

## **International Crimes Tribunal-2 [ICT-2]**

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

**Old High Court Building, Dhaka, Bangladesh**

**ICT-BD Case No. 03 of 2013**

**[Charges: crimes against Humanity and aiding & complicity to commit such crimes as specified in section 3(2)(a)(g)(h) of the Act No. XIX of 1973]**

**The Chief Prosecutor**

**Vs**

**Mir Quasem Ali**

**Before**

**Justice Obaidul Hassan, Chairman**

**Justice Md. Mozibur Rahman Miah, Member**

**Justice Md. Shahinur Islam, Member**

**For the Prosecution:**

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Rana Das Gupta, Prosecutor

Mr. Zead Al Malum , Prosecutor

Mr. Sultan Mahmud, Prosecutor

Ms. Tureen Afroz, Prosecutor

Ms. Rezia Sultana Begum, Prosecutor

Mr. Tapas Kanti Baul, Prosecutor

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**For the Accused:**

Mr. Mizanul Islam , Advocate

Mr. Tanveer Ahmed Al Amin , Advocate, Bangladesh Supreme Court

**Date of delivery of Judgement: 02 November 2014**

## **JUDGEMENT**

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

**Justice Obaidul Hassan, Chairman****Justice Md. Shahinur Islam, Member****I. Opening words**

This is the seventh case in which we [ICT-2] are going to render our verdict, on wrapping up of trial in presence of accused Mir Quasem Ali. The commendable efforts extended by both sides, at all stages of proceedings have provided significant assistance to the Tribunal [ICT-2] to focus on pertinent issues involved in the case indeed. We extend our appreciation for the laudable and professional presentation made on part of the learned prosecutors and the learned defence counsels.

Mir Quasem Ali [born in 1952] has been arraigned of internationally recognized crimes i.e. crimes against humanity committed in 1971 in the territory of Bangladesh, during the War of Liberation, under the International Crimes (Tribunals) Act, 1973. On conclusion of trial that commenced on framing charges on 05 September 2013 this Tribunal [ICT-2], a domestic special judicial forum constituted under the International Crimes (Tribunals) Act, 1973 is here today to render its Judgement and verdict.

We have considered it indispensable and relevant to address the settled and undisputed historical and contextual background that prompted the Pakistani occupation army and its local collaborators in carrying out horrendous atrocities within the territory of Bangladesh before we enter into the discussion on legal and factual aspects involving characterization of crimes, commencement of proceedings, procedural history reflecting the entire proceedings, charges framed, in brief, and the laws applicable to the case for the purpose of adjudicating the commission of alleged offences as narrated in the charges framed and also for arriving at a finding as to alleged culpability of the accused.

It is to be noted that particularly in resolving legal issues we will make reiteration of our deliberations and finding on it given in the cases disposed of earlier including the cases of *Chief Prosecutor v. Md. Abdul Alim* [ICT-BD Case No. 01 of 2012 Judgment: 09 October 2013] and *Chief prosecutor*

*v. Ali Ahsan Muhammad Mujahid* [ICT-BD Case No. 04 of 2012 Judgment: 17 July 2013] with necessary addition. Finally, on broad and cautious appraisal of evidence adduced, we have to render our reasoned finding on commission of alleged crimes and alleged culpability of the accused, as narrated in the charges, by making independent adjudication.

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

## **II. Commencement of proceedings**

1. The Prosecution filed the ‘formal charge’ in the form of petition as required under section 9(1) and Rule 18(1) of the Rules of Procedure 2010 [ICT-1] against accused Mir Quasem Ali. After affording due opportunity of preparation to accused, the Tribunal [ICT-1], took cognizance of offences as mentioned in section 3(2) (a)(b)(c) (g)(h) of the Act of 1973. Afterwards, the Tribunal-1[ICT-1] framed 14 charges on distinct events of criminal acts constituting the offences of ‘crimes against humanity’ and as specified in the Act of 1973 .The charges so framed were read out and explained to the accused Mir Quasem Ali in open court when he pleaded not guilty and claimed to be tried and thus the trial commenced.

## **III. Introductory Words**

2. The 2nd Tribunal [ICT-2] has been set up on 22 March 2012. The notion of ‘fairness’ and ‘due process’ as have been reflected in the International Crimes (Tribunals) Act, 1973[hereinafter referred to as Act of 1973] and the Rules of Procedure, 2012 (ROP) formulated by the Tribunal [ICT-2] under the powers conferred in section 22 of the principal Act is significantly well-matched with the recognized norms and jurisprudence evolved and international instruments including the ICCPR. Additionally, the Tribunal [ICT-2] in exercise of its judicial discretion and its inherent power [Rule 46A of the ROP] ensured all the rights and privileges indispensable for due defence, on prayer of the accused.

3. The Act XIX enacted in 1973 which is meant to prosecute crimes against humanity, genocide and system crimes committed in violation of customary international law is *ex-post facto* legislation. It is literally permitted. It is to be noted that the ICTY, ICTR and SCSL the *ad hoc* Tribunals backed by the United Nations (UN) have been constituted under their respective retrospective Statute. Only the International Criminal Court (ICC) is founded on prospective Statute [Rome Statute]. The 1973 Act of Bangladesh has the merit and means of ensuring the standard of safeguards recognized universally to be provided to the person accused of crimes against humanity as specified in the Act of 1973.

#### **IV. Jurisdiction of the Tribunal**

4. The Act of 1973 is intended to prosecute, try and punish not only the armed forces but also the perpetrators who belonged to ‘auxiliary forces’, or who committed the offence as an ‘individual’ or a member of ‘group of individuals’ or ‘organisation’ [as amended with effect from 14.7.2009]. It is thus 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) enumerated in the Act of 1973, can be brought to justice .

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

#### **V. Brief Historical Background and context**

6. It is now globally recognized history that atrocious and dreadful crimes were committed during the nine-month-long war of liberation in 1971, which resulted in the birth of Bangladesh, an independent state and the long

cherished motherland of the Bengali nation. **Justice Surendra Kumar Sinha** has observed in his judgment rendered in the case of *Abdul Quader Molla* [**Page 42 of the Judgment**] that

**What has happened in Bangladesh is nothing short of genocide. If what Hitler did in Germany and Poland was an example of racial genocide, if the tragedy of Jallianwala Bagh was an example of colonial genocide by the use of armed might, what happened in Bangladesh was no less a case of cultural and political genocide on a scale unknown to history. The whole of Bangladesh became truly a Jallianwala Bagh, hallowed and sanctified by the blood of patriotic martyrs and innocent defenceless people; whose only fault was that they were somewhat different than those who came to rule them from Pakistan. If Bangladesh has survived the onslaught and has been able to confine more than three divisions of Pakistan's Army to cantonments and towns, it is because the people of Bangladesh, who laid down their lives at the altar of freedom to pay the price of liberty in the coin of blood and sufferings and did not permit the Pakistani troops to clamp colonial rule on the 75 million people of Bangladesh.**

**[Source: War Crimes and Genocide, B.N. Mehrish, P.173.]**

7. Some three million people were killed, nearly quarter million women were raped and over 10 million people were forced to take refuge in India to escape brutal persecution at home, during the nine-month battle and struggle of Bangalee nation. This has now been a settled catastrophic history. During the 1971 nine-month war between East Pakistan (now

Bangladesh) and West Pakistan (now Pakistan), approximately 3 million people died. [Source: Rounaq Jahan, “Genocide in Bangladesh,” in Samuel Totten, William S. Parsons and Israel W. Charny (eds), *Century of Genocide: Eyewitness Accounts and Critical Views* (New York and London: Garland, 1997), p. 291.] Pakistani soldiers raped between 200,000 and 400,000 Bangladeshi women and girls. [Source: P. C.C. Raja, “Pakistan’s Crimes Against Humanity in Bangladesh,” FBIS-NES-97-351, “India: Commentary Raps Pakistan for Crimes Against Bangladeshis,” December 19, 1997. Originally broadcast by Delhi All India Radio General Overseas Service in English, December 17, 1997.]

8. In the judgment of Criminal Appeal Nos. 24-25 of 2013 [*Abdul Quader Molla Case*] **Justice Surendra Kumar Sinha**, at the very outset, narrates the following sourced observation -

**“The birth of Bangladesh has been preceded by injustice; false promise and economic and social abuse suspending the session of the elected National Assembly of 1970 *sine die* followed by the persecution of the legally elected people entitled to form the Government and frame the Constitution, by resorting to commit mass killing, rape and arson by an illegal regime headed by a usurper. These atrocities were perpetrated by the Pakistan’s occupation army with their cohorts, i.e., the Rajakar, Al-Badr, Al-shams and various other local killing squads in 1971. Although the killing of unarmed civilians during late March seemed abrupt and sporadic, it soon became a planned act of violence with operation ‘Search Light’ enforced at midnight, on 25th March, 1971 as part of the central planning and conspiracy hatched at Larkana”**

[Source: S.A. Karim, *Triumph and Tragedy: The University Press Limited 2009 p.172-176.*, quoted Mohammed Asghar Khan, *Generals in Politics: Pakistan 1958-1982*, p.28)]

9. The backdrop and context of commission of untold barbaric atrocities in 1971 war of liberation is the conflict between the Bangalee nation and the Pakistani government that pushed the Bangalee nation for self

determination and eventually for freedom and emancipation. War of Liberation started following the 'operation search light' in the night of 25 March 1971 and lasted till 16 December 1971 when the Pakistani occupation force surrendered. Ten millions (one crore) of total population took refuge in India under compelling situation and many of them were compelled to deport.

**10.** We take into notice the fact of common knowledge which is not even reasonably disputed that during the war of liberation in 1971, Razaker Bahini, Al-Badar Bahini [hereinafter referred to as AB] , Peace Committee, Al-Shams were formed as accessory forces of the Pakistani occupation armed force for providing moral supports, assistance and they substantially contributed to the commission of atrocious activities throughout the country, in furtherance of policy and plan.

**11.** In 1971 thousands of atrocious incidents happened within the territory of Bangladesh as part of organized or systematic and planned attack. Target was the pro-liberation Bangalee population, Hindu community, political group, non combatant freedom fighters, civilians who visibly took stance in support of the war of liberation. The charges framed against the accused arose from some particular events during the War of Liberation in 1971 allegedly occurred in Chittagong town and the accused Mir Quasem Ali is arraigned to have participated to the accomplishment of alleged crimes in different manner, by his act and conduct and also in exercise of his alleged 'command position' over the AB.

**12.** The perpetrators of the crimes could not be brought to book, and this left a deep scratch on the country's political awareness and the whole nation. The impunity they enjoyed held back political stability, saw the rise of militancy, and destroyed the nation's Constitution.

**13.** Undeniably the ways to self-determination for the Bangalee nation was strenuous, swabbed with colossal blood, strive and sacrifices. In the present-day world history, believably no nation paid as tremendously as the Bangalee nation did for its self-determination and independence.

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

**14.** Accused Mir Quasem Ali, son of Late Mir Tayeb Ali and Late Rabeya Begum of village- Munshi Dangi Satalori, Police Station- Harirampur, Dist. Manikgonj, at present- House NO. 287, Mollapara, South Monipur, Ward No.13, Mirpur, Dhaka, was born on 31 December in 1952. He was a student of Chittagong Government College and passed H.S.C in 1969 and got admitted in B.S.C (Hons) class in the same college and was elected president of Islami Chhatra Sangha [herein after referred to as ICS], the student wing of Jamat E Islami[JEI] for the period of 1970 to 25 March 1971. He was the President of Islami Chhatra Sangha, Chittagong Town unit up to 6 November, 1971, as alleged. He also held the post of General Secretary of East Pakistan Islami Chhatra Sangha [ICS] till the surrender of Pakistani occupation army to the joint command of Liberation War. During the War of Liberation, the accused was one of the central commanders of Razakars, Al-Badar and Al-Shams Bahini as alleged by the prosecution. He was allegedly involved in the commission of offences of crimes against humanity in Chittagong and subsequently discontinuing his education he went into hiding and passed B.A. from Ideal College, Dhaka in 1974. He joined the Jamaat-e-Islami in 1980 and has been performing as *Sura* Member of Jamaat E Islami [herein after referred to as JEI] since 1985.

## **VII. Procedural History**

### **Tribunal-1**

#### *Detention & Interrogation of the Accused: Pre-trial phase*

**15.** On an application under Rule 9(1) of the Rules of Procedure initiated by the Chief Prosecutor seeking arrest, for the purpose of effective and proper investigation the ICT-1 issued warrant of arrest pursuant to which accused Mir Quasem Ali was arrested and produced before the ICT-1 and then he was sent to prison. Accordingly, since then accused Mir Quasem Ali has been in custody in connection with the case before us.

**16.** The Tribunal (Tribunal-1), since his detention, has entertained a number of applications and the same were disposed of in accordance with law and on hearing both sides. The Tribunal [ICT-1] by its order dated 25.7.2013



allowed the learned defence counsels to have privileged communication with the accused detained in prison. To prohibit coercion and torture of any kind, the Tribunal [ICT-1] also ordered the presence of engaged counsel and a doctor at a room adjacent to the room of the 'safe home' where the Investigation Agency was allowed to interrogate the accused, during pre-trial stage.

### ***Submission of Formal Charge & taking Cognizance of offences***

**17.** On 26.5.2013, the Tribunal [ICT-1], considering the Formal Charge and documents submitted therewith submitted by the Chief Prosecutor, having found *prima facie* case, took cognizance of offences under the International Crimes (Tribunals) Act 1973 against the accused Mir Quasem Ali and fixed a date for hearing the charge matter with direction to the prosecution for submitting copy of formal charge, statement of witnesses, list of witnesses for the purpose of supplying the same to accused and fixed a date for hearing the charge matter and it directed the defence to meanwhile comply with the requirement of s. 9(5) of the Act of 1973.

### ***Hearing charge framing matter & order passed on it***

**18.** Hearing the charge matter commenced on 25.7.2013 on submission presented on part of the prosecution. On prayer of defence the ICT-1 allowed the defence counsels to have privileged communication with the accused detained in prison and fixed 07.8.13 for further hearing on charge matter. On 07.8.13 defence prayed for an adjournment and ICT-1 allowed it and fixed 18.8.13 for further hearing on charge framing matter.

**19.** On 18.8.13 defence filed a discharge application on the grounds stated therein. Tribunal [ICT-1] allowed an adjournment prayed by the prosecution for hearing on the discharge matter and fixed 21.8.13 for further hearing on charge framing matter. However, on conclusion of hearing on charge framing matter on 21.8.13 the Tribunal [ICT-1] fixed 29.8.13 for order on it.

**20.** On 29.8.13 defence prayed seeking opportunity for extending further submission on charge framing matter and thus sought for an adjournment.

The Tribunal [ICT-1], for ends of justice, allowed it and fixed 05.9.13 for order on charge framing matter and however, it kept it open for defence submission, on discharge matter, if the defence desires so.

**21.** On 05.9.13 defence again prayed for an adjournment on ground of non availability of the learned defence counsel Mr. Abdur Razzak who was about to make submission on discharge matter. But ICT-1, taking the whole situation and provisions of law and ROP into account, finally did not consider the prayer and on the same day i.e. on 05.9.2013 the Tribunal [ICT-1] by its detailed order framed in all 14 charges for the offences of abduction, confinement & torture, and murder as crimes against humanity against the accused Mir Quasem Ali. The Tribunal [ICT-1] then fixed 30.9.13 for opening statement to be presented by the prosecution.

***Transfer of the case record to ICT-2 & opening statement by the prosecution***

**22.** The Tribunal [ICT-1], pending opening statement supposed to be presented by the prosecution, by its order dated 30.9.2013 under section 11A of the Act of 1973 transmitted the case record to Tribunal-2 [ICT-2] for trial and disposal.

**Tribunal-2[ICT-2]**

**23.** This Tribunal [ICT-2] on receipt of the case record on 2.10.13 fixed 03.10.13 for advancing opening statement by the prosecution as the case was at this stage in ICT-1.

**24.** On 03.10.13 the accused could not be produced before the ICT-2 from prison and thus it directed the prison authority to produce the accused on 06.10.13. Accordingly, on production of the accused on 06.10.2013 this Tribunal [ICT-2] fixed 28.10.13 fixed for opening statement afresh and examination of witnesses by the prosecution. On 22.10.2013 prosecution prayed for an order for issuance of summons on 08 witnesses. The application was kept with the record.

**25.** On 28.10.13 defence prayed an adjournment for 04 weeks. This Tribunal allowing the prayer fixed 07.11.13 for opening statement and presenting prosecution witnesses.

**26.** On 7.11.13 defence pressed the review application dated 27.10.13 filed earlier before the ICT-1 for hearing. Having regard to submission of both sides this Tribunal [ICT-2] observed that the matter of review needed to be resolved by the ICT-1 as required under rule 26(3) of the ROP as the charges were framed by it [ICT-1] and thus the case record was sent back to the ICT-1.

**27.** The ICT-1, on receipt back of the case record, by an order dated 10.11.13 fixed 11.11.13 for hearing the 'review application' dated 27.10.13 preferred by the defence. On 11.11.13 the ICT-1 by an order rejected the review application under Rule 26A of the ROP and ordered to re-transmit the case record to the ICT-2

**28.** Again, on receipt of the case record, this Tribunal [ICT-2] fixed 17.11.13 for opening statement and prosecution witnesses. But on the date fixed the accused could not be produced before the Tribunal and thus it ordered issuance of production warrant and fixed 18.11.13 for opening statement. On the date fixed, defence prayed an adjournment of 03 weeks seeking opportunity of being adequately aware of disclosure of documents referred in the formal charge. ICT-2 allowed it and fixed 10.12.13 for opening statement to be presented by the prosecution.

**29.** This Tribunal by its order dated 26.11.13 directed the defence to submit its documents, if any, in compliance with the provisions as contained in section 9(5) of the Act of 1973 on or before 2.12.13.

### ***Presentation of Prosecution witnesses***

**30.** With the presentation of opening statement prosecution started examining its witnesses on 11.12.13 and examination of prosecution witnesses ended on 17.4.14. Prosecution adduced and examined in all 24

witnesses including the Investigating Officer and three seizure witnesses. Defence cross-examined the witnesses.

**31.** Meanwhile by an order dated 20.2.14 this Tribunal directed the prison authority to provide health friendly vehicle for transportation of accused from jail-tribunal-jail on his own cost.

### ***Defence witnesses & applications filed by the defence***

**32.** On closure of prosecution witnesses, presentation of defence witnesses thus commenced on 23.4.2014 and it ended on 27.4.2014 by examining three defence witnesses as limited by an earlier order dated 17.4.2014 passed by the Tribunal. Prosecution duly cross-examined the DWs.

**33.** On 22.4.14 defence, by filing an application, prayed permission for submitting additional documents as stated therein. The Tribunal rejected it chiefly on ground that neither the Act of 1973 nor the ROP permitted it. However, this Tribunal observed that the defence shall be at liberty to argue its case drawing attention to those papers.

**34.** Defence filed another application on 22.4.2014 praying permission to cross-examine the IO on 're-call'. The Tribunal on hearing both sides by passing a reasoned order rejected the prayer. And thus on closure of defence witnesses on 23.4.2014 the Tribunal fixed 27.4.14 for summing up of cases.

### ***Summing up of cases***

**35.** Prosecution's summing up commenced on 27.4.14 and ended on 28.4.14 with the presentation advanced by the learned prosecutors Mr. Zead Al Malum, Mr. Sultan Mahmud, Ms. Tureen Afroz, Ms. Rezia Sultana Begum and Mr. Tapas Kanti Baul. Defence summing up, on factual aspects, started on 29.4.14 and ended on 30.4.2014 with the presentation of Mr. Mizanul Islam. On 04.5.2014 Mr. Tanveer Ahmed Al Amin, another learned defence counsel was allowed to put his presentation on law points. In reply, Mrs. Tureen Afroz, the learned prosecutor presented a brief rebuttal.

**36.** At the stage of summing up, the defence came up with an application under section 17(1) of the Act of 1973 seeking permission to submit 'written explanation' for consideration 'at the time of passing judgment'. Having regard to defence submission and the provisions as contained in section 17(1) of the Act of 1973 the application was rejected with the following observations:

“It appears that it has been contended in paragraph 6 that the Tribunal has not yet asked the accused to give his explanation to the charges. But the provision as contained in the Act does not require the Tribunal to ask the accused for submitting any such 'written explanation'.

The Tribunal notes that the phrase 'written explanation to the charges made against accused' indicates that any such explanation ought to have been presented instantly after framing charges. Besides, defence got opportunity to present its own 'explanation' by cross-examining the prosecution witnesses in the form of putting 'suggestion'. Now, the case is at the stage of summing up. We are of view that there has been no scope of submitting such '**written explanation**' ' for considering it '**at the time of passing judgment**'.”

**37.** However, on closure of the phase of summing up of case by both sides ended on 04.5.2014, the Tribunal kept the ‘case awaiting for verdict’ [CAV]

## **VIII. Applicable laws**

**38.** Provisions as contemplated in the International Crimes (Tribunals) Act 1973 and the Rules of Procedure 2012 formulated by the Tribunal [ICT-2] under the powers given in section 22 of the Act are applicable to the proceedings before the Tribunal. Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872. Tribunal is authorized to take judicial notice of fact of common knowledge which is not needed to be proved by adducing evidence [Section 19(4) of the Act]. The Tribunal may admit any evidence which it deems to have probative value [Section 19(1) of the Act]. The Tribunal shall have discretion to consider hearsay evidence by weighing its probative value [Rule 56(2)]. The defence shall have liberty to cross-examine prosecution

witness on his credibility and to take contradiction of the evidence given by him [Rule 53(ii)]. Defence shall have right to examine witnesses [Section 10(1) (f) of the Act of 1973].

**39.** Cross-examination is significant in confronting evidence. 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 no such statement of witness has been received despite prayer on part of the prosecution.

**40.** In the judgment of *Abdul Quader Molla* it has been observed by the Appellate Division that “Sub-rule (ii) of rule 53, speaks of ‘contradiction of the evidence given by him’. This word ‘contradiction’ is qualified by the word ‘examination-in-chief’ of a witness. So, the contradiction can be drawn from the statements made by a witness in his' examination-in-chief’ only, not with respect to a statement made to the investigating officer of the case in course of investigation” [Page 196 of the Judgment of Appellate Division ]. “There is no scope to draw contradiction of the statement of a witness made in course of examination-in-chief with his/her earlier statements made to the investigating officer or other agency.” [ Page 205 of the Judgment of Appellate Division].

**41.** Both 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. Since the Act of 1973 is meant to prosecute and try the persons responsible for the offence of crimes against humanity, committed in violation of customary international law, the Tribunal however is not precluded from seeking guidance from international reference and relevant jurisprudence, if needed to resolve legal issues related to adjudication of charges and culpability of the accused.

## **IX. The Universally Recognised Rights of Accused Ensured by the Act of 1973**

**42.** The Act of 1973 and the Rules [ROP] framed there under are explicitly compatible with the fair trial concept as contained in the ICCPR. We have given a portrayal on compatibility of provisions in ICT Act with the ICCPR in the case of *Muhammad Kamaruzzaman* [ICT-BD Case No.03 pf 2012, Judgement 09 May 2013, para 63].

**43.** Fairness of judicial proceeding is a crucial notion indeed. Before we enter into the merit of the case, we prefer to reiterate what rights of accused have been guaranteed in the Act of 1973 and the ROP in order to dispel misconception. Fair trial concept stems from the recognized rights of accused. The Tribunal [ICT-2], a domestic judicial forum constituted under our own legislation enacted in the Parliament ensures the key rights of the accused constituting the elements of fair trial. The rights are (i) right to disclosure (ii) public hearing (iii) presumption of innocence (iv) adequate time to prepare defence (v) expeditious trial (vi) right to examine witness (vii) right to defend by engaging counsel. All the rights including these ones have been provided to the accused so that the fair trial requirements are satisfied.

### **Right to Disclosure**

**44.** Rule 9(3) of ROP [of ICT-BD-2] provides--“At the time of executing the warrant of arrest under sub-rule (2) or later on, copy of allegations is to be served upon such person.” Further, Rule 18 (4) provides-- “The Chief prosecutor shall file extra copies of formal charge and copies of other documents for supplying the same to the accused(s) which the prosecution intends to rely upon in support of such charges so that the accused can prepare his defence.” This provision compatibly corresponds to Article 9(2) ICCPR that contains-“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”

### **To be presumed innocent till found guilty**

**45.** The right to be presumed innocent until proven guilty relates to the protection of human dignity and is universally recognised jurisprudence of fair trial proceedings. In ICT-BD the provision that the burden of proving the charge shall squarely lie upon the prosecution [Rule 50] is manifestation of the recognised theory of innocence of an accused until and unless he is held guilty through trial. Besides, a person charged with crimes as described under section 3(2) of the Act of 1973 shall be presumed innocent until found guilty [Rule 43(2) of the ROP]. It adds further assurance to this right.

### **Adequate time to prepare defence**

**46.** The notion of fairness of trial includes the right of an accused to have adequate time and facilities for the preparation of his defense during all stages of the trial. This element of fair trial refers to the idea of doing what's best and level-headed.

**47.** The 'three weeks' time is given to the defense to prepare. Section 9(3) of the Act of 1973 explicitly provides 'at least three weeks' time before the trial commences on furnishing a list of witnesses along with the copies of recorded statement and documents upon which the prosecution intends to rely upon. What time is considered adequate for the defence? It depends on the circumstances of the case. The phrase 'at least three weeks' connotes the scope of providing time even more than 'three weeks' in exercise of discretion of the Tribunal. Rational time beyond 'three weeks' necessary for preparation of being defended is usually given to the accused.

### **Expediency of the proceedings**

**48.** Sections 11(3) and 13 of the Act of 1973 require the Tribunal for ensuring expeditious proceedings. It is to be noted that the expediency and fairness of the proceedings are intertwined. The right to be tried without undue delay is an important element of the right to a fair trial. Neither party should be allowed to cause setback the proceedings at will or by seeking unjustified adjournments. In this regard we may recall the



observation made in the case of *Kayishema and Obed Ruzindana* by The ICTR Appeals Chamber which is as below:

**“Procedural time-limits are to be respected, and . . . they are indispensable to the proper functioning of the Tribunal and to the fulfillment of its mission to do justice. Violations of these time-limits, unaccompanied by any showing of good cause, will not be tolerated.”**

*[Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgment (Reasons), 46 (June 1, 2001).]*

**49.** The case record will go to show that both parties were afforded adequate time in conducting their respective case. Keeping the notion of the principle of equality in mind the Tribunal was mindful in providing every practicable facility and adjournment it was capable of granting under the Rules and the Act of 1973 when faced with a request by either party for assistance in presenting its own case.

### **Right to examine witnesses**

**50.** Under section 10(1) (f) of the Act of 1973 defence shall have right to examine witness, if any. In the case in hand, defence submitted a list of 26 witnesses under section 9(5) of the Act of 1973 at the commencement of trial. However, eventually considering the defence case attributed from the trend of cross-examination of prosecution witnesses the Tribunal [ICT-2], in exercise of power given in section 22 of the Act and Rule 46A of the ROP, permitted the defence to produce and examine 03 witnesses preferably from their list. Accordingly, defence produced and examined three (03) witnesses in support of plea of *alibi* and affirmative defence and also proved and exhibited some documents.

**51.** Finally, it will be evident from procedural account of the case that the Act of 1973 does indeed adhere to most of the rights of the accused enshrined under Article 14 of the ICCPR. However, from the aforementioned discussion it reveals that all the key rights have been adequately ensured under the International Crimes (Tribunals) Act, 1973 and we will find that those fairly correspond to the ICCPR.

## X. Universally Recognised Rights of Victims

**52.** The Tribunal notes that the ‘fair trial’ concept does not reduce the rights of victims. It is to be noted that the State has an obligation to remedy serious human rights violations. Bangladesh recognizes Article 8 of the Universal Declaration of Human Rights [UDHR] and Article 2(3) of the International Covenant of Civil and Political Rights [ICCPR] which ensure the right to an effective remedy for the violation of human rights.

**53.** We reiterate our reasoned observation recorded in the case of *Muhammad Kamaruzzaman* [ICT-BD Case No.03 pf 2012, Judgement 09 May 2013, para 66, 67] with reference to **Article 2(3) ICCPR** that

**“the victims of systematic and organised diabolical atrocities committed in 1971 within the territory of Bangladesh in violation of customary international law need justice to heal. Bangladesh considers that the right to remedy should also belong to victims of crimes against humanity. It is also to be kept in mind together with the rights of accused, for rendering justice effectively”.**

**54.** Therefore, for rendering effective justice, victims’ right to remedy for the violation of recognised human rights also deserves to be kept in mind too with ensuring rights of accused.

## XI. Summing up of cases

### a. Summing up of the Prosecution

**55. Mr. Zead-al-Malum**, the learned prosecutor triggered the summing up of prosecution case. In his presentation the learned prosecutor chiefly focused on the role of the accused Mir Quasem Ali in forming AB force in Chittagong, to establish his nexus with it. Citing the narration made in the book titled ‘**Al-Badar**’ authored by Selim Mansur Khalid [page 133 of Bengali translated text] the learned prosecutor argued that it was the ICS the student wing of JEI that had substantially contributed and collaborated to the formation of AB force. The accused was the president of ICS, Chittagong town unit till 08 November 1971 and he was in third position of high command of AB force. Exhibit-1 series and Exhibit-IV series show

accused's stance against the war of liberation and freedom-loving Bengali civilians and his active affiliation with the AB force and the Pakistani occupation army in Chittagong as well. It is now settled that the AB force, an 'action section' of JEI was formed of workers of ICS. Accused Mir Quasem Ali, by virtue of his position in ICS, Chittagong town unit thus had association with the AB torture camp set up at Dalim Hotel, Chittagong and had actively facilitated and abetted the criminal activities carried out there. Accused's position of authority in ICS by itself makes him liable under section 4(2) of the Act of 1973 for the offences with which he has been charged.

**56.** Next, on the events of criminal acts constituting the offences as narrated in the charges framed, **Mr. Sultan Mahmud**, the learned prosecutor argued that all the victims were first brought to AB camp at Dalim Hotel, on capture where they were kept in prolonged confinement and subjected to torture. Accused Mir Quasem Ali was a potential leader of AB force formed of ICS workers and thus had authority over the camp and its activities. Many of detainees came on dock to narrate the events of their abduction, confinement and torture. They saw the accused present at the camp at the time of grilling them by causing torture and seldom the accused by remaining there present and by his act and conduct encouraged and provided moral support to the AB men the principals in accomplishing the crimes. Defence failed to refute what has been testified by the detainee witnesses on material particular, by cross-examining them.

**57.** The learned prosecutor went on to argue that the book titled **ওঁত্ৰম্ৰ ত্ৰম্ৰ মগ্ৰ** **অব্ৰত্ৰ তেঁ ব্ৰব্ৰ** authored by Advocate Shafiul Alam demonstrates that he was also kept in captivity and tortured at the AB camp which was set up at Dalim Hotel, Chittagong. All the detainee victims corroborating it stated that they were taken to AB torture camp set up at Dalim Hotel and also narrated what they experienced during their illegal confinement there. The information depicted in the book titled **ওঁত্ৰম্ৰ ত্ৰম্ৰ মগ্ৰ অব্ৰত্ৰ তেঁ ব্ৰব্ৰ** authored by Advocate Shafiul Alam together with the testimony of P.W.15 also prove that AB force had set up a torture camp at Dalim Hotel and it has been affirmed in cross-examination of P.W.15. Accused's culpable

presence at the crime site i.e AB camp coupled with his authority and act and conduct substantially facilitated and contributed to the commission of criminal acts constituting the offences of abduction, confinement and torture that resulted in death as crimes against humanity.

**58.** It has been further argued that the accused Mir Quasem Ali as the president of ICS, Chittagong town unit was thus also in commanding position of local Al-Badar, which was responsible for the criminal acts targeting the pro-liberation Bengali civilians. The accused had “effective control” over the AB members of the camp at Dalim Hotel and thus he incurs responsibility as he failed to prevent the commission of crimes by the AB members. The accused consciously acted in providing assistance to the AB members and also omitted to prevent them from committing such criminal acts by the extremely villainous Al-Badar force. Therefore, his participation to the accomplishment of crimes has been proved beyond reasonable doubt.

**59.** Mr. Sultan Mahmud, the learned prosecutor reinforcing the above pertinent submission in respect of all the charges framed, drew attention to the relevant evidence introduced in support of each charge independently arguing success of proving the fact of commission of offences and accused’s involvement and participation therewith. We deem it appropriate to take the argument based on evidence presented in relation to each charge into account together with the argument placed by the defence while adjudicating each charge independently.

**60. Mr. Tapas Kanti Baul**, learned prosecutor of the conducting team, in his brief presentation, submitted that the victimized witnesses testifying before the Tribunal stated that AB torture camp was set up at Dalim Hotel, Chittagong in 1971 where the atrocious activities had been carried out by the AB members under the command and leadership of accused Mir Quasem Ali who, during that period, was the president of ICS, Chittagong town unit. Since the AB force was formed of ICS workers, accused’s position in ICS placed him in a position of authority of AB force and AB camp at Dalim Hotel too. In support of his submission the learned prosecutor cited the observation made by this Tribunal [ICT-2] in the case

of *Muhammad Kamaruzzaman* [**Kamaruzzaman Judgment Paragraph: 158 & 588**]

**61.** Next, **Mrs. Rezia Sultana** another learned prosecutor drawing attention to the evidence of D.W.s submitted that they were not credible and by their evidence defence failed to prove the plea of *alibi* and the affirmative defence case to negate the fact of existence of AB camp at Dalim Hotel in 1971. The statement made by D.W.1 in respect of plea of *alibi* is not consistent to what has been suggested in this regard to the prosecution witnesses. Defence has failed to prove that at the relevant time the accused was not in Chittagong with certainty.

**62. Ms. Tureen Afroz**, in advancing argument, mainly presented her submission on ‘liability’ of the accused Mir Quasem Ali for the offences with which he has been charged. On applicability of JCE doctrine, the learned prosecutor has submitted that section 4(1) and first two parts of section 4(2) of the Act of 1973 incorporates the doctrine of JCE in our legislation. Fundamentally the JCE requires that a group of individuals had a common plan, design, or purpose to commit a crime, that the accused participated in some way in the plan and that the accused intended the accomplishment of common plan or purpose. In the case in hand, all the crimes narrated in the charges framed occurred at the AB torture camp at Dalim Hotel. All the detainees were non combatant freedom fighters or freedom-loving people. Purpose of detaining them was to extract information about freedom fighters and their locations as they termed them as ‘miscreants’. Bringing civilians at the AB camp on capture and causing torture to them in captivity for the said purpose was of course in execution of common design and plan. Accused was part of the common purpose and design of carrying out criminal activities at the AB camp as the evidence of victimized detainees demonstrates that he[accused] controlled and organised the course of events of ‘system cruelties’ knowingly and consciously. The accused also exercised his authority by ordering release of detainee.

**63.** It has been further submitted by Ms. Tureen Afroz that ‘common plan’ need not be proved and it is suffice to show the general system of cruelties and mistreatment of detainees and the system was practiced within knowledge of the accused. The AB camp at Dalim Hotel was engaged as ‘criminal enterprise’ to which the accused was concerned in furtherance of common plan and purpose and as such he incurs liability under the doctrine of Systematic Form of JCE.

**64.** In support of her submission the learned prosecutor Ms. Tureen Afroz cited principle propounded in **Belsen Concentration Camp case** [Trial of Josef Kramer and 44 others (The Belsen Trial), Case no. 10, British Military Court, Luneberg, 17 September-17 November 1945, in United Nations War Crimes Commission, Law reports of trials of War Criminals, Vol.II (1947) at 120-127] and **Dachau Concentration Camp Case** [Trial of Martin Fottfried Weiss and Thirty Nine others(The Dachau Concentration Camp Trial), Case No. 60, at the General Military Government Court of the United States Zone, Dachau, Germany, 15 Npvenber-13 December, 1945, in United Nations War Crimes Commission, Law reports of trials of War Criminals, Vol.XI (1947) at 14]. Citing the principle the learned Prosecutor argued that the evidence presented by the prosecution, in the case in hand, clearly reflects that there had been a ‘system’ of criminal activities and a ‘course of conduct’ at the AB camp and the cruelties and severe mistreatment were caused to the detainees in pursuance of a common design and the system which was practiced with the knowledge of the accused.

**65.** Ms. Tureen Afroz went on to submit that the evidence of victimized detainees made before the Tribunal portrays it manifestly that the accused Mir Quasem Ali was not a mere bystander at the camp. Rather, he remained there by virtue of his position of authority and influence over the camp, in furtherance of common design and plan. Additionally, conversation he had made with his cohorts the AB members at the camp as testified by the detainees negates his presence as a mere innocent spectator.

## **b. Summing up of case by the defence**

**66.** Mr. Mizanul Islam the learned defence counsel started summing up by presenting the affirmative defence case that the accused was the president of ICS, Chittagong town unit but since 06 November 1971 he had been away from Chittagong; that he was not involved with the formation of AB force and neither was he commander of AB force in Chittagong. It has been further submitted that Dalim Hotel was under control of one Motiur Rahman @ Moitya Gunda. And that if really there had been any AB camp at Dalim Hotel the accused had no connection with it.

**67.** Next, the learned defence counsel argued that the IO could not collect any document whatsoever to show that the accused belonged to AB force or he was its commander. Prosecution failed to bring any document to substantiate this pertinent fact relating to identity of accused in 1971.

**68.** Questioning the validity of accused's identification on dock by the prosecution witnesses the learned defence counsel submitted that most of the alleged detainee witnesses were not familiar with the accused since earlier. Only P.W.2 and P.W.3 claim that they knew the accused since prior to the alleged events. The accused was not known as 'Bangalee Khan' and the evidence presented in this regard by the prosecution is rather contradictory.

**69.** It has been further argued that the book titled *ওসম্মুখি গ্যৰ্হাখি বিজে, গনেৰ-ডজ -Avj g* [Material Exhibit- VI , book's page 297-302] relied upon by the prosecution shall go to show that some other persons were the AB leaders and commanders in Chittagong and not the accused Mir Quasem Ali.

**70.** The learned defence counsel then went on to present his submission on the charges framed against the accused. Mainly it has been submitted that the victimized witnesses' testimony is not credible and they have testified before the Tribunal being tutored. And in some occasions it will appear that their testimony is contradictory with the narration of the book authored by Shafiqul Alam one of alleged detainees, as relied upon by the prosecution.

However, the argument extended by the defence counsel in respect of each charge shall be conveniently taken under discussion at the time of adjudication of the charges.

**71. Mr. Tanveer Ahmed Al-Amin** the learned defence counsel presented brief argument on some legal aspects already settled in earlier cases by this Tribunal. He submitted for adoption of argument made in earlier cases on the issue of delay in bringing prosecution, elements to constitute the offences as crimes against humanity, allowing 195 Pakistani war criminals to walk free by virtue of tripartite agreement, 1974. As regards delay in bringing prosecution the learned defence counsel argued that long delay in bringing prosecution naturally creates room for concoction and thus the witnesses examined on the alleged events cannot be relied upon.

**72.** Apart from above submission, the learned defence counsel also advanced counter argument on two law points. One relates to ‘civilian superior responsibility’ and another involves JCE form II, mode of liability. We consider it convenient to address the argument advanced on these two legal points in the relevant segments of the judgment.

### **Prosecution’s Rebuttal**

**73.** Mrs. Tureen Afroz the learned prosecutor made a brief rebuttal on the above legal points submitting that ‘authority’ or ‘command’ may be well inferred from circumstances and relevant facts. It does not need to be proved by any documentary evidence.

## **XII. Addressing legal aspects agitated**

**74.** At the out set of argument on two law points, the learned defence counsel Mr. Tanveer Ahmed Al-Amin submitted to adopt the argument made on some key legal aspects as already advanced in earlier cases disposed of by this Tribunal[ICT-2]. However, the defence counsel added that unusual delay of long four decades in bringing prosecution against the accused is politically motivated and it also has creates a reasonable room of making concoction and fabrication on part of prosecution witnesses. The learned Prosecutor however submitted to adopt the defence argument as presented in the earlier cases, on the legal issues relating to (1) delay in



bringing prosecution (2) tripartite agreement 1974 that relieved the 195 war criminals belonging to the Pakistani occupation army (4) without prosecuting the principal perpetrators the accused cannot be prosecuted and (4) lack of elements to constitute the offences as crimes against humanity and

### **Summary of Argument by the defence Counsel on legal aspects [as adopted]**

75. The argument on legal issues considered to have been reiterated and adopted by the defence may be succinctly categorized as below, for the purpose of rendering our findings:

(i) Inordinate and unexplained delay of 40 years in prosecution the accused creates doubt and fairness of the trial;

(ii) that the Act of 1973 was enacted to prosecute , try and punish 195 listed Pakistani war criminals who have been exonerated on the strength of ‘tripartite agreement’ of 1974 and as such without prosecuting those listed war criminals present accused cannot be brought to justice as merely aider and abettor;

(iii) that it is not claimed that the accused alone had committed the offences alleged and thus without bringing his accomplices and 195 war criminals to justice the accused alone cannot be prosecuted;

(iv) that the offences have not been adequately defined in the Act of 1973 and for characterizing the criminal acts alleged for constituting offence of crimes against humanity the Tribunal should borrow the elements as contained in the Rome Statute as well as from the jurisprudence evolved in adhoc Tribunals.

## **Summary of Prosecution reply to argument by the Defence on Legal Points [as adopted]**

76. In reply to the above reiterated and adopted argument on legal aspects, prosecution has also submitted to adopt their earlier submission made in the earlier cases already disposed of by this Tribunal [ICT-2]. Accordingly, prosecution's argument on the legal issues agitated by the defence may thus be categorized as below:

(i) there is no limitation in bringing criminal prosecution, particularly when it relates to 'international crimes' committed in violation of customary international law;

(ii) that the 'tripartite agreement' which was a mere 'executive act' cannot bung up in bringing prosecution under the Act of 1973 against 'auxiliary force, an 'individual' or 'group of individuals';

(iii) that even without prosecuting the 195 Prisoners of War [POWs] and accused's accomplices [the AB men] the person responsible can be brought to book under section 3(2) of the Act of 1973 as there is no legal bar in prosecuting a person who acted to abet and facilitate the commission of the crimes even without bringing the principal perpetrators or accomplices

(iv) that the phrase '*committed against civilian population*' as contained in section 3(2)(a) of the Act of 1973 itself patently signifies that acts constituting offences specified therein are perceived to have been committed as part of 'systematic attack'. The context of war of liberation is enough to qualify the acts as the offences of crimes against humanity which were

perpetrated in violation of customary international law. Thus the offences are well characterized as the ‘crimes against humanity’.

### **XIII Determination of Legal Aspects**

#### **(i) Does Unexplained Delay frustrate prosecution case?**

**77.** The settled jurisprudential proposition is that mere delay does not create any clog in bringing criminal prosecution. But the defence argued that unexplained inordinate delay of long 40 years occurred in prosecuting the accused impairs the truthfulness of the allegations and it reflects political motive too. Such inordinate delay of long 40 years should have been explained in the formal charge submitted under section 9(1) of the Act which is the foundation of the case. But the formal charge remained silent in this regard.

**78.** The Tribunal first reiterates that 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 limitation of time.

**79.** It is pertinent to note that this view recorded by this Tribunal [ICT-2] in the case of *Abdul Quader Molla* has been affirmed by the Appellate Division with the as observation as below:

**“It is clear that no limitation has been prescribed by the Act, 1973 and the rules framed hereunder for initiating/commencing the proceedings against a person for the commission of crime as mentioned in sub-section (2) of section 3 thereof. Therefore, the delay in commencing the**

**proceedings in question against the accused after 41(forty one) years *ipso facto* cannot be a ground to doubt the truth or veracity of the prosecution case. At the risk of repetition, it is stated that for the inaction of the executive or for the failure of the executive to act in accordance with the provisions of a statute,(here the Act, 1973) for a considerable period, or for a long period, neither the law nor any of its provisions can be made ineffective and nugatory, particularly, in case of a criminal act of a person and such delay cannot also give an accused the benefit of doubt as to the commission of an offence or crime as may be given in the case of a trial under ordinary laws of the land.”**

**[Justice A. Wahaab Miah, Judgment: 17.9.2013 in Criminal Appeal Nos. 24-25 of 2013 , Page 285]**

**80.** Next, there can be no recognised hypothesis 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, during the war of liberation of Bangladesh

**81.** The learned defence counsel argued that unexplained delay in bringing prosecution against the accused has created a room of concoction and also suggests that the accused has been prosecuted out of political motive. On this issue resolved by this Tribunal [ICT-2] in the case of *Abdul Quader Molla* the Appellate Division of Bangladesh Supreme Court, on appeal, has observed that –

**“Allegation of long delay can also hold no water as it is an universally recognised principle of law that a criminal case is not hurdled by any limitation as to time. No law requires the prosecution to offer any explanation for delay and in any case, delay in respect to the present**

**prosecution is self explanatory given the circumstances and the events that proceeded following the assassination of the Father of the Nation who led the country to the Liberation War and the resultant victory.....**

**It is not correct to say that a criminal trial shall fall apart simply because of delayed indictment. While unexplained delay may shed doubt, a case can not ipso facto fail for that reason alone if evidence are overwhelming as in this cases.**

**There is nothing in the record to show that the prosecution was for political purpose. The mere fact that the perpetrator of an offence is a politician does not mean his trial is to be treated as one for political purpose. If allegations are proved beyond reasonable doubt against a person, it matters not that he is a politician, law does not and cannot provide impunity to politicians. It is to be borne in mind that crimes against humanity, whether committed by the Nazis of Germany or the Japanese or in Yugoslavia or Cambodia or Rwanda, had political connotations any way.”**

**[Justice A.H.M Shamsuddin Chowdhury: Judgment: 17.9.2013 in Criminal Appeal Nos. 24-25 of 2013, Page 750-751].**

**82.** The Tribunal notes that mere belonging to a political organisation does not by itself offers any notion even that the accused has been brought to book out of political motive. Any such claim on part of the defence is immaterial indeed in a trial of an individual arraigned of the offences of crimes against humanity. This view gains support from the observation given by the Appellate Division of Bangladesh Supreme Court in the case of *Abdul Quader Molla* which is as below:

**The mere fact that the perpetrator of an offence is a politician does not mean his trial is to be treated as one for political purpose. If allegations are proved beyond reasonable doubt against a person, it matters not that he is a politician, law does not and can not provide impunity to politicians. It is to be borne in mind that crimes against humanity, whether committed by the Nazis of Germany, or the Japanese or in Yugoslavia or Cambodia or Rwanda, had political connotations any way.**

**Nurturing a political belief is one thing while advancing such beliefs through legally proscribed devices, is quite another. A person can obviously not claim impunity if he advances his political belief by resorting to criminal activities and if he does, he can not allege that his trial is of political nature.”**

**[Justice A.H.M Shamsuddin Chowdhury: Judgment: 17.9.2013 in Criminal Appeal Nos. 24-25 of 2013, Page 751].**

**83.** Therefore, we are persuaded to reiterate our observation rendered in earlier case that the mere delay occurred in bringing prosecution, taking the context prevailed since last couple of decades into account, does not lead either accused’s acquittal or impairs the prosecution case the effective adjudication of which fundamentally rests on evaluation of totality of evidence and materials available before the Tribunal.

**(ii) Legislative Intention in enacting the Act of 1973 and subsequent incorporation of ‘Individual’ or group of individuals’ to the Act by amendment of the Act in 2009**

**84.** The Act of 1973 is meant to prosecute, try and punish any ‘individual’ or ‘group of individuals’ or any member of armed, defence or auxiliary force for the offences specified in section 3(2) of the Act of 1973. Prosecuting the accused even in the capacity of an ‘individual’ is lawful even if he is not found to have had membership of any ‘auxiliary force’.

**85.** We have rendered our reasoned finding in earlier cases disposed of by this Tribunal [ICT-2] that in the wake of nation's demand the Act of 1973 has been amended for extending jurisdiction of the Tribunal for bringing the local perpetrator to book if he is found involved and concerned with the commission of the criminal acts constituting offences of crimes against humanity and genocide as enumerated in the Act of 1973 even in the capacity of an 'individual' or member of 'group of individuals' .

**86.** In the case of *Muhammad Kamaruzzaman* we have given our specific and considered finding that

**“The legislative modification that has been adopted by bringing amendment in 2009 has merely extended jurisdiction of the Tribunal for bringing the perpetrator to book if he is found involved with the commission of the criminal acts even in the capacity of an ‘individual’ or member of ‘group of individuals’. The right to move the Supreme Court for calling any law relating to internationally recognised crimes in question by the person charged with crimes against humanity and genocide has been taken away by the provision of Article 47A(2) of the Constitution. Since the accused has been prosecuted for offences recognised as international crimes as mentioned in the Act of 1973 he does not have right to call in question any provision of the International Crimes (Tribunals) Act 1973 or any of amended provisions thereto.**

**[Muhammad Kamaruzzaman, ICT-BD(ICT-2) Case No. 03 of 2012, Judgment 09 May, 2013, para 110, 111]**

**87.** Now, in absence of any decision contrary to our view we are constrained to echo our earlier finding that the contention raised by the defence is of no consequence to the accused in consideration of his legal status and accordingly the defence objection is not sustainable in law,

particularly in the light of Article 47(3) and Article 47A(2) of the Constitution.

**(iii) Tripartite Agreement and immunity to 195 Pakistani war criminals**

**88.** This Tribunal [ICT-2] has already resolved this pertinent issue by giving its reasoned finding, in the case of *Abdul Quader Molla* and also in the case of *Muhammad Kamaruzzaman and Ali Ahsan Muhammad Mujahid*. Deliberations made therein, on this issue, may briefly be reiterated in the case in hand too, as below.

**89.** First, the backdrop of entering into the ‘tripartite agreement’ needs to be considered. Bangladesh’s decision was to prosecute and try 195 Pakistani POWs who were detained in India. Finally they were repatriated to Pakistan followed by the ‘tripartite agreement’. **N. Jayapalan**, in his book titled ‘**India and Her Neighbours**’ has attempted to give a light on it, by narrating

“.....India left no stone unturned for helping Bangladesh to get recognition from other countries and its due place in the United Nations. India gave full support to the August 9, 1972 application made by Bangladesh for getting the membership of the United Nations. However, the Chinese veto against Bangladesh prevented success in this direction. In February 1974, Pakistan gave recognition to Bangladesh and it was followed by the accord of recognition by China. This development cleared the way of Bangladesh’s entry into United Nations. In the context of Indo-Pak-Bangladesh relations, the April 1974 tripartite talks between India, Pakistan and Bangladesh produced an important agreement leading to the repatriation of 195 Pakistani POWs who were still being detained in India because of Bangladesh’s earlier decision to try them on charges of genocide and war crimes.”

[Source: **India and Her Neighbours**: N. Jayapalan: Atlantic Publishers & Distributors, Jan 1, 2000: B-2, Vishal Encalve, Opp. Rajouri Garden, New Delhi-27]: ISBN 81-7156-921-9]

Besides, **Srinath Raghavan** in his book titled “**1971 A Global History Of The Creation Of Bangladesh**” also focused on the background of the ‘tripartite agreement’ showing ‘clemency’ to 195 Pakistani war criminals. **Srinath Raghavan** narrates that



**“Faced with Pakistani intransigence on according recognition and civilian repatriation, Mujib decided to announce the trial of the 195 Pakistani army personnel. New Delhi took a pragmatic stance. It reminded Dhaka that the trials could further complicate its relations with Pakistan and would generate concern in the international community. To allay these fears, it was important that the Bangladesh government also announce the legal framework of the trial. As for civilian repatriation, India was of the view that Dhaka should set aside its precondition of official recognition and treat it as a humanitarian issue. The upshot of these consultations was twofold. Bangladesh brought into force the International War Crimes (Tribunals) Act in July 1973. It also reached an agreement with India that allowed the latter to negotiate on its behalf the exchange of civilians with Pakistan.**

**In the ensuing negotiations, Bhutto came out firmly against war crimes trials. “So far as prisoners of war are concerned,” he told Haksar, “you can throw the whole lot in the Ganges, but I cannot agree to the trials.” If Bangladesh did proceed with the trials, he would be forced to charge 203 Bengali civilian officials in Pakistan with espionage and high treason. If Mujib was reasonable, on the other hand, Bhutto might not only recognize Bangladesh but could “ask China to drop the veto.”[Source: Record of conversation, 27 July 1973, Subject File 97, P. N. Haksar Papers (III Installment), NMML.]**

**The Indians suggested to their Bangladeshi counterparts that the trials be postponed to**

**facilitate the resolution of the other issues. By this time, the problem of international recognition, especially entry to the United Nations, was weighing heavily on Mujib's mind, and the possibility of reprisal trials by Pakistan was equally troubling. In August 1973, Mujibur Rahman assented to an agreement between India and Pakistan for repatriation of the prisoners of war and civilian internees, suspending the issue of trials. *Eventually a tripartite agreement was concluded whereby those accused of war crimes were sent back to Pakistan with the understanding that these individuals would be tried in Pakistan.***"

[Source: Srinath Raghavan, '1971 A Global History of the Creation of Bangladesh', Chapter: Epilogue: The Garden of Forking Paths, page 270: Harvard University Press, Cambridge, Massachusetts; London, England 2013: Printed in the United States of America]

**90.** Pertinently, a closer look at the repatriation process of 195 Pakistani War Criminals [tripartite agreement] suggests that the political direction of the day had to put on hold the trial process at that time, but intended not to terminate the option of any future trial. The Tripartite Agreement visibly mentioned Bangladesh's position on the 195 Pakistani War Criminals in the **Article 13** of the agreement which is as below:

**"There was universal consensus that persons charged with such crimes as 195 Pakistani prisoners of war should be held to account and subjected to the due process of law".**

**91.** However, the **Article 15** of the tripartite agreement says:

**"Having regard to the appeal of the Prime Minister of Pakistan to the people of Bangladesh to forgive and forget the mistakes of the past" Government of Bangladesh had decided not to proceed with the trials as an act of clemency.**

**92.** Thus, the scope of clemency is evidently limited to Bangladesh's decision on not to try them here. Rather, it keeps the option open for trial of those Pakistani war criminals. Additionally, such agreement was an

‘executive act’ and it cannot create any clog to prosecute member of ‘auxiliary force’ or an ‘individual’ or member of ‘group of individuals’ as the agreement showing forgiveness or immunity to the persons committing offences in breach of customary international law was disparaging to the existing law i.e the Act of 1973 enacted to prosecute those offences.

**93.** It is thus not good enough to say that no ‘individual’ or member of ‘auxiliary force’ as stated in section 3(1) of the Act of 1973 can be brought to justice under the Act for the offence(s) enumerated therein for the reason that 195 Pakistani war criminals belonging to Pakistani armed force were allowed to evade justice on the strength of ‘tripartite agreement’ of 1974[**Muhammad Kamaruzzaman**, ICT-BD(ICT-2) Case No. 03 of 2012, Judgment 09 May, 2013, para 114].

**94.** Amnesty shown to 195 listed war criminals are opposed to peremptory norms of international law. It is to be noted that any agreement and treaty amongst states in derogation of this principle stands void as per the provisions of international treaty law convention [**Article 53 of the Vienna Convention on the Law of the Treaties, 1969**]. The Appellate Division has observed, on this issue, in the case of Abdul Quader Molla as below:

**“It must also be borne in mind that Pakistani soldiers were exonerated by executive order following a tripartite agreement between India, Pakistan and Bangladesh, not by the courts and the courts are not bound by the terms of this tripartic agreement.”**

**[Justice A.H.M Shamsuddin Chowdhury: Judgment: 17.9.2013 in Criminal Appeal Nos. 24-25 of 2013, Page 750].**

**95.** Here is what is said in **Article 53** of the Vienna Convention:

**“A treaty is void if at the time of its conclusion it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of**

**general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”**

**96.** The Appellate Division, in the case of *Abdul Quader Molla*, on this legal aspect has observed as below:

**“The clemency given to the admitted prisoners of war, in no way, either made the Act, 1973 or any of its provisions ineffective, invalid or void and mere failure of the successive Governments to act in accordance with the Act for a longer period (forty one years), in any way, gave any right to the accused to be exonerated from being tried for the commission of crimes as mentioned in sub-section (2) of section 3 thereof. Therefore, the objection taken by the learned Counsel for the appellant is not sustainable. The Tribunal did not commit any illegality in trying the appellant.**

**[Justice A. Wahhab Miah, Judgment: 17.9.2013 in Criminal Appeal Nos. 24-25 of 2013, page 279]**

**97.** The main justification for prosecuting crimes against humanity, or genocide is that they violate the *jus cogens* norms. As state party of Universal Declaration of Human Rights (UDHR) and Geneva Convention Bangladesh cannot evade obligation to ensure and provide justice to victims and sufferers of those offences and their relatives who still suffer the pains sustained by the victims and as such an ‘executive act’ (tripartite agreement) can no way derogate this internationally recognized obligation. Thus, any agreement or treaty if seems to be conflicting and derogatory to *jus cogens* (compelling laws) norms does not create any hurdle to internationally recognized state obligation to bring the perpetrators arraigned of crimes against humanity to book.

**98.** Finally, in absence of any other rationale and legal proposition, we affirm our earlier observation that the perpetrators of crimes against humanity and genocide are the enemies of mankind and the ‘tripartite agreement’ is not at all a barrier to prosecute even a local civilian perpetrator under the Act of 1973.

**(iv) Can accused be prosecuted without bringing the principals to book?**

**99.** The Tribunal notes that the accused has been indicted for abetting and facilitating the commission of offences with which he has been charged and allegedly incurred liability under section 4(1) and 4(2) of the Act of 1972. The Act of 1973 has enumerated ‘abetting’ and ‘aiding’ as distinct offence and punishable there under. From the jurisprudence evolved in the ICTR and SCSL as well it is now settled that even only the abettor and aider to perpetration of crimes underlying in the statutes can be prosecuted. We are not agreed with the argument advanced by the defence that without prosecuting 195 war criminals belonging to the Pakistani occupation army no individual can be brought to justice. In the case of *Abdul Quader Molla* the Appellate Division rendered its observation, in this regard, as below:

“.....Moreover it has been held by the Punjab High Court that when the principal accused is acquitted, the abettor need not necessarily be acquitted, whether the abettor can be convicted depends on the circumstance of the particular case ( ILR 1974 1 Punjab 449). Abetment by itself is a substantive offence and the abettor can be convicted even before the principal is apprehended and put on trial (1969 Ker LJ 215)..... The Judges in Taylor case openly disagreed with the ICTY’s decision in the case against former Serbian General Moncilo Perisic who was acquitted as ICTY held that to prove allegation of aiding and abetting what has to be proved is

**that the accused “specifically directed” aid toward committing the crimes.**

**[Justice A.H.M Shamsuddin Chowdhury, Judgment: 17.9.2013 in Criminal Appeal Nos. 24-25 of 2013, page 748-749]**

#### **(v) Definition and Elements of Crime**

**100.** On this legal aspect, defence’s adopted argument is that the offences specified in section 3(2) are not well defined and the same lack of elements. Section 3(2) of the ICTA 1973 does not explicitly contain the ‘widespread or systematic’ element for constituting the crimes against humanity. It has been further argued that an ‘attack’ may be termed as ‘systematic’ or ‘widespread’ if it was in furtherance of policy and plan. The offence, if actually happened, in absence of context, and policy or plan, cannot be characterized as crimes against humanity.

**101.** First, we consider it appropriate to have glance to the finding recorded in earlier case by this Tribunal [ICT-2]. It is now settled that ‘policy’ and ‘plan’ are not the elements to constitute the offence of crimes against humanity. It is true that the common denominator of a ‘*systematic attack*’ is that it is carried out pursuant to a preconceived policy or plan. But these may be considered as factors only and not as elements [*Kamaruzzaman*, Judgment 09 May 2013, para 128].

**102.** Additionally, the above view finds support from the observation made in paragraph 98 of the judgment in the case of *Prosecutor v. Kunarac* [Case No. IT-96-23/1-A: ICTY Appeal Chamber 12 June 2002] which is as below:

**“ Neither the attack nor the acts of the accused needs to be supported by any for of “policy’ or “plan’. .....Proof that the attack was directed against a civilian population and that it was widespread or systematic, are legal elements to the crime. But to prove these elements, it is not necessary to show that they were the result of the**

**existence of a policy or plan.....Thus, the existence of a policy or plan may be evidently relevant, but it is not a legal element of the crime.”**

**103.** Section 3(2) (a) of the International Crimes (Tribunals) Act, 1973 (as amended in 2009) [henceforth, 1973 Act] defines the 'Crimes against Humanity' in the following manner:

**'Crimes against Humanity: namely, murder, extermination, enslavement, deportation, imprisonment, abduction, confinement, torture, rape or other inhumane acts committed against any civilian population or persecutions on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated.'**

**104.** We have already resolved in the earlier cases that the expression '*committed against any civilian population*' is an expression which specifies that in the context of a crime against humanity the '**civilian population**' is the primary object of the attack. The Appellate Division, in the case of *Abdul Quader Molla* has observed that-

**“.....While it is clear from the text in Section 3(2)(a) of the Act that to constitute *actus reus* of the offence, murder, rape etc victims must be “civilian population,” evidences adduced in respect of all of the six charges, proved that the victims of murder and rape were part of civilian population.**

**[Justice A.H.M Shamsuddin Chowdhury, Judgment: 17.9.2013 in Criminal Appeal Nos. 24-25 of 2013, page 754]**

**105.** The definition of 'Crimes against humanity' as contemplated in Article 5 of the ICTY Statute 1993 neither requires the presence of 'Widespread or Systematic Attack' nor the presence of 'knowledge' thereto as conditions for establishing the liability for 'Crimes against Humanity'. It

is the jurisprudence developed in ICTY that identified the ‘widespread’ or ‘systematic’ requirement [*Kamaruzzaman*, Judgment 09 May 2013, para 131].

**106.** We will find that the Rome Statute (a prospective statute) definition differs from that of both ICTY and ICTR Statutes. However, the Rome Statute says, the definition etc. contained in the Statute is *‘for the purpose of the Statute’*. So, use of the phrase *“for the purpose of the Statute”* in **Article 10 of the Rome Statute** means that the drafters were not only aware of, but recognized that these definitions were not the final and definitive interpretations, and that there are others.

**107.** Therefore, this Tribunal [ICT-2] which is a domestic judicial body constituted under a legislation enacted by our sovereign Parliament is not obliged by the provisions contained in the Rome Statute. The Rome Statute is not binding upon this Tribunal for resolving the issue of elements requirement to characterize the offence of crimes against humanity [*Kamaruzzaman*, Judgment 09 May 2013, para 132].

**108.** The Appellate Division, on ‘**systematic attack**’ and applicability of international law in resolving the issue has observed in the case of *Abdul Quader Molla* that-

“I have already stated that International Law is not applicable.....We would nevertheless add that given the fact that the whole world knows what went on in Bangladesh in 1971 and given that it has been proved by evidence that the Appellant committed the offence with a view to obliterate the war of Liberation and the cherished aspiration of the Bengali people to attain Liberation, in conjunction with Paki army which was bent to crush that aspiration in a planned, pre-meditated and systematic manner through countrywide operation, it is axiomatic, that the offences formed part of systematic and widespread operation and hence the same stand



**proved any way on Judicial notice of fact of common knowledge.”**

**[Justice A.H.M Shamsuddin Chowdhury, Judgment: 17.9.2013 in Criminal Appeal Nos. 24-25 of 2013, page 752]**

**109.** The Tribunal notes that if the specific offences of 'Crimes against Humanity' which were committed during 1971 are tried under 1973 Act, it is obvious that they were committed in the '**context**' of the 1971 war of liberation. This '**context**' itself is sufficient to prove the existence of a '*systematic attack*' on Bangladeshi self-determined population in 1971. It is the '*context*' that transforms an individual's act or conduct into a crime against humanity and it may be validly presumed that the accused being aware of this context, participated the commission of crimes by his culpable act or conduct.

**110.** In respect of definition of offences specified in the Act of 1973, it has been held by the Appellate Division, in the case of *Abdul Quader Molla*, that –

**“If I am to accept that this crime has not been defined by the Act, that will invariably lead me to the conclusion that the same has not been defined by the Nuremberg Charter either, because the language applied in Article 6 (c) of the Nuremberg Charter is identical to the language used in Section 3 of the Act in most respect. That Article has also not defined murder or rape or other individual offences marshaled under the umbrella of crimes against Humanity. In fact there was no necessity to define these universally pre-defined individual offences. The court that convicted Eichmann also rejected the same contention on the same ground that murder, rape etc. are all defined by domestic law.**

**[Justice A.H.M Shamsuddin Chowdhury, Judgment: 17.9.2013 in Criminal Appeal Nos. 24-25 of 2013, page 577]**

**111.** According to provisions of section 3(2)(a) of the Act states the 'acts' forming part of 'attack' that constitutes the offences of crimes against humanity are required to have been 'committed against any civilian population' or 'persecution on political, racial, ethnic or religious grounds'. To qualify as a crime against humanity, the acts enumerated in section 3(2)(a) of the Act thus must be committed against the 'civilian population'.

**112.** Therefore, we reiterate our finding on this issue rendered in earlier cases that the claim as to the non-existence of a consistent international standard for the definition of the offence of 'crimes against humanity' as enumerated in the Act of 1973 is manifestly baseless [*Kamaruzzaman*, Judgment 09 May 2013, para 135].

#### **XIV. The way of adjudicating the charges**

**113.** The evidence presented by the prosecution in support of the charges framed is mainly testimonial. Victims of abduction, confinement and torture who allegedly directly experienced the criminal activities carried out at the AB camp by the AB men during their detention there. AB camp set up at Dalim Hotel building was the prime execution site, as alleged. The witnesses have also testified material facts they allegedly experienced during their captivity. However, their testimony seems to be invaluable to the Tribunal in its search for the truth on the alleged deliberate atrocious events that happened in Chittagong in 1971, during the war of liberation directing the pro-liberation Bangalee civilian population, after duly weighing value, relevance and credibility of such testimonies. Their testimony requires to be examined whether the alleged facts constituted the offences alleged and involvement of the accused therewith, in a most dispassionate manner and keeping in mind that the accused is presumed innocent.

**114.** The alleged incidents took place 42 years back, in 1971 and as such memory of live witness may have been faded. But however, the trauma the victim sustained was such an experience which remains alive in his or her memory. In this regard, the Appellate Division of Bangladesh Supreme

Court has observed in its judgment [*Abdul Quader Molla*] that “the science of psychology teaches us about voluntary and involuntary memory, suggesting that events like the ones that took place in 71 to the victims would fall within the category of voluntary memory, which may survive ad-infinitum.”

**115.** Invaluable documents could have been destroyed. Collecting and organizing evidence was a real challenge for the prosecution. Therefore, in a case like one in our hand involving adjudication of charges for the offence of crimes against humanity we are to depend, together with the evidence of witnesses, upon (i) facts of common knowledge (ii) available documentary evidence (iii) old reporting of news paper, books etc. having probative value (iv) relevant facts (v) circumstantial evidence (vi) Political status, position and conduct of the accused at the relevant time[1971] and (vii) the jurisprudence evolved on these issues in the *ad hoc* tribunals, if deemed necessary to adjudicate any point of law.

**116.** In light of charges framed the key facts which need to be adjudicated are:

- (i) Whether a torture and detention camp was set up at Mahamaya Dalim Hotel where the atrocious activities were allegedly carried out by the AB force;
- (ii) Whether the pro-liberation civilians and non combatant freedom fighters were allegedly brought at the camp, on capture, where they were kept detained and tortured for the purpose of extracting information about the freedom fighters;
- (iii) Whether accused Mir Quasem Ali was an influential leader of Chittagong AB force and thus he substantially abetted and facilitated the commission of criminal activities carried out by the AB men at the camp’;
- (iv) Whether accused had a culpable nexus with the AB camp and perpetrators of the crimes alleged; and
- (v) Whether accused was a part of common purpose and policy and had acted accordingly in concerted manner.

**117.** In adjudicating the above facts, relevant facts and circumstances shall also have to be taken into consideration. At the same time context of committing the alleged crimes and the elements necessary to constitute the

offence of crimes against humanity have to be determined too. Accused's status, position, association, authority, conduct, activities, link with the state organization, political party in 1971 and prior to the alleged events are pertinent issues. In determining alleged culpability of the accused, all these factors have to be addressed and resolved as well.

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

**118.** The case so far as it relates to the facts of criminal acts constituting the alleged offences is chiefly founded on oral evidence presented by the prosecution and documentary evidence as well. Together with the circumstances divulged it would be expedient to have a look to the facts of common knowledge of which Tribunal has jurisdiction to take into its judicial notice [Section 19(3) of the Act of 1973], for the purpose of unearthing the truth. Inevitably, determination of the related legal issues will be of assistance in arriving at decision on facts in issues.

**119.** Section 22 of the Act of 1973 provides that the provisions of the Criminal procedure Code, 1898 [V of 1898], and the Evidence Act, 1872 [I of 1872] shall not apply in any proceedings under this Act. Section 19(1) of the Act provides that the Tribunal shall not be bound by technical rule of evidence and it shall adopt and apply to the greatest possible extent non-technical procedure and may admit any evidence which it deems to have probative value. Reason of such provisions is to be perceived from the preamble of the Act of 1973 which speaks that the Act has been enacted to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law.

**120.** It is to be kept in mind that the term '**context**' refers to the events, organizational structure of the group of perpetrators, para militia forces, policies that furthered the alleged crimes perpetrated in 1971 during the war of liberation. Context prevailing in 1971 within the territory of Bangladesh will adequately illuminate as to whether it was probable to witness the atrocities as spectator. Totality of its horrific profile of atrocities committed in 1971 naturally leaves little room for the people or civilians to witness the

events of the criminal acts. Some times it happens that due to the nature of international crimes, their chaotic circumstances, and post-conflict instability, these crimes usually may not be well-documented by post-conflict authorities.

**121.** It is to be noted that the testimony even of a single witness on a material fact does not, as a matter of law, require corroboration. The established jurisprudence is 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].

**122.** Undeniably hearsay evidence is admissible but it is to be corroborated by ‘other evidence’. That is to say, hearsay evidence is to be considered together with the circumstances and relevant material facts depicted. Hearsay evidence is admissible and the court can act on it in arriving at decision on fact in issue, provided it carries reasonable probative value [Rule 56(2) of the ROP]. This view finds support from the principle enunciated in the case of *Muvunyi* which is as below:

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

**123.** It is to be noted too that an insignificant discrepancy does not tarnish witness’s testimony in its entirety. Any such discrepancy needs to be contrasted with surrounding circumstances and testimony of other

witnesses. In this regard, in the case of **Nchamihigo** it has been observed by the Trial Chamber of ICTR that

**“The events about which the witnesses testified occurred more than a decade before the trial. Discrepancies attributable to the lapse of time or the absence of record keeping, or other satisfactory explanation, do not necessarily affect the credibility or reliability of the witnesses.....The Chamber will compare the testimony of each witness with the testimony of other witness and with the surrounding circumstances.”**

**[The Prosecutor v. Simeon Nchamihigo, ICTR-01-63-T, Judgment, 12 November 2008, para 15]**

**124.** Further, inconsequential inconsistency by itself does not taint the entire evidence made by witness before the Tribunal. This principle adopted in trial of crimes against humanity is compatible with the evolved jurisprudence as well as with the Act of 1973. It has been observed by the ICTY trial Chamber in the case of **Prosecutor v.Mico Staisic & Stojan Jupljan** that

**“In its evaluation of the evidence, in assessing potential inconsistencies, the Trial Chamber took into account: the passage of time, the differences in questions put to the witnesses at different stages of investigations and in-court, and the traumatic situations in which many of the witnesses found themselves, not only during the events about which they testified, but also in many instances during their testimony before the Trial Chamber. Inconsequential inconsistencies did not lead the Trial Chamber to automatically reject evidence as unreliable.”**

**[Prosecutor v.Mico Staisic & Stojan Jupljan Case No. IT-08-91-T 27 March 2013]**

**125.** The alleged events of atrocities were committed not at times of normalcy. The offences for which the accused has been charged with occurred during war of liberation. Requirement of production of body as proof to death does not apply in prosecuting crimes enumerated under the Act of 1973. A victim's death may be established by circumstantial evidence provided that the *only* reasonable inference is that the victim is dead as a result of the acts or omissions of the accused constituting the offence.

