahini did not accompany the gang to the crime site for any sanctified purpose. Rather, he accompanied the criminal squad consciously intending to provide effective assistance, aid and substantial contribution for perpetration of the crimes in question.

311. Local mighty Razakars including the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul with extreme aggression actively aided , encouraged and assisted the gang chiefly formed of Pakistani army men in carrying out the ‘genocidal mission’, the evidence and circumstances divulged demonstrate it unerringly . In

this way the accused, being active part of the criminal enterprise, participated in committing the crimes, sharing intent.

312. The offence of ‘genocide’ refers to indiscriminate and systematic destruction of members of a protected group because they belonged to that group. According to Section 3(2)(c)(i) of the Act of 1973 ‘genocide’ is the deliberate and systematic attack intending to cause destruction of a national, ethnic, racial, religious or political group. The recurrent annihilation of individuals and destructive activities carried out to detriment normal livelihood because of their membership to a distinct religious group was perpetrated throughout the period of War of Liberation in 1971 in the territory of Bangladesh. It is the history of common knowledge.

313. In the case in hand, the devastating pattern and scale of the attack, size and number of the groups of attackers, members of the groups evidently indicate that the intent of the perpetrators was to annihilate Hindu civilians on ‘massive scale’. The accused is found to have significantly contributed to the JCE to the mass killing with genocidal intent and the accused thus acceded to an agreement to commit ‘genocide’, we conclude. We also express our view that the mens rea for the crime of ‘genocide’ establishes the mens rea required for the conspiracy to commit genocide as well. Thus, it

stands proved too that the accused was an active part to the conspiracy designed to commit the offence of 'genocide'.

314. The event of attack that resulted in barbaric, deliberate and selective killing of 33 Hindu civilians [as listed in the charge framed] is a fragmented portrayal of genocide happened in 1971. In addition to mass killing integral part of the plan and purpose of perpetrators was to annihilate RP Saha and causing devastation and detriment to normal livelihood of Hindu population and thereby intended to bring the edifying institutions of Kumudini Welfare Trust to an end.

315. According to section 3(2)(c)(ii) of the Act of 1973 the offence of 'genocide' includes causing serious bodily or mental harm to members of the group. Criminal activities carried out in course of first phase of attack at Kumudini Complex the accused his, accomplices and the army men participated in causing serious mental harm and trauma to female students and employees of Kumudini hospital and Bharateswari Homes. In conjunction with the second phase of attack the group of attackers had accomplished devastating activities which indisputably inflicted serious mental harm to the survived Hindu civilians. Intention of causing such mental harm encompasses the 'specific intent' to cripple the group the victims of such harm belonged.

316. On rational appraisal of evidence as discussed above the Tribunal is convinced to record its finding that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul , for his culpable participation to the attack in question is criminally responsible for all the criminal acts resulting from the criminal plan and design of annihilating the Hindu community of village-Mirzapur, Baimhati Kanthalia , Andhara, Sarishadair and adjacent vicinities under Mirzapur police station of District Tangail , irrespective of whether and in what manner he himself directly participated in the commission of any of these acts forming part of concurrent and systematic attack. This view is in conformity to the provisions in respect of ‘liability’ contained in section 4(1) of the Act of 1973. Prosecution has been able to prove the arraignment brought against the accused beyond reasonable doubt.

317. On totality of evidence as discussed above we eventually arrive at decision that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul is found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, assisting, substantially contributing and facilitating , by his act and conduct forming part of systematic attack, to the accomplishment of devastating criminal activities and mass killing of 33 Hindu civilians constituting the offence of ‘**genocide**’ as enumerated in

section 3(2)(c)((i)(ii)(g)(h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Adjudication of charge no.02

[Event no.02 as narrated in page nos. 27-30 in the formal charge]

[Offence of ‘genocide’ or in the alternative offences of ‘confinement’, ‘abduction’, ‘torture’ and ‘murder’ as crimes against humanity]

318. Charge: That in continuation of the attack that resulted in killing 33 civilians belonging to Hindu religious group [as narrated in charge no.01], on the same day i.e on 07th May, 1971 at about 11:00/11:30 P.M the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, his father, brother being accompanied by 10/15 accomplice Razakars and 20/25 Pakistani occupation army launched attack, with intent to destroy Hindu religious group, in whole or in part, at the residence of Danabir Roy Bahadur Ranada Prasad Saha @ R.P Saha situated at Sirajdikhan Road, Khanpur of Naryanganj town, arriving there by 4/5 jeeps and then entering into the residence forcibly detained Danabir Roy Bahadur Ranada Prasad Saha, his son Bhabani Prasad Saha @ Rabi, Gour Gopal Saha, the friend of R.P Saha, Rakhal Matlab and a Darwan [a guard whose name could not be known] and they were then subjected to torture. The detainees were then taken away towards the Oil Depot of Adamjee Burma Eastern of Naryanganj located on the bank of the river Sitalakhya and since then they could not be traced even.

Therefore, the accused Md. Mahbubur Rahman @ Mahub @ Mahebul participated, substantially abetted and facilitated the actual commission of the offence of 'genocide' as specified in section 3(2) (c)(g)(h) read with section 4(1) of the International crimes(Tribunals) Act, 1973 or in the alternative for participating, substantially abetting and facilitating the actual commission of the offences of 'confinement', 'abduction', 'torture' and 'murder as crimes against humanity as specified in section 3(2)(a)(g)(h) read with section 4(1) of the International crimes(Tribunals) Act, 1973 which are punishable under section 20(2) of the said Act of 1973.

Evidence of Witnesses Examined

319. Prosecution intending to substantiate the arraignment brought in this charge relies upon testimony of ten [10] witnesses. Of them P.W.10 is a direct witness to fact crucially linked to the crimes in question. Accused is alleged to have had participation in committing the criminal acts constituting the offence of 'genocide'. Prosecution claims that most of witnesses are hearsay witnesses and the source of such hearsay evidence was Chondro Mohon Saha, a loyal companion of RP Saha who had opportunity of observing the act of taking away RP Saha, his son and three others from RP Saha's residence in Naryanganj. Before we weigh the value of hearsay evidence and the evidence tendered by P.W.10 let us see what the witnesses testified, in respect of the event alleged.

320. P.W. 01 Protiva Mutsuddi is now a director of 'Kumudini Welfare Trust of Bengal'. In addition to what she experienced in respect of the event of attack as arraigned in charge no.01 P.W.01 testified what she heard about the event of attack as narrated in charge no.02 involving the act of taking away RP Saha, his son and three others from RP Saha's residence in Naryanganj, by launching attack just few hours after the event of attack ended at Kumudini Complex and Mirzapur and its adjacent Hindu dominated vicinities.

321. In adjudicating charge no.01 we have viewed and discussed what the P.W.01 testified about the Kumudini Welfare Trust and RP Saha, the architect of the institutions under the Trust when she also stated a brief profile of her own as well. Thus, to evade reiteration now we are going to focus just on what the P.W.01 testified in relation to the attack as arraigned in charge no.02. However, findings rendered in adjudicating charge no.01, if considered necessary and relevant may be taken into account to resolve any issue related to the attack that resulted in killing RP Saha, his son and three others.

322. P.W.01 stated that at the end of April [1971] Governor Tikka Khan invited R P Saha to meet him. He went to Governor House with his son Bhabani Prasad Saha Rabi and Superintendent of Kumudini Medical College Hospital Dr. Hafizur Rahman. R P Saha

used to address her [P.W.01] 'Maa' (Mother); most of the time she used to stay in his house and thus she knew the internal history. Tikka Kahn quizzed them on many matters and then allowed them to go back. As soon as they reached to the gate of the Governor House, Pakistani army men took away R P Saha and his son Bhabani Prasad Saha in the name of interrogation. Dr. Hafizur Rahman shared this with them when he came back to Mirzapur.

323. P.W.01 also stated that afterwards, RP Saha's daughter Joyapati contacted Lieutenant Colonel Kayani, who happened to be the Principal of Mymensingh Cadet College. Lieutenant Colonel Kayani informed that R P Saha and his son were kept in an Army Camp.

324. P.W.01 next stated that on 5th May, 1971 members of Pakistani occupation army had left R P Saha and his son in front of his house in Naryanganj. On the same day, he came to his native home in Mirzapur and consoled her [P.W.1] and other staff members. On the next day, he [RP Saha] had talk with the villagers when he made them comforted and had lunch with doctors, nurses, teachers and students in 'Nat Temple'. On morning of 7th May, 1971 R P Saha went back to his home at Khanpur, Naryanganj with his son Rabi.

325. In respect of the event of attack launched at Narayanganj home of RP Saha P.W. 01 Protiva Mutsuddi is a hearsay witness. She heard the event of attack from Chondro Mohon Saha, a loyal companion of RP Saha who witnessed the act of unlawful abduction of RP Saha, his son and three others.

326. P.W.01 stated that Chondro Mohon Saha[now dead], a loyal companion of R P Saha coming to Kumudini Complex on 09th May, [1971]Sunday, around afternoon, from Naryanganj disclosed them that Wadud Moulana, his two sons along with few Razakars and Pakistani occupation army men by launching attack forcibly took away R P Saha, his son Bhabani Prasad Saha, R P Saha's close companion Gour Gopal Saha, his employee Matlab Miah and a guard and since then they could not be traced **[at this stage, P.W.01 became emotional]**. Chondro Mohon Saha disclosed that he witnessed the event of attack remaining in hiding at RP Saha's house.

327. In cross examination P.W.01 stated in reply to defence question that after independence no case was lodged over the event either on behalf of RP Saha's family or Kumudini Complex.

328. P.W.02 Sreemoti Saha is the daughter-in-law of *Danbir* [The Great Philanthropist] Ranada Prasad Saha. In addition to the event

of attack arraigned in charge no.01 P.W.02 testified what she heard about the event of attack that resulted in taking away her husband, father-in-law RP Saha and three others forcibly from RP Saha's home in Naryanganj.

329. Before stating what she heard about the event of attack as arraigned in charge no.02 P.W. 02 stated that during the Liberation War, all of her family inmates [husband, son and father-in-law] had been staying at their home in Mirzapur. Her father-in-law was called by the Governor of [then] East Pakistan General Tikka Khan on 29th April, 1971. On that very morning her father-in-law, her husband and the Superintendent of Kumudini Hospital Dr. Hafizur Rahman [now dead] moved to Dhaka and they met General Tikka Khan. During their departure from the Governor House an army vehicle prevented them, asked for their identity and then took away R P Saha and his son Rabi Saha. However, they allowed Dr. Hafizur Rahman to walk free. At that time the age of her father-in-law was 75/76 years and her husband was 24 years old. P.W.02 next stated that seven days later, on 5th May [1971] her father-in-law and husband came back. Pakistani occupation army had left them in their house in Naryanganj.

330. In respect of the event of attack at the house of RP Saha in Narayanganj P.W.02 stated that on the night of 07th May, 1971

Moulana Wadud, his two sons Abdul Mannan [now dead] and Md. Mahbubur Rahman @ Mahbub being accompanied by Razakars and Pakistani occupation army forcibly captured her father-in-law R P Saha, her [P.W.02] husband Bhabani Prasad Saha, her [P.W.02] father-in-law's friend Gour Gopal Saha, employee Motlob Mia and the house guard and took them away. Her [P.W.02] father-in-law's loyal mate Chondro Mohon Saha witnessed the event remaining stayed in hiding.

331. P.W.02 stated that Chondro Mohon Saha came to Mirzapur Kumudini Complex on 9th May, 1971[two days after the event happened] and shared them the event he witnessed. Since then they could neither get any trace of those people so taken away on abduction nor did they get their dead bodies even.

332. In the cross-examination, in reply to defence question put to her P.W.02 stated that the accused was a resident of village-Baimhati, alongside Kumudini Hospital. P.W.02 denied the defence suggestions put to her that in August, 1971 Wadud Moulana himself handed over his son Mahbubur Rahman [accused] to Pakistani occupation army and Mahbubur was kept in jail till end of October, 1971; that during the war of liberation, Wadud Moulana was killed by the freedom-fighters and then his son accused

Mahbubur Rahman got release from jail and then he[accused] joined the war of liberation.

333. P.W. 03 Biswas Durlav Chandra [67/68] is a resident of village-Bawar Kumarjani, under police station-Mirzapur of District Tangail. He is a freedom fighter. Now he is the elected Commander of Mirzapur Thana Muktijodhdha Sangsad. He is a hearsay witness in respect of the arraignment brought in charge no.02.

334. P.W.03 stated that on 09th May, 1971 Chondro Mohon Saha [now dead], a loyal companion of RP Saha coming from Naryanganj on foot disclosed that Wadud Moulana, his two sons along with few Razakars and Pakistani occupation army men by launching attack at RP Saha's house in Naryanganj forcibly took away R P Saha, his son Bhabani Prasad Saha and three others. Chondro Mohon Saha witnessed the event remaining in hiding place and disclosed what he experienced.

335. On cross-examination, P.W.03 denied the defence suggestion put to him that the accused joined the war of liberation after his father died; that the accused and his two brothers used to oppose the activities of their father; that the accused was not a Razakar and that what he testified was untrue and out of rivalry

336. P.W. 04 Krishna Gopal Saha [62/63], a resident of village- Mirzapur, under police station- Mirzapur of District Tangail is the son of victim [of the event narrated in charge no.01] Madhusudan Saha. He is a hearsay witness to facts relevant to the event of attack arraigned in charge no.02.

337. P.W.04 stated that just two days after the event happened [at Mirzapur as arraigned in charge no.01], on 09th May he along with others went to meet Chondro Mohon Saha [now dead] of their village when he came from Naryanganj. From him [Chondro Mohon Saha] they came to know that the accused Md. Mahbubur Rahman, his father, brother being accompanied by accomplice Razakars and Pakistani occupation by launching attack at the residence of R P Saha situated at Khanpur in Naryanganj forcibly detained R P Saha, his son Bhabani Prasad Saha, R P Saha's friend Gour Gopal Saha, employee Matlab Mia and a doorman and took them away. The detainees never came back afterwards.

338. In cross-examination, P.W.04 stated in reply to defence question put to him that the accused used to stay at his own home even after Bangladesh got liberated; that no complaint was initiated earlier over the event against the accused; that he heard that in

1971 during the war of liberation Moulana Wadud was killed by the freedom-fighters.

339. P.W.04 denied the defence suggestions put to him that the accused had conflict with his father and brother Mannan as he [accused] took stance in favour of the war of liberation and thus his [accused] father sent him [accused] to jail and that what he testified was untrue and tutored.

340. P.W. 05 Tarapada Saha [64/65], a resident of village-Mirzapur, under police station-Mirzapur of District Tangail is the son of one victim [of the event of attack as listed in charge no.01] Godadhar Saha. He is a hearsay witness.

341. P.W.05 stated that just two days after the event of attack happened at Mirzapur [as arraigned in charge no.01], on 09th May[1971] he came to know from people that Chondro Mohon Saha [now dead] , a loyal companion of R P Saha came from Naryanganj. He went to meet him when he heard from him [Chondro Mohon Saha] that the accused Md. Mahbubur Rahman, his father, brother being accompanied by accomplice Razakars and Pakistani occupation army by launching attack at the residence of R P Saha situated at Khanpur in Naryanganj forcibly detained R P Saha, his son Bhabani Prasad Saha, R P Saha's friend Gour Gopal

Saha, employee Matlab Mia and a guard and then took them away and since then the detainees never came back.

342. In cross-examination, P.W.05 denied the defence suggestions put to him that the accused was not a Razakar; that no event he testified happened; that the accused was not involved in alleged event; that he did not hear what he testified and that what he testified was untrue and tutored.

343. P.W. 06 Saha Pran Gopal [63/64] is a resident of village- Andhara, under police station- Mirzapur of District Tangail. He is the son of Gour Gopal Saha, one of victims who were taken away along with RP Saha from his residence at Khanpur, Naryanganj, as alleged. P.W.06 is a hearsay witness.

344. P.W.06 stated that on 07th May, 1971 his father Gour Gopal Saha had been at the residence of R P Saha at Khanpur, Naryanganj. On 09th May, 1971 they got the information that Chondro Mohon Saha [now dead], a loyal companion of R P Saha, came from Naryanganj on foot and he disclosed that Wadud Moulana, his two sons along with few Razakars and member of Pakistani occupation army by launching attack at RP Saha's house in Naryanganj abducted R P Saha, his son Bhabani Prasad Saha, his [P.W.06] father Gour Gopal Saha and two more people. Chondro

Mohon Saha also told that he witnessed it from a nearby drain where he went into hiding. Being local people, he [P.W.06] knew accused Mahbub, his father and brother since prior to the war of liberation.

345. P.W. 10 Md. Samal [67/68] is a resident of 109, Khanpur Main Road, under police station- Naryanganj of District Naryanganj. He had been serving in the 'mechanical section' of ship's dockyard of 'Kumudini Welfare Trust' of Ranada Prasad Saha[RP Saha] at Khanpur, Naryanganj, since prior to the war of liberation ensued. He claims to have witnessed the gang of attackers taking away RP Saha and four others on forcible capture from the house of RP Saha in Naryanganj.

346. P.W.10 stated the fact of taking away RP Saha and his son by the army men when they came out from the Governor House after meeting the Governor that happened some days prior to the event of attack conducted at RP Saha's house at Naryanganj.

347. P.W. 10 stated that in the first phase of May, 1971, he came to know that on 29th April R P Saha and his son Bhabani Prasad Saha were taken away by Pakistani Army from in front of the Governor House. Moreover, he came to know that they went to meet the then Governor.

348. P.W.10 next stated that possibly on 05th May he came to know from others that R P Saha and his son were drove down by the army men at his residence in Naryanganj. Having heard it, all of the employees of the Trust went to visit him [RP Saha]. When the employees asked where they were taken, Bhabani Prasad Saha told them that from Governor House they were taken blindfolded to an unknown place.

349. P.W.10 in respect of the event of attack arraigned in this charge stated that on 7th May, 1971 at around 10:30/11:00 A.M. R P Saha and his son Bhabani Prasad Saha alias Robi came to Naryanganj from their native village-Mirzapur. On the same day, at around 11:00/11:30 P.M. when he was engaged in his work at the dry dock, about 80/90 hands[two hand equal to one yard] far from the residence of RP Saha he saw, 4/5 Army jeep arriving in front of R P Saha's home. He could see, with the headlights of the vehicles some army men and some civil dressed persons getting down from the vehicles. With this he went into hiding inside a bush adjacent to a drain of dry dock wherefrom he saw the Pakistani army and their accomplices entering into the house of RP Saha. Then the gang took R P Saha, his son Bhabani Prasad Saha and three more people away by making them boarded on their vehicles when he could notice civil dressed Wadud Moulana [now dead], his son Mannan [now dead] and another son Mahub [accused] accompanying the

army men. The victims who were taken away at that night never came back and could not be traced.

350. In respect of reason of recognizing the accused accompanying the gang of attackers P.W.10 stated that he used to visit Kumudini Complex very often to work at the power house[of the complex] and at that time he had occasion of seeing and knowing Wadud Moulana, his two sons the accused Mahbub and Mannan.

351. In cross-examination P.W.10 in reply to defence question stated that the office time of their dockyard was from 07:00 A.M to 05:00 P.M; that in 1971 four faces of the dockyard were unwrapped; that he visited Mirzapur prior to 1971; that accused Mahbub was 2/1 year older than him.

352. P.W. 11 Abul Kalam Azad is a valiant freedom fighter and a resident of Holding- 909, Par Dighulia, under police station- Tangail Sadar of District Tangail. He heard the event from one of their sources, during the war of liberation. P.W.11 stated that a gang formed of Pakistani occupation army guided and accompanied by the Razakar Mahbub, his father Wadud Moulana and their cohort Razakars by launching attack at the residence of RP Saha at Khanpur, Narayanganj forcibly captured five including RP Saha,

his son Bhabani Prasad Saha and took them away making them boarded on army vehicles.

353. P.W.11 also stated that Wadud Moulana was the chairman of Mirzapur peace committee and his two sons accused Mahbub and Mannan [now dead] were notorious members of Razakar Bahini formed in Mirzapur.

354. In cross-examination P.W.11 blatantly denied the defence suggestions put to him that he did not hear the event he testified; that the accused was not a Razakar; that in 1971 the accused was a freedom-fighter of a company under Brigadier Fazlur Rahman of 'Kaderia Bahini'.

355. P.W. 12 Razib Prasad Saha [50] is a resident of village- Mirzapur under police station- Mirzapur of District Tangail and 72, Siraz-ud-doula Road, Khanpur, police station- Naryanganj of District Naryanganj. During the Liberation War, he was three years old. Rai Bahadur Ranada Prasad Saha[RP Saha] is his grandfather. He is a hearsay witness.

356. P.W.12 stated that he heard from his mother Sreemoti Saha[P.W.02], father's sisters Joyapati and Bijoya Khan, Protiva Mutsuddi [P.W.01] and the elders of their family , when he grown

up, as to how the Razakars in collaboration with the Pakistani occupation army carried out atrocious activities against the Hindu population of villages under Mirzapur.

357. In respect of the event arraigned in charge no.02 P.W.12 stated that he heard that on the night of 07th May, 1971 Wadud Moulana [now dead], his two sons Mahbub [accused] and Mannan [now dead], their cohort Razakars and Pakistani army men by launching attack at the residence of RP Saha at Khanpur, Narayanganj and they could not be traced since then.

358. In cross-examination, defence simply put suggestion to P.W.12 that he did not hear about the event and that what he testified implicating the accused was untrue and tutored but he denied defence suggestion.

359. P.W.13 Fazlur Rahman Khan Faruk [75] is a resident of village-Kohela under police station Mirzapur, District Tangail. He was an elected member of Provincial Assembly in 1970. He is a hearsay witness in respect of the event arraigned.

360. P.W.13 stated that Rai Bahadur Ranada Prasad Saha was a globally reputed humanist who contributed in establishing educational institutions and Kumudini hospital for the cause of

wellbeing of humanity. Wadud Moulana, his sons Mahbub and Mannan were active in causing harm to his [RP Saha] family and institutions and also made attempts in many ways to cause arrest of RP Saha, after the war of liberation ensued. He [P.W.13] was closely associated with RP Saha for the reason of social and political affairs. In 1971 in the month of April he went to India and got responsibility of a training centre of freedom-fighters.

361. In respect of the event arraigned P.W.13 stated that in the month of July [1971] he got information that RP Saha and his son Rabi Saha were taken away from their Naryanganj residence and they could not be traced. P.W.13 also stated that later on he got information that Wadud Moulana[now dead], his sons Mahbub accused and Mannan [now dead] and Pakistani occupation army by launching a designed and deliberate attack committed the act of taking RP Saha and his son away, on forcible capture.

362. P.W.13 next stated that after independence achieved he returned back home at Mirzapur and heard the event also from Ms. Joyapati the daughter of RP Saha and his family inmates. Wadud Moulana was killed by local freedom-fighters, at the ending phase of the war of liberation as they had annihilated RP Saha and his son.

363. In cross-examination, P.W.13 stated in reply to defence question put to him that accused Mahbub was prosecuted under the Collaborators Order, 1972 and was arrested too. P.W.13 denied the defence suggestion that he did not hear the event; that the accused was not involved with the event he testified and what he testified was untrue and out of political rivalry.

Finding with Reasoning on Evaluation of Evidence

Prosecution argument

364. Mr. Rana Das Gupta, the learned prosecutor drawing attention to the massacre committed on 07 May 1971 till 05:00 P.M around the adjacent localities of Bharateswari Homes and Kumudini Welfare Trust complex, as arraigned in charge no.01 submits that on failure of getting RP Saha captured the same gang formed of Pakistani occupation army , accused, his father and brother and cohort Razakars moved to Naryanganj by jeeps and few hours later, at about 11:00 P.M the criminal gang forcibly captured RP Saha, his son and three others and took them away and since then they could not be traced which is reasonable proof that the detainees were annihilated.

365. The learned prosecutor further submits that killing of RP Saha and four others unlawfully detained from his Narayanganj's residence was continuation of the event happened in day time at

Mirzapur, as arraigned in charge no.01 and thus the systematic attack conducted in Naryanganj was intended with the same specific intent to cripple the Hindu community, either whole or in part which constituted the offence of 'genocide'. The accused got consciously engaged with the criminal enterprise knowingly and sharing intent.

366. The learned prosecutor also submits that P.W.10 Md. Samal and Chandra Mohon Saha [now dead] witnessed the gang accompanied by the accused, his father and brother taking away the victims on forcible capture. The other witnesses heard the event from Chandra Mohon Saha. Hearsay evidence of the P.W.s carries probative value as the same gets corroboration from facts and circumstances proved. Besides, P.W.10 is a key witness and he knew the accused beforehand. He saw the accused with the gang when it had carried out attack at the house of RP Saha. Defence could not impeach his testimony, the learned prosecutor added.

Defence argument

367. Conversely, **Mr. Gazi M.H Tamim** the learned state defence counsel questioning credibility of witnesses relied upon by the prosecution submits that none had opportunity of seeing the act of taking away the victims on forcible capture; that P.W.10 had no practicable reason of knowing the accused ; that P.W.10 had no

space of seeing the gang launching attack at the relevant time; that hearsay evidence of other P.W.s does not seem to have been corroborated by other evidence; that P.W.10 had no reason of remaining stayed at the dry dockyard, his work place at 11:00 P.M.

368. The learned state defence counsel next stated that prosecution could not establish that the detainees were killed and there has been no evidence to prove it and that mere taking away the victims on forcible capture does not prove that they were wiped out.; that in absence of any evidence it cannot be deduced that the RP Saha and other detainees were eventually killed and it was done on assistance and contribution of the accused. Prosecution failed to prove accused's involvement or participation in accomplishing the criminal acts, by launching alleged attack, the learned state defence counsel added.

369. The learned state defence counsel further submits that none had seen the killing of the detainees including RP Saha and his son who were allegedly taken away, on abduction; that dead body of none of detainees could be traced or recovered and that few days prior to the alleged event as arraigned in charge no.02 RP Saha and his son were taken away by army men and later on were set at liberty. Thus, it could not be proved that RP Saha and four other

detainees were killed, on abduction, the learned defence counsel argued.

370. At the outset we emphatically disagree with the above submission as advanced by the learned state defence counsel. Context and horrific situation need to be kept in mind in resolving the factual issues. In frightening situation no one was expected to follow the perpetrators who had left the site by vehicles taking the detainees with them and as such naturally none had occasion of experiencing the fate of the detainees or to see where and how the detainees were eventually annihilated.

371. It is now settled history that in 1971, during the war of liberation Pakistani occupation army and their local collaborators after wiping out the civilians, if accomplished on the bank of river, dead bodies of ill-fated victims were dumped or made floated into the river and thus the same could not be traced. There has been no evidence before us in this regard, true. But that does not mean that the abducted victims were not wiped out or the victims somehow got escaped from the clutch of the gang and the gang accompanied by the accused cannot be assumed to have had involvement in accomplishing the act of killing the victims.

372. Finding no trace of victims after they were unlawfully taken away is sufficient to prove that the detained victims were wiped out. Killing was the upshot of the attack which effected unlawful capture of the ill fated victims. Tribunal notes that considering the context prevailing in war time situation recovery of dead body is not required to show the accomplishment of the act of killing.

373. From the trend of cross-examination of witnesses and submission advanced by the learned state defence counsel it appears that the event of attack that resulted in forcibly taking away RP Saha, his son Ranada Prasad Saha and three other from the residence of RP Saha at Khanpur, Narayanganj is not disputed. Defence simply disputes accused's presence with the gang and participation in launching attack. Defence also argued that mere taking away the victims does not prove their liquidation.

374. In the case in hand, apart from the P.W.10 all other witnesses relied upon by the prosecution in support of this charge are hearsay witnesses. The alleged event of attack was conducted at about 11:00/11:30 P.M. Naturally, in context of war time situation people were not expected to witness the activities carried out in course of attack at night. However, let us weigh the testimony made by the witnesses, in arriving at decision.

375. It transpires that P.W.01, P.W.02, P.W.03, P.W.04 and P.W.05 heard the event from Chondro Mohon Saha, a loyal companion of RP Saha when he came at Mirzapur, two days after the event happened. Chondro Mohon Saha is now dead. P.W.06 is the son of Gour Gopal Saha, one of victims. It is evinced from testimony of P.W.06 that at the relevant time his father Gour Gopal Saha had been at the residence of R P Saha at Khanpur, Naryanganj. Defence could not impeach it. P.W.01, P.W.02, P.W.03, P.W.04 and P.W.05 heard from Chondro Mohon Saha as to how the event of attack was conducted. It transpires from their testimony that Chondro Mohon Saha witnessed the initiation of the attack remaining in hiding inside a nearby drain.