**126.** It is to be noted that '*participation*' may occur before, during or after the 'act' is committed. Second, the intent requirement may be well deduced from the mode of '*participation*', by act or conduct of the accused forming part of the 'attack', and it can consist of providing assistance to commit the crime or certain acts once the crime has been committed.

**127.** Physical presence or participation to the actual commission of the principal offence is not indispensable to incur culpable responsibility. It has been observed in the case of *Tadic*, [Trial Chamber: ICTY, May 7, 1997, para. 691] that:

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

**128.** However, according to universally recognised jurisprudence and the provisions as contained in the ROP of the ICT-2 onus squarely lies upon the prosecution to establish accused's presence, acts or conducts, and omission forming part of attack that resulted in actual commission of the offences of crimes against humanity as enumerated in section 3(2) of the Act of 1973 for which he has been arraigned.

**129.** In the case in hand, most of the prosecution witnesses have testified the acts, conducts of the accused claiming him as the head of Al-Badar camp having significant influence and effective control over it. Naturally considerable lapse of time may affect the ability of witnesses to recall facts

they heard and experienced with sufficient and consistent precision. Thus, assessment of the evidence is to be made on the basis of the totality of the evidence presented in the case before us and also considering the context prevailing in 1971 in the territory of Bangladesh.

**130.** It would be thus 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.

**131.** Both sides concede that hearsay evidence is to be weighed in context of its credibility, relevance and circumstances. Keeping this legal position the Tribunal will take advantage to weigh the probative value of hearsay evidence of witnesses made before the Tribunal in relation to charges framed against the accused.

## **XVI. Al-Badar: Armed para militia force**

**132.** Prosecution avers that the AB force was formed of workers of ICS the student wing of JEI and it had acted as the 'action section' of JEI who took stance against the war of liberation, in the name of preservation and solidarity of Pakistan in 1971. All the offences narrated in the charges were allegedly perpetrated by the AB members and the main crime site was the AB camp set up at Dalim Hotel, Chittagong. Therefore, it would be expedient to focus first on formation and objective, role and activities of AB force in 1971 within the territory of Bangladesh.

**133.** How the Al-Badar bahini was formed and manned with? The Al-Badar formed with the workers of Islami Chatra Sangha [ICS] the student wing of Jamat E Islam [JEI] was created aiming to provide support to the occupation armed forces. A report published in **The Economist 01 July, 2010** speaks as below:

**“Bangladesh, formerly East Pakistan, became independent in December 1971 after a nine-month war against West Pakistan. The West's army had the support of many of East Pakistan's**



**Islamist parties. They included Jamaat-e-Islami, still Bangladesh's largest Islamist party, which has a student wing that manned a pro-army paramilitary body, called Al Badr.”**

[Source: **The Economist: 01 July 2010: see also**<http://www.economist.com/node/1648551?zid=309&ah=80dcf288b8561b012f603b9fd9577f0e>]

**134.** We have already recorded our finding based on authoritative information in the case of *Muhammad Kamaruzzaman* [Judgment: 09 May 2013 page 55, para 155] that the Al-Badar force was formed with the workers belonging to Islami Chatra Sangha (ICS). The book titled ‘**Sunset at Midday**’ reflects the information about the potential and decisive role of jamat E Islami [JEI] in creating the Al-Badar force, one of wings of Razakar force. The book articulates that -

**“To face the situation Razakar Force, consisting of Pro-Pakistani elements was formed. This was the first experiment in East Pakistan, which was a successful experiment. Following this strategy Razakar Force was being organized through out East Pakistan. This force was, later on Named Al-Badr and Al-Shams and Al-Mujahid. The workers belonging to purely Islami Chatra Sangha were called Al-Badar, the general patriotic public belonging to Jamaat-e-Islami, Muslim League, Nizam-e-Islami etc were called Al-Shams and the Urdu-speaking generally known as Bihari were called al-Mujahid.”**

[Source: ‘**Sunset at Midday**’ , *Mohi Uddin Chowdhury* , a leader of Peace committee , Noakhali district in 1971 who left Bangladesh for Pakistan in May 1972 [(Publisher’s note): Qirtas Publications, 1998, Karachi, Pakistan, paragraph two at page 97 of the book]

**135.** The ‘publisher’s note’ of the book also reflects that Mohiuddin Chowdhury, the author was a leader of a political party [Jamaat-e-Islami] and Peace Committee, Noakhali. He left Bangladesh and reached Pakistan in the month of May, 1972 when the Bangalees in Pakistan opted for Bangladesh. Thus the autobiographic recitation made by the author in his

book portrays his active and considerable affiliation too with the politics of Jamat E Islami which makes the information made therein authoritative and dependable.

136. The information narrated in the book titled ‘Muktijudhdhe Dhaka 1971’ demonstrates that in 1971, Jamat E Islami with intent to provide support and assistance to the Pakistani occupation army formed armed Razakar and Al-Badar force and obtained government’s recognition for those *para militia* forces. The relevant information states that -

ÙRvgvqtZ Bmjvgx gy³ht×i iiaæ t\_†K †kl chŠl  
mvgviK RvŠ†K mg\_Š K†i | Z†`i mnvqZvi Rb`  
Ab`vb` agvŠ `j v†q cŰgZ MVb K†i kvŠl KvgvŰ |  
cieZx©mg†q mk` ; ewnbx ivRvKvi I Avje`i MVb  
K†i Ges miKvix `KZx Av`vq eti | ht†K ag†K  
v†m†te cŰviYv Pwj†q DMŰ ag†q Db†` bv m†i tPŰv  
K†i | Avi Gi Av†j `mb†`i mnvqZvq Pwjvq  
v†e††i bksm MYnZ`v, j†, bvix vbhvZb, AcniY I  
Pùv Av`vq | me†kl Rv†Zi v††K ey×R††`i nZ`v  
Kivnq | Ő

[Source: Muktijudhdhe Dhaka 1971: edited by Mohit UI Alam, Abu Md. Delowar Hossain, Bangladesh Asiatic Society, page 289 : Prosecution Documents Volume 03 page 583]

137. Therefore, the cumulative analysis based on above sources and authoritative information inevitably allow us to infer that the AB force was formed of ICS workers under the active guidance of JEI and had acted in furtherance of common policy and plan. AB force was not engaged with activities distinguishable from that carried out or provoked to be carried out by the Razakar force, Al-Shams. All these para militia forces had acted in a concerted manner pursuant to identical strategy and policy.

138. Predominantly the Al-Badar force had acted as an ‘action section’ of Jamat E Islami [JEI]. This was the core makeup of Al-Badar. Fox Butterfield wrote in the New York Times- January 3, 1972 that

“Al Badar is believed to have been the action section of Jamat-e-Islami, carefully organised after the Pakistani crackdown last March”

[Source: **Bangladesh Documents Vol. II** page 577, Ministry of External Affairs, New Delhi].

**139.** Al-Badar was thus made up of militants from the student wing of Jamat E Islami [JEI]. History accuses this group [force] of working like ‘death squad’---killing, looting and disgracing Bengalis whom they accused of being ‘anti-Islam’, ‘*infiltrators*’ and ‘miscreants’. Perpetration of systematic atrocities by the AB force indeed was no lesser than that of the Pakistan occupation army. JEI and its student wing ICS had acted as the think tank and colluded as key architect of the crimes against humanity committed in 1971 in the territory of Bangladesh.

**140.** ICS and its potential leaders were fully cognizant about the criminal activities of Al-Badar. It finds support from the narrative of the book titled ‘**Muktijudhdhe Dhaka 1971**’ demonstartes substantial contribution of Jamat E Islami and the leaders of its student wing ICS and was centrally guided by JEI. The relevant narration is as below:

০Avj e` i iv vQj tgav m=ubæmk` ; ivR%buzK K`Wlvi |  
 Bmj vgx Qvî mstNi tbZe,` G ewnbx MVb Kfi Ges  
 tK) `qfute RvgvqfZ Bmj vgx i vbqštb G ewnbx  
 cni Pwj Z nq|

[Source: **Muktijudhdhe Dhaka 1971**: edited by *Mohit Ul Alam, Abu Md. Delowar Hossain*, Bangladesh Asiatic Society , page 284 : Prosecution Documents Volume 03 page 631]

**141.** In view of above deliberation we are constrained to conclude that JEI and its student wing ICS had an effective, active and visible affiliation with the AB force and its activities and atrocities carried out in 1971.

**142.** Admittedly, accused Mir Quasem Ali was the President of ICS, Chittagong town till 08 November 1971 and afterwards he was elected as the general secretary, East Pakistan ICS. However, despite this pertinent but admitted fact prosecution requires to prove, by adducing evidence, accused’s association with the AB force and his participation with its activities in Chittagong as narrated in the charges framed for holding him

responsible and guilty. Merely on the admitted fact of his position in the ICS the accused cannot be held liable for the atrocities allegedly committed at the AB camp at Dalim Hotel. Burden squarely lies upon the prosecution to prove the accusation beyond reasonable doubt by evidence and circumstances.

## **XVII. Objective of forming AB force and its activities**

**143.** What was the objective of forming such armed para militia force [Al-Badar]? Was it to protect civilians and their rights from any kind of criminal transgression? It is a fact of common knowledge now that Al-Badar was an armed para militia force which was created for ‘operational’ and ‘static’ purpose of the Pakistani occupation army. In the case of *Muhammad Kamaruzzaman*, on the basis of sourced information and document this Tribunal recorded its finding that under the government management Al-Badar and Razakars were provided with training and allocated fire arms.

**144.** A report titled *ওমিকৃতি মনঃসী: পুস্তকখণ্ড ই তমৌজবি এন লেটি ই রবি চ্য-বি তঁ লগ ন্তেও* published on 25 November 1971 in *The Daily Pakistan* [ওমিকৃতি মনঃসী: পুস্তকখণ্ড ই তমৌজবি এন লেটি ই রবি চ্য-বি তঁ লগ ন্তেও] demonstrates that a government press note classified the ‘miscreants’ in five categories as below and encouraged to combat them in exchange of reward:

*পুস্তকখণ্ড ই তমৌজবি এন লেটি ই রবি চ্য-বি তঁ লগ ন্তেও*

K. *উপকৃত গুণেবনখি বসুগুজ ম'ম', উপকৃত গুণেবনখি ফুজি মনঃসী: পুস্তকখণ্ড ই তমৌজবি এন লেটি ই রবি চ্য-বি তঁ লগ ন্তেও*

L. *তঁ-ওগ বেতঁ খণ্ড ই লু', হবেনব ই আব'ব' 'এ' মনঃসী: পুস্তকখণ্ড ই তমৌজবি এন লেটি ই রবি চ্য-বি তঁ লগ ন্তেও*

M. *তঁ-ওগ বেতঁ খণ্ড ই আব'ব' 'এ' মনঃসী: পুস্তকখণ্ড ই তমৌজবি এন লেটি ই রবি চ্য-বি তঁ লগ ন্তেও*

N. *বেতঁ খণ্ড ই ওবদিগিও এন এনঃসী: পুস্তকখণ্ড ই তমৌজবি এন লেটি ই রবি চ্য-বি তঁ লগ ন্তেও*

O. *উপকৃত গুণেবনখি মনঃসী: পুস্তকখণ্ড ই তমৌজবি এন লেটি ই রবি চ্য-বি তঁ লগ ন্তেও*

[Source: ‘Sangbadpatre Muktijuddher Birodhita: Ekattorer Ghatakder Jaban Julum Sharajantra’: Edited by Dulal Chandra Biswas: Bangladesh Press Institute: March 2013 Page 324]

**145.** The freedom fighters and pro-liberation Bengali people were thus treated as ‘*miscreants*’. Even reward was announced for the success of causing their arrest or to provide information about their activities. Thus, objective of such announcement was to wipe out the pro-liberation Bengali civilians to resist and defy the war of liberation which was the core policy of the Pakistani occupation armed forces.

**146.** In a press conference in Rawalpindi, Pakistan professor Ghulam Azam, the then Amir of Jamat E Islami proposed for proper arming of ‘patriotic elements’ to combat the ‘miscreants’ [**Source: the Daily Sangram, 21 June 1971**]. Any such ‘proposal’ made by a party [JEI] chief of course reflects party’s stand and ideology. Being a potential leader of ICS the student wing of JEI accused Mir Quasem Ali also thus sided with that ideology devoid of any extent of humanity and the core spirit of the holy religion Islam. Objective of such proposal initiated by the then JEI chief to whom the accused Mir Quasem Ali was one of loyalists by virtue of his position in the ICS was indubitably to make the antagonistic and ghastly criminal actions of Al-Badar, Razakar and other forces toughened to combat the pro-liberation Bengali civilians , ‘*miscreants*’ [freedom fighters and their local adherents]. Such malignant proposal, even in the early part of November 1971, on part of Jamat E Islami was again ensued. From a report published in **Pakistan Times**, *Lahore November 28, 1971* it is found that

**“Professor Ghulam Azam, Amir, Jamaat-e-Islami, East Pakistan, has made three proposals (November 27) to meet the present situation in the country—striking India from West Pakistan, proper arming of patriotic elements in East Pakistan and full trust in genuine elements of that Wing.”**

[**Source: Pakistan Times**, Lahore, 28 November 1971: see also Bangladesh Documents, Volume II, Ministry of External Affairs, New Delhi, page 141]

**147.** Further, Al-Badar acted as the Pakistan army's '**death squads**' and exterminated leading left wing professors, journalists, litterateurs, and even doctors [Source: **Pakistan Between Mosque And Military: Hussain Haqqani**: published by Carnegie Endowment For International Peace, Washington D.C, USA first published in 2005, page 79].

**148.** Therefore, we are again persuaded to infer that objective of creating the Al-Badar force was not to guard lives and properties of civilians. Rather, it had acted in furtherance of policy and plan of Pakistani occupation army and in so doing it had committed indiscriminate atrocities in a systematic manner against the unarmed Bengali civilians through out the territory of Bangladesh in 1971.

### **XVIII. Adjudication of charges framed**

**149.** All the charges excepting charge nos. 11 and 12 relate to the offence of abduction, confinement and torture as crimes against humanity. The non combatant civilians were allegedly captured on different dates in the month of November 1971 from different places in Chittagong. But all the captured civilians were eventually brought to AB camp set up at Dalim Hotel where they were subjected to torture in protracted captivity for extracting information about the freedom fighters and their affairs, as alleged. It appears that the prosecution endeavored to adduce and examine many detainee witnesses, to prove the charges. Some of them testified the fact of seeing the detainee tortured victims Jasim, Ranjit and Tuntu Sen who were eventually killed and dumped to Karnofuli River, as alleged.

**150.** Prosecution avers that the principal perpetrators belonged to AB force; that AB members were headquartered at Dalim Hotel which was known as 'torture and detention camp'; that the accused was a leader or commander of the AB camp in exercise of his position of authority and had abetted and facilitated the commission of crimes alleged. Burden lies with the prosecution to prove these pertinent facts in issue.

**151.** Conversely, defence denied involvement of accused with the alleged offences by taking plea of *alibi* and also by taking affirmative defence that

Dalim Hotel was under illegal occupation of one Motiur Rahman @ Moitya Gunda who had carried out criminal activities there in 1971 and that the accused had not been in Chittagong at the relevant time. Burden to prove the affirmative defence case including the plea of *alibi* lies with the defence. Nevertheless, success of prosecution does not rest upon failure of the defence case and the plea of *alibi*.

**152.** Keeping all the above matters in mind now let us begin adjudicating the charges framed. First, we consider it convenient to adjudicate the charges relating to the offence of ‘abduction, confinement and torture’ as crimes against humanity. And next the charge nos. 11 and 12 which relate to the offence of ‘murder’ as crime against humanity will be taken for adjudication.

### **Adjudication of Charge No.1**

#### **[Abduction, confinement and torture of Md. Omar-ul- Islam Chowdhury on 08 November 1971]**

**153. Summary Charge:** This charge relates to the event of abduction of Md. Omar-ul- Islam Chowdhury from *Chaktai* sampan ghat on 8th November 1971 around 10.00 a.m by a group of AB men under leadership of the accused. On capture the victim was first taken to the AB camp at Salma Manjil where he was caused to torture under confinement and then on 12.11.1971 he was taken to AB camp at Dalim Hotel where forcibly and under coercion his signature was obtained on some written papers and then handed him over to his maternal uncle. Accused Mir Quasem Ali has been charged for abetting and facilitating the commission of offences of abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which the accused incurred liability under Section 4(1) and 4(2) of the Act.

### **Finding**

**154.** Prosecution could not bring and examine the victim detainee in support of this charge. More so, either of detainee witnesses testifying before the Tribunal states nothing about the confinement of victim Md.

Omar-ul- Islam Chowdhury. Might be none of them had occasion to see this victim detained at the camp. That is to say, truthfulness of the events alleged remained unearthed due to lack of any evidence before us. Therefore, the accused Mir Quasem Ali cannot be held liable and guilty for the offences narrated in the charge no.1

## **Adjudication of Charge No.2**

### **[Abduction, confinement and torture of Lutfar Rahman Faruk and Seraj on 19 November, 1971]**

**155. Summary Charge:** This charge involves the event of forcible picking up of Lutfar Rahman Faruk and Seraj on 19 November, 1971 at about 2.00 p.m. by the Pakistani invading force and Al-Badar members under leadership of accused Mir Quasem Ali from the house of one Syed at 35 Bokshirhut ward under *Chaktai* area of *Bakalia* police station, Chittagong and they were taken to the AB torture cell at Dalim Hotel, Chittagong and during their captivity at Dalim Hotel they were subjected to torture in presence of accused and on his instigation. 2/3 days later, detainee Lutfar Rahman Faruk under torture was handed over to Circuit House under control of Pakistani occupation army where he was again subjected to torture and then sent to Chittagong jail. Another detainee at the AB camp at Dalim Hotel became freed after 16th December, 1971. Therefore, the accused has been charged for abetting and facilitating the commission of offences of abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which the accused incurred liability under Section 4(1) and 4(2) of the Act.

## **Witnesses**

**156.** Lutfar Rahman Faruk one of victims as described in the charge framed came on dock and narrated, as P.W.20, the events of his forcible capture and torture inflicted to him during his captivity at the AB camp set up at Mahamaya Dalim Hotel and at the army camp at circuit house and how, later on, he was sent to Chittagong jail. In 1971 he was 22 years old.



## **Evidence**

**157. P.W.20 Lutfar Rahman Faruk [65]** deposed that on 27<sup>th</sup> March 1971 they under the leadership of one Sayed Bhai took refuge at different villages around Chittagong as they could not continue to exist in Chittagong town and had organised the people in favour of war of liberation. Sayed Bhai afterwards had gone to India and returned back three months later and then they [including the P.W.20] met him when he [Sayed Bhai] asked them for arranging their shelter in Chittagong. Accordingly His [P.W.20] house in Chittagong, Aisa Manjil of Haji Nur Ali Sawdagar and the house of Mia Sawdagar were arranged as the shelters of freedom fighters.

**158.** P.W.20 further stated that on 19 November 1971, Al-Badar, Al-Shams and Pakistani army, being aware of staying of freedom fighters besieged those shelters and at that time he [P.W.20] was with Sayed Bhai, freedom fighter Seraj, Mansurul Haque Chowdhury and Abul Kalam. He and Seraj had attempted to escape but the armed attackers caught them and brought to Dalim Hotel.

**159.** The above relevant facts relating to his abduction do not appear to have been dislodged in cross-examination. Even the defence did not deny it. Rather, on cross-examination it has been re-affirmed that Sayed Bhai had gone to India and afterwards returned back and he was associated with Awami League politics.

**160.** Next, P.W.20 described how he was treated with brutality during his captivity at the AB camp. He stated that he found one bearded Moulavi and the president of Islami Chatra Sangha [ICS] sitting at Dalim Hotel [AB camp]. He also found there many detainees blindfolded with their hands tied up. On order of Mir Quasem Ali [accused] he was then also blindfolded and his hands were tied up. At night, he was taken to another room where he was beaten by AB members on instruction of Mir Quasem Ali for obtaining information about whereabouts of freedom fighters. At a stage of torture he became senseless. P.W.20 also stated that when he was brought to Dalim Hotel he asked Mir Quasem Ali for a glass of water as he

was fasting. But Mir Quasem Ali replied '*what fasting for you, give him urine to drink*'.

**161.** In cross-examination, defence simply denied what the P.W.20 stated in respect of torture inflicted during his detention at the AB camp at Dalim Hotel and the act of instigation and instruction of accused Mir Quasem Ali. But the version, as it appears, remained totally unshaken.

**162.** P.W.20 further stated that he was kept under confinement at the AB camp at Dalim Hotel for 7/8 days and on failure to extract information from him he was then handed over to the army who took him to the army camp at circuit house where he kept detained. At the army camp he saw causing brutal torture to the detainees and he was also subjected to severe and barbaric torture and two days later one major Fateh Ali sent him to Chittagong jail wherefrom the freedom fighters got him released on 16 December 1971.

**163.** The fact of being detained at the army camp at circuit house and then in Chittagong jail wherefrom P.W.20 got release, as stated by him remained unshaken. It was one of series of criminal events.

### **Deliberation and Finding**

**164.** The learned Prosecutor Mr. Sultan Mahmud argued that one of victimized detainees has testified how he was abducted, confined and tortured at the AB camp at Dalim hotel in presence of accused Mir Quasem Ali. Act of instruction may not always be tangible. It may be tacit or inferred from circumstances. Defence failed to shatter what has been testified by P.W.20 on material particular. Mere non-examination of other detainee Seraj does not affect the events constituting the offence narrated in the charge framed.

**165.** The learned Prosecutor further submitted that the detainee witness P.W.20 had reason to identify the accused at the AB camp. In order to prove accused's 'participation' it is not required to show that he physically participated to the commission of the crimes. Even his 'participation' may

be inferred by his act and conduct forming part of attack. Accused affiliation and presence at the AB camp by itself proves that he was 'consciously concerned' in carrying out atrocious activities, in furtherance of common purpose.

**166.** The learned defence counsel Mr. Mizanul Islam argued that in narrating accused's identity in the charge framed involving the event of abduction that allegedly took place on 19 November 1971 it has been stated that Mir Quasem Ali was the president of ICS, Chittagong town unit. But already on 08 November 1971 he was elected General Secretary of East Pakistan ICS and as such at that time the accused was not in Chittagong.

**167.** Next, it has been argued that P.W.20 the alleged detainee became impotent due to torture caused to him during his detention at the AB camp at Dalim Hotel. This is totally untrue. Because, the copy of *nikahnama* showing solemnization of his [P.W.20] daughter's marriage, as presented by the defence, although at belated stage does not go with his claim and as such the fact of being in confined and tortured becomes untrue and P.W.20 is not a credible witness.

**168.** At the out set the Tribunal notes that the unimpeached version of P.W.20 presumably demonstrates that for the reason of providing shelter to the freedom fighters and his association with them the group of AB members and Pakistani army targeted him and his associates. This context strengthens the purpose of the act of forcible taking of P.W.20 and his fellow Seraj to Dalim hotel AB camp, on capture.

**169.** Defence could not dislodge the version of P.W.20 that relates to material particular. Defence suggested P.W.20 that the Pakistani army had been in the ground floor of Dalim Hotel. P.W.20 denying it stated further that the army however used to visit it [Dalim Hotel] frequently. Why the army had to visit Dalim Hotel frequently? Such frequent visit of Pakistani army impels an unerring inference that AB camp was set up at Dalim Hotel building and for the purpose of providing back up or support to or to supervise camp's activities the army often used to stay in the ground floor

of Dalim Hotel building, as stated by the P.W.20 in reply to question put to him by the defence.

**170.** P.W.20 stated that Mir Quasem Ali was in leadership of Dalim Hotel [AB camp]. On cross-examination he stated that he had occasion to see Mir Quasem Ali as a student leader even since prior to his capture on 19 November 1971.

**171.** P.W.20, in reply to question put to him by the Tribunal stated that he had occasion to see Mir Quasem Ali as a student leader even since prior to his capture on 19 November . Admittedly, accused Mir Quasem Ali was the president of ICS, Chittagong town unit since 1970 and as such it was probable for the locals including the victim to know and see him even prior to the War of liberation ensued.

**172.** The AB force was thus indivisible part of the ICS the student wing of JEI. AB force a pro-army paramilitary body manned by the workers of the student wing of JEI had acted to support the Pakistani occupation army in respect of which we have already discussed in preceding paragraph no. 133. Accused Mir Quasem Ali who was a potential leader of ICS thus had an inevitable and effective nexus with the AB force. This inference gains support from the above sourced information.

**173.** On cumulative evaluation of evidence together with circumstances and relevant facts, it stands proved that the P.W.20 and his fellow Seraj were forcibly captured on the date and time and in the manner and from the place by a group of AB members and Pakistani army. And on capture, they were first brought to AB camp set up at Dalim Hotel. It has also been proved from the testimony of P.W.20 that for the reason of his having association with freedom fighters staying at different shelters in Chittagong [ in November 1971] he was so caught and subjected to inhuman torture for obtaining information about whereabouts of freedom fighters.

**174.** We are not with the defence argument made on two aspects. Mere oversight in narrating the accused, in the charge framed, as the president of

ICS, Chittagong town unit, instead of general secretary of East Pakistan ICS does not cause any prejudice to the defence. Accused's alleviation to more leading position in ICS rather heightened his authority in the organisation. It in no way adversely affects the merit of the case.

**175.** As regards another argument advanced by the learned defence counsel the Tribunal notes that P.W.20 has not been cross-examined by drawing attention to the said *nikahnama* showing solemnization of his [P.W.20] daughter's marriage, to explain the matter. Second, the alleged *nikahnama* is not a document submitted by the defence as required under section 9(5) of the Act of 1973. Third, permanent physical impairment of any kind is not necessary to constitute the offence of 'torture'. Only physical injury or impairment should not be understood as 'torture'.

**176.** For the offence of '**torture**' to be established, as a crime against humanity, the following three elements must be satisfied:

- (1) Presence of an act or omission inflicting or causing relentless pain or suffering, whether physical or mental;
- (2) The act or omission must be deliberate or intentional; and
- (3) The act or omission must have been carried out with a specific purpose such as to obtain information or a confession, to punish, intimidate or coerce the victim or a third person.

**177.** In the case in hand, we are not dealing with the issue whether the P.W.20 is impotent or not. Causing permanent physical injury or harm is not the only element necessary to constitute the offence of 'torture'. Thus, it is quite immaterial to adjudicate whether due to the torture caused to victimized detainee P.W.20 at the AB camp he became impotent. Besides, in absence of any definite proof mere *kabinnama* showing one as daughter of P.W.20, as submitted by the defence does not ipso facto prove that the injuries he endured at the confinement camp did not result in his impotence and the P.W.20 might have adopted her as his daughter which is not barred by law.

**178.** We are to see whether P.W.20 was abducted, detained and tortured at AB camp at Dalim Hotel as alleged in the charge framed against the accused. Besides, mere inaccurate version on a particular matter cannot make witness's sworn testimony untrue in its entirety. And also the witness [P.W.20] cannot be branded as an untrustworthy witness. During trial we have seen the demeanour of this witness whose testimony was so highly emotion choked.

**179.** The charge framed does not describe accused's physical participation to the commission of the act of forcible capture of the P.W.20. Victim also does not claim so. The accused has been indicted for facilitating and abetting the commission of the offence of abduction, confinement and torture and thereby he incurred liability under section 4(1) and 4(2) of the Act of 1973. Before entering into finding as regards mode of liability let us have a glance to what has been stated by the P.W.20 in respect of act and conduct of the accused at the AB camp at Dalim Hotel.

**180.** Seeing the accused Mir Quasem Ali at the AB camp when the victim [P.W.20] was tortured in detention by tying his hands up, on Mir Quasem Ali's instruction for obtaining information about the whereabouts of freedom fighters and telling to give him urine to drink by the accused, as stated by P.W.20, are not only significant relevant conduct and attitude of the accused but these are unmistakable indicatives of his influence over the AB members and the detention camp. Accused had been at the camp as not a mere innocent spectator. His presence coupled with influence and authority makes him liable for the criminal acts committed in furtherance of common purpose. In this regard we find substance in what has been argued by the learned Prosecutor Mr. Sultan Mahmud.

**181.** Non-examination of Seraj who was also abducted and brought to AB camp along with the P.W.20 does not make the system criminal activities with which the accused was 'concerned' untrue. Even failure to describe the fate of co-detainee Seraj by the P.W.20 does not render the events untruthful. Because, in a torture and detention camp it was absolutely impracticable for a detainee to see the treatment done to all the detainees

particularly when there has been clear indication that the detainees were kept in captivity in different rooms of Dalim Hotel building.

**182.** On total evaluation of evidence adduced and circumstances revealed it is found to have been proved beyond reasonable doubt that being a potential ‘boss’ of ICS accused Mir Quasem Ali not only had significant domination and influence over the AB members at the camp at Dalim Hotel, he had material and effective ability too to guide or steer their activities done in furtherance of common purpose and design. Thus, accused Mir Quasem Ali was part of common purpose in furtherance of which ‘system cruelties and criminal activities’ were carried out at the AB camp set up at Dalim Hotel. Additionally, accused’s conduct, act and culpable presence as divulged together with his position of authority rather encompasses facilitation, abetment, approval, encouragement forming part of systematic attack directing unarmed civilians that had substantial effect to the accomplishment of the offence of abduction followed by confinement and torture as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which accused Mir Quasem Ali is held liable under Section 4(1) and 4(2) of the Act of 1973.

### **Adjudication of Charge No.3**

#### **[Abduction, confinement and Torture of Jahangir Alam Chowdhury on 22 or 23 November, 1971**

**183. Summary Charge:** Charge no.3 involves the event of keeping Jahangir Alam Chowdhury confined at the AB camp set up at Dalim Hotel, Andarkilla under Kotwali Police Station Chittagong on capture from his rented house at Kodam Tali under Double Mooring police station by a group of AB members and Pakistani army on 22 or 23 November in the morning. The detainee was mercilessly tortured at the instance of accused Mir Quasem Ali, during his confinement. His relatives got him freed from the torture cell at Dalim Hotel on 16 December 1971. Therefore, the accused has been charged for abetting and facilitating commission of offences of abduction, confinement and torture as crimes against humanity

as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which the accused incurred liability under Section 4(1) and 4(2) of the Act.

### **Witnesses**

**184.** This charge involves confinement and torture of victim Jahangir Alam Chowdhury who has been examined as P.W.16. He is a freedom fighter and received training in India in 1971. Apart from narrating extreme degrading mistreatment and torture caused to him at AB camp at Dalim Hotel P.W.16 narrated some relevant facts too. Additionally, prosecution relied upon P.W.1 Sayed Md. Emran, P.W.2 Sanaulla Chowdhury, and P.W.3 Nasiruddin the co-detainees at the same AB camp who allegedly corroborated the fact of detention of victim Jahangir Alam [P.W.16]. P.W.14 Fayeze Ahmed Siddique is also claimed to have heard the event. Prosecution also relied upon the book titled **উত্তম তম মগ্ন আত্ম তে বুক** [Material Exhibit-VI : Book's relevant page 36-40: Prosecution Document Volume-2 , page 251-261] authored by Advocate Shafiul Alam who was also in captivity at the AB camp, as alleged.

### **Evidence**

**185. P.W.16 Jahangir Alam Chowdhury [66]** was a resident of Kadamtali locality under Double Mooring police station in Chittagong and student of Chittagong City College, in 1971. He stated that about one month subsequent to declaration of independence on 26 March 1971 he had gone to India crossing border and arrived at 'Harina' camp where he received training under officers' group no.4 and afterwards he received special guerilla training at 'Chakulia' and again returned back to 'Harina' camp. At this stage a guerilla group including himself was sent to Chittagong and thus they arrived in Chittagong few days prior to the month of *Ramadan* and formed two guerilla groups by coordinating leaders of other groups at the 'Bangla ghar' of Jabbar's house at the south-west corner of Chittagong Collegiate School for the purpose of carrying out 'operations'.

**186.** The above version remained undenied and unimpeached. Thus it is proved that the P.W.16 had gone to India where he received guerilla



training and came back just before the month of Ramadan and started organising the guerilla groups for the purpose of 'operations'. What happened next?

**187.** P.W.16 stated that two days after the Eid-ul-Fitre [last part of November, 1971] the Pakistani army and AB men besieged the Kadamtali locality and he was captured from his house as shown by one AB men having his face covered with cloth and then he was taken to AB camp at Dalim Hotel tying up hands and legs. First he was taken to a room of ground floor where he found his own brother Dastagir Chowdhury, neighbour Mafiz and other detainees. Two-three hours later, some of detainees including himself were taken to a room on first floor and then to another room on second floor. His [P.W.16] brother was not with them. After the dusk, detainee Advocate Shafiul Alam was brought there by AB member Afsar and Mir Quasem Ali[accused] and was thrown inside their room and they [Afsar and Mir Quasem Ali] had left the place by keeping the room locked with uttering that *'seeing him[detainee Advocate Shafiul Alam] the detainees here will have same lesson'*.

**188.** P.W.16 in narrating mistreatment caused to him stated that one day, during his captivity, he was taken to kitchen where he was subjected to torture severely by the AB members and at stage he was taken to staircase near the roof of the building where Nurul Afsar [AB member] asked whether he wanted to see him [Nurul Afsar] and then removed his blindfold. Nurul Afsar then gave him a paper and asked to read out the contents therein which would be broadcast in radio. The contents were *'here everything is alright, you all come back and no problem now exists here'*. He [P.W.16] refused to read it out and told that freedom fighters would kill his [P.W.16] family inmates if he opted to read it out. P.W.16 stated that during such conversation with Nurul Afsar he found two more persons including Mir Quasem Ali standing there.

**189. P.W.1 Sayed Md. Emran,** a co-detainee at the same AB torture camp in testifying his experience stated that during his confinement he was caused to torture for extracting information about freedom fighter. Mir Quasem Ali quizzed him being accompanied by Afsar Uddin Chowdhury

one of his college-mates [now general secretary of JEI, Chittagong city] and at a stage he [P.W.1] was thrown to a room where he found his known Sanaula Chowdhury [P.W.2], Jahangir Alam Chowdhury [P.W.16] and Advocate Shafiul Alam detained there.

**190. P.W.2 Sanaula Chowdhury** another co-detainee stated that during his confinement he saw Jahangir [P.W.16], Emran [P.W.1] and others at the AB detention camp at Dalim Hotel.

**191. P.W.3 Nasiruddin** a co-detainee who got release on 16 December 1971 morning from the AB camp at Dalim hotel stated that the detainees got release with the help of outsiders as the AB men fled away and he noticed Jahangir Alam Chowdhury [P.W.16] of Kadamtali and freedom fighter Syed Md. Emran [P.W.1] who also had been in captivity at the camp at Dalim Hotel.

**192. P.W.14 Fayez Ahmed Siddique [68]** is the brother-in-law of Saifuddin who was also kept in confinement at the AB camp, on capture, by AB members. He stated that in the early morning on 16 December 1971 he had gone to Dalim Hotel and saw the people rescuing the civilians detained there. He started searching each room of the hotel building but could not have trace of his sister's husband Saifuddin Khan. However, he saw about 100-150 freed detainees including Jahangir Chowdhury [P.W.16] of Kadamtali, Emran [P.W.1], Sunil Kanti Bardhan of Hajari lane, Iskandar Alam Chowdhury and Nasiruddin Chowdhury of Patia

**193.** The version as narrated by P.W.1, P.W.2, P.W.3 and P.W.14 on material particular, as discussed above could not be denied and shaken by the defence in their cross-examination.

### **Deliberation and Finding**

**194.** Mr. Sultan Mahmud, the learned prosecutor argued that P.W.16 one of victim detainees has testified the events of abduction, confinement and torture at the AB camp at Dalim Hotel. Co-detainees P.W.1, P.W.2, P.W.3

and P.W.14 have corroborated the fact of his confinement. Evidence of P.W.16 also shows that accused Mir Quasem Ali remained present at the time of causing torture to him at the camp, during his detention and it signifies his involvement with the commission of offence as narrated in charge no.3. It remained unshaken in his cross-examination.

**195.** The learned prosecutor further argued that the fact of confinement of P.W.16 at the AB camp gains corroboration also from the book titled **উদ্ভাষিত মগ্ন আৰু তেঁৰ বৃষ্টি** [ **Material Exhibit-VI** : Book's relevant page 36-40:Prosecution Document Voluem-2 , page 251-261] authored by Advocate Shafiul Alam who was also kept confined and tortured at the same AB camp known as torture camp. Abetment to the commission of actual crime is to be inferred from circumstances and conduct and act of accused. Besides, by dint of his position of authority in the ICS he had effective control over the AB members as the AB force was formed purely of ICS workers. It is now settled. Thus, the accused, in relation to offences described in charge no.3 incurs individual criminal liability and also the liability under the theory of civilian superior responsibility which corresponds to section 4(2) of the Act of 1973.

**196.** The learned defence counsel argued that the prosecution failed to incriminate the accused with the alleged act of abduction, confinement and torture caused to Jahangir Alam Chowdhury. There has been no evidence to show that the accused accompanied the group who allegedly abducted the victim. Since accused was neither a commander of AB force nor its member he had no connection with the AB camp and its activities. Even the victim P.W.16 does not claim that the accused himself inflicted torture to him during his alleged detention.

**197.** Citing evidence of P.W.16 the learned defence counsel argued that this witness allegedly a detainee claims that he was detained at the AB camp 2-3 days after Eid-ul-Fitre[ 21 November 1971] and he also found there Advocate Shafiul Alam detained . But Advocate Shafiul Alam in his book titled **উদ্ভাষিত মগ্ন আৰু তেঁৰ বৃষ্টি** [ **Material Exhibit-VI** : Book's relevant page36-40:Prosecution Document Voluem-2 , page 251-261] shall go to

show that Advocate Shafiqul Alam was allegedly detained at the camp on 27 November 1971. Thus seeing Advocate Shafiul Alam at the camp under captivity on 23-24 November [2-3 days after Eid-ul-Fitre 1971] is not believable and the version made in this regard by P.W.16 is untrue. As a result the statement made by P.W.16 in respect of his alleged detention itself makes untrue and thus causing torture to him during confinement does not stand on legs.

**198.** The accusation involving the ‘attack’, for the purpose of committing the offence of crime against humanity, formed of multiple acts of many persons including the principals. It is to be evaluated whether accused’s act and conduct as depicted from evidence of P.W.,16 formed part of ‘attack’ and had substantial effect in facilitating and abetting the actual commission of the offence of ‘confinement’ and ‘torture’ as crimes against humanity as specified in section 3 of the Act of 1973.

**199.** The victim P.W.16 was brought to AB camp set up at Dalim Hotel by a group of armed AB members on the date time and in the manner, on capture. Victim himself has testified it and there has been no reason to exclude it from consideration. His evidence does not show accused’s physical participation to the act of abduction, true. The charge framed refers to series of acts constituting the offence of abduction, confinement and torture. The act of abduction is inevitably linked with the act of confinement and torture. Where the victim was kept confined and subjected to torture? What was the purpose of causing such torture?

**200.** The fact of keeping P.W.16 under confinement at the AB camp at Dalim Hotel has been corroborated by the other detainees who have testified as P.W.1, P.W.2. Defence could not impeach the above version that refers to the fact of keeping P.W.16 captive at the AB camp at Dalim Hotel. Besides it has been re-affirmed when P.W. 16 in reply to question put to him by the defence stated that he had been in detention at Dalim Hotel for 22-23 days and he saw there Sayed Emran [P.W.1] and Sanaula Chowdhury [P.W.2], the co-detainee witnesses, in confinement.

**201.** It is clear from the unshaken version as made by P.W.16 that due to extreme hostile attitude against the war of liberation and the freedom fighters the AB force on calculated way brought the pro-liberation civilians including the non combatant freedom fighters and the Bengali civilians closely associated with them at the AB camp under their control for the purpose of either to compel them to disclose information or to act in favour of them[AB force] under coercion and also by causing barbaric torture.

**202.** In cross-examination the version of keeping confined and causing inhuman torture for extracting information, grilling by the accused at the AB camp and afterwards seeing Jahangir Alam Chowdhury [P.W.16] and two other detainees inside a room where he[P.W.1] was kept detained as stated by P.W.1 remained totally unshaken. Even defence does not deny the fact of seeing P.W.16 confined at the camp, as stated by P.W.1.

**203.** P.W.2 Sanaulla Chowdhury and P.W.3 Nasiruddin were kept in detention, as divulged from their evidence made before the Tribunal and the same remained unimpeached too. P.W.1 Sayed Md. Emran, P.W.2 Sanaulla Chowdhury and P.W.3 Nasiruddin had opportunity to see P.W.16 Jahangir Alam Chowdhury detained at the AB camp at Dalim Hotel as all of them were in prolonged captivity at the same camp. Therefore, the fact of keeping P.W.16 Jahangir Alam Chowdhury detained at the AB camp at Dalim Hotel gains valid corroboration from their unimpeached testimony.

**204.** Credibility of P.W.2 Sanaulla Chowdhury and P.W.14 Fayeze Ahmed Siddique seems to be significantly potent as the fact of confinement of Sanaullah Chowdhury and Saifuddin [sister's husband of P.W.14] has been corroborated by the narration made in the book titled **উত্তম তম মগ্গ আবত্বে** **te`buqo** [Material Exhibit-VI : Book's relevant page36-40:Prosecution Document Voluem-2 , page 251-261] authored by Advocate Shafiul Alam who in fact described the horrific and traumatic experience he sustained during his protracted confinement at the same AB camp at Dalim Hotel. Description made in this book also confirms the fact of confining Jahangir Alam Chowdhury [P.W.16, the victim of charge no. 3] at the same AB camp.

**205.** Now the question of accused's involvement with the criminal acts comes forward. How the accused 'participated' to the accomplishment of torture allegedly inflicted to P.W.16 and why?

**206.** The evidence of P.W.16 transpires that one day, after the dusk, detainee Advocate Shafiul Alam was brought to their room [AB camp at Dalim Hotel] by AB member Afsar and Mir Quasem Ali [accused] and was thrown inside their room and they [Afsar and Mir Quasem Ali] had left the place by keeping the room under locked with utterance that 'seeing *him [Advocate Shafiul Alam] the detainees here will have same lesson*'. This act on part of the accused by itself unerringly indicates accused's substantial affiliation with and influence over the AB camp.

**207. P.W.1 Sayed Md. Emran**, a co-detainee at the same AB torture camp also testified that during his confinement Mir Quasem Ali interrogated him being accompanied by Afsar Uddin Chowdhury one of his [P.W.1] colleagues [now general secretary of JEI, Chittagong city] and at a stage he [P.W.1] was thrown to a room where he found his known Sanaula Chowdhury [P.W.2], Jahangir Alam Chowdhury [P.W.16] and Advocate Shafiul Alam detained there.

**208.** Integrated evaluation of testimony of P.W.16 and P.W.1 allows us to conclude that the presence of accused Mir Quasem Ali at the AB camp was not at all free from vice. Accused was consciously concerned with the course of conduct of systematic persecution, in furtherance of common purpose.

**209.** Further version of P.W.16 showing presence of the accused Mir Quasem Ali at the AB camp at the time of causing mistreatment and coercion by AB member Nurul Afsar insisting him to act in support of anti-liberation campaign does not appear to have been shaken in any manner by the defence. Such culpable presence of accused at the AB torture camp coupled with his position of authority in ICS and influence over the camp signifies his tacit approval and endorsement of the criminal acts done by the

principals. In this regard we may recall the observation of the **ICTY Trial Chamber** which is as below:

**“presence, when combined with authority, may constitute assistance (the *actus reus* of the offence) in the form of moral support” and that “an approving spectator who is held in such respect by other perpetrators that his presence encourages them in their conduct, may be guilty [of] a crime against humanity.’** [*Bagilishema*, (Trial Chamber), June 7, 2001, para. 34]

**210.** Testimony of P.W.2 Sanaullah Chowdhury depicts that he was tortured in different rooms during his detention at AB camp and on many occasions in presence of Mir Quasem Ali. This version together with the fact of seeing AB member Afsar and Mir Quasem Ali [accused] throwing a detainee Advocate Shafiul Alam inside their room and hearing them [Afsar and Mir Quasem Ali] uttering that ‘*seeing him[Advocate Shafiul Alam Chowdhury] the detainees here will have some lesson*’ remained unshaken. Indisputably this relevant fact connects the accused Mir Quasem Ali as a complicit with the criminal activities carried out at the camp in causing torture and degrading mistreatment to victim P.W.16. It also proves accused’s effective control and substantial influence over the camp too.

**211.** The act of being present at the AB camp coupled with the above ‘declaration’ or ‘message’ uttered by the accused renders him responsible for assisting, encouraging and providing moral support to the principals the AB men that had substantial effect upon the perpetration of the offence of prolonged illegal confinement and causing torture to victim Jahangir Alam Chowdhury.

**212.** The charge framed does not allege that the accused directly or physically participated to the commission of the offence of torture inflicted to the victim at the AB camp. If it is so, what responsibility the accused incurred for the crimes committed at the AB camp? In this regard the Tribunal notes that for holding liability it is to be seen whether the accused

abetted and facilitated the commission of the actual crime and how. ‘Abetment’ signifies ‘encouragement’, providing ‘moral support’ or ‘assistance’. Accused Mir Quasem Ali being consciously present at the AB camp in exercise of his potential position in the ICS provided obvious encouragement and moral support by his conduct and accompanying the AB men of the camp in causing mistreatment to the detainees. The **Trial Chamber of ICTY**, in the case of *Prosecutor v. Vidoje Blagojevic* observed that

**“The assistance need not have caused the act of the principal, but it must have had ‘substantial effect’ on the commission of the crime. The assistance may be provided by either an act or by an omission, and it may occur before, during or after the act of the principal.”** [ICTY Trial Chamber: Case No. OT-02-60-T: Judgment 17 January 2005 para- 26]

**213.** Yes, P.W.16 could not state the exact date of his capture, as narrated in the charge framed. The Tribunal notes that he is a traumatized witness and he may not be able to recollect the exact date and time when the event of his capture occurred, particularly long about 42 years’ passage of time after the barbaric series of events. We should not forget too that there is higher likelihood that the traumatic events under investigations and the trauma incurred by witnesses have an intense impact on witnesses when their statements are taken or when witnesses testify in court. The witness may not be always able to recall every detail with precision. **The ICTR** in the case of *Nyiramasuhuko* has considered this issue by making observation as below:

**“Many witnesses lived through particularly traumatic events and the Chamber recognises that the emotional and psychological reactions that may be provoked by reliving those events may have impaired the ability of some witnesses to clearly and coherently articulate their stories.**



**Moreover, where a significant period of time has elapsed between the acts charged in the indictments and the trial, it is not always reasonable to expect the witness to recall every detail with precision.**

*[The Prosecutor v. Pauline Nyiramasuhuko, ICTR-98-42-T, Judgement, 24 June 2011, para. 179]*”

**214.** Naturally, any identification of time, be it dates, hours, years, and any estimation of duration, appears to be problematic for many witnesses particularly who incurred severe trauma and thus they may not be able to put together a comprehensive picture by recollecting date relating to the events.

**215.** We are not with the argument advanced by the defence that P.W.16 is not a credible witness as his version is discrepant to the narration of co-detainee Advocate Shafiul Alam. It is to be borne in mind that the events about which the P.W.16 came on dock to testify occurred more than four decades before the trial. Thus, discrepancies attributable to the lapse of time or the absence of record keeping, or even other satisfactory explanation, do not necessarily affect the credibility or reliability of the witnesses.

**216.** Since the statement of P.W.16 so far as it relates to his captivity at the AB camp at Dalim Hotel remained unshaken and also appears to have been corroborated by the description made in the book [Material Exhibit-VI] authored by Advocate Shafiul Alam, a co-detainee at the same camp. Other relevant facts divulged from the evidence of co-detainee witnesses suggest that it is quite impracticable to assess P.W.16’s testimony solely on the basis of his inaccurate version made as to date of his capture. The variation seems to be of only 3-4 days which is not at all unnatural due to lapse of long passage of time. It would appear that version of P.W.16 on material particular connected to the fact of his confinement and torture at the AB camp remained unimpeached. There is no earthly reason of disbelieving him. The act of confinement and torture indisputably is the outcome of act of abduction. Confinement and torture would not have taken place if there was no act of abduction. Since accused Mir Quasem Ali is found to have

had ‘concern’ with the commission of confinement and torture of the detainees at the camp, it is lawfully presumed that the act of abduction too occurred on his approval and endorsement and within his knowledge.

**217.** On rational and integrated evaluation of evidence and relevant facts and context it stands proved beyond reasonable doubt that the criminal activities were carried out on substantial inducement and assistance of the accused Mir Quasem Ali, that the accused and the AB men at the torture camp worked together in furtherance of common purpose of causing deprivation of civilians’ physical liberty by keeping them under stretched and illegal captivity at the AB camp aiming to obtain information about the freedom fighters and as such the act and conduct of the accused forming part of attack directing civilian population coupled with his significant influence and domination over the AB torture camp as depicted provided substantial abetment and assistance to the accomplishment of offence of ‘confinement’ and degrading ‘torture’. Accused Mir Quasem Ali is thus found guilty of offence of ‘abduction’, ‘confinement’ and ‘torture’ as crimes against humanity as enumerated in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 for which he is held liable under section 4(1) and 4(2) of the Act of 1973.

#### **Adjudication of Charge No.4**

##### **[Abduction, confinement and Torture of Saifuddin Khan (now dead) on 24 November, 1971**

**218. Summary Charge:** Charge no.4 narrates that in the late night of **24th November 1971** the AB men, at the instance of accused Mir Quasem Ali, abducted **Saifuddin Khan (now dead)** from Aziz colony under Double Mooring Police Station, Chittagong and he was kept detained at the AB camp set up at Dalim Hotel, Andarkilla under Kotwali Police Station Chittagong wherein he and his co-detainees were severely beaten and tortured by AB men under the leadership of accused and afterwards on 02 or 03 December he was sent to Chittagong jail wherefrom he was released on 16 December 1971. Therefore, the accused has been charged for abetting and facilitating commission of offences of abduction, confinement and

torture as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which the accused incurred liability under Section 4(1) and 4(2) of the Act.

## **Witnesses**

**219.** P.W.14 Fayez Ahmed Siddique [66], brother-in-law of victim Saifuddin Khan [now dead] came on dock to describe the event of abduction and related facts. In 1971 he was associated with activities of guerilla force in Chittagong. According to him he heard the event of abduction from his sister Nurjahan Khan and then rushed towards AB camp at Dalim Hotel.

## **Evidence**

**220. P.W.14 Fayez Ahmed Siddique [66]** narrated that in the night of 24 November 1971 AB men picked his 'dulabhai' Saifuddin Khan up from his residence at Aziz Colony and brought him to Dalim Hotel. Mir Quasem Ali [accused] was the commander of Al-Badar. On hearing this from his sister Nurjahan Khan he rushed madly towards Dalim Hotel by a motor bike where he found ICS leader Afsar Uddin[ now a leader of JEI] sitting there. Afsar Uddin was a student of Commerce College and 2/3 years junior to him [P.W.14]. He [Afsar Uddin] exchanged words with him and told that he knew why he came there. Nothing would happen to him [Saifuddin Khan] as he was his relative too, Afsar added. Then he [P.W.14] came back and had stayed at the guerilla camp at Karoldanga under Patia police station till 15 December.

**221.** P.W.14 further stated that on 16 December he on arriving at Dalim Hotel saw some people rescuing detainees there from and thus he also started searching his *dulabhai* [Saifuddin Khan] but could not have his trace there. However, he [P.W.14] saw about 100-150 detainees freed there of them he could recognise Jahangir Chowdhury of Kadomtoll, Emran, Sunil Kanti Bardhan of Hajari lane, Iskandar Alam Chowdhury and Nasir Uddin Chowdhury of Patia.

**222.** Next, P.W.14 stated that on 17 December he had met his *dulabhai* Saifuddin Khan as he was released from Chittagong jail. Saifuddin told him that on 2-3 December he was sent to jail from Dalim Hotel and during his detention at Dalim Hotel inhuman torture was caused to him and dead body of so many detainees were thrown to Karnofuli river after killing them causing torture.

### **Deliberation and Finding**

**223.** Mr. Sultan Mahmud the learned prosecutor argued that P.W.14 the brother-in-law of Saifuddin Khan testified in support of the events. He on hearing the event of abduction instantly rushed to the AB camp where he found one Afsar a local leader of ICS who was known to him. It connects accused's association too with the AB camp as he was a potential leader of ICS of Chittagong town unit. It has been further argued that the fact of detention of captured victim Saifuddin Khan gets corroboration from the description made by Advocate Shafiul Alam another detainee at the same AB camp in his book [Material Exhibit-VI-Prosecution Documents Volume-11].

**224.** The learned prosecutor further submitted that the fact of handing the detained victim over to the army camp at circuit house, few days after he was brought at the AB camp, on capture and then to jail also gains corroboration from the above authoritative book. Thus, even in absence of direct proof as to complicity of accused with the act of abduction and torture at the AB camp it may be lawfully presumed that the accused, by virtue of his position of authority and culpable association with the camp and activities carried out there was concerned with the crimes committed and he substantially facilitated the principals in furtherance of common purpose.

**225.** It has been argued by the learned defence counsel Mr. Mizanul Islam that there has been no proof of accused's involvement with the act of alleged abduction, confinement and torture of victim Saifuddin Khan. Testimony of P.W.14 [relating to charge no. 4] suffers from major contradiction as he narrated the events implicating the accused for the first

time before the Tribunal. The learned defence counsel submitted that in the case of Abdul Quader Molla the Appellate Division has observed that major omission in the statement made to IO be regarded as 'contradiction'. The witnesses examined in support of this charge are not credible.

**226.** The Tribunal notes that the defence, in cross-examination, simply denied that accused was not a commander of AB, that Saifuddin Khan was not brought to Dalim Hotel and kept detained there. But the defence however could not controvert the fact of abduction of Saifuddin Khan by the AB members and causing inhuman torture to him keeping him confined at AB camp at Dalim Hotel. Testimony of P.W.14 on material particular i.e seeing Afsar Uddin, one ICS leader, at the AB camp at Dalim Hotel when he [P.W.14] had rushed there instantly after the event of abduction remained undenied and defence could not impeach this pertinent fact too, by cross-examining him.

**227.** Victim Saifuddin Khan was abducted in the dead of night of 24 November 1971 from his residence in Chittagong and he was kept captive at the AB camp at Dalim Hotel till 2-3 December 1971 and then was sent to army camp and then to jail. On release from jail on 17 December Saifuddin Khan disclosed how he was tortured at the camp. This version made by P.W.14 remained totally unimpeached. Thus, the hearsay testimony of P.W.14 on material particular carries probative value and we do not find any earthly reason to keep it aside from consideration. Besides, this piece of hearsay evidence gains corroboration from the narration made in the book titled *উত্তম তম মগ্ন অভ্যন্তরীণ* [Material Exhibit-VI: Book's relevant page 39-40 , last two paragraphs: Prosecution Document Voluem-2 , page 260-261] authored by Advocate Shafiul Alam . Thus, hearsay testimony of P.W.14 so far as it relates to confinement and torture of Saifuddin Khan at the AB camp at Dalim Hotel carries probative value and inspires credence.

**228.** Together with the above let us have a glance to some related facts as discovered from testimony of P.W.14. The uncontroverted fact of presence of one ICS leader Afsar Uddin at the AB camp at Dalim Hotel, as stated by

P.W.14 impels conclusion as to culpable association of ICS leaders with the camp and activities carried out there.

**229.** The unimpeached version, as made by P.W.14, that on 16 December he saw about 100-150 detainees were getting release unerringly allows to conclude that the AB camp set up at Dalim Hotel was a **‘detention and torture camp’**. Admittedly, till 06 November 1971 accused Mir Quasem Ali was the president of ICS, Chittagong town unit. We have already recorded our finding based on authoritative information published in national and international news media that the AB force a wing of Razakar force was formed of ICS workers.

**230.** Saifuddin Khan was so abducted by a group of AB members and the criminal activities constituting the offences alleged were carried out at the ‘instance’ of the accused—the charge framed alleges. The act of ‘instance’ encompasses ‘signal’, providing ‘moral support’, ‘encouragement’, approval to the accomplishment of the actual crime. Thus, the act of ‘instance’ being an intangible act is not required to be proved by direct evidence. It is to be inferred from circumstances and relevant facts divulged.

**231.** We have already found that there had been culpable alliance of ICS leaders with the camp and activities carried out there. Be that as it may, the accused who was a significantly potential leader of ICS of course was concerned with the common plan and design. Context, purpose of bringing non combatant freedom fighters and pro-liberation civilians to the AB camp on capture and inevitable culpable association of accused Mir Quasem Ali with the camp allow even a man of reasonable prudence that he was deliberately concerned with the entire course of criminal conduct.

**232.** To qualify the act of ‘participation’ an individual need not be present at the crime sites. Even remaining far from the crime site an individual may have capacity to ‘participate’ to the commission of actual crime by his act or conduct and by virtue of his position of domination over the principals. And thus rational analysis brings us to the conclusion that even the act of

abduction of victim Saifuddin Khan also occurred within accused's 'knowledge' and 'approval' that qualifies the act of 'instance'.

**233.** The learned defence counsel argued that P.W.14 has made the narration in relation to the events implicating the accused for the first time before the Tribunal and thus his statement in Tribunal is not consistent with that he made to the IO. First, the learned defence counsel could not place the observation of the Appellate Division he intended to depend in support of his submission. Second, earlier statement made to IO is not evidence. Third, it would appear that the **Appellate Division** in the case of *Abdul Quader Molla* has observed that

“This word ‘**contradiction**’ is qualified by the word ‘examination-in-chief’ of a witness. So, the contraction can be drawn from the statements made by a witness in his 'examination-in-chief' only, not with respect to a statement made to the investigating officer of the case in course of investigation [**Page 196 of the Judgment**]. There is no scope to draw contradiction of the statement of a witness made in course of examination-in-chief with his/her earlier statements made to the investigating officer or other agency [**Page 205 of the Judgment of Appellate Division**].

**234.** Besides, discrepancies in testimony of witnesses could be due to the fallibility of perception and memory and the operation of the passage of time. It has been observed in the case of *Akayesu* that:

“**The majority of the witnesses who appeared before the Chamber were eye-witnesses, whose testimonies were based on events they had seen or heard in relation to the acts alleged in the Indictment. The Chamber noted that during the trial, for a number of these witnesses, there appeared to be contradictions or inaccuracies between, on the one hand, the content of their**

**testimonies under solemn declaration to the Chamber, and on the other, their earlier statements to the Prosecutor and the Defence. This alone is not a ground for believing that the witnesses gave false testimony.”[Akayesu case, ICTR, para. 140].**

**235.** The learned defence counsel argued that the prosecution failed to prove accused’s participation to the commission of crimes alleged by evidence. Without proving participation of accused in the commission of offences as listed in the charges he cannot be held guilty.

**236.** The case in hand relates to trial of internationally recognised crimes committed in violation of customary international law. The offences are alleged to have been committed in context of war of liberation in 1971. Proof of all forms of criminal responsibility, through participation in any manner can be given by direct or circumstantial evidence. It is now settled jurisprudence. It is settled too that the offence of crimes against humanity is considered as ‘group crime’ and it is not perpetrated by a single individual. But however, an individual may participate to the actual commission of the principal crime by his act or conduct, before or midst or after the crime committed.

**237.** The Tribunal notes that to incur criminal liability, in a case of crimes against humanity, the accused himself need not have participated in all aspects of the alleged criminal conduct. [*Stakic*, ICTY Trial Chamber, July 31, 2003, para.439]. The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated [*Blaskic*, ICTY Appeals Chamber, July 29, 2004, para. 48]. Participation may occur before, during or after the act is committed.

**238.** Accused’s potential and leading position in the ICS fanned the flames of his domination and inducement even over the AB force at the camp at Dalim Hotel in Chittagong. By choosing to be present at the AB camp where the civilian detainees were subjected to torture and tortured to death the accused Mir Quasem Ali took an encouraging step which substantially



facilitated and contributed to the commission of crimes. Even the act of being present at the crime scene as a silent spectator can be well construed as the ‘tacit approval’ or ‘encouragement’ of the crime, by taking his position of domination into account. Such conduct of the accused having significant authority and domination that informally created a relationship between him and the actual perpetrators, the AB men at the camp amounts to sanction of the crimes committed and thus substantially contributed to it. Defence claim that the accused had no connection with AB force and the AB camp allegedly set up at Dalim Hotel seems to have gone astray.

**239.** The above crucial facts all together offer an unambiguous conclusion that accused Mir Quasem Ali had culpable and effective association with the camp and had a significant position of authority on it and activities carried out there and that he was quite ‘aware’ of criminal acts perpetrated by AB men at the torture camp by bringing and keeping the pro-liberation civilians captive there on forcible capture. The Tribunal notes that ‘abetting’ encompasses the act of facilitation, encouragement or instigation to the commission of the principal crime.

**240.** It stands proved too beyond reasonable doubt from the preceding evaluation of evidence and circumstances that the accused Mir Quasem Ali by his conduct and act of culpable presence coupled with his authority at the camp substantially facilitated and assisted the perpetration of crimes. Thus, he cannot absolve of liability of such criminal acts constituting the offence of confinement and torture, although the accused’s direct participation to the act of abduction of victim Saifuddin Khan is absent. But the act of abduction is chained to the acts of confinement and torture. The criminal act committed at the AB camp the prime execution site is the outcome of the act of abduction. Victim Saifuddin Khan was kept confined at the AB camp at Dalim Hotel by bringing him on abduction. It is proved. Evidence shows accused’s complicity and participation to the criminal activities carried out directing the detainees there. Therefore, accused’s leading position in ICS and its effective affiliation with the AB force formed of ICS workers lead us to conclude that the accused had knowledge about all the activities of AB men carried out at the AB torture camp at

Dalim Hotel in furtherance of common policy and purpose and thus the accused Mir Quasem Ali, by his 'culpable affiliation' with and 'presence' at the camp consciously facilitated and abetted the commission of the offences of abduction, confinement and torture of victim Saifuddin Khan as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 for which accused Mir Quasem Ali is held liable under Section 4(1) and 4(2) of the Act.

## **Adjudication of Charge No.5**

### **[Abduction, confinement and torture of Abdul Jabbar Member on 25 November 1971]**

**241. Summary Charge:** This charge relates to the event of abduction of Abdul Jabbar Member that allegedly occurred on 25 November 1971. The victim was allegedly brought to AB torture camp at Dalim Hotel by the Razakar commander Jalal Chowdhury and his accomplices on instance of accused Mir Quasem Ali. The captured victim was subjected to torture at the camp and eventually released on 13 December 1971. Therefore, accused Mir Quasem Ali has been charged for abetting and facilitating the commission of offences of abduction, confinement and torture as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which the accused incurred liability under Section 4(1) and 4(2) of the Act.

## **Finding**

**242.** Prosecution could not adduce and examine the victim detainee in support of this charge. More so, testimony of any of detainee witnesses examined before the Tribunal did not state anything relating to any of facts relevant to this charge. Might be none of them had occasion to see this victim Abdul Jabbar Member detained at the camp. Truthfulness of the events alleged remained unearthed due to lack of evidence. Therefore, accused Mir Quasem Ali cannot be held liable for the offences narrated in the charge no.5

## Adjudication of Charge No. 6

### [Abduction, confinement and Torture of Harunur Rashid Khan (now dead) on 28th November, 1971]

**243. Summary Charge:** This charge involves the event of forcible bringing of Harunur Rashid Khan on 28th November, 1971 at about 10-30/11.00 a.m to the AB camp at Dalim Hotel by the AB men and Pakistani army at the instance of the accused Mir Quasem Ali and keeping him confined there where he was tortured. Afterwards, on accused's directives he was taken blindfolded to another Torture Cell set up at 'Salma Manjil' under Pachlaish police station in Chittagong. He was however rescued from 'Salma Manjil' on 16th December, 1971 in the morning by pro-liberation forces and local people when the nation achieved victory. The accused has thus been charged for abetting and facilitating the commission of offences of abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which the accused incurred liability under Section 4(1) and 4(2) of the Act.

### Witnesses

**244.** Prosecution, in order to prove this charge, examined Julekha Begum the wife of the victimized detainee Harunur Rashid [now dead] as P.W.15. She is the hearsay witness. She narrated what she heard from her husband about the atrocious events. Prosecution also relied upon the information depicted from the book titled *০৯১৮ খ্রিঃ গণহত্যা বিবরণ* authored by Mahbul-ul-Alam [Material Exhibit-VI, relevant page 297-302].

### Evidence

**245. P.W.15 Julekha Begum [57]** the wife of victim Harunur Rashid Khan [now dead] stated that she got married to Harunur Rashid in 1976. She testified what she had heard from her husband and father about the events. P.W.15 stated that her husband told that he had played a vital role as the liaison officer of sector-1 in forming 'Swadhin Bangla Betar Kendra'. On 28 November 1971 at about 10:00 am a group of AB men led by Mir Quasem Ali had picked him up and brought to Dalim Hotel[AB

torture camp] where he was kept detained for 3-4 days and was subjected to torture and then brought to another AB torture cell set up at ‘Salma Manjil’ under Pachlaish police station. He was caused to severe torture too by the AB men and Mir Quasem Ali.

**246.** P.W.15 further stated that she also heard that 17/18 persons were kept detained at ‘Salma Manjil’ camp and of them 15/16 were eventually killed. One AB member of that camp was about to get married with the daughter of Shafi Saheb and victim Harunur Rashid Khan was the maternal uncle of Shafi Saheb’s wife . For this reason, on intervention of Shafi Saheb’s wife the AB men finally did not kill the victim Harunur Rashid.

### **Deliberation and Finding**

**247.** The learned prosecutor argued that hearsay evidence is admissible and carries probative value. Besides, the hearsay testimony of P.W.15 the wife of victim gets corroboration from the book from the book titled **ÓeŒMj xi gy³hŒxi BŒZeĒÓ** authored by Mahbub-ul-Alam [Material Exhibit-VI, relevant page 297-302]. Besides, the role and culpable association of the accused with AB camp and its criminal activities as found from the evidence of other victimized detainees are the fair indicatives of accused’s ‘participation’ to the system crimes and cruelties committed at the camp and his authority over it. All these lend support to the conclusion that accused was a part also to the criminal activities constituting the offence of’ abduction, confinement and torture of detained Harunur Rashid.

**248.** The learned defence counsel argued that according to the version of P.W.15 the wife of the detainee victim Harunur Rashid her husband was released from captivity 5/6 days after 16 December 1971 which is inconsistent with the narration made in the charge framed; that the charge alleges that the act of abduction was committed at the ‘instance’ of accused Mir Quasem Ali but prosecution failed to present any evidence to substantiate it. It has been further argued that the testimony of P.W.15 suffers from major contradiction. The learned defence counsel submitted that in the case of *Abdul Quader Molla* the Appellate Division has observed

that major omission in the statement made to IO be regarded as 'contradiction'. The witness examined in support of this charge is not credible. There has been no evidence to connect the accused with the commission of any of events alleged.

**249.** This charge, as it appears, rests on hearsay testimony of P.W.15 the wife of victim Harunur Rashid Khan [now dead]. The victim was a potential freedom fighter. In the month of September 1971 he was assigned with the task of publicity cell of freedom fighters in the area of Chittagong. Relevant document [the book titled *ওসম্ভবি গুপ্তহত্যার বিবরণ* authored by Mahbub-ul-Alam; Material Exhibit-VI, relevant page 297-302] offers corroboration to it. Defence too does not dispute the authoritativeness of narration made in the book. Presumably, to carry out the task assigned to him Harunur Rashid Khan [now dead] had been in Chittagong at the relevant time.

**250.** It is true that there has been no direct evidence as to involvement of the accused with the act of abduction alleged. But 'proof' does not mean rigid mathematical formulae since "that is impossible". However, proof must mean such evidence as would induce a reasonable man to come to a definite conclusion. It is now settled jurisprudence. Considering the pattern and system cruelties committed at the AB camp at Dalim Hotel, in furtherance of common purpose and design, as already found in our preceding deliberation the prosecution case, thus, must be adjudicated in its entirety having regard to the totality of the circumstances revealed. And in doing so the Tribunal considers it appropriate to use the yard-stick of probability and appreciate the intrinsic value of the evidence brought on records and analyze and assess the same objectively.

**251.** P.W.15 Julekha Khan the wife of the victim Harunur Rashid Khan is a hearsay witness and she testified what she had heard from her husband. However, any evidence which is supported by 'other evidence' logically possesses a greater probative value than evidence which stands alone.

**252.** The version as made by P.W.15 narrating the fact of his husband's abduction, confinement at Dalim Hotel for 3-4 days and then at 'Salma Manjil' [AB camp] and the fact of causing torture to him in captivity could not be dislodged in her cross-examination, in any manner. Defence simply suggested the P.W.15 that accused Mir Quasem Ali did not lead the AB men in abducting and confining Harunur Rashid at Dalim Hotel and Salma Manjil. P.W.15 denied it. But the fact of forcible capture, confinement and causing torture by the AB men at the camps remained unshaken and undenied.

**253.** P.W.15 also stated that her husband [victim] told him that during his detention at both the camps accused Mir Quasem Ali and other AB men had caused torture to him, that he was rescued from the bathroom of torture cell at Salma Manjil. This piece of pertinent version implicating accused's participation to the system cruelties remained unshaken.

**254.** We are not in agreement with the argument advanced by the learned defence counsel that testimony of P.W.15 is false as it is inconsistent with the date of victim's release as narrated in the charge framed. P.W.15 is a hearsay witness. Mere inaccurate statement on a particular matter cannot, by itself, constitute false testimony. Judicial testimonies made under solemn declaration tend, as a general rule, to demonstrate greater reliability if it is not found contradictory on major particular. P.W.15 heard the events from her husband [now dead]. Hearsay evidence is not inadmissible *per se* and the court can act on it if it is corroborated by other evidence. It is now settled jurisprudence. The term 'other evidence' includes circumstances and relevant material facts. Defence does not appear to have been able to shake her testimony on material particular.

**255.** Mere inconsistency occurred due to the time lapse in narrating date of her husband's release from captivity does not render her whole testimony unreliable, particularly when the fact of her husband's confinement at the AB camp at Dalim Hotel stands proved. "Memory over time naturally degenerates; hence it would be wrong and unjust for the Chamber to treat

forgetfulness as being synonymous with giving false testimony” [Akayesu case: ICTR, para. 140.]

**256.** The criminal activities constituting the offences alleged were carried out at the ‘instance’ of the accused—the charge framed alleges. The act of ‘instance’ encompasses ‘signal’, providing ‘moral support’, ‘encouragement’, ‘approval’, ‘guidance’ to the accomplishment of the actual crime. Thus, the act of ‘instance’ being an intangible act is not required to be proved by direct evidence. It is to be inferred from circumstances and relevant facts divulged.

**257.** The fact of forcible capture of Harunur Rashid by the armed group of AB men and bringing him blindfolded to the AB camp at Dalim Hotel gains confirmation from the information narrated in the book titled **০৯১৮১৮** **১৮১৮** **১৮১৮** authored by Mahbub-ul-Alam [Material Exhibit-VI, relevant page 297-302] . The book also makes it known that victim Harunur Rashid was a freedom fighter and in the month of September 1971 he was authorized to organize a publicity cell on behalf of the freedom fighters throughout Chittagong and in carrying out this task he had to keep close liaison with persons working for the war of liberation. Defence does not dispute this information narrated in this book. A freedom fighter who was non combatant at the time of his forcible capture was kept in prolonged captivity at the AB torture and detention camp obviously not for any unfussy or innocent purpose.

**258.** The reason of letting the detained victim Harunur Rashid Khan free from Salma Manjil AB camp as stated by P.W.15 also remained unimpeached. Unshaken testimony of P.W.15 rather confirms the fact of keeping the victim detained at the AB camp at Salma Manjil. Defence does not dispute the existence of AB camp at Salma Manjil. Proved fact of Harunur Rashid’s confinement itself suggests that he was captured forcibly and of course by the group of AB men.