376. Another hearsay witness P.W.06 is a resident of village- Andhara, under police station- Mirzapur of District Tangail. He is the son of Gour Gopal Saha, one of victims. Two days after the event happened he too heard from Chondro Mohon Saha [now dead] when he came from Naryanganj the event of attack conducted by the gang accompanied by the accused, his father Wadud Moulana[now dead] and brother Mannan[now dead].

377. It is evinced too that at the relevant time Gour Gopal Saha the father of P.W.06 who had been at RP Saha's house at Khanpur, Naryanganj at the relevant time and Chondro Mohon Saha, as

disclosed had occasion of witnessing the act of taking away five victims, from a nearby drain where he[Chondro Mohon Saha] went into hiding. Defence could not refute it.

378. Hearsay evidence of those witnesses is not anonymous. The source of such hearsay evidence is the person who had fair and practicable opportunity of witnessing the facts intimately related to the attack that resulted in forcibly taking away RP Saha and four others from his home in Naryanganj. Defence could not refute that at the relevant time Chondro Mohon Saha, a loyal companion of RP Saha had been in Naryanganj.

379. Hearsay evidence of P.W.01, P.W.02, P.W.03, P.W.04, P.W.05 and P.W.06 indisputably proves that the attack was launched at about 11:00/11:30 P.M i.e. about dead of night. It could not be controverted in any manner. Thus, and due to situation existed throughout the territory of Bangladesh in 1971 naturally people had no occasion of witnessing the atrocious acts carried out in conjunction with the attack. Five including RP Saha and his son were taken away on forcible capture. In absence of anything contrary it may be presumed that only the persons including RP Saha staying at his home were unlawfully detained and instantly they were taken away by making them boarded on army vehicles.

380. The learned state defence counsel questioning the probative value of hearsay evidence of those witnesses submits that since the alleged source of such hearsay evidence is not alive now, as testified by prosecution witnesses there is no space of weighing the truthfulness of what has been testified by the witnesses the same does not carry probative value.

381. Disagreeing with the above defence submission we reiterate that hearsay evidence in a case involving the offences enumerated in the Act of 1973 is not inadmissible per se. The hearsay evidence is to be considered together with other evidence which includes circumstances and relevant material facts depicted. Hearsay evidence is admissible and the court can safely act on it in arriving at decision on fact in issue, provided if it carries reasonable probative value [Rule 56(2) of the ROP]. This view finds support from the principle enunciated in the case of *Muvunyi* which is as below:

“Hearsay evidence is not per se inadmissible before the Trial Chamber. However, in certain circumstances, there may be good reason for the Trial Chamber to consider whether hearsay evidence is supported by other credible and reliable evidence adduced by the Prosecution in order to support a finding

of fact beyond reasonable doubt.”
**[Muvunyi, ICTY Trial Chamber,
September 12, 2006, para. 12]**

382. It transpires that hearsay evidence of P.W.01, P.W.02, P.W.03, P.W.04, P.W.05 and P.W.06 so far as it relates to launching attack at the relevant time and forcibly taking away RP Saha and four others from his house gets corroboration from evidence of P.W.10, the lone direct witness to facts intimately linked to the attack in question.

383. Defence categorically suggested, as defence case, to the P.W.02, the wife of victim Bhabani Prasad Saha that in August, 1971 Wadud Moulana himself handed over his son Mahbubur Rahman [accused] to Pakistani occupation army and Mahbubur was kept in jail till end of October, 1971; that during the war of liberation, Wadud Moulana was killed by the freedom-fighters and then his son accused Mahbubur Rahman got release from jail and then he [accused] joined the war of liberation. P.W.02 blatantly denied all these defence suggestions put to her. Besides, there has been no evidence on part of the accused to substantiate such defence case.

384. However, Chondro Mohon Saha, a close companion of RP Saha could see the troops accompanied by the accused, his father and brother forcibly taking away RP Saha and four others. It has been depicted from consistently corroborative hearsay evidence of those five prosecution witnesses. In addition to Chondro Mohon Saha P.W.10 Md. Samal who was an employee of 'mechanical section' of ship's dockyard of 'Kumudini Welfare Trust' of Ranada Prasad Saha [RP Saha] at Khanpur, Naryanganj also could see the gang taking away the victims by making them boarded on army vehicles.

385. It is found from evidence of P.W.10, the lone direct witness to facts closely related to the attack and participation of accused therewith that on 07 May 1971 at about at 11:00/11:30 P.M. he was working in the dry dock, about 80/90 hands [40/45 yards] far from the house of RP Saha when he saw 4/5 army jeeps arriving in front of R P Saha's residence.

386. The above uncontroverted fact gets potency from another crucial fact observed by the P.W.10. It is evinced from testimony of P.W.10 that he could see, with the headlights of the vehicles, some army men and some civil dressed persons getting down from vehicles. With this he went into hiding inside a bush adjacent to a drain of dry dock wherefrom he saw the Pakistani army and their

accomplices entering into the house of RP Saha and they then took R P Saha, his son Bhabani Prasad Saha and three more people away by making them boarded on their vehicles when he could notice civil dressed Wadud Moulana [now dead], his son Mannan [now dead] and another son Mahbub [accused] accompanying the army men. The victims who were taken away at that night never came back and could not be traced.

387. As to reason of recognizing the accused P.W.10 stated that he used to visit Kumudini Complex very often to work at the power house[of the complex] and at that time he had occasion of seeing and knowing Wadud Moulana, his two sons the accused Mahbub and Mannan. Defence could not impeach it. Admittedly the accused was a resident of the locality where the Kumudini Complex is located. Thus, it was practicable of seeing and knowing the accused since beforehand, as testified by the P.W.10. Thus, what the P.W.10 narrated as to the attack launched at RP Saha's residence in Naryanganj indisputably inspires credence.

388. The learned stated defence counsel questioning the plausibility of seeing the gang launching attack and taking away RP Saha and four others as testified by the P.W.10 submits that there was no reason of working in the dry dock at 11:00/11:30 P.M as it was not the working time. and as such the version made by him as to

witnessing the gang taking away the victims is untrue and carries no credibility.

389. We are not agreed with the above submission. There is nothing before us that no employee of the dockyard owned and operated under the Trust of RP Saha was supposed to work even after evening time. It remained unshaken that the dry dock where the P.W.10 had been working at the relevant time was about 80 hands [49 yards] far from RP Saha's home in Narayanganj.

390. That is to say, the place where the P.W.10 remained stayed was just 40 yards far from the place where the gang arrived by vehicles. Means of seeing the act of taking away RP Saha and four others by the gang accompanied by the accused, his father and brother was the headlights of the army vehicles. It was quite natural. P.W.10's testimony does not suffer from any degree of exaggeration. Besides, defence could not refute the truthfulness of this crucial version of P.W.10, the lone direct witness.

391. In cross-examination of P.W.10 it has been rather affirmed that it was practicable of noticing the members of the gang when it took away RP Saha and four others on capture making them boarded on army vehicles. The event does not appear to have been denied even in cross-examination. The reason of knowing the

accused beforehand as claimed by the P.W.10 has been found affirmed too as the P.W.10 stated in reply to defence question that he used to visit Mirzapur very often prior to 1971 and had occasion of seeing and knowing the accused who was about 2/1 year older than him[P.W.10]. Be that as it may, testimony of P.W.10 so far as it relates to participation of the accused in committing the act of forcible capture of RP Saha and four others from the residence of RP Saha in Naryanganj carries natural credibility.

392. Defence appears to have simply denied what the P.W.10 stated in respect of witnessing the accused present with the gang when it carried out the act of forcible capture at the residence of RP Saha. But mere denial is not sufficient to diminish the credence what is testified in examination-in-chief. Defence does not seem to have made any effort to impeach credibility of witness and truthfulness of the facts he testified.

393. P.W. 11 Abul Kalam Azad is a resident of Holding- 909, Par Dighulia, under police station- Tangail Sadar of District Tangail. He is a valiant freedom fighter. In 1971 a freedom-fighter was supposed to remain acquainted with the atrocious activities committed particularly around his own and known localities, it may be presumed. He [P.W.11] too heard the event from one of their sources. It was very likely. This witness does not seem to have

made any kind of exaggeration. He simply stated what he heard and knew.

394. It appears that it has been suggested, as defence case, to P.W.11 that the accused was not a Razakar and that in 1971 the accused was a freedom-fighter of a company under Brigadier Fazlur Rahman of 'Kaderia Bahini'. Mere putting such unfounded defence case does not negate accused's affiliation in locally formed Razakar Bahini. Defence does not seem to have made any attempt to substantiate such specific defence case by adducing evidence. Thus, putting such suggestion as a defence case is nothing but a futile effort intending to negate accused's participation and complicity with the attack that resulted in abducting RP Saha and four others.

395. P.W. 12 Razib Prasad Saha is the grand-son of RP Saha. In 1971 he was three years old. He testified that he learnt how his grand-father and father were unlawfully taken away from Naryanganj and they could not be traced since then. From whom P.W.12 heard the tragic event? According to him he heard it from his mother Sreemoti Saha [P.W.02], father's sisters Joyapati and Bijoya Khan, Protiva Mutsuddi [P.W.01] and the elders of their family.

396. Admittedly, in 1971 P.W.12 was just a kid of three years old. When he is grown up naturally he obviously started feeling absence of his father and thus naturally then got acquainted about the fate of his father and noble grand-father from his ill-fated mother [P.W.01] and elders of family including Protiva Mutsuddi [P.W.01]

397. Defence could not refute that the P.W.12 heard the event from his mother and others, when he grown up. His hearsay testimony seems to be consistent to that of other witnesses including the evidence, P.W.10, a direct witness. Thus, his hearsay testimony carries probative value and inspires credibility.

398. P.W.13 was an elected member of Provincial Assembly in 1970 and close associate of RP Saha. It remained undisputed. Testimony of P.W.13 demonstrates that Wadud Moulana [now dead], his two sons accused Mahbub and Mannan [now dead] were gravely antagonistic to RP Saha and his contributions, since prior to the war of liberation ensued. This piece of pertinent fact which remained unimpeached lends assurance to the fact of participation of accused, his father and brother in effecting forcible capture of RP Saha, his son and three others present at the residence of RP Saha in Naryanganj.

399. Hearsay evidence is admissible in a case involving the offences enumerated in the Act of 1973. It is now settled. P.W.13 is a responsible person. We do not find any reason to keep his hearsay evidence aside. P.W.13 heard the event, in the month of July 1971 when he had been in freedom-fighters training center in India, through his sources. It was quite natural. Besides, he heard the event also from the daughter-in-law of RP Saha and their family inmates, after independence. That is to say, hearsay evidence tendered by P.W.13 is not anonymous. Besides, the hearsay evidence of P.W.13 gets corroboration from the evidence of P.W.10, a direct witness and facts unveiled.

400. The learned state defence counsel submits that only one witness i.e. P.W.10 claims to have witnessed the acts related to the event of attack and the other witnesses are hearsay witnesses. Thus, the accused cannot be held responsible merely on the basis of uncorroborated testimony of P.W.10.

401. We are not persuaded with the above misconceived argument advanced on part of the defence. It is now well settled that Tribunal may arrive at decision even on the basis of single testimony and ‘corroboration’ is simply one of factors to be considered in assessing witness’ credibility. In this regard we recall the

observation made by the **ICTR Trial Chamber** in the case of **Nyiramasuhuko** which is as below:

“There is no requirement that convictions be made only on evidence of two or more witnesses. The Chamber may rule on the basis of a single testimony if, in its opinion, that testimony is relevant and credible. Corroboration is simply one of potential factors in the Chamber’s assessment of a witness’ credibility. If the Chamber finds a witness credible, that witness’ testimony may be accepted even if not corroborated.

[Nyiramasuhuko, ICTR Trial Chamber, 24 June 2011, para 174]

402. Why the gang accompanied by the accused rushed to Naryanganj just after concluding its mission at Mirzapur [as arraigned in charge no.01]? What was their objective and intent? We have already got it proved from facts and circumstances in adjudicating charge no.01 that in addition to targeting Hindu community of Mirzapur the key target of the squad was RP Saha.

403. Why the gang targeted RP Saha? Who was RP Saha? What scale of destruction the gang intended to cause by targeting RP Saha and what was intent behind it? Although the methods of forced expulsion often include massacres, a group can become

socially dead even if non-lethal coercive means are used to expel its survived members.

404. In the case in hand, it is patent that the criminal gang accompanied by the accused, his father, his brother and cohort Razakars just couple of hours after they carried out attack as arraigned in charge no.01 had launched systematic attack at the RP Saha's residence at Khanpur, Naryanganj. That is to say, this attack was continuation of the attack the gang had carried out in day time at Mirzapur and adjacent localities that resulted in killing 33 Hindu civilians and grave devastation.

405. The designed recurrent attack impels the conclusion that the gang of perpetrators accompanied by the accused became extremely aggressive in throwing out RP Saha who was perceived to lead the Hindu community and to bring activities of institutions formed by RP Saha for human wellbeing to an end.

406. It remained undisputed that the noble contribution and deeds RP Saha made for the cause of wellbeing of humanity and society made him a globally notable philanthropist. This was the reason of targeting him, his son, his institutions and the Hindu civilians of his native village-Mirzapur. Intention was to leave impact upon the survived individuals of the group. The accused, his father, brother

and cohort Razakars being imbued by extreme antagonistic attitude and with intent to destroy or cripple the noble ideology of RP Saha actively participated in perpetration of crimes in question, we conclude.

407. Of course the accused, his brother and father were not with the troops to enjoy a pleasure trip or to execute any pious wish, at the time of launching attack. The troop arrived at the home of RP Saha in Naryanganj by jeeps, being accompanied by the accused, his brother, father and cohort Razakars. It stands proved. RP Saha and four others available at home were then taken away unlawfully—it stands proved too. Thus, the accused obviously knew the purpose and intent of the troops and consciously accompanied the gang. In this way he assisted, aided the gang, sharing intent.

408. This phase of attack resulted in abduction of RP Saha and four others including his son. None had occasion of seeing what happened to the detainees next. But since they could not be traced or none of them returned back it may be safely and lawfully inferred that eventually the detainees were killed. The act of killing the upshot of the first phase of attack was linked to the act of abduction in accomplishing which the accused had played active role by aiding, assisting and encouraging the troops. Thus, the

accused cannot absolve liability even of the killing RP Saha and four others.

409. Liability can be established by showing that the accused had intent to participate in the crime and that his act contributed to its commission. Here, the accused remained stayed with the troops consciously and knowing the consequence or outcome of the attack and thus incurred equal liability.

410. It already stands proved that the accused was a notorious Razakar of the locality and his father was a mighty associate of the army and his brother Mannan also belonged of Razakar Bahini. They together deliberately accompanied the troops to the crime site. Obviously they did not opt to move to the site to be attacked as mere spectators. Be that as it may, we are forced to infer that presence of accused at the crime site with the gang was culpable indeed and intended to participate in accomplishing the criminal activities, sharing common purpose.

411. It is now jurisprudentially settled that contribution to the commission of crimes does not necessarily require participation in the physical commission of the crime, but that liability accrues where the accused is found to have had intentional and culpable

presence at a location where arbitrary unlawful acts were committed.

412. It is immaterial to argue that the accused was not the actual perpetrator or he himself physically participated to the commission of the criminal acts leading to annihilation of victims. The accused must be the cog in the wheel of events leading up to the result which in fact happened.

413. In the case in hand, the facts unveiled suggest the conclusion that the accused being active part of the enterprise got culpably engaged to promote the object of actual accomplishment of the principal crime, annihilation of detainees. Thus, the accused shall not have exoneration as he is found to have had acted in such a manner which eventually facilitated the actual carrying out of the criminal acts. This view finds support from the observation made by the ICTY in the case of **Prosecutor v. Du [Ko Tadi]** which is as below:

“.....many of international crimes which are committed most commonly in wartime situations. Most of the time these crimes do not result from the propensity of single individuals but constitutes manifestations of collective criminality: the crimes are often carried out by groups of individuals acting in

pursuance of a common criminal design. Although only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or villages, etc), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different—from that of those actually carrying out the acts in question.” [ICTY Appeal Chamber in the case of Prosecutor v. Du **[Ko Tadi]: Case No. IT-94-1-A Judgement 15 July 1999, Paragraph: 191**].

414. The locality of Mirzapur and adjoining vicinities were Hindu dominated. Kumudini Welfare Trust and Bharateswari Homes were the institutions run by RP Saha., defence does not dispute it. Attack was first carried out at those institutions, on the same day in day time and in conjunction with the attack the army men on having facilitation and active assistance deliberately abused the girls of the Homes. Such prohibitory act caused mental harm to all who had been at those institution and the accused and his accomplice Razakars created grave fright.

415. RP Saha, his son and others could not be traced after committing their abduction from Naryanganj. Prior to committing

this attack the criminal mission formed of Pakistani occupation army, their local collaborators including the accused, his brother and father desperately carried out horrific attack at the Mirzapur Kumudini Welfare Trust, on the same day in afternoon. The event of attack was chained to the subsequent attack [as arraigned in charge no.02] that resulted in abduction of RP Saha, his son and others.

416. It stands proved that in course of the attack at Mirzapur the gang deliberately targeted Hindu civilians of the locality, created untold panic and caused serious mental harm to the female students. Plainly, it may be presumed that the criminal enterprise chiefly intended to annihilate RP Saha who used to act as a guide of the people worked at Kumudini welfare trust and also to cripple the substantial part of Hindu community of Mirzapur.

417. But why RP Saha was so targeted? Did the gang target him merely for the religion he belonged to? It is settled history that in 1971 during the war of liberation civilians belonging to Hindu religious group were the key targets of the Pakistani occupation army, true. But in the case in hand, there have been some other explicit reasons of targeting RP Saha.

418. Tribunal considers it just to eye on the brief portrayal of RP Saha and his contribution to humanity and wellbeing of humankind, which may justifiably lead to the inference as to objective of targeting him.

419. Testimony of P.W.01 Protiva Mutsuddi and other unchallenged authoritative documents clearly demonstrate that in early life RP Saha had to cross enormous hurdles to survive. His nobility started flourishing when he got engaged in continuing social activities around the localities under Mirzapur, Tangail. Pioneering deeds for developing education and health of people gradually placed him as an icon in the world of humanity, irrespective of race and religion.

420. Danabeer [Philanthropist] RP Saha thus belonged to mankind, civilization, not only to any particular religion or race. He was an incomparable architect of creating and mounting the school of humanity meant to respond to the need necessary for a developed society, by his immense and continuing noble deeds. RP Saha was not a mere human being. He himself was an institution which was not built in a day. His life was full of struggle and the struggle was not meant for the wellbeing and happiness of his own, but for the humanity, for the mankind and for the well being of the society,

intending to go ahead aiming to achieve advancement and only advancement of civilian population.

421. Attack on RP Saha and his son and others was not only to wipe them out but was intended to make the noble activities of the institutions conducted under his vibrant guidance halted and also to destroy the Hindu community, either whole or in part.

422. Act of gunning down large number of Hindu civilians bringing them near a ditch, adjacent to Kumudini female Hostel, creating grave horror and causing serious mental harm by launching attack at hostel exceeded the limit of brutality[as arraigned in charge no.01]. It stands proved that local Razakars including the accused, his father and brother accompanied the troops in carrying out such diabolical massacre.

423. It is evinced from testimony of P.W.10 who had opportunity of seeing the gang accompanied by accused and his father and brother taking away RP Saha, his son and others away forcibly. None could have any trace of the detainees. There has been nothing before us as to where, how and by whom the detainees including RP Saha were wiped out. But it does not negate the fact that they were annihilated.

424. The undisputed fact of forcible capture, by launching attack and the fact of having no trace of detainees since such abduction together proves it beyond reasonable doubt that RP Saha and other detainees were killed by the gang of perpetrators which carried out the attack in effecting forcible capture of RP Saha and others.

425. Admittedly, RP Saha, his son and three other victims could not be traced, since they were forcibly taken away, from the residence of RP Saha at Khanpur, Naryanganj. The accused has been indicted for the offence of murder as ‘crimes against humanity’ or in the alternative for the offence of ‘genocide’, the upshot of the act of abduction in committing which he is already found to have had active participation and concern.

426. Since the event happened not in times of normalcy, proof beyond reasonable doubt that an abducted person was murdered does not necessarily require proof that the dead body of that person was recovered. In situation prevailing during the war of liberation in 1971, a victim’s death may be established even by circumstantial evidence provided that the only reasonable inference is that the victim is dead as a result of the deliberate acts the accused and his accomplices forming the squad.

427. In the case in hand, accused's participation at the phase of abduction itself is a fair indicative of his conscious participation even to the accomplishment of killing the abductees, the upshot of their abduction as proved.

428. Therefore, it is unerringly concluded that the accused being part of the enterprise played a substantial and culpable role in facilitating the entire criminal mission in concerted way and thereby he incurred liability as a 'participant' to the commission of the crimes, with specific intent.

429. It is not denied that the father of accused was killed by the freedom-fighters just before the independence achieved, for his extreme and antagonistic role in accomplishing horrendous atrocities around the localities of Mirzapur. The father of accused was a notorious affiliate of Pro-Pakistan political party and played key role in forming local Razakar Bahini.

430. It is undisputed too that Mannan, the brother of the accused was a close associate of Razakar Bahini. In absence of anything contrary, it may thus be emphatically inferred that the accused did not keep him distanced from the ideology his father and brother used to carry and he too thus got affiliated in locally formed Razakar Bahini and being imbued by the policy and plan of

Pakistani occupation army he opted to knowingly accompany the gang of attackers to execute its culpable design, sharing common intent.

431. What was the 'specific intent' of the perpetrators in launching attack to secure unlawful capture of five Hindu civilians including RP Saha? In the case in hand, it is patent that the criminal gang accompanied by the accused, his father, his brother and cohort Razakars just couple of hours after they carried out attack as arraigned in charge no.01 had launched systematic attack at the RP Saha's residence at Khanpur, Naryanganj. That is to say, this attack was continuation of the attack the gang had carried out in day time at Mirzapur and adjacent localities.

432. Already in adjudicating the charge no.01 it has been resolved that the criminal activities leading to indiscriminate killing of 33 civilians belonging to Hindu religious group of Mirzapur and adjoining vicinities was with intent to destroy the group, in whole or in part and thus collective criminality of the squad constituted the offence of 'genocide'.

433. We have found it proved that the attack arraigned in charge no.02 was conducted just few hours after the mayhem happened in Mirzapur and adjacent localities, on the same day. In conjunction

with the attack arraigned in charge no.01 the gang accompanied by the accused, his father, brother and cohort Razakars carried out prohibited acts at Kumudini Complex, in search of RP Saha. All these cumulatively lead to irresistible conclusion that the gang formed of Pakistani occupation army, accused, his father, brother and accomplice Razakars, with the same intent moved to Naryanganj and by launching attack at the residence of RP Saha forcibly captured RP Saha and four others and took them away making them boarded on army vehicles. Be that as it may, we justifiably arrive at finding that the attack launched at RP Saha's residence in Naryanganj was a 'genocidal attack' which was with intent to destroy the Hindu religious group, in whole or in part..

434. Tribunal notes that 'specific intent' to destroy the group does not mean its actual physical destruction and there is no numerical threshold of victims required to constitute the offence of 'genocide'. Specific intent of perpetrators as manifested from the factual matrix was to rid the Hindu religious community of Mirzapur, the native village of RP Saha and its adjacent villages. Killing 33 Hindu civilians as already proved in adjudicating charge no.01 and five including RP Saha, as found proved lead to conclude that the genocidal intent was predominant to constitute the offence of 'genocide'.

435. The perpetrators had shown barbaric aggression to RP Saha considering him the leader of the Hindu community of Mirzapur. By targeting RP Saha and his institutions the perpetrators rather intended to destroy the leadership of local Hindu religious group as they perceived that it would have impacted upon the survival of the group as well. Further, RP Saha was selected for his philanthropic leadership, irrespective of race and religion. In respect of ‘genocidal intent’ **ICTY Trial Chamber** observed in the case of **Jelusic** that--

“Genocidal intent may . . . be manifest in two forms. It may consist of desiring the extermination of a very large number of the members of the group, in which case it would constitute an intention to destroy a group en masse. However, it may also consist of the desired destruction of a more limited number of persons selected [*i.e.* **leadership of the group**] for the impact that their disappearance would have upon the survival of the group as such. This would then constitute an intention to destroy the group ‘selectively.’

[Jelusic, ICTY Trial Chamber, December 14, 1999, para. 82]

436. In the case in hand, we have found it established that the perpetrators accompanied by the accused desired destruction of a more limited number of selected persons which constituted an intention to destroy the Hindu religious group.

437. Pakistani occupation army men naturally had no acquaintance with the locality and the people to be targeted. Obviously, their local collaborators especially belonging to local Razakar Bahini including the accused provided facilitation and culpable contribution to the gang chiefly formed of army men and such acts amounted to 'participation'.

438. We may thus arrive at decision that presence of accused with the criminal enterprise was thus culpable and he knowing the consequence of the attack assisted and substantially contributed to the commission of killing of numerous selected Hindu civilians.

439. The learned prosecutor argued that accused had complicity as he consciously aided and abetted the gang which substantially contributed to the commission of the offence of genocide. Liability the accused incurred is no less than the actual perpetrators. For the accused knowing the forceable consequence and sharing specific intent to destroy the Hindu religious group. Facts divulged suggest the unerring inference that act and conduct of the accused were

culpable because he knew or should have known that the acts he committed would destroy, in whole or in part, the Hindu religious group constituting the offence of 'genocide', the learned prosecutor added.

440. We agree with the above submission on the issue involving the mode of participation of accused in accomplishing the crimes. Aiding refers to act of providing assistance to someone. Abetting, on the other hand, would involve facilitating the commission of an act by being sympathetic thereto. It is now well settled that the phrase aided and abetted is thought to be virtually indistinguishable from the concept of 'complicity'.

441. 'Complicity' or 'participation' of accused may be well inferred and well perceived from relevant facts and circumstances which prompts not to draw any other hypothesis excepting the guilt of the accused, despite lack of explicit evidence in this regard. Nuremberg principles recognize that complicity in the commission of a crime against humanity or offence of genocide or war crime is a crime under international law. 'Complicity' refers to 'all acts of assistance or encouragement' that have substantially contributed to, or have had a substantial effect on, the completion' of a crime as enumerated in the Act of 1973.

442. It stands proved that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul was actively with the criminal gang when it carried out first phase of its mission. Killing or annihilation of detained five victims including RP Saha was the upshot of the first phase of attack that resulted in taking them away on unlawful capture. It is thus enough to assume that the accused did not withdraw him from the group or principal perpetrators to facilitate the act of annihilating the detainees.

443. In light of the settled proposition depicted from the view of the adhoc tribunal it may be lawfully inferred that the act of the accused who being part of the criminal enterprise consciously facilitated the squad chiefly formed of Pakistani occupation army in abducting the victims RP Saha, his son and three others was indeed an act of ‘assistance’ or ‘encouragement’ that amounts to an act of ‘complicity’ in the commission of the principal crime, the killing.

444. According to **Professor Schabas:**

“Complicity is sometimes described as secondary participation, but when applied to genocide, there is nothing “secondary” about it. The “accomplice” is often the real villain, and the “principal offender” is a small cog in the machine. Hitler did not, apparently, physically

murder or brutalize anybody, technically, he was “only” an accomplice to the crime of genocide.”

[See William A. Schabas, Enforcing International Humanitarian Law: catching the Accomplices, INT’L REV. RED CROSS (2001) at 286]

445. In international criminal law, the three essential elements of ‘complicity’ are—(i) the commission of a crime, (2) the accomplice is one who is a complicit and provides material contribution to the commission of that crime; and (iii) the accomplice’s intention that the crime be committed. **ICTY Appeal Chamber** observed in the case of **Tadic** that—

“.....Most of the time these crimes do not result from the criminal propensity of single individuals but constitute manifestations of collective criminality: the crimes are often carried out by groups of individuals acting in pursuance of a common criminal design. Although only some members of the group may physically perpetrate the criminal act..... the contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows then that the moral gravity of such perpetration is often no less –or

indeed no different from that of those actually carrying out the acts in question”

[Tadic Case, ICTY Appeal Chamber, Case No IC-94-1-A, Judgment: July 15, 1999, p.191]

446. It stands proved that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul was present with the gang intending to take part in a common enterprise which was prohibited and unlawful and he in his own way assisted the common purpose of all the members of the criminal gang. The accused is thus equally guilty in point of law, for the commission of the principal crime in question, the upshot of the deliberate genocidal attack.