**259.** All these circumstances together with the common pattern of criminal activities carried out at the camps suggests unerringly that Harunur Rashid

was so captured and detained first at the AB camp at Dalim Hotel and then at the AB camp at Salma Manjil for extracting information about freedom fighters, under coercion and torture. And inevitably in execution of the common purpose and design he was subjected to brutal torture. It may be presumed validly even in absence of any direct proof in this regard. The word 'confinement' itself implies commission of torture, by causing physical or mental harm. Due to restraint access to the detention and torture camp no outsider is expected to have had occasion to witness the activities carried out inside the camp.

**260.** We agree with the argument advanced by the learned prosecutors Ms. Tureen Afroz and Mr. Sultan Mahmud that the evidence presented by the prosecution, in relation to all the charges framed, clearly reflects that there had been a 'system' of criminal activities' and a 'course of conduct' at the AB camp set up at Dalim Hotel and the cruelties and severe mistreatment were caused to the detainees in pursuance of a common design and the system was practiced with the knowledge of the accused. Mir Quasem Ali

**261.** We reinforce that it has been found proved beyond reasonable doubt from evidence of victimized detainees in relation to charge nos. 2, 3 and 4 that a common system of cruelties and inhuman mistreatment was practiced in the AB camp at Dalim Hotel, in furtherance of common purpose and design to which the accused Mir Quasem Ali was a part.

**262.** Thus, hearsay version of P.W.15 Julekha Khan the wife of detainee Harunur Rashid Khan[now dead] so far as it relates to the fact of abducting Harunur Rashid Khan by the AB men under 'leadership' of accused Mir Quasem Ali and causing torture keeping him in captivity there by them carries probative value and inspires credence. And her testimony together with the finding on accused's involvement and influence over the camp as found proved, in relation to charge nos. 2, 3 and 4 impels to conclude that accused Mir Quasem Ali had acted as the 'boss' of AB men at the torture camp at Dalim Hotel and was in steering position in carrying out criminal activities and deciding the fate of detainees. Confining and torturing detained Harunur Rashid Khan was a part of system cruelties occurred at



the AB camp at Dalim Hotel. Therefore, accused Mir Quasem Ali cannot be relieved from liability of system criminal activities and cruelties carried out there including the act of confinement and torture caused to Harunur Rashid Khan within his knowledge. The culpable presence and facilitating act and conduct of accused as already revealed in adjudicating foregoing charges add further strength to accused's 'conscious concern' and 'participation' to the commission of crimes of abduction, confinement and torture of victim Harunur Rashid Khan as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 for which accused Mir Quasem Ali is liable under section 4(1) and 4(2) of the Act of 1973.

### **Adjudication of Charge No.7**

**[Abduction, confinement and Torture of Md. Sanaulla Chowdhury, Habibur Rahman (now late) and Elias on 27 November, 1971]**

**263. Summary Charge:** Charge no. 7 narrates that on 27th November, 1971, after Magrib prayer on instruction of accused Mir Quasem Ali a group of AB members abducted Md. Sanaulla Chowdhury, Habibur Rahman (now late) and Elias from 111 Uttar Nala Para under Double Mooring Police Station, Chittagong. The captured civilians were brought to the torture cell set up at Dalim Hotel, Andarkilla under Kotwali police station, Chittagong. The camp was under of accused Mir Quasem Ali. The captured victims were kept confined there and on accused's directives, members of Al-Badar Bahini tortured them severely. The victims saw many people there detained in the same condition during their forceful stay in the Torture Cell. They saw some of them were taken away and they heard that they were killed by Al-Badar Bahini on accused's instigation. Afterwards, victims Habibur Rahman and Md. Sanaulla Chowdhury were released on 6th December and 9th December, 1971 respectively on condition of providing information about the freedom fighters regularly. Therefore, Mir Quasem Ali has been charged for abetting and facilitating the commission of offences of abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which the accused incurred under Section 4(1) and 4(2) of the Act.

## Witnesses

**264.** The charge involves some phases. Prosecution examined, in support of this charge. P.W.2 Sanaullah Chowdhury, one of victims. It also relied upon testimony of P.W.1 Sayed Md. Emran, P.W.13 Md. Hasan and P.W.16 Jahangir Alam Chowdhury the victimized co-detainees at the same AB camp at Dalim Hotel. Apart from oral testimony, prosecution relies upon the material Exhibit VI, a book authored by Advocate Shafiul Alam who was also captured, detained and tortured at the same camp. P.W.13 allegedly witnessed the event of forcible picking up of victims and as regards confinement and torture at the AB camp he has testified what he heard from victims. P.W.2 described how he was subjected to torture and accused Mir Quasem Ali quizzed him during his 12-day captivity at that camp. This witness also narrates what he experienced and saw during his detention at the camp. P.W.1 Sayed Md. Emran another detainee testified the fact of seeing P.W.2 at the AB camp.

## Evidence

**265.** In narrating the event of abduction or forcible picking up **P.W.2 Md. Sanaullah Chowdhury [67]** testified that in the evening of November 27, 1971, there was a knock on the door when he was making gossip with his brother-in-law Habibur Rahman and neighbours Zafar Ahmed and Ilias. With this he opened the door and instantly seven to eight armed people stormed into the house and started searching the house, blindfolded him, Habibur and Ilias, and then boarded them into a jeep and from their [armed men] conversation, he realised that they were taken to Dalim Hotel. The above is the description as to when and how P.W.2 and two other victims were captured and brought to Dalim Hotel by a group of armed people.

**266.** The version so made by P.W.2 on the event of abduction seem to have been corroborated by P.W.13 Md. Hasan who stated that on a day, at the end of November 1971, at dusk, a group of people besieged their [P.W.13] and the rented house of his uncle Bashirul Huda and on search, captured Habibur Rahman, Ilias Sawdagar and Sanaullah Chowdhury [P.W.2] and were brought to Dalim Hotel. 9-10 days after such capture he saw Habibur Rahman coming back by a rickshaw when he was in physically unable

condition and 3-4 days after Habibur Rahman's return he saw Sanaullah Chowdhury returning back. He heard from them [returned victims] that they were kept confined at AB camp at Dalim Hotel and subjected to torture.

**267.** Thus, **P.W.13 Md. Hasan** had occasion to witness the event of forcible capture of victims including Sanaullah Chowdhury [P.W.2] on the date time and manner by a group of armed people and were brought to AB camp at Dalim Hotel. Presumably the armed people forming group were the AB members as the captured civilians were brought to AB camp. The version so made by P.W.13 Md. Hasan remained totally unshaken in his cross-examination. Even the defence does not appear to have denied the fact of forcible capture of victims as narrated by P.W.13.

**268. P.W.1 Sayed Md. Emran** is one of victim detainees in relation to the event of concurrent forcible capture that took place on 29 November 1971 [as narrated in charge nos. 8,9 and 10]. He [P.W.1] stated that he could recognise some of detainees amongst whom one was Sanaullah Chowdhury [P.W.2] and Advocate Shafiul Alam, during his detention at AB camp at Dalim Hotel.

**269. P.W.2 Sanaullah Chowdhury** also testified that he could recognise Advocate Shafiul Alam, one of detainees in his room. He knew him since earlier. This version remained unrefuted in his cross-examination.

**270.** Next, P.W.2 Sanaullah Chowdhury stated that at one stage of his detention he was taken to a room on second-floor where the Al-Badar men started to grill him. He had seen Jahangir [victim detainee of charge no.3] and some other detainees in the room. After some time, a man was kicked into the room who was howling. The man was Advocate Shafiul Alam who was known to him since earlier.

**271.** The above version too remained unimpeached in cross-examination of P.W.2. Rather, it offers corroboration to what has been deposed by P.W.1

another detainee as regards detention of Advocate Shafiul Alam at the AB camp.

**272.** P.W.2 went on to state that on the next day, a boy, who endured severe torture, was brought to their room when 'someone' told Al-Badar men pointing to that boy *'he is not dead yet, throw him in[onside the room] so that the captives understand the consequence of not telling the truth'*. Then they [Al-Badar men] left the boy inside their room. Advocate Shafiul Alam told him that he [who gave the order] was Mir Quasem Ali, commander of [Al] Badar force.

**273.** Defence, as it appears, did not deny the crucial fact indicating accused's participation to criminal activities at the camp as revealed from above piece of evidence. It remained unshaken too. In reply to question put to him P.W.2 stated that Al-Badar 'head office' was stationed at Dalim Hotel, Andarkilla and he was kept confined at different rooms of Dalim Hotel.

**274.** P.W.2 Sanauulla Chowdhury further stated that while he was in confinement, captives were tortured in different rooms and Mir Quasem Ali, on several occasions, remained present and Mir Quasem Ali himself also quizzed him at Dalim Hotel. On December 9, he was released upon giving an undertaking that he would provide [to AB] information about freedom fighters.

**275.** This piece of version has neither been denied specifically nor controverted, in his cross-examination in any manner.

### **Deliberation and Finding**

**276.** The learned prosecutor Mr. Sultan Mahmud, in respect of this charge, argued that defence could not refute the testimony of victim P.W.2 Sanauulla Chowdhury so far as it relates to the fact of his abduction, confinement and torture at Dalim Hotel where the AB torture camp was stationed. The event of abduction of three victims including Sanauulla Chowdhury [P.W.2] gets corroboration from the evidence of P.W.13. The fact of being in

confinement at Dalim Hotel as stated by the victim P.W.2 appears to have been re-affirmed in his cross-examination. Victim's confinement gets corroboration from the testimony of co-detainees P.W.1 and also from Material Exhibit VI, a book authored by Advocate Shafiul Alam who was also kept detained and tortured at the same camp. The narration made in this book demonstrates that he [Advocate Shafiul Alam] saw Sanaula Chowdhury [P.W.2] and Jahangir Alam Chowdhury [P.W.16] detained at the camp at Dalim Hotel, during his confinement.

**277.** Further submission advanced by the learned prosecutor is that the fact of confinement and inflicting torture was not supposed to be witnessed by any other person excepting the co-detainees as it occurred inside the AB camp to which public access was naturally restricted. Victim P.W.2 is a credible and direct witness and his testimony on material particulars remained unimpeached. It has been further argued that accused's presence at the AB camp intending to facilitate the culpable affairs, as stated by P.W.2, is a fair *indicium* of his influence and effective control over the camp and criminal activities carried out there by the AB men. Thus, the accused Mir Quasem Ali incurred liability for the offences committed.

**278.** Conversely, the learned defence counsel argued that the charge relates to abduction of three persons together including P.W.2 Sanaula Chowdhury. But the two others i.e Habibur Rahman and Ilias have not been adduced and examined by the prosecution. P.W.2 could not say where Ilias and Habibur Rahman were kept detained. None of detainee witnesses corroborates the alleged fact of detention and torture of Habibur Rahman and Ilias who were allegedly captured together with the P.W.2. Thus, the fact of alleged abduction, torture and confinement becomes tainted by reasonable doubt.

**279.** According to the narration made in the indictment the act of 'abduction' was followed by the act of 'confinement' and 'torture'. The victims were allegedly abducted from their place of living and were kept confined at the AB camp at Dalim Hotel where they were grilled under

coercion and torture and allegedly the purpose was to obtain information about freedom fighters whom they termed the 'miscreants'.

**280.** In the case in hand, considering the nature and pattern of system criminal acts and since the execution site was AB camp the victims' testimony is the best and direct evidence in relation to most of the charges. To prove this charge prosecution examined detainee victim Sanullah Chowdhury as P.W.2. In narrating the event of abduction P.W.2 Md. Sanullah Chowdhury [67] testified that in the evening of November 27, 1971 group of seven to eight armed people stormed into their house and started searching the house and then they brought him, his brother-in-law Habibur Rahman and neighbour Ilias blindfolded, on capture, to Dalim Hotel by a jeep.

**281.** P.W.13 Md. Hasan was a neighboring resident of the victims. He corroborates the fact of abduction that took place on the date, time and in the manner. Defence could not refute his testimony. P.W.13 also stated the fact of return of captured victim Habibur Rahman 9-10 days after he was abducted and he saw him physically unable condition. This version too remained unshaken. It indicates Habibur Rahman's forcible bringing to Dalim Hotel where he was physically mistreated.

**282.** The description of forcible lifting and taking the victim P.W.2 Sanullah Chowdhury and two others, on capture, to Dalim Hotel [AB camp] by a group of armed people, as stated by the victim P.W.2 remained totally undisputed. Additionally, the fact of abduction appears to have been corroborated by P.W.13 who had occasion to witness the event of forcible capture of three victims including Sanullah Chowdhury [P.W.2] on the date time and manner by a group of armed people who were brought to AB camp at Dalim Hotel. Presumably, the armed people forming group of abductors were the AB members. The version so made by P.W.13 remained totally unshaken in his cross-examination. Even the defence does not appear to have denied the fact of forcible capture of victims as narrated by P.W.13.

**283.** P.W.1 Syed Md. Emran is one of victim detainees in relation to the events narrated in charge no.9. For obvious reason, during his confinement at the AB camp at Dalim Hotel he [P.W.1] could recognise some of co-detainees amongst whom one was Sanauallah Chowdhury [P.W.2] and Advocate Shafiul Alam at the camp. P.W.1. Emran and P.W.2 Sanauallah Chowdhury also testified that they could recognise Advocate Shafiul Alam, one of co-detainees in their room. This version remained unrefuted in his cross-examination.

**284.** It also stands proved that Advocate Shafiul Alam was a co-detainee of P.W.2 at the same AB camp. In reply to question put to him by the defence P.W.2 stated that Al-Badar 'head office' was stationed at Dalim Hotel, Andarkilla and he was kept confined at different rooms of Dalim Hotel. Thus, it has been rather re-affirmed that P.W.2 was kept under prolonged captivity at Dalim Hotel which was a 'camp or detention cell' of Chittagong Al-Badar force.

**285.** We are not in agreement with the learned defence counsel that for the reason of non examination of two other victims the charge suffers from doubt. The Tribunal notes that since the fact of forcible capture of Sanauallah Chowdhury [P.W.2], Habibur Rahman and Ilias has been proved by the testimony of one victim P.W.2 and P.W.13 Hasan an spectator of the fact of abduction and since the captured victims were brought to Dalim Hotel there can be no room to argue that the fact of abduction remains not proved or suffers from doubt as two other captured victims have not been examined.

**286.** Besides, the unshaken testimony of P.W.13 that speaks of return of Habibur Rahman, one of captured victims 9-10 days after he was so abducted adds assurance to the fact of his forcible capture and bringing to Dalim Hotel. Naturally, all the detainees were not kept confined in a single room at Dalim Hotel. Thus, P.W.2 Sanauallah Chowdhury might have no opportunity to experience the cruelties caused to his two other co-detainees Habibur Rahman and Ilias. This inability on part of P.W.2 neither affects his credibility nor shakes the truthfulness of the events occurred at AB torture and detention camp at Dalim Hotel, as stated by him.

**287.** On cumulative evaluation of evidence of P.W.2, the victim, P.W.13 who saw picking him up forcibly and P.W.1 another detainee at the camp it stands proved beyond reasonable doubt that victim P.W.2 was forcibly captured by a group of armed AB members and taken to the AB camp at Dalim Hotel where he was kept detained together with other detainees

**288.** It is found that at one stage of his detention victim P.W.2 was taken to a second-floor room and Al-Badar men started to grill him. He had seen Jahangir [victim detainee of charge no.3] and some others in the room. After some time, a man was kicked into the room and he was howling. The man was Advocate Shafiul Alam [Chowdhury], who was known to him since earlier.. This unshaken version impels us to conclude that the AB camp was a **'torture cell'** where the pro-liberation unarmed civilians were kept confined, coerced and tortured.

**289.** P.W.2 while testifying before the Tribunal narrated a very crucial relevant fact. According him [P.W.2], one day, during his detention at the AB camp, a boy, who endured severe torture, was brought to their room when 'someone' told Al-Badar men pointing to that boy *'he is not dead yet, throw him in[inside the room] so that the captives understand the consequence of not telling the truth'*. Then they [Al-Badar men] left the boy inside their room. Advocate Shafiul Alam [detainee] told him that he [who gave the order] was Mir Quasem Ali, commander of [Al] Badar force.

**290.** The above version of P.W.2 remained uncontroverted which is credence inspiring and unerring proof that the accused Mir Quasem Ali was in 'dominating position' of the AB camp and was effectively affiliated to the system cruelties and criminal activities carried out there. Defence, as it appears, has failed to show that there had been no AB camp at Dalim Hotel. True, a negative assertion need not be proved by evidence. But defence failed to shake this fact by cross-examining the P.W.2 and other witnesses. Rather, by the reply to question put to P.W.2 it has been re-affirmed that Al-Badar 'head office' was stationed at Dalim Hotel, Andarkilla and he was kept in captivity in different rooms of the camp.



**291.** We have found from evidence of P.W.2 that while he was in confinement, captives were tortured in different rooms and Mir Quasem Ali [accused], on several occasions, remained present and Mir Quasem Ali also quizzed him at Dalim Hotel. Afterwards, on December 9, he was released upon giving an undertaking that he would provide information about freedom fighters.

**292.** Defence could not impeach the above decisive version in any manner, by cross-examining the P.W.2. This unshaken fact divulged from testimony of P.W.2 coupled with other relevant facts as demonstrated from evidence of P.W.2 and P.W.1 proves it unambiguously that accused Mir Quasem Ali not only 'abetted' and 'facilitated' the actual commission of criminal acts constituting the offence of confinement and torture but he was the 'mastermind' of the series of system cruelties criminal activities carried out by the AB men in furtherance of common purpose and design.

**293.** We have found from evidence of P.W.2 that on December 9, he was released upon giving an undertaking that he would provide information about freedom fighters. The fact of his release gets corroboration from evidence of P.W.13 who stated that 9-10 days after he saw Habibur Rahman [victim] coming back by a rickshaw in physically unable condition. He heard from the victims on their return on release from the AB camp that they were kept confined at AB camp at Dalim Hotel and subjected to torture by them [AB men]. The Tribunal notes that freeing the captured victims, on condition, from captivity subsequent to the act of confinement and torture does not diminish the commission of the offences.

**294.** It is now settled that even a single act or conduct coupled with influence and authority is enough to conclude accused's nexus with the crimes committed. Accused's presence at the AB camp and at the time of grilling the detainees coupled with his steering position impels the conclusion that he was aware of the commission of criminal activities and he by his act and conduct provided 'approval' of keeping the civilians detained and causing degrading torture to them, in furtherance of common

purpose and design. Mere absence of formal membership in AB force does not absolve him from liability of substantially facilitating and abetting the AB men the principals in committing the offences of confinement and torture at the AB camp.

**295.** Torture is, literally and in essence, a crime against humanity. It is a systematic attempt to violently degrade non combatant civilians and rob them of their very humanity. Cumulative evaluation of evidence adduced and circumstances revealed suggest that the accused Mir Quasem Ali was a potential *complicit* in committing the crimes as narrated in the charge and despite indirect participation in carrying out criminal activities he passively allowed the humanity of the detainees to be degraded and attacked, by virtue of his influence, inducement and dominating position over the AB men and the AB camp. The fact of letting the victims freed upon giving undertaking of providing information, few days after their confinement, as wished by accused Mir Quasem Ali also impels the conclusion of his substantial influence and steering position over the AB camp.

**296.** On total evaluation of evidence and circumstances, it is found proved beyond reasonable doubt that while P.W.2 [victim detainee] was in confinement, captives were tortured in different rooms and Mir Quasem Ali [accused], on several occasions, remained present and Mir Quasem Ali also had grilled him at Dalim Hotel. Thus, objective of such system criminal acts and degrading mistreatments towards the detainees was to obtain information about freedom fighters, as depicts from evidence. This piece of version made by P.W.2 remained unshaken. Even it has not been specifically denied. We, therefore, arrive at an unambiguous finding that this pertinent version depicts the purpose of keeping the pro-liberation civilians detained at the AB camp and inflicting brutal torture, inhuman mistreatment were the method of extracting information about the freedom fighters through ‘grilling’ and ‘coercion’ and accused Mir Quasem Ali was an active part to such system cruelties and aggressively allied with the criminal activities carried out there and thereby participated to the commission of offences of abduction confinement and torture. Therefore, accused Mir Quasem Ali incurred liability under section 4(1) and 4(2) of

the Act of 1973 for the offences of abduction, confinement and torture as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973.

### **Adjudication of Charge No. 08**

**[Abduction, confinement and torture of Nurul Quddus, Md. Nasir, Nurul Hashem and others]**

**297. Summary Charge:** This charge alleges that on the following of 29th November, 1971 at about 2.30-3.00 a.m. on planning and direction of accused Mir Quasem Ali, the president of Islami Chhatra Sangha [ICS], Chittagong Town Unit a group of armed members of Al-Badar Bahini in collaboration with Pakistani Army by raiding Sabanghata locality under Chandgaon police station, captured **Nurul Quddus, Md. Nasir, Nurul Hashem and others** and took them forcibly in front of N.M.C High School first and then at dawn they along with others were taken to the torture centre of Al-Badar Bahini set up at Dalim Hotel at Andarkilla under Kotwali police station, Chittagong. Afterwards, on accused's direction the AB men kept them confined there for ten days and caused torture to them and then sent them to Chittagong District Jail, and they were subsequently released on 16<sup>th</sup> December, 1971. Therefore, accused Mir Quasem Ali has been charged for abetting and facilitating the commission of offences of abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which he incurred liability under Section 4(1) and 4(2) of the Act.

### **Witnesses**

**298.** Prosecution could not adduce and examine any of three victims. However, prosecution relies upon P.W.8 [victim detainee of charge no.10], P.W.18 and P.W.19 [victim detainees of charge no.9] and P.W.1 also a co-detainee who saw these victims brought in front of NMC High School, on capture when all of them were assembled there, at the relevant time. The evidence of these witnesses lends support to the fact of their bringing at AB camp at Dalim Hotel, as alleged. P.W.12 Md. Hasan a cousin of the victims [**Nurul Quddus, Md. Nasir, Nurul Hashem**] narrated how the AB men brought him and his cousins in front of NMC High School, on capture. The

act of abduction and act of taking all the detainees to the AB camp at Dalim Hotel as described in charge no.8 is linked to the events of abduction occurred concurrently and in conjunction with the same attack at the relevant time as narrated in charge nos. 9 and 10.

## **Evidence**

**299. P.W.12 Md. Hasan [62]** was an inhabitant of Sabanghata locality under Chandgaon police station, Chittagong. He testified that on 29 November at about 03:00 am a group of armed AB men led by Mir Quasem Ali besieged their house and dragged 20-25 persons including him, his father Abdus Sattar, Moulana Nurul Islam, his cousin Nurul Quddus, Nurul Hashem, Ibrahim, Abdul Hakim,, Md. Idris, Md. Shafi out and brought first in front of NMC High School and kept them guarded by AB men. At an early hour of morning, he saw more persons in two groups brought there on capture by the AB men. Of them he could identify Md. Emran [P.W.1], Sayed Jamal [P.W.18], Sayed Sarwar [P.W.19], and Iskandar [P.W.8].

**300.** P.W.12 further stated that the AB men, made him [P.W.12] freed, considering his tender age and they also however spared his father and Moulana Nurul Islam from that place [in front of NMC High School].

**301.** On question put to him by the Tribunal P.W.12 replied that detainee Quddus and Hashem were sent to jail from Dalim hotel wherefrom they got release. The detainees on their release after independence disclosed that they were kept in confinement and he noticed mark of causing physical torture on their body. On cross-examination, P.W.12 further stated that the 'head camp' of AB was stationed at Dalim Hotel and the victims Quddus and Hashem were kept confined there.

**302.** Principally P.W.18, P.W.19 and P.W.8, are the witnesses relating to the events narrated in charge nos. 9 and 10 and thus discussion on their detailed testimony would be necessary to adjudicate those two charges. Now, let us eye to what they have testified in relation to charge no.8.

**303. P.W.18 Jamaluddin, P.W.19 SM Sarwaruddin** [victims of charge no.9] and **P.W.8 Iskandar Alam Chowdhury**, victim of the event narrated in charge no.10 corroborated the fact of seeing the three victims of charge no.8 brought on capture at the place in front of NMC High School at the relevant time. They also stated that all of them were brought there on capture and then taken to AB torture camp at Dalim Hotel by two trucks.

**304. P.W.1 Sayed Md. Emran** a freedom fighter who on receipt training in India entered Chittagong during the mid of September 1971 and started planning and carrying out guerilla operations, as stated by him. It remained quite unshaken in cross-examination.

**305.** P.W.1 had occasion to see the victims of charge no. 8 and other persons including P.W.8, P.W.18 and P.W.19 brought on capture at the place in front of NMC High School when he too was brought there by the armed AB men and army on 29 November 1971 at about 04:00-04:30 am from his house under Chandgaon police station locality of Chittagong. P.W.1 stated that eventually all the detained persons including him were taken to AB camp at Dalim Hotel by two trucks parked in front of the school. Moulana Nurul Islam and Nurul Amin brought there on capture were however freed there from.

### **Deliberation and Finding**

**306.** The learned prosecutor Mr. Sultan Mahmud submitted that none of victims of this charge could be produced and examined. But the prosecution relies upon the P.W.8, P.W.18 and P.W.19 who saw the victims brought in front of NMC High School on capture. . The act of abduction as described in charge no.8 is linked to the events narrated in charge nos. 9 and 10. All the victims of these three charges were first brought and assembled in front of NMC High School wherefrom they were then taken to AB camp at Dalim Hotel by truck. P.W.12 Hasan was also captured with the three victims of charge no. 8 and thus he saw the event only at abduction phase. P.W.12 was however freed considering his tender age and was not brought to the camp.

**307.** It has been further argued by the learned prosecutor that the fact of forcible capture of Nurul Quddus, Nurul Hashem and Md. Nasir as has been proved by P.W.8, P.W.18 and P.W.19 the other co-detainees offers inference that these three victims were also kept in detention for obtaining information by causing torture at the AB camp at Dalim Hotel. And since accused was a part of such system criminal activities he is liable even for the offences narrated in charge no.8.

**308.** On contrary, the learned defence counsel in advancing his argument submitted that none of three victims could be brought and examined by the prosecution and as such the events narrated in this charge remained not proved. Mere proving the fact of taking the victims at the place near the NMC High School forcible does not give rise to the conclusion that they were kept detained at the AB camp and were subjected to torture. Even no other co-detainee witness states that any of these three victims was also seen at the AB camp, after their alleged capture. Accused's involvement with the act of alleged abduction also remained not proved. P.W.1 and P.W.12 are not credible witnesses.

**309.** The Tribunal notes that the witnesses relied upon by the prosecution, to prove this charge, are the co-detainees. They were allegedly caught concurrently and in conjunction with the same attack by the gang of armed AB men as alleged and then taken to the AB camp at Dalim Hotel.

**310.** The commission of alleged crimes is to be proved first and then culpability of accused is to be focused. It is to be noted that the fact that P.W.12 was brought at the place in front of NMC High School on capture on the date and time by the armed AB men as narrated in the charge no.8 gains strong corroboration from the testimony of P.W.1, P.W.8, P.W.18 and P.W.19 who were also brought there on capture by the gang of armed AB men. Defence could not dislodge this version by cross-examining these witnesses..

**311.** The victims were relatives of P.W.12, as claimed. Naturally P.W.12 had opportunity to know from them the mistreatment committed to them in

their captivity at AB camp at Dalim Hotel. But his testimony in this regard does not carry any specificity. In absence of statement of any of victims, testimony of P.W.12 in this regard thus inspires no credence.

**312.** Defence could not however controvert the testimony of P.W.18, P.W.19 and P.W.8 as to how they were brought first to the place in front of NMC High School on capture by the armed AB men where they found many other civilians detained and they could recognise many of them including the victims of charge no. 8.

**313.** But does the mere fact of seeing the victims too at the place in front of NMC High School by the other captured civilians including P.W.18, P.W.19 and P.W.8 offer any unerring conclusion as to their confinement and torture at the AB camp at Dalim Hotel?

**314.** It is true that the unshaken testimony of P.W.18 and P.W.19, the victims of charge nos. 9 and P.W.8, the victim of charge no.10, proves that they had witnessed the act of taking Nurul Hashem, Nurul Quddus and Md. Nasir to the AB camp at Dalim hotel by truck together with them as they [victims of charge no.8] were also brought and assembled in front of NMC High School at the relevant time by the group of armed AB men, on capture. But merely this version does not make it proved that Nurul Hashem, Nurul Quddus and Md. Nasir were also kept detained at the AB camp set up at Dalim Hotel.

**315.** Undeniably the testimony of any of three victims [of charge no. 8] could have provided more support to what has been testified by P.W.8, P.W.18 and P.W.19. These witnesses the co-detainees do not claim to have seen any of the three victims [of charge no.8] confined and tortured at the AB camp at Dalim Hotel. It may not be practicable. But in absence of any positive and rationale indication the court of law cannot arrive at a decision on a material fact. Integrated and impeccable inference should always be based on rationale and feasible facts.

**316.** It is true that the criminal jurisprudence does not require the prosecution to prove the impracticable. All that it requires is to establishment of such a degree of probability that a man of prudence may, on its basis, believe the existence of a fact in issue. In the case in hand, the AB camp headquartered at Dalim Hotel was the prime execution site. The charge itself narrates that the three victims got release from Chittagong jail after the independence.

**317.** Thus, prosecution was obliged to prove the fact of captivity of three victims at the AB camp at Dalim Hotel. Often legal proof is nothing more than a prudent man's estimation as to the probabilities of the case. But the prosecution appears to have failed to show such probabilities as to confinement and causing torture to these three victims at the AB camp by the AB members. Only the victims would be the best and competent witnesses in this regard. It is best known to the prosecution why they did not care to produce and examine any of these three victims, to prove this charge, despite the fact that the Investigation Officer, in course of investigation, examined two victims namely Nurul Quddus and Md. Nasir as witnesses and recorded their statement as well.

**318.** The evidence of co-detainees divulges that numerous civilians including three victims [of charge no.8] were first brought to the place in front of NMC High School at the relevant time, on capture, in conjunction with the same attack. The P.W.8, P.W.18, P.W.19 [the victims of charge nos. 9 and 10] and P.W.1 have testified it unequivocally as they had occasion to see Nurul Quddus, Md. Nasir, Nurul Hashem there. We do not find any reason to disbelieve these witnesses and their version so far as it relates to seeing the victims brought there on capture.

**319.** But mere seeing the victims brought at the place in front of NMC High School is not sufficient to conclude beyond reasonable doubt that they were confined and tortured at the AB camp at Dalim Hotel. The act of confinement and causing torture to them could have been well proved only and only by any of these three victims. Surprisingly none of them has been produced and examined as witness despite the fact that two of them have



been cited as witnesses by the Investigation Officer. Prosecution even utterly failed to offer any explanation against such material and deliberate flaw. It is to be noted that the charge framed narrates that the victims got release from Chittagong jail after independence.

**320.** In view of above, the fact of causing torture to the victims by keeping them in confinement at the AB camp headquartered at Dalim Hotel building suffers from apparent and reasonable doubt, despite the fact that they were picked up forcibly and brought to the place in front of NMC High School where other detained persons including the P.W.8, P.W.18, P.W.19 and P.W.1 had occasion to see them there, before they all were taken to the AB camp at Dalim Hotel.

**321.** The other charge framed narrates that the criminal acts subsequent to abduction of civilians occurred at the AB camp at Dalim Hotel. From the preceding deliberation made on other charges it has been proved that the accused Mir Quasem Ali had culpable affiliation with and effective control and influence over that camp. But in respect of charge no.8, since prosecution has utterly failed to provide even any reasonable indication as to confinement of the victims at that camp, by adducing and examining either of victims, as competent and best witness we are not convinced to conclude that the three victims too were kept in prolonged confinement and subjected to torture by the AB members at that camp. This pertinent accusation appears to have been tainted by reasonable doubt. Merely on the basis of testimony of P.W.8, P.W.18, P.W.19 and P.W.1 relating to seeing the victims brought at the place in front of NMC High School we do not consider it safe to go with the argument advanced by the learned Prosecutor.

**322.** Mere taking the three victims together with other detained persons to the AB camp at Dalim Hotel, as stated by P.W.8, P.W.18, P.W.19 and P.W.1 does not *ipso facto* prompts us to conclude that the victims too were kept confined at the camp for ten days, as alleged. Release of the victims from the jail after the independence, as alleged in the charge framed reasonably excludes the truthfulness of the fact of their captivity at the AB

camp at Dalim Hotel. Unexplained failure on part of the prosecution to cite and examine any of victims before the Tribunal inevitably strengthens the doubt as to the crucial fact of their being confined and tortured at that camp.

**323.** In view of above discussion we are constrained to conclude that the prosecution has utterly failed to prove the commission of the criminal act of confinement and torture of the three victims namely Nurul Quddus, Md. Nasir, Nurul Hashem at the AB camp set up at Dalim Hotel building. The charge lacks of lawful evidence and circumstances that could reasonably lead us to find the accused guilty. Therefore, accused Mir Quasem Ali cannot be held liable for the offences narrated in the charge no.8.

### **Adjudication of Charge No.-9**

**[Abduction, confinement & torture to Sayed Md. Jamaluddin and 06 others on 29 November 1971 at about 04:00—4:30 am from Najirbari locality under Chandgaon police station, Chittagong]**

**324. Summary Charge:** This charge alleges that on the following of 29th November, 1971 at about 4.00/4.30 a.m. on plan and direction of accused Mir Kashem Ali the president of Islami Chhatra Sangha[ICS], Chittagong town unit his cohorts the armed members of Al-Badar surrounded the Najirbari locality under Chandgaon police station and forcibly abducted Nuruzzaman along with his cousins Sayed Md. Osman Hossain, Sayed Md. Jamaluddin, Sayed Md. Kamaluddin, Sayed Md. Sarwaruddin, Sayed Md. Golam Kibria and Sayed Md. Golam Rahman and then took them to the AB torture centre at Dalim Hotel at Andarkilla under Kotwali police station. Thereafter, on his direction the members of AB force caused torture to them keeping there in confinement till 15th December, 1971, and they subsequently got release on 16 December 1971. The accused has been charged for abetting and facilitating the commission of offences of abduction, confinement and torture as crimes against humanity as specified in section3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which the accused incurred liability under Section 4(1) and 4(2) of the Act.

## **Witnesses**

**325.** Prosecution, to prove this charge chiefly depends on P.W.18 Sayed Md. Jamaluddin and P.W.19 Sayed Md. Sarwaruddin, two of victims captured. The armed group of AB men allegedly captured them including cousins of these two witnesses, on plan and direction of accused Mir Quasem Ali. In addition to these two victimized witnesses prosecution also depends upon P.W.1, P.W.16 and P.W.8. Prosecution claims that their testimony corroborates the fact of abduction, confinement of the seven civilians [victims of charge no.9] captured from Najirbari, Chandgaon locality as they had occasion to see them at the place in front of NMC High School after they were brought there on capture by the AB men at the relevant time.

## **Evidence**

**326. P.W.18 S.M Jamaluddin [75]** testified the description of confinement and torture he had endured during his 14- day captivity at the AB camp set up at Dalim Hotel, Chittagong. He stated that on 29 November 1971 at about 4:00-4:30 am the armed AB men forcibly entering into their house picked him, his two brothers Kamal, Sarwar and three cousins Emran [P.W.1], Osman and Kibria up and on capture they were first brought in front of NMC High School where he saw some other captured persons including Nurul Quddus, Nurul Hashem, Nurul Huda, Nasir [victims of charge no 8]. P.W.18 added that similarly Iskandar [P.W.8], Jakaria [P.W.10][ victims of charge no. 10] were also brought there on capture from the locality of Golam Ali Najirbari. Afterwards, all of them were brought to Dalim Hotel by trucks tying up their hands and detained at the torture camp set up there.

**327.** From above version it appears too that the other civilians captured by the AB men were brought in front of the NMC High School wherefrom they including the P.W.18 and his brothers and cousins were taken to the AB camp at Dalim Hotel by truck. P.W.18 thus appears to have corroborated the fact of abduction of victims of charge nos. 8 and 10 as well.

**328.** It has been re-affirmed that the Dalim Hotel was the AB camp as P.W.18 replied to question put to him by the defence that he could not say where the AB men used to dine at Dalim Hotel. It also affirms the fact of his and his brothers' detention at AB camp at Dalim Hotel. P.W.18 however denied the suggestion put to him by the defence that he and his brothers including his cousin brother Emran [P.W.1] were kept detained in jail in connection with the murder case of Moulana Abul Kashem.

**329.** P.W.18 SM Jamal Uddin then stated that when he reached the hotel[AB camp], he along with several others were kept confined in a room on the ground floor [of Dalim Hotel] where he saw three to four dead bodies inside. When he asked for water, Al-Badar men gave him urine to drink. After three to four days, he was taken blindfolded to the second floor and when the blindfold was removed, he saw there Al-Badar commander Mir Quasem Ali and Shoeb Ali. The AB men then started beating him up with electric wires, hanging him upside down, and asked him if there was any freedom fighter he had helped. At one stage, Mir Quasem Ali [accused] ordered them to get him down. They kicked him on the stairs and he fell down on the floor. P.W.18 stated that he was released on December 13 after his family members had signed an undertaking with Shoeb Ali, who was his distant relative.

**330. P.W.19 S.M Sarwaruddin [62]** the brother of P.W.18 S.M Jamaluddin has testified the event of their abduction corroborating P.W.18. According to P.W.19 the armed gang of AB members that had abducted him and his brothers and cousins was also accompanied by two Pakistani army men.

**331.** On cross-examination, P.W. 19 stated that those two army men who accompanied the group in abducting them did not come to Dalim Hotel when they were brought there along with other detainees. It rather affirms the fact of abduction and bringing the P.W.19 and other captured civilians to the AB camp at Dalim Hotel.

**332.** P.W.19 further stated that he was kept detained at Dalim Hotel camp till 15 December 1971 and during his confinement there he was subjected to ruthless torture. In one night Mir Quasem Ali and his accomplice AB men had grilled him for obtaining information about the freedom fighters and their arms and on his refusal to respond the AB men started mercilessly beating him up, on order of Mir Quasem Ali and afterwards he was taken to another room on the first floor where Mir Quasem Ali again quizzed about Emran [P.W.1] and on refusal to reply he was again beaten up on order of Mir Quasem Ali.

**333.** P.W.19 also stated that during his detention at Dalim Hotel camp he saw the AB men moving around the rooms having arms with them and accused Mir Quasem Alim seldom used to accompany them.

**334. P.W.1 Sayed Md. Emran** a cousin brother of P.W.18 and P.W.19 stated that they were captured together at about 04:00-04:30 am of 29 November 1971 from their houses by the group of armed AB members. P.W.1 stated that the group of armed AB men led by accused Mir Quasem Ali brought them first at the place in front of NMC High School where he saw some other civilians brought there on capture and two trucks parked.

**335.** As regards torture caused to him during prolonged confinement at the AB camp, P.W.1 stated that untold inhumane torture was caused to him by electric wire, stick and lethal weapons and at a stage removing his blindfold Mir Quasem Ali started quizzing him. He [Mir Quasem Ali] wanted to know how many arms he had and freedom fighters with him [victim]. Afsar Uddin, one of his [victim] senior college mates who is now general secretary of Chittagong city JEI was recording his [victim] account and then he was kept confined in another room blindfolded where after someone removed his blindfold and he then saw there Sanaulla Chowdhury [P.W.2], Jahangir Alam Chowdhury [P.W.16] and Advocate Shafiul Alam detained.

**336.** The above version on significantly material particular has neither been denied nor been controverted in any manner by the defence, in cross-examination of P.W.1

**337. P.W.16 Jahangir Alam Chowdhury** another inmate of the torture camp at Dalim hotel, in addition to torture caused to him in captivity stated that on 16 December, 1971 his elder brothers and freedom fighters rescued him, Emran [P.W.1] and many other detainees by breaking lock of the room where they were kept confined. With this testimony the fact of confinement of P.W.1 at the same AB camp stands corroborated.

**338. P.W.8 Iskandar Alam Chowdhury**, another detainee testified that on 29 November at about 04:00 am he was caught by the AB members and army and was first brought at a place in front of NMC High School where he found other persons detained including Emran [P.W.1], Sayed Jamal [P.W.18], Sayed Kamal, Sayed Sarwar [P.W.19], Sayed Kibria who were his relatives. They all were then brought to AB torture camp at Dalim Hotel by two trucks parked at that place.

**339.** P.W.8 in addition to the fact of their capture and bringing to the AB torture camp where they were kept confined described how he was subjected to inhuman torture and detained in a room.

**340.** P.W.14 Fayeze Ahmed Siddique is the brother-in-law of Saifuddin [victim of charge no.4]. He on 16 December had gone to AB torture camp at Dalim Hotel in search of Saifuddin Khan [victim of charge no.4] but could not have his trace there. However, he found about 100-150 detainees freed including Emran [P.W.1], Iskandar [P.W.8], Jahangir [P.W.16] from the camp.

### **Deliberation and Finding**

**341.** To prove this charge prosecution chiefly relies upon testimony of P.W.18 Sayed Md. Jamaluddin and P.W.19 Sayed Md. Sarwaruddin who were captured by the group of AB men and brought to AB camp at Dalim Hotel where they were caused to inhuman torture in detention on active

approval and in presence of accused Mir Quasem Ali, the learned prosecutor Mr. Sultan Mahmud argued. Besides, P.W.1 Md. Emran captured in conjunction with the same attack and a co-detainee at the camp testified corroborating the fact of detention of P.W.18 and P.W.19. The two victims of this charge together with the victims of charge nos. 8 and 10 captured concurrently were kept in confinement at the camp, in furtherance of common purpose to which the accused was a part and he was consciously concerned with the system criminal activities carried out at AB camp, by virtue of his position of domination over it.

**342.** Conversely, the learned defence counsel argued that this charge relates to abduction, confinement and torture of four other civilians, as alleged apart from P.W.18 and P.W.19. But none of these two witnesses testified anything as to confinement, torture and release of four other persons allegedly captured together with them. It creates doubt as to the events narrated in the charge. It is further argued that P.W.1 Md. Emran is not a credible witness as he failed to say exactly where the AB camp was set up at Sabanghata locality in Chittagong, despite the fact that he was a freedom fighter.

**343.** Let us have glance to the affirmative defence case first. In order to refute the fact of abduction and detention at the AB camp, defence suggests P.W.18 that he and his brothers including cousin Emran [P.W.1] were kept detained in jail in connection with the murder case of Moulana Abul Kashem, to negate the fact of his detention at the Dalim Hotel. The witnesses denied it. Thus, if the affirmative defence case that P.W.18 and his brother Emran [P.W.1] had been in detention on jail, during the alleged period, in connection with the murder case of Moulana Abul Kashem appears to be untrue, particularly when the testimony of P.W.18 and P.W.19 the detainees at the camp implicating accused Mir Quasem Ali and his presence at the AB camp while they were so brutally tortured at the AB camp remains unshaken and inspires full credence.

**344.** The defence, as it transpires, did not attempt to prove the above affirmative defence by adducing evidence, oral or documentary. It is

surprising to note too that defence did not suggest the above affirmative defence case to P.W.1 Emran [the cousin brother of P.W.18]. Rather, it has been suggested to P.W.1 that he was sent in jail by his political rival one Kashem Razakar. P.W.1 denied it. Thus the above affirmative defence case goes on air. Be that as it may, the unshaken version of presence of accused Mir Quasem Ali at the time of causing brutal torture to P.W.18 and active participation in grilling him and his brother P.W.19 at the AB camp at Dalim Hotel not only offers valid indication as to accused's substantial contribution to their confinement and causing torture to them by the AB men, it also establishes that the accused did all these culpable activities in exercise of his authority over the AB men and tacit approval to the criminal acts done to the detainees P.W.18 and P.W.19.

**345.** We have already found from evidence of P.W.12 that 29 November 1971 at about 03:00 am the gang of AB men led by Mir Quasem Ali whom he knew since earlier forcibly brought them, on capture first at the place in front of NMC High School and then keeping them under guard of armed AB men Mir Quasem Ali had left the place. It is important to note that all the victims of charge nos. 8, 9 and 10 were first brought at the place in front of NMC High School, on capture from three different localities and afterwards they all were taken to AB camp at Dalim Hotel by two trucks.

**346.** Integrated evaluation of testimony of P.W.1 and P.W.12 so far as it relates to accused's act of accompanying the gang of perpetrators leads us to the conclusion that accused Mir Quasem Ali physically participated to facilitate and contribute to the commission of offences, at the phase of capturing the targeted civilians.

**347.** Unshaken testimony of P.W.18, one of victims, proves that in presence of Mir Quasem Ali and Shoeb Ali at the AB camp the AB men started beating him up with electric wires, hanging him upside down to extract information as to whether there was any freedom fighter he had helped. Thus, torture usually took place in presence and on approval of accused Mir Quasem Ali.



**348.** Unimpeached testimony of P.W.19, another victim provides that Mir Quasem Ali and his accomplice AB men quizzed him at the AB camp for obtaining information about the freedom fighters and their arms. On refusal to make disclosure the AB men started cruelty beating him up, on order of Mir Quasem Ali and afterwards he was taken to another room on the first floor where Mir Quasem Ali again grilled him about Emran [P.W.1] and on refusal to respond he was again beaten up on order of Mir Quasem Ali. Thus it stands proved that causing brutal torture took place twice in presence of accused Mir Quasem Ali and on his explicit order.

**349.** Defence could not refute the version that relates to brutal torture caused to P.W.19 the brother of P.W.18 by the AB men at the camp at Dalim Hotel. Nothing contrary could be brought in respect of the fact of presence of accused Mir Quasem Ali at the AB camp and giving order by him to the AB men to beat him [P.W.19] up, by cross-examining P.W.19.

**350.** Testimony of P.W.1 so far as it relates to indescribable inhumane torture caused to him by electric wire, stick and lethal weapons at the AB camp proves that he was grilled there by Mir Quasem Ali who wanted to know how many arms he had and freedom fighters with him[victim]. Afsar Uddin, one of his [victim] senior college mates [now the general secretary of Chittagong city JEI] was recording his [victim] statement and then he was kept confined in another room. Thus, it stands proved that the objective of causing torture was to obtain information about freedom fighters and their activities. Accused Mir Quasem Ali actively participated to this act sharing common intent of the AB camp and its members.

**351.** If the evidence of these three witnesses is viewed together it involves the accused as being seen and present in the camp with the principal perpetrators, the AB men, at the time of causing torture to the detainees. The defence asserts that the evidence of Prosecution witnesses can be seen to be unreliable. But in absence of any earthly reason this Tribunal is satisfied beyond reasonable doubt from the evidence of P.W.18, P.W.19 and P.W.1 that the accused Mir Quasem Ali used to remain actively and consciously present in the detention room at the camp on the occasion of

the assault caused to them and also took vigorous part in that assault by act of encouragement and providing order to the principals, in furtherance of common design and purpose.

**352.** It appears that four other victims captured together with P.W.18, P.W.19 and P.W.1 could not be produced by the prosecution in support of the charge. But it does not make the accusation brought untruthful. Even testimony of a single witness who is one of number of civilians captured in conjunction with the event of attack is sufficient to prove the event and no corroboration is required. In the case in hand, we have found that as many as three victims [of charge no.9] came on dock to testify their traumatic experience they sustained in their captivity at the AB camp at Dalim Hotel.

**353.** P.W.8 Iskandar Alam Chowdhury is a victimized detainee of charge no.10. On reading of charge no. 9 and charge no. 10 together it appears that the events of bringing the victims, in relation to both charges, at the AB camp at Dalim Hotel, on capture occurred concurrently. Naturally, other detained persons including P.W.8 had fair occasion to see and experience the activities carried out by the perpetrators at the AB camp.

**354.** Testimony of P.W.8 provides corroboration to the fact of abduction and confinement of victims of charge no.9. He was kept detained in a room and as such he may not have opportunity of seeing or knowing the episode of causing tortures to his co-detainees i.e the victims of this charge detained in another room. It does not make the testimony of victims P.W.18 and P.W.19 so far as it relates to causing torture to them at the camp unreliable.

**355.** Unshaken evidence of P.W.14 Fayeze Ahmed Siddique demonstrates too that Emran [P.W.1], Iskandar [P.W.8], Jahangir [P.W.16] had been in protracted captivity at the AB torture camp at Dalim Hotel, on capture by the group of armed AB men. Thus, P.W.8, P.W.14 and P.W.16 have provided significant corroboration to the fact of abduction, confinement of P.W.18 and P.W.19 the victims of charge no.10. Therefore, their prolonged confinement and the fact of being subjected to untold torture caused to them, as narrated by the P.W.18 and P.W.19 inescapably prove the

commission of offences forming a chain of system criminal transaction and cruelties, in furtherance of common purpose and design.

**356.** Was it practicable, in reality, for each and every detainee at the camp to see or know the fate of all of his co-detainees there? Naturally, it was not possible. Thus, failure of P.W.18 and P.W.19 to narrate the fate of other four victims captured with them does not affect the accusation brought. Four other victims who have not been examined were forcibly brought to AB camp, on capture in conjunction with the same event of attack as has been testified by P.W.18, P.W.19 and P.W.1 and presumably they were also subjected to torture in their captivity in accomplishing the same objective. We are not in agreement with what has been argued by the learned defence counsel. Thus, mere non examination of four other victimized detainees by itself does not render the accusation untrue.

**357.** P.W.1 Md. Emran could not say exactly where the AB camp was set up at Sabanghata locality in Chittagong. But merely for this reason his sworn testimony cannot go on air in its entirety, as argued by the defence. A person may not be able to recollect all the matters occurred in 1971 due to lapse of long passage of time. It does not make him incredible at all.

**358.** Accused Mir Quasem Ali has been indicted for abetting and facilitating the commission of crimes narrated in charge no.9. The charge framed also alleges that on plan and direction of the accused the gang of perpetrators the armed AB men carried out the task of capture of targeted civilians. 'Plan' is not a tangible act. It is to be inferred from circumstances. Even 'directing' or 'ordering' also may not always be tangible. It is to be inferred from the conduct or act, prior amid or subsequent to the events, of the accused.

**359.** On totality of evidence and circumstances disabused above, it has been proved that accused Mir Quasem Ali accompanied the gang of armed of AB men in accomplishing the act of violent capture of non combatant civilians by launching attack. The series of criminal activities including the act of forcible capture carried out was of course in furtherance of common

plan and purpose. Accused's act of 'accompanying' by itself denotes that he was a part of common plan and design and had 'participation' to the act of confinement and torture too as the integrated chain of his acts and conduct, amid and subsequent to act of abduction, formed part of attack that in fact substantially contributed and facilitated the whole system transaction of the criminal acts constituting the offences of abduction, confinement and torture perpetrated by the AB members of the camp.

**360.** At the same time, accused's control and substantial influence on the AB camp and its members that has already been revealed in the preceding deliberation on other charges coupled with his admitted potential status in the Chittagong ICS directs to the conclusion that not only he accompanied the perpetrators but also 'guided', 'influenced' and 'induced' them to accomplish the actual commission of the act of capture of selected civilians that eventually resulted in their confinement and torture at the AB camp at Dalim Hotel. Considering the context and relationship of accused with the AB men and the AB camp, as found from evidence of P.W.18 and P.W.19 it would be quite logical to be with the inference that such 'influence', 'guidance' and 'inducement' rather directed the perpetrators in committing the series of criminal acts including the act of 'abduction'.

**361.** Thus, it stands proved beyond reasonable doubt that accused Mir Quasem Ali remained actively and consciously present at the camp and by his act of ordering and approval he knowingly participated to the chained process of confinement and causing torture to the victimized detainees P.W.1, P.W.18 and P.W.19. Accused Mir Quasem Ali used to remain at the camp not as a mere innocent spectator. Rather, he aggressively supported, guided, induced, directed and ordered the AB men the principals in carrying out the criminal acts constituting the offences of confinement and torture, in furtherance of common purpose and design. Therefore, accused Mir Quasem Ali incurred liability under section 4(1) and 4(2) of the Act of 1973 for the offences of abduction, confinement and torture as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973.

## Adjudication of Charge No. 10

[Abduction, confinement & Torture of (1) Zakaria, (2) Md. Salahuddin alias Chuttu Miah, (3) Iskandar Alam Chowdhury, (4) Md. Nazim Uddin along with many others from the area of Najirbari on 29th November, 1971

**362. Summary Charge:** This charge relates to the event of abduction of **Md. Zakaria, Md. Salahuddin** alias Chuttu Miah, **Iskandar Alam Chowdhury, Md. Nazim Uddin** along with many others from the area of Najirbari on the following of 29th November, 1971 at about 4.30/5.00 a.m. by the armed members of Al-Badar Bahini on instruction of accused Mir Quasem Ali and first they were taken to in front of N.M.C High School and then to the Torture Centre of Al-Badar Bahini situated in Dalim Hotel at Andarkilla under Kotwali police station. On accused's direction members of Al-Badar Bahini tortured them keeping confined there. The victim Md. Nazimuddin was released from the Torture Centre on 30th November, 1971 as he was under age, and after 7/8 days victim Md. Zakaria was released on the request of his father, and another victim Md. Salahuddin alias Chuttu Miah was released on 11/12th December, 1971 on the request of his relative, and finally the victim Iskandar Alam Chowdhury was released from the said Torture Centre on 16<sup>th</sup> December, 1971, the Victory Day of Bangladesh.

**363.** The accused has been charged for abetting and facilitating the commission of offences of abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which the accused under Section 4(1) and 4(2) of the Act.

### Witnesses

**364.** Prosecution presented evidence of P.W.8 Iskandar Alam Chowdhury, P.W.9 Md. Salauddin @ Chuttu Mia, P.W.10 Md. Zakaria and P.W.11 Md. Nazimuddin. All of them are victimized detainees. Apart from them prosecution depends upon testimony of P.W.1 Sayed Md. Emran [co-detainee] and P.W.12 [captured along with the detainees of charge no.8]. In addition to narrating the criminal acts constituting the offence as narrated in the charges the detainee witnesses testified what they saw and experienced

at the AB camp during their prolonged detention which seem to be relevant on material particular in respect of other charges too.

## **Evidence**

**365. P.W.8 Iskandar Alam Chowdhury** was a ground engineer of Pakistan air force and was posted in Mouripur air base in Karachi [in the then West Pakistan]. Fleeing from work place he came to Chittagong during first part of November 1971 and joined the 'Emran group' of freedom fighters. On 28-29 November 1971, he had participated in the front fight against Al-Badar force at Khaja Road, Chittagong and then secretly returned home for spending night. But at about 04:00 am the AB members and Pakistani army by launching a raid caught him and picked him up first to the place in front of NMC High School wherefrom along with other persons brought there on capture he was taken to the torture camp at Dalim Hotel by truck.

**366.** This is the version about his being abduction or forcible capture by the group of AB men accompanied by Pakistani army. This version could not be controverted by the defence. It has not been specifically denied even in cross-examination.

**367.** P.W.8 next described how he was subjected to degrading treatment at the camp at the instance of accused Mir Quasem Ali. He stated that about 1 or days after bringing him at the camp he was taken to a room on the first floor and some one started beating him up by electric wire and then removed his blindfold when Mir Quasem Ali grilled him for exposing information about freedom fighters and their positions. Mir Quasem Ali told that he would be killed if he did not make disclosure about the freedom fighters. On 16 December he got release from captivity as the local people rescued him and other detainees

**368.** In cross-examination, P.W.8 denied the suggestion put to him that he for the first time narrated the description he made before the Tribunal in respect of torture implicating accused Mir Quasem Ali. P.W.8 also denied that he was sent to jail as he fled from his work place.

**369.** P.W.9 Md. Salauddin @ Chuttu Mia is another victim detainee. He is brother's son of P.W.8 and P.W.10 who were also brought at the AB camp on forcible capture along with P.W.9. He narrated that a group of AB members by raiding their house caught him and his uncles Zakaria, Iskandar, cousin Zafar, Nazim and first took at the place in front of NMC High School wherefrom along with other persons brought there on capture they were taken to AB camp at Dalim Hotel by trucks.

**370.** The above piece of evidence involving the act of abduction remained unshaken. Thus it provides corroboration to what has been stated by P.W.8 in respect of abduction and bringing them at AB camp at Dalim Hotel.

**371.** He was grilled by accused Mir Quasem Ali, in his captivity for extracting information about freedom fighters and their arms, P.W.9 stated. He added that Mir Quasem Ali threatened to kill and dump him in the river Kornofuli if he would not disclose the information and then the AB men started causing torture to him. However, later on he was brought back to the ground floor where indicating his[P.W.9] father Mir Quasem Ali asked him whether he was his father. He replied in affirmative. With this Mir Quasem Ali released him by saying '**you are saved for the cause of your father; you must meet me occasionally to provide information about freedom fighters**'. Then he returned back home with his father.

**372.** Defence neither denied the above version specifically nor could controvert it in any manner. Defence simply suggested that he [P.W.9] narrated the above version for the first time before the tribunal. P.W.9 denied it and voluntarily added that he stated it even to the IO.

**373. P.W.10 Md. Jakaria,** another victim corroborating P.W.8 and P.W.10 stated that group of armed AB men brought him and others on abduction to the AB camp at Dalim Hotel, 5-7 days after Eid-ul-Fitre in 1971[last part of November 1071]. He was subjected to torture in a room on the first floor and he saw his brother Iskandar [P.W.8] crying at the stairway on the first floor. At a stage of causing torture some one arrived there and ordered the AB members to beat him up more as he refused to disclose information

about freedom fighters. And then he was again brought back on ground floor's room by the AB men and from conversation of those AB members he learnt that the man who **arrived on first floor room** while causing torture to him and who **ordered to beat him up more was Mir Quasem Ali.**

**374.** The fact of forcible capture and bringing to AB torture camp is found to have been re-affirmed as the P.W.10 in reply to question put to him by the defence stated that some of them were blindfolded when they were taken to Dalim Hotel and there had been two trucks parked in front of NMC High School and that the army accompanied the AB members up to Dalim Hotel.

**375.** Seeing Iskandar [P.W.8] crying at the camp , as stated by P.W.10 appears to have been reaffirmed in cross-examination as P.W.10 stated, in reply to question put by the defence that he saw his brother Iskandar crying on the first floor before he was taken back to ground floor.

**376.** P.W.10 also stated that he however got release from the camp some days after his confinement there on appeal of his father and uncle on condition of providing information to them [AB members]. This piece of version also remained undenied and unimpeached

**377. P.W.11 Md. Nazimuddin** one of four victims of the event of abduction narrated in charge no.10 testified corroborating the act of forcible picking up him and others and confining them at AB camp at Dalim Hotel. He added that at the camp he found mark of violence and torture on body of many detainees. Three-four days after his confinement he was taken before **Mir Quasem Ali and quizzed him** for extracting information about freedom fighters. But he could not provide any information and then Mir Quasem Ali freed him, on his father's appeal on condition to keep contact by providing information as asked for charge

**378. P.W.1 Sayed Md. Emran** who was captured in conjunction with the same event of attack corroborates the fact abduction of four victims of



charge no.10 as all of them were brought to AB camp at Dalim Hotel eventually from the place in front of NMC High School where they were brought there first.

**379. P.W.12 Md. Hasan** was also brought at the place in front of NMC High School along with other persons on capture where he found many other persons brought there on capture from other places and they were taken to AB camp by two trucks by the AB members. He however was released considering his tender age.

### **Deliberation and Finding**

**380.** The learned prosecutor, during summing up, contended that the events narrated in this charge has been proved by the evidence of victim detainees who have been examined as P.W.8, P.W.9 P.W.10 and P.W.11. Additionally, P.W.1 a co-detainee and P.W.12 have testified some relevant and material facts providing corroboration to the evidence of above direct witnesses. Defence could not controvert their testimony. All of those witnesses narrated how the accused Mir Quasem Ali participated to the act of grilling and causing torture forming a series of system criminal activities. Accused's act and conduct at the AB camp as revealed is a valid indication of his authority and influence over the camp and thus he incurred liability also under the theory of civilian superior responsibility.

**381.** Conversely, attacking the credibility of P.W.8 and P.W.9 the learned defence counsel chiefly argued that they are not reliable witnesses as their testimony will appear to be inconsistent, on material particular, with what he stated to Investigation Officer.

**382.** It appears that four victimized detainees came on dock to depose. All of them were in captivity at the AB camp at Dalim Hotel. They have testified the experience of their own on the traumatic events at the camp. Cumulative evaluation of their testimony eventually may lead us to the conclusion as to their confinement and torture.

**383.** Defence argued that P.W.8 and P.W.9 did not narrate what they have testified before the Tribunal about torture implicating accused Mir Quasem Ali in their earlier statement made to IO. And as such reliance cannot be place upon his exaggerated testimony on material particular. Such contradictory version deserves exclusion from consideration, defence argued.

**384.** It is to be noted that earlier statement made to any non judicial body is not evidence. The Act of 1973 does not provide any mandatory provision of reducing witness' statement in writing during investigation. The observation of the Appellate Division rendered in the case of *Abdul Quader Molla* does not permit the Tribunal to take any such omission occurred in earlier statement into account. The **Appellate Division** observed that – “This word ‘**contradiction**’ is qualified by the word ‘examination-in-chief’ of a witness. So, the contraction can be drawn from the statements made by a witness in his' examination-in-chief’ only, not with respect to a statement made to the investigating officer of the case in course of investigation [**Page 196 of the Judgment**].”

**385.** On this issue the Tribunal cannot go beyond the finding and observation rendered on it [contradiction] by the Appellate Division. **The Appellate Division** in the case of *Abdul Quader Molla* observed that – “ There is no scope to draw contradiction of the statement of a witness made in course of examination-in-chief with his/her earlier statements made to the investigating officer or other agency [**Page 205 of the Judgment**]”. Next, for obvious reason defence could not ask the P.W.8 and P.W.9 directly that they did not narrate any such statement before the IO, by drawing attention to their earlier statement. Thus, for the reason of mere omission in recording any such particular in their earlier statement, it cannot be readily inferred that P.W.8 and P.W.9, during investigation did not disclose it to IO or now they have made an embellishment.

**386.** Even if we allow the above version to be excluded from consideration, accepting the defence argument the fact of abduction and confinement remained unimpeached. P.W.8 was sent to jail as he came in Chittagong fleeing from his work place illegally, defence specifically suggests. But there has been no evidence or indication whatsoever to substantiate this affirmative defence case.

**387.** Now, the fact of prolonged confinement at the AB camp at Dalim Hotel together with the fact of his having active association of a group of freedom fighters led by Emran[P.W.1] provides credibility to what P.W.8 has testified in respect of causing torture to him at the camp.

**388.** P.W.9 denied the suggestion put to him in cross-examination by the defence that he narrated the version of his being tortured and grilled by accused Mir Quasem Ali at the AB camp for the first time before the Tribunal. Rather, he stated that he narrated it also to the IO. It is to be noted that the observation of the Appellate division in the judgment of Abdul Quader Molla does not allow us to see whether the witness omitted to state any fact to his earlier statement made to IO. Next, responsibility of non recording of any particular matter by the IO does not tarnish sworn testimony of that witness particularly when he states before the Tribunal that he narrated all that even to the IO.

**389.** In view of observation of the Apex Court we deem it not required to make further discussion on it excepting to record the view that not any earlier statement made to any non judicial forum but the sworn testimony shall be regarded as 'evidence' and the same is to be weighed by taking the inconsistencies, if any, between his statement made in examination-in-chief and cross-examination into account. But it does not transpire that testimony of P.W.9 suffers from any such glaring inconsistencies. Rather, the above version incriminating the accused Mir Quasem Ali with the act of confinement and torture remained unimpeached in cross-examination.

**390.** It appears that defence does not dispute the release of P.W.9 from the AB torture camp few days after he was brought there on capture. Be that as it may, the fact of his being in confinement there stands proved and it extends corroboration to what has been stated by his co-detainee P.W.8.

**391.** Seeing Iskandar [P.W.8] crying at the camp , as stated by P.W.10 appears to have been reaffirmed in cross-examination as P.W.10 stated, in reply to question put by the defence that he saw his brother Iskandar crying on the first floor before he was taken back to ground floor.

**392.** P.W.10 also stated that he however got release from the camp some days after his confinement there on appeal of his father and uncle on condition of providing information to them [AB members]. This piece of version also remained undenied and unimpeached.

**393.** It is to be seen whether the accused conducted to promote the objective of system cruelties and such objective can be furthered by a diversity of accused's acts, not only by giving explicit orders to the principals. The accused shall not have exoneration if is found to have acted in any manner which eventually facilitated the actual carrying out of the criminal acts constituting the offence of confinement and torture.

**394.** P.W.8 Iskandar Alam Chowdhury a co-detainee was also subjected to degrading treatment at the camp at the **instance** of accused Mir Quasem Ali, P.W.8 stated. It remained unshaken. He stated too that he was taken to a room on the first floor of Dalim Hotel and some one started beating him up by electric wire in **presence** of accused Mir Quasem Ali who **grilled** him for exposing information about freedom fighters and their positions, and also **threatened to kill** if he would not make disclosure as asked.

**395.** P.W.9 Md. Salauddin @ Chuttu Mia one of victims was grilled by accused Mir Quasem Ali, in his captivity at the AB torture camp for extracting information about freedom fighters and their arms, as revealed from his unshaken testimony. At a stage, Mir Quasem Ali threatened to kill and dump him in the river of Karnofuli if he would not disclose the information and then the AB men started causing torture to him.

**396.** That is to say, accused Mir Quasem Ali remained **present** not as a mere spectator at the execution site [AB camp] at the time of causing torture. He himself **grilled** the detained victim, **threatened to kill too**. Objective was to obtain information about freedom fighters and their arms. Such act and conduct of accused combined indicate that he had significant level of influence and control on the camp and its member Al-Badars.

**397.** Testimony of P.W.10 Md. Jakaria the brother of detainee P.W.8 Iskandar Alam Chowdhury also depicts that in his captivity he was brutally

tortured in **presence** of accused Mir Quasem Ali who **quizzed** him, **ordered** the AB men to beat him up again.

**398.** It is also found that three-four days after confinement P.W.11 Md. Nazimuddin was taken before Mir Quasem Ali who himself **quizzed** him, in furtherance of common purpose and design. However Mir Quasem Ali freed him, on his father's appeal on condition to keep contact by providing information as asked for charge. Agreeing to conditional release to a detainee signifies again Mir Quasem Ali's sole authority to decide the fate of detainees at the camp.

**399.** Acts of torture must aim, through the infliction of severe mental or physical harm, to achieve a certain outcome or purpose. It is quite patent that the detainees brought at the AB camp, on capture were subjected to degrading mistreatment and torture for the purpose of obtaining information about the freedom fighters whom they considered as 'miscreants'

**400.** Considering the context and purpose of apprehending the victims forcibly it may reasonably be presumed that the civilians so kept detained illegally at the AB camp were in an exacerbated situation of vulnerability that created a real risk of violating their rights such as the right to be treated with humanity and dignity. This presumption gains support from the testimony of victimized detainees who described the harrowing episode of brutal mistreatment caused to them in their captivity.

**401.** It has been proved too that in exercise of authority indeed accused Mir Quasem Ali had allowed conditional release of P.W.9 and P.W.11. This authority obviously heightened his level of control over the AB torture and detention camp. Indisputably the accused being at the '**leadership level**' effectively encouraged, instigated, abetted, approved and provided moral support to the AB members in launching attack directing the selected non-combatant freedom fighters and pro-liberation Bangalee civilians.

**402.** We have already viewed that the act of abduction, confinement and torture formed a chain of system cruelties and criminal activities. One

phase of criminal act is linked to another phase of criminal act. In accomplishing such chained system cruelties at the AB camp at Dalim Hotel, the execution site, to further common purpose the camp turned into a 'criminal enterprise' to which accused Mir Quasem Ali was a conscious part. For it has been proved beyond reasonable doubt that in captivity all the four victims [P.W.8, P.W.9, P.W.10 and P.W.11] were subjected to brutal torture in presence and on explicit instigation and order of accused Mir Quasem Ali.

**403.** On totality of evaluation of above pertinent evidence of victim detainees [P.W.8, P.W.9, P.W.10 and P.W.11] we are persuaded to pen our finding that the conduct, act, behaviour of the accused Mir Quasem Ali at the camp directing the detained victim, which have been convincingly proved, are thus qualified to be the constituent of 'participation' to the accomplishment of the crimes by the AB members. By act of being present at the AB's torture camp and behaving brutally with detained victims and providing 'moral support' and 'instigation to the AB members inevitably formed part of attack which had substantial effect to the actual commission of the crime. Thus, it can be legitimately concluded that the accused Mir Quasem Ali was 'concerned' in the commission of the criminal acts caused to the detainees forming chained system cruelties. Therefore, accused Mir Quasem Ali incurred liability under section 4(1) and 4(2) of the Act of 1973 for the offences of abduction, confinement and torture as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973

### **Adjudication of Charge No. 13:**

#### **[Abduction, confinement and torture of Sunil Kanti Bardhan]**

**404. Summary Charge:** This charge involves the event of abduction of Sunil Kanti Bardhan alias Dulal on any day at the end of November, 1971 from Chaktai Shampanghat by some armed members of Al-Badar force, on instigation of Mir Quasem Ali when he was coming back along with his wife, baby-child and a boy-servant from the house of his friend Golam Mostafa. On abduction he was taken to the torture centre situated at Chaktai Dost Mohammad Panjabi Building (Chamrar Gudam) and tortured him therein. On 14th December, 1971 Sunil Kanti Bardhan alias Dulal along

with some other civilians were shifted from that torture centre to another torture centre situated in Dalim Hotel. On 16th December, 1971, victim Sunil Kanti Bardhan alias Dulal along with others were released by Yusuf, a tenant of him from the said torture centre. Therefore, accused Mir Quasem Ali has been charged for abetting and facilitating the commission of offences of abduction, confinement and torture as crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which the accused under Section 4(1) and 4(2) of the Act.

### **Witnesses**

**405.** Prosecution depends upon the victim Sunil Kanti Bardhan @ Dulal who has been examined as P.W.4, to prove this charge. Prosecution also drew attention to testimony of P.W.14 who proved the fact of victim's release from the AB camp at Dalim Hotel on 16 December 1971.

### **Evidence**

**406. P.W.4 Sunil Kantia Bardhan [70]** testified how he was abducted and kept confined. His testimony demonstrates that after 25 March 1971 they had gone to their native village leaving home in Chittagong town and in the month of May they returned to their home in Chittagong town due to atrocities committed by the Pakistani army around their native village and one month after they again had gone back to their native home. In the month of October they returned to their home in Chittagong town. But due to frequent firing around the town his parents had gone to their native village and he, along with his wife and baby child remained in Chittagong town at Golam Mostafa's house.

**407. P.W.4** went on to state that on any day at the end of November due to deterioration of situation while he along with his wife and baby child was on the way to his native village, armed AB men apprehended them from *Chaktai* area and brought him to the AB camp stationed at Dost Mohammad Panjabi Building. Shah Alam was the commander of the camp. During his confinement at the camp he saw killing of many of detainees at

the bank of Chaktai canal. He was subjected to physical and mental torture in various ways during his confinement there.

**408.** P.W.4 further stated that on 13 December one AB member Kamrul informed him that he would be shifted to Dalim Hotel camp and on the following morning he was taken blindfolded there[AB camp at Dalim Hotel] by a truck and kept confined in a room where he found Mir Quasem Ali who started grilling them. But on refusal to make disclosure Mir Quasem Ali told that all of them would be killed and then he and five other detainees were kept there confined and about 10:00 am they[Mir Quasem Ali and his cohorts] had gone to their respective work places. Then they removed their blindfold and tried to sleep. On 15 December they could not sense any sound even by opening the windows of the room. On 16 December, at the early morning the local people and his neighbours got him and others released there from breaking the door of the room.

**409.** Defence denied what has been stated by P.W.4 incriminating accused Mir Quasem Ali. P.W.4. on cross-examination admitted that he first saw the accused Mir Quasem Ali in the Tribunal.