447. Entirety of facts as unveiled leads to the conclusion that act of the accused was intimately related to the attack on a particular group, The accused had acted as an accessory and co-perpetrator as he took a consenting part in the commission of crime, knowing the intended purpose and was connected with plans or enterprise involved in its commission, in exercise of his membership in Razakar Bahini a *para militia* force.

448. Evidence presented together with the facts and circumstances unveiled collectively leads to the irresistible conclusion that the accused participated in the mission of effecting unlawful detention

of RP Saha and four others belonging to Hindu religious group, by consciously accompanying the gang.

449. It is imperative to note, in view of argument advanced by the learned state defence counsel that it is true that there has been no evidence in support of the act of killing as arraigned in the charge framed. But it is quite patent that the act of abduction was chained to the act of annihilation of victims.

450. 'Group crime' as specified in the Act of 1973 does not require the prosecution to establish that the accused personally committed the killing. Personal commission is only one of the modes of responsibility. The law does not enjoin an obligation on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate really difficult to be led.

451. Even absence of any evidence as to causing death of detainees after taking them away it may be lawfully deduced that the victims were annihilated as since the act of abduction the victims could not be traced afterwards. At the same time it is validly concluded that none but the gang which accomplished the forcible capture of victims had accomplished also the act of killing. And it may be lawfully deduced that in execution of their killing the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul, being active part of the

enterprise aided, abetted and facilitated substantially to the commission of the principal crime, in furtherance of common purpose.

452. The accused Md. Mahbubur Rahman @ Mahbub @ Mahebul incurred liability under section 4(1) which refers to Joint Criminal Enterprise [JCE-Basic Form]. Tribunal notes that JCE is an agreement or understanding to execute a “common criminal purpose’. The accused, by virtue of his affiliation in an auxiliary force, was naturally in a position to have predicted that the attack would lead to the killing of the victims by the gang and knowing it he participated actively in launching the deliberate attack. The accused was quite aware that the atrocious actions of the group of which he was a conscious and active member were likely to lead to the forcible capture of RP Saha, his son and three others leading to their annihilation.

453. It is now settled that the expression ‘common purpose’, ‘awareness of foreseeable consequence’ of act or conduct, ‘intent’ are the key factors involved with the notion of JCE liability. In the case in hand, proved act of accompanying the gang at the crime site itself indicates accused’s conscious agreement to participate in

accomplishing the criminal mission, sharing common purpose and genocidal intent, we conclude.

454. Tribunal notes that the doctrine of ‘common purpose’ presupposes that all the participants including the accused in the common purpose shared the same criminal intent, namely, to commit annihilation of RP Saha, his son and three others of whom all belonged to Hindu religious group and the specific intent of the common purpose was to destroy the Hindu community, either whole or in part. Number of victims is not material, in all cases. It is to be seen whether attack was conducted with ‘genocidal intent’.

455. Already it has been found proved, in adjudicating charge no.01 that on 07th May 1971, in day time the group formed of Pakistani army men, accused Md. Mahbubur Rahman @ Mahub @ Mahebul and their accomplices carried out deliberate and violent systematic attack and devastating activities at Hindu dominated localities under Mirzapur, Tangail and its adjacent localities that resulted in killing of 33 Hindu civilians and the intent of the perpetrators was to destroy the Hindu religious group, in whole or in part constituting the offence of ‘genocide’.

456. The above proved event of violent genocidal attack as narrated in charge no.01 had intimate nexus with the event of attack

conducted in Naryanganj residence of RP Saha, the factual matrix suggests this unerring conclusion.

457. On rational appraisal of evidence presented we arrive at unanimous decision that prosecution has been able to prove beyond reasonable doubt that--

(i) Five including RP Saha, a notable philanthropist and the architect of Kumudini Welfare Trust, all belonging to Hindu religious group were apprehended by the group formed of Pakistani occupation army men, accused Md. Mahbubur Rahman @ Mahbub @ Mahebul and their accomplices from the Naryanganj residence of RP Saha by conducting a designed and systematic attack, on 07th May 1971 at 11:00 P.M;

(ii) accused Md. Mahbubur Rahman @ Mahbub @ Mahebul consciously and knowing consequence of his act and conduct actively participated, abetted and substantially facilitated in effecting unlawful capture of victims including RP Saha;

(iii) the detained victims could not be traced since they were taken away and as such it is lawfully deduced that they were liquidated which was the upshot of their abduction;

(iv) participation and culpable concern of the accused at the first phase of attack lead to deduce justifiably that he participated also in accomplishing the phase of killing of detainees and thus incurred equal liability;

(v) the attack was in continuation or prolongation of the attack carried out on the same day, just few hours back at Mirzapur, Tangail and adjacent vicinities that resulted in killing 33 Hindu civilians constituting the offence of 'genocide';

(vi) the attack was, with intent to destroy the group the victims belonged, in whole or in part.; and

(vii) collective criminality was 'genocidal' in nature and as such by accomplishing the common purpose of killing five civilians including RP Saha all of whom belonged to Hindu religious group constituted the offence of 'genocide'.

458. On totality of evidence tendered on part of the prosecution there can be no room to deduce that the event of killing five[05] Hindu civilians including RP Saha on taking them away on forcible capture was an isolated event.

459. Collectively all the prohibited and deliberate criminal acts forming part of attack to which the accused was an active part

adversely impacted on the livelihood of survived civilians of the Hindu community of Mirzapur the native village of RP Saha. Pattern and magnitude of attack lead to conclude that ‘specific intent’ of the perpetrators was not to simply killing Hindu civilians but to cripple or destroy the religious group the victims belonged to.

460. In view of deliberation based on evidence and settled legal proposition we arrive at decision that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul is found criminally liable under section 4(1) of the Act of 1973 for participating, abetting, assisting, substantially contributing, by his act and conduct forming part of systematic attack, to the accomplishment of actual commission of the offence of ‘**genocide**’ as enumerated in section 3(2)(c)(i)(g)(h) of the International Crimes(Tribunals) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Adjudication of charge no.03

[Event no.03 as narrated in page nos. 30-35 in the formal charge]

[Offence of ‘genocide’ or in the alternative offences of ‘confinement’, ‘abduction’, ‘torture’ and ‘murder’ as crimes against humanity]

461. Charge: That on 14 May, 1971 in between about 02:30/03:00 P.M to 12:00 A.M, in continuation of the attack that resulted in killing 33 civilians belonging to Hindu religious group [as narrated

in charge no.01] and 05 civilians including Ranada Prasad Saha [R.P Saha] (as narrated in charge no.02) carried out on 07 May, 1971 a group formed of 50/60 armed Razakars being accompanied by the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul by launching systematic attack at villages-Mirzapur, Andhara, Sarishadair, Durgapur, Kanthalia, Postakumari under Police Station Mirzapur of District Tangail with intent to destroy the Hindu religious group, in whole or in part unlawfully detained 22 civilians belonging to Hindu religious group--(1) Dhirendra Saha, (2) Nityananda Saha, (3) Dinesh Chandra Poddar, (4) Birendra Nath Chowdhury, (5) Rabindra Nath Saha, (6) Panna Lal Saha, (7) Syamsundar Poddar, (8) Surjendra Poddar, (9) Haridas Saha , (10) Suresh Chandra Saha, (11) Balai Chandra Saha **of village-Mirzapur** under Police Station-Mirzapur, (12) Pada Saha of village Andhara, (13) Bhabendra Kumar Saha, (14) Nitai Karmakar **of village- Sarishadair** under Police Station-Mirzapur, (15) Kanai Lal Saha, (16) Rakhal Chandra Saha, (17) Bhebal Mandal **of village-Durgapur** under Police Station-Mirzapur, (18) Jagadish Bakshi, (19) Amal Kumar Bakshi @ Amu Bakshi **of village-Kantahlia** under Police Station-Mirzapur, (20) Dr Rebati Mohon Saha, (21) Fanindra Nath Saha **of village-Postakumari** under Police Station-Mirzapur and (22) an unknown Hindu civilian and first took them away to Mirzapur Police Station.

Thereafter, at about 06:00 P.M, on the same day a group of Pakistani occupation army arrived at the police station by a big truck being accompanied by accused Md. Mahbubur Rahman @ Mahbub @ Mahebul and his accomplices and then the 22 detained Hindu civilians including two other detainees were taken to the torture cell set up at Tangail circuit house, by a truck at about 10:30/11:00 P.M and the detainees were subjected to inhumane torture in captivity.

Finally, the 24 detainees were taken to Madhupur Bridge under the Bangshai river of Madhupur by an army truck at about 12:00 A.M where they were made stood in a line forcibly and then the Pakistani occupation army bayoneted 22 detainees to death and threw their dead bodies into the river. Detainees Sadhan Bhattacharya and Gandhi Saha somehow got survived with severe injuries sustained.

Therefore, the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul participated, substantially abetted and facilitated the actual commission of the offence of 'genocide' as specified in section 3(2) (c)(g)(h) read with section 4(1) of the International crimes(Tribunals) Act, 1973 or in the alternative for participating, substantially abetting and facilitating the actual commission of the offences of 'confinement', 'abduction', 'torture' and 'murder as

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

Evidence of Witnesses Examined

462. This charge involves the act of taking away 24 civilians belonging to Hindu community of Mirzapur and its neighboring villages, on forcible capture and the criminal mission ended in killing 22 Hindu detainees and two somehow got survived.

463. The arraignment brought in this charge rests upon testimony of three witnesses i.e. P.W.07, P.W.08 and P.W.09 of whom P.W.08 and P.W.09 are direct witnesses to facts materially related to the first phase of attack. P.W.07 and P.W.08 are the sons of two survived victims and they claim to have heard the ending phase of the attack involving the act of killing the detainees from their fathers, later on. Now, let us see what the witnesses testified.

464. P.W. 07 Sushil Kumar Bhattacharya [59/60] is a resident of village-Kanthalia, under police station-Mirzapur of District Tangail. In 1971 he was 12/13 years old and a student of class IV. He is the son of Sadhan Chandra Bhattacharya [now dead], one of victims. He is a hearsay witness.

465. P.W.07 stated that on 14th May, 1971, Friday at around 4:30/5:00 P.M. he had been at home when their village doctor Hazrat [now dead] coming to their home informed that Razakar Mahub @ Mahebul being accompanied by his accomplice Razakars detained 24 people belonging to Hindu religious group from neighbouring villages-Mirzapur, Sarishadair, Durgapur, Postakumari and Kanthalia including his father Sadhan Chandra Bhattacharya, Jagadish Chandra Bakshi, Amiyo Chandra Bakshi and took them away towards Mirzapur police station. On hearing it his [P.W.07] uncle Advocate Reboti Bhattacharya [now dead] moved to Mirzapur Thana and on arriving in front of Thana he witnessed from far that 24 detainees were taking away towards Tangail town making them boarded on a truck of Pakistani occupation army.

466. P.W.07 next stated that on the following day his grand-father Rajani Kanta Bhattacharya [now dead] and uncle Advocate Reboti Bhattacharya [now dead] started searching of his father and just 4/5 days prior to Bangladesh got liberated his uncle came to know that his [P.W.07] father was undergoing treatment at the house of Jamila Khatun [now dead] at village-Chapri of Police Station-Madhupur. His uncle brought back his father to home, 2/3 days

before independence. They found his father's body severely wounded caused by charging bayonet.

467. P.W.07 went on to state that people from neighbouring villages came to visit his ailing father. His father told them that on 14th May, 1971 at around 2:20/3:00 P.M. Razakars detained 24 people of Hindu community, took them away to Mirzapur Thana where they were subjected to brutal torture. Then the 24 detainees were taken to Madhupur Bridge by an army truck at about 12:00 A.M. where they were made stood in a line forcibly and then the Pakistani army bayoneted 24 detainees which resulted in death of 22 detainees, threw their bodies into the river. His [P.W.07] father also disclosed that he [Sadhan Bhattacharya] and Gandhi Saha got miraculously survived with severe injuries sustained and local people rescued them when they found them floating at Chapri village and took them to the home of Jomila Khatun and Dr. Sudhansu Saha [now dead] treated them.

468. P.W.07 finally stated that his father got admitted in Kumudini Hospital to have necessary treatment. They saw 19 marks of severe injuries on his father's body which were caused by charging bayonet.

469. On cross-examination, P.W.07 stated in reply to defence question put to him that Baimhati village was about 01 kilometer far from their house; that he saw the accused Mahbub @ Mahebul around the locality, 4/5 years after independence.

470. Defence, it appears, simply denied what the P.W.07 described in relation to the event arraigned in charge no.03. P.W.07 denied the defence suggestion that the accused was not a Razakar and that what he testified was untrue and tutored

471. P.W. 08 Debesh Chandra Saha [65/66] is a resident of village-Durgapur, under police station-Mirzapur of District Tangail. In 1971 he was 17/18 years old. He is a direct witness to the facts related to the first phase of attack launched at their village. He is the son of another survived victim Gandhi Ranjan Saha.

472. P.W.08 stated, in respect of the first phase of the attack that on 14th May, 1971, Friday at around 3:00/4:00 P.M. he had been at home when he saw a group formed of Razakar Mahbub @ Mahebul and their cohort Razakars heading towards their house and with this being scared he went into hiding inside a nearby bush, west to their house. His father also went into hiding inside another bush, west to their house. Remaining stayed inside the hiding place, he saw the Razakars taking away his father blindfolded, on forcible capture.

He [P.W.08] came out of the hiding place, after the gang had left the site and coming back home disclosed the fact of taking away his father.

473. In respect of the upshot of the attack, the killing P.W.08 is a hearsay witness. P.W.08 stated that he came to know from the local people that including his father 24 Hindu civilians of villages- Mirzapur, Sarishadair Kanthalia Postakumari were first made assembled at the place north to Kumudini Hospital and therefrom they were taken to Mirzapur Thana where they were subjected to grave torture in captivity and therefrom they were taken towards Tangail town by an army truck at about 06:00 P.M.