**410. P.W.14 Fayez Ahmed Siddique** is the brother-in-law of Saifuddin Khan [victim of charge no. 4]. He stated that in the early morning of 16 December he rushed to the AB camp at Dalim Hotel for searching his sister's husband Saifuddin Khan but could not have any trace. He however, during his staying there found 100-150 detainees released and of them he saw Jahangir Chowdhury of Kadamtali, Emran[P.W.1] , Sunil Kanti Bardhan [P.W.4]of Hajari lane, Iskander Alam Chowdhury and Nasiruddin Chowdhury of Patia.

### **Deliberation and Finding**

**411.** The learned prosecutor argued that release of victim from AB camp at Dalim Hotel itself proves that he was abducted, detained and tortured there and the accused being in position of authority of the camp was responsible for the criminal acts committed by the AB men.



**412.** The learned defence counsel, conversely, argued that the victim was not brought to AB camp at Dalim hotel on abduction, alleged. Mere his release from Dalim Hotel does not prove that he was subjected to torture there and accused had involvement with it in any manner. P.W.4 had no reason of recognizing the accused at the camp as claimed. Prosecution failed to prove accused's participation to the commission of offences alleged.

**413.** First, the narration made by P.W.4 so far as it relates to frequent going to native village and coming back to home at Chittagong town seems to be unusual, considering the context prevailing in 1971. However, there might be exception in this regard. According to P.W.4 it appears that some armed AB men brought him to their camp at Dost Mohammad Panjabi Building, on capture from Chaktai locality on any day at the end of November 1971.

**414.** There has been no evidence to show that accused Mir Quasem Ali was in leadership and command of the AB camp at Dost Mohammad Panjabi building too. Testimony of P.W.4 does not demonstrate that during his detention he saw the accused present at that camp. Rather, according to P.W.4 it was one Shah Alam who was the commander of the camp stationed at Dost Mohammad Panjabi Building.

**415.** In the case in hand, all the charges center on criminal activities carried out at the AB camp set up at Dalim Hotel and the accused has been indicted for abetment and facilitation to the commission of criminal acts committed there by the AB men, in furtherance of common purpose and design as he had influence and domination over that camp and culpable association with it.

**416.** Prosecution does not aver that accused Mir Quasem Ali was responsible for all the criminal activities carried out by the AB force in Chittagong or he was in leadership and command of all the AB camps at Chittagong. Besides, we are dealing with the system criminal acts and atrocious activities carried out at the AB camp set up at Dalim Hotel. Therefore, in absence of any evidence and rationale indication as to accused's affiliation with the AB camp at Dost Mohammad Panjabi

Building he cannot be held concerned and liable for the act of abduction and confinement of Sunil Kanti Bardhan, even if the testimony of P.W.4 as regards his confinement there is believed to be true.

**417.** According to P.W.4, next phase of his confinement starts on 14 December morning when he was taken blindfolded to AB camp at Dalim Hotel from the earlier camp. P.W.4 stated that after bringing him and others blindfolded at this camp they were kept confined in a room where he found Mir Quasem Ali who started grilling them. But on refusal to make disclosure Mir Quasem Ali told that all of them would be killed and then he and five other detainees were kept confined in the room under lock and key and at about 10:00 am they [Mir Quasem Ali and his cohorts] had gone to their respective work places. Then they removed their blindfold and tried to sleep.

**418.** First, P.W.4 does not complain of causing any kind of torture to him during his captivity at Dalim Hotel camp. The charge framed too does not allege so. Even the testimony as regards causing torture to him during his captivity at the camp at Dost Mohammad Panjabi Building does not tend to show any specificity, although the fact of his being confined there is proved.

**419.** Next, how could the P.W.4 see and recognise the person quizzing him as Mir Quasem Ali, in blindfolded condition? How he became aware that leaving them confined there Mir Quasem Ali and his cohorts had gone to their respective work places? The Tribunal notes that it does not even divulge from the testimony of any of victimized detainees that they witnessed the presence and activities of accused Mir Quasem Ali even till 14 December, 1971. Rather, they found him actively present almost instantly after their confinement there despite the fact that nearly all of them were kept there detained till 16 December 1971. Besides, since the charge framed does not allege causing torture to P.W.4 at the camp at Dalim Hotel the claim of being grilled by accused on 14 December, as stated by P.W.4, does not appear to be credible.

**420.** Therefore, statement made by P.W.4 as regards seeing accused Mir Quasem Ali at the AB camp at Dalim Hotel gravely suffers from credence. P.W.4 seems to have made exaggeration. At best it can be said to have been proved that P.W.4 was shifted to AB camp at Dalim Hotel on 14 December wherefrom he was brought freed by the locals on 16 December along with other detainees as corroborated by P.W.14. But in absence of any indication as to accused's active presence at the camp on 14 December 1971 and absence of his concern with the act of bringing P.W.4 at the camp at Dost Mohammad Panjabi Building on abduction he cannot be held liable. Prosecution has failed to prove the arraignment narrated in charge no.13 brought against accused Mir Quasem Ali.

### **Adjudication of Charge No.14**

**[Abduction, confinement & torture of Nasiruddin Chowdhury at the end of November 1971]**

**421. Summary Charge:** This charge alleges that at the end of November, 1971 at dead of night group of some armed young members of Al-Badar force led and accompanied by accused Mir Quasem Ali a leader of Islami Chhatra Sangha abducted Nasiruddin Chowdhury from the house of A.J.M. Nasiruddin, situated at Nazir Ahmed Chowdhury Road under Kotwali police station, Chittagong and took him to the Torture Centre situated at Dalim Hotel and on accused's direction and in his presence they tortured him therein for many days. On 16<sup>th</sup> December, 1971 victim Nasiruddin Chowdhury along with 100/150 persons got release from that Torture Centre as rescued by the local people. Therefore, accused Mir Quasem Ali has been charged for abetting and facilitating the commission of offences of abduction, confinement and torture as crimes against humanity as specified in section3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, for which the accused incurred liability under Section 4(1) and 4(2) of the Act.

### **Witnesses**

**422.** Prosecution, in order to prove this charge, produced and examined the victim Nasiruddin Chowdhury as P.W.3. In addition to this witness prosecution depends upon the P.W.1 Sayed Md. Emran, inmate of the

torture camp and P.W.14 Faye Ahmed Siddique who allegedly saw the victim and other detainees being released by the local people on 16 December 1971.

## **Evidence**

**423. P.W.3 Nasiruddin Chowdhury [60]** was a freedom fighter. On receiving training in India he returned back home in the mid part of June 1971 and entered Chittagong in October 1971 and had been staying at the house of A.J.M Nasiruddin situated at Najir Ahmed Chowdhury road at Andarkilla, Chittagong and it was his secret shelter, P.W.3 stated. This piece of version remained unshaken.

**424.** As regards his forcible capture and torture caused in captivity at the AB camp at Dalim Hotel pursuant to the attack P.W.3 stated that one day at the end of November, 1971 at the dead of night the group of AB members picked him up as he was sleeping and took him blindfolded to Dalim Hotel, beating him on the way. After taking at Dalim Hotel he was kept confined in a shadowy room and the AB men started beating him up for exposing information about arms and location of freedom fighters. On failure to get information from him the AB members had left the room removing his blindfold. Few minutes later Mir Quasem Ali entered into the room accompanied by AB members. Mir Quasem asked his cohorts why they could not extract any information from him [P.W.3] and ordered to beat him up more. With this the AB members started beating him up indiscriminately with stick, iron rod, electric wire. At a stage Mir Quasem Ali himself asked him – *‘who are your co-freedom fighters? Where are their shelters and arms?’* But on his refusal to make any disclosure they continued beating him up causing bleeding injuries and at a stage they had left the room.

**425.** Defence, as it appears, did not specifically deny the above version on material particular. Even it remained unshaken too. Rather, the fact of causing torture in confinement at AB camp at Dalim Hotel appears to have been re-affirmed in cross-examination as P.W.3 in reply to question put to him by the defence stated that he was kept confined almost in the room

where he was first taken and detained. But he was subjected to torture taking in different rooms as well.

**426.** P.W.3 also stated that he and other detainees were very often subjected to torture in different rooms of the camp [Dalim Hotel] and the AB members increased the extent of causing such torture to them when it was conversed amongst the AB members that Mir Quasem Ali became injured due to bombarding at Chittagong airport on 06 December 1971. From conversation of AB members at the camp at Dalim Hotel he [P.W.3] came to know that there had been two other AB torture camps apart from that at Dalim Hotel—one was at Dewan Hotel and another was at ‘Chamrar Gudam’.

**427.** In respect of release, P.W.3 stated that on 16 December 1971 the local people by breaking door rescued him and other detainees from the camp. He saw, at the time of coming out from the camp, Jahangir Alam Chowdhury and Sayed Md. Emran[P.W.1] who were freedom fighters and kept detained at the camp.

**428.** P.W.1 Sayed Md. Emran a co-detainee and P.W.14 Fayeze Ahmed Siddique corroborate the fact of release of Nasiruddin Chowdhury [victim P.W.3]. Their version remained unshaken. Even defence did not deny this relevant fact that provides essential corroboration to the fact of Nasiruddin Chowdhury's confinement at that camp.

## **Deliberation and Finding**

**429.** The learned prosecutor argued that the victim Nasiruddin Chowdhury himself testified as P.W.3. He narrated how he was captured, kept confined at AB camp at Dalim Hotel and tortured in captivity. His testimony depicts accused's presence and participation to the act of causing torture and accused's conversation with his cohorts provides fair indication of his position of domination and authority over the camp and AB members. Additionally, P.W.1 Sayed Md. Emran [P.W.1] another detainee and P.W.14 have corroborated the fact that the victim got release from the camp on 16 December and it proves the fact of victim's confinement.

**430.** Mr. Mizanul Islam the learned defence counsel argued that P.W.3 is not a credible witness. He was a freedom fighter as claimed by him and this was the reason of his abduction from his secret shelter by the AB men. P.W.3 does not claim that at the time of raiding the perpetrators did not make search of his shelter. It is not believable that the perpetrators without making any search of his shelter simply took him at the AB camp on capture. It has been further argued that there has been no evidence that accused Mir Quasem Ali accompanied and led the group of AB members in abducting the victim Nasiruddin Chowdhury. Therefore, he cannot be held liable for the offences with which he has been charged.

**431.** As regards first argument advanced by the defence the Tribunal notes that it is true that there has been no claim or evidence to show that the perpetrators made a search of shelter wherefrom P.W.3 was forcibly captured. But it does not make what has been testified by P.W.3 as regards his abduction untrue in its entirety. It is to be noted too that the defence did not cross-examine P.W.3 on this matter. Besides, mere lack of detail precision in witness's testimony is not unusual and we are to see whether the victim was so abducted and kept confined at the AB camp at Dalim Hotel.

**432.** On query by the Tribunal the learned defence counsel however conceded that entire evidence of witness shall not go on air merely for the reason that any part of testimony is unusual or inconsistent. Thus, it would be jurisprudentially logical if, in the process of appraisal of evidence, we separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon. 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*."

**433.** The fact of release victim P.W.3 from the camp and seeing Jahangir Alam Chowdhury and Sayed Md. Emran [P.W.1] gains corroboration from the testimony of P.W.14 Fayeze Ahmed Siddique [68] brother-in-law of Saifuddin Khan [victim of charge no.4]. P.W.14 stated that on 16

December 1971 he had gone to the AB camp at Dalim Hotel in search of Saifuddin Khan but could not have his trace there. He however saw 100-150 detainees freed from the camp and of them he could recognise Jahangir Alam Chowdhury, Emran [P.W.1], Iskandar Alam Chowdhury and Nasiruddin Chowdhury [P.W.3], the victim of charge no.14.

**434.** P.W.1 Sayed Md. Emran a co-detainee also corroborates that on 16 December 1971 about 100-150 detainees including him [P.W.1] and Nasiruddin Chowdhury [victim P.W.3] of Patia got release from the AB camp with the help of freedom fighters.

**435.** The fact of seeing the victim Nasiruddin Chowdhury [P.W.3] being released from the AB camp at Dalim Hotel on 16 December 1971 as stated by a detainee witness P.W.1 and P.W.14 who had gone there on 16 December 1971 in search of his sister's husband Saifuddin Khan another detainee [victim of charge no.4] provides vital corroboration to the fact of Nasiruddin Chowdhury's stretched confinement at the AB torture and detention camp at Dalim Hotel. And 'confinement' itself speaks a lot about his abduction. For without the act of abduction or forcible capture, act of confinement would not have occurred. Thus, it has been proved beyond reasonable doubt that Nasiruddin Chowdhury was kept in prolonged captivity, on capture at the AB camp at Dalim Hotel. .

**436.** What was the role of accused in abducting the victim Nasiruddin Chowdhury? The charge alleges that the group of AB members led and accompanied by accused Mir Quasem Ali forcibly captured him from his shelter. It is true that P.W.3 does not state that accused Mir Quasem Ali physically accompanied the gang of perpetrators in abducting him. But does it absolve the accused of liability of the act of abduction of P.W.3 if it is proved that he was so tortured at the AB camp in presence and on order of accused? It has been proved that the victim was so forcibly picked up by the group of AB members and was taken to the AB camp at Dalim Hotel. So the chance of accused's being present with the group of AB members at the time of abducting the victim cannot be brushed aside as he had active association with that camp.

**437.** Who can be called a leader? An individual is termed as a ‘leader’ when his activity aims and involves establishing a common purpose by sharing the vision with others so that they will follow or obey him willingly. Leadership is a process whereby an individual influences a group of individuals to achieve a common objective. Leadership is a process by which a person influences others to carry out an organizational objective. Mir Quasem Ali alleged to have led the gang. The act of abduction is the first phase of the whole and chained system criminal enterprise. If the accused is found to have had part and concern in subsequent phases of chained criminal acts constituting the offence of confinement and torture, logically he is presumed to have had leading part in causing ‘abduction’ as well.

**438.** We have found from unimpeached testimony of victim P.W.3 that few minutes later Mir Quasem Ali entered into the room [at the AB camp] accompanied by AB members. Mir Quasem Ali asked his cohorts why they could not extract any information from him [P.W.3] and ordered to beat him up more. With this the AB members started beating him up indiscriminately with stick, iron rod, electric wire. At a stage Mir Quasem Ali himself asked him – ‘*who are your co-freedom fighters? Where are their shelters and arms?*’ But on his refusal to make any disclosure they continued beating him up causing bleeding injuries and at a stage they had left the room.

**439.** As regards recognition of accused Mir Quasem Ali at the camp, P.W.3 in reply to question put to him by the defence stated, instead of making any exaggeration, that prior to seeing him at Dalim Hotel he did not see and know Mir Quasem Ali. But it does not mean that it was not possible for P.W.3 to recognise the accused at the camp. It transpires from his unshaken evidence that from conversation amongst AB members at the camp he knew that Mir Quasem organised AB force in Chittagong. The conversation made by accused with his cohorts almost instantly after confinement of P.W.3 and ordering the AB men to beat him up more, as stated by P.W.3 provided the detained victim adequate opportunity in recognizing the accused Mir Quasem Ali.



**440.** The above unshaken version speaks a lot, particularly about influence and authority of the accused over the AB camp and proves that accused Mir Quasem Ali was not only a complicit to the commission of torture but he was in steering position of the camp. It transpires too that during detention, P.W.3 and other detainees were very often subjected to torture in different rooms of the camp and the AB members increased the extent of causing such torture to them when it was conversed amongst the AB members that Mir Quasem Ali became injured due to bombarding at Chittagong airport on 06 December 1971. This unshaken and undenied piece of evidence offers the conclusion that the detainees including the victim P.W.3 were caused to inhuman torture, in furtherance of common purpose and design to which the accused Mir Quasem Ali was a part.

**441.** In respect of torture in captivity, evidence of victim P.W.3 demonstrates that almost instantly after confining the P.W.3 at the AB camp at Dalim Hotel accused Mir Quasem Ali appeared and in his presence and on order his cohorts the AB men started beating him up indiscriminately. It signifies that even victim's forcible capture was done within knowledge of accused and he was concerned even with the act of abduction, a part of the chained system criminal activities.

**442.** Presence of accused even only on single occasion of causing torture coupled with his act and conduct suggests that accused Mir Quasem Ali had conscious approval and endorsement to further criminal acts of causing torture to P.W.3 by keeping him in captivity that had a significant legitimizing or encouraging effect on the principals in continuing the act of torture upon P.W.3. It stands proved too that the AB camp had acted as a 'criminal enterprise' within the knowledge of accused Mir Quasem Ali.

**443.** As regards 'participation' of accused in criminal conduct we recall the observation of the ICTY that "the accused himself need not have participated in all aspects of the alleged criminal conduct." [ *Stakic*, (ICTY Trial Chamber), July 31, 2003, para. 439]. "The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has

been perpetrated.” [*Blaskic*, (ICTY Appeals Chamber), July 29, 2004, para. 48].

**444.** We reiterate that to qualify the act of ‘participation’ an individual need not be present at the crime sites. Even remaining far from the crime site an individual may have capacity to ‘participate’ to the commission of actual crime by his act or conduct and by virtue of his position of domination over the principals. Therefore, it is not required to show or prove that accused Mir Quasem Ali had been present in all the occasions of causing torture to victim P.W.3 at the camp the prime execution site.

**445.** It has been proved that pro-liberation civilians and non-combatant freedom fighters were brought to AB torture camp on capture and then subjected to torture in protracted captivity. Thus, there could be no confinement if there was no act of abduction and there could be no torture if an individual was not in confinement. In the case in hand, accused has been indicted for abetting and facilitating the commission of offences forming a ‘series of system criminal acts’ constituting these offences.

**446.** It is not required to show that accused physically participated at all the three phases of such chained cruelties. In order to determine accused’s liability it is to be kept in mind that participation or aiding and abetting may occur before, during or after the commission of the crime. The AB camp set up at Dalim Hotel turned into a ‘criminal enterprise’ to which accused was an active part. Thus, even a single act or conduct of accused Mir Quasem Ali, before, during or after the commission of the crime, makes him liable for the whole series of criminal acts and chained system cruelties committed at the prime execution site [the AB camp] and even sites of acts of abduction.

**447.** On total evaluation of evidence we arrive at a conclusion that the prosecution has been able to prove it beyond reasonable doubt that victim Nasiruddin Chowdhury [P.W.3] a freedom fighter who had been staying in Chittagong town at the relevant time for carrying out guerilla operations was caught by the AB members and was taken to AB camp stationed at

Dalim Hotel where instantly after his confinement, accused Mir Quasem Ali appeared and started him grilling and ordered to beat him up more as he refused to make any disclosure about freedom fighters and their arms. The victim's status at the time of attack was non combatant civilian. The evidence presented on all the charges relating to abduction, confinement and torture impels to conclude that the criminal activities by the AB members at the AB camp, the prime execution site were carried out in furtherance of common design and objective of which the accused Mir Quasem Ali had full knowledge and he was culpably associated with the camp in exercise of his position of authority and domination. Accused Mir Quasem Ali is thus found to have had participation, by his act and conduct forming part of attack directed against the civilian population, to the accomplishment of the offence of abduction, confinement and torture [of Nasiruddin Chowdhury] as crimes against humanity as specified in section 3 (2)(a)(g)(h) of the International Crimes Tribunal Act of 1973 and is held liable under section 4(1) and 4(2) of the Act of 1973.

## **Adjudication of Charge No. 11**

### **[Murder of youth freedom fighter Jasim in confinement at AB camp]**

**448. Summary Charge:** This charge involves the event of murder of Jasim in confinement at the AB camp. The charge alleges that at any time after the day of Eid-ul-Fitre held in 1971 the members of Al-Badar Bahini on plan of accused Mir Quasem Ali the then president of Islami Chhatra Sangha [ICS], Chittagong Town Unit abducted Jasim, a Freedom-fighter, from an unknown place of Chittagong town and took him to the Torture Centre of Al-Badar Bahini situated in Dalim Hotel at Andarkilla under Kotwali police station. Thereafter on 28th November, 1971 on accused's direction and hint, the members of Al-Badar Bahini tortured him to death in confinement and then his dead body along with 5(five) other dead bodies of unknown detainees who were also tortured to death by the AB members were thrown into the Karnofuli river. Therefore, accused Mir Quasem Ali has been indicted for abetting and facilitating the commission of offences of abduction, confinement, torture and murder as crimes against humanity as specified under section 3(2)(a), 3(2)(a)(g) and 3(2)(a)(h) of the Act of

1973 and thus accused incurred liability under Section 4(1) and 4(2) of the Act.

### **Witnesses**

**449.** The charge relates to murder of Jasim, a youth freedom fighter in captivity at the AB torture and detention camp at Dalim Hotel. His dead body along with that of some other detainees was dumped to the river Karnofuli, the charge alleges. Accused Mir Quasem Ali has been indicted for planning Jasim's abduction and directing to his confinement and causing torture to death. Prosecution chiefly depends upon (1) P.W.1 Sayed Md. Emran (2) P.W.2 Sanaula Chowdhury (3) P.W.3 Nasiruddin Chowdhury (4) P.W.16 Jahangir Chowdhury and (5) S.M Sarwaruddin. They are the victimized detainees of charge nos. 3, 7,9,14. Apart from them prosecution adduced and examined P.W.17 Hasina Khatun. She is the daughter of Jasim's maternal uncle. She had heard about confinement and killing of her younger cousin Jasim from Advocate Shafiul Alam [co-detainee] and Saifuddin [co-detainee and now is dead]. In addition to these witnesses, prosecution relies upon the book titled **০৫ম তম মগু আব্দে` তে` বুগু , চক্কক্য : 2006** [Material Exhibit-VI , Book's page nos. 37-39 ] authored by Advocate Shafiul Alam [co-detainee and now is dead]. It would be convenient to focus on hearsay testimony of P.W.17 Hasina Khatun first so that it can be duly weighed with the testimony of the detainee witnesses.

### **Evidence**

**450. P.W.17 Hasina Khatun [72]** is the elder cousin sister [daughter of Jasim's maternal uncle] was with the war of liberation by her writings and after independence she worked as the editor of a journal '**Saptahik Sikritee**'. She stated that in 1971 her brother Jasim was student of intermediate class in Chittagong College and he tied him with the war of liberation as a youth freedom fighter and used to visit their home at Beparipara, Chittagong almost regularly. On the Eid-ul-Fitre day Jasim came to her home accompanied by his co-freedom fighter Mansur and they had left in the evening. Afterwards, she could not have any trace of Jasim despite vigorous hunt.

**451.** Defence does not deny the above piece of version. This unshaken version reflects the profile and missing of Jasim. From this version it transpires that Jasim visited P.W.17's house on Eid-ul-Fitre day [third week of November, 1971] for last and since then he remained untraced. Presumably Jasim was caught after he had had left his sister's [P.W.17] home on Eid-ul-Fitre day evening. In cross-examination, it has been reaffirmed that on Eid-ul-Fitre day Jasim and his co-freedom Fighter Mansur visited her home.

**452.** P.W.17 in respect of being aware about the fate of Jasim stated that after independence, she met Advocate Shafiul Alam [a co-detainee] a leader of NAP at the office of Communist Party office at Matin building and asked her about missing of Jasim. With this he [Advocate Shafiul Alam] wanted to know whether Jasim was from Swandep its office. With her reply in affirmative, Advocate Shafiul Alam told that during his captivity in a room at Dalim Hotel [AB camp] the AB men led by Mir Quasem Ali had thrown tortured Jasim to their room and then by removing his [Advocate Shafiul Alam] blindfold he found Jasim in critical condition and within a short while he died. She [P.W.17] started crying hearing him who advised to meet Saifuddin Khan [another co-detainee] too.

**453.** P.W.17 next stated that then met Saifuddin Khan who also narrated the episode and informed her that the dead body of Jasim was dumped to the river of Karnofuli. On her query Saifuddin Khan told that during his captivity at Dalim Hotel [AB camp] one Swapan, an aide at the camp provided him with this information. Advocate Shafiul Alam detailed similar information to him, Saifuddin Khan told her.

**454.** The fact of meeting Advocate Shafiul Alam and Saifuddin Khan [co-detainees], after the independence for having trace of her missing brother Jasim could not be dispelled, by cross-examining P.W.17.

**455. P.W.1 Sayed Md. Emran** narrated how he was subjected to inhuman torture in confinement at the AB camp at Dalim Hotel where he was brought on forcible capture. He stated that the camp was controlled by Mir

Quasem Ali [accused]. He [P.W.1] was taken to a room in the camp where he was subjected to untold torture by thrashing with stick and electric wire. At a stage, by removing his blindfold Mir Quasem Ali himself quizzed him for obtaining information about his co-fighters and arms and ammunition he [P.W.1] had. One Afsar Uddin Chowdhury [now Secretary General of Chittagong City JEI and Editor of Daily Karnofuli] standing by him [accused] had recorded his statement.

**456.** The above decisive version made on the fact of accused's presence at the camp that relates him with the act of confinement of P.W.1 and causing torture to him remained undenied and unshaken.

**457.** P.W.1 went on to narrate that he [P.W.1] was kept detained blindfolded inside a locked room where he could hear screaming of other detainees. Some one of co-detainees removed his blindfold and blotted blood of injuries he sustained with his wearing apparel. Then he discovered there **Sanaulla Chowdhury [P.W.2]**, **Jahangir Alam Chowdhury [C-in-C]** and **Advocate Shafiul Alam** whom he knew since earlier. Through interaction with them [those three detainees] he came to know that one youth freedom fighter **Jasim Uddin** of *Sawandeeep* died in the room where they were kept confined due to torture caused to him [Jasim]. The detainees could know Jasim's name also from one Swapan an employee of the Al-Badar camp. They also became aware from Swapan [worker at the camp] that 3-4 more detainees had been killed in another room and their bodies were dumped to Karnofuli rover.

**458.** Another victim **Md. Sanaulla Chowdhury** who was taken to AB camp at Dalim Hotel on capture on 27 November after the dusk and kept confined there testified as **P.W.2** that at a stage of his confinement he was taken to a room on second floor where the AB men started grilling him and after the AB men had left the room he lightened his blindfold when he found there some other detainees including Jahangir of *Kadamtali* and after a short while another man was thrown to their room and he was Advocate Shafiul Alam whom he knew since earlier.

**459.** P.W.2 in respect of seeing tortured Jasim in their room at the AB camp, as hurled by the AB men led by accused Mir Quasem Ali stated that on the following day they could hear scream due to causing torture on the top floor and at a stage it was stopped and someone was brought to their room when one commanded the AB men by telling *“the dirty fellow has not yet died, throw him inside so that the detainees there can understand the consequence of not disclosing truth”*. With this they threw down a youth inside their room and had left the place by keeping the room locked. Advocated Shafiul Alam [co-detainee in the room] whispered that **“he [the man who commanded] was Mir Quasem Ali, ‘Bangalee Khan’, commander of Badar Bahini [AB force]”**. Seeing critical condition of the youth thrown to their room Advocate Shafiul Alam took him on his lap and told that he was Jasim a youth freedom fighter of Swandeeep. Within a short while the youth [Jasim] died on the lap of Shafiul Alam. After dawn, the AB members took out the dead body of Jasim there from.

**460.** On the following day, Swapan a worker at the AB camp informed them that dead body of 4/5 detainees including Jasim , Tuntu Sen and Ranjit Das [victims of charge no.12] who were tortured to death had been dumped to the river of Karnofuli, P.W.2 added. On cross-examination in reply to question put to him by the defence P.W.2 stated that Al-Badar force was headquartered at Dalim Hotel. Thus, the fact of implanting AB detention and torture camp at Dalim Hotel building appears to have been re-affirmed.

**461. P.W.16 Jahangir Alam Chowdhury** [victim of charge no.3], a co-detainee of P.W.1, P.W.2 and Advocate Shafiul Alam corroborates the fact of his being detained in the same room along with the above detainees. He stated that one day, in afternoon, AB member Nurul Afsar [presumably Afsar Uddin Chowdhury as stated by P.W.1] , Mir Quasem Ali and Jalal had hurled a youth named Jasim inside their room and afterwards on seeing him [Jasim] Shafiul Alam told that he [Jasim] had died. Swapan whom they called *‘bhatwala’* [meal supplier] on seeing Jasim told that many other detainees were killed in such a manner and dumped to the river of

Karnofuli. This piece of material evidence could not be controverted in any manner by the defence.

**462. P.W.3 Nasiruddin Chowdhury** is another co-detainee [victim of charge no. 14] at the AB torture camp. Already it has been found proved that he had been in captivity at that camp since the last part of November 1971 and was caused to severe torture. P.W.3 stated that Swapan an employee of the AB camp updated that freedom fighter Jasim of Swandeeep, Tuntu Sen and Ranjit Das of Hajari Goli [victims of charge no.12] were tortured to death on the roof of Dalim hotel [building] and their dead bodies were dumped to the river of Karnofuli.

**463.** Another detainee witness **P.W.19 Md. S.M Sarwaruddin** [victim detainee of charge no.9] testified some relevant facts. He stated that during his confinement at the AB camp at Dalim Hotel, he could hear screaming of persons detained at the camp and saw the armed AB members often moving around different rooms [at the camp] being accompanied by accused Mir Quasem Ali. Sensing arrival of Mir Quasem Ali at the camp, the AB members used to converse that ‘Commander’ and ‘Khan Saheb’ had come and with this the AB members used to intensify their activities and torture upon the detainees, in presence of Mir Quasem Ali.

### **Deliberation and Finding**

**464.** The learned prosecutor argued that the prosecution has been able to prove this charge by the credible testimony of detainee witnesses together with the document, a book titled **ওঁত্ৰম্ৰ ত্ৰম্ৰ মগ্গ আব্ৰত্ৰ তে`বুগ্ৰ , চক্ৰিক্ৰব্ৰ : 2006** [Material Exhibit- VI, Book’s page nos. 37-39 ] authored by Advocate Shafiul Alam a co-detainee [now dead].The book describes when and how he saw the brave but severely tortured victim Jasim had died due to brutal torture inflicted on him, during his confinement in the AB camp. P.W.17 the cousin elder sister had learnt it from Advocate Shafiul Alam and Saifuddin Khan [now dead], co-detainees at the same AB camp. Her hearsay testimony seems to have been corroborated by other evidence and such it carries probative value. The other co-detainees also testified what



they saw and learnt in their captivity at Dalim Hotel's AB camp from Advocate Shafiul Alam and Swapan a worker at the camp.

**465.** The learned prosecutor further contended that the defence could not dispel what they have stated on material particular. Accused was in position of authority and had effective control of the camp and as such he was aware of the activities carried out and about to be carried out at the camp by the AB men. It is immaterial to say that non examination of Swapan, the said worker at the AB camp makes the investigation flawed and he would have testified different, if cited and brought before the Tribunal as witness by the prosecution. There has been sufficient evidence and materials before the Tribunal to necessitate effectual adjudication of this charge involving Jasim's confinement, torture and murder at the AB camp at Dalim Hotel.

**466.** On contrary, the learned defence counsel Mr. Mizanul Islam in arguing on this charge submitted that the accused has been indicted to 'plan' and providing 'direction' to the commission of alleged offence of murder. But there has been no evidence that accused Mir Quasem Ali was involved in designing any such 'plan' and providing 'direction' to the perpetrators in accomplishing the act of murder. The learned counsel went on to contend that prosecution failed to show that the accused was concerned with the act of abduction of Jasim. Swapan, alleged worker at Dalim Hotel, as claimed by the witnesses should have been cited and examined by the Investigating Officer as he allegedly used to provide detainee witnesses with the information about the activities of the camp. But it was not done. P.W.17 allegedly heard the event from Advocate Shafiul Alam. But in his book Advocate Shafiul Alam has not mentioned accused's name anywhere in narrating his memoir on confinement at Dalim Hotel. Thus, learning accused's name with the criminal acts constituting the act of murder from him, as stated by P.W.17 is not credible.

**467.** The learned defence counsel further argued that the defence document [The book titled *০০০০০০* - *০০০০০০* PUMÓÓ cKvkKvj 2012: **Defence Documents Volume, page no.201**] shows that Jasim was a freedom fighter who was murdered in 1971. But date and site of his death could not be

identified and the document narrates it on the basis of information provided by A.B.M Siddiqur Rahman of Muktijodhdha Command of Swandep Muktijodhdha Sangsad. This document dispels the accusation that Jasim was murdered in captivity at Dalim Hotel, as alleged.

**468.** Considering the context, nature of event and crime site it is to be noted first that there has been no direct evidence available to prove the act of abducting Jasim. The charge also does not allege any specificity about it. The act of abduction formed a part or chain of system criminal transaction that ended at the principal execution site the AB camp at Dalim Hotel with the act of causing Jasim's killing. If it is proved that Jasim was brutally tortured to death in confinement at the AB camp at Dalim Hotel, it may lawfully be presumed that he was so kept there in protracted confinement, on abduction and the perpetrators were of course the AB men by whom the unlawful dealings were carried out at the detention and torture camp at Dalim Hotel. Thus, materially we are to determine Jasim's confinement and torture that resulted in his death.

**469.** Killing Jasim, a youth freedom fighter in captivity at the AB camp was the ending phase of the organised and system cruelties that, as revealed, were practiced as routine activities at the torture and detention camp directing the detained civilians brought there on capture. It was not practicable for any stranger at all to witness the criminal activities carried out there including the act of inflicting torture to Jasim that eventually resulted in his death. Even it was not feasible to see exactly at what time, how and who had dumped the dead body of Jasim to the river Karnofuli. For this obvious reason, prosecution, in order to prove the commission of the offence of murder and accused's culpability therewith, depends upon some of detainee witnesses who had occasion to see brutally injured Jasim at their room and know from one Swapan an worker at the camp in respect of causing ruthless torture and dumping his and others' dead bodies to the river Karnofuli.

**470.** Even in absence of direct evidence the fact of inflicting torture to detained Jasim may be well proved by circumstantial evidence. If the

circumstances divulged form a chain that rationally indicates no other suggestion excepting that of the criminal acts caused to him were done at the AB camp.

**471.** The criminal acts constituting the offence of confinement and torture and murder of Jasim, a brave freedom fighter took place inside the seclusion of the AB camp and in such circumstances where only the perpetrators and the persons associated with the camp had all the opportunities to plan, design the scheme and commit the offence. 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. It is quite impracticable to think that the stranger even had chance to witness the criminal activities committed inside the camp. Prosecution chiefly depends upon some of detainee witnesses who have testified some relevant facts that may lawfully facilitate drawing lawful presumption on the key fact.

**472.** Defence, as it appears, does not dispute that after the independence P.W.17 had met Advocate Shafiul Alam and Saifuddin Khan [co-detainees] for having information about her missing brother Jasim. Defence simply denied that she [P.W.17] did not hear the name of Mir Quasem Ali as the commander of AB force either from Advocate Shafiul Alam or Saifuddin Khan. But what she heard from them [co-detainees] about their seeing tortured Jasim at the AB camp at Dalim Hotel and hearing that Jasim's dead body was dumped to the river of Karnofuli remained unshaken and undenied too.

**473.** P.W.17's hearsay testimony is to be evaluated together with the narration made in the book authored by Advocate Shafiul Alam [co-detainee] and other detainee witnesses, for determining its probative value and credence. First, let us eye on what has been narrated by Advocate Shafiul Alam in his book titled **ওঁম্ৰ ত্ৰ মগ্গ আব্ৰ` তে` ব্ৰাও , চক্ৰক্ৰয় : 2006** [Book's page nos. 37-39 ]. Defence does not attack the authoritativeness of article published in the book. The article titled **ওঁ য`ত্ৰে বিত্ৰ ত ত্ৰাউজ** **Wuj gó** in fact describes the author's harrowing memoir of his incarceration

at the AB camp set up at Dalim Hotel building. Advocate Shafiul Alam was brought to the camp on 27 November 1971, on capture. In recalling the torment he sustained, on the following day of his capture, at the camp, he narrates that –

Ôthb ðvi ð\_ðKB G e`icjxZ ðm Kx GK nší š-ÔzUvOwU  
Pj ðQ| wmw-eviv`v-Qv` mðRvði Pj b Avi eðUi I Vv-bvgvi  
kã| AÜKvi cðKvôï cðivb eÜ`i vbKU Gmtei bvbv  
A\_©Zvrch®ð`Lj vg AvZ `úó| `ðMvZw³i gZB AðbðK  
vdmvdm Kði ej ðQ : ÔBm! Qv` nðZ jvk\_ðjv bvgv`QÓ ev  
ÔGUv tevanq Rmðgi Mjvi kãÓ, vKsev, ÔðKb th ðQðj Uv  
GðZv tekx K\_v eðj eðSbÓ, A\_ev, ÔibQ, GUv bZb Pjv vb  
vbðqBÓ BZ`w |.....`ðði `ðb  
Gðm ej j : ÔAvR `v`v, cðRb LZgÓ| GZÝY KY®ðj xZ  
fvðQ ; Rmðg fvB tevanq eððe bv Gevi|  
.....G- `ðb vðj Avgv`i AÜKvi  
cðKvô Avi e`icjxi thvMmð| KðqK gum AvðM ðm aiv  
cðo R%K gðððmbvðK Zvi evoxi cvðki ðMcb c\_  
ð`Lvevi Acivða| vek`í AvððYi cð`vi wmwðe, GLb  
vKðkvi `ðb GðUvRj Avi NiðgvQvi KvR Kði [Avj e`i  
K`vðv] me NðIB Zvi Aeva MvZ| KvðRi dvðK `ðMvZw³i  
gðZv veoveo Kði cãZw`b ðm msev` I wmvðší eü K\_v  
RvbvðZv| Avgiv tgvUgyU mevKQzAvð Kði vbZvg| Avgv`i  
vK IçðIB G e`icjxi vbhvðb Ký| `ðb ej Z, I iv  
bvK eðj GUv Ôwveqv ð`vRL;Ó| .....ðmw`b  
`ðði nVv `iRv Lðj ðMðjv| wZb PviRb ðjvK AðbKUv  
Kvða Sðjðq ðK GKRBðK vbðq Gðjv iæðg| AðbKUv  
vbðýc Kivi gðZv Kði ðððj w`j thb| `iRv eðÜi mð\_  
mð\_B ðPvL Avi nvðZi evav Lðj ZvðK ðKvðj Zðj vbjvg|  
ÔðfwUðjUiÓ dðo Amv GK vðjðZ ðiv` Zvi gðUv Zðj  
aij mKðj| mevB AvZðK DVj, G th Rmðg ! vKðkvi  
gðððhvðv Rmðg| gv\_Uv thb ðKvðj ð\_ðK Avj Mv nðq ðMðjv|  
Kvðiv tevSvi evK iBðjv bv, Rmðg, Avi ðbB| IB GK  
vðjðZ ðiv` Zvi vbtkã gðUv vPKvPK Kði Rj ðQ| vK my`i  
gvqvex gð!Ó

**474.** The above narration offers a harrowing portrayal of the AB camp. It recounts that the old detainees could guess the activities carried out at the ‘torture room’ on the top floor, on hearing tortured detainees’ screaming, haughty movement of people around the roof and veranda. The dead bodies [of murdered detainees] were brought out from the roof, they could guess.

**475.** From the traumatic memoir in confinement at the camp, as narrated by co-detainee Advocate Shafiul Alam in his above article goes to show that in one afternoon [28 November 1971], Swapan [worker at the AB camp] came to their room and told **“brother, today five have been ‘finished’ and meanwhile being floated in the river Karnofuli and perhaps Jasim will not survive this time”**. This Swapan was a cleaner in the AB camp and thus had opportunity to visit all the rooms at the camp. He had provided this information with them which seems to be credible. And afterwards, the door of their room got opened and then three-four persons brought someone almost hanging on their shoulder inside the room and hurling him there they had left the place by locking the room. Advocate Shafiul Alam instantly by removing his blindfold took him [tortured detainee] on his lap and then all detainees in the room could recognise him; he was youth freedom fighter Jasim and his head then became freed from his lap. Jasim was no more, they realized.

**476.** It transpires from the dreadful memoir that the detainees had occasion to be acquainted with some information from Swapan a worker at the camp. **“Perhaps Jasim will not survive this time”** – Swapan’s agonizing expression became true within a short while. Presumably, Jasim was subjected to vicious torture that resulted in his death and few minutes before his death his severely tortured body was thrown to the room where Advocate Shafiul Alam and some other detainees were kept confined. Why tortured Jasim was thrown to their room? Seemingly it was done consciously to terrorize the detainees about the consequence of non-cooperation in providing information.

**477.** Thus, it is quite patent that Advocate Shafiul Alam [co-detainee] from whom P.W.17 had heard the event of Jasim's confinement, torture and murder was a direct witness who saw him falling into the jaws of death, being severely tortured. In absence of anything contrary, it is lawfully presumed that Jasim was subjected to such untold torture in captivity at the AB camp by the AB men, not anywhere else. It is tragic too that his relatives could not have trace of his dead body even. The above book [Material Exhibit-VI] narrates that the perpetrators used to dump dead bodies of the murdered detainees to the river of Karnofuli as the co-detainees had opportunity to learn it from Swapan, a worker at the camp.

**478.** Another co-detainee Saifuddin Khan was also the source of P.W.17's knowledge about the fact of Jasim's detention, torture and murder at the AB camp. Saifuddin is now dead. Advocate Shafiul Alam narrated in his book that at a stage of captivity at the AB camp at Dalim Hotel he along with Saifuddin Khan and some other detainees were brought to army camp at circuit house by a truck and there from to Chittagong jail. Naturally, detainee Saifuddin Khan had reasonable opportunity to learn the fate of detainee Jasim from Advocate Shafiul Alam and Swapan a worker at the camp. Be that as it may, learning the event of Jasim's murder from Saifuddin Khan [co-detainee] as stated by P.W.17 carries sufficient probative value and credence.

**479.** The act of handing over some of detainees including Saifuddin Khan, Advocate Shafiul Alam from the AB camp at Dalim Hotel to the army signifies substantial collaboration of the AB force with the Pakistani occupation army in accomplishing the common purpose and design. Such act of the AB camp by itself is a strong indicator of accused's significant influence and effective control and authority over the AB camp in exercise of which he could even hand over any of detainees to the army or to some other AB camp.

**480.** What the co-detainees Sanauilla [P.W.2] and Jahangir [P.W.16] as mentioned by Advocate Shafiul Alam in his heartrending memoir stated before the Tribunal?

**481.** It has already been proved in our foregoing discussion on **adjudication of charge no.7** that P.W.2 Sanaulla Chowdhury had been in captivity at AB camp at Dalim Hotel, on capture and was subjected to torture there. It is found that the fact of implanting AB detention and torture camp at Dalim Hotel building appears to have been re-affirmed in cross-examination of P.W.2.

**482.** The version as narrated by P.W.2 Sanaulla Chowdhury a co-detainee in the room where Advocate Shafiul Alam and others were kept confined and they thus had opportunity to see how severely tortured Jasim was brought to their room and almost instantly died there. P.W.2 heard someone commanding the AB men, before throwing down tortured Jasim to their room, by telling **“the dirty fellow has not yet died, throw him inside so that the detainees there can realize the consequence of not disclosing truth”**. The man giving such ‘command’ was accused Mir Quasem Ali as P.W.2 learnt it from Advocate Shafiul Alam, a co-detainee instantly after the brutally persecuted Jasim was thrown down to their room. It gains corroboration from the tear-jerking memoir of Advocate Shafiul Alam too.

**483.** Jasim, a youth freedom fighter of Swandeeep, within few minutes of his being thrown inside the room by accused Mir Quasem Ali and his cohorts had died on the lap of Advocate Shafiul Alam, a detainee. It thus stands proved. Jasim eventually so died due to severe physical torture caused to him by the AB men, circumstances unerringly suggest it. After the dusk the AB men brought away the dead body of Jasim there from. It remained undislodged.

**484.** The article published in the book Material Exhibit-VI authored by Advocate Shafiul Alam also depicts that **‘Sarder’**[ commander] and **‘Khan Saheb’** was in steering position of the AB camp, although it does not mention the ‘name’ of said ‘Khan Saheb’ and ‘Sarder’. Presumably, for various reasons including own safety concern and socio-political context prevailing in 1989 when the memoir was first published the author might have avoided mentioning the name of said ‘Khan Saheb’ and ‘Sarder’. But

on total evaluation of the memoir of the traumatic days he spent in captivity sketched in his writing that was first published in 1989 in a book edited by Rashid Haider and the evidence provided by the co-detainee P.W.2 Sanaula Chowdhury leads to an unerring conclusion that said **‘Khan Saheb’** and **‘Sarder’** was no one else but accused Mir Quasem Ali.

**485.** The charge alleges that dead bodies of victim Jasim and five other unknown detained persons who were tortured to death too were dumped to the river of Kornofuli. It appears from testimony of P.W.2 that they learnt from Swapan an aide at the AB camp that dead bodies of 4-5 detainees including Jasim and two other victims of charge no.12 Tuntu Sen and Ranjit Das were dumped to the river of Karnofuli. P.W.1 Md. Sayed Emran, a detainee testified that they also became aware from Swapan [an aide at the camp] that 3-4 more detainees were killed in another room and their bodies were dumped to Karnofuli River.

**486.** Such organised criminal activities and unlawful acts happened in seclusion. It was impracticable indeed even for the detainees to know or see as to when and how many murdered detainees were dumped to the river Karnofuli excepting being updated by said Swapan who had access to all the rooms of the camp. It is to be noted too that the precise number of dead bodies so dumped to the river Karnofuli may not be possible to recollect due to long lapse of time by the hearsay witness.

**487.** However, from hearsay testimony of P.W.1 and P.W.2 it transpires that dead bodies of 2-3 or 3-4 unknown murdered persons were so dumped too to the river Karnofuli along with the dead body of Jasim. Absence of evidence as to exact number of murdered detainees who were dumped to the river along with the dead body of Jasim, tortured to death at the AB camp does not affect the accusation of murder of Jasim, a youth brave freedom fighter. Besides, the following narrative made by co-detainee Advocate Shafiul Alam in his memoir titled *০`y`tcie bi:k t tntUj Wwj g0* published in the book *0tmB tm mgq Avbt` te` buq0 , cKvkKvj : 2006* [Material Exhibit-VI , Book’s relevant page no.38 ] divulges that in addition to Jasim 05 other unknown detainees were killed at the AB camp at Dalim Hotel:



০.....`ঢ়ি `্চ Gম ejj : ০AvR `v`v, cWRb  
 LZg0j GZyY KI@j xZ fımt0 ; Rmıg fıB tevanq eWte bv  
**Gevi [brother, today five have been ‘finished’  
 and meanwhile being floated in the river of  
 Karnofuli and perhaps Jasim will not survive  
 this time].**

**488.** The depiction that transpires from the evidence and circumstances, as discussed above, offers the conclusion that the AB camp at Dalim Hotel transformed into a ‘murdering machinery’ to which accused Mir Quasem Ali was a part and had acted as a cog of the squad which in accomplishing the pattern system criminal activities used to dump dead bodies of murdered detainees to the river of Karnofuli.

**489.** P.W.16 Jahangir Alam Chowdhury, another co-detainee in the room of Advocate Shafiul Alam at the AB camp, during his captivity, stated that one Swapan, an employee of the AB camp on seeing dead body of Jasim at their room in the camp told that many other detainees too were so tortured to death earlier and had been dumped to the river of Karnofuli.

**490.** Already in the preceding discussion made on adjudication of charge no.3 it is found to have been proved beyond reasonable doubt that P.W.16 Jahangir Alam Chowdhury was subjected to grave torture in active presence and substantial instigation of accused Mir Quasem Ali, in his captivity at the AB camp at Dalim Hotel. Swapan as mentioned by P.W.16 was an aide at the camp. It stands corroborated too by the unimpeached evidence of other detainee witnesses.

**491.** P.W.16, at a stage had been in confinement in the room where he found Advocate Shafiul Alam too as a detainee. It gains support from the memoir too made in the book authored by Advocate Shafiul Alam. Thus, P.W.16 had occasion to see the tortured victim Jasim as he was thrown to their room in a critical condition by Accused Mir Quasem Ali and his cohorts. Jasim was severely tortured at the camp that resulted in his death,

it becomes quite obvious. This version seems to be corroborative to what has been testified by his co-detainee P.W.2, on this material particular.

**492.** Since already it has been proved beyond reasonable doubt that P.W.3 Nasiruddin Chowdhury was brutally tortured in prolonged confinement at the AB camp in presence and on explicit order of accused Mir Quasem Ali, as part of system cruelties naturally he had occasion to be aware of the fate of other detainee or detainees, either from co-detainees or said Swapan, an employee of the camp.

**493.** The hearsay testimony of P.W.3 Nasiruddin Chowdhury so far as it relates to learning from Swapan an employee at the AB camp the fact of killing Jasim by causing torture in confinement at the camp and dumping his dead body to the river seems to have gained corroboration from testimony of P.W.1, P.W.2 and P.W.16. The memoir authored by Advocate Shafiul Alam, a co-detainee also provides substantiation to this version and as such it carries probative value and inspires credence too.

**494.** In cross-examination P.W.3 stated, in reply to question put to him by the Tribunal that prior to 1971 the hotel was named as 'Mahamaya Hotel' and in 1971, Islami Chatra Sangha[ICS] occupying the hotel renamed it as 'Dalim Hotel'. History says that AB force was formed of workers of ICS. Hence, the act of keeping the Mahamaya hotel building under occupation by the ICS once again proves that in fact it was under control of AB force and in exercise of position in the ICS the accused Mir Quasem Ali had potential affiliation and material influence and guidance over it.

**495.** Already it has been proved beyond reasonable doubt that P.W.19 had been in confinement, on capture at the AB camp set up at Dalim Hotel and was severely tortured in presence and within knowledge of accused Mir Quasem Ali.

**496.** The relevant and pertinent fact, as testified by P.W.19 a detainee witness, that Mir Quasem Ali was known as '**Khan Saheb**' and '**commander**' to the AB members at the camp and his presence there used

to induce the AB members at the camp to intensify the extent of causing torture to the detainees remained totally unshaken in his cross-examination. It allows presuming what Advocate Shafiul Alam [co-detainee], in his book, intended to designate by saying that there had been a '**Khan Saheb**' and '**Sarder**' at the camp. From testimony of P.W.19 it stands obvious that it was none but accused Mir Quasem Ali was known as '**Khan Saheb**' who had been in the position of 'superior' of the AB members at the detention and torture camp and had been going out with the camp ever since it was implanted at Dalim Hotel building. Thus, it goes without saying that '**Khan Saheb**' or '**Sarder**' was no one else but the accused Mir Quasem Ali.

**497.** On cumulative appraisal of evidence as discussed above it is proved that 'system cruelties' practiced routinely at the AB camp also included killing of the detained civilians by causing dreadful and brutal torture in confinement there; that under explicit guidance and inducement of accused Mir Quasem Ali detained Jasim was tortured to death by the AB members the principal perpetrators and then his dead body was dumped to the river of Karnofuli as it happened too in case of other murdered detainees. The pained relatives could not have trace even of their dear ones. What a brutality! What a grisly felony attacking the humanity! JEI the architect of AB force formed of workers of its student wing ICS knowingly endorsed such activities in the name of saving Islam and solidarity of Pakistan. But the holy religion Islam does not endorse anyone to go with such criminal act of murdering human being, as it is against entire humankind.

**498.** The system practiced at the AB camp in causing torture and intense degrading transgression denying human rights was directed to the detainees who were freedom fighters and freedom loving civilians brought there on capture when they had been in non combatant status. Nature and extent of brutality forming attack directed against civilians , as revealed, indeed demonstrates the grave antagonistic attitude of the AB members and the accused Mir Quasem Ali who had been in steering capacity of them, imbued by his political ideology. The attack was simply against the humanity and civilization. And it happened in furtherance of planned and designed purpose.

**499.** The event of murder of youth freedom fighter Jasim occurred in furtherance of common intent and purpose. Circumstances divulged from the evidence and materials before the Tribunal suggest that the accused Mir Quasem Ali by his act and conduct coupled with his significant and steering position over the AB camp shared the intent of the principals in accomplishing the actual commission of the crime.

**500.** Defence document ০৮০৭৭' `w j - g৭³ h†× PUM০g০ cKvkKvj 2012: [Defence Documents Volume, page no.201 and book's relevant page 201] also shows that Jasim of Swandeeep is a martyr youth freedom fighter. In absence of anything contrary it is thus admitted by this document that Jasim was a freedom fighter and was killed in 1971. Referring one A.B.M Siddiquir Rahman of Swandeeep Upazila Command of Bangladesh Muktiyodhdha Sangsad as the source of the information narrated therein the document also states that date and place of Jasim's death could not be identified. That is to say, the information provided in this document was not complete. Said A.B.M Siddiquir Rahman could not be produced and examined by the defence. Besides, had he capacity and adequate source of providing accurate information about date and place of Jasim's death? If it is not so, the incomplete information narrated in the document referring said A.B.M Siddiquir Rahman as its source does not dispel the sworn testimony of detainee witnesses substantiating Jasim's confinement and death at the AB camp at Dalim Hotel.

**501.** It is to be noted again that since the offence of murder of Jasim took place inside the AB camp set up at Dalim Hotel during his protracted captivity and the accused Mir Quasem Ali had active affiliation and substantial influence over the camp he cannot absolve of the responsibility for the criminal acts of causing death of detainees by inflicting ruthless torture. We are to see whether the accused used to remain present in the AB camp as an innocent spectator or in furtherance of common concert and design.

**502.** The accused need not be shown to have had physical participation to the perpetration of the crime. It is enough to establish that accused, sharing intent of the principals, acted in such a manner by his act or conduct or behaviour that substantially contributed and facilitated the commission of the actual crime. ‘Participation’ in such manner to the accomplishment of crime makes him liable equally, as contained in section 4(1) of the Act of 1973. This settled jurisprudence corresponds to section 34 of the Penal Code. In this regard it has been observed in the case of **Mahbub Shah v. King Emperor, AIR 1945 PC 118** that-

**“When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone.”**

**503.** An offence of murder as crimes against humanity is indeed a ‘group crime’ committed by several persons in a concerted manner and in furtherance of common purpose and plan. An accused may thus be held liable for this crime even for his act, conduct or behaviour amid, before or after the commission of the crime. Murder as a crime against humanity 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. Therefore, the accused Mir Quasem Ali can also be convicted of a crime specified in the Act on the basis of his responsibility as a superior as well together with section 4(1) of the Act as discussed above which may be taken into account as an aggravating factor.

**504.** On cumulative evaluation of evidence, chain of circumstances and materials, it has been found proved in the preceding deliberation made on adjudication of other charges involving the criminal acts committed at the AB camp, the same execution site that accused Mir Quasem Ali by his conscious act and conduct, instruction, order, directives, instigation, inducement forming part of attack coupled with his substantial authority participated to the commission of offences, in furtherance of common purpose and design . Accused himself used to grill the detained civilians in

their protracted captivity, and in the process he often induced the AB members to beating the detainees up mercilessly. It is proved from testimony of detainee witnesses. Jasim, a brave youth freedom fighter laid his life at this infamous AB camp in captivity due to untold barbaric torture caused to him. It is proved too. In accused's presence at the camp the AB members used to feel enthused in intensifying the extent of torture to the detainees, as revealed from unshaken testimony of tortured detainee witnesses. .

**505.** It is not necessary, in view above, to prove that accused Mir Quasem Ali had physically participated to all the phases of the whole criminal transaction. A single act or conduct, amid or before or after commission of crime, forming part of attack is sufficient to prove his culpability.

**506.** Accused's presence at the AB camp the prime execution site was not by a sheer chance. It is not required to show that at the time of inflicting torture to Jasim, accused remained present. Besides, who will come to prove it? Had any stranger opportunity to witness it? Obviously it was quite impracticable. Accused's presence and act or conduct amid or before or after the actual commission of crime coupled with his position of authority is enough to prove his '**concern**' with the accomplishment of such crime. In this regard, the ICTY Trial Chamber has observed in the case of **Bagilishema** that,

**“presence, when combined with authority, may constitute assistance (the *actus reus* of the offence) in the form of ‘moral support’ and that ‘an approving spectator’ who is held in such respect by other perpetrators that his presence encourages them in their conduct, may be guilty [of] a crime against humanity.’**

**[*Bagilishema*, TICTY Trial Chamber, June 7, 2001, para. 34:]**

**507.** Accused Mir Quasem Ali used to steer and guide the activities carried out inside the detention and torture camp, evidence presented conclusively

suggests it. Thus, mere denial of the accusation coupled with absence of any explanation on part of the defence to justify accused's presence at the camp will be inconsistent with his innocence but consistent with the hypothesis that Mir Quasem Ali by his act and being in commanding position of the AB camp contributed substantially to the commission of murder of Jasim, a part of the system scheme of criminal activities.

**508.** Culpable presence of accused Mir Quasem Ali at the AB's torture camp and behaving brutally with detained victims and providing 'directives' to execute the victim and other detainees, as stated by P.W.2, inevitably formed part of attack which had substantial effect to the actual commission of the crime committed by the principals and as such he [accused] was 'concerned' even with the commission' of the killing of Jasim.

**509.** Someone, at the camp, commanded the AB men, before throwing tortured Jasim inside the room, by telling **"the dirty fellow has not yet died, throw him inside so that the detainees there can realize the consequence of not disclosing truth"**. The man giving such 'command' or 'directive' was accused Mir Quasem Ali. It has been proved beyond reasonable doubt, as discussed above.

**510.** Such antagonistic act and conduct, culpable presence at the AB camp coupled with authority indicating 'superior' position are convincingly sufficient to conclude that the criminal acts that eventually caused Jasim's killing were the outcome of 'common purpose' to which accused Mir Quasem Ali was a part and the murder was committed with his knowledge. The act of providing 'directive' entails a person in a position of authority or domination using that position to approve and induce another to commit an offence. We are convinced to pen our finding, considering the facts and context that involvement with the common purpose and arrangement or providing 'directive' constitutes the act of 'abetment' and 'instigation' which makes the accused liable for being 'concerned' with the commission of substantive offence of murder of Jasim and other unknown detainees. Therefore, the accused Mir Quasem Ali is found liable under section 4(1)

and 4(2) of the Act of 1973 for the offence of murder as crime against humanity as specified in section 3(2)(a)(g)(h) of the Act.

### **Adjudication of Charge No.12:**

#### **[Murder of Ranjit Das & Tuntu Sen as Crime against Humanity]**

**511. Summary Charge:** The charge involves series of criminal acts including abduction, confinement and murder. It is alleged that on any day and at any time in the month of November, 1971, a group of AB members on plan and direction of accused Mir Quasem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit abducted Jahangir Alam Chowdhury (now dead) from the House No. 139, Ranjit Das @ Lathu and Tuntu Sen @ Raju from the House No. 114 both of Hindu populated Hajari Lane of Chittagong town and took them to the Torture Centre of Al-Badar Bahini at Dalim Hotel, Chittagong. On the following day said Jahangir Alam Chowdhury was released from the said Torture Centre, but later at accused's instance the AB members killed Ranjit Das and Tuntu Sen and kept their dead bodies concealed. Therefore, the accused Mir Quasem Ali has been charged for abetting and facilitating the offences of abduction, confinement, torture, murder and other inhuman acts as crimes against humanity as specified under section 3(2)(a), 3(2)(a)(g) and 3(2)(a)(h) of the Act and thereby he incurred liability under section 4(1) and 4(2) of the Act.

### **Witnesses**

**512.** Prosecution, to prove this charge, mainly relies upon two detainee witnesses, relatives of victims together with the narrative made by Advocate Shafiul Alam, a co-detainee at the AB camp in his article published in the book [**Material Exhibit-VI:** Prosecution Document Volume 2, books relevant page 38; volume's page 259]. Of these witnesses, P.W.7 Prodip Talukder is the son of Tuntu Sen's sister who allegedly saw the victims being forcibly picked up; P.W.5 Shibu Das the son of victim Ranjit Das who allegedly heard the event from his mother; P.W.2 Sanaula Chowdhury [victim of charge no. 7] and P.W.3 Nasiruddin Chowdhury [victim of charge no. 14] allegedly saw the victims detained at



the camp and had learnt about the event of murder from Swapan a worker at the camp ; P.W.6 Mridul Kumar Dey and P.W.4 Sunil Kanti Barman are hearsay witnesses who allegedly heard the fact of victims' confinement at the camp.

## Evidence

**513. P.W.7 Prodip Talukder [55]** is the son of victim Tuntu Sen's sister. He stated that in 1971 he had been with his maternal uncle [Tuntu Sen] at his Hajari lane's house. One day, he along with Tuntu Sen came to Shib Mondir [Hindu temple] *morh* wherefrom the AB members picked Tuntu Sen, Ranjit Das and a Muslim up and brought them to Dalim Hotel. P.W.7 further stated that his *dida* [maternal grand-mother] Rasabala rushed to Dalim Hotel for getting Tuntu Sen released.

**514.** The AB members told his *dida* that he would not be released until their commander's arrival at the camp. On asking, Rasabala knew that Mir Quasem Ali was their commander; P.W.7 heard it from his *dida* Rasabala

**515.** P.W.7 went on to state that he heard from his *dida* Rasabala that next, one day while his *dida* was moving through the front of Dalim Hotel she saw Tuntu Sen falling down on a tin shed from second floor of the Dalim Hotel building and then on order of Mir Quasem Ali Tuntu Sen was again caught and brought inside Dalim Hotel where he was tortured to death. His *dida* Rasabala is now dead. This piece of version remained unshaken. Defence simply denied it.

**516. P.W.5 Shibu Das[46]** is the son of victim Ranjit Das. He simply testified what he heard from his mother in respect of the event of his father's murder. He stated that he heard from his mother that in the month of November 1971 his father was forcibly picked up by the AB members led by accused Mir Quasem Ali and was tortured to death keeping in confinement at Dalim Hotel which was a den of AB members.

**517.** Defence denied what this P.W.5 had learnt from his mother. On cross-examination P.W.5 stated that another victim Tuntu Sen was their

neighbouring tenant. His mother is now not capable to speak due to ailment.

**518. P.W.2 Sanaula Chowdhury** [victim of charge no. 7], a detainee at the AB camp stated that he found some other detainees blindfolded in the room where he was kept confined and they were screaming lying on the floor. Of them there had been Advocate Shamsul Islam, Shah Alam, Tuntu Sen and Ranjit Das of Hajari lane. Defence, as it appears, did not deny it in his cross-examination and even it remained totally unshaken.

**519.** P.W.2 further stated that on the following day i.e on 29 November 1971 one Swapan a worker at the camp informed them that Tuntu Sen and Ranjit Das were tortured to death on the roof[of Dalim Hotel building] and their dead bodies had been dumped to the river of Karnofuli

**520.** The above piece of pertinent version as made by a detainee witness could not be shaken in any manner. And even it has not been denied too, in cross-examination.

**521. P.W.3 Nasiruddin Chowdhury** a detainee [victim of charge 14] has testified what he had learnt, during his confinement, about the fate of Tuntu Sen and Ranjit Das. He stated that during his confinement at the AB camp at Dalim Hotel, possibly one Swapan or Pankaj informed that Tuntu Sen and Ranjit Das of Hajari lane had been tortured to death on the roof of the Dalim Hotel building and they were then dumped to the river of Karnofuli. He also learnt from that worker [Swapan] and co-detainees that they were so killed in presence and on instruction of Mir Quasem Ali [accused].

**522.** The above version remained undenied and unshaken as well, in cross-examination. P.W.3 however stated that he did not see Ranjit Das and Tuntu Sen and even he did not hear their name before his confinement.

**523. P.W.6 Mridul Kumar Dey [58]** is a hearsay witness as to the event of series criminal acts. He stated that on 16 December 1971 he saw many people including Prova Rani the wife of Ranjit Das around the Dalim

Hotel. Prova Rani told him that she did not have any trace of her husband Ranjit Das and neighbour Tuntu Sen. He also heard from the released detainees there that possibly Mir Quasem Ali had killed Tuntu Sen and Ranjit Das. Defence denied this version. But however, could not refute it by cross-examining the P.W.6.

**524. P.W.4 Sunil Kanti Barman** who was allegedly kept detained on the ground floor at the AB camp at Dalim Hotel since 14 December, 1971 and got release on 16 December 1971 along with other persons detained there. He is the victim of charge no.13. He stated that the old detainees in his room informed that the detainees including Tuntu Sen and Ranjit Das had been killed on instruction of Mir Quasem Ali. He also stated that on release, he also heard from wives of Tuntu Sen and Ranjit Das that their husbands were caught by the AB members and they never returned.

### **Deliberation and Finding**

**525.** The learned prosecutor Mr. Sultan Mahmud, during summing up, contended that considering the context and nature and pattern of crimes and crime site it was not practicable to witness the system criminal activities. But however, two detainee witnesses P.W.2 Sanaulla Chowdhury and P.W.3 Nasiruddin Chowdhury have testified facts relevant to the detention and killing of Tuntu Sen and Ranjit Das. P.W.2 had opportunity to see the victims detained at the AB camp and P.W.3 had learnt the fact of their killing from Swapan a worker at the camp. The narrative made by a co-detainee Advocate Shafiul Alam in his book [Material Exhibit-VI] provides corroboration to their testimony so far as it relates to the fact of victims' confinement and killing.

**526.** It has been further argued by the learned prosecutor that P.W.7 Prodip Talukder, sister's son of victim Tuntu Sen saw his maternal uncle, Ranjit Das and one Muslim civilian being abducted while he [P.W.7] was with Tuntu Sen. P.W.2 Shibu Das, son of victim Ranjit Das testified what he heard from his mother. His hearsay testimony gets corroboration from other evidence especially from that of P.W.2 and P.W.3. Defence could not controvert that the detainees P.W.2 and P.W.3 heard from Swapan a worker

at the camp that the victims had been killed and then dumped to the river of Karnofuli. P.W.6 Mridul Kumar Dey and P.W.4 Sunil Kanti Barman are hearsay witnesses. They heard the fact of confinement and killing of Tuntu Sen and Ranjit Das from co-detainees. Their hearsay testimony too has been corroborated by other evidence and circumstances.

**527.** Finally it has been contended by the learned prosecutor that since accused Mir Quasem Ali had active affiliation and substantial authority over the AB camp and its activities as proved from totality of evidence and since he used to remain actively present at the time of causing inhuman torture to the detainees he was 'concerned' also with the act of causing torture and death of victim Ranjit Das and Tuntu Sen that occurred at the same execution site and by practicing similar pattern.

**528.** Conversely, Mr. Mizanul Islam the learned defence counsel in his brief argument on this charge mainly attacked the credibility of witnesses. He contended that there has been no evidence to prove abduction of Tuntu Sen and Ranjit Das by the AB members. P.W.5 and P.W.7 are not credible witnesses and their testimony suffers from embellishment. They are mere hearsay witnesses. No witness has testified about the fact of alleged plunder burning houses and shops as narrated in the charge framed.

**529.** This charge involves killing civilians in confinement at the AB camp set up at Dalim Hotel. The system criminal activities commenced with the act of their abduction. The act of confinement, causing torture and killing detained civilians thus occurred in seclusion. No stranger had opportunity to see or know the activities carried out inside the camp set up for accomplishing common purpose. It is noticed that the prosecution chiefly depends upon two detainee witnesses one of whom claims to have seen the victims detained at his room at the camp and another detainee claims to have heard from a worker at the camp about the act of causing death of victims by inflicting torture. P.W.7 Prodip Talukder, sister's son of victim Tuntu Sen claims to have seen the victims being captured. He also claims to have heard other related facts from his grand-mother [mother of Tuntu

Sen]. P.W.5 Shibu Das, son of victim Ranjit Das is hearsay witness and he claims to have heard the event and event related facts from his mother.

**530.** The crime alleged was not an isolated crime. It was a ‘group crime’ perpetrated by a number of persons who play different role in different phases of the crime. The matters to be proved are:

- (i) victims were kept in confinement at the AB camp at Dalim Hotel, on capture;
- (ii) Victims were subjected to torture in captivity
- (iii) Victims were tortured to death, in furtherance of common purpose
- (iv) Accused was a part of the system cruelties

**531.** For obvious reason, if it is proved that victims were kept confined at the AB camp it stands proved too that they were so brought there by the AB members, on forcible capture. Defence does not dispute that the victims had to face death caused by severe torture. Their relatives could not have their trace even. Defence simply disputes that they were not confined and subjected to torture there. The circumstances divulged from evidence have to be taken into account, particularly in arriving at a finding on victims’ murder at the AB camp and liability of accused person therewith.

**532.** It appears from evidence of P.W.7 that the mother of Tuntu Sen instantly rushed to the AB camp at Dalim hotel to get her son freed. But the AB members told her that he would not be released until their commander’s arrival at the camp. On asking, Rasabala the mother of Tuntu Sen knew that Mir Quasem Ali was their commander. P.W.7 heard it from his *dida* Rasabala. On another day, as testified by P.W.7 Rasabala the mother of Tuntu Sen while was moving through the front of Dalim Hotel she saw Tuntu Sen falling down on a tin shed from second floor of the Dalim Hotel building and then on order of Mir Quasem Ali Tuntu Sen was again caught and brought inside Dalim Hotel where he was tortured to death.

**533.** The fact of picking Tuntu Sen up seems to have been re-affirmed in cross-examination as P.W.7 replied to question put to him by the defence that the Pakistani army had embezzled the houses and shops of the locality prior to abduction of Tuntu Sen.

**534.** Rasabala the mother of Tuntu Sen could have been the best witness to prove the fact of her son's abduction and confinement. But she is now dead, as stated by P.W.7. The above testimony of P.W.7, though hearsay, is admissible and carries probative value too as it is supported by other evidence. Falling down of Tuntu Sen on a tin shed from second floor of the Dalim Hotel building indicates unambiguously that he was in captivity; that he intending to escape from confinement attempted to flee by jumping from the second floor of the building of Dalim Hotel. But the attempt was in vain and he was caught again and kept confined at the AB camp. His mother thus could not have any trace of her dear son.

**535.** The following narrative made by a co-detainee Advocate Shafiul Alam in his heartrending memoir titled **০`y`tcē bi:k t tnvUj Wwj g0** published in the book **০tmB tm mgq Avb` te`bvq0 , cKvkKvj : 2006** [Material Exhibit-VI , Book's relevant page no.38 ] provides support to the fact of the attempt Tuntu Sen made intending to escape from confinement :

**০.....`yfi `cb Gtm ejj : .....Qv` t`tk  
jwdtq cvjvZ Mttq th t0tjUv aiv ctoQj , vzbw b AtPZb  
\_Kvi ci AvR gviv tMttQ| [The boy who was caught  
while attempted to flee by jumping from the  
roof (of Dalim Hotel building) died today  
after passing three days in unconscious  
condition ].**

**536.** The above narrative does not mention the name of detainee, true. But cumulative appraisal of evidence, circumstance and this narration impels the conclusion that it was none but Tuntu Sen. Defence does not aver that it was some other detainee. Rather, Rasabala the mother of Tuntu Sen saw her son falling from the Dalim Hotel building, as stated by P.W.7 remained unshaken.

**537.** P.W.5 the son of victim Ranjit Das learnt the event from his mother. P.W.5 replied to question put to him by the defence that he could not say whether the fact of his father's abduction was witnessed by many people, With this the fact of his father's abduction seems to have been re-affirmed. Learning the event from mother is very much likely. It could not be refuted

that the mother of P.W.5 is now not in position to speak due to ailment. The fact of missing and killing of Ranjit Das does not appear to have been disputed. Defence simply disputes that Ranjit Das was not in confinement at the AB camp at Dalim Hotel and was tortured to death there by the AB members on directive of accused Mir Quasem Ali.

**538.** According to **P.W.7 Prodip Talukder [55]** the son of victim Tuntu Sen's sister, in 1971 he had been with his maternal uncle [Tuntu Sen] at his Hajari lane's house and one day he along with Tuntu Sen came to Shib Mondir [Hindu temple] *morh* wherefrom the AB members picked Tuntu Sen, Ranjit Das and a Muslim up and brought them to Dalim Hotel. This version gets credence from above discussion on Tuntu Sen's confinement and the attempt he made to flee from the roof of Dalim Hotel building. Testimony of P.W.2 Sanaulla Chowdhury a detainee at the AB camp goes to show that he saw Tuntu Sen and Ranjit Das detained in his room.

**539.** P.W.2 Sanaulla Chowdhury is a detainee witness [victim of charge no. 7]. In adjudicating this charge, it has already been proved beyond reasonable doubt that P.W.2 Sanaulla Chowdhury was severely tortured during his prolonged captivity at the AB camp at Dalim Hotel in presence of accused Mir Quasem Ali. Thus, P.W.2 had reasonable opportunity to see and know the affairs carried out at least in the room where he was in confinement. The unrefuted version as to seeing Tuntu Sen and Ranjit Das detained too in his room proves that they were brought there on forcible capture. Their detention at the AB camp, as stated by P.W.2 provides corroboration to the testimony of P.W.5 and P.W.7 who came on dock as hearsay witnesses in narrating the event of abduction of Tuntu Sen and Ranjit Das..

**540.** Defence does not dispute that there had been one Swapan who used to work as an aide at the AB camp at Dalim Hotel. We have already found that said Swapan used to keep the detainees updated about the affairs of the camp. Seeing the victims detained at the camp and afterwards learning about their killing on the roof of the Dalim Hotel building together impel the conclusion that Tuntu Sen and Ranjit Das were kept confined at the AB

camp on abduction and were subjected to vicious torture that resulted in their death. Thus, the offence of murder of victims was committed in confinement. .

**541.** P.W.3 does not claim that he knew Ranjit Das and Tuntu Sen even since earlier. He testified what he had learnt, during his confinement at the AB camp, from one Swapan a worker at the AB camp at Dalim Hotel. It is to be seen whether he had occasion to learn what he testified from said Swapan and then his hearsay testimony is to be weighed together with other evidence. Thus, it is immaterial to question credibility of P.W.3 merely for the reason that he did not see the victims and even did not hear their name before his confinement, as stated in his cross-examination.

**542.** In the preceding deliberation made on adjudication of charge no. 14 it has been found proved beyond reasonable doubt that P.W.3 had been in protracted captivity at the AB camp at Dalim Hotel where he was subjected to torture in presence and on approval of accused Mir Quasem Ali. Hence, since P.W.3 had been in confinement at the AB camp set up at Dalim Hotel it was practicable for him of being updated about the affairs carried out at the camp from said Swapan, a worker there.

**543.** Other detainee witnesses also testified that said Swapan, an aide at the camp was the source of their knowledge about the activities of the camp and accused including the torture caused to detainees on the roof of the Dalim Hotel building. Therefore, hearsay testimony of P.W.3 a detainee so far as it relates to learning the fact of killing Tuntu Sen and Ranjit Das by causing torture on the roof of Dalim Hotel building carries probative value as it gains support especially from the evidence of P.W.2 Sanaula Chowdhury a co-detainee who had occasion of seeing the victims detained in his room and afterwards who had learnt too from said Swapan a worker at the camp about the killing of victims on the roof of the Dalim Hotel building.

**544.** Defence does not however dispute the fact of missing of Ranjit Das and Tuntu Sen. In absence of anything contrary, the evidence as discussed



above leads to the conclusion that they were brought to the AB camp at Dalim Hotel where they were subjected to inhuman torture that resulted in their death and since their dead bodies were dumped to the river of Kornofuli their relatives could not have any trace of their dear ones. Hearing from the detainees released from the camp that possibly Mir Quasem Ali had killed the victims, as stated by P.W.6 gets support from other evidence and thus his hearsay testimony carries probative value.

**545.** Besides, seeing Prova Rani the wife of Ranjit Das, a victim around the Dalim Hotel building on 16 December 1971 is quite natural. She had been there in search of her missing husband but could not have any trace. This unshaken relevant fact, as stated by P.W.6 lends support to the fact of keeping her husband confined at the AB camp on abduction. The victims never returned, since their missing. It needs to be noted that recovery of dead body of the murdered victim is not required to prove the fact of murder, particularly when their death can be inferred from the evidence and circumstances. In this regard we recall the following observation made by the ICTY Appeal Chamber in the case of *Kvočka*

**“In the *Krnjelac* case, the Trial Chamber rightly stated that proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. The fact of a victim’s death can be inferred circumstantially from all of the evidence presented to the Trial Chamber. All that is required to be established from that evidence is that the only reasonable inference from the evidence is that the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally responsible.**

[ *Kvočka* , ICTY Appeals Chamber, February 28, 2005, para. 260]

**546.** As a co-detainee at the same AB camp P.W.4 had opportunity to learn from inmates of the camp about the killing of Ranjit Das and Tuntu Sen in

confinement at the camp. This hearsay evidence seems to have gained support from other evidence as discussed above. P.W.4 had been in confinement at the AB camp at Dalim hotel only for two days [14-15 December 1971] and as such naturally he may not have further opportunity to hear the affairs of the camp in detail. But what he has stated is based on information provided by the detainees of his room and the detainees released on 16 December, 1971. Thus, his testimony so far as it relates to hearing the fate of Ranjit Das and Tuntu Sen deserves consideration together with other evidence.

**547.** It is imperative to note, in view of argument advanced by the learned defence counsel that there has been no evidence in support of the act of plunder as stated in the charge framed. But it does not affect the prime accusation involving the murder of Tuntu Sen and Ranjit Das in confinement or makes the entire charge untrue *ipso facto*. Besides, it would appear that P.W.7 replied to question put to him by the defence that the Pakistani army had embezzled the houses and shops of the locality prior to abduction of Tuntu Sen.

**548.** P.W.7 stated that on the day of the event of abduction when he along with Tuntu Sen came to Shib Mondir [Hindu temple] morh the AB members picked Tuntu Sen, Ranjit Das and a Muslim up. It is true that the charge framed narrates that Tuntu Sen and Ranjit Das were so abducted from the house being no. 114 of Hindu populated Hajari Lane of Chittagong town. It appears that the defence did not suggest the witness that the said Shib Mondir [Hindu temple] morh was too far from 114 Hajari Lane. In absence of any definite indication in this regard it may be presumed that the Shib Mondir [Hindu temple] morh was around the locality of Hindu populated Hajari Lane. Had the victims been abducted from any Masjid [mosque] *morh* or Church *morh* it could be presumed that the place abduction was really far from 114 Hajari Lane, the Hindu populated area.

**549.** It remained undisputed that the victims were the residents of the locality of Hindu populated Hajari Lane. The act of abduction was chained

to the act of confinement, torture and killing of victims that occurred at the AB camp at Dalim Hotel. In fact the AB camp headquartered at Dalim Hotel was the key crime site. Since the act of confinement and causing torture that resulted in their death at the said AB confinement camp is proved, mere variation in respect of place where from the victims were abducted, as stated by P.W.7 does not materially affect the system and organized criminal activities and cruelties carried out by the AB members at Dalim Hotel where they were headquartered under active guidance of accused Mir Quasem Ali.

**550.** There is no evidence that accused Mir Quasem Ali physically or directly participated to the actual commission of killing or to the act of causing torture that resulted in death of Tuntu Sen and Ranjit Das. Given his position in the AB camp's command, by dint of his position in the ICS, accused Mir Quasem Ali must have also known about the killing of Tuntu Sen and Ranjit Das or the brutal and inhuman torture and physical mistreatment that resulted in their death. It is now settled that physical participation of accused in committing murder is not required to be established. His participation is to be inferred from his act and conduct coupled with his position of authority over the principals that facilitated the actual commission of the crime. It has been observed by the ICTY Appeal Chamber in the case of *Ntakirutimana and Ntakirutimana*, that

**“Murder as a crime against humanity under Article 3(a) does not require the Prosecution to establish that the accused personally committed the killing. Personal commission is only one of the modes of responsibility.**

[*Ntakirutimana and Ntakirutimana*, (ICTY Appeals Chamber), December 13, 2004, para. 546]

**551.** On careful appraisal of evidence as discussed above it stands proved that Tuntu Sen and Ranjit Das were tortured to death in their captivity in AB camp headquartered at Dalim Hotel building and their dead bodies were dumped to the river of Karnofuli. It is thus lawfully inferred that the victims were brought to that camp on forcible capture. Killing Tuntu Sen

and Ranjit Das in confinement at AB camp was not an isolated event. It was a part of routine pattern of system cruelties directing pro-liberation civilians, in furtherance of common purpose and plan.

**552.** The fact of confinement of Tuntu Sen and Ranjit Das has been corroborated by P.W.2 who was also kept detained at the same AB camp since 27 November to 09 December 1971. This version is crucially relevant to the event narrated in charge no. 12. P.W.2 also saw Advocate Shamsul Islam, Shah Alam, Jahangir and Emran detained there. Defence could not refute this version in any manner and as a result bringing the pro-liberation civilians to the camp on capture by the AB members stands proved. And being a person in position of domination over the camp accused Mir Quasem Ali had reason to know what criminal acts were going to be committed by the AB members and his inaction, despite his knowledge and authority, signifies his approval to the commission of offences perpetrated by the AB men. Accused thus incurred liability as a co-perpetrator.

**553.** In the foregoing discussion on other charges involving abduction confinement, torture and tortured to death it has been found proved beyond reasonable doubt that in exercise of position in ICS accused Mir Quasem Ali used to remain present at the camp and grill the detainees by causing physical torture, ordered his cohorts to beating the detainees up. It has been found proved too that the accused was concerned with the act of causing brutal torture to youth freedom fighter Jasim that resulted in his death.

**554.** It is imperative to note that participation by 'planning' presupposes that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases. The evidence presented by the prosecution so far as it relates to the act, conduct, behaviour, active affiliation and commanding position of accused convincingly impels to conclude that the accused Mir Quasem Ali was concerned with the plan of designing the commission of routine system cruelties at the AB camp.

**555.** All the criminal acts constituting the offences, as narrated in all the charges framed, were the out come of organized system cruelties carried

out at the same execution site and by the same group of AB members headquartered at Dalim Hotel, to further common purpose and design to which accused was a part. Already it has been proved that accused Mir Quasem Ali had been going out with the AB camp and its criminal activities ever since it was set up at Dalim Hotel building and he had been in steering position of the camp. Thus, it may lawfully be inferred that accused Mir Quasem Ali was knowingly concerned even with the act of confinement of Tuntu Sen and Ranjit Das and causing brutal torture to them that resulted in their death which was a part of organized system cruelties.

**556.** Why the accused Mir Quasem Ali got himself actively associated with the AB camp where the captured civilians were killed and subjected to degrading torture in confinement? His presence and conduct at the camp, as already found, unerringly indicate that he was aware about the fate of the detainees to be decided. Of course not as an insignificant pro-Pakistan element he ensured his access to the camp. It was his higher position of authority in ICS which was transformed to an 'action section' AB that enabled him to be there and coordinate the brutal mistreatment caused to the detainees. True, there has been no evidence that the accused physically committed the offence of murder of the detainees. But in absence of any evidence as to causing death of detainees elsewhere and since they were in protracted captivity at the AB camp and their dead bodies could not be traced even it is validly concluded that they were killed at the AB detention and torture camp headquartered at Dalim Hotel. And in execution of their murder accused's act and conduct abetted and facilitated the perpetrators constituting significant contribution and substantial effect on commission of crimes.

**557.** Conduct and act of the accused Mir Quasem Ali at the AB camp at Dalim Hotel forming part of attack, as found in the foregoing deliberation made on adjudication of other charges framed, forces to conclude that the accused shared the common intent of the principals also to further the common unlawful purpose of actual perpetration of the offence of murder of Tuntu Sen and Ranjit Das. Accused Mir Quasem Ali is thus held liable

for the acts of system cruelties perpetrated by the AB men as he, by virtue of his position of authority over the AB camp, knew or had reason to know about their acts. He was also knowingly ‘concerned’ with the commission of substantive offence of murder of Tuntu Sen and Ranjit Das. Accused Mir Quasem Ali is thus held responsible for abetting and facilitating the perpetration of the offence of murder as crime against humanity as specified in section 3(2)(a)(g)(h) of the Act and is found liable under section 4(1) and 4(2) of the Act of 1973 for the offence of murder.

## **XIX. Contextual requirement to qualify the offences proved as crimes against humanity**

### **Context Element**

**558.** The definition of crimes against humanity requires that the individual criminal act, for example, a murder, be committed within a broader setting of specified circumstances and context. Context element in crimes against humanity distinguishes ordinary crimes under national law from international crimes which are under international criminal law.

**559.** The ‘context’ element is thus an “international element” in crimes against humanity which renders certain criminal conduct a matter of international concern. Thus, the rationale of the context element can be summarized as the protection of human rights against the most serious and most dangerous violations. This rationale at the same time serves to distinguish crimes against humanity from the less serious national law crimes.[ **KAI AMBOS** and **STEFFENWIRTH**, *THE CURRENT LAW OF CRIMES AGAINST HUMANITY, An analysis of UNTAET Regulation 15/2000, PAGE 13,15*]

**560.** The phrase ‘**acts committed against any civilian population**’ as occurred in section 3(2)(a) clearly signifies that the acts forming ‘attack’ must be directed against the target population to the accomplishment of the crimes against humanity and the accused need only know his acts are part thereof. Therefore, the facts and circumstances unveiled before us unmistakably have proved the ‘contextual requirement’ to qualify the

offences for which the accused has been charged with as crimes against humanity.

**561.** An ‘attack’ against ‘civilian population’ means the perpetration of a series of acts of violence, or of the kind of mistreatment referred to in subsection (a) of section 3(2) of the Act against ‘civilian population’. Thus, conducts constituting ‘Crimes’ committed against ‘civilian population’ refers to organized and systemic nature of the attack causing acts of violence to the number of victims. A particular conduct forming part of ‘attack’ may constitute one or more crimes.

**562.** Accused Mir Quasem Ali has been prosecuted and tried for the offences enumerated in section 3(2)(a)(g)(h) of the Act of 1973 which are not punishable under the normal penal law of the country. These offences are known as ‘system crimes’. An offence of murder punishable under Penal law is an isolated crime and needs no ‘contextual requirement’. But murder as ‘crime against humanity’ must be shown to have been committed within a ‘context’ so that it can be distinguished from isolated crime.

**563.** The expression ‘**committed** against civilian population’ as contained in section 3(2) of the Act of 1973 itself is an expression which specifies that in the context of a crime against humanity the civilian population is the primary object of the ‘attack’. The notion of ‘attack’ embodies the notion of acting purposefully to the detriment of the interest or well being of a civilian population and the ‘population’ need not be the entire population of a state, city, or town or village.

**564.** The offences proved took place during the period of war of liberation in 1971 directing the unarmed Bengali civilians belonging to pro-liberation ideology. The evidence presented demonstrates that the accused Mir Quasem Ali a potential leader of Islami Chatra Sangha (ICS) was in position of authority even over the AB members at their camp at Dalim Hotel, Chittagong. It has already been proved that he was concerned with the commission of crimes perpetrated at the AB camp the prime execution site. Therefore, it becomes patent that the acts, culpable conducts, and

encouraging sayings of the accused forming part of attack substantially facilitated the commission of crimes by the members of Al-Badar force, directing the unarmed civilians.

**565.** The criminal acts forming part of ‘attack’ constituting the offences enumerated in section 3(2)(a) of the Act of 1973 were connected to policy or plan of the government or an organization. It is to be noted too that such policy and plan are not the required elements to constitute the offence of crimes against humanity. These may be taken into consideration as factors for the purpose of deciding the ‘context’ upon which the offences were committed.

**566.** Thus, the term ‘context’ stemmed from ‘policy or plan’ in furtherance of which ‘attack’ was committed in ‘systematic’ manner characterizes the offence, the outcome of the attack, as crime against humanity.

### **Context prevailing in 1971 in the territory of Bangladesh**

**567.** It is fact of common knowledge that the basis for planning of the ‘operation search light’ master plan, which was carried out with brute force by Pakistan army to annihilate the Bengalis reads as below:

#### **‘OPERATION SEARCH LIGHT’**

##### **BASIS FOR PLANNING**

- 1.** A.L [Awami League] action and reactions to be treated as rebellion and those who support or defy M.L[Martial Law] action be dealt with as hostile elements.
- 2.** As A.L has widespread support even amongst the E.P [East Pakistan] elements in the Army the operation has to be launched with great cunningness, surprise, deception and speed combined with shock action.

[Source: **A Stranger In my Own Country: East Pakistan, 1969-1971**, Major General (Retd) Kahdim Hussain Raja, Oxford University Press, 2012, page 114. See also ‘**Songram Theke Swadhinata**’(সংগ্রাম থেকে স্বাধীনতা) : Published in December 2010, By ; Ministry of Liberation War Affairs, Bangladesh; Page 182]

**568. Anthony Mascarenhas** in a report titled ‘**Genocide**’ published in **The Sunday Times**, June 13, 1971 found as below:



**“SO THE ARMY is not going to pull out. The Government’s policy for East Bengal was spelled out to me in the Eastern Command headquarters at Dacca. It has three elements: (i) The Bengalis have proved themselves “unreliable” and must be ruled by West Pakistanis (ii) The Bengalis will have to be re-educated along proper Islamic lines. The “Islamisation of the masses” – this is the official jargon – is intended to eliminate secessionist tendencies and provide a strong religious bond with West Pakistan (iii) When the Hindus have been eliminated by death and flight, their property will be used as a golden carrot to win over the under-privileged Muslim.”**

[Source:[http://www.docstrangelove.com/uploads/1971/foreign/19710613\\_tst\\_genocide\\_center\\_page.pdf](http://www.docstrangelove.com/uploads/1971/foreign/19710613_tst_genocide_center_page.pdf) : See also: **Bangladesh Documents Volume I**, page 371: Ministry of External Affairs, New Delhi]

**569.** We reiterate our reasoned finding given in the case of *Muhammad Kamaruzzaman* that the Pakistani occupation army with the aid of its auxiliary forces, accessory *Para militia* forces, pro-Pakistan political organizations implemented the commission of atrocities in 1971 in the territory of Bangladesh in furtherance of following policies:

- (i) Policy was to target the self-determined Bangladeshi civilian population
- (ii) High level political or military authorities, resources military or other were involved to implement the policy
- (iii) Auxiliary forces were established in aiding the implementation of the policy
- (iv) The regular and continuous horrific pattern of atrocities perpetrated against the targeted non combatant civilian population.

[**Muhammad Kamaruzzaman, Judgment 09 May 2013, para, 513**]

**570.** In the case of *Abdul Quader Molla*, the Appellate Division focusing the notion of ‘systematic attack’ has observed that –

**“We would nevertheless add that given the fact that the whole world knows what went on in Bangladesh in 1971 and given that it has been proved by evidence that the Appellant committed the offence with a view to obliterate the war of Liberation and the cherished aspiration of the Bengali people to attain Liberation, in conjunction with Paki army which was bent to crush that aspiration in a planned, pre-meditated and systematic manner through countrywide operation, it is axiomatic, that the offences formed part of systematic and widespread operation and hence the same stand proved any way on Judicial notice of fact of common knowledge.”**

**[Justice A.H.M Shamsuddin Chowdhury, Judgment’s relevant Page 752]**

**571.** The above reflects the ‘context’ and it by itself suggests that the offences of crimes against humanity as specified in section 3(2)(a) of the Act of 1973 committed in 1971 during the war of liberation for which the Accused Mir Quasem Ali has been arraigned and found responsible were the predictable effect of part of ‘*systematic*’ and ‘*planned*’ attack’ ‘*committed against civilian population*’ .

**XX. Who was accused Mir Quasem Ali in 1971 and had he acted as the ‘Leader’ or ‘commander’ of the AB camp at Dalim Hotel, Chittagong**

**572.** Who was Mir Quasem Ali? What he used to do and what was his political dogma in 1971? Did he allegedly belong to Al-Badar force in Chittagong? Had he allegedly coordinated and steered the activities of the Al-Badar camp set up at Dalim Hotel, Chittagong? Findings on these matters will be of significant relevance in adjudicating the extent and gravity of accused’s culpability for the offences commission of which have already been proved. Therefore, let us arrive at decision on these aspects,

on having discussion based on evidence, authoritative sources and materials presented before us.

**573.** Accused Mir Quasem Ali has been arraigned for his culpable act and conduct forming part of attack committed against unarmed civilian population that resulted in the commission of principal offences of crimes against humanity in 1971 in Chittagong. Prosecution avers that the accused had so acted as a 'leader' of Al-Badar force in Chittagong town and of the AB camp set up at Dalim Hotel with which he was actively associated. Accused Mir Quasem Ali was with the politics of Islami Chatra Sangha [ICS], the student wing of Jamat E Islami [JEI] and thus had played a commanding role over the infamous AB camp at Dalim Hotel.

**574.** Mr. Tanveer Ahmed Al-Amin, the learned defence counsel argued that since the prosecution failed to prove that accused was the superior or commander of the AB force at the camp at Dalim Hotel by any document. He cannot be said to have had leadership on it. Prosecution also failed to show that accused had 'effective control' a requisite element of civilian superior responsibility by any evidence. Accused was a civilian throughout the war of liberation in 1971 and thus it was impossible for him to be a 'commander' or 'leader' of AB force in Chittagong. However, on query the learned defence counsel conceded that civilian superior responsibility involves *de facto* command or leadership and formal superior-subordinate relationship is not required to be established.

**575.** It has been further argued that the prosecution documents [reports published in 1971 in news media in the month of November] do not show that accused had been in Chittagong at the relevant time of commission of offences alleged. The owner of Dalim Hotel could set the law on motion by initiating case against the accused if really had he been associated with alleged activities carried out at Dalim Hotel.

**576.** As regards '**authority**' the learned defence counsel argued that mere presence of the accused at the crime site is not sufficient to incriminate him with the offence committed in the AB camp at Dalim hotel. In support of

his submission the learned defence counsel relied upon the observation made in the case of *Kvocka* judgment, para 257 by referring which it has been held by the ICTY Appeal Chamber in the case of *Brdjamin* that

**“mere presence at the scene of a crime is not sufficient to trigger criminal liability; the presence must be shown to have a significant legitimizing or encouraging effect on the principals.”**

**577.** The Tribunal [ICT-2] agrees with the settled legal proposition that the presence of an accused at the crime site must be shown to have a significant legitimizing or encouraging effect on the principals. What we see in the case in hand? What the evidence of victimized detainees divulges?

**578.** First, neither the prosecution documents nor the documents submitted by the defence show that the accused Mir Quasem Ali had been in elsewhere, not in Chittagong during the period of execution of offences for which he has been charged with. Next, the documents relied upon by the prosecution chiefly provide support to the fact of accused’s position in ICS and affiliation of ICS with the AB force. Thus, absence of information as to accused’s presence in those reports published in the dailies does not render him ‘absent’ in Chittagong at the relevant time.

**579.** The learned defence counsel argued too that no fact has been set out in the charges framed to establish a superior-subordinate relationship between the accused and the members of AB the principal perpetrators and as such depriving the accused of detailed notice in the indictment he cannot be held responsible as ‘superior’ of the principals the AB members.

**580.** The Tribunal notes that the charges framed, as it appears, make the accused liable also under section 4(2) of the Act of 1973 which corresponds to the doctrine of civilian superior responsibility for the offences with which he has been indicted. It implies clearly that he had acted also in exercise of his superior position and authority over the AB men in addition

to provide abetment and facilitation to the commission of crimes. Besides, the defence could raise the matter identifying any defect in the charges framed if the same was likely to cause prejudice to the defence instantly after the order framing charges. It was not done. Rather, it appears too that the charges have been framed in compliance with the requirement of section 16(1) of the Act of 1973. Thus, mere non-mentioning the accused as ‘superior’ or ‘leader’ of the AB men, the principals in the charges framed does not debar the prosecution in agitating this contention. And the Tribunal also shall not be precluded from arriving at a decision in this regard, on the basis of evidence and facts revealed in trial.

**581.** We are not convinced with the defence argument that in absence of any documentary evidence the accused cannot be termed as a ‘commander’ or ‘superior’ of Al-Badar members who used to carry out the criminal activities at the camp implanted at Dalim Hotel. Even the circumstances revealed may be considered sufficient to show an individual’s position of authority and his position of ‘*de facto* commander’. It need not be proved strictly by any formal document. For the purpose of arriving at a finding on this crucial issue we deem it expedient to look at the evidence of detainee witnesses first and then to the authoritative sourced information.

**582.** It has been alleged that accused Mir Quasem Ali had ‘participation’ to the series of system cruelties committed at the AB camp, by his conscious act or conduct forming part of ‘attack’. First, accused’s act and conduct is to be evaluated and next it is to be seen whether such act or conduct had placed him in the position of ‘command’ and ‘leadership’ of the AB camp at Dalim Hotel. In order to resolve this crucial issue we have to travel through what the detainee witnesses experienced during their protracted captivity at the camp.

**583. P.W.9 Md. Salauddin @ Chutu Mia**[ detainee victim of charge no. 10] stated that during his detention at the AB camp at Dalim Hotel when he was brought before Mir Quasem Ali he [accused Mir Quasem Ali] asked –

০েত্জব তক্ভ\_ব্গ A ̄; Aত্ফQ Ges গ্গ<sup>৩</sup>ewnbx তক্ভ\_ব্গ Aত্ফQ, bv ej ত্জ  
 ত্জব্গত্ফK ত্ফত্ফU UKত্ফiv UKত্ফiv Kত্ফi KY@j x b` ত্ফZ fvmত্ফq ত্ফ` e0 [tell  
**the whereabouts of freedom fighters and their arms**  
**; if you do not tell, you will be killed into pieces and**  
**dumped in the river Karnofuli].**

On refusal to make any disclosure, Mir Quasem Ali then asked the AB men  
 –0 Iত্ফK ফ্জ Kত্ফi ত্ফব্গtB Kত্ফi০ [beat him up smartly]. ‘Ordering’ AB men at the  
 detention and torture camp by such culpable utterance proves his [accused]  
 ‘command’ and ‘authority’ on them [AB men].

**584. P.W.10 Md. Jakaria** [detainee victim of charge no. 10] stated that  
 during his detention he was caused to torture by the AB men in a room on  
 the first floor of Dalim Hotel and at a stage some one came there and asked  
 the AB men to beat him up again as he refused to disclose information they  
 asked for. He came to know from conversation of the AB men that the  
 name of the person who asked those [AB men] to beat him [P.W.10] up  
 again was Mir Quasem Ali. Thus, the accused Mir Quasem Ali asked his  
 fellow AB men to continue torture on him by saying –0 Aবেবি ত্ফচুবি 0 as he  
 refused to make any disclosure. Explicitly directing the AB men to beat the  
 detainee up again not only establishes accused’s authority and position of  
 domination over the camp; it also proves the purpose of causing such  
 torture and degrading mistreatment.

**585. P.W.16 Jahangir Alam Chowdhury** [detainee victim of charge no.  
 02] stated that during his detention in a room on the second floor at Dalim  
 Hotel and after the dusk Advocate Shafiul Alam was brought there and  
 thrown inside the room by Afsar and Mir Quasem Ali and at then they had  
 left the place with the utterance 0গ্ফত্ফK ( G`ত্ফWত্ফfত্ফt্ফKU kত্ফDj Avj g) ত্ফ` ত্ফL GLtB  
**Dcw`Z Abত্ফ` i GKB ত্ফক্ফyv ন্ফe0 [ the other detainees here will learn similar**  
**lesson seeing him(tortured Advocate Shafiul Alam)].** Such utterance was  
 in fact aimed to make other detainees aware of the consequence on failure  
 to disclose information. It was a ‘threat’ to civilians detained there. And  
 only a person in position of authority over the execution site [the camp] can  
 extend such threat.

**586.** Chat and sayings, as discussed above, remained unimpeached. There is nothing on record which can reasonably provide an alternative meaning for this conversation. Rather, normal human prudence suggests that by such sayings the accused Mir Quasem Ali fanned the flames of grave inducement to the AB men at the camp to go on with the act of causing torture on the detainees. It signifies his commanding position on the camp too and he must have known all the activities carried out there.

**587.** Who can be called a leader? An individual is termed as a ‘leader’ when his activity aims and involves establishing a common purpose by sharing the vision with others so that they will follow or obey him willingly. Leadership is a process whereby an individual influences a group of individuals to achieve a common objective. Leadership is a process by which a person influences others to carry out an organizational objective. The above communication made by the accused with the AB men at the camp not only negates Mir Quasem Ali’s presence as a mere innocent bystander at the crime site the AB camp but it offers blatant indication of his ‘leadership’ and ‘command’ over the camp and his culpable concern to the commission of criminal activities by the AB men.

**588.** Defence does not dispute the authoritativeness of the book titled **০৫ম** **৫ম** **৫ম** **৫ম** **৫ম** authored by Advocate Shafiul Alam who was brutally tortured at the AB camp at Dalim Hotel in prolonged detention. Defence argued that since Advocate Shafiul Alam, in his book did not mention the name and presence of accused Mir Quasem Ali while narrating the episode of his being confined and tortured at the camp it may be presumed that accused Mir Quasem Ali had no nexus with the camp and its activities.

**589.** Presumably, this is the reason why the defence does not dispute the truthfulness of memoirs narrated by Advocate Shafiul Alam in his book. But it is to be noted that the narration made therein gains substantiation from the testimony of some of detainee witnesses whom Advocate Shafiul Alam saw detained at the torture camp at Dalim Hotel. The traumatic narration made in the book not only reflects the viciousness of torturous act but also indicates that there had been a mighty ‘boss’ at the camp known

as ‘Khan Saheb’ and ‘Sardar’ [head] who was in position of navigating all the criminal activities committed directing the detainees. Let us have a glance to part of harrowing memoirs made in the book which states that –

০.....`iRv eU nIqvi mʌ\_ mʌ\_B tK  
GKRb vRtAm Kij, ōtK Zng fvB ?Ō bvg ej tZB `Rb  
Rvotq aitjv mʌ-ʌn | Giv Augvi AvZ vbKtUi  
gyʌthv×v, RvnusMxi Avi QvbnDj øvn tPrajx | AvgvʌK  
t`qvʌj i mʌ\_ tVm wʌ tʌ eumʌq wʌ j Iiv | nvZ-tPvL  
Avgvi ZLtbv evav | Avi mKtj iI ZvB | Ggb vK  
cʌbtiv wʌ b AvʌMi tj vKt` iI ; GUvB I LvKvi ŌbqgŌ |  
mKtj RvbʌZ D` Mʌe evʌti i Ae-v tKgb, hʌ×i Ae-v,  
vKfʌte aiv cojvg BZ`wʌ | Avevi nVv eʌUi Avl qvR  
Kvʌb Gtjv | gʌb nʌjv tek KŌRb μgk vbKUZi nʌ"Q |  
tmwU<sup>a</sup> `iRv Lʌj nvK wʌ tʌjv ; Ō Lvb mʌʌne GʌmʌŌ,  
mKtj DʌV `wvI | Ō evʌti \_vKʌZ kʌbʌŌtʌjvg G ŌLv  
mʌʌneŌ fqvj vbŌi kʌʌ<sup>3</sup>ai GK tj vK | GLvbKvi m`vʌ |  
cŌtʌg, bvg-avg Avi vKŌzmvaviY tMʌŌi i vRbʌwzi K\_v  
vRtAm Kij | gʌb nʌjv tK thb vj LvŌj Gme | nVv  
tʌsʌP D`Pvi tʌY Lvb mʌʌne ej tʌjv : ŌRq evsjv eʌjv bv  
?Ō ej jvg, ŌtʌZ mKtj B ej tʌŌŌ | Avi Agvʌb gʌL Gʌm  
j vMj GK Zʌe<sup>a</sup> Nyl | Zvici AK\_ Mj vMvj , Avi  
Pvi wʌ K t\_ʌK tek KŌRb mgvb Zʌtʌj B"QvgʌZv mviv  
Mʌq mʌRʌti j w\_ Nyl tʌgti Pj j  
.....hšʌvq nVv Ō Dn ! Avj øvn Ō  
kā Kʌi DVjvg | Avi Agvʌb gʌL mʌRʌti AvWvZ tʌtʌb  
ej j : Ōkvjv, tʌ vbb Avi gvl tʌm Zs ej --Avj øvn bq | Ō

590. Co-detainee Sanaullah Chowdhury [P.W.2] stated that at one stage, during his confinement, in a room on the second floor of Dalim Hotel[ AB camp] he, removing his blindfold, saw Jahangir[P.W.16] and other detainees in the room and after a short while by kicking back another one was pushed to their room. He was Advocate Shafiul Alam [author of the



book] who was formerly known to him. This piece of testimony corroborates to what has been narrated by Advocate Shafiul Alam in his book as regards his seeing Sanaullah Chowdhury [P.W.2] and Jahangir [P.W.16] detained in the room where he was in captivity with them

**591.** P.W.2 further stated that on the following day someone commanded the AB men **“this dirty fellow [a detainee] has not yet died, hurl him so that the detainees in the room can perceive the consequence of not telling the truth”**. And with this the youth was thrown to their room and they had left the place by keeping the door closed. Then Advocate Shafiul Alam muttered --“the man was Mir Quasem Ali, **Bangalee Khan** – commander of Badar Bahini [AB force]”.

**592.** Defence could not refute the above crucial piece of evidence as to presence and identity of accused Mir Quasem Ali with authority at the AB camp. Even it has not been denied too. Further, it has not been suggested by the defence that not Mir Quasem Ali, some other AB man was known as **‘Bangalee Khan’ or ‘Sarder’** of the camp.

**593.** From the above narration made in the book titled **উদ্ভব তম মগ্গ আব্দ** **te` buq** it has been divulged that even prior to his confinement at the AB camp Advocate Shafiul Alam had learnt about **‘Khan Saheb’** a mighty and austere cruel man who was **‘Sarder’** [head] of the AB camp. It gains corroboration from the above piece of evidence of P.W.2, a co-detainee. Therefore, despite non mentioning Mir Quasem Ali’s name directly in the book authored by Advocate Shafiul Alam, a co-detainee it is quite clear that Advocate Shafiul Alam wanted to make it comprehended that said **‘Khan Saheb’** and **‘Sarder’ [head or leader]** was none but accused Mir Quasem Ali.

**594.** An ordinary member belonging to AB force was not supposed to be acquainted with Lenin and Mao Tse Tung. Advocate Shafiul Alam was affiliated with left politics. It is not denied. By giving a fist blow to Advocate Shafiul Alam when said **‘Khan Saheb’** angrily scolded by uttering **“dirty fellow, tell Lenin and Mao Tse Tung, not Allah [for**

**help]”** it was none but a Bengali man having knowledge about Leninism and Maoism. Thus, a vindictive Bengali man who had a position of steering the atrocious and brutal activities of the AB camp was known as **‘Khan Saheb’** and **‘Sarder’** [head or leader] of the camp. And it was accused Mir Quasem Ali.

**595.** P.W.19 S.M Sarwaruddin a co-detainee [victim of charge no.9] in narrating his harrowing experience, during captivity at the AB camp at Dalim Hotel stated that he used to see the armed AB men going round at different rooms and Mir Quasem Ali often accompanied them. Extent of causing torture got intensified on arrival and in presence of Mir Quasem Ali at the camp when the AB men used to utter-- **“commander’** has come, **‘Khan Saheb’** has come”.

**596.** The above version of a direct witness who had been in confinement at the prime execution site, the AB torture camp at Dalim Hotel could not be refuted by the defence in any manner. And even it remained undenied too. This unshaken piece of evidence based on traumatic experience provides force to the fact that accused Mir Quasem Ali was known as **‘Khan Saheb’**, **‘Bangalee Khan’**, **‘Sarder’** or **‘commander’** of the infamous AB torture & detention camp implanted at Dalim Hotel.

**597.** Now the question comes forward whether the accused got himself involved with AB camp in his individual capacity or by virtue of his position in the ICS the student wing of JEI.

**598.** Al-Badar acted as the Pakistan army’s **‘death squads’**. [Source: **Pakistan Between Mosque And Military: Hussain Haqqani**: published by Carnegie Endowment For International Peace, Washington D.C, USA first published in 2005, page 79]. Thus, acting as ‘death squad’ of Pakistan occupation army in furtherance of policy and plan unequivocally proves that the Al-Badar force was a *para militia* force created to assist the Pakistan army as its auxiliary force.

**599.** Referring a report published in **The daily Sangram** 24 April 1971 a report titled **ÓgRwnt` i KKwZ©Muv AvtQ `vbK mSMÓgi cvZvqÓ** published in **The Daily Bhorer Kagoj**, 31 October 2007 which speaks as below:

Ó%abK mSMÓgi 24 GucÓ ZwiþLi mSL`vq cKvkZ  
 Leti Avtiv ejv nq, 22 GucÓ (1971) ZwiþL  
 gqgbmstn RvgvZ I Bmjvqx QvÎ mstNi (eZ@vb  
 Bmjvqx QvÎvkvei) tbZv I Kgx@ i GK mfv nq| ZvZ  
 mfvvZZ; Kþib gya\$ Avkivd trnmvBb Ges mfvq  
 Dcw`Z vDþj b gvZDi ingvb vbRvgx I Avjx Avnmvb  
 gRwn` | GB mfvq e<sup>3</sup>Zv wþZ vltq Avjx Avnmvb  
 gRwn` etjb, ÓAvj-e` i GKvW bvg, GKvW ve`sq|  
 Avj-e` i GKvW cþZÁv| thLvþbB Z\_vKw\_Z gya<sup>3</sup>ewnbx,  
 tmLvþbB \_vKte Avj-e` i | gya<sup>3</sup>ewnbx Z\_v fviZvq  
 Piþ i KvQ Avj-e` i nte mvývr AvRivBj Ó|

[See the translated key part: “Al-Badar is a name!  
 A wonder! Al-Badar is a commitment! Where there  
 is the so called freedom fighter, there is the Al-  
 Badar. Where there is the miscreant, there is the Al-  
 Badar. Al-Badar is the Azrail [Angel of death] in  
 presence to the ‘Indian agents’ or the ‘miscreants’.]

**600.** The above report unerringly demonstrates that goals and activities of JEI, ICS and Al-Badar were chained together. The speech also triggered the Al-Badar members to act as ‘Azrail’ [The Angel of Death] to annihilate pro-liberation Bangalee people and freedom fighters wherever they [Al-Badar] get them.

**601.** Who was Mir Quasem Ali in 1971? He was the president of ICS of Chittagong town unit and afterwards on 08 November same year he was elected as general secretary of the East Pakistan ICS. Thus, accused’s position and ideology that he belonged suggests his mindset was inseparable from that of his leader Ali Ahsan Muhammad Mujahid. Additionally, it emerges from the preceding findings that it has been proved beyond reasonable doubt that Mir Quasem Ali is criminally responsible, for having ordered, committed and, by his presence and his participation aided and abetted in the commission of crimes for which he has been charged with.

**602.** ICS and its potential leaders were thus fully cognizant about the criminal activities of Al-Badar. It finds support from the narrative of the book titled ‘Muktijudhdhe Dhaka 1971’ demonstrates substantial contribution of Jamat E Islami and the leaders of its student wing ICS and was centrally guided by JEI. The relevant narration is as below:

০Avj e` i iv wj tgav m=ubæmk` ; ivR%bwZK K`Wwi |  
 Bmj vgx Qvî mstNi tbZe,` G ewnbx MVb Kti Ges  
 tK) `iqfute RvgvqfZ Bmj vgx i vbqštb G ewnbx  
 cwi Pwj Z nq|

[Source: *Muktijudhdhe Dhaka 1971*: edited by *Mohit Ul Alam, Abu Md. Delowar Hossain*, Bangladesh Asiatic Society , page 284 : Prosecution Documents Volume 03 page 631]

**603.** Therefore, there had been an effective tie between ICS and the AB force. Such linkage together with the potential position the accused Mir Quasem Ali had in the ICS offers unmistakable conclusion that he had culpable association with the AB force and its activities in Chittagong, particularly with the AB camp at Dalim Hotel. It was not required to provide evidence that the accused formally belonged to AB force. His position in the ICS by itself made him a person of domination and authority in carrying out activities by the AB men of the camp at Dalim Hotel in Chittagong town.

**604.** The above unerring inference coupled with the fact of accused's access to and mighty presence at the AB camp at Dalim Hotel and sharing intent with the AB men by his act, conduct, order, direction are strong indicators of his culpable 'commanding position' and 'effective control' over the camp. It may also be validly presumed that at war time situation a civilian cannot be expected to be affiliated with an armed *para militia* force created to collaborate and assist the Pakistani occupation army at war unless he was a part of policy and plan, in furtherance of common purpose. Accused Mir Quasem Ali had thus acted as a 'leader' and 'commander' of the AB camp at Dalim Hotel persuaded by the message to annihilate pro-liberation Bangalee people and freedom fighters wherever they are found.

605. A report titled *Óe`i w eṭmi mgvṭeṭk Bmjvgx QvṭmsN mfvṭvZi fvlyó* published in *The Daily Ittefaque*, 8 November 1971 narrates that

Ó Gvṭvṭ I vṭvṭAvB cvṭṭeṭkZ Leṭi ejv nq, Avj e` I w em Dcjṭṭ MZKvj (iveevi) veKvṭj evqZj tgvKiig cṖṭṭb Bmjvgx QvṭmsṭNi Dṭ`vṭM AvṭqvRZ GK mgvṭeṭk cvK`vṭbi msnvZ I ALÚZv iṭṭvq RbMṭVi `p msKṭíi cṖṭṭ<sup>3</sup> Kiv nq|.....fvZxq I `ṭṭZKvixṭ`i nvjv cṖṭṭvṭa `p msKí ṭNvbv Kviqv veṭṭbṭvṭMṭb ṭ` I qv nq|.....mfvṭvZ Rbve Avj x Avnmb tgvnṭṭṭ tgvRvn` e<sup>3</sup>Zv cṖṭṭM eṭjb th, AvR (ṭmgevi) nṭZ ṭKvb cvMṭvi vn`ytj LK I vn`ycṭṭveZ gṭṭj g ṭj LKṭ`i vjvLZ ṭKvb cṭK iwlṭZ ṭ` I qv nṭe bv| vZvb eṭjb th, Bmjvgx Qvṭ msṭNi ṭ`QvṭmeKMY AṭṭmjwgK cṭṭve nṭZ gṭṭj gṭṭ`i iṭṭvi Rb` cvMṭṭi H me eB cvṭṭj Zvvn cṖṭṭBqv wṭe| Rbve gṭṭvn` eṭjb, veṭṭkṭ gṭṭvṭPṭ nṭZ fvṭṭZi bvg gṭṭqv bv ṭdṭv chṭ- mslṭṭg Ae`vnZ `wKṭe|.....ó

606. The above report also depicts that the general secretary of ICS Mir Quasem Ali also addressed the rally and he [accused] uttered that the people would not allow destroying Pakistan and would not accept slavery of India. In the rally, the slogan ‘destroy India and its agents’ was chanted with firm pledge to resist the ‘Indians’ and ‘miscreants’. Prudence of a reasonable man allows inferring that such culpable attitude had acted as a catalyst to inspire the accused too in participating, abetting, facilitating and contributing to the criminal activities carried out in systematic manner by the AB men directing non combatant civilians in captivity who were with the war of liberation.

607. In fact ICS was synonymous of AB force. We reiterate our earlier finding based on consideration of undisputed history depicted from authoritative reports published in the domestic and international news media, in the case of *Muhammad Kamaruzzaman*[Judgment para-601] that

**“Jammat E Islami and its student wing ICS were thus indulged in indiscriminate annihilation of their political opponents belonging to Bengali nation, in the name of liquidating ‘miscreants’, ‘infiltrators’ for which they were using Razakars, Al-Badar comprising with the workers of Islami Chatra Sangha [ICS], its student wing. Incontrovertibly the way to self-determination for the Bangalee nation was arduous, swabbed with mammoth blood, struggles and sacrifices.**

**608.** We further observed in the above mentioned case that “the Al-Badar was created by JEI and had acted as its ‘**action section**’, ‘**fascist body**’ and ‘**armed wing**’ in 1971.

**609.** The book titled ‘Al-Badar’ [Bengali translated text] authored by Selim Mansur Khalid and published from Pakistan describes the formation about Al-Badar including its activities and speeches of some leading Al-Badar men as well as the last speech of ‘**Nazim**’ [President] of ICS addressed to Al-Badar men at Al-Badar HQ in Dhaka city` urging the AB members to spread wherever they liked without being ‘ashamed’ of their deeds.

**610.** It is true that the speech does not state the name of accused. But who was ‘Nazim’ [president] of the ICS at the relevant time? It was Ali Ahsan Muhammad Mujahid [already found guilty and convicted and sentenced to death in another case involving the offences specified in the Act of 1973] who was the president of ICS till 16 December 1971. Who was the General Secretary of East Pakistan ICS during that time? Admittedly, it was the present accused Mir Quasem Ali and prior to 08 November 1971 he was the president of ICS, Chittagong town unit. Be that as it may, accused Mir Quasem Ali’s position was inevitably with his ‘organizational boss’ who used to ignite, by inciting speech, his fellow party men to take stance in annihilating and attacking the pro-liberation civilians and freedom fighters who were termed by them as ‘miscreants, ‘infiltrators’ and ‘Indian agents’.

**611.** The speech as discussed earlier with reference to a report titled **ÓgRvnt` i KKwZ©Muv AvtQ `wbK mslMti cvZvq0** published in **The daily Sangram 24 April 1971** also drastically provoked the Al-Badar to act as 'Azrail' [The *Angel of Death*] to exterminate the pro-liberation Bangalee people and freedom fighters wherever they [Al-Badar] get them. It sufficiently established the nexus between ICS and the AB force. The speech delivered by Mujahid a top leader of ICS obviously influenced the AB to make the freedom fighters, pro-liberation Bengali civilians their target of attack.

**612.** Can the accused Mir Quasem Ali despite being a potential leader of ICS which substantially contributed to the formation of AB force claim to have had remoteness from such inciting culpable urge? No, the accused inescapably was with the 'urge' divulged from the above 'message', in execution of common purpose and object. This is the reason why the accused Mir Quasem Ali made himself culpably associated with the AB camp at Dalim Hotel and had steered its activities in exercise of his position of authority.

**613.** Another report published in the daily 'Dainik Pakistan, 08.11.1971 demonstrates how aggressive the accused Mir Quasem Ali was towards the 'miscreants'[freedom fighters] in the name of solidarity of Pakistan and Islam. The report speaks that on 07 November 1971 accused Mir Quasem Ali as the general secretary of East Pakistan ICS addressed a rally organized by the ICS held in the Baitul Mukarram premises, Dhaka where he declared that-

**0AvRtKi e`i w`etmi kc\_ ntjv, (K) fviZi  
Avµgb ijl `wve (L) `PwZKvix` i LZg Kie (M)  
Bmj vgx mgvR Kvqq Kie|0[Prosecution  
documents volume 2 page 41-42]**

**614.** Accused Mir Quasem Ali thus urged for a pledge, with ferocity, to exterminate the freedom fighters [miscreants]. This infuriating urge is to be considered together with the speech of Ali Ahsan Muhammad Mujahid the

president of East Pakistan ICS as discussed above that provoked the Al-Badar to act as 'Azrail' [The *Angel of Death*] to execute pro-liberation Bangalee people and freedom fighters wherever they [Al-Badar] get them.

**615.** The report published in the daily '**Dainik Azadi**' **23 November 1971** [Prosecution document volume 2 page 226] speaks of 'attack' carried on 21 November 1971 directing the freedom fighters[miscreants] stationed at a secret shelter in the locality of Chaktai, Chittagong by the group of AB members. It also proves that the AB force became aggressively active aiming to target the freedom fighters and freedom-loving people in Chittagong town particularly in the month of November as around this month freedom fighters were stationed in various secret shelters in Chittagong. Presumably, accused's provoking urge and extremely hostile attitude substantially fanned the flames of grave inducement to such 'attack'. And the offences committed at the AB camp at Dalim Hotel by the AB members were not isolated from the common design and purpose of such attack. All these cumulatively allow us to conclude that the accused's act and conduct coupled with his position in the ICS and active affiliation with the AB camp at Dalim Hotel placed him in *de facto* leadership of the AB force in Chittagong and the AB torture and detention camp at Dalim Hotel as well.

**616.** It is significant to note that a civilian superior may be held responsible under the theory of civilian superior responsibility only where he has effective control, be it *de jure* or merely *de facto*, over the persons committing violations of international humanitarian law. A superior's or leader's authority may be merely *de facto*, deriving from his influence or his indirect power. The determining question is the extent to which Mir Quasem Ali had power of control over the AB camp. No formal superior-subordinate relationship was required, so long as the accused possessed *de jure* or *de facto* authority to order or that authority may be implied.

**617.** It evidently transpires from the testimony of detainee witnesses that Mir Quasem Ali himself used to remain present at the AB camp, the prime execution site and grill the detainees under coercion and torture and thus



the Tribunal infers that the accused knew or, at least, had reason to know, by virtue of his position of authority that the AB members at the camp were about to commit the criminal acts or had done so. But he, instead of preventing the commission of criminal acts by the AB men, abetted and facilitated the commission of those acts, by his culpable and mighty presence and personal participation to the act of causing torture. He thus incurs individual criminal responsibility, as the 'superior' of the principals as well.

**618.** It emerges from the evidence presented that acts of causing severe bodily and mental harm to the civilians detained at the AB camp at Dalim Hotel [most of them were non combatant freedom fighters] were often accompanied by terrorizing or intimidating utterances by the accused Mir Quasem Ali which clearly indicates that the purpose underlying each specific criminal act forming part of attack was to extract information about freedom fighters and their affairs in Chittagong and that those activities were carried out at the 'instance' or 'approval' or 'order' or 'instigation' of the accused as well. Accused Mir Quasem Ali, by his act and conduct had thus achieved a profile of '**Khan Saheb**', '**Bangalee Khan**' and '**Sarder**' [leader or commander] of the AB torture and detention camp at Dalim Hotel and in this way he became an indispensable cog in the 'murdering machinery'.

**619.** It is now settled that 'ordering' implies a situation in which an individual with a position of authority uses such authority to impel other persons who eventually acted as the principals in committing an offence. In the case in hand, all the offences including confinement, torture and murder occurred at the AB camp which was the prime execution site. The AB members at the camp were the principal perpetrators. The routine situation of cruelties coupled with accused's active and conscious affiliation with the camp and authority over the principals suggests that the criminal activities were perceptibly carried out on order of accused Mir Quasem Ali as he was in commanding position of that camp.

**620.** Thus, even in absence of any formal document showing the accused as a ‘commander’ or ‘member’ of AB force or the AB camp at Dalim Hotel the nexus between him who was a potential ICS leader in Chittagong in 1971 by virtue of which he was in commanding position of AB and atrocious activities carried out by the AB force in Chittagong town offer valid inference that the accused Mir Quasem Ali, being in commanding position of the camp, was fully aware of criminal activities carried out there and had ‘effective control’ over the AB members of that camp. Hence, accused Mir Quasem Ali had acted as the ‘leader’ or ‘commander’ of the AB camp, an organised criminal enterprise.

**621.** The authoritative books relied upon by the prosecution also provide corroboration to the fact of setting up AB torture camp at ‘Dalim Hotel’. Most of prosecution witnesses experienced horrific torture caused to them in their prolonged captivity at the AB camp the prime execution site. Causing inhuman torture and extreme degrading treatment to them, keeping there in confinement for days together, denying fundamental rights for obtaining information about the position of freedom fighters and their arms were gravely violative of recognised human rights. Accused Mir Quasem Ali had acted as the ‘**leader**’ and *de facto* ‘**commander**’ of the principal perpetrators the AB men at the camp headquartered at Dalim Hotel building in steering the criminal activities by them.

## **XXI. Participation and mode of liability**

**622.** It is now settled that the offence of crimes against humanity is considered as ‘**group crime**’ and it is not perpetrated by a single individual. But however, an individual may participate to the actual commission of the principal crime by his act or conduct, before or midst or after the crime committed.

**623.** We reiterate that the offences are alleged to have been committed in context of war of liberation in 1971. Thus, in the case in hand, if we keep the provision of section 22 together with section 19 of the Act of 1973 in mind it would be clear that the task of determination of culpability of a

person accused of offences enumerated in section 3 of the Act of 1973 involves a quite different jurisprudence. Proof of all forms of criminal responsibility, through participation in any manner can be given by direct or circumstantial evidence. It is now settled jurisprudence.

**624.** All the charges excepting charge no.11 and charge no.12 involve the criminal acts of causing inhuman torture at the AB camp keeping the civilians captive there, on capture. Thus, the criminal acts consist of three phases – forcible capture, confinement at the AB camp and causing torture during confinement. Accused Mir Quasem Ali may not be found to have had direct participation to all the phases of criminal acts. But his act, conduct or position of authority over the AB camp must connect him with the criminal acts carried out by the principal perpetrators.

**625.** Besides, presence of accused person having position of authority over the group of perpetrators at the main execution site validly suggests his ‘participation’ to the commission of the criminal acts constituting the offences. Thus, even accused’s presence either at the place wherefrom the victims were captured or at the AB camp offers his explicit approval and encouragement to the accomplishment of the criminal act of abduction, confinement and torture, as it has been established that he had effective and potential control and authority over the AB members who actually perpetrated the crimes.

**626.** In relation to **charge no.2** it is found proved from evidence that the accused **remained present at the time of causing torture** to detainee P.W.20 and he was so tortured on instruction of accused and he used to visit the camp frequently. Thus accused’s effective affiliation and control over the AB men the principals has been proved.

**627.** In relation to **charge no.3** detainee P.W.16, during his confinement at the AB camp one day after the dusk saw the accused and his accomplice Afsar bringing and throwing tortured co-detainee Advocate Shafiul Alam inside their room and they [Afsar and Mir Quasem Ali] had left the place by keeping the room under lock and key with uttering that ‘seeing *him*

*[Advocate Shafiul Alam Chowdhury] the detainees here will have same lesson'. This act on part of the accused by itself unerringly indicates accused's 'substantial affiliation' with and 'influence' over the AB camp. Thus, the accused **was consciously with the AB men in carrying out criminal activities at the camp.** Such act of the accused entails his deliberate contribution to the activities at the camp. It indicates his authority over the AB men as well.*

**628.** In relation to **charge no.4** the fact of presence of one ICS leader Afsar Uddin at the AB camp at Dalim Hotel, as stated by P.W.14 impels conclusion as to culpable association of ICS leaders of Chittagong with the AB camp[s] and activities carried out there. Admittedly, in 1971 till 06 November accused Mir Quasem Ali was the president of ICS, Chittagong town unit. Accused's leading position in ICS together with the act and conduct revealed from evidence of other detainees so far as it relates to charge nos. 2 and 3 it may be lawfully presumed that the **accused had substantial contribution in the form of approval and encouragement** to the commission of criminal acts constituting the offence of confinement and torture of P.W.14.

**629.** In respect of **charge no.6** the fact of forcible capture of Harunur Rashid by the armed group of AB men and bringing him blindfolded to the AB camp at Dalim Hotel and keeping him confined there gains corroboration from the information narrated in the book titled **০১১১১১ ১১১১১১** authored by Mahbub-ul-Alam [Material Exhibit-VI, relevant page 297-302] . And testimony of P.W.15 Julekha Khan the wife of detainee Harunur Rashid Khan [now dead] together with the finding on accused's involvement as found proved, in relation to charge nos. 2,3 and 4 impels to conclude that the accused Mir Quasem Ali had acted as the '**boss**' of AB men at the torture camp at Dalim Hotel.

**630.** The evidence of P.W.2 a detainee, in relation to **charge no.7**, depicts that during his detention at the AB camp he saw one AB men bringing a boy, who endured severe torture, to their room when someone told Al-Badar men pointing to that boy *'he is not dead yet, throw him in[inside the*

room] so that the captives realise the consequence of not telling the truth'. Then they [Al-Badar men] left the boy inside their room. Advocate Shafiul Alam, a co-detainee in their room told him that he [the man who gave the order] was Mir Quasem Ali, commander of [Al] Badar force. It has also been proved that during his [P.W.2] confinement, captives were tortured in different rooms and he saw Mir Quasem Ali, on several occasions, **remained present** and Mir Quasem Ali himself also had **grilled** him at Dalim Hotel. It signifies accused's effective nexus with the AB camp and its activities.

**631.** It has been proved that even at the phase of forcible capture of victims of **charge no.8** accused Mir Quasem Ali **led the group** of armed AB members. He used to play substantial role in deciding the fate of the inmates of the AB torture camp, in furtherance of common purpose and design. He was **part of system series of crimes** carried out by the AB men at AB camp, the prime execution site

**632.** In relation to **charge no.9** it has been proved that the detainee victims P.W.18 and P.W.19 were brutally tortured at the AB camp at Dalim Hotel on **order** of Mir Quasem Ali and in his **presence** there. Presence by itself alone is not always an indicator of culpability. But such presence coupled with authority, influence and *mens rea* offers unambiguous conclusion of accused's participation to the criminal enterprise directing unarmed civilians.

**633.** In respect of **charge nos.10 and 14** it has been found proved that accused Mir Quasem Ali himself **grilled** the detainees and **ordered** his cohorts to beat them up more on refusal to make disclosure about the freedom fighters and their arms.

**634. Charge nos. 11 and 12** involves the event of killing of detainees at the AB camp. It has been found proved that the accused, by his conduct, act, and presence coupled with his position of authority was knowingly '**concerned**' with the act of such killings.

**635.** Thus, the AB camp at Dalim hotel was a ‘criminal enterprise’ of which the accused Mir Quasem Ali was a ‘boss’. Accused’s active inducement, approval and endorsement effectively contributed to the commission of all those criminal activities carried out there, in furtherance of common purpose.

**636.** Accused Mir Quasem Ali had acted in such culpable and commanding manner sharing intent of the principals by virtue of his potential position in the ICS, although he had no formal relationship with the AB camp at Dalim hotel. But by his act and conduct he established himself as the ‘**ring leader**’ of the criminal enterprise. Accused’s conscious and active presence at the AB camp, his inducing sayings, act and conduct cumulatively suggest his ‘commanding position’ that had encouraging effect and approved to all the criminal activities carried out to the commission of abduction, confinement, torture and death. In this regard we may recall the observation of ICTY Trial Chamber rendered in the case of *Ndindabahizi*,

**“The presence of a person in a position of authority at a place where a crime is being committed, or at which crimes are notoriously committed, may convey approval for those crimes which amounts to aiding and abetting. It is not the position of authority itself that is important, but rather the encouraging effect that a person holding the office may lend to events.”**

*[Ndindabahizi, (ICTY Trial Chamber), July 15, 2004, para. 457:*

**637.** It is immaterial to argue that the accused was not the actual perpetrator or he himself did not physically participate to the commission of the criminal acts. It is not the ‘act’ but the ‘attack’ is to be systematic in nature and even a single act forms part of the ‘attack’. It is to be seen how the accused acted or conducted in forming part of ‘attack’. The whole criminal systems was practiced by AB members under the active and substantial guidance and directives of the accused Mir Quasem Ali and thus even a

single act or conduct, at any phase of the system, on part of the accused obviously formed attack directing the civilians.

**638.** Mr. Tanveer Ahmed Al-Amin, the learned defence counsel argued mainly on two points. He submitted that section 4(2) of the Act of 1973 does not apply to civilian superior. Second part of section 4(2) of the Act corresponds to JCE form II, but the prosecution failed to prove the fact of plan and design the necessary elements for holding the accused liable under second part of section 4(2) of the Act. The accused did not have any concern to any such plan and design and thus he cannot be held liable under JCE form II.

**639.** It has been argued too by the defence that section 4(2) of the 1973 Act only provides for holding military commanders and superiors responsible for criminal acts of subordinates; and it does not provide for civilian superiors to be held similarly accountable.

**640.** We are not with the above argument. We have already recorded our reasoned finding that the accused Mir Quasem Ali was in ‘commanding’ and ‘leading’ position of the AB members headquartered at the Dalim Hotel building. An accused incurs individual criminal liability for his act of abetment that encompasses moral support, assistance, instigation. At the same time he incurs liability under the theory of ‘civilian superior responsibility’ if he is found to have had authority and command over the principals. As per the amendment of section 3 of the Act of 1973, the Tribunal now has jurisdiction to try and punish any non-military person [civilian], whether superior or subordinate, who has direct or indirect involvement with the relevant crimes. In other words, the Tribunal now has jurisdiction to try an individual who was a non-military person, including a civilian superior, for the offences enumerated in the Act of 1973.

**641.** Section 4(2) of the 1973 Act generally asserts the superior’s liability for crimes. This section uses the terms ‘commander’ or ‘superior officer’ in general. But the said section does not preclude the liability of the civilian superiors. If the amended section 3 and the section 4(2) of the 1973 Act are

read together it would affirm that liability for crimes under section 4(2) would also entail the liability of the civilian superior.

**642.** Prosecution is not required to show that the accused had ‘explicit legal capacity’ to prevent the commission of crimes. It is to be seen whether the accused Mir Quasem Ali had material ability to act. Accused was in *de facto* commanding position of the detention and torture camp of AB set up at Dalim Hotel. It is proved. He had substantial and material ability to control the AB men in the camp.

**643.** It is now settled that the doctrine of superior responsibility is applicable even to civilian superiors of paramilitary organizations. As a matter of policy, civilians should also be subject to the doctrine. Since AB, the ‘killing squad’ of JEI, was formed of workers of ICS, accused Mir Quasem Ali, by virtue of his leading position in ICS had acted as a potential member of AB ‘high command’ in setting up ‘AB torture and killing camp’ at Dalim Hotel in Chittagong, the facts revealed lead us to this conclusion. Accused’s recurrent cruel activities and acts carried out at the camp, as found proved by evidence, demonstrates that in exercise of his ‘commanding position’ he rather consciously induced the AB members in committing the untold recurrent torture and torture to death of civilians and non combatant freedom fighters kept confined there on capture, to further the notorious purpose and plan of his parent organisation JEI that actively sided with the Pakistani occupation army.

**644.** It has been found that the accused in exercise of his position and authority used to order conditional release of detainees even. Hence, it transpires that the accused, by dint of his position, could prevent the AB men in committing crimes. The duty to prevent arises when the commander acquires actual knowledge or has reasonable grounds to suspect that a crime is being or is about to be committed. It has been proved that the system criminal activities were carried out within knowledge of accused Mir Quasem Ali and despite being in commanding position of the AB camp accused failed to prevent the commission of crimes. Rather, he used to remain present and grill the detainees, ordered the AB men to beat them up.



**645.** The decisive criterion for determining one's position as 'superior' is not his formal status or formal authority but the "degree of control" he had on the perpetrators or the 'group' or the 'organization'. 'Power of influence' is a key indicator that constitutes sufficient basis for the imposition of 'superior responsibility'. Formal position or designation as a commander is not required, particularly in case of a *de facto* superior. Accused's commanding position in the ICS naturally placed him in a position of authority even of AB members at the camp at Dalim Hotel.

**646.** Ms. Tureen Afroz next contended that the accused Mir Quasem Ali incurs liability also under the theory of JCE form-II that refers to criminal activities committed in concentration or detention and torture camp, in furtherance of 'common purpose and design'. The evidence presented by the prosecution, in the case in hand, clearly reflects that there had been a 'system' of criminal activities and a 'course of conduct' at the AB camp and the cruelties and severe mistreatment were caused to the detainees in pursuance of a common design and plan and the 'system' was practiced with the knowledge of the accused, the learned prosecutor added.

**647.** The learned defence counsel argued that there has been no evidence to show that the criminal acts were the outcome of common design and plan and the same were accomplished with the knowledge of the accused. .

**648.** The systemic form of JCE involves confinement and torture camp situations where detainees are killed or mistreated pursuant to the JCE. *Mens rea* requirements for JCE II is that the accused must have personal knowledge of the system of ill-treatment and the intent to further this system of ill-treatment are required. The personal knowledge may be proven by direct evidence or by reasonable inference from the accused's position of authority. "Systemic" JCE thus requires the accused's knowledge of an organised system of ill-treatment, as well as the accused's intent to further this system. All the elements of systematic form of JCE including the 'common purpose' and 'design' have to be inferred from circumstances and relevant facts.

**649.** Accused Mir Quasem Ali may not be found to have had direct participation to all the phases of criminal acts. The acts of the accused do not always need to be committed in the midst of the attack provided that if they are sufficiently connected to the attack. Excepting the act of forcible capture of victim civilians all other offences were committed at the AB detention and torture camp at Dalim Hotel. It has been proved beyond reasonable doubt that the accused Mir Qausem Ali was actively and substantially affiliated with this confinement and torture camp and criminal activities carried out therein.

**650.** Under the systemic JCE, persons who violate international humanitarian law by knowingly contributing to the maintenance of a system of ill-treatment (*e.g.* criminal mistreatment of inmates in detention or concentration camps) can be charged, tried and punished as principals. It is now settled proposition. Thus, liability under the systematic JCE refers to liability for the crimes committed at concentration or confinement or torture camp. In fact the AB camp set up at Dalim Hotel was the lone and principal execution site of the proved offences of confinement, torture and murder of detainees. Keeping the captured civilians [mostly non combatant freedom fighters] in prolonged captivity at that camp, the AB men caused ruthless torture to them that resulted even in death of many detainees too. Common objective and purpose was to wipe out the freedom fighters and freedom loving civilians. The whole systems were aimed to further a common design. The circumstances and evidence impel this unerring conclusion.

**651.** It is now settled that the essential elements of systemic form of JCE includes (a) existence of an organised system to ill-treat the detainees and commission of various crimes alleged (b) accused's knowledge and awareness of the nature of such system and (c) accused's intention to further the system or in some way he participated in enforcing the system. It has already been found that there had been a common purpose in committing recurrent crimes under 'an organized system' set in a single place the Dalim Hotel building where the AB members were headquartered. Thus, the coordinated commission of repeated crimes by a multiplicity of actors throughout a protracted period of time can be sufficient evidence to

establish the existence of a systemic JCE to commit those crimes. In the case in hand, prosecution has been able to prove that the accused Mir Quasem Ali was related to a scheme or system cruelties carried out at the detention and confinement camp manned by AB members. Therefore, naturally he was part of design and concerted plan to in achieving a criminal outcome.

**652.** It is to be noted that JCE is not a crime in itself. JCE is viewed as a form of ‘commission’ of a crime. Individual criminal responsibility can arise when several individuals with a common purpose embark on criminal activity that is then carried out either jointly or by some members of this plurality of persons. Under JCE liability each participant in the JCE is a principal perpetrator himself. Therefore, anyone who contributes to the criminal activity in order to carry out a common ‘criminal purpose’, in accomplishing the common design and plan may be held criminally liable under the doctrine of JCE- form II.

**653.** We have already found it proved that accused Mir Quasem Ali consciously and substantially contributed to the whole system cruelties, in furtherance of common purpose and design. What was the common purpose? It was to extract information about freedom fighters whom they termed ‘miscreants’ by forcibly bringing the pro-liberation civilians and non combatant freedom fighters in captivity where they were subjected to inhuman torture and tortured to death.

**654.** Prosecution requires showing accused’s knowledge of the system of ill-treatment and intent to further that system. It may be shown even as a matter of inference from the nature and level of the accused’s authority within the AB camp. It has been observed by the ICTY Appeal Chamber in the case of *Vasiljevic* that

**“With regard to the systemic form of joint criminal enterprise (which, as noted above, is a variant of the first [form of joint criminal enterprise]), personal knowledge of the**

**system of ill-treatment is required (whether proved by express testimony or a matter of reasonable inference from the accused's position of authority), as well as the intent to further this system of ill-treatment."**

**[ Vasiljevic, (ICTY Appeals Chamber), February 25, 2004, para. 101]**

**655.** In view of settled jurisprudence as discussed above, we conclude that when an accused is found that he was aware of a system of ill-treatment and agrees to it, it may be reasonably inferred that he has intent to contribute to that system and accordingly be regarded as a co-perpetrator in a JCE [systematic form]. For holding the accused liable also under the theory of JCE [form II], prosecution requires to show that the accused performed acts that in some way were directed to the furthering of the common plan or purpose.

**656.** With regard to the second category of JCE, personal knowledge of the system of ill-treatment is required and the 'knowledge' may be proved either by express testimony or may be inferred from the accused's position of authority and influence over the perpetrators who performed activities at the AB detention and torture camp, as well as the intent to further the common concerted system of ill-treatment. It is to be noted that in the case of acting in pursuance of a common purpose or design, it is sufficient to show that the accused Mir Quasem Ali had acted intending to the furthering of the common plan or purpose.

**657.** Accused Mir Quasem Ali knowingly contributed to the maintenance of a system of ill-treatment (*e.g.* criminal mistreatment of inmates in the AB torture camp). It stands proved. Under systemic JCE, the accused had to make a contribution to the criminal system, although the accused was not required to actually take part in the *actus reus* of the underlying criminal offences. Even it is not necessary to show that the accused was present at the time committing the crimes. It is sufficient to prove that the accused was a part to the criminal system carried out at the AB camp set up at Dalim Hotel.

**658.** It has been proved beyond reasonable doubt from the testimony of the detainees made before the Tribunal as prosecution witnesses that recurrent barbaric pattern system criminal acts were committed at the same execution site [AB detention and torture camp] by the same group of perpetrators [AB members] over whom accused Mir Quasem Ali had substantial influence and significant level of authority. And it indisputably suggests the irresistible conclusion that accused Mir Quasem Ali was a part of an 'organised system' of ill-treatment and cruelties, he was 'aware' of the nature of that system and he actively contributed consciously in the enforcement of the system, by his act and conduct and in exercise of his position of authority. Accused Mir Quasem Ali is thus found liable also under the doctrine of JCE- form II [systematic form].

**659.** Defence does not dispute that the second part of section 4(2) of the Act of 1973 corresponds to JCE form II. On cumulative evaluation of evidence, circumstances it stands proved too that the accused Mir Quasem Ali took 'consenting part' in the commission of the system cruelties and is found to have had 'connection with plans and enterprise' [as enumerated in section 4(2) of the Act of 1973] in the commission of crimes and he was affiliated with the enterprise or group of AB members engaged in the activities in committing crimes at the AB detention and torture camp. On this score as well accused Mir Quasem Ali is held liable under section 4(2) of the Act of 1973. Accordingly, accused Mir Quasem Ali is held criminally responsible under section 4(1) and 4(2) of the Act of 1973 for the commission of crimes proved.

## **XXII. Investigation Procedure**

### **(i) Procedure**

**660.** Mr. Mizanul Islam attacking fairness and legality of investigation procedure argued on some points. The learned defence counsel submitted that the Investigation Officer did not make any effective investigation and he purposefully omitted to examine and cite the persons surrounding the crimes sites as witnesses; that the IO could not collect any document

whatsoever to show that accused Mir Quasem Ali belonged to AB force and he was its commander in Chittagong; that the IO failed to consider the fact of lodgment of a case by the owner of Dalim Hotel against one Motiur Rahman, after the independence; that the IO could not ascertain that there had been no case over the alleged events after the independence. The IO did not find accused's name either in any list of Al-Badar or any document.

**661.** We deem it expedient to address these issues, in light of provisions contemplated in the Act of 1973 and the ROP together with the deposition made by the IO before the Tribunal. Investigation officer [P.W.24] is a mere formal witness. Any procedural flaw even if found in the task of investigation does not necessarily impair the entire investigation and in no way affects the merit of the case. Besides, it is significant to note that the task of investigation under the Act of 1973 is a quite unique and challenging job for the officer assigned with it. The 'report' submitted by the Investigator arraigning the accused does not relate to the offences under the normal Penal Law. In fact the Investigation Officer had to deal with the alleged offences of crimes against humanity occurred long four decades ago in violation of customary international law together with the matter of unearthing *prima facie* involvement of the accused therewith.

**662.** P.W.24 Md. Nurul Islam, an Investigation Officer [Assistant Superintendent of Police] of the Investigation Agency constituted under section 8(1) of the Act of 1973 was entrusted with the task of investigation. As stated by P.W.24, before initiating investigation he had gone through various sources, books, documents and then for the purpose of initiating formal investigation into the offences he discovered entered the necessary particulars as 'complaint' based on his own knowledge in the 'complaint register' as required under Rule 5 of the ROP. During investigation P.W.24 prayed through the Chief Prosecutor for detention of the accused Mir Quasem Ali for the purpose of effective and proper investigation; visited the crime sites; examined the witnesses and recorded their statement; seized documents and materials from different organisations. On conclusion of investigation he [P.W.24] submitted report in the office of the Chief Prosecutor as required under Rule 11 of the ROP.

**663.** Rule 2(6) of the ROP defines; ‘complaint’ on the basis of which investigation is to be done. Under Rule 2(6) a ‘complaint’ is defined as “*any information oral or in writing obtained by the Investigation Agency including its own knowledge relating to the commission of a crime under section 3(2) of the Act*”. That is to say, the Investigation Agency is authorized to initiate investigation predominantly on information it obtains. But in the instant case, the IO started investigation on the basis of information obtained on its own knowledge that he achieved by going through various book, sources, documents. There has been no legal bar in obtaining information only in writing from an individual. Thus, it is clear that obtaining Information oral or in writing including own knowledge of Investigation Agency authorizes the agency to initiate the investigation process.