474. P.W.08 next stated that few days later he heard from the local people that at 12:00 night, on the day the detainees including his father were taken towards Tangail the Pakistani army men bayoneted 22 detainees to death, taking them at Madhupur Bridge and threw their dead bodies into the river. Being seriously wounded two detainees including his father got survived as the local people of Chapri village rescued their injured body when found floating in the river and arranged treatment by Doctor Sudhansu Saha.

475. P.W.08 next stated that after couple of months his father came back home when they saw mark of 26 bayonet hit severe injuries on his father's body. Later, his father disclosed that on that day [day of attack launched] they the 24 Hindu civilians were taken to Tangail circuit house from Mirzapur Thana. And at midnight they the 24 detainees were taken to Madhupur Bridge by an army truck, they were made stood in a line and then the Pakistani army by charging bayonet caused death of 22 detainees and threw their dead bodies into the river. However, he [the father of P.W.08] and Sadhan Bhattacharya somehow got survived with sheer luck as they were thrown to river, perceiving them dead. Local people of village Chapri rescued them finding their bodies floating in river and took them to the home of Jomila Khatun where Dr. Sudhansu Saha [now dead] treated them---his [P.W.08] father told.

476. Afterward, he[P.W.08] made arrangement for his father's treatment keeping him at his aunt's home and then brought him back to home, after independence when he[father of P.W.08] shared the event he experienced with the villagers and near ones, P.W.08 stated..

477. In respect of reason of knowing the accused P.W.08 stated that the house of accused Mahub @ Mahebul was about quarter mile

far from their house and very often he had occasion of seeing him at Bazaar and thus he knew the accused beforehand.

478. P.W. 09 Anil Kumar Saha [64/65] is a resident of village-Mirzapur, under police station-Mirzapur of District Tangail. During the Liberation War he was a student of Class VI of Sodoy Krishna High School. At that time he was 16/17 years old.

479. P.W.09 stated that on 14th May, 1971 Friday at around 3:00 P.M. he had been at home when he saw Razakar Md. Mahbubur Rahman alias Mahbub alias Mahebul being accompanied by his brother Mannan [now dead] and 20/30 cohort Razakars entering their house. With this being scared he went into hiding inside a nearby jungle, west to their house wherefrom he saw the Razakar Mahbub @ Mahebul and his accomplice Razakars taking away his father Haridas Saha on forcible capture towards the north bank of the river Louhojong. Half an hour later after the gang had left the site he came out of the hiding place and he came to know from local people that 24 Hindu civilians including his father were made assembled at the place north to Kumudini Hospital wherefrom the detainees were taken to Mirzapur police station where the detainees were subjected to torture. Later on, he [P.W.08] heard that the 24 detainees were taken away to Tangail circuit house by army truck and his father never came back.

480. P.W.09 also stated that after the independence he and his relatives went to meet two survived detainees Sadhan Bhattacharya and Gandhi Ranjan Saha. They told them that the 24 detainees were taken to Tangail Circuit House where they were subjected to brutal torture. Then the 24 detainees were taken to Madhupur Bridge by an army truck at about 12:00 A.M where they were made stood in a line forcibly and then the Pakistani army bayoneted all, threw their dead bodies into the river. They [Sadhan Bhattacharya and Gandhi Saha] got survived with severe injuries sustained as they were thrown to river perceiving them dead. People of Chapri villages rescued their floating bodies and arranged treatment.

481. P.W.09 in respect of reason of knowing the accused beforehand stated that he knew Md. Mahbubur Rahman alias Mahbub alias Mahebul beforehand as he was a resident of their village.

Finding with Reasoning on Evaluation of Evidence

482. The learned prosecutor **Mr. Rana Das Gupta** submitted that the accused person Md. Mahbubur Rahman @ Mahbub @ Mahebul being active part of the criminal enterprise participated in launching attack at village-Mirzapur and adjacent villages in accomplishing forcible capture of 24 civilians belonging to Hindu community; that facts unveiled from evidence of P.W.07, P.W.08 and P.W.09

patently demonstrates accused's presence with the gang formed of Razakars at the crime sites and his participation in launching the attack. Defence does not seem to have been able to controvert the act of taking away 24 Hindu civilians by launching attack and that the accused was an active part of the criminal mission, the learned prosecutor added.

483. The learned prosecutor further submits that the intent of the perpetrators was to destroy the Hindu community, either whole or in part; that the gang conducted its criminal mission targeting selective group i.e. Hindu religious group which leads to the inference that the gang carried out the attack with 'genocidal intent'.

484. The learned prosecutor also asserted that evidence tendered proves it beyond reasonable doubt that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul and his cohort Razakars handed over the detained Hindu civilians to Pakistani occupation army who then eventually perpetrated the act of killing. Hearsay evidence in this regard inspires credence as the witnesses heard the ending phase of the event that resulted in killing 22 Hindu detainees from two survived victims. Defence could not impeach truthfulness of such hearsay evidence in any manner, the learned prosecutor added.

485. The learned prosecutor further submitted that defence could not impeach what the witnesses testified and as such it stood proved by the evidence tendered that the accused person actively and culpably participated and substantially contributed, facilitated and aided in committing the offence of mass killing, sharing specific intent to destroy Hindu religious group of a particular geographical locality constituting the offence of 'genocide' for which the accused as well incurred equal liability.

486. On contrary, Mr. Gazi M.H Tamim the learned state defence counsel defending the accused person submitted that the witnesses examined in support of this charge are not reliable; that they had no rational reason of knowing the accused person; that the witnesses do not claim to have seen the accused in causing forcible capture of 24 Hindu civilians as alleged ; that none of three witnesses relied upon by the prosecution had occasion of seeing the accused taking away the detainees to the alleged killing site and causing death of 22 detainees by charging bayonet.

487. The learned state defence counsel next submits that hearsay evidence as to the alleged killing does not seem to have been corroborated by other evidence; that their testimony suffers from inconsistencies and the witnesses have testified being tutored out of

political rivalry. Prosecution failed to prove the indictment brought against the accused, the learned state defence counsel added.

488. According to the arraignment brought the group formed of Razakars accompanied by the accused Md. Mahbubur Rahman @ Mahub @ Mahebul accomplished the act of forcible capture of 24 Hindu civilians from village-Mirzapur and its neighbouring vicinities; that the detainees were first taken to Mirzapur Thana wherefrom they were then taken away towards Tangail town by army truck.

489. That is to say, Pakistani occupation army in collaboration with the accused and his accomplice Razakars got the detainees under their clutch. Finally, the criminal mission ended in killing 22 Hindu detainees and two detainees got survived. The Pakistani occupation army allegedly later on bayoneted the detainees to death taking them at Madhupur Bridge, the charge framed alleges.

490. It is to be noted that the event of recurrent attack arraigned in charge no.03 happened on 14th May 1971, just seven days after the genocidal massacre conducted at village-Mirzapur and adjacent vicinities, in recurrence of attack at Kumudini Complex[as arraigned in charge no.01].

491. That is to say, in prolongation of the proved event of attack as arraigned in charge no.01 the criminal gang accompanied by the accused first carried out an extended genocidal attack at RP Saha's residence at Khanpur, Naryanganj, just five hours later, on the same day and this attack resulted in taking away RP Saha, his son Bhabani Prasad Saha and three others on forcible capture and since then none of them could be traced and thus the attack ended in their annihilation, we have already concluded.

492. Now, we see that a group formed of Razakars accompanied by the accused forcibly captured 24 Hindu civilians from village-Mirzapur and adjoining vicinities. That is to say, again, seven days later the accused and his accomplice Razakars got engaged in launching a designed attack directing Hindu civilians of the same localities. Thus, we may safely conclude that target of all the three attacks as narrated in all the three charges was Hindu religious group of RP Saha's native village-Mirzapur and its adjacent vicinities.

493. In order to substantiate the arraignment brought in the charge no.03 the material facts which the prosecution requires proving are that—

- (i) a group formed of Razakars and the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul by

launching attack at village Mirzapur and its adjacent vicinities forcibly captured 24 Hindu civilians ;

(ii) the detainees were first taken away to Mirzapur Thana where they were subjected to torture;

(iii) the detainees were then taken away towards Tangail town by a truck of Pakistani occupation army;

(iv) later on the detainees were taken to Madhupur Bridge by an army truck at about 12:00 A.M. where the Pakistani army bayoneted them which resulted in death of 22 detainees, and two could however survive despite receiving injuries caused by charging bayonet ;

(v) the accused knowingly and in furtherance of common purpose and policy of the Pakistani occupation army actively participated in causing unlawful capture of 24 Hindu civilians and handed them over to the Pakistani occupation army and thereby consciously aided and abetted even the commission of mass killing, the upshot of the attack;

(vi) specific intent of the accused and his accomplice Razakars was to extinguish or destroy the Hindu religious group, either whole or in part.

494. Tribunal notes that out of three witnesses relied upon to prove this charge two i.e. P.W.08 and P.W.09 had occasion of seeing the act of taking away their father by the gang accompanied by the

accused. But they did not have opportunity of seeing the rest phases of attack including the act of killing. Later on they heard the event from two survived detainees.

495. It transpires that P.W.08 is a direct witness, in respect of the first phase of the attack that resulted in abduction of his father by the group of Razakars accompanied by the accused. Naturally, P.W.08 did not have occasion of seeing the gang in accomplishing unlawful detention of other Hindu civilians from the vicinities under attack. But the pertinent fact relating to his father's unlawful capture was a fraction of the outcome of the first phase of attack which unambiguously proves accused person's presence and active participation therewith.

496. It appears that defence simply denies the event of attack that resulted in forcible capture of 24 Hindu civilians, taking them away and finally causing death of 22 detainees by charging bayonet. But mere denial is not sufficient to diminish the truthfulness of the event of attack launched which ended in accomplishing killing of 22 Hindu civilians. Defence does not seem to have made effort to controvert the material facts testified by P.W.08.

497. P.W.07 is a hearsay witness. His father was also taken away on forcible capture. He [P.W.07] just immediately after the event

heard from village doctor Hazrat [now dead] who coming to their home informed the event of abduction of civilians including his [P.W.07] father.

498. Abduction of the father of P.W.07 has not been challenged. Thus, hearsay evidence of P.W.07 gets corroboration from the evidence of P.W.08 and P.W.09 who observed the gang accompanied by the accused in effecting capture of their father, in conjunction with the same attack.

499. P.W.07 also heard from his grand-father Rajani Kanta Bhattacharya [now dead] and uncle Advocate Reboti Bhattacharya that detainees were taken away towards Tangail town by a truck of Pakistani occupation army, from Mirzapur Thana. It may be presumed that Rajani Kanta Bhattacharya [now dead] and Reboti Bhattacharya [now dead] made an attempt to have trace of the abducted father of P.W.07 by moving towards Mirzapur Thana. Did they get any result of their effort they made to get the detainee father of P.W.07 traced?

500. It transpires from testimony of P.W.07 that Reboti Bhattacharya [now dead] witnessed from far that 24 detainees were taking towards Tangail town by a truck of Pakistani occupation

army from Mirzapur. This version, though hearsay, remained unimpeached. Be that as it may, P.W.07 had natural occasion of knowing this fact from his uncle Reboti Bhattacharya and thus, his hearsay testimony which was linked to the act of abduction that happened in first phase of the attack inspires credence.

501. The above proves that the accused and his cohort Razakars actively and substantially facilitated in handing over the detainees to Pakistani occupation army. Indisputably, Rajani Kanta Bhattacharya [now dead] and Reboti Bhattacharya [now dead] who moved to Mirzapur Thana did not have any chance of resisting the gang in taking away 24 detainees by army truck towards Tangail town.

502. It also transpires that just 4/5 days prior to Bangladesh got liberated his[P.W.07] uncle Reboti Bhattacharya came to know that his [P.W.07] father was undergoing treatment at the house of Jamila Khatun [now dead] at village-Chapri of Police Station-Madhupur. Then Reboti Bhattacharya brought back his [P.W.07] father to home, 2/3 days before independence. They found his father's body severely wounded caused by charging bayonet.

503. His [P.W.07] survived father told the people who came to visit him from neighbouring villages that they the 24 detainees were

taken to Madhupur Bridge by an army truck at about 12:00 A.M. where they were made stand in a line forcibly and then the Pakistani army bayoneted 24 detainees which resulted in death of 22 detainees, he and another detainee could however survive despite receiving injuries caused by charging bayonet. P.W.07 also testified that they could find sign of 26 bayonets hit severe injuries on his father's body.

504. What has been divulged from testimony of P.W.08, a direct witness to facts related to the first phase of attack? P.W.08 is the son of victim Debesh Chandra Saha. It is evinced that he at the relevant time saw a group formed of Razakar Mahbub @ Mahebul and their cohort Razakars heading towards their house and with this being scared he went into hiding inside a nearby bush, west to their house. His father also went into hiding inside a bush, west to their house. Remaining stayed inside the hiding place, P.W.08 saw the Razakars taking away his father blindfolded, on forcible capture Defence could not impeach the fact of taking away the father of P.W.08 as watched.

505. The above piece of uncontroverted version indisputably proves accused's physical participation to the commission of unlawful detention of a defenceless civilian. Hearsay evidence of P.W.07 in respect of taking away his father on forcible capture gets

corroboration from the direct evidence of P.W.08 as forcible capture of all the 24 Hindu civilians formed part of the attack launched.

506. P.W.09 is the son of another victim Haridas Saha. He too could see the gang accompanied by the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul taking away his father towards the north bank of the river Louhojong by launching attack at their house. It appears that sensing the attack P.W.09 went into hiding inside a nearer bush, being scared.

507. Half an hour later, after the gang had left the site P.W.09 came out of the hiding place and then he came to know from local people that 24 Hindu civilians including his father were made assembled at the place north to Kumudini Hospital wherefrom the detainees were taken to Mirzapur police station. This piece of hearsay version seems to be consistent to what has been testified in this regard by P.W.07.

508. What happened next? None of witnesses had practicable opportunity of seeing what happened to the detainees after taking them away towards Tangail, from Mirzapur Thana. But it stands proved from hearsay evidence of P.W.s that the detainees finally were taken to Madhupur Bridge where by charging bayonet death

was caused to 22 detainees and two could however get survived despite sustaining injuries.