**664.** Section 8 of the Act of 1973 and the Chapter II of the ROP deal with the procedure of holding investigation and it appears that the IO (P.W.24) accordingly has done the task of investigation. The ‘report’ submitted by the Investigation Agency before the Chief Prosecutor under Rule 11 of the ROP, in true sense, is the foundation of the case. On receipt of such ‘report’ the Chief Prosecutor is authorized to examine it and documents , materials submitted therewith and to decide whether ‘Formal Charge’ is to be submitted under section 9(1) of the Act of 1973.

**665.** On total appraisal, we do not find anything flawed in the investigation task. Fundamentally, investigation under the Act of 1973 relates to the process of procuring documentary evidence, recording statement of witnesses if found available and identifying the event[s], crime site[s] and casualty caused by the alleged criminal acts and also to identify whether the criminal acts alleged fall within the definition as enumerated in section 3(2) of the Act of 1973. The Tribunal notes that the Investigation Officer [P.W.24] , in compliance with the norms and provisions contemplated in the Act of 1973 and the ROP, carried out its investigation on completion of which he duly submitted ‘report’ before the Chief Prosecutor.

## **(ii) Eligibility of IO in deposing Facts**

**666.** IO is a formal witness and not eligible to testify any fact related to the indictment. His deposition made in Tribunal involves chiefly the investigation procedure only. Despite this position, the defence put question on factual aspects to IO, it appears. He merely submitted report on the basis of evidence and documents collected during investigation. Thus, the reply of IO to question put to him by the defence on merit does not deserve consideration for the purpose of adjudication of any factual aspect or commission of offences alleged.

## **XXIII. Issues agitated by the defence**

### **(i) Non-examination of people surrounding the crime site**

**667.** Terming the investigation flawed the learned defence counsel argued that the people living around the crime sites in 1971 should have been examined by the IO to ascertain the truthfulness of the alleged event of abduction. Non examination of persons who were naturally acquainted with the events renders the investigation flawed.

**668.** We are not impressed with the above argument. Non-examination of persons residing around the localities wherefrom the victims were abducted in 1971 does not *ipso facto* make the whole investigation flawed. First, the people living around these localities in 1971 may not be available due to lapse of long passage of time. Second, most of victims of offences have come on dock and testified how they were captured, confined and tortured and what they experienced during their captivity. Third, the nature of the criminal acts constituting the offence of abduction, confinement and torture together with the prevailing context does not suggest that those were occurred in presence of number of people or strangers who had occasion to witness the activities of ‘group crime’ carried out by the armed group of perpetrators. Finally, the principal crime site was the AB camp set up at Dalim Hotel. The criminal acts occurred there in secrecy and no stranger had access to the camp. It is thus impracticable to expect any outsider to witness the offences accomplished inside the camp.



**669.** The charges framed demonstrate that the criminal acts did not end with the act of abduction. The captured civilians were then brought to the AB camp wherein they were subjected to inhuman torture during their captivity. Naturally, excepting the victims and in some cases co-detainees had opportunity to experience and see the activities carried out inside the camp and none else. Thus, depending on victims' testimony presented before the Tribunal together with other circumstances, context and relevant authoritative information we arrived at finding as to commission of offences alleged and culpability of the accused. Mere non-examination of other people by the IO itself does not affect either the investigation or the merit of the case, in any manner.

**(ii) No case filed on the events alleged in 1972**

**670.** The learned defence counsel argued that there had been series of cases, lodged in the early part of 1972 for the offences committed during 1971 in Chittagong. But neither any of victims nor any person did care to initiate any case on the events alleged accusing Mir Quasem Ali. It creates reasonable doubt as to truthfulness of commission of alleged offences and accused's culpability therewith.

**671.** True, many cases under Penal Code were registered at the early part of 1972 for the criminal acts committed on different dates in 1971 in various localities of Chittagong. But non-existence of any case on the events alleged does not straight way create any doubt as to commission of offences for which the accused has been indicted. Besides, now the accused is facing trial for the offences specified in the Act of 1973 and not for the offences punishable under the Penal Code. The offences alleged are recognised as 'international crimes' committed in violation of customary international law. These were not punishable under the ordinary Penal Code. Tribunal further notes that delay in bringing prosecution against the accused under the Act of 1973 is no bar.

**(iii) Does the case lodged by the owner of Dalim Hotel show that it was not under capture of AB force in 1971?**

**672.** The learned defence counsel argued that the Dalim Hotel was owned by a Hindu people who brought a case in 1972 on allegation of carrying activities of rape by keeping his hotel building under capture against one Razakar Motiur Rahman @ Moitya Gunda. In support of this contention defence presented a photocopy of information slip obtained in connection with the GR Case being Kotwali police station case no. 233 dated 21.1.1972 under section 148/354/380/411 on allegation of criminal trespass and theft. The learned counsel further submitted that the Dalim Hotel was under capture and control of some one else and not the accused Mir Quasem Ali or the AB members.

**673.** Mere initiation of a case on allegation of offences punishable under the Penal Code by the owner of Dalim Hotel does not exclude the allegation of implanting AB detention and torture camp there. First it stands proved, as perceived from defence suggestions put to IO and other witnesses and argument advanced, that the Dalim Hotel was kept under illegal capture and control in 1971. Who or which quarter had kept it under such illegal occupation? What activities were carried out there? Defence once suggests that it was under control and occupation of one Razakar Motiur Rahman @ Moitya Gunda and in next breath it suggests that it was under control of 'someone else'. At the same time, defence suggests too that one non Bengali Khalid used to stage 'trial' of the detainees at Dalim Hotel.

**674.** We reiterate our finding made in earlier cases that AB was one of wings of Razakar force. Co-existence of AB and Razakar members at the same building was not thus improbable, even if the defence suggestion is accepted to be true. And thus it does not exclude the fact of setting up AB detention and torture camp at Dalim Hotel. Additionally, defence also suggests IO that one non Bengali Khalid was in charge of staging 'trial' of the detainees at Dalim Hotel. It adds further assurance that the Dalim Hotel building was used also to carry out the activities of keeping the civilians captive there.

**675.** Cumulatively all these together with the evidence presented by the detainee witnesses impel the conclusion that Dalim Hotel was illegally occupied and was used as a torture and detention camp of AB and influential non Bengali person and members of Razakar force might have carried out their activities too simultaneously, in a concerted manner. Besides, Mere lodgment of First Information Report by the owner of the said Hotel building does not readily manifest the truthfulness of its contents and allegations brought therein. The same need to be investigated first and then a report is to be submitted before a competent court. But there has been no such paper before us showing verdict of court on such accusation. Rather it appears that the said GR case [Kotwali police station case no. 233 dated 21.1.1972 under section 148/354/380/411] eventually ended with discharged of the accused under section 494 of the Code of criminal Procedure on 3.7.1973.

**676.** Thus, in absence of verdict of competent court of law in a case generated from the said GR case it cannot be concluded that it was only Razakar Motiur Rahman @ Moitya Gunda alone who had kept the building of Dalim Hotel under his capture exclusively. Therefore, we do not find any earthly reason to disbelieve the evidence presented by the prosecution showing that AB camp was set up at Dalim Hotel where the civilians were brought on capture and were kept detained, grilled, coerced and tortured and even killed for obtaining information about whereabouts of freedom fighters.

**(iv) ‘Informant’ or ‘Complainant’ and the IO: Same person**

**677.** It has been argued by the learned defence counsel that the IO himself was the informant or complainant of the case and as such it affects the fairness of investigation and creates doubt as to truthfulness of accusation brought. On query made by the Tribunal during argument, the learned defence counsel submitted that despite absence of provision, either in the Act or in the ROP, relating to lodgment of case by ‘informant’ or ‘complainant’ section 21(2) reads that the ‘informant or ‘complainant’ shall have right to prefer appeal to the Appellate Division against verdict of the Tribunal. Additionally, the report submitted by the IO to the Chief

Prosecutor goes to show that the IO Nurul Islam himself was the 'complainant' of the case he investigated into .

**678.** We are not in agreement with what has been submitted by the learned defence counsel. Understandably, insertion of the words 'informant' or 'complainant' [by an amendment dated 20.2.2013 of the Act of 1973] is only for the purpose of 'preferring appeal' and it does not extend or create scope of 'lodgment of complaint or first information' as it happens under the Code of Criminal Procedure.

**679.** The Tribunal notes that the Investigation Agency established under section 8(1) of the Act of 1973 is authorized to investigate into crimes specified in section 3 of the Act of 1973. Procedure of initiating investigation has been contemplated in the ROP. Rule 5 of the ROP reads that for initiating investigation under the Act necessary particulars and serial number of the 'complaint' shall have to be entered in a 'complaint register' by the Investigation Agency. Rule 2(6) defines 'complaint' as any information oral or writing obtained by the investigation agency including its own knowledge relating to commission of crime under section 3(2) of the Act. Rule 2(6) does not read that information shall have to be obtained from a 'complainant' or 'informant'.

**680.** Thus, it is quite patent that the Investigation Agency is formed of number of members [investigation officers]. And the IO, an officer of the Investigation Agency is thus authorized in obtaining information on going through books; written information etc. and then he causes entry of that information, in the form of particulars, in the complaint register, for the purpose of initiating investigation. The IO [P.W.24] stated that he himself caused entry of necessary particulars and information in the complaint register, before the investigation was ensued against the accused Mir Quasem Ali. The Tribunal notes that the particulars so entered in the complaint register were merely to initiate the task of investigation.

**681.** The complaint register is thus not meant to reflect detail accusation. Showing the name of IO as 'complainant' in the title page of the report

submitted on completion of investigation thus of course does not mean that the IO was the 'complainant' of the case. Presumably, for the reason that P.W.24 Nurul Islam [ a member of the Investigation Agency] caused the entry of necessary particulars on putting date and serial number , for the purpose of initiating investigation against Mir Quasem Ali he has been termed as 'complainant' in the title page of the report he submitted. In fact it was unneeded. Thus, and in view of procedure as contained in the Act of 1973 and the ROP no provision exists of lodging accusation as a 'complainant' or 'informant' before the Investigation Agency.

**(v) Judicial Notice to papers submitted by the defence at argument stage**

**682.** It appears that on 30.4.2014 the second day of presenting defence argument an application was submitted under section 19(4) on behalf of the accused with prayer to take the 'documents' submitted therewith into judicial notice at the time of judgment to be passed. The Tribunal on hearing both sides and on perusal of the application ordered to keep the same with the record for consideration.

**683.** The documents are photocopy of passport of accused Mir Quasem Ali and photocopy of voter lists of Andarkilla Ist part [Chittagong] and photocopy of information slip relating to GR Case being No. 1518/1972 arising out of Kotwali Police Station case no. 357(2) 1972 dated 29.2.1972 under section 436/380 lodged by Ajit Kumar Banik against the Pakistani army which ended with Final Report.

**684.** The papers so submitted are not the original ones. Nor the same bear any endorsement of authenticity by the concerned government authority. As a result the same do not come within the purview of 'government document' as mentioned in section 19(4) of the Act of 1973. Thus, the same deserves no consideration, by taking into judicial notice. Yet, let the argument extended by the learned defence counsel be addressed in light of these papers.

**685.** These papers do not seem to be decisive in respect of any key fact in issue. Presumably the copy of the passport has been submitted to exclude

the prosecution's claim that D.W.1 is not accused's uterine sister. Yes, on perusal it appears that accused's mother's name is Doly Begum which is consistent with what has been stated by D.W.1. Surprisingly prosecution stated accused's mother name as Rabeya Begum. However we are convinced that D.W.1 is accused's uterine sister. The mistake done on part of prosecution in stating name of accused's mother, at the same time, does not affect the prosecution, although the prosecution should have been more careful in this regard.

**686.** Next, the defence intends to bring the voter list to judicial notice of the Tribunal presumably to show that P.W.6 Mridul Kumer Dey and P.W.7 Prodip Talukder are not the inhabitants of Hajarigoli Lane locality as their names do not find place in the concerned voter list. By showing it the learned defence counsel argued that these two witnesses went with lie by stating their address falsely and thus they are not credible at all.

**687.** It is true that the name of P.W.6 and P.W.7 do not find place in the said voter lists. But it does not *ipso facto* prove that they are not the inhabitants of the locality of Hajarigoli Lane. At best it may be said that they are not the voters of the said locality. An individual's name may be included in the voter list even at a place where he does not reside. Additionally, defence by drawing attention to this voter list did not cross-examine the P.W.6 and P.W.7 and as such they did not get opportunity to explain the matter. Thus, mere non inclusion of their name in the voter list of the locality where they claim to reside does not make them untrustworthy witnesses.

**688.** The information slip[photocopy] relating to GR Case being No. 1518/1972 arising out of Kotwali Police Station case no. 357(2) 1972 dated 29.2.1972 merely proves existence of such case initiated by one Ajit Kumar Banik against the Pakistani army which ended with Final Report. The allegations brought therein were not adjudicated through trial by any competent court of law. The contents made therein thus cannot be used either to prove or to disprove any fact in issue involved in the case in hand. Understandably, this piece of paper does not impact to the prosecution case in any manner.

## **XXIV. Defence Evidence: Plea of *alibi* and affirmative defence case**

**689.** Defence produced and examined as many as three witnesses including younger sister of the accused Mir Quasem Ali. Of them D.W.1 deposed in support of the plea of *alibi* and the two other D.Ws have testified to negate the fact of affiliation of accused with the AB force and the Dalim Hotel camp and activities carried out there in 1971. D.W.2 and D.W.3 further deposed on the fact of lodgment of a case by the owner of Dalim Hotel building against one Motiur Rahman @ Moitya Gunda in 1972. Photocopy of three books [Defence Documents Volume: submitted as required under section 9(5) of the Act of 1973] have been exhibited and marked by D.W.3.

**690.** At the outset, the Tribunal notes that the ‘defence case’ always is to be attributed from the suggestion put to the prosecution witnesses by the defence. In the name of asserting defence case the prosecution cannot be put under surprise by claiming quite new averment by examining defence witnesses. In evaluating defence evidence we are to examine whether the version they made before the Tribunal is consistent to what has been suggested to prosecution witnesses by the defence.

### **Plea of *Alibi* and Finding**

**691.** Defence plea of *alibi* relates to the claim that the accused Mir Quasem Ali since 08 November 1971 had not been in Chittagong and thus had no nexus with any of alleged events occurred in November 1971. He has been falsely implicated with the alleged crimes. Admittedly, on 08 November 1971 accused Mir Quasem Ali was elected General Secretary of East Pakistan ICS. His position was thus elevated with this. It has been argued by the learned defence counsel that the accused had been in Chittagong till he was elected General Secretary of ICS and since 08 November 1971 and towards he had been in Dhaka and as such he cannot have any kind of involvement with the offences alleged and that the evidence presented by the prosecution portraying his presence at the AB camp at Dalim Hotel carries no value.

**692. D.W.1 Momtaj Nur Uddin [59]** the younger sister of the accused has testified mainly on plea of alibi. She stated that since first week of November 1971 her brother Mir Quasem Ali had been staying at her husband's rented house at Agamosi Lane, Dhaka. In cross-examination she stated that her brother had come from Comilla, the place of her father's place of posting simply to provide companionship to her.

**693.** The total evaluation of evidence of D.W.1 together with defence suggestion put to prosecution witnesses rather allow to conclude that D.W.1 has simply made an attempt to save her brother, the accused by hiding the truth. She deposed simply to fan the flames in strengthening the plea of alibi.

**694.** Because, the above version does not appear to be compatible to the suggestion put to prosecution witnesses. It appears that defence suggests to prosecution witness that Mir Quasem Ali had not been in Chittagong during the period of 08 November to 16 December 1971. Thus, the claim of accused's continuous staying in Dhaka city till March 1972, as claimed by D.W.1 does not inspire credence. Besides, the purpose of accused's prolonged and continuous staying, as stated by D.W.1, does not seem to be rationale. Because, defence by putting suggestion to prosecution witnesses intends to create an impression that since the accused was elected General Secretary of East Pakistan ICS he had to stay in Dhaka, the capital city and necessity of his staying in Chittagong thus ended with such elevation in the ICS and as such he had no nexus in any manner with offences committed during the month of November 1971.

**695.** The accused Mir Quasem Ali had been in Dhaka since 08 November 1971 and towards is a plea of alibi and also relates to specific fact. And thus it needs to be proved reasonably. The Tribunal notes too that defence is not burdened to disprove prosecution case. Rather, defence is burdened to prove its own defence and plea of *alibi*, if any with certainty. The fate of prosecution i.e adjudication of guilt or innocence does not depend upon success or failure of defence in proving its own defence or plea of *alibi*. Besides, the plea of *alibi* comes into consideration only when the prosecution establishes the charges.



696. In the case in hand, it has already been proved beyond reasonable doubt that the accused Mir Quasem Ali ‘participated’ to the commission of crimes with which he has been indicted. Admittedly, crime sites were in Chittagong town and the events alleged took place in the month of November 1971. Now the mere fact that the accused was elected General Secretary of East Pakistan ICS on 08 November in a meeting held in Dhaka does not *ipso facto* prove that since that date he had not been in Chittagong.

697. In raising the plea of alibi, the accused not only denies that he committed or was involved with the commission of crimes for which he is charged but also asserts that he was ‘elsewhere’ than at the site of the crimes alleged when they were committed. The Defence is thus required to enter the defence of alibi by putting suggestion to the prosecution witnesses, in cross-examination with specificity as to the place or places at which the accused claims to have been present at the time of the alleged crimes. It is to be noted too that prosecution’s burden never lessens for the reason of success or failure to prove the plea of alibi. It has been observed by the ICTR Appeal Chamber that

**“The only purpose of an alibi is to cast reasonable doubt on the Prosecutor’s allegations, which must be proven beyond reasonable doubt. In alleging an alibi, the accused merely obliges the Prosecution to demonstrate that there is no reasonable likelihood that the alibi is true.”**

*[Nahimana, Barayagwiza and Ngeze, (Appeals Chamber), November 28, 2007, para. 417]*

698. However, the plea of *alibi* has to be proved with absolute certainty so as to completely exclude the possibility of the presence of the accused in the crime locality of Chittagong, at the relevant time. It would appear that the defence suggests P.W.1 Sayed Md. Emran that subsequent to 07 November 1971 accused Mir Quasem Ali had been in Dhaka all the time. While it suggests P.W.2 Sanaullah Chowdhury that in between since 07 November 1971 and 16 December 1971 accused remained away from Chittagong. Next, defence suggests P.W.20 Lutfar Rahman Faruk that on 19 November 1971 accused had not been in Chittagong. It thus transpires that suggestion put to PWs asserting accused’s absence in Chittagong at the

relevant time suffers from glaring non-specificity and the same clashes to each other. Additionally, it has not yet been suggested to any of P.W.s that the accused Mir Quasem Ali since 08 November 1971 had been in his sister's husband's rented house at Agamosi lane in Dhaka city till the month of March 1972.

**699.** Next, it is hard to argue that elevation to the post of General Secretary of East Pakistan ICS rather debarred the accused from going to Chittagong or elsewhere outside Dhaka, the capital city. Elevation to an upgraded position in a political student organisation never creates such bar in staying at own locality, leaving the capital city. It is rather unheard of. Thus, the plea is not at all well founded and provides no reasonable hint even in favour of it.

**700.** In view of above, it emerges that no specific and consistent defence case has been suggested to the prosecution witnesses, in support of the *plea of alibi* taken. Evidence adduced by the defence, on plea of alibi, does not appear to be compatible with the material facts proved by prosecution evidence. Testimony of D.W.1 does not stimulate to conclude it reasonably that at the relevant time of commission of crimes proved the accused Mir Quasem Ali was away from the crime sites or Chittagong.

**701.** During the trial the Defence bears no onus of proof of the facts in order to avoid conviction. But, during the trial, the Accused may adduce evidence, including evidence of alibi, in order to raise reasonable doubt regarding the case for the Prosecution. It must be stressed, however, that the failure of the defence to submit credible and reliable evidence of the Accused's alibi must not be construed as an indication of his guilt.[ *Kajelijeli*, (ICTR Appeals Chamber), May 23, 2005, para. 42]. In the case in hand, the defence, as it appears, has failed to prove the *plea of alibi* with certainty to exclude the possibility of presence of accused Mir Quasem Ali at the crime sites and in Chittagong. Therefore, claim of remaining elsewhere or in Dhaka during, at the relevant time, does not come into play, in any manner, to negate the prosecution case.

**Accused was not involved with the activities carried out in Dalim Hotel: A negative defence assertion**

**702.** Intending to dispel prosecution's averment that AB detention and torture camp was set up at Dalim Hotel, defence examined two witnesses. Of them, D.W.2 **Mohammad Ali [59]** was SSC examinee in 1971, as claimed. He stated that in early part of September 1971 he along with his three friends had gone to Harina camp, Tripura, India where he received training as a freedom fighter and then returned back to Chittagong on 20 November 1971 and on 24 November he arrived at his parental house in Chittagong. Afterwards, he used to keep contact with his fellow freedom fighters at a secret shelter near the Baptist Church in Chittagong town and started participating guerilla operations. D.W.2 further stated that he became aware that there had been army camps at circuit house, CRB [Central Railway Building], stadium and T&T building and the civilians brought there on capture were subjected to torture and Dalim Hotel was also a torture camp.

**703.** D.W.2 then stated that one Motiur Rahman @ Moitya Gunda and his accomplices and Bihari people had occupied the Dalim Hotel building where they used to carry out anti social activities and torture to civilian detainees there. He heard that Chandra Mohon Nath the owner of the Dalim Hotel building initiated a case against said Motiur Rahman @ Moitya Gunda in 1972 and he never heard that accused Mir Quasem Ali was involved with the criminal acts carried out at Dalim Hotel.

**704.** It has been admitted by the D.W.2 who claims him to be a freedom fighter that Dalim Hotel building was a 'torture camp' where civilians were kept under confinement and were subjected to torture. But the D.W.2 remained unvoiced as to participation of AB members in committing such criminal acts constituting the offences of confinement and torture at Dalim Hotel torture camp. D.W.2 seems to have made a deliberate effort of hiding the truth with intent to negate the involvement of AB force with the activities carried out at the torture camp set up at Dalim Hotel Building.

**705.** Next, how the D.W.2 became sure that such atrocious activities were carried out there [Dalim Hotel] only by Motiur Rahman @ Moitya Gunda,

his accomplices and Biharis? D.W.2 claims that he was a trained freedom fighter and during the month of November 1971, on return from India, he used to participate in accomplishing operations. If that is being so why he and his fellow men did not think or plan to carry out any 'operation' targeting Dalim Hotel, despite being aware of the fact that it was a torture camp where the civilians were subjected to degrading mistreatment under captivity? Such inexplicable inaction, if accepted to be true, does not appear to be compatible with the bravery and aspiration of a freedom fighter. At the same time it gives rise to significant doubt as to his credibility too.

**706.** In reply to question put to him by the prosecution D.W.2 stated that he could not say whether Razakar force, AB force and Al-Shams force were formed in Chittagong in 1971. The Tribunal notes that the defence does not deny the fact of formation of those auxiliary and para militia forces in Chittagong in 1971. It is now settled and undisputed history that all these parallel forces were formed intending to actively collaborate with the Pakistani occupation army in carrying out barbaric atrocities within the territory of Bangladesh in 1971. But astonishingly, D.W.2 who claims himself to be a trained freedom fighter is not acquainted with the fact of formation of these forces including the AB force, an action section of JEI, in Chittagong town, as stated by him. It impairs his credibility too. It is to be noted that the defence does not deny the atrocities committed by the AB force. But the D.W.2 by saying that he is not aware about the fact of killing and atrocious activities committed by the AB force in Chittagong has deliberately attempted to hide the truth and history. Mindset of D.W.2 in making obliging statement before the Tribunal, instead of disclosing the settled truth has rather turned down his credibility.

**707.** D.W.2 claims that he never heard accused's involvement with the criminal activities carried out at Dalim Hotel. It is a 'negative assertion' which need not be proved by adducing evidence. Presumably, D.W.2 has made a futile attempt by stating a 'negative assertion' merely on the basis of the fact of lodgment of case by the owner of Dalim Hotel against said Motiur Rahman @ Moitya Gunda.

**708.** D.W.2 also stated that he was not familiar with the name and identity of accused Mir Quasem Ali and only in 1986 he heard his name first. Admittedly, Mir Quasem Ali was the president of ICS of Chittagong town unit in 1971 and was elected general secretary of East Pakistan ICS on 08 November 1971. Accused thus was a man of profile even in 1971. As a local of Chittagong town and a freedom fighter D.W.2 was supposed to be acquainted with the identity of accused. Besides, if truly he [D.W.2] was not familiar with the identity and name of accused how can he say or claim that accused Mir Quasem Ali was not involved with the criminal activities committed at Dalim Hotel AB detention and torture camp?

**709.** It appears from the book title **ঢালিম হোটেলের গণহত্যা** submitted by the defence [**Material Exhibit-A:** defence documents volume: relevant running page 37] shows that Chandra Mohan Nath the owner of Dalim Hotel lodged a case against Motiur Rahman @ Moitya Gunda [Kotwali police station case no. 233 dated 21.1.1972] under section 148/354/380/411 on allegation of criminal trespass and theft. And the accused was discharged under section 494 of the Code of criminal Procedure on 3.7.1973.

**710.** First, the information as depicted from the above document relied upon by the defence shows that despite setting the law on motion the accusation was not adjudicated through trial by any competent court. Second, the alleged allegation brought there does not constitute the criminal act of illegal occupation and carrying out the activities of causing torture and killing by keeping the civilians under illegal confinement. Third, mere allegation as narrated in the First Information report is not evidence and does not prove the contents and allegations brought therein to be true. Therefore, the defence case that Dalim Hotel was under lone and illegal occupation of Motiur Rahman @ Moitya Gunda who used to accomplish criminal acts of inflicting torture to the civilians detained there goes on air. D.W.2 rather has made an effort of calculated suppression of truth that inevitably makes him unreliable and thus does not inspire credence at all.

**711.** Additionally, the information narrated in the same book [**Material Exhibit-A: Defence documents volume page no. 41**] demonstrates that freedom fighters were brought at Mahamaya Dalim Hotel [in front of T & T building], on capture, by the 'Hanadar Bahini' [Pakistani army], Al-Badar and Al-Shams members where they were subjected to torture and killed. Thus, the defence keeping the document which it relies upon aside cannot aver that Al-Badar force had no concern with the Dalim Hotel and activities committed there.

**712. Material Exhibit-A [Defence document volume: relevant page 42]** also speaks of setting torture cell of Pakistani army and Al-Badar force at '**Hotel Tower**', Jamalkhan, Chittagong, '**Hotel Dewan**', Dewanhat morh, Chittagong where freedom fighters were brought, on capture and were subjected to torment and were killed too. This information, as demonstrated from the defence document, unmistakably allow to conclude that the Al-Badar had opted to set up 'torture cell or camp' at many of Hotels in Chittagong town. It too, in addition to evidence adduced by the prosecution, thus provides a valid indication as to the fact of setting up AB camp at Dalim Hotel as well.

**713. D.W.3 Taher Khan** a resident of Chittagong claims that in 1971 he had participated in carrying out many operations [guerilla operations] at different places at Patia and after 20 December 1971 he visited various torture camps and killing fields in Chittagong. But on cross-examination he stated that he could not say whether there had been torture camps of Pakistani army, Al-Badar, Razakar force and Al-Shams force at the Circuit house, Dost Mohammad building, Dalim hotel. D.W.3 however, does not deny the fact of formation and existence of Al-Badar, Razakar force and Al-Shams force in Chittagong. Be that as it may, by which force the torture camps he [D.W.3] allegedly visited were set up? He could not discover it. But it is surprise to note that he could discover only that Dalim Hotel was under illegal occupation of one Motiur Rahman @ Moitya Gunda and accused Mir Quasem Ali was not associated with the activities carried out at Dalim hotel.

714. D.W.3 Abu Taher Khan stated, in reply to question put to him by the prosecution that he for the first time knew Mir Quasem Ali and his name in 1983 when the accused was a director of Islami Bank. Be that as it may, how could he say that the accused was not involved with atrocities committed at Dalim Hotel? However D.W3 admits the fact that a torture camp was set up at Dalim Hotel.

715. D.W.3 denied the suggestion put to him by the prosecution that in 1971 non combatant freedom fighters were brought to Dalim Hotel building, on capture, by the AB members and Al-Shams and were subjected to torture that resulted in their death. But the information narrated in the defence document **Material Exhibit-B** [Defence Document Volume Page No. 41] itself allow us to arrive at a decision that Dalim Hotel building was used as a torture camp where the AB members used to bring unarmed freedom fighters, on capture who were subjected to torture and tortured to death there. That is to say, the above piece of version as made by D.W.3 is not only conflicting with the document relied upon by the defence but also is an indicative of patent falsehood affecting credibility of his testimony. Thus, his testimony, on total evaluation, suffers from concealment of truth and fabrication that inevitably buries its credence.

716. We are not convinced with the defence argument that in absence of any documentary evidence the accused Mir Quasem Ali cannot be said to have had acted either as a member of AB force or as its leader. The following narration quoting Moulana Abul Ala Moududi the architect of JEI made in the Bengali text of the book titled 'Al Badar' [ authored by Selim Mansur Khalid, 2010, published by Talaba Publication, Lahore, Pakistan] depicts that ICS the student wing of JEI was synonym of the infamous AB force :

০.....Avj e`i I Avj kvgtmi mv\_ mu,<sup>3</sup> evsMvjx ZiYt`i  
msL`v 20 nvRvti i KvQvKvQ vQj |.....ZLb [1971 mvj] H mgttq Gme  
hpkiv cvK`ubi HtK`i ctq| KvR KivQj | Avi hLb cvK`ubx ewnbx  
`uZKvix I fviZvq ewnbxi tMvijv`i veitx Avfhub Pvjvq ZLb GB  
ZiYiv cvK ewnbxi [tK] ctjvcyi mnthvMxZv Kti | GgbvK tmbvevnbxi  
mvdj` GB ZiYt`i Dci vbf<sup>o</sup> KtiB AvR<sup>o</sup> nvQj | tKbbv tmbvevnbxi

ৱেইৱ Ask ৱজ চাওগ চুক-ইতি | Zviv ce@চুক-ইতি iv-ইনৱ I fvlv RvbZ  
 bv ev ৱbZ bv| H mgtq GB ZiYiv Bmjvtgi cZ fvjemv I t`ktcOg  
 DfOvj Z ntq mgtb Gvltq hvq Ges Zviv fviZxq ewnbxi AvMmx nvgjv  
 cZnZ Kivi Rb` t` kx ewnbxK cYt c mrvh` Kti| GivB ৱj tmB  
 bIRIqb hviv চুক ewnbxi AMcW\_K ৱj | GB ZiYiv [চুক-ইতি Bmjvgx  
 QvI mstNi Kgxv] Zv` itK Avcbviv Kyj I ৱKj tqi AvKvZtZ t` LtZ  
 চত'Ob|0

[Source: *Selim Mansur Khalid, Al Badar'* 2010, published by Talaba Publication, Lahore, Pakistan: Bengali text's page 146-147]

**717.** The above unambiguously demonstrates that ICS had active and effective involvement with the horrific atrocious activities committed by the AB force in 1971, within the territory of Bangladesh. The accused Mir Quasem Ali admittedly was in leading position of ICS, Chittagong town unit in 1971. Thus, he cannot be said to have had no nexus with the AB force in Chittagong, as claimed by the defence. Thus, formal document does not seem to be necessary at all to prove his active association with and domination over the AB force, headquartered particularly at Dalim Hotel building, Chittagong. The accused Mir Quasem Ali, as the evidence presented before us divulges, consciously made himself part of notoriety of AB force, not only by his act and conduct but also by virtue of his leading position in ICS, in the name of preserving solidarity of Pakistan. It further depicts from the above part of the speech of Moulana Abul Ala Moududi that the assistance of the 'youths' belonging to ICS had acted as a catalyst and local guiding force of the Pakistani occupation army in achieving success, to materialize the policy of annihilating the 'miscreants' [freedom fighters] and pro-liberation Bengali civilians.

**718.** The above discussion rendered on the plea of *alibi* and 'negative assertion' as claimed by the defence thus does not appear to have cast reasonable doubt at any rate as to crimes committed and accused's liability therewith. Rather, conscious and culpable conduct and act ---antecedent, contemporaneous and subsequent coupled with his authority on the principals, as have been found---all point to his guilt and are well consistent with accused's 'complicity' and 'participation' in the commission of the crimes proved.



## **XXV. Conclusion**

**719.** Excepting the act of forcible capture of victim civilians all other offences were committed at the AB camp at Dalim Hotel, in seclusion. It was the principal execution site of all the offences of confinement, torture and murder. Keeping the civilians in prolonged captivity the AB men caused ruthless torture to them that resulted in death of several detainees including Jasim a youth freedom fighter, and Tuntu Sen and Ranjit Das. Purpose of carrying out such system cruelties was to obtaining information about freedom fighters secretly headquartered in and around Chittagong town. Finally, on 16 December hundreds of detainees got release there from with the help of freedom fighters.

**720.** On his active inducement, approval and endorsement of accused Mir Quasem Ali all those criminal activities were carried out there, in furtherance of common purpose and plan. It has been proved. Accused Mir Quasem Ali had acted in such culpable and authoritative manner sharing intent of the principals by virtue of his potential position in the ICS. By his act and conduct coupled with 'superior' position the accused established himself as the 'ring leader' and a 'boss' of the 'criminal enterprise' implanted at the Dalim Hotel building.

**721.** JEI and its student wing ICS claimed that their stance was with the solidarity of Pakistan and for preserving Islam. But the holy religion Islam does not allow such atrocious acts against the humanity. Rather, Islam teaches for protecting humanity and human rights and dignity. The grave misdeeds committed by the AB force the 'action section' JEI in no consideration is approved by Islam. ICS the student wing of JEI and leaders of ICS by providing active assistance, inducement and endorsement to the AB's criminal activities rather took stance against the spirit of Islam. AB force was the 'action section' of JEI and thus accused being a potential leader of ICS the student wing of JEI had acted as its trusty henchman in furtherance of common policy and design of annihilating the 'miscreants[ freedom fighters].

**722.** However, we have already resolved in the preceding deliberations that accused Mir Quasem Ali as a potential and top ranking leader of ICS the student wing of JEI had acted as a person in position of authority and command over the AB detention and torture camp set up at Dalim Hotel, Chittagong in 1971. According to section 4(1) of the Act of 1973 accused Mir Quasem Ali, being equally responsible, has incurred individual criminal liability for the commission of crimes proved.

**723.** It also stands proved that the accused, by his acts and conduct coupled with his ‘commanding’ and ‘leadership’ position over the AB camp at Dalim Hotel, also incurs liability under the theory of civilian superior responsibility as contemplated in section 4(2) of the Act of 1973 for the crimes described in all the charges excepting charge nos. 1, 5 and 13[which have not been proved]. In this regard, it is to be noted that the Tribunal [ICT-2] is not precluded from considering both forms of responsibility in order to get a full reflection of culpability of the accused, in light of the facts revealed from evidence and materials. But however, we consider that ‘cumulative convictions’ under section 4(1) and 4(2) of the Act of 1973 is inappropriate for the same conduct or act forming part of attack that resulted in actual commission of the crimes proved.

**724.** However, we refrain from convicting him cumulatively for both modes of liability, excepting taking it into account as an aggravating factor. Accordingly, the accused is held criminally responsible under section 4(1) of the Act of 1973 for the commission of crimes proved as listed in **charge nos. 2, 3, 4, 6, 7, 9, 10 and 14** [offence of abduction, confinement and torture as crimes against humanity] and **charge nos.11, 12** [offence of murder as crimes against humanity].

## **XXVI. VERDICT ON CONVICTION**

**725.** For the reasons set out in our Judgement and having considered all evidence and arguments, we find the accused **Mir Quasem Ali**

**Charge No.1: NOT GUILTY** of the offence of ‘abetting’ and facilitating the commission of the offences of ‘abduction’ ‘confinement’ and ‘torture’ as ‘crimes against

**humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be acquitted of the charge.

**Charge No.2: GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**abduction**' '**confinement**' and '**torture**' as '**crimes against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.3: GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**abduction**' '**confinement**' and '**torture**' as '**crimes against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.4: GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**abduction**' '**confinement**' and '**torture**' as '**crimes against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.5: NOT GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**abduction**' '**confinement**' and '**torture**' as '**crimes against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be acquitted of the charge.

**Charge No.6: GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**abduction**' '**confinement**' and '**torture**' as '**crimes against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.7: GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**abduction**' '**confinement**' and '**torture**' as '**crimes against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.8: NOT GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**abduction**' '**confinement**' and '**torture**' as '**crimes against**

**humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be acquitted of the charge.

**Charge No.9: GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**abduction**' '**confinement**' and '**torture**' as '**crimes against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.10: GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**abduction**' '**confinement**' and '**torture**' as '**crimes against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.11: GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**murder**' as '**crime against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.12: GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**murder**' as '**crime against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.13: NOT GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**abduction**' '**confinement**' and '**torture**' as '**crimes against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be acquitted of the charge.

**Charge No.14: GUILTY** of the offence of 'abetting' and facilitating the commission of the offences of '**abduction**' '**confinement**' and '**torture**' as '**crimes against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

## **XXVII. VERDICT ON SENTENCE**

726. Mr. Sultan Mahmud and Ms. Tureen Afroz, the learned Prosecutors finally submitted that accused Mir Quasem Ali should face the highest sentence, being a sentence of death, as he is proved to have abetted,

substantially facilitated and participated to the commission of horrific criminal acts constituting the offence of causing brutal torture and murder of civilians keeping them in prolonged and unlawful detention, as crimes against humanity at the detention and torture camp manned by AB members.

**727.** The civilians detained at the AB camp, on forcible capture were the non combatant freedom fighters and pro-liberation Bengali civilians. Not only they were made subject to ruthless torture, many of detainees were tortured to death even and their bodies were dumped to the river Karnofuli. All these system barbaric cruelties happened within knowledge and on endorsement, guidance and approval of accused Mir Quasem Ali at the AB camp set up at Dalim Hotel that turned into a ‘criminal enterprise’.

**728.** The learned Prosecutors added that accused’s superior position of authority on the Al-Badar camp set up at Dalim Hotel, Chittagong which was the main execution site coupled with the inherent magnitude and routine pattern of criminal acts practiced at the AB camp, in furtherance of common purpose and design constituting the offences as crimes against humanity deserves to be considered as an ‘aggravating factor’ in awarding the highest sentence. Only the highest sentence would be just and appropriate to punish those crimes causing incalculable torment to the victims that justifiably corresponds to their overall magnitude.

**729.** On contrary, defence simply submitted that the accused Mir Quasem Ali was not with any such criminal activities for which he has been indicted and he had no nexus with the AB force. Prosecution failed to prove the accusation brought against him and thus he deserves acquittal.

**730.** In the case of *Ali Ahsan Muhammad Mujahid* this Tribunal [ICT-2], in determining aggravating circumstances in awarding sentence observed that

“Considering the charges proved and facts relevant thereto we take some factors into account as the key requirement of aggravating

circumstances for the purpose of sentence to be imposed and these are **(i)** the position or leadership of the accused on Al- Badar and his level of influence and control on the Al-Badar and their headquarter at Dhaka city**(ii)** the accused's role and mode of participation as fellow perpetrator **(iii)** culpable affiliation with the army and holding meeting with them at the army camp, and **(iii)** the violent, and humiliating nature of the acts and the vulnerability of the victims.”[Judgment, 17 July 1971, para 635]

**731.** The Tribunal, in assessing the aggravating factors, must eye on the nature and extent of the offences committed, their scale, the role and position of the accused he played in providing contribution to the accomplishment of crimes, and the trauma and harm sustained by the victims and their families.

**732.** In assessing it, eyes should also be kept concentrated to the preamble of the Act of 1973. The accused Mir Quasem Ali has been found criminally responsible not for committing any isolated offence punishable under the normal Penal Law. Commission of offences as specified in the Act of 1973 itself portrays enormity, gravity and diabolical nature of the crimes.

**733.** Active abuse of a position of authority is another key factor.. It includes participation in the crimes by principals over whom the accused had effective control and it aggravates his liability arising from such superior authority. The conduct of the accused in the exercise of his position of authority must be seen as an aggravating circumstance.

**734.** In the case in hand, the routine persecutory acts as found to have been committed at the AB camp were **(i)** murder of several detainees **(ii)** Inhuman beating of numerous detainees **(iii)** protracted unlawful confinement of hundred of civilians in inhuman and humiliating conditions,

creating climate of terror (iv) grave psychological abuse of detainees (v) organised system of causing routine torture to the detainees (vi) detainees were forced to endure the most brutal and inadequate living conditions (vii) detainees were regularly beaten and mistreated, in furtherance of common purpose and design.

**735.** The case in hand seems to be unique one as it involves atrocious system activities committed at a detention and torture camp manned by the members of the AB force, an ‘action section’ of JEI. The detainee witnesses have testified on substantial facts relevant and material to the event of atrocities and recurrent cruelties committed at the AB camp at Dalim Hotel the prime execution site and culpability of accused Mir Quasem Ali and their testimony does not appear to have been suffered from any material infirmity.

**736.** The term “crimes,” in the expression “crimes against humanity,” clearly refers to the grave acts committed which require penal sanction. The meaning of the term “humanity,” however, is not as straightforward. “Humanity” may be understood as referring to either all human beings – humankind – or to the characteristic of being “human” – humanness. [*See ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW* 101-103 (2nd ed. 2008); *David Luban, A Theory of Crimes Against Humanity*, 29 *YALE J. INT’L L.* 85, 86-93 (2004)]

**737.** Crimes against humanity are currently considered to be particularly odious offenses because they constitute a serious attack on human dignity or a grave humiliation of one or more human beings. [**Persecution as a Crime under International Criminal Law: Fausto Pocar**, Judge, International Criminal Tribunal for the former Yugoslavia (2000-present) and President of the Tribunal (2005-2008). This article is based on a paper presented to the faculty of the University of the Pacific, McGeorge School of Law, on April 3, 2008]

**738.** Defence document itself shows that there had been AB camp set up at Dalim Hotel building in Chittagong. The evidence presented too provides support to the conclusion that the camp at Dalim Hotel building came to serve as a model for an expanding and centralized torture camp system under AB management. However, the camp increasingly became the site for the systematic murder of individuals kept in protracted captivity there. The AB members being actively commanded, effectively administered and consciously guided by accused Mir Quasem Ali used to confine those whom they defined as ‘miscreants’[freedom fighters] and political or ideological opponents. Accused was thus an indispensable cog in the ‘murdering machinery’ implanted at Dalim Hotel. General system of cruelties and murder of detainees demonstrates that the system was practiced within the knowledge of accused. The AB camp was in fact engaged as ‘criminal enterprise’ to which accused was a part, by virtue of his position of authority, and act and conduct.

**739.** Atrocious activities accomplished in the AB camp included recurrent arbitrary terror and routine violence. The evidence presented proves it beyond reasonable doubt that the harrowing dynamics of terror, violence, torture impeccably demonstrate that the system of cruelties and terror even transformed to brutal murder of many detained civilians in the ‘**death-factory**’ of AB force headquartered at Dalim Hotel. Arbitrary detention of non combatant civilians in the AB camp headquartered at Dalim Hotel in piteous conditions, and in a climate of terror, combined with their recurrent physical torture and torture to death deserve to be dealt with more severely.

**740.** Accused Mir Quasem Ali had been in steering position of the AB detention and torture camp. Abuse of his position of authority is considered as an aggravating circumstance. A person who abuses or wrongly exercises power deserves a harsher sentence than an individual acting on his own. Consequently, what matters is not the position of authority taken alone, but that position coupled with the manner in which the authority is exercised. Accused instead of preventing the criminal acts by the AB men on whom he had effective control, involved him in the system and protracted brutality



caused to the detainees at the AB camp. The accused was an indispensable cog in the ‘murdering machinery’ implanted at Dalim Hotel.

**741.** It has been proved beyond reasonable doubt that the horrifying mistreatment as described by the detainee witnesses caused serious mental harm and physical suffering to the detainees and was a **continuous attack on the human dignity** of non combatant civilians. The system of extreme brutalities was practiced within the knowledge of accused. The AB camp was in fact engaged as ‘**criminal enterprise**’ to which accused was a part, by virtue of his position of authority, and act and conduct

**742.** According to section 4(1) of the Act of 1973 the accused Mir Quasem Ali, being equally responsible, has incurred individual criminal liability for the commission of crimes proved. It also stands proved that the accused, by his acts and conduct coupled with ‘authority’, also incurs superior responsibility under section 4(2) of the Act of 1973 for the crimes described in the charges framed against him.

**743.** What situation existed in the AB camp implanted at Dalim Hotel building in 1971? It has been divulged from the evidence of detainee witnesses that the civilians who had been in unlawful captivity were at the mercy of their captors, routine physical and psychological sufferings were inflicted upon the detainees [witnesses to the crimes], extremely terrifying or heinous means and methods were routinely used to commit the crimes. Accused Mir Quasem Ali was a part of this system brutality.

**744.** All the crimes including murder of several detainees including Jasim, Tuntu Sen, and Ranjit Das committed at that infamous AB camp within his knowledge and on his explicit and tacit approval and encouragement. The relatives of the murdered detainees could not have trace of their dear and near ones. It stands proved beyond reasonable doubt. Conduct and act of the accused at the camp forces to conclude that he shared the common intent of the principals to further the common unlawful purpose of actual perpetration of the offence of murder. The information narrated in the book titled *উত্তর-পূর্ব : গণহত্যা পুনঃস্মৃতি, পৃষ্ঠা 41* [Defence Documents Volume

page 41] depicts that the freedom fighters were brought to Dalim Hotel by AB Members and army and they were subjected to torture to death. It has been proved that the accused Mir Quasem Ali had been in steering and guiding position of the AB force headquartered at Dalim Hotel which was a **'death-factory'** indeed.

**745.** Since the events proved as narrated in **charge no. 2,3,4,6,7,9,10 and 14** relate to the offence of abduction of civilians and causing them torture keeping in prolonged confinement at the same AB camp, in furtherance of common purpose, we deem it appropriate to award sentence, considering the gravity and magnitude of each of the offences narrated in these charges.

**746.** We have already deduced that the accused Mir Quasem Ali has incurred criminal liability also under the 'theory of civilian superior responsibility' in respect of offences proved, which is covered by section 4(2) of the Act of 1973 and it may thus legitimately be taken into account as an **'aggravating factor'**, for the purpose of determining the degree of accused's culpability and awarding sentence.

**747.** Jasim, a brave youth freedom fighter was murdered in unlawful captivity at the AB camp where he was brought on capture. He was non combatant at the time of his forcible capture. Other 4-5 detainees were also killed at the same AB camp. It is proved. Ranjit Das and Tuntu Sen were also tortured to death there. Tuntu Sen attempted to escape by jumping from the roof of the Dalim Hotel building. But he was again caught on accused's order and tortured to death. Their dead bodies could not be traced even. The events of these killings were enormously appalling indeed. However, mode of participation of the accused, as has been found, deserves justifiable consideration, in awarding sentence in respect of the offence of murder as listed in **charge nos. 11 and 12**. Accused Mir Quasem Ali has been found to have incurred criminal liability also under the 'theory of civilian superior responsibility', in respect of charge nos. 11 and 12, as covered by section 4(2) of the Act of 1973. His position of authority and domination over the AB camp which was indeed a **'death factory'** justifiably be taken onto account as an aggravating factor.

**748.** A sense of closure to the darkest chapter in the history of Bengali nation needs to be brought to end impunity for the barbaric atrocities committed in 1971, for strengthening the rule of law and also to set an example. The offence as listed in **charge nos.11 and 12** indubitably falls within the kind of such gravest crimes which trembles the collective conscience of mankind. In view of above discussion and considering the nature and gravity of offences and also keeping the factors as discussed above into account we are of the view that justice would be met if the accused **Mir Quasem Ali** 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:

## **SENTENCE**

That the accused **Mir Quasem Ali** son of Late Mir Tayeb Ali and Late Rabeya Begum of village- Munshi Dangi Satalori, Police Station- Harirampur, Dist. Manikgonj, at present- House NO. 287, Mollapara, South Monipur, Ward No.13, Mirpur, Dhaka, found **guilty** of the offences of abduction, confinement and torture as **‘crimes against humanity’** enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge nos. 2,3,4,6,7,9,10 and 14**. Accordingly, he be convicted and condemned to the **sentence as below for these eight charges**, under section 20(2) of the Act of 1973:

Sentence of imprisonment for **20[twenty] years** for the crimes as listed in **charge no.2;**

Sentence of imprisonment for **7[seven] years** for the crimes as listed in **charge no.3;**

Sentence of imprisonment for **7[seven] years** for the crimes as listed in **charge no.4;**

Sentence of imprisonment for **7[seven] years** for the crimes as listed in **charge no.6;**

Sentence of imprisonment for **7[seven] years** for the crimes as listed in **charge no.7;**

Sentence of imprisonment for **7[seven] years** for the crimes as listed in **charge no.9;**

Sentence of imprisonment for **7[seven] years** for the crimes as listed in **charge no.10;**

**AND**

Sentence of imprisonment for **10[ten] years** for the crimes as listed in **charge no.14.**

The sentence so awarded above **in respect of charge nos. 2, 3,4,6,7,9,10 and 14** shall run **concurrently**.

The accused **Mir Quasem Ali** is also found guilty of the offence of **'murder'** as **'crimes against humanity'** enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 in respect of **charge nos. 11 and 12**. Accordingly, he be convicted and condemned to a **'single sentence of death'** for the crimes in respect of these **two charges** and he be hanged by the neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973.

However, as the convict **Mir Quasem Ali** has been condemned to **'single sentence of death'**, as above, the **'sentences of imprisonment'** awarded in respect of charge nos. **2,3,4,6,7,9,10 and 14** will get merged into the **'sentence of death'**. This sentence shall be carried out under section 20(3) of the Act of 1973.

Accused **Mir Quasem Ali** is found not guilty of offences in respect of charge nos. **1, 5, 8 and 13** and thus he be acquitted thereof.

The sentence awarded shall commence from the date of this judgment as required under Rule 46(2) of the Rules of Procedure, 2012(ROP) of the Tribunal-2[ICT-2] and the convict be sent to the prison with a conviction warrant accordingly.

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

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

**Justice Md. Mozibur Rahman Miah, Member**

**749.** I have had the privilege to go through the judgement to be delivered by my learned brothers, Obaidul Hassan, J and Md. Shahinur Islam, J. I am in agreement with the adjudication and observation my learned brothers have made as regards to charge no. 2,3,4,6,7,8,9,10,11,13 and 14. I do also

agree with the findings of conviction and sentence they propose in respect of those charges but still, I pen my independent views and give observation on adjudicating those charges concurring with my learned brothers. But, I regret, I could not subscribe to the observation and findings my learned brothers propose as regards to charge no.12. Hence, I express my views and reasonings which I find myself pertinent in adjudicating charge no.12. Since my learned brothers have elaborately discussed factual segments of the prosecution case, historical background of our liberation war, emergence of Bangladesh as an independent state, the activities of Anti liberation forces during nine month long war, personal account of the accused, mode of liability of the accused in perpetrating offence and other ancillary issues I prefer not to reiterate those segments for the brevity of my episode by endorsing the views of my learned brothers expressed therein. Furthermore, much has been discussed by my learned brothers specially on legal issues so raised and submitted by the Defence at the stage of ‘Summing up’ of the trial on the point of maintainability of prosecuting accused, Mir Kashem Ali and what my learned brothers have eventually found, in adverting the legal issues, I do also agree with the reasoning having no occasion to find otherwise. Though, fact remains, those legal points had adequately been addressed in all the preceding Judgements passed by this Tribunal and subsequently the Hon’ble Appellate Division has affirmed those legal issues in the judgement passed in Kader Molla’s Case (judgement Delivered by the Hon’ble Appellate Division on 17-09-2013). Consequently, the same has become law and made it binding to us having no scope to give different findings in the instant case. Invariably, similar findings have been followed in the instant judgement also on the legal issues so agitated by the defence.

**750.** International Crimes (Tribunals) Act, 1973 (Act of XIX of 1973) was enacted on 20<sup>th</sup> July, 1973 by first sovereign Parliament of the Country and under the provision of section 6 of the Act International Crimes Tribunal-1(herein after referred to as ICT-1) was constituted on 25<sup>th</sup> March,2010 and this Tribunal (ICT-2) was also constituted on 22<sup>nd</sup> March , 2012. Section 3 of the Act has envisaged the category of offences this Tribunal is empowered to adjudicate while section 9 has stipulated the

commencement of the proceeding to be started before this Tribunal by way of submitting formal charge by the Prosecution. In view of the said express provisions of law the instant proceeding commenced before ICT-1 through submission of formal charges by the prosecution on 26-05-2013 and the Tribunal took cognizance of the offence thereof on the same date. Basing upon the formal charges prosecution placed its argument for indictment of the accused for committing several counts of offences described in the Petition of formal charge when the defence by filing a petition urged for discharging the accused and ICT-1 eventually by its order dated.05-09-2013 framed 14 different charges against the accused and all those charges were read-over to the accused in open court and invited his comment when he pleaded innocence. Thereafter, ICT-1 by its order dated.30-09-2013 transferred the case record to this Tribunal (ICT-2) and this Tribunal received the same on.02-10-2013 . On scrutiny the case record, this Tribunal found that a petition for review of the Order- framing charges had been filed in ICT-1 on.17-09-2013 but before the said petition is disposed of the Tribunal-1 had transferred the case to this Tribunal which necessitated this Tribunal to sent back the case record again to ICT-1 enable it to dispose of that review petition and accordingly, ICT-1 disposed of the review petition by rejecting so on.11-11-2013 and transmitted the case record to this Tribunal. All these process is accomplished in compliance of section 11A of the Act.

By placing opening statements prosecution adduced its first Prosecution witness-Syed Md. Emran on 11-12-2013 and ended its part by adducing last witness, Investigation Officer Md. Nurul Islam as Prosecution witness no.24 whose testimony was completed on.17-04-2014. After that, the Defence was allowed to adduce 3(Three) witnesses on its behalf by order dated.17-04-2014 and accordingly, it completed testifying its three witnesses on. 22-04-2014 and 23-04-2014 respectively. In course of adducing witnesses, both the parties produced certain documents in their favour as well. The case was then set for 'Summing up' by the prosecution and it took 2(two) working days that is, on 27-04-2014 and 28-04-2014 while the Defence placed so on. 29-4-14 and 30-04-14. On 04-05-2014 Defence made submission on Law point while Prosecution gave rebuttal there against and after wrapping up the Trial Proceeding this Tribunal made

the case *Curia Advisari Vult* (CAV). Hence, we take up the case for passing the verdict today and my part is as follows :

**751.** In order to prosecute accused Mir Quasem Ali for allegedly committing crimes against humanity as many as 14(fourteen) different charges have been brought against him under different clauses of section 3(2) of International Crimes (Tribunals) Act, 1973 proposing to have incurred liability in committing the offences under section 4(1) and 4(2) of the said Act also. To incriminate the accused for the offences made out in the charges prosecution adduced 24 witnesses including three Seizure list Witnesses and investigating officer testified as Pw-21 to Pw-24 respectively. On the contrary, for proving innocence, Defence examined three witnesses while both the prosecution and Defence produced certain documents favouring their respective cases.

Now, for the adjudication of the case, here I discuss the evidences of the prosecution witnesses in terms of Charges.

**752 .Adjudication of Charge no.1**

In fact, to support this particular charge, the prosecution has not adduced any witness nor produced any documents to buttress the incidents alleged to have described in the charge and eventually, the allegation so leveled by the prosecution against the accused in the charge just falls through. In such a posture, I refrain from reiterating the Order framing charge here. Hence, accuse Mir Quasem Ali is found not guilty of offence leveled in this charge and thus he be acquitted thereof.

**753. Adjudication of Charge no.2**

**Charge framed :** Precisely, in this charge accused Mir Quasem Ali as president of Islami Catra Sangha(herein after referred to as **ICS**) has been arraigned for leading and instigating abduction of some Lutfar Rahman Faruk and Seraj upon capturing them from the house of Mr. Syed of 35, Bokshirhat, Chittagong by the Pakistan Occupation forces and members of Al-Bader Bahini on the 19<sup>th</sup> November,1971 at about 2.00 p.m. and there from the victims were at first taken to Mohamya Dalim Hotel under Kotwali Police station where they were tortured in presence of Mir Quasem

Ali for 2/3 days wherefrom Lutfar Rahman Faruk was then handed over to Circuit House, used as Pakistan Army camp, Chittagong town where he was again tortured and was sent to jail wherefrom victim Faruk was freed sometime after 16 th December, 1971 and by this way, Mir Quasem Ali has been charged for abetting and facilitating in committing offence of abduction, confinement and torture as Crimes against humanity as envisaged in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act, 1973 on incurring liability under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

**754. Discussion Of Evidences :**

Victim **Lutfar Rahman Faruk** has deposed before this Tribunal as Prosecution Witness (hereinafter referred to as ‘PW’) **no.20** in support of the charge. This Pw has stated that- on arrival at Dalim Hotel he saw Mir Quasem Ali , President of ICS sitting and on his (Mir Quasem Ali) instant order, the members of Al-Badr blindfolded him, tied his hands and tortured him over the whole night by an electric wire for extracting the whereabouts of freedom fighters . At one stage of torture he got fainted. This Pw further stated that soon after arrival at Dalim Hotel he craved for a glass of water to Mir Quasem Ali as *Ifter* for breaking his fast as he had been fasting then when Mir Quasem Ali exclaimed ‘ what Ramadan is meant for you, bring him urine for drink’ on asking Al-Badar men standing there.

**755.** He further stated in his chief that, he had been detained and tortured at Dalim Hotel for 7/8 days but as the Al-Badr force did not elicit any information from him about the whereabouts of Freedom Fighters, they (Al-Badr men) then handed him over to Pakistan Army who took him to Circuit house where he was again inhumanly tortured in different cruel manner and eventually, he was sent to Chittagong jail at the mercy of some Beluch major named- Fatey Ali Shah wherefrom the Freedom fighters set him free on 16th December, 1971.

At the fag-end of his chief he howled at the top of his voice by saying that “for the barbaric torture inflicted on me at Dalim Hotel I became emasculated and lost my reproduction power to give birth to any child”- when the entire court room witnessed a pin drop silence.



**756.** The learned Counsel for the Defence then grilled the Pw by cross examining ( hereinafter referred to as “**cross**”) him extensively. In reply to questions, this Pw averred that accused Mir Quasem Ali was the President of ICS on November 19, 1971 and he also saw him in various meetings after the liberation. In reply to a question put by this Court, this Pw asserted that before being detained at Dalim Hotel on 19<sup>th</sup> November, 1971 he also saw Mir Quasem Ali as a student leader, though no permission was sought by the defence to cross examine the Pw on this particular question put by this Tribunal as mandated in section 10(h) of the Act.

**757.** This PW in reply to cross further stated to had known the circuit house before the liberation war adding further that, the torture cell which was set up at the vicinity of circuit house in 1971 is no more exist asserting that, he did not know whether there remained any army camp in Chittagong city other than at Circuit house. Aside from that, the Defence pleaded accused innocence drawing attention of the material portion of chief of victim where he incriminated the accused in terms of the charge -which the Pw flatly denied the defence plea and affirmed what he stated in his chief. This Pw very candidly denied two specific suggestions of the defence that - Dalim Hotel was under the control of Rajakar Motiur Rahman alias Moittya Gunda where the Pakistan Army had mainly dominated in 1971 as well as Mir Kashem Ali had not stayed in Chittagong on November 19, 1971.

**758. Submissions advanced by the Prosecution :**

In the event of summing up, Mr. Sultan Mahmud, learned prosecutor very emphatically submits that this Pw is a victim who was abducted, confined and had been endured inhuman torture at the behest of accused Mir Quasem Ali keeping him confined at Dalim Hotel and Chittagong Circuit House. The very recognition of the accused by the victim before and after the liberation war as well as during his torture at Dalim Hotel in 1971 could not be shaken by the defence in cross. Further, learned counsel submits that, on the material point of abduction, confinement and torture of the victim the defence has merely pleaded the accused innocence in the form of taking denial from the Victim- which is not enough to discard the culpability of

the accused and absolve him from the charges as well - the learned prosecutor continued.

**759.** More so, nothing has been suggested on the part of the Defence that could give rise in the suspicion of the veracity and credibility of the evidence of this PW, rather horrific description of torture he endured and his wailing in the court room recalling his horror stricken days makes his testimony incriminating the accused trustworthy- learned prosecutor further asserts. He finally argues that, since the victim has proved the charge beyond any shadow of doubt by irrefutable evidences the accused deserves to be meted out with highest punishment.

### **Contention of Defence**

**760.** While refuting the above submission of the Prosecution, Mr. Mizanul Islam learned Defence Counsel, in his summing up gave much stress about the alleged claim of the victim for being 'emasculated' caused for alleged torture being perpetrated in presence of Mir Quasem Ali while confined at Dalim Hotel narrated in his chief. To falsify the said assertion of the Victim-Pw20, learned Defence counsel put much emphasis on the said statement claiming it to be totally untrue pointing out that he in his cross examination asserted to had got married to some Dilara Begum in the year of 1979. Had it been so, then his above testimony bears no substance and the witness cannot be treated as credible one and thus all other statements made in the chief implicating the accused will also not be believable and the allegations brought against the accused are mere travesty of truth.

### **761. Evaluation of Evidence :**

In adjudicating the above charge I would confine myself with in the ambit of the evidences advanced by the prosecution.

While sifting Examination-in-chief (hereinafter referred to as 'Chief') of the Victim deposed as PW-20 I find that, this Pw has described the incident corroborating the date and time of incident mentioned in the charge and asserted other segments of the charge as well. Three distinct offences namely abduction, confinement and torture have been leveled against the accused which he alleged to have abetted and facilitated. On careful perusal

of the chief of the victim, sole witness (Pw-20), it reveals that, he was abducted on 19<sup>th</sup> November 1971 from the shelter of some Syed vai. Some Al-Badr men and Pakistan Army led the said abduction though the charge says, under the leadership of the accused he was abducted. It is true that, leader always need not require to remain present at the crime scene but some strong inference must come out from the circumstances or from the testimony of the witness that indicates in forming opinion that the accused was behind the abduction. If I take the entire testimony in to consideration, it would be clear that under no circumstances a person could be held refuge to Dalim Hotel without any signal from the accused.

**762.** Here in this case, I also find so as while Victim stepped in to Dalim Hotel he found accused Mir Quasem Ali sitting there which dictates strong inference that, Mir Quasem Ali had orchestrated his abduction and the Al-Badr forces have just carried out his order in capturing him from his shelter and brought him at Dalim Hotel. So, the very charge of abduction has abundantly proved against Mir Quasem Ali.

**763.** The second count of charge relates to confinement. Victim as Pw-20 at one stage of his chief steadfastly asserted that ‘accused Mir Quasem Ali had led Dalim Hotel’ – which appears to me that, victim has obviously expressed so seeing the position of the accused at Dalim Hotel, blind obedience of Al-Badr men towards the accused as well as from the movement and demeanor of the Al-badar men who often tortured the abductees brought in at Dalim Hotel including this victim- PW-20. This version of testimony finding the accused leader at Dalim Hotel also remained uncontroverted.

**764.** It is in the chief, that the Victim Lutfar Rahman Faruk(PW-20) was first taken to Dalim Hotel soon after abduction and on arrival there he found Mir Quasem Ali sitting there upon whose direction the Al-Badr men first tied his hand and blindfolded him. At night, he was taken to a room of Dalim Hotel and under the direction of Mir Quasem Ali, Al-Badr members tortured him over whole night by an electric wire and at one stage of torture he got fainted. This Pw had also conversed with the accused

before being blindfolded. This Pw also narrated his subsequent handing over to Pakistan Army from Dalim Hotel , confined at circuit house - a Pakistani Army camp and put up with barbaric torture there as well.

**765.** From the above deposition of Victim-PW-20, it appears that, Mir Quasem Ali was there at Dalim Hotel when the victim was made presented before him. He was blindfolded by the Al-badr men first and was taken to a room of the hotel at night and from that very night he had been tortured by the Al-Badr men that continued till his handing over to Pakistani Army and all these atrocities perpetrated obviously at the direction of Mir Quasem Ali.

**766.** Mir Quasem Ali was the President of ICS of Chittagong City at the time of occurring incident as made out in the charge which Pw-20(Victim) has affirmed in his cross examination. No contrary suggestion has been put to this PW by the Defence. It could not also be discarded that Mir Quasem Ali was not at Dalim Hotel when the victim was taken there and subjected to inhuman torture under his direction by blindfolding and confining him at night in the Hotel. It cannot be denied that, victim had been confined at Dalim Hotel for 7/8 days. So, it can cogently be perceived from the testimony of the victim that, Mir Quasem Ali had held the position of authority and under his egis Victim had been tortured brutally at Dalim Hotel.

**767.** From the above, it is found that, without the consent of accused nothing could be materialized as happened even in the handing over of the victim subsequently to the Pakistani Army being failed to glean any information from victim about the whereabouts of Freedom fighters . So, had he (accused) not consented to hand him over to Pakistani Army and took him to Circuit house- the Victim would not have been subjected to further torture there also.

**768.** Again, the heart wrenching mourning of the victim in the court room recalling the brutality inflicted upon him at Dalim Hotel and circuit house that resulted him emasculated –clearly and palpably impel me to believe

the accused's active participation in committing the offence of Abduction, confinement and torture on the Victim and thus it proves, the accused abetted, assisted and approved the perpetrator to commit the crime of abduction, confinement and torture to an unarmed civilian constituting the offence of Crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and therefore, accused **Mir Quasem Ali** incurs criminal liability under section 4(1) of the Act also.

**769. Verdict of Conviction :** Considering all evidences and submissions of learned Advocate of the parties I find accused Mir Quasem Ali **Guilty** of the offence of complicity to commit abduction, confinement and torture as “Crimes against humanity” and he is liable to be convicted and sentenced under section 20(2) of International Crimes(Tribunals) Act, 1973.

**770. Verdict of Sentence :** While sifting the evidences of Pw-20 I find the torture perpetrated on Victim Lutfar Rahman ,Faruk very cruel in nature and the victim had been tortured gruesomely under the direction of accused Mir Quasem Ali right in his presence at Dalim Hotel and on failing to glean any information the accused subsequently handed him over to Pakistan Army also where he underwent another round of torture that ultimately crippled his reproduction ability once for all. It also stands proved, accused took active part in abducting and confining the victim and in my view, such sorts of horrific atrocities perpetrated towards the victim-an unarmed pro-liberation civilian, the accused deserves no leniency in awarding punishment. Therefore, the accused **Mir Quasem Ali** be condemned to a single sentence of imprisonment for **20 (twenty)** years for the crimes of abduction, confinement and torture under section 20(2) of International Crimes (Tribunals) Act, 1973.

**771. Adjudication of Charge no.3**

**(Abduction, Confinement and Torture of Jahangir Alam Chowdhury)**

**Charge Framed :**

Precisely, in this charge accused Mir Quasem Ali as president of Islami Satra Sangha (ICS)has been arraigned for leading abduction of some Jahangir Alam Chowdhury upon capturing him from his rented house at

Kadom Tali, Chittagong by the Pakistan Occupation forces and members of Al-Badr Bahini in the morning of 22<sup>nd</sup> or 23<sup>rd</sup> November, 1971 and there from the victim was taken to Mohamya Dalim Hotel under Kotwali Police station where he was mercilessly beaten and tortured at the instance of accused-Mir Quasem Ali and later on in the early morning on 16th December, 1971 the relatives of the victim and pro liberation forces rescued him from Dalim Hotel and by this way, Mir Quasem Ali has been charged for abetting and facilitating in committing the offence of abduction, confinement and torture as Crimes against humanity as envisaged in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act, 1973 on incurring liability under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

**772. Discussion Of Evidences :**

To prove the charge prosecution has relied upon the testimony of seven witnesses including victim Jahangir Alam Chodhury and some documents.

**Jahangir Alam Chowdhury** being the sole victim described in the charge deposed as **Pw -16** whom in his chief stated to had been abducted by the Pakistan Army some-time two days after Eid-ul Fitr in 1971 on being identified by a masked Al-badr men who upon tying his hands and feet were taken to the ground floor of Dalim Hotel- an Al-badr camp where he found his full younger brother Dastagir Chowdhury, neighbour- Mafis and many others who were brought there earlier. After 2/3 hours, he together with other abductees were first taken to the second floor and then to the third floor of the Hotel. Sometime after evening, Al-Badar men Nurul Afsar and accused Mir Quasem Ali dumped Advocate Shafiul Alam in their room and locked the door from outside when he (shafiul Alam) was profusely bleeding.

**773.** While dumping Shafiul Alam, Mir Quasem Ali and Nurul Afser had been exclaiming with each other saying ‘others would take lesson out of seeing it’. The victim with other detainees then made Advocate Shafiul Alam lean upon the wall of the room. After confining in the third floor for one day he was then brought to the kitchen of the Hotel where he had been tortured. At one point of torture, Al-Badr man Nurul Afsar upon unfolding

his folded eyes showed a written paper and proposed him to announce it in the Radio that was meant for the Freedom Fighter where it was written – ‘all goes normal here, there remain no problem and thus return’- but the victim refused to read it over to the Radio in fear of retaliation by the Freedom Fighter upon him and his family members. Instead, Nurul Afser was insisting him to read it over. Mir Quasem Ali and 2/3 of his cohorts were witnessing the scene standing there- Pw16 further added.

**774.** Refused, they again started torture on the victim on blindfolding him and tying his hands and feet until he went unconscious and then Al-Badr men left him in the kitchen. Eventually, on the morning of 16<sup>th</sup> December his two full brothers along with other freedom fighters rescued him, Emran and other pro-liberation civilians by breaking open the doors of the room where they had been confined.

**775.** In the Chief Victim claimed to had seen Syed Md. Emran during his captivity at Dalim Hotel and he (Syed Md. Emran) was also set free on 16<sup>th</sup> December along with victim. Syed Md. Emran as **Pw-1** in his chief claimed that, he had captured by Al-Badar force and Pakistan Army led by accused Mir Quasem Ali in the morning of 30<sup>th</sup> November from his residence on cordoning it. They inflicted severe torture and then pushed him off to a room of Dalim Hotel blindfolded where he sensed the presence of several abductees out of whom an abductee unfolded his folded eyes when he recognized several abductees earlier confined over there, including victim of this charge-Jahangir Alam Chowdhury.

**776.** Pw-1 then conversed with other co-abductees and victim and came to learn that, on 28<sup>th</sup> November a freedom fighter had been dumped and died instantly in their room whom sustained brutal torture. It was divulged from Shawpan who supplied meal to the abductees at the Hotel that the dead person is Juvenile freedom fighter, Jashim from Sawndip. At the fag end of his chief, this Pw asserted that, on the morning of 16<sup>th</sup> December the brother of Victim(Pw-16)- Dastagir Chowdhury and other freedom fighters had rescued him from Dalim Hotel.

**777.** As stated earlier, Victim-Jahangir Chowdhury (Pw-16) had come across **Advocate Shafiul Alam** in the third floor of Dalim Hotel whom was dumped at critical state, as he had been severely tortured. Advocate Shafiul Alam could not be testified since he died before the proceeding is started but the Prosecution relied upon a Book he authored named "*Shei She Shomay Ananda Bedonay*"- a compilation of several articles based on Liberation War(**Material Exhibit-VI, Vol-2, page251-261submitted by the Prosecution**) wherein amongst others, he had written an article about his horrific **ordeal** he put up with during his confinement at Dalim Hotel under caption '*Du Shopner Norokey : Dalim Hotel*' .