509. The P.W.s heard this tragic fate of 22 victims from two survived detainees. Defence could not dispute that two detainees got survived and eventually came back home. Be that as it may, hearing the ending phase of the event from them as testified by the P.W.s is quite natural and thus their hearsay evidence in this regard obviously inspires credence.

510. Of three witnesses relied upon by the prosecution one P.W.07 is hearsay witnesses and P.W.08 and P.W.09 are direct witness to some facts related to the attack and they just testified what they watched, in conjunction with the attack . The facts they testified were intimately linked to the end result of the attack conducted at village-Mirzapur and adjacent villages.

511. Defence questions practicability of recognizing the accused accompanying the group of attackers when it carried out act of forcibly taking away the Hindu civilians as claimed by the P.W.08 and P.W.09. The learned defence counsel submits that they had no reason of knowing the accused beforehand and as such they made untrue version as to recognizing the accused with the gang at the crime site, in course of the alleged attack.

512. We disagree with the above defence submission. It is evident that the house of accused Mahbub @ Mahebul was about quarter mile far from that of P.W.8 who had occasion of seeing him at Bazaar very often. It has been affirmed in cross-examination of P.W.08 that accused was a resident of village-Baimhati, about quarter mile far from the village of P.W.08. It is also evinced that the accused was a resident of the village of P.W.09. Defence could not impeach this pertinent fact. Rather it has been affirmed in cross-examination that the P.W.09 knew the accused and his brother. Thus, it was quite practicable for P.W.08 and P.W.09 of recognizing the accused accompanying the group of attackers when it accomplished unlawful capture of Gandhi Ranjan Saha, the father of P.W.08 and Haridas Saha the father of P.W.09.

513. Therefore, testimony of P.W.08 and P.W.09 so far as it relates to seeing the accused with the gang, in conjunction with the attack proves accused's active and culpable presence with the gang and participation in conducting the violent and deliberate attack at the Hindu dominated vicinities under Mirzapur. Testimony of P.W.08 and P.W.09 inspires credence which provides evidentiary value to their testimony they made in relation to the act of abduction of Hindu civilians by the gang accompanied by the accused.

514. According to settled jurisprudence of International Law ‘hearsay evidence’ is not inadmissible *per se*, even when it is not corroborated by direct evidence. The accused is being tried long four decades after the atrocities were committed. Naturally, direct witness may not be available to prove all aspects of an event of atrocious attack. Besides, the pattern of the attack did not leave space for a number of people of watching the violent attack. Rather, in such horrific situation the people sensing the attack naturally had opted to go into hiding wherever they could, to escape.

515. We reiterate that probative value of hearsay evidence is to be weighed in light of context and circumstances related to material facts depicted from evidence led by the prosecution. Hearsay evidence thus can be relied upon to prove the truth of its contents, and the fact that merely the ‘hearsay character’ does not necessarily deprive the evidence of its probative value.

516. In the case in hand, evidence tendered in respect of the second phase of attack, after taking the detainees away to Tangail from Mirzapur police station is hearsay in nature. But merely for this reason such evidence cannot be kept aside from consideration. It needs to be considered together with the facts and circumstances unveiled. Tribunal notes that hearsay evidence so far as it relates to the ending phase of the attack is not anonymous. The P.W.s had

practicable occasion of knowing it from two survived victims, when they came back home.

517. Corroborative evidence of P.W.08 and P.W.09 indisputably proves that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul was with the group of attackers when it had carried out the act for forcible capture of 24 civilians. Their evidence tendered in this regard remained totally unshaken. Further corroboration is not need to prove this fact intimately related to the upshot of the attack. This crucial fact is sufficient to connect the accused with the entire attack that eventually resulted in mass killing of 22 Hindu civilians. In respect of corroboration requirement we may recall the observation made by the **ICTY Appeal Chamber** in the case of **Kordic and Cerkez which is as below:**

“The Appeals Chamber has consistently held that the corroboration of evidence is not a legal requirement, but rather concerns the weight to be attached to evidence”.

[**Kordic and Cerkez** ICTY Appeal Chamber December 17, 2004, para. 274]

518. Was it practicable of civilians of vicinity under attack of seeing detail exactitude of the event? The answer is ‘No’. Event of

attack was systematic and the crimes committed by launching such attack formed of multiple acts and naturally created horrific situation. The crimes committed were not isolated and those are known as international crimes, perpetrated in violation of international humanitarian law.

519. Tribunal notes that context of committing such crimes which are internationally recognised crimes and totality of its horrific profile naturally leaves little room for the people or civilians to witness the events of the criminal acts. Thus the witnesses who came on dock to testify are not expected to narrate the entire attack. **Martin Witteveen** in his article titled '*Dealing with Old Evidence in Core International Crimes Cases: The Dutch Experience as a Case Study*' observed that--

“One characteristic of these crimes is that they are very complex and involve multiple acts. Often we are dealing with a series of events that took place in one single day or even only part of a day, during which hundreds of people are attacked and killed or mutilated. Moreover, these killings and attacks always involve a multitude of perpetrators.....International crimes cannot be compared with ordinary crimes. They are of an incomparable scale and seriousness.....The victims of such attacks and crimes were in total disarray

while the crimes were committed and the attacks were carried out. The initial reaction of a victim or target of an attack is to flee and escape. The victims run around seeking shelter wherever they can find a place to hide and often go from one place to another. They usually have no idea what exactly is going on or who is doing what. Their focus is survival.”

[**Martin Witteveen:** *‘Dealing with Old Evidence in Core International Crimes Cases: The Dutch Experience as a Case Study’*, Old Evidence and Core International Crimes, FICHL Publication Series No. 16 (2012) – page 67]

520. In the case in hand, it transpires that the witnesses testified what they experienced just at the phase of initiation of the attack and sensing the horrific attack they went into hiding wherever they could. In a dreadful state of affairs existing pursuant to enormously violent and organised attack it was impracticable indeed for the panicked civilians and the witnesses to observe the acts of the accused and his accomplices done, at all phases of the attack with precision. But what the P.W.08 and P.W.09 testified seems to be materially related to the event of attack conducted by the gang accompanied by the accused.

521. We have found it proved that the accused was with the gang of Razakars when it conducted the attack at village Mirzapur and

adjacent localities, forcibly captured 24 Hindu civilians and took them away first to Mirzapur Thana. Already it stands proved too that the accused was a notorious member of infamous Razakar Bahini. His presence at the crime sites with the gang formed of a bunch of infamous Razakars, combined with his membership in such auxiliary militia force leads to conclude that the accused knowingly and being part of the criminal enterprise participated in accomplishing the act of forcible capture of 24 Hindu civilians.

522. The evidence of witnesses examined depicts a ring of truth and is cogent, credible and trustworthy and thus it can safely be relied upon. On rational appraisal of the evidence on record it is found proved that the incriminating narratives made by the P.W.07, P.W.08 and P.W.09 could not be controverted by the defence. The nefarious acts of accused Md. Mahbubur Rahman @ Mahub @ Mahebul were deliberately intended to cause annihilation of the Hindu civilians detained during the first phase of attack to which the accused was an active part.

523. It stands proved that the accused participated, being part of the group of attackers in causing forcible capture of 24 Hindu civilians and the accused did not keep him distanced from the group till it brought the detainees first at Mirzapur Thana where they were subjected to torture. The event till this phase was chained to the

next phase i.e. taking away the detainees to Tangail circuit house by army truck leading to killing 22 detainees.

524. Defence, by putting mere suggestions, alleges that the prosecution witnesses are lying and have testified being tutored. But the defence utterly failed to lay the foundation for that challenge and put the challenge to the witnesses in question during cross-examination. We find no earthly reason to denounce the testimony of witnesses.

525. Now, let us resolve the matter of accused's participation also in accomplishing killing of 22 detainees. Tribunal notes that not necessarily the accused is to be shown to have participated in all aspects of the criminal acts, in course of entire attack. It is not required to show that the accused too remained present with the perpetrators at the killing site and assisted or physically participated in accomplishing the mass killing.

526. It is now well settled that the offence of 'genocide' or 'crime against humanity' is a 'group crime' and it is not perpetrated by a single individual. But however, even an individual may participate to the actual commission of the principal crime by his act or conduct, before or midst or after the crime in question committed.

527. Accused by his conscious act knowingly participated in causing unlawful detention of the victims, the Hindu civilians. It may be thus lawfully deduced that he by such act and conduct substantially contributed and facilitated even the commission of the killing the detainees, the upshot of the attack. It is sufficient to deduce that the accused was consciously concerned even with the commission of the crime of mass killing in question.

528. Therefore, we arrive at a conclusion that even in absence of any direct evidence as to participation of the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul with the mass killing in question it may validly be justifiably held that the accused's act and conduct prior to the killing, in course of the first phase of the attack linked him even with the actual perpetration of the principal offence of large scale killing of detained Hindu civilians. This view finds support from the observation rendered by the **ICTY Trial Chamber in the case of *Aleksovski*** which is as below:

"Participation may occur before, during or after the act is committed. It can, for example, consist of providing the means to commit the crime or promising to perform certain acts once the crime has been committed, that is, behaviour which may in fact clearly constitute instigation

or abetment of the perpetrators of the crime."

[The Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-T, Judgment: 25 June 1999,Para-62]

529. Objective of such mass killing was not only to expel the victims, beyond the boundary of their lives by causing their death but to cause deliberate destruction of the religious group to which the victims belonged and also to detriment the livelihood of the Hindu community of the crime villages.

530. It stand proved that the accused being active part of the criminal enterprise substantially facilitated, contributed and aided to the act of taking away the forcibly captured 24 detainees to Tangail circuit house by army truck. We may lawfully deduce that the accused and his accomplices indisputably knew the consequence of their act and they did such acts, sharing specific intent, we deduce it in light of facts and circumstances unfolded.

531. It is to be noted that the act of providing 'assistance' or 'substantial contribution' in committing the principal crime may not always be tangible or there may not be direct evidence in this regard. It may be well perceived or inferred from circumstances and material facts. It has been observed by the **ICTY Trial Chamber in the case of *Simic, Tadic, and Zaric* that—**

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

[Prosecutor v. Blagoje Simic, Miroslav Tadic and Simo Zaric, Case No. IT-95-9-T, Judgment-17 October 2003, Para -162]

532. Already we have found it proved that just seven days before on 07th May 1971 the gang formed of Pakistanis occupation army, the accused and his cohorts had carried out deliberate attack directing the civilians belonging to Hindu community of Mirzapur and its adjacent localities which resulted in killing 33 Hindu civilians. Participation of the accused again with the event of attack arraigned in charge no.03 demonstrates his extreme antagonistic attitude to Hindu religious group and close nexus with the Pakistani occupation army.

533. The atrocities for which the accused stood trial were not isolated from the policy and plan of the occupation Pakistani army who started its ‘mayhem’ since 25 March 1971.

534. The basic characteristic of the crime of barbaric mass killing of numerous non-combatant civilians of a protected group as proved was in furtherance of a collective and designed criminal

plan with specific intent, we deduce. What was such ‘specific intent’?

535. ‘Specific intent’ is a key requirement of the offence of genocide. ‘Specific intent’ may be well manifested from fact and circumstances and pattern of attack. What we see in the case in hand? It stands proved that the perpetrators conducted selective annihilation of a large number of members of a protected group i.e. Hindu religious group. It patently impels that the specific intent of perpetrators was to ‘destroy the group’, either whole or in part which is the key constituting element of the offence of ‘genocide’.

536. On totality of evidence presented and in light of facts and circumstances it may be well inferred that the accused and his cohort Razakars with intent to cripple the Hindu religious group had carried out recurrent genocidal attack directing the Hindu dominated vicinities under Mirzapur.

537. Handing over the detainees to the Pakistani occupation army, after taking them first at Mirzapur police station fairly indicates that the attack was designed and calculated to cause annihilation of detained civilians. Selected civilians on account of their membership in Hindu religion were made target of the perpetrators. The accused, his cohorts and the Pakistani occupation army had

acted in a concerted manner to further common purpose and with the 'specific intent' to destroy or cripple a particular religious group and thus, their collective criminality constituted the offence of 'genocide'.

538. In view of reasoned deliberation made above we arrive at decision that the accused had conscious 'concern' and 'participation' not only in committing the act of 'abduction' and 'unlawful detention', but also in accomplishing the mass killing as well and thus he being part of a 'criminal enterprise' is found equally responsible under the theory of JCE [Basic Form] for the commission of the principal crimes in question.

539. Since the act of killing 22 detained Hindu civilians was the outcome of 'collective criminality' the accused being the members of the joint endeavor is held equally responsible as a co-perpetrator. In this regard, we may recall the observation of the **ICTY Trial Chamber**, in the case of *Tadic* that-

“In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the

commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question”

[Prosecutor v. Tadic, ICTY Trial Chamber, Case No. IT- 94-1-T, Judgment 7 May, 1997, paragraph 692]

540. On integrated evaluation of evidence tendered it appears that the prosecution has been able to prove it beyond reasonable doubt that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul being part of collective criminality by their act and conduct forming part of systematic attack in materializing the genocidal attack participated, aided, substantially ‘contributed’ and facilitated to the actual commission of the mass killing of 22 civilians on account of their religious identity, with intent to destroy the Hindu religious group, in whole or in part constituting the offence of ‘**genocide**’ enumerated in section 3(2)(c)(i)(g)(h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

XIII. Conclusion

541. The accused Md. Mahbubur Rahman @! Mahbub @ Mahebul has been found guilty for the proved arraignments constituting the offence of genocide which arose from some particular events of genocidal attacks occurred violently and methodically in the

vicinities under Mirzapur Police station of District Tangail and also at Khanpur, Naryanganj, in context of the War of Liberation in 1971.

542. The accused arraigned of all the three charges has been found to have had conscious and culpable participation, substantial contribution and complicity in accomplishing the alleged crimes , the upshot of the deliberate attacks. The accused is found to have had participated in perpetrating those horrific crimes, in exercise of his notorious membership in the locally formed Razakar Bahini.

543. It has been proved that being enthused by the policy and plan of the Pakistani occupation army the accused, his father Wadud Moulana [now dead], brother Mannan [now dead] and cohort Razakars being part of the calculated criminal mission remained stayed with the gang, sharing common purpose in launching attacks [as narrated in all the three charges] directing Hindu religious group with intent to cripple or destroy it, in whole or in part.