**778.** Advocate Shafiul Alam in the said article described how he had been captured by the masked Al-Badr men from his rented house in the night of 27<sup>th</sup> November, 1971 had been tortured, taken to 3<sup>rd</sup> floor of Dalim Hotel and then kicked off to a room where he found freedom fighter Jahangir Alam Chowdhury and Sanaullah Chowdhury - confined earlier. He also narrated harrowing account of torture being perpetrated by the member of Al-Badr upon him and other captives on taking them on the roof top of the hotel by which a juvenile freedom fighter named, Jashim breathed his last in his lap, dumped in his room.

**779. Pw-2 Sanaullah Chowdhury** in his chief has just echoed what the victim Zahangir Alam Chowdhury (PW-16) described about his confinement at Dalim Hotel and Advocate Shafiul Alam wrote in his article '*Du Shopner Norokey : Dalim Hotel*' - - apart from his testimony of the brutality perpetrated on him(Pw-2) by the Al-badr men during his confinement at Dalim Hotel.

Now comes, **PW-14 Fayeze Ahamed Siddique** who did not say anything about abduction , confinement and torture of the victim Zahangir Alam Chowdhury . He in his chief stated to had found Zahangir Alam Chowdhury freed among 100-150 persons came out free at Dalim Hotel when he was looking for his brother-in-law, Saifuddin Khan there on the very morning of 16<sup>th</sup> December, 1971.



**780. Nasiruddin Chowdhury** deposed as **PW-3** claimed to had been abducted by the Al-Badr force at the last part of the month of November, 1971, taken to Dalim Hotel, and was confined and tortured there till his rescue on 16<sup>th</sup> December, 1971. In support of the charge, he made his testimony to the effect that - he saw victim, Zahangir Alam Chowdhury and Syed Md. Emran both coming out free from Dalim Hotel in the morning on 16 December, 1971.

**Md. Anisur Rahman**, a seizure list witness appeared as **Pw-23** is not much significant who has just proved the seizure of the book "*Shei She Shomay Ananda Bedonay*" by the Investigation officer so relied by the prosecution in support of this charge.

**781.** Now, Let me discuss about the cross examination of those Prosecution witnesses by the Defence. In reply to cross, Victim- **Pw-16** averred *inter alia*, that, he had been detained at Dalim Hotel for 22-23 days on being captured 2 days after Eid-ul Fitr, he did not recollect as to whether he had ever seen Syed Md. Emran and Sanaullah Chowdhury on the very day he was taken to Dalim Hotel or that of Eid-ul-Fitr was celebrated on 21<sup>st</sup> November, 1971, he pleaded unaware whether Dalim Hotel had been under the control of Matiur Rahman alias Moitya Gunda and Biharies in 1971. In a specific suggestion, Pw-16 denied of having been remained blindfolded in the ground floor while confined at Dalim Hotel. Apart from that, drawing attention of some portion of the chief, Defence made suggestions claiming that he(pw) has not disclosed those statements earlier- which the Victim (Pw-16) denied.

**782.** Though **Pw-1** Syed Md. Emran was cross examined but no question has been put to this Pw in relation to abduction and torture of the Victim when Pw-16- victim claimed to had been rescued along with this Pw-1, Emran on 16, December, 1971 by his(Pw-16) full brother Dastagir Chowdhury and this Pw, Syed Md. Emran corroborated so in his chief adding further that, they had been confined in a room at Dalim Hotel.

**783.** From Defence several questions have been put to **Pw-2**, Md. Sanaullah Chowdhury but amongst those, I do not find any question to have shaken

the veracity of the assertion of the Victim(PW-16) made in his chief or that of the credibility of this PW-2 when he asserted to had been confined with the Victim and Advocate Shafiul Alam in the same room of Dalim Hotel and also shared the grief they had gone through during their captivity - in his chief. In cross, this Pw-2 asserted that, during liberation war in 1971 he had served as Office Assistant in Land Acquisition branch at DC office, Chittagong, he knew Dalim Hotel much before the liberation war, he did not know Tuntu Sen, Ranjit Das, Jashim and Shawpan- staff of Al-Badr force before being detained at Dalim Hotel. He also denied a suggestion of the defence that- Mir Quasem Ali had not been lived in Chittagong after 7<sup>th</sup> November till emergence of Bangladesh on 16<sup>th</sup> December, 1971.

**784.** Upon a question from the Tribunal, this Pw asserted that- the Head-office of Al-Badr was stationed at Dalim Hotel. Yet, no question has been put to this Pw to deviate him from this vital assertion though defence could avail the opportunity upon taking permission from this court under section 10(h) of the Act leaving the said answer uncontroverted.

**785.** No question has been put to Nasiruddin Chowdhury (**PW-3**) by the Defence shaking his assertion made in his chief who claimed to had seen Victim(PW-16) coming out from Dalim Hotel on 16th December,1971. But, in reply to first question in Cross this Pw has unequivocally asserted that- he did not see accused Mir Quasem Ali in his captive room at Dalim hotel from 6<sup>th</sup> December- till he was set free on 16<sup>th</sup> December, 1971. In second question, this Pw has further asserted that from day one of his abduction, he had been confined in the same room of Dalim Hotel.

**786.** To **Pw-14, Faye Ahmed Chowdhury** the defence put a suggestion that - he for the first time disclosed in the Tribunal that he had gone to Dalim Hotel on 16<sup>th</sup> December,1971 which the Pw admitted as true, but has clarified that, there was no opportunity to divulge so earlier.

As regards to the article ‘ *Du Shopner Norokey : Dalim Hotel* ‘being part of the book of “ *Shei She Shomay Ananda Bedonay*” written by victim Advocate Shafiul Alam- no question has been put to Pw-23(seizure list witness) or Pw-24(Investigation Officer) about the authenticity of the book

and credibility of facts described therein where hair raising description of atrocities perpetrated at Dalim Hotel has been depicted.

**787. Submissions advanced by the Prosecution at Summing up :**

The learned Counsel for the prosecution at the very outset submits that there is no iota of doubt that Victim Zahangir Alam Chowdhury was abducted at the instance of Mir Quasem Ali, confined at Dalim Hotel and had been subjected to inhuman torture by the Al-Badr men in his presence in the date, time and manner so specified in the charge and all the witnesses designated for the charge proved so by convincing evidences whom corroborated each other. The learned Counsel further added, the defence has rather affirmed his abduction and confinement upon extracting a reply from the victim who stated that he had been confined at Dalim Hotel for 22/23 days on being abducted after 2 days of Eid-ul Fitr. A suggestion has been made to the victim that whether he had been blindfolded and confined in the ground floor of Dalim Hotel- which the victim denied. So by that very suggestion, the defence has re-affirmed his confinement and torture at Dalim Hotel.

**788.** On the reliability of the Article titled '*Du Shopner Norokey : Dalim Hotel*'- written by Advocate Shafiul Alam the learned Prosecutor has drawn our attention to the respective lines where the author amongst others narrated how he was abducted, subjected to cruel torture, taken to 3<sup>rd</sup> floor of Dalim Hotel, finding victim and Sanaullah Chowdhury there and came across 'Khan Shaheb' –a monster as well as tragic death of Jashim in his lap . All these horrific atrocities –the writer himself sustained has vividly been reflected in the testimony of the victim, PW-16, Pw-2 and Pw-1 and remained unshaken in the cross- the learned Prosecutor asserts.

**789.** So far it relates to the testimony of Pw-1, Pw-2 Pw-3 and Pw-14 the learned Prosecutor argues that, all those witnesses either remained confined with the victim at Dalim Hotel, encountered brutality there or had seen the victim coming out from the Dalim hotel on 16<sup>th</sup> December, 1971 but such assertion of the respective Witness could not be rebutted in any manner through cross leaving the charge proved and eventually, the learned

Prosecutor prays for convicting and sentencing the accused suggesting the offences accused committed is grave in nature.

**790. Contention of Defence**

In contrast, the learned counsel for the Defence tries to counter the assertion of the Prosecution by attacking the credibility of the Prosecution witnesses. In his such endeavor, the learned Counsel draws our attention to the chief of Victim, Zahangir Alam Chowdhury where he claimed to had been abducted 2/3 days after Eid-ul-Fitr and found Advocate Shafiul Alam in a room of third floor at Dalim Hotel on that very evening in a critical state but Advocate Shafiul Alam in his write up '*Du Shopner Norokey : Dalim Hotel*'- penned to had been abducted on 27<sup>th</sup> November, 1971. The learned Counsel asserts that, in the year of 1971 Eid-ul-Fitr was celebrated on 21 November, 1971 so if Pw-16 were arrested 2/3 days after the said Eid, he would have seen Advocate Shafiul Alam at best on 24<sup>th</sup> November in his hotel room but as per the said write up it indicates otherwise . So, on this point alone, the alleged assertion of the Victim of his abduction, confinement and torture can in no way be proved.

**791.** As regards to the testimony of PW-2 and Pw-1, the learned Counsel opines that, those two witnesses claimed to had been abducted on 27<sup>th</sup> and 29<sup>th</sup> November respectively and both were kept confined with the Victim and Advocate Shafiul Alam in the same room of Dalim Hotel - but they cannot be considered as credible witnesses –the learned Counsel asserted. To discredit Pw2, the learned Counsel then pointed out that Pw-2 in reply to cross stated that, he could not say where the main camp of Pakistan Army or that of main office of Rajakar in Chittagong town was located- though he was the employee of DC office in 1971 and his office was stationed at the heart of the town and thus, he would only know Dalim Hotel before liberation war- sounds fishy.

**792.** Similarly, Syed Md. Emran – claimed to be a veteran freedom fighter as **Pw-1** on the other hand, replied in cross, he did not know where the main camp of Rajakar was located in Chittagong town though he claimed to knew Dalim Hotel since 1969- which also cast serious doubt about the

credibility of his evidence incriminating the accused with the commission of offence as made out in the charge and hence, the accused is liable to be acquitted- the learned counsel concluded.

**793. Evaluation :**

On careful scrutiny of the evidences and submission of the parties discussed above, some vital points have been evolved which are required to be adjudicated first, of course in the light of materials placed before me. The Defence did not dispute rather has agreed that, Mir Quasem Ali was the President of ICS in Chittagong town but claimed to had held such position till 6<sup>th</sup> November, 1971 and on 7<sup>th</sup> November, 1971 he became the Secretary of ICS of the then East Pakistan. In the charge though the accused was designated as the President of ICS, Chittagong town unit but Defence did not raise any objection there against.

**794.** Now, Question naturally crops up how the accused would Command the Al-Badr forces and took control over it staying at Dalim Hotel. The answer has meantime been given in the judgement of Muhammad Kamruzzaman's Case(**Para-601 of ICT-BD Case no.03 of 2012, Judgement delivered by this Tribunal on 09 May,2013**) as well as in the judgement of Ali Ahsan Muhammad Mujahid's Case(**Para-148 of ICT-BD Case no.04 of 2012, Judgement delivered by this Tribunal on 17th July,2013**) that, members of ICS had been transformed to Al-Badr force during liberation war. Since, accused Mir Quasem Ali is found to had been holding the highest position of ICS in Chittagong during liberation war he obviously, held the position of chief (Commander) of Al-Badr-force having all out domination over Al-Badr force in Chittagong, staying at Dalim Hotel. It has further been held that, Al-Badr force was an "*auxilliary force*" as defined in section 2(a) of the Act of 1973 and acted under the control of Pakistani occupation armed forces and run as '**Death Squad**' to eliminate Pro-liberation Bengali Civilians, intellectual sections, religion minority particularly, Hindu Community and Freedom Fighters. (**Source : Para-495 of ICT-BD Case no.03 of 2012, Judgement delivered by this Tribunal on 09 May,2013**)

**795.** Now next question comes, as to whether ‘Dalim Hotel’ had run as ‘Torture cell’ of Al-Badr forces during liberation war. In this Particular charge, It has been alleged that, victim was taken to Dalim Hotel where he had been severely tortured . Apart from the victim, Pw-1, Pw-2 and Pw-3 suffered same ordeal at Dalim Hotel. Even, Advocate Shafiul Alam who alleged to had been dumped to a room of Dalim Hotel by Mir Quasel Ali and Nurul Afser had also given a terrifying ordeal in his write up *‘Du Shopner Norokey : Dalim Hotel’* symbolizing Dalim Hotel as ‘ realm of horror’ and none but the accused Mir Quasem Ali had turned ‘Dalim Hotel’ in to a “Valley of Death” during liberation war. All the horrendous crimes had been orchestrated under the aegis of accused Mir Quasem Ali though the author on obvious reason avoided the name of the said tormentor in his article but it would not be hard to a man of ordinary prudence to grasp to whom the author indicates. The book is absolutely an authoritative one and well documented having no occasion to disown the credibility of the facts penned.

**796.** Further, from the evidences of above witnesses it become crystal clear that, Dalim Hotel had operated as ‘torture cell’ of Al-Badr forces and all nefarious crimes perpetrated at the dictate of accused Mir Quasem Ali during the liberation war. In cross, the defence put a suggestion to the victim (PW-16) that he was kept blindfolded in the ground floor of Dalim Hotel-which the Pw denied as it was not the case of the prosecution that victim had ever been blindfolded during abduction, confinement and torture at Dalim Hotel. So, by putting such suggestion, the Defennce has conversely admitted that, victim had been taken to Dalim Hotel. In reply to cross, he has also stated that he knew Dalim Hotel during liberation war which was called ‘Mahamaya Dalim Hotel before liberation war’.

**797.** In two different occasions, Victim had seen Mir Quasem Ali during his confinement at Dalim Hotel, One- When Advocate Shafiul Alam was thrown in to his room with severe injury and then, when he refused to read-out a script to the Radio shown by Al-Badr man, Nurul Afsar and was tortured for refusal- accused was standing there. So, the very torture on

victim at Dalim Hotel and presence of accused Mir Quasem Ali at that time could in no way be waned by the Defence.

**798.** Even, Pw-2 Sanaullah Chowdhury who had been abducted and tortured at Dalim Hotel and was confined in the same room of Victim also stated in chief to had seen Mir Quasem Ali when he had been tortured. In reply to a question asked by the Tribunal, he emphatically stated that the Head-office of Al-Badr in Chittagong was at Dalim Hotel though could not say the head-office of Razakar. To deviate from such assertion, the defence did not take advantage of section 10(h) of the Act by quizzing him on that point upon taking permission from the Tribunal leaving the answer regarding Al-Badar head-office uncontroverted. In another question put to this Pw-2 he replied that, he was not known to Tuntu Sen, Jashim, Ranjit Das and Staff of Badar Bahini-Shawpan before being confined at Dalim Hotel. By this reply, his confinement at Dalim hotel has rather been affirmed and similarly, his assertion as to finding Victim Zahangir Chowdhury at Dalim Hotel also become proved.

**799.** On the other hand, PW-1 Syed Md. Emran in his chief claimed to had been abducted by the joint force of Al-Badr, Rajakar and Pakistan Army led by accused Mir Quasem Ali. He was blindfolded, boarded in a truck, taken to Al-Badr torture cell at Dalim Hotel, had been tortured by electric wire and arms. He also stated, accused Mir Quasem Ali had led the Al-Badar Camp at Dalim Hotel and he himself(Accused)had quizzed him during his confinement and torture. At one point of torture he was pushed off to a room where he found the Victim(PW-16) and Pw-2. Through cross, two vital points have been elicited from this Pw. He in reply to cross categorically stated that, at the time of capturing him he had not been blindfolded rather he had been blindfolded when he was boarded on truck. In another question he also replied that, at the time of quizzing and torture his folded eyes had been unfolded. Secondly, this Pw steadfastly asserted that, Dalim Hotel was the torture cell of Al-Badr force.

**800.** By those assertion made by the Pw in his chief, it is found that, this witness could recognize Mir Quasem Ali during his abduction from his

house as well as confinement and torture at Dalim Hotel . In reply to another question, this Pw has also asserted that Hotel Dalim was the torture camp of Al-Badr. Had it been so, finding of Victim (Pw-16) in a room of Dalim Hotel during his captivity stood proved.

**801.** Pw-3 Nasiruddin Chowdhury – in his chief claimed to had seen the Victim(Pw-16) and Syed Md. Emran when he was coming out from Dalim Hotel in the morning of 16<sup>th</sup> December,1971. In addition to that, he in his chief described how he had been captured by the Al-Badr force and sustained torture at Dalim Hotel under the direction of Mir Quasem Ali, though such assertion remained un-impeached. Surprisingly, in reply to cross, this Pw asserted that –he remained confined in the same room of Dalim Hotel where he had been confined first. So, with the above testimony, the recognition of accused Mir Quasem Ali, his confinement at Dalim Hotel and sustaining torture under the order of accused have palpably been proved.

**802.** Reverting to the charge of abduction of the victim, question naturally arises, as to how far the prosecution has been able to prove the event through witnesses since no witness claimed to had seen the victim to be abducted. It's true, but all incident could not be proved through visible manner, some has to be proved from inference supported by strong circumstances. We all know, in our war of liberation the main target of the Occupation Army and Anti- liberation elements were Pro-liberation civilian, religious minority specially Hindu communities and intellectual groups. Evidence depicts, victim-Zahangir Alam Chowdhury was once a Student leader of a pro-liberation political party who joined as freedom fighter in the liberation war. Naturally, the anti liberation force could not feel secured keeping such a valiant freedom fighter out of their grip.

**803.** What I get about other abductees deposed as Pw-1, Pw-3 -all had been captured for being freedom fighters. Even, Mir Quasem led a joint operation with his Al-Badr force, Razakar and Pakistan Army in capturing Syed Md. Emran- also a valiant Freedom Fighter. Even, all the abductees deposed in support of charge found Mir Quasem Ali at Dalim Hotel as



monster soon after they were brought there. They had witnesses Mir Quasem Ali unleashed a reign of horror there, terrified the entire Hotel all the times they had confined. So, by holding such a position of authority he was not needed to go to abduct the victim, as his cohorts Al-Badar force had just carried out his indication in abducting the victims – which appears natural.

**804.** The event of abduction and confinement are intertwined. Subsequent action sometimes indicates one's previous involvements. It reveals from the evidences, after abduction, Victim had been confined and tortured at Dalim Hotel in presence of accused. Since I express my view in my foregoing paragraph that, Mir Quasem Ali was the chief (Commander) of Al-Badr force and led Dalim Hotel as its Head-office, so it can genuinely be perceived that nothing would have been done at Dalim Hotel beyond his direct knowledge and the victim had also been abducted as a part of plan and design orchestrated by accused Mir Quasem Ali sitting at Dalim Hotel.

**805.** Further, the defence made a plea that since Advocate Shafiul Alam in his book claimed to have been confined at Dalim Hotel on 27<sup>th</sup> November, 1971 the assertion of the Victim of finding him 2/3 days after Eid-ul-Fitr cannot stand. Though the learned counsel for the Defence has omitted to mention victim's subsequent reply in the cross, as he in same breath has stated that he could not recollect whether Eid-ul-Fitr in 1971 had celebrated on 21<sup>st</sup> November. So, had the subsequent statement be taken in to account, the former one would not have been so vital to the Defence.

**806.** Human memory naturally fades away after passage of long period that has happened in the instant case when victim has been deposing about his saddest part of his life after long lapse of 43 years even though, the victim himself did not mention any specific date - what he has stated from his memory. In view of the above testimony, it can be perceived that, the learned Counsel for the Defence cannot succeed in impeaching the credibility of PW1, Pw-2 and Pw-3 and disprove the prosecution case on

the material particulars. On the other hand, Prosecution has successfully discharged their burden in proving the case as all the witnesses corroborated each other supporting the charge.

**807.** From the above, it appears to me that Prosecution by adducing and producing the evidences has been able to prove the charge beyond any shadow of doubt. Thus accused Mir Quasem Ali is held responsible for actual commission of offence of abduction, confinement and torture to unarmed Civilian constituting the offence of crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused Mir Quasem Ali incurs criminal liability under section 4(1) of the Act of 1973.

**808. Verdict of Conviction :** Considering all evidences and submissions of learned Advocate of the parties, I find accused Mir Quasem Ali **Guilty** of the offence of complicity to commit abduction, confinement and torture as “Crimes against humanity” and he is liable to be convicted and sentenced under section 20(2) of International Crimes(Tribunals) Act, 1973.

**809. Verdict of Sentence :** On perusal of the evidences I find the torture perpetrated on Victim Zahangir Alam Chodhury at the behest of accused Mir Quasem Ali is severe one and victim had repeatedly been tortured and the motive behind such brutality was to compel him to make a false announcement for an oblique motive to capture other Freedom Fighters so maneuvered by the accused which was dangerous design hatched by the accused. In conjunction, I have given reasoned observation where it has been proved accused active participation in abducting and confining the victim. In view of the above, accused deserves no leniency in awarding punishment. Therefore, the accused **Mir Quasem Ali** be condemned to a single sentence of imprisonment for **7(seven)** years for the crimes of abduction, confinement and torture under section 20(2) of International Crimes(Tribunals) Act, 1973.

**810. Adjudication of Charge no.4**

**(Abduction, confinement and torture of Saifuddin Khan)**

Succinctly, in this charge accused Mir Quasem Ali as president of Islami Catra Sangha(ICS) has been implicated for instigating abduction of some Saifuddin Khan(Now dead) by the Al-Badr Forces from Aziz Colony under Double Mooring Police station, Chittagong in the wee hours of **24th November,1971** and there from the victim was taken to and kept confined at Dalim Hotel Torture Cell under Kotwali Police station where he was mercilessly beaten and tortured under the direction of accused-Mir Quasem Ali and thereafter, on 2<sup>nd</sup> or 3<sup>rd</sup> December the victim was sent to Chittagong jail where Nurjahan, wife of victim with permission of jail authority met him who found her husband severely wounded smeared with blood and eventually, in the early morning on 16th December,1971 the victim was released from jail and by this way, Mir Quasem Ali has been charged for abetting and facilitating in committing offence of abduction, confinement and torture as Crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act,1973 on incurring liability under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

#### **811. Discussion of Evidences :**

To buttress the charge, prosecution has relied upon oral testimony of sole witness, **Fayez Ahmed Siddiqui** deposed as **PW-14** -basically a hearsay witness and brother-in-law of Victim Saifuddin Khan together with documentary evidence concerning an article under caption '*Du Shopner Norokey : Dalim Hotel* ' written in a book named "*Shei She Shomay Ananda Bedonay*"(**Document produced by Prosecution**) authored by Advocate Shafiul Alam.

**812.** In Chief, Pw-14 stated that, having been learned from his sister, that his broth-in-law was taken away to Dalim Hotel by Al-Badar force in late night of November 24, 1971 he went to Dalim Hotel by a motor cycle and found Afseruddin – an ICS leader sitting on a stool who after having formal talks, ultimately rest him(Pw-14) assured about the safety of Victim. From there, the Pw then went straight to guerrilla camp at Karaldanga, Patia, Chittagong considering it unsafe to stay at Dalim Hotel as well as in Chittagong town. In the morning of 16<sup>th</sup> December, 1971 he returned to

Dalim hotel but could not find his brother-in-law(victim) there who ultimately met victim on December 17, 1971 and came to learn about his release from Jail.

**813.** This Pw also came to learn from victim that, he(Victim) was sent to Jail from Dalim Hotel on December, 2/3, 1971 and during confinement he had been severely tortured . Victim had also divulged him (Pw-14) that, during his such captivity at Dalim Hotel many abductees were tortured to death and there dead-bodies had been thrown in to Karnaphuli river. In reply to cross examination, this Pw stated that, Victim did politics and was involved with Communist Party apart from serving in the then Eastern Bank(currently Uttara Bank). In another question, PW-14 replied that he did never go to Dalim Hotel other than for two occasions stated in his chief.

**814.** In addition, Defence pointed out some events stated by this PW in his chief regarding his visit to Dalim Hotel , learning from his brother-in-law about his confinement, torture, dumping of dead bodies of numerous abductees in to Karnaphuli river as well as sending him to Chittagong jail from Dalim Hotel on 2/3 December,1971 –suggesting those to have been disclosed for the first time before the Tribunal - which the PW admitted as true adding further that, there was no scope to speak out those incidents before.

**815. Submissions advanced by the Prosecution at Summing up :**

Upon taking us to the deposition, the learned Prosecutor strenuously submits that, though this Pw is a hearsay witness but his evidence demonstrates a clear picture as to how the victim was abducted from his house, confined and tortured by the Al-Badr forces at Dalim Hotel at the behest of accused Mir Quasem Ali. He goes on to submit that, the testimony of this Pw clearly bears out the charge in to to. Referring to the respective pages of the Article ‘*Du Shopner Norokey : Dalim Hotel* ‘ penned by Advocate Shafiul Alam , learned Prosecutor further argues that, had the Victim not been confined at Dalim Hotel , Advocate Shafiul Alam- who also went through brutal torture at Dalim Hotel would not have seen

the Victim, as both of them had converged when they were being boarded on to a truck for bringing them to Jail from Dalim Hotel .

**816. Defence Contention :**

The learned Counsel for the Defence on the contrary, submits that the prosecution has miserably failed to prove its case in terms of charge so framed. He submits that, what the Pw-14 stated in his chief he alleged to had been heard from his brother-in-law but it totally devoid of any truth and nothing had been occurred to the victim- the way Pw has stated nor the accused had ever involved as alleged.

**817.** Learned counsel then submits that, the entire evidence so made by the Pw has vitiated the prosecution case for making completely a new story before this tribunal as what he omitted to or did not describe before the Investigation Officer(hereinafter referred to as ‘IO’) on material particulars has narrated before this Tribunal for the first time which cannot be tenable. Lastly, the learned counsel submits that, since the prosecution has failed to produce the wife of the Victim- Nurzahan Khan in spite of taking her statement by the IO and listing her as Prosecution Witness and no reason has been assigned for her non-production before the Tribunal-the prosecution case cannot stand on sole, hearsay as well as an incredible witness.

**818. Evaluation :**

In adjudicating foregoing charge (Charge no.3) I have already viewed that “Dalim Hotel” had operated as torture cell as well as the Head office of Al-Badr Force in Chittagong during liberation war and accused Mir Quasem Ali being the chief of ICS had become the Commander of Al-Badr force and orchestrated all sorts of horrendous atrocities mainly on the persons belonging to Un-armed pro-liberation civilian, minority religion community specially Hindu community and Pro-liberation intellectual sections staying at Dalim Hotel- which has been evolved on reasoned analysis of the evidence and materials on record.

**819.** It has also been propounded therein who were the main targets of Al-Badr force for elimination during war of liberation. It has been found from the testimony(cross) of Pw-14 as well as in the article of Advocate Shafiul Alam titled- '*Du Shopner Norokey : Dalim Hotel* ' that victim was actively involved with leftist politics –a pro-liberation political party during the war of liberation. Now question may emerge, how accused would be held liable for the alleged abduction, confinement and torture of victim as he had neither been seen in abducting the victim nor his wife has turned up before the Tribunal who might have been reliable witness in proving the charge. It is true, but there is no hard and first rule in the Act that the testimony of an ocular witness would outweigh the evidence of hearsay witness if the latter is found to have been trustworthy and credible.

**820.** On critical analysis of the evidence of PW-14 it is found that the defence could not be successful in disproving that the victim had not been abducted on November 24, 1971, confined at Dalim Hotel or had been sent to Chittagong jail on 2nd or 3<sup>rd</sup> December, 1971. While adjudicating charge no.3 I termed the article '*Du Shopner Norokey : Dalim Hotel*' written by Advocate Shafiul Alam in the book "*Shei She Shomay Ananda Bedonay*"(*Prosecution Document 2<sup>nd</sup> Volume page 255-261*) is an authoritative document and defence could not impeach the authenticity as well as the acceptability of the facts narrated therein which also appears to me a naïve revelation of the author who has just narrated harrowing account of ordeal he himself endured and also witnessed horrible atrocities perpetrated to other abductees during his captivity at Dalim Hotel. There is no earthly reason to question the truthfulness of such innocent admission having no exaggeration.

**821.** The author in one place of his article has also stated to had found his two bosom friends, NAP(A leftwing political party) leader Nurunnabi Shaheb and Saiuddin khan(victim) on the truck when he(author) was also being boarded therein for taking all of them to Chittagong jail from Dalim Hotel. From the above, it can legally be perceived that the victim was abducted from his house and confined at Dalim Hotel and it is none but the accused had led the abduction and under his direction he was confined and

tortured by his cohorts Al-badr forces at Dalim Hotel as none of the abductees who was once taken to Dalim Hotel on abduction could ever escape from torture and the victim had also to embraced same cruel fate there .It sounds absurd, a captive would be graced with warm hospitality by the Al-Badr men once he was confined at Dalim Hotel. So, the very assertion of the Pw-14 that he heard from his brother-in-law(Victim) to had been tortured inhumanly at Dalim Hotel is quite believable.

**822.** The Defence has adopted a new device in the process of its cross examination on drawing attention of Pw to its some portion of ‘Chief’ suggesting to have disclosed for the first time in the Tribunal in the guise of taking ‘contradiction’ from PW’s earlier statements recorded by the investigation officer. In reply to such a suggestion PW-14 has admitted those as true adding that, he did not find any scope earlier to divulge those statement, he made in his chief. By making such sorts of suggestions and the reply come out thereof from the PW, the Defence has tried to make out a case that the witness has made exaggeration before the Tribunal and thus Pw’s such evidence cannot be taken in to account.

**823.** Whether this very endeavour adopted by the defence can be permissible under any provision of the Act of 1973 needs to be resolved. In this regard, it is pertinent to state here that, certainly International Crimes (Tribunals) Act-1973 is a special statute enacted for adjudicating certain types of crimes /offences which have been characterized as international crimes. Section 26 of the Act authorizes the provisions of this Act to be override from all other laws. In view of existing such non obstante clause, Code of Criminal Procedure as well as Evidence Act have been made inapplicable in the proceeding to be proceeded under this Special statute as provided in section 23. Further, by virtue of section 19 of this Act, technical rules that use to follow in the proceeding of criminal trial in ordinary criminal court with the help of Evidence Act has also been made redundant by providing some new methodologies therein the Act in admitting evidences as well.

**824.** In the given proposition of the Act, whether any statements made before any authority other than this Tribunal can be treated as ‘evidence’ or such statements can be termed as ‘contradiction’ (usually pleaded by the Defence) in case of finding discrepancy, embellishment with the testimony given subsequently to the Tribunal and would render the entire evidence of a particular Prosecution witness untrue.? In the same vein, if it is found that in the ‘Chief’ any prosecution witnesses has added or elaborated something which is absent in his previous statements made to the IO and upon finding so, if the prosecution pleads that, it was just ‘omission’ minor or major whatever it may be, on the part of the PW with those of the statements made before the IO –whether it can be acceptable ? Further, in course of giving testimony if any PW claims he had told relevant facts incriminating the accused with the offence but the very IO has not recorded so , or IO has recorded but not exactly what he had said then, how would it be proved.? Again, while deposing before Tribunal, if a Witness concurs with the Suggestion of the Defence admitting to had not disclosed relevant facts earlier to the IO justifying of not having Tribunal then for holding trial of his allegations, then whether his testimony before the Tribunal would go.?

**825.** All the above legal panoramas have been evolved while adjudicating the case proceeding before us. It is to be bear in mind that, we are adjudicating some offences which are characterized as Crimes against humanity incorporated in section 3(2) of the Act of 1973 and the nature of perpetrating such crimes and culpability of atrocities perpetrated in systemic manner towards un-armed civilian are different from those of crimes embodied in Penal Code and other alike statutes committed in peace time. So, considering the intensity and gravity of offence usually committed during war time as well as in an unusual state- the application of ordinary law in the proceeding of offences meant for Crimes against humanity must not be applied.

**826.** Again, if I take note of the provision of section 8(6) of the Act of 1973 for ready reference, it would be found that, it is not mandatory for IO to write down the statement of any person during his investigation and if



he writes any statement of any persons privy to the incident and subsequently such persons appear as witness his/her earlier statement can never be treated as 'evidence'. Because, what procedure would be followed in taking evidence and what particulars would be treated as evidence before the Tribunal have clearly been stipulated in section 10 and 11 of the Act of 1973 having no ambiguity.

**827** So, in cumulative observation made above, it can safely construe that, the witness whom will testify and the documents be produced by the parties before the Tribunal be regarded as "evidences" only subject to the decision of the Tribunal. The veracity of the testimony of a prosecution witness cannot be assailed or called in question by the Defence on drawing attention of the PW of his/her earlier statements recorded by an IO in view of prohibition enshrined in section 19 and 23 of the Act as I have quoted and observed above. In such a state of affairs, technicalities applicable in the process of ordinary criminal trial under the provision of Evidence Act will have no manner of application in the trial proceeding before this Tribunal and the statements, if made earlier also will have no bearing on the merit of the evidences deposited by the Witnesses before the Tribunal under this special statute.

**828.** Certainly, this Tribunal will not be oblivious of facts related to the case placed before it and reserves every right in perusing all the relevant documents including what the witnesses have stated before the IO, if so done, and will evaluate so. Mentionable, this Tribunal has constituted under section 6 of the Act and competent enough to weigh the acceptability and merit of the evidences on evaluating its probative value and other materials on record upon a public hearing in open Court in a transparent manner providing every right to the contending parties permissible by the Act. The paramount point for consideration will be whether the evidences placed, are credible one but have no occasion to go beyond the Act.

**829.** In the premises, I am convinced that Prosecution by adducing and producing evidences has been able to prove the charge beyond any reasonable doubt. Thus accused Mir Quasem Ali is held responsible for

actual commission of offence of abduction, confinement and torture to an un-armed Civilians constituting the offence of crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused Mir Quasem Ali incurs criminal liability under section 4(1) of the Act of 1973.

**830. Verdict of Conviction :** Considering all evidences and submissions of learned Advocate of the parties I find accused Mir Quasem Ali **Guilty** of the offence of complicity to commit abduction, confinement and torture as “ Crimes against humanity” and he is liable to be convicted and sentenced under section 20(2) of International Crimes(Tribunals) Act, 1973.

**831. Verdict of Sentence :** On perusal of the evidences, I find Victim Saifuddin Khan had been tortured by the member of Al-Badr forces under the direction of the accused, Mir Quasem Ali on confining him at Dalim Hotel and the motive behind such confinement and torture was to stop his political movement to liberate the country as he was loyal to pro-liberation political parties. And all such atrocious acts had maneuvered by the accused. Further, I have given reasoned observation where it has been proved accuser’s active participation in abducting the victim. In view of the above, accused deserves appropriate punishment . Therefore, **Mir Quasem Ali** be condemned to a single sentence of imprisonment for **7 (seven)** years for the crimes of abduction, confinement and torture under section 20(2) of International Crimes(Tribunals) Act, 1973.

**832. Adjudication of Charge no.5**

**( Abduction ,Confinement and Torture of Abdul Jabber Member)**

Record shows that, to prove the charge prosecution has not adduced any witnesses nor any documents produced. In view of such position, charge so framed against the accused, Mir Quasem Ali is held to be not proved.

In such a posture, I refrain from reiterate the Order framing charge here. Hence, accuse Mir Quasem Ali is found not guilty of offence leveled in this charge and thus he be acquitted thereof.

**833. Adjudication of Charge no.6**

**(Abduction, confinement and torture of Harun-Or-Rashid Khan)**

**Charge Framed :**

In short, in this charge accused Mir Quasem Ali as president of Islami Catra Sangha (ICS) has been entangled for instigating abduction of one Haru-Ur-Rashid Khan(Now dead) by the members of Al-Badar Forces accompanied by Pakistani Army at 10-30/11.00 a.m. on November, 28,1971 and was taken to and kept confined at Dalim Hotel Torture Cell under Kotwali Police station on tying hands behind his back and blindfolded him where he was tortured under the direction of accused-Mir Quasem Ali wherefrom the victim was further taken to another torture cell named 'Salma Manjil' under Panschlie police station, Chittagong and eventually victim was rescued from 'Salma Manjil' in the morning of 16<sup>th</sup> December, 1971 by the pro-liberation forces and local inhabitants and by that, Mir Quasem Ali has been charged for abetting and facilitating in committing offence of abduction, confinement and torture as Crimes against humanity as provided in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act,1973 on incurring liability under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

**834. Discussion of Evidences :**

Prosecution has banked upon oral testimony of lone witness deposed as PW-15, the wife of Victim and some documents exhibited to prove the charge.

**Julekha Khan** deposed as **Pw-15** is not a live witness rather a hearsay witness and she narrated what she had allegedly heard from her father before getting married to Victim as well as from the victim husband, Harun-Ur-Rashid Khan after marriage who(victim) ultimately died on.26<sup>th</sup> October, 2001- she stated. This Pw in her chief stated further that, she got married to Victim in 1976 and before that, she had heard from her father that her husband was a freedom fighter and had been subjected to torture by Al-Badr Commander Mir Quasem Ali. After getting married to victim he had told her that he was serving as Liaison Officer of Sector no.1 of Provincial Government and during performing such duty, on November 28, 1971 at 10.00 or 11.00a.m.he and some Shahidul Alam were picked up from a Tea stall by the Al-Badr members spearheaded by Mir Quasem Ali

and brought them to Dalim Hotel where they had been tortured for 3 /4 days –she added further.

**835.** Victim had further told her that after staying at Dalim Hotel for 3 /4 days they were shifted to another Al-Badr torture cell named ‘ Salma Manjil,-located behind Pachshail police station where Mir Quasem Ali and his cohorts Al-Badr members had further tortured him on tying his hands, feet and eyes upon confining him in a bathroom where he also saw 17 /18 abductees brought there before including Shahidul Alam-Pw continued. She has stated further that her husband told her Mir Quasem Ali had attempted to kill him 5/6 times at Salma Manjil though other 15/16 abductees who were kept confined with him at Salma Manjil had eventually been killed.

**836.** This Pw further added to had heard from her husband that he was the general Secretary of “Satra Shakti’(Student wing of leftist political party) at Chittagong College when accused Mir Quasem Ali was the President of ‘Satra Shanga’(Student wing of JEI) at the same college and he was rescued from the bathroom of Salma Manjit in critically wounded state after liberation. This PW has also proved her signature in the seizure list prepared while seizing the Article by the IO titled *’Shadhin Bangla Beter Kendra Shuchana Parba’* penned by her husband published in Victory day of 1989. Prosecution has also relied upon a book named *”Bangalir Muktijuddher Eti Britta”* –written by Mahabub-Ul Alam in support of this charge seized by IO from the Library of Investigation Agency .

**837.** This PW-15 has extensively cross examined by the Defence. A volley of questions have put to this very Witness. In reply to a question in cross this Pw asserted that her husband had contributed in the newspaper and the subject matter of his writing was on ‘Liberation War’. She also admitted to have read the respective portion of book named *“ Bangali Muktijuddher Etibritta”*-authored by Mahabub-Ul Alam where there was writings about her husband having no mention of Mir Quasem Ali, though name of Al-Badr and its members are there- she continued.

**838.** Pw has also stated in reply to Cross that, She had gone to ‘Salma Manjil’ as her husband accompanied her to there to let her witness the spot where he was being tortured. She further added, “salma Manjil’ belonged to some Zahur Shaheb. Her husband had also showed her “Dalim Hotel” and she came to learn that, a Hindu gentleman was its owner, but could not recollect his name -she continued. The Defence also put a suggestion that her husband did not tell her that he had been captured/abducted by Al-Bard Force led by Mir Quasem Ali and subjected to torture by confining him at Dalim Hotel or Salma Manjit-which PW denied.

**839. Submissions Advanced by Prosecution at Summing Up:**

At the very outset, the learned Prosecutor submits that, PW-15 though a hearsay witness but most reliable one as she is none but the wife of victim and her testimony is no less worthier than that of a live witness. In this connection, he takes us to the relevant portion of her testimony related to the charge and asserts that, the Defence has utterly failed to shake the witness in what she pinpointed in her chief incriminating the accused with the abduction, confinement and torture Perpetrated on her husband both at Dalim Hotel and Salma Manjil. The learned Prosecutor then submits, PW-15 in her chief categorically stated that her husband had disclosed her that accused was well known to him (victim) as he and accused were both General Secretary of ‘Satro Shakti’ and ‘Satra Shangha’ respectively - student wing lean to respective political parties at Chittagong College but the Defence could not dislodge her from such assertion by showing any contrary evidence proving the identity of the accused beyond any iota of doubt.

**840.** It is Defence who by cross examining the Witness has rather confirmed the atrocious incidents committed to the victim by abducting and confining him both at Dalim Hotel and Salma Manjil - as in reply to the Cross Pw-15 has stated that her husband had accompanied her to Dalim Hotel and Salma Manjil and had shown her the places where he had been tortured - the learned Prosecutor very resolutely submits. He further added that, it has also been confirmed by putting the first question in cross- that the victim had been set free after liberation as Pw in her chief has also

stated to had heard from her husband that he had been rescued from the bath room of ‘Salma Manjil’ after liberation. So, had the victim not been abducted and confined, there would have no reason to rescue him -learned Prosecutor submits.

**841.** With regard to the description made to the Book “*Bangalir Muktijuddher Eiti Brittya*” by Mahabub-Ul Alam the learned Prosecutor by pointing out relevant portion from the book submits that, the very author had also been abducted and he had witnessed the abduction of the victim and Shahid by 6/7 armed Al-Badr men led by their ‘Commander’ at 10-30 a.m. from a tea stall and had taken to Dalim Hotel boarding a car on tying their hands , feet and eyes and segregated the duo at Dalim Hotel by confining them in two different rooms of the Hotel. The author has also given important information about capturing the ownership of Dalim hotel, attempt of renaming it and notorious activities being carried out during their capture. Apart from that , the author has also given a heart wrenching description about the brutality and horrible atrocities unleashed by the Al-Bard forces and Pakistan Army in the entire Chittagong city during liberation war – which makes the occurrence related to the charge unbiased – the learned Prosecutor argued.

**842.** So far the article titled “*Shadhin Bangla Shuchana Parba*” written by the Victim Harun-Ur-Rashid Khan the learned Prosecutor has averred that, the victim by his write up has portrayed the true picture of his direct involvement with the event of declaring independence by the then Major Ziaur Rahman on behalf of Father of the Nation, BangaBandhu Sheikh Mujibur Rahman on 27<sup>th</sup> March,1971 from Kakurghat Beter Kendra and has thus buried all controversies surrounding the historical truth. His such firm conviction towards liberation war qualify him appointed to the very vital position of ‘Liaison officer’ of sector no.1 of Provisional Government who also took active part in establishing ‘*Shadhin Bangla Beter Kendra*’ in the very inception of liberation war-learned prosecutor added. His such glorifying activities had invariably made the victim target to the Anti liberation forces especially notorious Al-Badr forces –the learned prosecutor strenuously argues.

**843. Defence Contention**

By contrast, the learned Defence counsel has drawn our attention to the relevant page ( Page 298) of the Book '*Bangalir Muktijuddher Eiti Brittya*' - where the very capture of the victim has alleged to have been written on November 26, 1971 and vehemently submits that, since the date of occurrence as has been described in the charge sharply varies with that of the said write up so the prosecution case cannot be believed. He has argued next that, the testimony of Pw-15 cannot be taken as gospel truth only for becoming the wife of the victim as she is mere a hearsay witness and it would be fatal to believe her unilateral testimony without any corroboration.

**844. Evaluations :**

It is true, there is no prohibition in the instant Act or in the Ordinary Criminal law to admit the testimony of sole witness whatever he/she might be an ocular or hearsay witness and to convict the accused relying upon evidence of such sole witness if the same carries probative value and is found to be trustworthy and credible one. But in such a posture, evidence of sole witness is needed to be sifted and evaluated very sparingly. In the instant charge, prosecution has relied upon the testimony of sole witness although to support her testimony it has produced certain documents as well.

**845.** Pw-15-Julekha Khatun narrated what she had alleged to heard from her victim husband. On the point of abduction, confinement and torture of her husband she has implicated Mir Quasem Ali claiming that under Mir Quasem's direct leadership her husband was abducted by the Al-Badr forces, been taken to Dalim Hotel and was tortured there for 3/4 days. After that, the victim put up with similar fate in another torture cell named 'Salma Monjil' led by Mir Quasem Ali and his cohorts, Al-Badar forces. On careful perusal of cross, I do not find defence could be able to shake the said assertion of the witness on those material points nor impeach her credibility, rather made some suicidal questions- reply of which has

reinforced the prosecution case and went in support of her(PW-15) assertion.

**846.** Pw-15 very assertively replied of her visiting to both 'Dalim Hotel' and 'Salma Manjil' with her husband who had shown her the place he had been tortured. Now, Defence has raised a point on the variation of date of alleged abduction of victim narrated in the book 'Bangalir Muktijuddher Eiti Brittya' with that of mentioned in the charge. Though PW-15 deposed supporting the date of alleged abduction made in the charge but it varies only 2 days to what has written in the said book. It appears from 'Bangalir Muktijuddher Eiti Brittya' that the author described the date of alleged abduction of the victim on 26<sup>th</sup> November, 1971 although in the charge it has been so described on 28<sup>th</sup> November, even having no variation as regards to time of abduction. The learned Counsel for the Defence tends to argue that, the above anomaly of occurring alleged abduction is grave in nature and thus the charge itself is based on assumption for which the evidence led thereby can never be believable.

**847.** From the above averment, it appears to me that, Defence did not dispute abduction, confinement and torture of the Victim but it is their definite case that the accused was not involved with the offences alleged in the charge. We should keep in mind that, the present accused is being prosecuted long after 42 years of alleged event. Victim's family has to go through many ups and downs with the passage of such long period of time. They couldn't even think of getting justice of the atrocities perpetrated by the occupation forces and their local collaborators, as the culture of impunity offered to those heinous offenders committed Crimes against humanity, Genocide, war Crimes had become the order of day nurtured by the State machineries. Victim's family had also got frightened on seeing the audacity of Anti liberation forces backed by state power who started thinking that, those war time offenders are above the law even after 42 years of independence living in an independent and sovereign country.

**848.** The enemies of our sovereign state though have betrayed in the birth of nation but did never feel ashamed when the nation achieves victory and



still they strive relentlessly to turn its glorious history of independence backward. In such a panorama of long deprivation of getting justice, and deliberate negative propaganda victim's memory can naturally be faded away. So, it is not unnatural to recollect exact dates of committing atrocities long after 42 years. Further, the victim has not been testified before this Tribunal who might have been the right person to specify the exact date rather, his wife who had heard from her husband. So it is not unusual for her not to specify the exact date but that is not fatal in a proceeding of the instant case proceeded under ICT Act, 1973 as we are to keep in mind that we are not adjudicating the crimes that happened in peace time and being proceeded under ordinary criminal law.

**849.** Still, I think the Book 'Bangalir Muktiyuddher Eiti Brittya' has enormously supported the prosecution case and substantiated the assertion of PW-15, as from the writing, it has vividly reflected how Al-Badr force and its "Commander" had terrorized the entire Chittagong city during liberation war and had been engaged in ghastly murder and had crippled many un-armed pro-liberation forces by torturing gruesomely by setting up torture cell at Dalim Hotel, Salma Monjil and elsewhere in the City where Harun-Ur Rashid is just one of such victim.

**850.** Now question naturally crops up why the victim had become target of the accused and Al-Badr forces. The answer has been given in both the book and article 'Bangalir Muktiyuddher Eiti Brittya' and 'Shadhin Bangla Beter Kendra' respectively coupled with the testimony of PW-15 specifying what role victim had been playing in the emergence of our Independent nation. As I have viewed in the foregoing paragraph also whom are the targets of the evil forces like Al-Badr and the victim had certainly fallen among those target groups.

**851.** In the premises, I am convinced that Prosecution by adducing and producing evidences has been able to prove the charge beyond any reasonable doubt. Therefore, accused Mir Quasem Ali is held responsible for actual commission of offence of abduction, confinement and torture to an un-armed Civilian constituting the offence of crimes against humanity as

enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused **Mir Quasem Ali** incurs criminal liability under section 4(1) of the Act of 1973.

**852. Verdict of Conviction** : Considering all evidences and submissions of learned Advocate of the parties I find accused Mir Quasem Ali **Guilty** of the offence of complicity to commit abduction, confinement and torture as “ Crimes against humanity” and he is liable to be convicted and sentenced under section 20(2) of International Crimes(Tribunals) Act, 1973.

**853. Verdict of Sentence** : On perusal of the evidences I find, Victim Harun-Ur-Rashid had been tortured by the member of Al-Badr forces under the direction of the accused, Mir Quasem Ali on confining him at ‘Dalim Hotel’ as well as at ‘Salma Manjil’. It is proved, the motive behind such confinement and torture was- he was one of the Pioneer in declaring the historical ‘ proclamation of Independence’ and had played an active role in transmitting bulletin from “Shadhin Bangla Beter Kendra’ at Kalurghat to invigorate pro-liberation civilian and Freedom Fighters .To stop his voice-the Al-Badr forces had captured him and confined him and he had been tortured as a part of plan and design of accused Mir Quasem Ali, it proved. Taking in to consideration of above notoriety, accused deserves sentences proportionate to the severity of crimes he perpetrated. Therefore, accused **Mir Quasem Ali** be condemned to a single sentence of imprisonment for **7(seven)** years for the crimes of abduction, confinement and torture under section 20(2) of International Crimes(Tribunals) Act, 1973.

**854. Adjudication of Charge no.7**

**(Abduction, confinement and torture of Sanaullah Chowdhury and two others)**

**Charge Framed.**

Briefly, in this charge accused Mir Quasem Ali as president of Islami Satra Sangha(ICS) has been entangled for instigating abduction of some Md. Sanaullah Chowdhury, Habibur Rahman(Now dead) and Illius Ali by the

members of Al-Badar Forces from 111, Uttar Nalapara under Double Mooring Police station, Chittagong on **27th November, 1971** after Magrib prayer and was taken to and kept them confined at Dalim Hotel Torture Cell under Kotwali Police station where they were tortured severely under the directive of accused-Mir Quasem Ali when they saw many captives wounded there out of whom some were killed under the direction of Mir Quasem Ali who had absolute domination over Dalim Hotel by virtue of his position of authority in ICS. By the order of Mir Quasem Ali Victim Habibur Rahman and Sanaullah Chowdhury were set free on December 6 and 9, 1971 respectively on condition of providing the whereabouts of freedom fighters and by that, Mir Quasem Ali has been charged for abetting and facilitating in committing offence of abduction, confinement and torture as Crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act, 1973 on incurring liability under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

#### **855. Discussion of Evidences :**

In proving the charge prosecution has relied upon the oral testimony of as many as 5 Prosecution Witnesses including victim Sanaullah Chowdhury and some documents marked as Exhibits.

**Sanaullah Chowdhury** has deposed as **Pw-2**. While testified, he stated that after Magrib prayer on November 27, 1971 he was gossiping with his brother-in-law Habibur Rahman(dead), neighbor Zafar Ahamed(dead) and Illius at his residence when they noticed of having knocked on the door. While the door was opened thinking their friends might had arrived, 7/8 plain clothed armed men stormed in to the room and on gun point they were blindfolded by those armed men and made them walking for about hundred yards before boarding all the three on to a jeep. On arriving at Dalim Hotel, Victim and Habibur Rahman were then confined in a room of second floor at Hotel but what had happened to Illius he could not guess.

**856** After a short while, victim was taken to a room of 3<sup>rd</sup> floor where he was quizzed by Al-Badr forces. When Al-Badr men left his room he loosened the knot of his eye and could see Zahangir of Kadamtali and many

others there. Sometimes thereafter, he saw a man kicked off in to their room who was screaming on pain sustaining injuries though victim could recognize him as Advocate Shafiul Alam and both he and Zahangir then made him seated against the wall of the room. On the next day, victim had sensed sounds of torture being perpetrated in the upstairs, though it stopped after a short while when he witnessed a man was exclaiming with slang language and right after that some member of Al-Badr forces threw a man to their room though he did not die when the al-Badar men had dumped the man to his room and closed the door from outside.

**857.** At that time, Shafiul Alam whispered him the very man was Mir Quasem Ali, “Bangalee Khan”-Commander of Badr Bahini. Victim in his chief further stated that- during confining at Dalim Hotel he had been tortured on taking him to different rooms of the Hotel when Mir Quasem Ali remained present and Mir Quasem Ali himself had quizzed him during his captivity at Dalim Hotel as well. Pw-2 had also seen Emran other than Advocate Shafiul Alam, Shamsul Islam, Shah Alam and Zahangir while he was confined at Dalim Hotel-he added. Eventually, upon giving an undertaking to provide information about the Freedom Fighters to them, Victim was set free in the morning of 16<sup>th</sup> December, 1971 –Pw concluded.

**858.** In reply to cross, this Pw stated, he did know Dalim Hotel before starting Liberation War and could not say who had belonged to that Hotel. In another question this Pw replied that, he had been kept confined in different rooms on different times at Dalim Hotel . At the instance of the Tribunal, a question was put to this Pw, asking him the location of main office of Razakar and Al-Badr in Chittagong City when Pw replied the main office of Al-Badr was stationed at Dalim hotel but failed to say the location of main office of Razakar. In addition to that, the defence made some suggestions as regards to the ownership of Dalim Hotel, activities occurred there during liberation war as well as Mir Quasem’s place of stay at certain periods- which this Pw denied.

**859.** To support the charge Prosecution has presented **Syed Md. Emran** deposed as **Pw-1** –a Freedom Fighter who alleged to had been captured by

the joint forces of Al-Badr, Pakistan Army and Rajakar led by accused Mir Qasem Ali in the early hours of 30<sup>th</sup> November, 1971 and brought him to the torture cell at Dalim Hotel spearheaded also by Mir Quasem Ali. In his Chief he narrated how he had been tortured gruesomely on confining him at Dalim Hotel by the Al-Badr men in presence of accused who quizzed him there before being pushed off to a room where he found Victim, Zahangir Chowdhury and Advocate Shafiul Alam while somebody in the room unfolded the knot of his eyes.

**860.** On material point, the Defence did not ask any question to this Pw. In reply to a question this Pw stated that, –Dalim Hotel was the torture cell of Al-Badr forces and since it was not a *Baddhya Bhumi* (dumping place of killed persons) so no list of martyrs were supposed to hang there(Dalim Hotel). In another question this Pw also stated that, - from the very date of his confinement till 15<sup>th</sup> December,1971 he often blindfolded but at the time of quizzing and torture it had been taken off. Apart from those, Defence put some suggestions on the point of status of accused, his whereabouts from 7<sup>th</sup> November as well as ownership of Dalim Hotel during liberation war- which the Pw denied.

**861. Jahangir Alam Chowdhury** has testified as **PW-16** who in his chief alleged to had been abducted sometime 2/3 days after Eid-UI-Fitr by the Al-Badar forces from his house and was then taken to Dalim Hotel where he was first detained in second floor then in third floor. In the evening he saw Mir Quasem Ali , and Al-Badr member Nurul Afser dumping Advocate Shafiul Alam in to their room. He has also stated how he was inhumanly tortured at Dalim Hotel in presence of Mir Quasem Ali till he had been rescued there on 16<sup>th</sup> December, 1971.

**862.** In cross, this Pw replied to had abducted 2/3 days after Eid-ul-Fitr and was confined at Dalim Hotel for 22/23 days. He replied to another question that- he could not recollect whether he had seen Sanaullah Chowdhury and Emran on the very day of his capture or on next day. He also denied a suggestion that he had seen the Victim( Sanaullah Chowdhury) one day before he had released from Dalim hotel. On drawing

attention to the incriminating part made in the chief, defence put suggestions claiming to have disclosed those for the first time - which the PW-denied.

**863.** Another witness named **Md. Hasan** has been produced by the prosecution who deposed as **PW-13**. In his chief he alleged to have witnessed the very abduction of three persons named in the charge in the vicinity of their house by the masked men at the fag end of November, 1971 and was taken to Al-Badr Camp, Dalim Hotel. He has also stated to have seen one of the captives named Habibur Rahman returning home 9/10 days of his capture in a very devastating state as well as Sanaullah Chowdhury 3/4 days after Habibur Rahman's return. He further added, he came to know from them that they were taken to Dalim Hotel where they had severely been tortured by the members of Al-Badr forces.

In reply to cross this Pw has stated to have communication with both Illius and the Victim. In another reply he stated that, he could not state who had controlled Dalim Hotel in 1971 and also denied suggestion that- both Habibur Rahman and Victim had ever disclosed him any information regarding torture they sustained at Dalim Hotel.

**864. Md. Anisur Rahman**, a seizure list witness appeared as **Pw-23** is not much significant who has just proved the seizure list and his signature thereon while the book was seized by the Investigation officer named "*Shei She Shomay Ananda Bedonay*"- authored by Advocate Shafiul Alam where an article has been written by the same author captioned "*Dushapner Norokei : Dalim Hotel*" relied by the prosecution in support of this charge.

**865. Submissions Advanced by the Prosecution:**

Learned prosecutor in course of summing up hearing submits that, victim Sanaullah Chowdhury has categorically proved his very abduction from his residence, confinement and torture both at Dalim Hotel by the Al-Badr men in presence of accused Mir Quasem Ali - the mastermind of all atrocities who had been dubbed as 'Bangalee Khan'- Commander of Badar Bahini (Al-Badr Forces) for his notoriety as he had terrorized the entire

Dalim Hotel introduced by another abductee Advocate Shafiul Alam. Victim had witnessed how Advocate Shafiul Alam had been pushed off barbarously and Jashim-a nearly dead boy had been dumped in to their room by Mir Quasem Ali.

**866.** Learned Prosecutor while placing his argument has also pinpointed that, victim in reply to cross, asserted to had known Dalim Hotel before liberation war and he had been confined in different rooms at different times in that Hotel upon abduction. Victim also asserted the Head office of Al-Badr by saying it 'Dalim Hotel' when asked by the Tribunal. Having been eliciting those reply from the victim defence has rather affirmed the case of the prosecution-the learned prosecutor argued. As regards to the testimony of PW-1 Syed Md. Emran learned Prosecutor submits that, this Witness has not only supported the captivity of victim at Dalim Hotel finding him in his room but has also branded the accused as 'Tormentor' at Dalim Hotel and that of Dalim Hotel as 'torture camp of Al-Badr forces'- quoting the cross of PW-1.

**867.** Zahangir Alam Chowdhury as Pw-16 in his chief though avoided to mention that he had ever seen the victim at Dalim Hotel during his captivity but it is the Defence, who by cross examining this Pw has surfaced Victim's confinement at Dalim Hotel by putting a suggestion that- he had seen the Victim one day before his (Pw-16) release on 16<sup>th</sup> December, 1971 and by that suggestion, it has been established that both were confined at Dalim Hotel- the learned Prosecutor averred. Learned Prosecutor goes on to submits that, Pw has also echoed the assertion of victim and Pw-1 as regards to torture - perpetrated by the member of Al-Badr forces upon the abductees confined at Dalim Hotel as well as the leadership of the accused over the Al-Badr forces in orchestrating all the heinous atrocities there.

**868.** Md. Hasan who deposed as Pw-13 claimed to had witnessed the very abduction of the Victim and two others from the house of their uncle- Basirullah but he had heard subsequent event of confinement and torture perpetrated at Dalim Hotel from the Victim and Haun-Ur Rashid when they returned from their confinement. His such testimony has not been

shaken by the Defence on cross- rather by eliciting the statement of having had contact with Habibur Rahman after liberation as well as have still contact with the victim reinforced his assertion what he made in his chief - learned Prosecutor argued.

**869.** To fortify oral testimony of those PWs the learned Prosecutor then placed his reliance to the Article '*Dushopner Norokey: Dalim Hotel*' which was incorporated in the book titled "*Shei She Shomay Ananda Bedonay*"- written by Advocate Shafiul Alam-. This Shafiul Alam was none but also one of the victims of the atrocities unleashed by accused and his cohorts - Al-Badr forces during his captivity at Dalim Hotel. By referring page no.37 of the book the learned prosecutor has robustly argued that, a person cannot tell lie when he gets compassion and solace from someone soon after sustaining cruelty. The Writer resonated the generosity and empathy extended to him by the Victim and Zahangir when he had been badly tortured and pushed off their(Victim's) room . The Defence could not show any convincing elements to discard the reliability of such right up rather, on plain reading of the article it reflects the enormity of atrocities –the accused perpetrated upon the abductees staying at the torture cell, Dalim Hotel during liberation war-the prosecution concluded.

**870. Contention of Defence :**

The learned Defence Counsel in course of refuting the above assertion made by the prosecution primarily submits that, though in the charge three persons were specified alleged to had been abducted but none of the abductees who appeared as PW-1, Pw-16 including Victim had ever found Illyus to be abducted, confined or tortured even Pw-13 who alleged to had witnessed the abduction could not say the fate of Illyus after abduction which has rendered the charge doubtful. He next submits that, None of the witnesses is credible one as on cross, all the witnesses could only tell the name of the accused, his alleged atrocities at Dalim Hotel implicating the accused but when they were asked some pertinent question to verify the authenticity of their such knowledge they failed to reply, which proves that, they knew nothing other than the guilt of the accused- that creates reasonable doubt of the prosecution case.



**871.** Further, the learned counsel submits that, there remained major inconsistencies among the testimony of Victim(Pw-2) and Pw-16- as victim who alleged to had abducted on 27<sup>th</sup> December,1971 in his chief has stated to had seen Zahangir Chowdhury during his captivity at Dalim Hotel while Pw-16 Zahangir Alam Chowdhury in reply to cross has stated to had seen victim on his very date of abduction or following day though victim claimed to had been abducted 2 days after Eid-ul Fitr. The learned Counsel finally submits that, the prosecution has utterly failed to connect the accused with the commission of offence so alleged in the charge and none of the Pws ever knew the accused beforehand and thus, out of political enmity the accused has been entangled and thus the accused is liable to be acquitted.

**872. Evaluation :**

I have heard the learned counsel of the parties at length and perused the documents. It has been alleged by the Victim-Sanaullah Chowdhury that he was abducted by 7/8 masked men who brought him to Dalim Hotel and on that very date came across the accused so pointed to him by Advocate Shafiul Alam branding him as “Bangalee Khan” ‘commander of Badr Bahini’. His such recognition of accused though not so pleasant moment, as he saw the accused had been hurling abusive upon a young chap when he was being dumped in to his room and found the youth dead when Advocate Shafiul Alam out of affection took him in his lap . Victim also stated to had been tortured on taking him to different rooms of the hotel and at that time accused remained present there and he himself had quizzed victim at Dalim Hotel.

**873.** He further stated to had seen Zahangir(Pw-16) and Emran(PW-1)-confined at Dalim Hotel –who has also corroborated the victim while testified in support of this charge. On going through the Cross I find that, the Defence made it confirmed that victim knew Dalim Hotel before liberation war and had been tortured at Dalim Hotel on taking him in different rooms on different time. Here we also find the accused as ‘Commander of Al-Badr’ also branded as “Bangalee Khan”. This very

emblem “Bangalee Khan” has also been surfaced in the article *‘Dushopner Norokey: Dalim Hotel’* as “Khan Shaheb”.

**874.** We know who were called “Khan” during liberation war, they are the occupation Pakistan Army and for the commendable role Mir Quasem Ali played in favour of Pakistan Army in eliminating pro-liberation forces perhaps such title had been bestowed by the occupation forces upon a Bangalee man who was none but the ‘commander of Al-Badr forces’ Mir Quasem Ali - I observed in foregoing paragraph.

**875.** Defence has raised a plea by which it tends to state, since Pw-16 Zahangir Chowdhury had seen victim the very day of his abduction or following day, his alleged abduction on 27<sup>th</sup> November cannot be believed, as Pw-16 was supposed to abduct on 23<sup>rd</sup> November as Eid-ul Fitr had been celebrated on 21<sup>st</sup> November, 1971. This very contention does not hold water because in his next breath of reply (Upon Cross) pw-16 expressed his ignorance as to whether Eid-ul Fitr had been celebrated on 21<sup>st</sup> November, 1971. And had it been so, his very catching up with the Victim pointing exact date could also be faded. Conversely, by that very reply of Pw-16 on cross, victim’s confinement at Dalim Hotel has rather been confirmed though he had missed to state his converge with victim at Dalim Hotel in his chief.

**876.** Defence has also assailed the credibility of Victim and other witnesses. In this respect, it can only say that, a victim who had to go through a painful or frightful event in his/her life, it naturally resonates in his memory only. But he/she was not supposed to memorize all other surrounding aspects when facing brutality in as much as, the victim could have been killed out of such torture. Victim did not envision that one day he might have to be given testimony about the brutality he sustained. So, mere failing to answer certain question other than the charge events will not *ipsofacto* vitiate the credibility of a witness.

**877.** I have also very carefully perused the article titled *‘Dushopner Norokey: Dalim Hotel’* authored by Advocate Shafiul Alam. Defence

though did not make any submission about its veracity but as a worst victim, his (Author) description of horrendous atrocities perpetrated to scores of unarmed civilian at Dalim Hotel by the infamous Al-Badr forces startle human conscience. While adjudicating charge no.3 I have come to a conclusion on elaborate discussion, it was none but Mir Quasem Ali who had led Al-Badr forces at Dalim Hotel as their Commander committing heinous crimes as the author has designated him as 'Khan Shaheb'.

**878.** With the above discussion, there has been no iota of doubt that, victims who had been confined at Dalim Hotel during liberation war had also been abducted by none other than the member of Al-Badr forces, as while adjudicating other charges including the instant one it has been proved by corroborative evidences that, Dalim Hotel was the torture cell of Al-Badr forces spearheaded by its Commander accused Mir Quasem Ali. And Sanallah chowdhury had to embrace same fate of getting abducted by 7/8 armed persons under the direct command of its commander- the accused - it can cogently perceived when his such confinement and torture following abduction has not been shaken in any manner by the defence in cross.

**879.** In view of the above, I am convinced that, Prosecution by adducing and producing evidences has been able to prove the charge beyond any reasonable doubt. Therefore, accused **Mir Quasem Ali** is held responsible for actual commission of offence of abduction, confinement and torture to an un-armed Civilian constituting the offence of crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused Mir Quasem Ali incurs criminal liability under section 4(1) of the Act of 1973.

**880. Verdict of Conviction :** Considering all evidences led and submissions of the learned Advocate of the parties, I find accused Mir Quasem Ali **Guilty** of the offence of complicity to commit abduction, confinement and torture as "Crimes against humanity" and he is liable to be convicted and sentence under section 20(2) of International Crimes(Tribunals) Act, 1973.

**881. Verdict of Sentence :** In the chief victim has described that he had been often tortured on taking him to different rooms at Dalim Hotel and accused remained present at the time of such torture. Accused himself had quizzed him during his captivity at Dalim Hotel. Complicity of accused in abduction, confinement and torture is prevalent. The victim had been endured torture, there is no doubt of it and justice will be dispensed if appropriate punishment is meted out to the accused. Therefore, the accused Mir Quasem Ali be condemned to a single sentence of imprisonment for **7 (Seven)** years for the crimes of abduction, confinement and torture under section 20(2) of International Crimes(Tribunals) Act, 1973.

**882. Adjudication of Charge no.8**

**(Abduction, confinement and torture of Nurul Quddus, Md. Nasir, Nurul Hashem and others)**

Briefly, in this charge accused Mir Quasem Ali as president of Islami Satra Sangha(ICS) has been implicated for planning and directing Al-Badr Forces and Pakistani Army for abducting Nurul Quddus, Md. Nasir, Nurul Hashem and others upon besieging Sabanghata Maholla under Chandgaon Police station in the wee hours of 29<sup>th</sup> November, 1971 and taken them in front of N.M.C. High School first from where they were then taken to Al-Badr torture cell at Dalim Hotel where they were tortured severely for ten days by the members of Al-Badr Bahini under the directive of accused-Mir Quasem Ali and thereafter those three captives were sent to Chittagong District Jail from where they were released on 16<sup>th</sup> December, 1971 and by that, Mir Quasem Ali has been charged for abetting and facilitating in committing offence of abduction, confinement and torture as Crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act, 1973 on incurring liability under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

**883. Discussion of Evidences:**

In this charge three persons have been named to had abducted, confined and tortured by the Al-Badr Forces and Pakistan army as their accomplices on being directed by the accused-Mir Quasem Ali as alleged. Prosecution has

examined as many as four witnesses in support of the charge having no documentary evidences.

Now let me discuss their testimony first. **Syed Md. Emran** as **PW-1** in his chief has stated to had been abducted by joint forces of Al-Badr , Pakistan Army and Rajakar in the late night of 29<sup>th</sup> November,1971 and they were first taken in front of NMC School where two trucks were parked before. After their arrival the victims-Nurul Kuddus, Nurul Hashem, Nasir and many others were brought there from Shabanghata base. After that, all the abductees brought were blindfolded and were boarded on to trucks that headed to Dalim Hotel- Al-Badr Torture camp being led by Mir Quasem Ali.

**884.** In cross examination no question has been put to this Pw about the abduction and confinement of those three victims by the Defence. Some questions have been made to verify the knowledge of this Pw about the identity of Dalim Hotel, its ownership, political position of the accused in the ICS before and after 7<sup>th</sup> November,1971 and his(Accused) whereabouts after that 7<sup>th</sup> November.

**885.** Prosecution has then adduced some **Md. Hasan** who has deposed as **PW-12** . In the chief he claimed to had been abducted along with Victim Nurul Kuddus, Nurul Hashem and 20-25 others by the Al-Badr forces led by accused Mir Quasem Ali on besieging their house following 3 at night on 29<sup>th</sup> November,1971 and was first taken in front of NMC School. Two trucks were parked in front of the school before and all those captives were then boarded on to the truck. Since he was teenager among the abductees he was set free from there. After liberation, the abductees who were captured, divulged him that they had been confined at Dalim Hotel where Mir Quasem Ali was at the helm and he had also seen the mark of torture in the body of those abductees – this Pw further stated.

**886.** Upon a question from Tribunal, this Pw further stated that Quddus and Hashem were set free from Chittagong jail as Al-Badr forces had sent them to Jail from Dalim Hotel. He knew Mir Quasem Ali since 1970 when he was a student of Chittagong College where he held the post of President

of ICS, whereas some AFM Zahangir of Fatiksari was its Secretary—the Pw further added in chief.

**887.** Here also the Defence did not put any question to this Pw about the abduction, confinement and torture of three alleged victims specified in the charge. In reply to cross this Pw has stated that he went to Dalim Hotel before and after liberation war though he did not know the owner of that Hotel nor he heard the name of Rajakar, Motiur Rahman alias Moityya Gunda and asserted the location of the camp of Al-Badr at Dalim Hotel. This Pw has also denied some suggestions made as regards to his abduction, recognition of Mir Quasem Ali as well as his knowledge of Dalim Hotel.

**888. Pw-19, S.M. Sarwar Uddin** appeared with intend to support the charge has stated in chief that, at late night following 29<sup>th</sup> November, 1971 two Pakistan Armies and one Al-Badr man entered his house while his sister-in-law opened the door and one Al-Badr man then pinned his pistol to his head and on gun point he along with his brothers Kamaluddin, Zamaluddin, Emran, Kibria were taken in front of NMC School on tying their hands back. On arriving there, he found Victims-Nurul Kuddus, Nurul Hashem and Nasir and others there. Then all the abductees were boarded on two trucks brought in there before and taken them to Dalim Hotel.

**889.** This Pw further stated that, he was first taken to a room of 2<sup>nd</sup> floor and then 3<sup>rd</sup> floor where he was quizzed by accused Mir Quasem Ali and was tortured severely by the member of Al-Badr forces on being failed to elicit any information about freedom fighter from him. He further added,- when Mir Quasem Ali stepped in, Al-Badr men present shouted ‘Mir Quasem Ali’ came, some time “Commander Shaheb” came and some time “Khan Shaheb’ came . He finally stated that, on 15<sup>th</sup> December, 1971 at about 1pm he was set free and returned to his house from Dalim Hotel.

**890.** As of earlier, the defence has refrained from putting any question about the abduction, confinement and torture of three victims mentioned in the charge. In reply to a question this Pw has categorically stated that he had

not seen Mir Quasem Ali before or after he sustained torture, though he heard his name earlier. In the same vein, this pw has also stated that, he had not gone to Dalim Hotel before or after he had been confined there. Apart from those, this Pw has denied the suggestion that, Mir Quasem Ali was never a member or Commander of Al-Badr force or he had ever heard the name of the accused.