544. The undisputed fact of common knowledge is that by forming Razakar Bahini an auxiliary squad the Pakistani occupation army started acting together in accomplishing criminal acts by launching systematic attack throughout the territory of Bangladesh in 1971,

during the war of liberation. The members of such auxiliary force remained actively engaged in providing culpable support and assistance to the Pakistani occupation army in carrying out its violent atrocious activities. Common purpose of such prohibited activities was to liquidate the pro-liberation civilians and freedom-fighters, Hindu civilians terming them ‘anti-state elements’, ‘miscreants’.

545. The proved crimes arraigned in three charges are not isolated from the widespread massacre carried out in 1971. In the case in hand it stands proved that all the events of attacks as narrated in three charges eventually ended in killing numerous civilians all of whom belonged to Hindu religious group. It reflects extreme aggression of the perpetrators to the victims selected for the reason of their membership in Hindu community.

546. Conducting such planned and systematic attacks directing at the Hindu dominated vicinities against selected Hindu civilians would not have been possible without active, culpable and enthusiastic participation and engagement in the criminal enterprise of the accused belonging to locally formed Razakar Bahini. The accused was a notorious member of locally formed Razakar Bahini – already it stands proved.

547. In the case in hand, all the offences proved were diabolical and gravely violent in nature for which the accused is found to have had contribution, complicity and explicit participation. The prohibited acts constituting the offences proved were not divisible from the horrendous atrocities committed in the territory of Bangladesh in 1971 during the war of liberation. It has now become an undisputed history.

548. The Tribunal already rendered its reasoned decision, on adjudication of all the 03 charges, holding the accused criminally liable under the doctrine of JCE [Basic Form] which corresponds to section 4(1) of the Act of 1973 for the commission of crimes proved as listed in all the 03 charges [offence of ‘genocide’] and therefore, he be convicted for the offence of ‘genocide’ proved.

XIV. VERDICT ON CONVICTION

549. For the reasons set out in our unanimous Judgement and having considered all evidence and arguments, we find the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul guilty and criminally liable as below:

Charge No.01: GUILTY of participating, abetting, assisting, substantially contributing

and facilitating , by his act and conduct forming part of systematic attack, to the accomplishment of devastating criminal activities and mass killing of 33 Hindu civilians constituting the offence of '**genocide**' as enumerated in section 3(2)(c) ((i)(ii)(g)(h) of the Act of 1973 and thus he incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.02: GUILTY of participating, abetting, assisting, substantially contributing, by his act and conduct forming part of systematic attack, to the accomplishment of actual commission of the offence of '**genocide**' as enumerated in section 3(2)(c)(i)(g)(h) of the International Crimes(Tribunals) Act, 1973 and thus he incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.03: GUILTY of participating, aiding, substantially contributing and facilitating by his act and conduct forming part of

systematic attack, to the accomplishment of actual commission of the offence of ‘**genocide**’ as enumerated in section 3(2)(c)(i)(g)(h) of the International Crimes(Tribunals) Act, 1973 and thus he incurred criminal liability under section 4(1) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

XV. Verdict on sentencing

550. Mr. Rana Das Gupta, the learned Prosecutor drawing attention to the seriousness of the crimes proved and accused’s participation therewith submitted that accused Md. Mahbubur Rahman @ Mahbub @ Mahebul should face the highest sentence, being a sentence of death, as he is proved to have consciously participated to the commission of genocidal acts with extreme fanaticism and sadism, in exercise of his affiliation in locally formed Razakar Bahini.

551. The learned Prosecutor further submitted that extent and pattern of criminal acts constituting the offence of ‘genocide’ itself deserves to be considered as an ‘aggravating factor’ in awarding the highest sentence. For only such sentence would be just and appropriate to punish, deter those crimes at a level that corresponds to their overall magnitude and reflect the extent of the suffering inflicted upon the millions of victims.

552. On contrary, Mr. Gazi M.H Tamim the learned state defence counsel submitted that delayed prosecution itself creates doubt as to truthfulness of alleged involvement of the accused with the alleged events happened in 1971 and that the prosecution failed to prove accused's role of any degree in accomplishing the alleged crimes and thus the accused deserves acquittal.

553. In respect of 'delayed prosecution' as pressed on part of the defence we have already rendered our reasoned finding. Participation of accused in carrying out violent attacks as arraigned in all the three charges has also been found proved. However, on this aspect agitated again we prefer to add that the nation experienced that the military regimes in power after the brutal assassination of the Father of The Nation Bangabandhu Sheikh Mujibur Rahman on 15th August 1975 did not care to respond to the cry of victims and sufferers of mass atrocities committed in 1971. Thus, the Act of 1973 remained dormant for decades. The nation felt pained and helpless. It could not even raise its voice due to nature of state power existing at that time.

554. The upshot of military regimes, which were gravely contradictory to the norms of recognized human rights, prolific governance, democracy and rule of law, affected the society and the nation as well. This history of common knowledge itself is

explanatory for delayed prosecution. Besides, there is no limitation in bringing criminal prosecution, particularly when it relates to ‘international crimes’ committed in violation of international humanitarian law and the laws of war.

555. The case in our hand involves the offence of ‘genocide’ which is crime of all crimes committed in context of the war of liberation in 1971, in the territory of Bangladesh, in violation of international humanitarian law. The offences proved are not isolated crimes. These are rather ‘group crimes, accomplished in furtherance of designed policy. Thus, the Tribunal reiterates that the forms of punishment for such horrific nurture of crimes must reflect norms and values and aspirations of a particular society at a given time.

556. Undeniably, the punishment to be awarded must reflect both the calls for justice from the persons who have directly or indirectly been victims and sufferers of the crimes, as well as respond to the call from the nation as a whole to end impunity for massive human rights violations and crimes committed during the war of liberation in 1971.

557. The Tribunal as a court of law must keep in mind that traumatized victims and relatives of victims may legitimately insist appropriate and highest sentence while the defence may demand acquittal, in a criminal trial. But either of such demands is never

considered as a catalyst in deciding the sentence to be inflicted upon the person found guilty of a criminal charge, in a court of law.

558. The gravity of the offence is a primary factor to be taken into account in awarding a sentence. Chiefly the seriousness of the crimes proved is to be weighed in imposing the sentence irrespective of the form of the criminal participation of the individual.

559. In determining the gravity of the crimes, the Tribunal solely respects to the legal nature of the offences committed, their scale, the role of the accused played in their commission, and the shock sustained by the victims and their families together with the preamble of the Act of 1973.

560. The event of attack as arraigned **in charge no.01 eventually** resulted in killing 33 civilians on account of their membership in Hindu religious group by conducting attack at Hindu dominated vicinities of Mirzapur and adjoining vicinities, south bank of the river Louhojong. This was the second phase of attack in conjunction with which the gang carried out devastating activities too. Before conducting the second phase of attack the gang had carried out prohibitory and unlawful activities at Kumudini

Complex, located on the other bank of the river Louhojong causing serious mental harm and trauma to females and others.

561. The accused Md. Mahbubur Rahman @ Mahbub @ Mahebul is found proved to have actively and consciously participated in both phases of attack [**as listed in charge no.01**], sharing common purpose. It has been found proved too that the perpetrators accompanied by the accused committed the crime of selective killing with genocidal intent directing Hindu religious group of the vicinities under Mirzapur police station, Tangail.

562. The event of attack as arraigned in **charge no.02** happened at Khanpur, Naryanganj. The same gang of perpetrators accompanied by the accused which carried out genocide at the Hindu dominated localities under Mirzapur, Tangail [as arraigned in charge no.01] on the same day and just few hours later conducted its criminal mission in Naryanganj that resulted in taking away RP Saha, his son Bhabani Prasad Saha and three others all belonging to Hindu religious group, on forcible capture and since then they could not be traced and thus and in view of facts and circumstances Tribunal has already deduced that the attack eventually ended in their annihilation, with intent to cripple the Hindu religious group, in part and thereby to leave an adverse impact on this community of

Mirzapur. The accused is found to have had tangible participation in accomplishing the genocidal attack, it stands proved.

563. RP Saha was a noble philanthropist and a leading person in his community in Mirzapur as well. Many institutions established by him were located in Mirzapur, the native home of RP Saha. The group of perpetrators being substantially facilitated and assisted by the accused and his cohort Razakars and Pakistani occupation army opted to annihilate RP Saha, with intent to cause grave destruction to the Hindu community, we have already found it proved.

564. But the barbaric annihilation of RP Saha could not bring his dogma and pious thought to an end. RP Saha who sacrificed his life and wealth he achieved for the cause of wellbeing of humanity and advancement of education is still breathing in the noble deeds he contributed.

565. It is a grave shame indeed that the accused and his accomplices including his father Wadud Moulana[now dead] and brother Mannan[now dead] being Bengali, instead of acting to safeguard the defenceless civilians including a noble person like RP Saha opted to join the criminal enterprise intending to facilitate and participate in wiping out them in brutal manner, with genocidal intent.

566. The event as arraigned in charge no.03 too involves the offence of abduction of 24 Hindu civilians from Mirzapur and they were taken away to Tangail circuit house and afterwards 22 detainees were liquidated and two somehow could survive who returning back shared what they experienced. The group formed of accused and his cohort Razakars conducted first phase of attack in effecting selective capture of Hindu civilians which ended in killing of 22 detainees.

567. It is evinced that accused Md. Mahbubur Rahman @ Mahub @ Mahebul and his cohort Razakars being imbued by extreme aggression got consciously engaged in criminal enterprise and perpetrated the selective killings, with intent to cripple or destroy the substantial part of Hindu religious group constituting the offence of 'genocide.

568. This is a case of distinct feature. All the three attacks as arraigned in three charges framed involve the killing of numerous civilians of Mirzapur on account of their membership in Hindu religious group. The events of massacre constituting the offence of genocide [as listed in all the three charges] for which the accused has been found guilty is a minute portrayal of the horrific planned and designed genocide committed in the territory of Bangladesh in 1971.

569. In the case in hand, prosecution has been able to prove that the accused Md. Mahbubur Rahman @ Mahbub @ Mahebul was knowingly and intimately related to the murderous scheme or system with specific intent. Perpetrators concerned with such shocking and horrendous crimes against humanity are known as the enemies of the mankind.

570. Tribunal assessed the seriousness of the crimes proved in the light of the circumstances and consequences unveiled. This presupposes taking into account quantitatively the number of victims and qualitatively the suffering inflicted even on the survived victims and the community they belonged. Long-term impact of the barbaric atrocities left to the surviving family members and the Hindu community is considered as an aggravating circumstance.

571. It stands proved that direct, conscious and deliberate participation of accused, being active part of the criminal enterprise in accomplishing the designed criminal mission intended to commit the offence of 'genocide. Accused's intent and willingness to participate in the commission of the crimes, serves as an aggravating factor.

572. The Tribunal reiterates that in fact section 4(1) of the Act of 1973 refers to JCE liability, although it has not been categorized in our Statute, as evolved through judicial pronouncement in the case of *Tadic* [ICTY]. The expression ‘*committed*’ occurred in section 4(1) of the Act includes participation in JCE. Section 4(1) tends to cover the necessary elements of the doctrine of JCE, especially JCE category 1 and accordingly, the accused Mahbubur Rahman @ Mahbub @ Mahebul forming part of the murderous enterprise incurred equal liability in accomplishing the horrendous crimes proved.

573. Letters of law does not consider the level of the offender, in awarding sentence. It considers the level and gravity of the offence for which the offender is found guilty. The offence ‘genocide’ proved was of gravest and appalling nature that shakes human conscience, the humanity and civilization.

574. Convicted accused is found to have had participation in the mission agreeing with its purpose and intent and knowing the consequence of the criminal mission. All these together obviously aggravates his responsibility too and accordingly the accused deserves just and just punishment which is inevitable to respond the cry of victims, relatives of victims and the nation as well.

575. We must consider not only the gravity and magnitude of the offences proved but also the mode and level of participation of convicted accused together with his culpable concern and agreement to the common purpose and specific intent, as found proved.

576. We reiterate that inappropriate lesser sentence causes injustice not only to the victims of crimes but sometimes to the whole society. The Tribunal as the Trier of fact is quite aware of its solemn duty in awarding just and just sentence commensurate with the gravity of the crimes proved.

577. Thus, Letters of law cannot remain non responsive to the victims and relatives of victims and the nation too who have been still carrying colossal and unspeakable trauma. Therefore, the sentence to be awarded must be proportionate to the seriousness of the offence and mode of participation of the offender who has been found guilty.

578. In view of reasoned deliberation as made above and considering the nature and proportion to the gravity of the offences proved and also keeping the factors as focused above into account we are of the **UNANIMOUS** view that justice would be met if the convicted accused Md. Mahbubur Rahman @ Mahbub @ Mahebul who has been found guilty beyond reasonable doubt for the crimes

proved is condemned and sentenced as below, under the provision of section 20(2) of the Act of 1973:

Hence it is
ORDERED

That the accused **Md. Mahbubur Rahman @ Mahub @ Mahebul**, son of late Abdul Wadud @ Wadud Moulana and Hosne Ara Begum of village-Bairatipara, Baimhati under Mirzapur Municipality, Police Station- Mirzapur of District Tangail is found **UNANIMOUSLY** guilty of the offence of **‘genocide’** enumerated in section 3(2)(c)(g)(h) of the International Crimes (Tribunals) Act, 1973, arraigned in **charge nos. 01,02 and 03**. Accordingly, he be convicted and condemned **UNANIMOUSLY** to the **sentence as below:**

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

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

AND

‘Sentence of death’ for the crimes as listed in **charge no.03** and he be hanged by the neck till he is dead,

under section 20(2) of the International Crimes (Tribunals) Act, 1973

The '**sentences of death**' as awarded above, in respect of all the three charges i.e. **charge nos. 01, 02 and 03** will get merged.

The convicted accused **Md. Mahbubur Rahman @ Mahbub @ Mahebul** [present on dock as brought from prison] be sent to the prison with conviction warrant accordingly.

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

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

Let certified copy of this judgment be provided to the prosecution and the convict accused **Md. Mahbubur Rahman @ Mahbub @ Mahebul**, free of cost, at once.

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

Let a copy of this judgment together with the conviction warrant of
the convict accused **Md. Mahbubur Rahman @ Mahbub @
Mahebul** be sent to the IG [Prison] for information and necessary
action.

Justice Md. Shahinur Islam, Chairman

Justice Amir Hossain, Member

Justice Md. Abu Ahmed Jamadar, Member