**891. Pw-8, Iskandar Alam Chowdhury** alleged to had been abducted by Pakistan Army and member of Al-Badr Forces in late night at 4 am on 29<sup>th</sup> November, 1971 and first taken in front of NMC School and subsequently when they were about to boarded on a truck parked before he saw victims-Nurul Hashem, Kuddus and Md. Nasir kept detained there. Then he and other detainees were taken to Al-Badr torture camp, Dalim Hotel where he had been tortured brutally and at one stage, he saw Mir Quasem Ali when someone uncovered his folded eyes . He further stated to had been rescued by the local people on 16<sup>th</sup> December by breaking open the door - he had been kept confined.

**892.** In cross examination nothing has been asked about the Victims. Some questions have been put about Matiur Rahman alias Mattya Gunda portraying him as the owner of Dalim Hotel though Pw disowned. Apart from that, drawing some portion of chief incriminating Mir Quasem Ali with confinement and torture of this PW at Dalim Hotel suggestions have been made to this Pw to have been disclosed for the first time in the Tribunal –which he admitted as true.

**893. Submissions advanced by the Prosecution:**

Learned Prosecutor, on taking us to the material portion of the evidences of above four witnesses submits that, there is no denying that Victims Nurul Kuddus, Nurul Hashem and Md. Nasir were abducted from their respective abode and were boarded on truck and were taken to Dalim Hotel where they had been confined. It was not unknown to anybody what fate would await once a person had been taken to Dalim Hotel and those three abductees had also been tortured there and their whereabouts could not be known later. And for all those atrocious event accused-Mir Quasem Ali

played the role as mastermind as with his hints these three victims had also been abducted by none but his cohorts notorious Al-Badr men and Pakistan army- learned counsel for the prosecution further argued. The learned Counsel goes on to submit that, all the witnesses have corroborated each other about the date, time and place of assembling victims before being boarded on truck for bringing and confined them at Dalim Hotel for which the accused is liable to be held responsible for committing the offence of abduction, confinement and torture.

**894. Contention of Defence :**

Learned Counsel for the Defence at the very onset submits that, the investigation officer during his investigation interrogated alleged Victims Md. Nasir and Nurul Kuddus and accordingly their statement were recorded and prosecution had showed them in serial no.16 and 18 respectively in the list of witnesses to be adduced as witnesses(PW) but ultimately they did not turn up before this tribunal for giving testimony- which creates a reasonable doubt of the prosecution case. Learned Counsel next submits that, none of the 4 Pw's in their respective testimony has ever found any of the victim at Dalim hotel let alone of their torture there and had it been so, their alleged abduction at the direction of the accused so levelled in the charge has no foot to stand.

**895. Evaluation :**

First, I note the point raised by the Defence about not testifying any of the two victims before the tribunal very pertinent in spite of listing them as Prosecution witnesses and made statement before the IO. Furthermore, the prosecution's nonchalant attitude for not invoking the provision of section 19(2) of those two witnesses also aggravate the said doubt about the prosecution case. Because the testimony of other PW's deposed can never be outpaced of the victim's testimony in terms of its evidentiary value.

**896.** Even, no convincing explanation or arguments have been set forth when learned Counsel for the Prosecution was asked about non production of the victims as Pw's. So, it can justly be viewed that, the victims could have been the most reliable and competent witness to prove the charge so



brought against the accused. Learned Counsel for the prosecution then argued that all the four Pw's have been able to prove the charge, so the accused can be arraigned for committing the offence and be convicted.

**897.** Record shows that, all the Pw's in their respective testimony found the victims in front of NMC School. They further said they all had been boarded in truck parked there earlier but next to that, nothing could be revealed from their testimony about the fate of those victims as none of those witness did say they had ever seen the victims at Dalim Hotel and had they (Pw's) not seen the victims, subsequent event of causing torture did not gain ground. Again, it cannot be perceived from the testimony of Pw's who had allegedly brought the victims in front of Dalim Hotel as well as how the victims had allegedly been captured and by whom .

**898.** It is the victims who could be the right persons to answer those two vital questions, in absence of which imputing the accused with the commission of abduction in either capacity has not been proved. Mentionable, pw-12 has tried to make out a case that, after liberation all the abductees disclosed him(Pw) they were held hostage at Dalim Hotel spearheaded by Mir Quasem Ali and he saw the mark of torture in their bodies. It sounds sheer lie and just a lump statement as none of four Pw's have ever said so in their respective testimony. It is also impracticable that all the abductees would share their ordeal they went through during their captivity at Dalim Hotel and show their wound to a boy who alleged to had been set free by his captor considering his tender age.

**899.** Given the above circumstances, it is my considered view that Prosecution has utterly failed to discharge the burden of proving its case. Hence, accused Mir Quasem Ali is found not guilty of the offence of abduction, confinement and torture as Crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and therefore ,he be acquitted of the charge.

**900. Adjudication of Charge no.9**

**(Abduction, confinement and torture of Nuruzzaman, Syed Md. Osman Hossain, Syed Md. Zamaluddin, Syed Md. Kamaluddin, Syed Md. Sarwaruddin, Syed Golam Kibria and Syed Md. Golam Rahman)**

**Charge Framed :**

Briefly, in this charge accused Mir Quasem Ali as president of Islami Catra Sangha(ICS) has been implicated for planning and directing Al-Badr Forces for abducting **1. Nuruzzaman, 2. Syed Md. Osman Hossain, 3. Syed Md. Zamaluddin, 4. Syed Md. Kamaluddin, 5. Syed Md. Sarwaruddin, 6. Syed Md. Golam Kibria and 7. Syed Md. Golam Rahman** on besieging Nazirbari Nuruzzaman under Chandgaon Police station in the wee hours of 29<sup>th</sup> November, 1971 and were taken to Al-Badr torture camp at Dalim Hotel where they were confined and tortured till 15<sup>th</sup> December, 1971 by the member of Al-Badr Bahini under the directive of accused-Mir Quasem Ali and thereafter, those captives were released on 16<sup>th</sup> December, 1971 and by that, Mir Quasem Ali has been charged for abetting and facilitating for committing offence of abduction, confinement and torture as Crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 on incurring liability under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

**901. Discussion of Evidences :**

To substantiate the charge prosecution has adduced 8(eight) witnesses including two victims as Pw-18 and Pw-19 relying no documents.

**S.M. Zamaluddin** as Victim has deposed as **Pw-18**. In his chief pw claimed to had been abducted along with his full brothers Kamal, Sarwar, cousins Emran, Osman and Kibria by the members of Al-Badr forces by storming in to his house in the late hour of 29<sup>th</sup> November, 1971 by pointing a revolver to him and they were forcibly taken in front of NMC School where two trucks were parked before. Then all the captives were boarded on the trucks and were taken to Dalim Hotel where they were kept confined in different rooms of the hotel. After 3/ 4 days, the victim was taken to 3<sup>rd</sup> floor of the hotel and saw accused Mir Quasem Ali when he unfolded his folded eyes. He has further narrated that members of Al- Badr force had tortured him brutally hanging him from roof on tying his hands and feet by electric wire in presence of Mir Quasem Ali to extract

information about Freedom Fighters. And at one stage of such torture accused Mir Quasem Ali ordered Al-Badr members to kick him and they did so and victim then rolled down the stairs. This Pw was ultimately set free from Dalim Hotel on December 13, 1971.

**902.** In reply to cross examination, this pw has asserted to had seen accused Mir Quasem Ali for the first time on the date of incidents but heard his name beforehand. After 13<sup>th</sup> December, 1971 he has claimed to see him in the tribunal while giving deposition. In another question, he has replied to knew Dalim Hotel before 1971 and he could not recognize any member of Al-Badr forces since his capture till confinement at Dalim Hotel as they were masked.

**903. Pw-19, S.M. Sarwar Uddin** as one of the Victims appeared with intend to support the charge has stated in chief that, at late night following 29<sup>th</sup> November, 1971 two Pakistan Armies and one Al-Badr man entered his house while his sister-in-law opened the door and Al-Badr man pinned his pistol to his head and on gun point he along with his brothers Kamaluddin, Zamaluddin, Emran, Kibria and Osman were then taken in front of NMC School making them walk on tying their hands back. Then all the abductees were boarded on two trucks parked there before and taken to Dalim Hotel. This Pw further stated that-he along with 10-12 abductees were first taken to a room of 2<sup>nd</sup> floor and then 3<sup>rd</sup> floor of the hotel where he had been quizzed by accused Mir Quasem Ali and was tortured severely by the Al-Badr forces at the order of Mir Quasem Ali when they failed to elicit any information about freedom fighter from him. He has further added, when Mir Quasem Ali had stepped in, Al-Badr men present, had shouted by saying ‘Mir Quasem Ali’ came, some time “Commander Shaheb” came and some time “Khan Shaheb’ came . He finally stated that, on 15<sup>th</sup> December, 1971 at about 1 noon he was set free and returned to his house from Dalim Hotel.

**904.** Defence has refrained from making any question about abduction, confinement and torture of other victims he mentioned in chief. He has asserted in cross to had seen two trucks parked in front of NMC School

when he was brought before the said school. In reply to another question, this Pw has categorically stated that he had not seen Mir Quasem Ali before or after torture he sustained, though he heard his name earlier. In the same vein, this pw has also stated that he had not gone to Dalim Hotel before or after he was confined there. Apart from those, this Pw has denied the suggestion that Mir Quasem Ali was never a member or Commander of Al-Badr force or he had ever heard the name of the accused.

**905. Syed Md. Emran** as **PW-1** in his chief has stated that, he together with his brother-Syed Md. Osman, cousins Syed Md. Zamaluddin, Syed Md. Kamaluddin, Syed Md. Sarwaruddin, Syed Md. Golam Kibria and Syed Md. Golam Rahman had been abducted by joint forces of Al-Badr, Pakistani Army and Rajakar led by Mir Quasem Ali in the late hour of 29<sup>th</sup> November, 1971 and then they were first taken in front of NMC School where two trucks were parked before. After that, all the abductees brought there were blindfolded and then boarded on the trucks and taken to Dalim Hotel- Al-Badr Torture camp-which had operated upon under the absolute domination of Mir Quasem Ali.

**906.** In cross examination, no question has been put to this Pw about the abduction and confinement of other victims he mentioned in his chief by the Defence. Some questions have been made to verify the knowledge of this Pw about the identity of Dalim Hotel, its ownership, political position of the accused in the ICS before and after 7<sup>th</sup> November, 1971 and his(accused) whereabouts after 7<sup>th</sup> November.

**907. Pw-8, Iskandar Alam Chowdhury** alleged to had been abducted by Pakistan Army and member of Al-Badr Forces in late night of 29<sup>th</sup> November, 1971 and was first taken in front of NMC School along with his nephew Salahuddin, Nazimuddin, Abu Zafar and Zakaria captured earlier and saw 2-3 trucks kept parking there. Subsequently, when they were about to boarded on a truck he saw -Nurul Hashem, Kuddus and Md. Nasir kept detained there. Then Syed Md. Emran, Syed Zamal, Syed Kamal, Syed Sarwar, Syed Kibria- all his relatives were also brought there. Then he and all captives were taken to Al-Badr torture camp, Dalim Hotel and pushed

them off at ground floor in a tiny room where he had been tortured brutally and at one stage, he saw Mir Quasem Ali when someone uncovered his folding eyes . He further stated to had been rescued by the local people on 16<sup>th</sup> December, 1971 by breaking open the door he had been kept confined.

**908.** In cross examination, nothing has been asked about his abduction, confinement and torture perpetrated upon him or those of other abductees he has mentioned in his chief . In reply to a question he stated to had seen 2-1 Pakistan army with Al-Badr forces during his confinement at Dalim Hotel. In addition, Some questions have been put about Matiur Rahman alias Mattya Gunda projecting him as the owner of Dalim Hotel though Pw readily disowned. Apart from that, drawing some portion of chief incriminating Mir Quasem Ali with confinement and torture of this Pw at Dalim Hotel -suggestions have been made to him to have been disclosed those for the first time in the Tribunal –which he admitted as true.

**909.** Prosecution has then adduced some **Md. Hasan** deposed as **PW-12** . In chief he claimed to had been abducted along with Nurul Kuddus, Nurul Hashem and 20-25 other persons by the Al-Badr forces led by accused Mir Quasem Ali on besieging their house following 3 at mid night of 29<sup>th</sup> November,1971 and were first taken in front of NMC School and kept them under vigilance by Al-Badr forces as Mir Quasem Ali went away. After a short while, Al-Badr men brought another group of abductees named Syed Md. Emran, Syed Md. Zamal, Syed Md. Sarwar, Syed Md.Kamal and many more. Two trucks were parked in front of the school earlier and all those captives were then boarded on the truck. But he was set free since he was younger among the abductees. After liberation, the abductees who were captured, had divulged him that they had been confined at Dalim Hotel where Mir Quasem Ali was at its helm and he had also seen the mark of torture in the body of those abductees – this Pw further stated. He knew Mir Quasem Ali since 1970 when he was a student of Chittagong College where he was holding the post of President of ICS whereas some AFM Zahangir of Fatiksari was its Secretary—the Pw further stated in chief.

**910.** Here also the Defence did not put any question to this Pw about the abduction, of three alleged victims he has narrated in his chief and specified in the charge. In reply to cross, this Pw has stated that he went to Dalim Hotel before and after liberation war though he did not know the owner of that Hotel nor he heard the name of Rajakar Motiur Rahman alias Moityya Gunda and asserted to had recognized the camp of Al-Badr at Dalim Hotel. This Pw has also denied some suggestions made as regards to his abduction, recognition of Mir Quasem Ali as well as his knowledge of Dalim Hotel.

**911.** I have gone through the entire deposition of Sanaullah Chowdhury deposed as **Pw-2** , Zahangir Alam Chowdhury deposed as **Pw-16** and that of Fayeze Ahamed Siddiqui deposed as **Pw-14** but could not find any ingredients therein upon which the prosecution can be based on for supporting this particular charge in incriminating the accused and thus I refrain from discussing their testimony here. However, they have corroborated each other with regard to atrocities being occurred at Dalim Hotel- symbolizing it as torture cell of Al-Badr forces dominated by accused as Commander of Al-Badr forces during liberation war.

**912.Submissions advanced by the Prosecution :**

The learned Prosecutor at the very outset draw our attention to the material portion of the evidences of Pw-18 and Pw-19 first and very robustly submits that, these two victims have emphatically corroborated each other supporting the charge incriminating the accused showing how he actively took part in the commission of abduction, confinement and torture by his accomplices- notorious Al-Badr members. So far as it relates to perpetrating torture on those two victims, the learned Prosecutor argues it was simply barbarous where the accused made an active role. The Defence has not put any question to those two Victims-Pws that could have shaken their assertion pertaining to abduction, confinement and torture of 7 abductees, rather in cross, Defence has affirmed the very abduction of the victims by eliciting from the Pw about carrying on trucks as well as confinement at Dalim Hotel- learned prosecutor submits further.

**913.** Learned Prosecutor goes on to argue that, save and except the deposition of Pw-2, Pw-14 and Pw-16 all the witnesses have categorically substantiated the charge regarding manner of capturing the victims, bringing them to NMC School as well as confining them at Dalim Hotel on boarding them on trucks. Since Defence did not take any venture from deviating of such assertion on putting question the testimony of those witnesses on that particular counts of abduction and confinement would be rendered true-learned Prosecutor added. As regards to torture of other victims other than Pw-18 and Pw-19, learned Prosecutor then submits that – it clearly reveals from the testimony of Victims and other abductees appeared as Pws that, soon after arrival at Dalim Hotel all the abductees were confined at different rooms of the Hotel and during their such confinement they could hear the scream and wailing of other abductees coming from different rooms.

**914.** Pw-19 further stated to had seen member of Al-Badr forces roaming and guarding different rooms wielding arms accompanying Mir Quasem Ali . Pw-18 had even seen corpses lying scattered inside the hotel when he had stepped inside the hotel. These very horrific revelation clearly indicates that all the abductees confined in different rooms had been tortured gruesomely and some of them had even been tortured to death because it was not humanly possible for any abductees to look in to the wellbeing of other abductees braving the danger of his own life. And commonsense dictates - an abductee confined at that particular point of time will never be treated generously by his captors - learned prosecutor concludes.

**915. Contention of Defence :**

Learned Defence counsel while adverting to the submission of the learned Prosecutor submits that, Prosecution is duty bound to prove the charge distinctly by convincing evidences since three different modes of offence have been arraigned against the accused but in this particular charge it has utterly failed to do so. In the charge, 7(Seven ) persons have alleged to had been abducted , confined and tortured but prosecution could not prove what

had happened to other five abductees except alleged victims, Pw-18 and Pw-19 as nothing has been found out from the testimony of the witnesses about their fate nor the prosecution has made any attempts to let it be known the whereabouts of those abductees as well as explain the causes for not adducing them as witnesses which has rendered the testimony of Pw-18 and Pw-19 as well as the charge doubtful. Learned Counsel next submits that, other than Pw-1 none of the witnesses could able to disclose the name of all the victims claiming to had seen either in front of NMC school or at Dalim Hotel as mentioned in the charge and failing so, it cannot be termed that seven persons had been abducted.

**916. Evaluation :**

It is true, in the charge Seven persons alleged to had been abducted by the armed member of Al-Badr forces out of whom two abductees as victims have testified as Pw-18 and Pw-19 and they have given description how they and their fellow natives had been abducted and confined at Dalim Hotel. They in their respective testimony have not only stated the brutality they endured at the behest of Mir Quasem Ali while confined at Dalim Hotel but also disclosed how other abductees had faced similar cruel treatment by the notorious Al-Badr men being accompanied with accused Mir Quasem Ali. So considering the above testimony, it can genuinely be perceived that, all the victims specified in the charge were tortured during their captivity at Dalim Hotel by the member of the Al-Badr forces and Mir Quasem Ali had led such atrocities. Now question can arise, how the abduction and confinement of seven alleged victims get proved. It is Pw-1 who has given a vivid description how the seven persons- most of whom are his full brothers and cousins had been abducted from one place that is, his house upon an operation by joint forces of Al-Badr, Rajakar and Pakistani Army led by accused Mir Quasem Ali and confined all those abductees to Al-Badr torture camp- Dalim Hotel.

**917.** At the very inception of chief, the Pw-1 asserted that amongst other accused Mir Quasem Ali was his schoolmate when he had studied at Chittagong Collegiate School. Pw-8 and Pw-12 who had also been abducted but not named as victims in this charge has also fortified the



statement of PW-1 as both of them in their respective testimony have stated to had seen Emran(Pw1) and his brothers (Victims) when they were being boarded on trucks in from NMC school that carried them to Dalim Hotel. The Defence has not taken any move in the cross by dislodging the Pw-1 from his such assertion by giving any sorts of suggestion or through any other devise that could have shaken his such statements leaving those vital assertion of recognizing accused as well as abduction true in the eye of law. Since, accused Mir Quasem Ali led the operation in abducting the victims that having been established through the evidence of Pw-1 so there is no iota of any doubt, all of the abductees had been confined at Dalim Hotel.

**918.** The submission of the prosecution to the effect that, apart from Pw-18 and Pw-19 other abductees confined in different rooms of Dalim Hotel had also been tortured gruesomely because it was not humanly possible for any abductees to look in to the wellbeing of other abductees braving the risk of his own life. This contention cannot be brushed aside, rather it sounds quite natural .So, the alleged contention of the Defence, that none has supported or seen the torture on the victims is simply beyond such strong circumstantial reality and thus cannot be tenable.

**919.** In view of the above, I am convinced that Prosecution by adducing evidences has been able to prove the charge beyond any reasonable doubt. Therefore, accused Mir Quasem Ali is held responsible for actual commission of offence of abduction, confinement and torture to un-armed Civilians constituting the offence of crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused Mir Quasem Ali incurs criminal liability under section 4(1) of the Act of 1973.

**920. Verdict of Conviction :** Considering all evidences and submissions of the learned Advocate of the parties I find accused Mir Quasem Ali **Guilty** of the offence of complicity to commit abduction, confinement and torture as “ Crimes against humanity” and he is liable to be convicted and sentenced under section 20(2) of International Crimes(Tribunals) Act, 1973.

**921. Verdict of Sentence :** In sifting the evidences I find the torture perpetrated on Victim S.M. Zalaluddin and victim S.M. Sarwaruddin deposed before this Tribunal as Pw-18 and Pw-19 respectively very diabolical in nature and both the victims had been tortured gruesomely under the order of accused Mir Quasem Ali right in his presence in conjunction of his direct participation in abduction and then confinement of the victims at Dalim Hotel which demonstrates his cruel and vengeful lust towards the victims-who were all unarmed pro-liberation civilians. Regard being had to the nature of atrocities, accused deserves no leniency in awarding punishment. Therefore, the accused Mir Quasem Ali be condemned to a single sentence of imprisonment for **7 (Seven)** years for the crimes of abduction , confinement and torture under section 20(2) of International Crimes(Tribunals) Act, 1973.

**922. Adjudication of Charge no.10**

**(Abduction, confinement and torture of Md. Zakaria, Md. Salauddin alias Chuttu Mia, Iskender Alam Chowdhury and Md. Nazimuddin)**

**Charge Framed :**

In this charge accused Mir Quasem Ali as president of Islami Satra Sangha (ICS) has been implicated for planning and directing Al-Badr Forces for abducting **1. Md. Zakaria, 2. Md. Salauddin alias Chuttu Mia, 3. Iskender Alam Chowdhury and 4. Md. Nazimuddin** on besieging Nazirbari area in the wee hours of 29<sup>th</sup> November, 1971 and were first taken them in front of NMC school and then to Al-Badr torture cell at Dalim Hotel under Kotwali Police Station where they were confined and tortured by the member of Al-Badr forces under the direction of accused and eventually, out of those four abductees Victim Md. Nazimuddin was released November 30, 1971, Victim Zakaria was released after 7/8 days of his abduction, Victim Md. Salahuddin alias Chuttu Mia was released on December 11/12' 1971 and Victim Iskender Alam Chowdhury on December 16, 1971 respectively and by that, Mir Quasem Ali has been charged for abetting and facilitating for committing offence of abduction, confinement and torture as Crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act,1973 on incurring liability

under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

### **923. Discussion of Evidences**

Four Victims alleged to had been abducted, confined and tortured by the member of Al-Badr Forces as part of plan and direction of the accused-Mir Quasem Ali and to support the said accusation Prosecution has placed its reliance upon 6(Six) witnesses including 4 (four) victims, material portion of which are as follows –

**Md. Zakaria** as one of the victim deposed as **Pw-10** in his chief has stated that,-5-7 days after Eid-ul-Fitr, 1971 he was apprehended by two armed Al-Badr members from his house while he was asleep in his house and then brought him in front of Nazirbari mosque when he saw his cousin Eskender, nephews Zafar, Salahuddin and Nazimuddin and many others there and then made all of them walking up to NMC School where he saw two trucks guarded by some armed Al-Badr Forces there. Afterwards, upon boarding them along with other abductees on to a truck they were taken to Dalim Hotel and confined all the captives in a congested room located in the ground floor of the hotel where there remained other abductees brought in earlier. Two days after his confinement Al-Badr members took his brother-Eskender to the upstairs and after 5-10 minutes he could hear the sound of lashing and screaming of his brother and right after half an hour, he was also taken upstairs and when he was heading there he saw his brother crying in the yard. Al- Badr members then started quizzing him and forced him to divulge the information of Freedom fighters and their arms but as he expressed inability they started inflicting torture when another person approached and asked for same information but on refusal he ordered the Al-Badr men to lash him again and they complied instantly and at one stage of such torture he was brought to ground floor. He got to know from the conversation of Al-Badr men, that the person who had ordered the Al-Badr men by uttering “lash him again’ was none but Mir Quasem Ali. After 1-2 days he was released from Dalim Hotel at the request of his father and uncle.

**924.** On cross examination by the Defence, this Pw has revealed that Pakistan Army had accompanied Al-Badr Forces at the time of his capture and there remained two trucks parked in front of NMC school. Upon a question from Tribunal, this Pw has replied that, he for the first time saw Mir Quasem Ali while he was confined at Dalim Hotel. In another question put from defence he replied, he was taken once to the 2<sup>nd</sup> floor of Dalim Hotel and he saw his brother Eskender crying in the second floor while he was descending from there.

**925.** Another Victim **named Eskender Alam Chowdhury** appeared as Pw-8. This Pw in his chief has made similar version with that of Pw-10 as regards to his abduction, finding other co-victims in front of Nazirbari mosque, boarding victims on a truck and then to confined to a congested room in the ground floor of Dalim Hotel. As regards to endure torture, he gave similar description as of PW-10 adding further that, after torture, Al-Badr men uncovered his folding eyes when he saw Mir Quasem Ali and he was again tortured by accused Mir Quasem Ali and others when he expressed his inability to divulge the information of Freedom Fighters and their base and at one stage of torture, Mir Quasem Ali even threatened to kill him and to float the dead body in Karnaphuly river had he not provided with any information about Freedom Fighters.

**926.** While he was cross examined, the Pw resolutely asserted that, there had been a camp of Al-Badr Forces at Dalim Hotel during liberation war. He further stated to had seen Pakistan Army while confined at Dalim Hotel. Apart from that, the Defence has made some suggestion upon drawing attention to some portion of his chief claiming to had disclosed for the first time - which this Pw pleaded true. In the morning of December 16, 1971 the local inhabitants rescued him by breaking open the door-he further stated.

**927.** Then Prosecution adduced some **Salahuddin alias Chutu Mia**-another victim deposed as **PW-9**. In his chief, he has reiterated the facts in the same vein- the Pw 8 and Pw-10 have stated in their respective chief so far it relates to abduction and confinement. He continued, 2/3 days upon

confinement, member of Al-Badr started lashing him by electric wire and 4/5 days thereafter, he was brought by the Al-Badr men saying him that he would be presented before their Commander- Mir Quasem Ali staying in the second floor and they did so. When faced, Mir Quasem Ali got to know the whereabouts of Freedom fighters and of their arms and threatened, had he not disclosed, he would be Killed and the dead body be floated in the Karnaphuly river on fragmenting so. Refused, Mir Quasem Ali then ordered Al-Badr men to lash him properly and instantly members of Al-Badr present there carried out his order and after a while, he was brought back to ground floor where he had been confined. Later on, Mir Quasem Ali ordered his release directing him to supply information of freedom Fighter from time to time.

**928.** Defence did not put any question on material particulars- on what pw stated in his chief. In reply to a question, he stated that he did not see Mir Quasem Ali before or after liberation but on his own volition has asserted that- he had seen Mir Quasem Ali during his confinement at Dalim Hotel. Apart from that, upon drawing attention to some portion of his chief the Defence has made some suggestions claiming to have disclosed those for the first time before the Tribunal - which this Pw pleaded true, though readily claimed to have disclosed those to Investigation Officer.

**929.** Next comes another alleged Victim named **Md. Nazimuddin** testified as **Pw-11** who in his chief has echoed the description of other three victims as regards to manner of operation Al-Badr men had launched in capturing them and confining at Dalim Hotel. He has stated that during his confinement at Dalim Hotel he witnessed how other abductee had been taken out of the room and returned wounded whom branded Dalim Hotel a torture cell spearheaded by Mir Quasem Ali that would appal him apprehending to face same fate that had instilled him all the moment. After 3/4 days some Al-Badr men had presented him before Mir Quasem Ali who then asked about Freedom Fighters but as he expressed inability, Mir Quasem Ali released him.

In reply to cross, this Pw stated, he was not acquainted to Mir Quasem Ali before 1971. Upon a suggestion, this Pw has asserted that from the very

abduction until confining at Dalim Hotel he had not seen any Pakistan Army.

**930.** As stated in the beginning, apart from alleged Victims two Pw's have deposed in support of the instant charge, they are Syed Md. Emran and Md. Hasan appeared as Pw-1 and Pw-12 respectively. **Syed Md. Emran as Pw-1** in his chief has corroborated the fact of abduction and confinement of the Victims asserting in his chief that, at the same time and from same vanue he had also been abducted and subsequently confined at Dalim Hotel together with the victims. On that particular score, no cross has been made by the Defence.

**931.** Md. Hasah as Pw-12 has revealed similar version with that of Pw-1 in his chief. He claimed to had seen the victims while boarding them on the truck parked in front of NMC school. In cross, he asserted to had acquainted Nazimuddin by his name before his confinement but on the date of capture he became sure of his abode. Aside from that, no question has been made.

**932. Submissions advanced by the Prosecution:**

Quoting the relevant portion of chief of 4 (four) Victims testified as Pw-8, Pw-9, Pw10, and Pw-11 respectively, the learned prosecutor very stoutly submits that, apart from the mode of capturing as well as torturing of individual victims, assertion of all those Victims made in their respective chief about the event of abduction and confinement so alleged in the charge are totally identical. He continued, since all the four victims had not been captured or apprehended from single house by the member of Al Badr forces as a part of plan and design hatched by the accused or sometimes by their leader Mir Quasem Ali, their testimony to that count is bound to be different. Similarly, all those four victims had not been tortured jointly at a time on taking them to an specific place of Dalim Hotel and certainly, their testimony on that count is likely to be different as well-learned prosecutor argued.

**933.** Definitely, it would go against the prosecution or be termed prosecution's failure to prove the charge if the Defence could be able to deviate their (Victims) stand from their individual assertion through cross examination but nothing sorts of these has been succeeded by the Defence leaving the charge proved beyond any shadow of doubt- learned prosecutor further added. It's true that Pw-1 has not said much about torture alleged to had inflicted on victims but he with two sentences made in his chief proved the very abduction and confinement of the victims. Because in Chief, he asserted his previous acquaintance with victims, their place of abduction and confinement at Dalim Hotel, staying with the group of other abductees including victims there. So his such testimony has proved the abduction, confinement and torture of the victims more trustworthy -learned prosecutor submits. So far it relates to the testimony of Md. Hasan testified as Pw-12 learned prosecutor submits that, though he had not finally been abducted but he saw how the victims had been abducted and boarded on a truck from NMC School- which corroborates Victim's testimony and make the prosecution case proved, as the Defence could not shake the assertion of these two Vital witnesses on the point of abduction and confinement also.

**934. Contention of Defence :**

Learned Defence Counsel in a bid to refute the assertion of the learned Prosecutor has tried to discredit the witnesses who deposed in support of this charge for proving what the Victims and other Pw's has stated - cannot be relied. As, the learned counsel points out, victim-Pw-10 has agreed in a suggestion that, he did not know any Razakar or Al-Badr other than Mir Quasem Ali and therefore, the learned Counsel contends that, with an oblique motive to make the accused condemned this very witness has made some untrue statement, as it is quite un-natural, the witness would not have known any Razakar or Al-Badr member. In similar move, Victims have also been asked about their knowledge with regard to Peace Committee, Razakar Bahini, Al-Badr Force or Al-Shams force during 1971 which the victims replied in the negative.

**935.** Drawing our attention to certain portion of Chief of Pw-8, Iskender Alam Chowdhury- the learned counsel viewed to have disclosed by that Pw before the Tribunal for the first time and vehemently contends that, his (PW-8) testimony cannot be taken in to consideration, as what he had not told before Investigation officer on material particular deposed subsequently before the Tribunal **which** will be treated as ‘major omission’ and cannot be termed as evidence and used so against the accused. Learned Defence Counsel lastly submits that, it has been revealed from the testimony of the victims that, none of them had previously acquainted with Mir Quasem Ali. So, their alleged assertion of recognizing Mir Quasem Ali at Dalim Hotel is absolutely **improbable and** mere imported version that has only maligned to make the accused guilty in this case.

**936. Evaluation :**

**First,** Four segments - Abduction, Confinement, torture and recognition of the accused by the alleged Victims are required to be address chronologically. From the testimony of alleged victims, Pw8 - Pw11 who had been apprehended from their respective abode of Nazirbari area corroborated each other with respect to abduction and also their confinement at the ground floor of Dalim hotel. So I refrain from reiterating the segment of abduction and confinement for further discussion in the later part of my observation in respect of other victims. Then from the discussion of Evidences made in the foregoing paragraph, I find, on confining at Dalim Hotel Victim, Pw-10 had been tortured both by the member of Al-Badr Force and Mir Quasem Ali himself who even uttered “ Whip again”. This Victim had recognized accused with the conversation of Al-Badr men which appears to me not unusual. Even, upon a question from the Tribunal this Pw asserted to had seen Mir Quasem Ali at Dalim Hotel for the first time while he had been kept confined there. At this juncture, Defence could have put question on that point taking permission from Tribunal as mandated in section 10(h) of the Act of 1973 in a bid to deviate the PW from such assertion, failing which I seem, recognition of the accused stood affirmed.



**937.** While giving description about torture, Victim, Pw-8 has stated in his chief that, 2 days after his confinement he was taken to a room of 2<sup>nd</sup> floor at Dalom Hotel by folding his hands and eyes, and had been tortured there mercilessly when he heard the name of Mir Quasem Ali. After some times, when his eyes were unfolded he saw Mir Quasem Ali who had also tortured him. So, on such a testimony I do not disbelieve that, this victim was not tortured by the accused as there is nothing in the cross to impeach such assertion of the victim or that of recognition of the accused by him rather, his confinement has been established by the defence through cross.

**938.** Again, from the testimony of victim-Pw-9, it reveals that, he had also been tortured by the member of Al-Badr forces repeatedly under the directive of Mir Quasem Ali who had been introduced as 'Commander'. Mir Quasem Ali had also threatened his life while interrogating him to let him know about the Freedom Fighters. On perusing cross, I find that no question has been put to this Pw by the Defence on those material particulars incriminating the accused. Mere taking denial on vast portion of Chief alleging to have been disclosed for the first time before the Tribunal will not suffice or absolve the Defence to discredit or disprove the prosecution's case until and unless the testimony of the Pw appears to be not trustworthy or having no evidentiary value on sifting its credibility. The learned Defence Counsel has taken such endeavor while cross examining this Pw, which I think, go in vein on such proposition.

**939.** It may be noted that, Victim Md. Nazimuddin though has deposed as PW-11 but in his chief, he has not claimed to had been physically tortured while he had been kept confined at Dalim Hotel. Having been gone through his testimony, it reveals how frightful moment he had to pass through during his captivity as he had to reckon when he would be called upon for embracing such painful ordeal having seeing the brutally of wounded abductees smear with blood around him which would make him frightened round the clock. I think such mental trauma is more severe than that of Physical torture - the victim had endured. From the testimony, it is found that, at last victim had been presented before Mir Quasem Ali by the member of Al-Badr forces for interrogation but before so produced,

wounded abductees had told him the power and position of accused at Dalim Hotel, so victim had not been confused to recognize the accused –it can reasonably perceive. Mentionable, the abduction and confinement of this accused has rather been affirmed on cross, as the victim upon a suggestion by the Defence asserted to had not seen any Pakistan Army from his very abduction till confining at Dalim Hotel.

**940.** Reverting to evidences of other two witnesses that is, Pw- 1 and Pw- 12 and in assessing their testimony I find both of them have categorically substantiated abduction and confinement of the victims as co-abductees on the event. Most significant side of the testimony of Pw-1 is that, he has asserted that accused was his schoolmate and his very abduction had been spearheaded by the accused and all the victims including the Pw-1 were taken to Dalim Hotel blindfolded and confined there which has not been denied by the Defence on cross making the recognition of the accused as well as his role at Dalim Hotel as tormentor proved again.

**941.** Next Pw-12, in his chief stated that he was set free by the member of Al-Badr Forces considering his tender age but he had seen the very abduction of four victims. Even in reply to cross, he asserted to had known the victim, Nazimuddin previous to his abduction.

Defence has very robustly made a point that accused Mir Quasem Ali was not known to any of the Victims beforehand nor he had any complicity with the commission of any offences charged. There remain no scope of those victims to recognize the accused connecting with the alleged offences but the Prosecution upon an ill motive has implicated the accused with the offence and set those alleged Victims/Pw's for giving testimony before the Tribunal supporting complicity of accused just as parrot fashion.

**942.** In this regard my considered view is that a person can either become famous or infamous by dint of his noble work or dreadful atrocities and they get respect or hatred by the people in line with their characteristics they possess. The name of Mir Quasem Ali had emerged as “monster” for his ‘monstrous offences he perpetrated during liberation war. So, he need not be acquainted to every person physically. His line of action at that time

had demonstrated who he was. From the evidences, It has been found that, during liberation war Mir Quasem Ali emanated in such a position for his notoriety at Dalim Hotel that people in Chittagong remained fearful of him. Naturally, victims who had been devastated by the brutal torture of the accused would only recognize him, accuse him and will seek justice for soothing of their pain - they have been carrying over for the last 42 years though, they may not have seen the accused any other days after liberation. So, defence alleged contention as regards to the recognition of accused has got no substance and beyond natural phenomena.

**943.** Having been considered the evidences, observation and reasoning I am convinced that Prosecution has been able to prove the charge beyond any reasonable doubt. Therefore, accused Mir Quasem Ali is held responsible for actual commission of offence of abduction, confinement and torture to the un-armed Civilians constituting the offence of crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and thus accused Mir Quasem Ali incurs criminal liability under section 4(1) of the Act of 1973.

**944. Verdict of Conviction :** In view of the evidences and submissions of the learned Advocate of the parties, I find accused Mir Quasem Ali **Guilty** of the offence of complicity to commit abduction, confinement and torture as “Crimes against humanity” and he is liable to be convicted and sentenced under section 20(2) of International Crimes(Tribunals) Act, 1973.

**945. Verdict of Sentence :** On perusal of the evidences, I am convinced, accused Mir Quasem Ali played a very perfidious role while torturing the un-armed victims in a bid to glean information about the freedom fighters and of their arms. It has been proved accused’s participation in abducting and then confining the victims at Dalim Hotel which demonstrates his cruel and vengeful lust towards the unarmed victims and Freedom Fighters who have liberated this nation braving their life. Regard being had to the nature of atrocities, accused deserves no magnanimity in awarding punishment. Therefore, the accused Mir Quasem Ali be condemned to a

single sentence of imprisonment for **7(Seven)** years for the crimes of abduction, confinement and torture under section 20(2) of International Crimes(Tribunals) Act, 1973.

#### **946. Adjudication of Charge no.11**

**(Abduction, confinement, torture and murder of Jasim)**

##### **Charge Framed :**

In this charge accused Mir Quasem Ali as president of Islami Satra Sangha (ICS), Chittagong Town Unit has been **indicted** for planning and instigating member of Al- Badr Forces for abducting Jasim- a Freedom Fighter from an unknown place of Chittagong at any time after Eid-Ul-Fitr, 1971 and taking him to Al-Badr torture cell at Dalim Hotel, Underkilla under Kotwali Police Station, Chittagong where he was kept confined and then at the direction of accused, victim was tortured to death by the member of Al-Badr forces on 28<sup>th</sup> November, 1971 and eventually, his dead body together with the dead bodies of other 5 unknown persons were thrown in to Karnaphuly river and by that, Mir Quasem Ali has been charged for abetting and facilitating for committing offence of abduction, confinement, torture and murder as Crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 on incurring liability under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

##### **947. Discussion of Evidences :**

In proving this charge, it appears, prosecution has relied upon oral testimony of 6 witnesses and has also relied an article as documentary evidence. Now, I take the material portion of the testimony of those witnesses to my notice which I think to be related with the charge for discussion here.

**Hasina Khatun**, claimed to be the cousin of victim has testified as **Pw-17** before the Tribunal. In her chief, she alleged that her cousin, Jasim had come to her house on the day of Eid-un-Fitr, 1971 with co-Freedom Fighter named Mansur when she served them with *Polao*(scented rice), *Korma* and after having the feast they left her house on that day. Since Jasim could not be traced after liberation, she became anxious and was looking for him and

in course of time she met Advocate Shafiul Alam and told him about the disappearance of her cousin, Jasim. After knowing everything, Shafiul Alam then informed her that during his confinement at Dalim hotel, Mir Quasem Ali and his notorious accomplices Al-Badr members once dumped Jasim in to his room in an unconscious state as he had been tortured gruesomely and after a short while he embraced death and further asked her to meet some Sayfuddin Khan. She accordingly met Sayefuddin who gave her same account of ordeal about Jasim. When she asked about the dead body of Jasim he (Sayefuddin) informed, his dead body could not be traced ever as after killing Jasim, his dead body had been thrown in to Karnaphuly river. Upon a query about his source of such information about Jasim, he told her that, he had also been confined at Dalim Hotel where some Shawpan who used to supply meals to the abductees had divulged him the said information.

**948.** In reply to questions put in cross examination, this Pw has replied amongst others, Mansur who had come to her house on Eid day has now been serving at Railway Department adding further, she could not say whether the bank of Karnaphuly river where Jasim's body had been dumped was nearer to that of Circuit house or from Dalim Hotel. She also said in cross of going through the relevant portion of the book "*Shei Shamoy Ananda Bedonai*" where the episode of Jashim's murder has been written and said further, to the best of her knowledge accused Mir Quasem Ali has been designated as 'Commander of Al-Badr Forces' in that episode. Since she had been involved with NAP politics she was acquainted with both Advocate Shafiul Alam and Saifuddin-she continued in reply to cross.

**949.** Then prosecution has also put its reliance on the evidence of **Sanaullah Chowdhury** appeared as **PW-2**. This Pw-2 who had been apprehended on 27<sup>th</sup> November, 1971 from his house has stated in his chief that, on the following day of his confinement at Dalim Hotel he heard the sound of torture and wailing of the victim but moment thereafter, it was stopped and senesced someone was being carried to their room who was thrown when Advocate Shafiul Alam hugged the youth and had said it was Juvenile Freedom Fighter, Jasim of Swandip though he died instantly in

the lap of Shafiul Alam. After dusk, the member of Al-Badr forces had taken away the dead body of Jasim- Pw continued. He has further stated that, on the morning of 29<sup>th</sup> November Shawpan –employed at Dalim Hotel had also informed him that the dead body of Jasim, Tuntu Sen and Ranjit Das who were tortured to death were dumped in the Karnaphuly river.

This Pw in reply to cross has stated that, he did not know Tuntu Sen, Ranjit Das, Jasim and the staff of Al-Badr force, Shawpan before he saw them at Dalim Hotel.

**950.** Prosecution has adduced **Jahangir Alam Chowdhury** who has deposed as **Pw-16** in his chief stated that, he had been abducted some time two days after Eid, 1971 and was confined at Dalim Hotel and remained confined there till December 16, 1971. Sometime 6 days of his confinement at Dalim Hotel, a boy named Jasim of Swandip was thrown to their room carried by Nurul Afser, member of Al-Badr, accused Mir Quasem Ali and Jalal when Advocate Shafiul Alam had been detained in the same room found the boy dead. Then Shawpan who used to supply meal and so branded as “*Vatwala Shawpan*” in the hotel told him that, like Jasim many person had been killed before and their dead body were thrown to Karnaphuly river—the Pw continued. He further stated, member of Al-Badr forces had taken away the dead body of Jasim in the afternoon.

In cross, this Pw has just denied the suggestion of the Defence claiming that- what he has stated in chief incriminating accused Mir Quasem Ali have not been deposed for the first time in the tribunal rather disclosed earlier.

**951. Syed Md. Emran** has deposed as **Pw-1**. In his chief he stated to have abducted by joint force of Al-Badr, Razakar and Pakistan Army led by accused Mir Quasem Ali and had been brought to Dalim Hotel in the late night of November, 29, 1971 and had been kept confined in a room there where amongst other, his acquaintances Sanaullah Chowdhury, Zahangir Alam Chowdhury and Advocate Shafiul Alam remained confined. He further stated to have known from them, a youth named Jasim- a juvenile freedom fighter of Swandip was tortured on 28<sup>th</sup> November and dumped in

their room though Sanaullah Chowdhury had known Jasim from earlier. It appears, defence did not put any question to this Pw on these events in cross.

**952. Nasiruddin Chowdhury** appeared as **Pw-3** has also claimed to had been abducted in the last part of the month of November, 1971 and had been confined at Dalim Hotel has stated, he could hear from Shawpan- a staff of Al-Badr force at Dalim Hotel that, Freedom Fighter-Jasim of Swandip, Tuntu Sen and Ranjit Das of *Hazari Goli* were tortured to death in the roof top of Dalim Hotel and their dead bodies were thrown to Karnaphuly river. This Pw further claimed to have known that, at the time of killing those three persons accused Mir Quasem Ali remained present at the **crime scene** and at his direction all the killing had been perpetrated.

In reply to cross, this pw stated amongst others that, he had neither seen Jasim, Tuntu Sen and Ranjit Das before nor heard their name before confinement and he could not recollect since when Dalim Hotel had operated as torture cell. On another question put to this Pw, he replied of not seeing accused Mir Quasem Ali other than at Dalim Hotel and he did not know him before.

**953.** Though Prosecution has relied upon the testimony of **S.M. Sarwaruddin** deposed as **Pw-19** in support of the charge but on going through his testimony, I could not find any incriminating materials against the accused in line with this charge. He though claimed to had been abducted on 29<sup>th</sup> November, 1971 and had been tortured keeping him confined at Dalim Hotel.

**954.** Aside from that, Prosecution has put its reliance upon an article titled “*Dushopner Norokey : Dalim Hotel*” that has incorporated in the Book “*Shei She shomoy Ananda Bedonay*” written by Advocate Shafiul Alam. In this article the author has described a harrowing account of atrocities being perpetrated at Dalim Hotel during his captivity there. At page 258-259 of the book this author who had also been tortured barbarously at Dalim Hotel, gave a heartrending account of ordeal he endured when Jasim was thrown to his room on the following day of his confinement . He also

described that, he had taken Jasim in his lap but the boy embraced death moment after taking him in his lap.

It appears from the testimony of Pw-23, Pw-24 or that of Pw-17 the defence has been able to cast any doubt about the authenticity and veracity of facts penned in that article - as no question has been put to those Pw's about the material portion written in that article prosecution based on.

**955. Submission advanced by the Prosecution :**

The learned Prosecutor on the onset of his submission pleads that, the death of Jasim has not been denied by the defence in any manner and prosecution has been able to prove that, it is accused under whose direction Jasim was tortured to death by confining him at Dalim hotel. Upon reading out the relevant portion of evidences of Pw-2 and Pw-16 who had heard the scream of Jasim when he had been tortured perpetrated in the roof of Dalim hotel. He had also witnessed throwing of Jasim to his room by accused and his Al-Badr accomplices as well as his death, moment after Advocate Shafiul Alam had taken Jasim in his lap.

**956.** Quoting from the respective portion of the article "*Dushopner Norokey : Dalim Hotel*" Learned Counsel also submits that , the narration made in the article on alleged date of killing of Jasim through brutal torture has also been countenanced with the testimony of Pw-2 and Pw-16 .

Learned counsel next submits that, Advocate Shafiul Alam, the author of article "*Dushopner Norokey : Dalim Hotel*" had also encountered with worst cruelty from the member of Al-Badr forces and got the occasion to witnessed the horrific atrocious role of accused Mir Quasem Ali keeping close range with him and the grisly facts he narrated therein the article, specially the gruesome killing of Jasim can in no way be disbelieved, though he refrained from mentioning his name(accused) for obvious reason in fear of possible retaliation.

**957.** In the same posture, the testimony of Pw-1 and Pw-3 have also reinforced the above evidences, as whatever they had heard from the live (Eye) witnesses that is, from Pw-2 and Pw-16 have just stated in their chief eventhough, Defence has failed to shake their said source of knowledge in



cross and therefore, their irrefutable evidences cannot be brushed aside only for the reason that, they are hearsay Witnesses- learned Prosecutor argued.

**958.** As regard to the evidence of Hasina Khatun deposed as Pw-17, learned Prosecutor submits that, victim Jasim is the cousin of this Pw having no doubt of it and whatever she deposed before the Tribunal, she heard from Advocate Shafiul Alam-the author of “*Shei She shomoy Ananda Bedonay*” as well as Syfuddin Khan who had also been tortured by the Al-Badr gangsters led by accused Mir Quasem Ali while confined at Dalim Hotel. Though both the victims are dead and the witness is hearsay one but her source of knowledge about the killing of Jasim as well as the very credibility of her evidence surrounding the entire factum she asserted in her chief cannot be shaken in any way –the learned Prosecutor concluded.

**959. Contention of Defence :**

The learned counsel for the Defence in the first place of his submission, tries to defame the credibility of Pw-17 contending that, being an editor of a weekly magazine “Shikrity”- a conscious person, she will have no knowledge about Al-Badr or Rajakar member in her locality ‘Beperypara’ and can only reminiscence the name of Al-Badr Commander- Mir Qyuasem Ali – cannot be believed as true. In the same token, It also sounds untrue Jasim had been killed at the direction of accused at Dalim Hotel- as this pw in cross, admitted to had not given any description about ‘Dalim Hotel’ in her weekly magazine. In this regard, learned Defence Counsel contends, had she got previous knowledge about the alleged killing of Jasim, her cousin at Dalim Hotel she must have described about it in her magazine at any point of time after liberation till 1975.

**960.** While countered the testimony of Pw2 and Pw-16 learned Defence Counsel further submits that, none of those witness had ever seen jasim to had been abducted, confined and tortured. So, the very attempt of the prosecution in connecting the accused with the commission of those offences is far from any sorts of evidence and therefore, the accused can in no way be liable for subsequent event of alleged murder of Jasim. And, Since the testimony of those two witnesses cannot stand as true, so

whatever Pw-1 and Pw-3 had heard from them about the alleged killing of Jasim cannot be taken in to consideration-learned Defence Counsel contended further.

**961.** As stated earlier, learned Defence Counsel has not argued on the authenticity of the article “*Dushopner Norokey : Dalim Hotel*” incorporated in the Book “*Shei She shomoy Ananda Bedonay*” or the credibility or veracity of the facts narrated therein –the prosecution put its reliance. Learned Defence Counsel though tends to argue that, nowhere in the said article the name of the accused have ever been mentioned which is why, the prosecution’s alleged attempt to link the accused with the offences basing that document is not at all tenable. With such submission, the learned Defence Counsel, urges to acquit the accused of the charge as prosecution has utterly failed to lead it.

**962. Evaluation :**

In the charge accused Mir Quasem Ali has been arraigned for designing plan in abducting, confining, torturing and then murdering victim Jasim by the member of Al- Badr Forces at Dalim hotel. Now, let me see whether the prosecution has been able to prove the charge against accused of committing those offences through convincing evidences. On perusal of the evidences of the PW’s, it is found that none of them has claimed to had seen abduction, confinement and torture of the Victim. Pw-2 and Pw-16 in their respective testimony claimed to had found victim, Jasim alive when he was dumped to their room at Dalim Hotel. Both of them have also claimed to hear the sound of inflicting torture and wailing from the roof staying in their confined room. But shocking part of their combined testimony is that, moments after stopping the wailing Jasim was brought in and thrown to their room. Perhaps, the above situation calls for no explanation who had been tortured earlier and who was wailing – It is none but hapless Jasim.

**963.** So, on the above observation there can be no iota of doubt that, Jasim had earlier been confined at Dalim Hotel. From the testimony of those two witnesses it is further found that, Jasim had been so crippled and devastated for torture some persons were required to carry Jasim and such tasks were

tasked upon some members of Al-Badr led by accused Mir Quasem Ali. He (Accused) had been hurling abusive when Jasim had being thrown to the room of Pw-2 and Pw-16 when Advocate Shafiul Alam whispered Pw-2 pointing Mir Quasem Ali as the 'Commander of Badr Bahini'(Force)- that revealed from the testimony of Pw-2.

**964.** On the other hand, Pw-16 in his testimony has made this point more clear on categorically stating that, member of Al-Badr, Nurul Afser, accused Mir Quasem Ali and Jalal Ahamed had dumped Jasim in the room- he had been confined. The testimony of both the Pw's have further reinforced the description narrated by Advocate Shafiul Alam in his article "*Dushopner Norokey : Dalim Hotel*" (page 259, Documentary Evidence of Prosecution) where he described 3/4 persons had dumped jasim in their room. Defence has not made any question or suggestion to these pw's to shake such identification or recognition of Mir Quasem Ali, - failing which it goes without saying that, Pw-16 knew accused earlier. It has been thus proved , Mir Quasem Ali had led in carrying Jasim and dumped in the room where Pw-2 and Pw-16 were kept confined and with this, the involvement of accused Mir Quasem Ali in torturing Jasim has been proved.

**965.** All the evidences led in support of the charge speaks jasim died moment after he was thrown in a critically wounded state to the room where Advocate Shafiul Alam had also been confined and he had taken jasim in his lap. And it is Advocate Shafiul Alam who knew Jasim earlier as Juvenile Freedom Fighter.

Similar description has also been made by Pw-17, Pw-1, Pw-3 and their source of such information was Pw-2, Pw-16 and Al-Badar's staff, Shawpan and whatever they have stated about confinement, torture and killing of victim on knowing from them(Pw-2,16 and Shawpan) - has not been discarded in any manner by the Defence in cross.

**966.** It has also been proved that, the dead body of Jasim had been taken away by the member of Al-Badr forces. Pw-2 and Pw-16 have corroborated each other by saying that in the evening (28<sup>th</sup> November, 1971) member of Al-Badr forces took away the dead body of Jasim. It was further revealed

from the testimony of those Pw's that – Shawpan who had supplied meal to the victims at Dalim Hotel had stated them, dead body of Jasim was thereafter thrown to Karnaphuly river as usually did by the Al-Badr members to the victims they had killed. It has now been abundantly proved that, as part of plan and design of Mir Quasem Ali, Jasim was tortured to death during his confinement at Dalim Hotel in where he(accused) had actively participated.

**967.** Now only the event of abduction is left for proving. It has been revealed from article “*Dushopner Norokey : Dalim Hotel*” Jasim was a Freedom Fighter and its author Advocate Shafiul Alam knew him earlier, else he could not say him ‘Juvenile Freedom Fighter of Swandip’ when he took him in his lap before he embraced death. All other Pw's echoed the same status about Jasim and Defence did not deny that Jasim was not a Freedom Fighter. While adjudicating charge no.2 I have given a reasoned observation about the targets of Al-Badr force for elimination during liberation war and commander (Chief) of Al-Badr Forces in Chittagong City. In view of earlier observation Jasim had certainly fallen upon the target of Al-Badr forces for being a Freedom Fighter and since member of Al-Badr Forces are bound by the order of their Commander, Jasim was abducted under the direction of their Commander, accused Mir Quasem Ali.

**968.** Having been considered the evidences, observation and reasoning I am convinced that, Prosecution has been able to prove the charge beyond any shadow of doubt. Therefore, accused Mir Quasem Ali is held responsible for actual commission of offence of abduction, confinement, torture and murder to an un-armed Civilian constituting the offence of crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and thus the accused Mir Quasem Ali incurs criminal liability under section 4(1) of the Act of 1973.

**969. Verdict of Conviction :** In view of the evidences and submissions of the learned Advocate of the parties I find accused Mir Quasem Ali **Guilty** of the offence of complicity to commit abduction, confinement, torture

and murder as “ Crimes against humanity” and he is liable to be convicted and sentenced under section 20(2) of International Crimes(Tribunals) Act, 1973.

**970. Verdict of Sentence** : It is found from the evidence on record , accused Mir Quasem Ali played a very revengeful role in eliminating Freedom Fighters and as a part of accomplishing his such culpable mission he in a preplanned way had made juvenile Freedom fighter abducted by his notorious accomplices, member of Al-Badr Forces. The manner the victim was gruesomely tortured and subsequent carrying his severely wounded body for dumping like a beast shakes the conscience of any sensible human being. His active participation in abducting and confining the victim- a juvenile and hurling abusive towards a nearly dead juvenile demonstrates his cruelest and vengeful lust towards an unarmed Freedom Fighter who appears to be hell-bent to liberate the nation braving his life. Regard being had to the nature and enormity of atrocities, accused perpetrated upon a minor boy it would be appropriate if exemplary punishment is meted out to the accused having no scope to show any sort of magnanimity in awarding punishment. Therefore, the accused Mir Quasem Ali be condemned to a single sentence of **Death** for the crimes of abduction , confinement, torture and murder under section 20(2) of International Crimes(Tribunals) Act, 1973.

**971. Adjudication of Charge no.12**

**(Abduction, confinement, torture and murder of Ranjit Das alias Lalu and Tuntu Sen alias Raju)**

**Charge Framed :**

In this charge accused Mir Quasem Ali as president of Islami Satra Sangha (ICS), Chittagong Town Unit has been implicated for planning and directing the member of Al- Badr Forces of abducting Jahangir Alam Chowdhury(now dead), Ranjit Das alias Lalu and Tuntu Sen alias Raju lived in Hazari lane, Chittagong, a predominantly Hindu area at any time in the month of November,1971 and took them to Al-Badr torture cell at Dalim Hotel, Underkilla under Kotwali Police Station where they were confined but on the following day, Jahangir Alam Chowdhury was

released though at the instance of accused, the dead body of the victims Ranjit Das alias Lalu and Tuntu Sen alias Raju were concealed and while they were being abducted his(accused) accomplices Al-Badr , Razakar, Al-Shams and Pakistan Army looted many shops and burnt down 250/300 houses compelling 100 families to flee to India and by that, Mir Quasem Ali has been charged for abetting and facilitating for committing offence of abduction, confinement, torture, murder and other inhuman acts as Crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act,1973 on incurring liability under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

**972. Discussion of Evidences :**

To espouse the charge prosecution put its reliance to the oral testimony of seven Witnesses and an article as of documentary evidence material portion of which are stated as under:

**Prodip Talukder** who happened to be the nephew of victim Tuntu Sen deposed as **Pw-7** who was aged about 6/7 years at the time of occurrence . This Pw who claimed to had lived with his victim maternal uncle (shortly Uncle) in 1971 in his chief has stated to had gone with his uncle in the intersection(*more*) of Shib Mondir sometime in 1971. When they were returning, the member of Al-Badr's captured his Uncle and brought him to Dalim Hotel. Thereafter, his grandmother (Tuntu's mother) went Dalim Hotel to rescue him while Al-Badr members told her that Tuntu would not be released until their Commander came. When she asked the name of their (Al-Badr's) Commander they disclosed-'Mir Quasem Ali'. This Pw continued some Ranjit Das and a Muslim person had also been abducted along with his uncle . He further stated that, in a bid to flee from Dalim hotel his uncle had once jumped from the 3<sup>rd</sup> floor of the hotel and his grandmother holed him up but accused Mir Quasem Ali could trace him and brought him back to Dalim hotel where he had been tortured to death. He stated to hear those events from his grandmother.

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In cross examination, Pw replied that, he had not lived in same mess with his uncle and aunt. In another question he replied, at the time of alleged abduction of his uncle no notable persons remained present and his uncle had bought a *Singara* (refreshment) for him.

**973. Shibu Das** who is the son of victim Ranjit Das and was aged about 3 years during liberation war has deposed as **Pw-5** and whatever he has stated in his chief, he had heard from his mother. In his chief he has stated that, in the month of November, 1971 his father, Ranjit Das was captured from their house and had been confined at Dalim Hotel under the leadership of Mir Quasem Ali where he was killed. He further stated that, Tuntu sen was also captured and was killed adding further that, Dalim hotel had served as an instrument of terrors of notorious Al-Badr Forces in 1971 where numerous civilians were being killed.

At Cross, this Pw stated that, his mother could not speak due to illness. He further stated in reply to cross, there is no offspring of Tuntu sen nor his any brother alive and he has heard, Tuntu's wife got married elsewhere but could not say her whereabouts.

**974. Sanaullah Chowdhury** claimed to had abducted on November 27, 1971 and confined at Dalim Hotel deposed in support of this charge as **Pw-2**. He stated in his chief that, during his captivity at Dalim hotel a staff of Al-Badr Force named 'Shawpan' used to supply meal to the abductees confined at Dalim Hotel. In the morning of 29<sup>th</sup> November, Shawpan disclosed him and other abductees that, the dead body of duos who were tortured to death in previous day had been thrown to Karnaphuly river. Though in cross examination, this Pw has asserted Jasim, Tuntu Sen and Ranjit Das had not known to him before being confined at Dalim Hotel.

**975.** Another witness named **Nasiruddin Chowdhury** has also deposed as **Pw3** supporting the charge. This Pw has claimed to had abducted in the last part of the month of November, 1971 and was brought to Dalim Hotel where he had been confined till December 16, 1971. This Pw has also given identical statement of Pw-2 Sanaullah Chodhury only adding that, at the time of killing of those three persons accused Mir Quasem Ali remained present and under his (accused) direction those killing had been perpetrated. In cross examination this Pw has asserted to had neither known nor seen Jasim, Tuntu Sen and Ranjit Das before being confined at Dalim Hotel.

**976. Mridul Kumer Dey** appeared as **Pw-6** claimed to be a resident of Hazari lane in his chief stated that, in the last part of the month of November Tuntu Sen and Ranjit Das were abducted by the member of Al-Badr forces and the very following day of their abduction they were confined at Dalim Hotel- camp of Al-Badr Forces and had been tortured there. In the morning of Victory day he found the wife of Ranjit Das, Prova Rani in the vicinity of Dalim Hotel when she in chocking voice had told him of not finding his husband and Tuntu Sen. At that time, other abductees freed from Dalim Hotel then told him (Pw) that, the cohorts of Mir Quasem Ali had killed the duo though they could not be traced ever- the Pw continued. In reply to cross, this Pw has failed to give any personal account of accused Mir Quasem Ali nor any body had ever divulged him how, when and by whom Tuntu Sen and Ranjit Das were abducted.

**977. Some Sunil Kanti Bardhan alias Dulal** claimed to had been abducted by the Al-Badr Forces in the last part of the month of November, 1971 and confined at Dalim Hotel and was released therefrom on December 16,1971 has deposed as **Pw-4**. In the fag end of his chief he has stated that, while stepping out from Dalim Hotel the wives of Ranjit Das and Tuntu Sen had asked him the whereabouts of their husbands when he had disclosed them that, the member of Al-Badr had killed them. When, he (PW) got to know that, their husbands had been taken away blindfolded under the direction of Mir Quasem Ali and they never returned. In the cross, this Pw admitted to have disclosed for the first time in the Tribunal about the death of Ranjit Das and Tuntu Sen and having conversation with their wives. In another question, this Pw has also asserted that, he has got no personal knowledge about the killing of Tuntu Sen and Ranjit Das though he had heard about it.

**978.** Apart from the evidences of those witnesses, prosecution has also placed their reliance upon the testimony of Pw-1 and an article “*Dushopner Norokey : Dalim Hotel*” as documentary evidences but on careful perusal of the evidences, I do not find any materials relating to the charge that calls for any discussion here.

**979. Submission advanced by the Prosecution :**



The learned Prosecutor giving much stress to the testimony of Pw-7 and Pw-5 submits that, both the witnesses are close relatives of the Victims Tuntu Sen and Ranjit Das and though they were minors at the time of abduction, confinement, torture and murder of their dear ones but their assertion could not be shaken by the Defence. Pw-7, nephew of slain victim Tuntu Sen had witnessed the abduction of his uncle and whatever he has narrated about subsequent event he had heard from his grandmother (*nani*) and defence could not deviate him from such hearsay portion of evidences in any manner leaving such testimony proved.

**980.** As regards to the testimony of PW-5 who was allegedly 3 years old during liberation war and heard from his mother about his slain father's (Ranjit Das) abduction, confinement, torture and killing, in his chief has incriminated accused, Mir Quasem Ali for committing those offences while Defence has not put any question on those material particulars and therefore, his such assertion has remained uncontroverted—learned prosecutor further added.

**981.** Learned Prosecutor then submits, both pw-2 and Pw-3 have deposed that, some Shawpan- a staff of Al-Badr Forces employed at Dalim hotel for supplying meals to the abductees had informed them that, Tuntu Sen and Ranjit Das had been killed in the roof of Dalim Hotel and their dead bodies were subsequently dumped in to Karnaphuly river, though their such source of information about killing could not be questioned by the defence through cross. Since the identity of Sawpan, his service towards the abductees at Dalim Hotel during liberation war remains undisputed so the killing of Tuntu Sen and Ranjit Das at Dalim Hotel stands proved—learned Prosecutor further added.

**982.** Quoting testimony of Pw-6 learned Prosecutor submits that, this Pw hails from same area of slain Tuntu sen and Ranjit Das and his knowledge about their abduction and subsequent torture at Dalim Hotel by the member of Al-Badr Forces led by Mir Quasem Ali is quite believable. His (PW-6) subsequent meeting with Prova Rani, wife of slain Ranjit Das in the morning of 16<sup>th</sup> December in the vicinity of Dalim Hotel and got informed

from her of not finding Ranjit Das and Tuntu Sen as well as further knowing from other abductees about the killing of Ranjit Das and Tuntu Sen by the cohorts of Mir Quasem Ali could not be impeached in cross-the learned Prosecutor continued.

**983.** Terming Pw-4 as **sighted** witness learned Prosecutor then submits that, while the wives of slain Tuntu Sen and Ranjit Das approached this Pw when he was released from Dalim Hotel to know the whereabouts of their husbands he had then disclosed them(Wives of Tuntu and Ranjit), both Tuntu Sen and Ranjit Das had been killed by the member of Al-Badr forces and this very assertion of killing has corroborated the testimony of other Pw's deposed-learned Prosecutor concluded.

**984. Contention of Defence :**

Learned Defence Counsel in adverting to the alleged assertion of the Prosecution, at the very outset submits that, neither the testimony of alleged ocular witnesses nor the hearsay witnesses nor the circumstances have ever led prosecution case proved. As, none of the above PW's have ever deposed to had seen the Victims at any point of time of their alleged abduction, confinement , torture or killing. Had it been so, then how come the prosecutor could claim of having been proved the charge against accused Mir Quasem Ali- learned Counsel doubted.

**985.** Terming the evidences of Pw7 and Pw-5 not credible one learned counsel submits that, though both are hearsay witnesses and were minors at the time of alleged event but still, there remained vast discrepancies between their chief and cross. Pw-7 in his chief has stated to had lived in the house of his slain uncle Tuntu Sen in the year of 1971 but in cross he altered his earlier statement making his alleged assertion of accompanying uncle at the time of abduction untrue.

**986.** On the contrary, Pw-2 and Pw-3 did not see Tuntu Sen and Ranjit Das at Dalim hotel. They merely heard from some 'Shawpan' –a staff of Al-Badr Forces about the Killing of Tuntu Sen and Ranjit Das as well as dumping their body in to Karnaphuly river.The whereabouts of that very

Shawpon could not find place in the entire prosecution case depriving the Defence to cross checked the reliability of such testimony and conversely, even in the failure to explain the whereabouts of Shawpan by the prosecution it cast serious doubt about the credibility of testimony of Pw-2 and Pw-3- learned Defence Counsel argued.

**987.** Again, no trust can be reposed on the testimony of Pw-6 and Pw-4 who in their respective chief allegedly claimed to had seen the abduction of Victims, Tuntu Sen and Ranjit Das as well as killing them respectively but moment after that, in cross, they made totally contrary statement making their earlier statement totally frivolous one- learned Defence Counsel concluded.

**988. Evaluation:**

Before evaluating the evidences, I feel it urge to take a glance on the Order-framing Charge against the accused. On close scrutiny, I find that there has been no tentative date therein about the abduction of the victims and another and subsequent taking them to Dalim Hotel for confining there, though place of such abduction so far it relates to Victims have been mentioned as 114, Hajari Lane, Chittagong. It has been mentioned in the charge that, both the Victims and another person named Jahangir Alam Chowdhury had been tortured on the very date of their alleged abduction though Jahangir was set free on the following day while the dead bodies of the victims had been kept concealed.

**989.** Pw-7, nephew (*Vagney*) of victim Tuntu Sen claimed to had heard the event from his Grandmother (*nani*) who is now dead and Pw himself was 6/7 years old at that particular time of occurring alleged offences. He in his chief stated that, in the year of 1971 his uncle had been captured and taken to Dalim Hotel by the member of Al-Badr Forces. During confinement, he once attempted to escape from Hotel but he was captured and ultimately he had been tortured to death at the instruction of accused. But it appears, this very witness have deviated from whatever has mentioned in the charge. As charge speaks, Tuntu had been abducted from a particular place of Hazari lane(114, Hazari Lane) not from the intersection(*mor*) of Shib Mondir.

**990.** Further, in the chief he claimed to had lived with his slain uncle in a mess in 1971 but in cross, he flatly denied of living with his said uncle leaving his testimony about abduction of his uncle from Hazari lane totally doubtful. To testify the memory, defence has asked him (PW-7) to disclose the name of any of his childhood friend at hazari lane dating back in 1971 though the Pw failed, that ridiculed his alleged knowledge/ assertion about his alleged presence at the time of abduction of his uncle. This Pw has very assertively stated that, his uncle had bought *Singara* from the shop of Ranjit Das(Victim) before being abducted when there had been no people in that locality. But it creates serious doubt whether all the statements he narrated in chief, he had heard from his *nani* or he himself had witnessed the event having remained with his uncle - could not be ascertain. Because, at the fag end of his chief he has said that, he had heard the entire event from his *nani*

**991.** Pw-5, Shibu Das, son of alleged slain victim Ranjit Das has stated that his father was abducted and killed by the member of Al-Badr forces led by Mir Quasem Ali on confining him at Dalim Hotel and these very facts he had heard from his mother who is now ailing. His such testimony could not be substantiated by any sort of evidences. Since Pw-5 a mere hearsay witness, and a child then, his testimony could have been believed had the prosecution led a very strong circumstantial evidences or could produce any witness who remained present when alleged facts had been divulged to the Pw by his ailing mother in support of his alleged hearing from his mother.

**992.** The other two hearsay witnesses Pw-2 and Pw-3 claimed to have heard the alleged killing of Tuntu Sen and Ranjit Das from one Shawpan. But fact remains, these two witnesses had never seen tuntu sen and Ranjit Das at Dalim Hotel. They in their respective testimony had also admitted that, they had never heard the name of the duos before being divulged by Shawpan to them. They even did not know from where, when and by whom those two alleged persons were abducted. This casts reasonable doubt as to whether they had at all been kept confined at Dalim Hotel. They (Pw's) themselves could not even hear of inflicting torture upon the duos or that of

from alleged Shawpan. What they had heard from Shawpan, both Tuntu Sen and Ranjit Das had been killed on previous night. They further got to know from Shawpan that, their dead bodies were subsequently dumped in to Karnaphuly river –which is totally absent in the charge.

**993.** Certainly, Shawpan would have been a vital witness in proving the instant charge but on careful perusal of materials on record, I find that Prosecution has kept totally silent or oblivious of giving any information for not producing him as witness or kept apprising his whereabouts through the testimony of any PW's. But what I have found he (shawpan) had not been looked for after liberation war, as Pw-17, Hasina Khatun asserted while testified before this Tribunal in support of charge no.11.

**994.** Now reverting to the documentary evidence it is found that, prosecution has relied upon an article "*Dushopner Norokey : Dalim Hotel*" in support of this charge. While adjudicating charge no.11, it has been found, the writer of that article, Advocate Shafiul Alam time and again described how freedom Fighter, Jasim had been tortured to killed in the Hotel which corroborates the oral testimony of respective PW's of that charge. While testified, Pw-2 and Pw-3 upon supporting the instant charge, had described Jasim, Tuntu Sen and Ranjit Das were killed at a contemporary period. Had it been so, the alleged killing of Tuntu Sen and Ranjit Das would have surely been found place in the article "*Dushopner Norokey : Dalim Hotel*" as the name of Shawpan and his role at Dalim hotel has vividly been described in his article. This Shawpan had disclosed all the atrocities perpetrated at Dalim Hotel to victim, Advocate Shafiul Alam when he was kept confined there. So he would not have omitted in informing the alleged killing of Tuntu Sen and Ranjit to Advocate Shafiul Alam should it at all occurred there at Dalim hotel.

**995.** Further, Pw-1, Emran a valiant freedom fighter in his chief claimed to had heard about the killing of Jasim also from 'Shawpan'. So, had Tuntu Sen and Ranjit Das killed at Dalim Hotel at the same time of Jasim there would have no earthly reason for Swapan to divulged their name also to this Pw at the same time but it has not been disclosed. By these, it has

shrouded serious mystery about the source of information of knowing the alleged killing of Ranjit Das and Tuntu Sen from Shawpan . From above, it stands prove that, whatever Pw-2 and Pw-3 have stated claiming to had known from Shawpan is found to be an anonymous source and thereby, the testimony of Pw-2 and Pw-3 can be termed as un-attributable hearsay evidence basing upon which the charge cannot be said to have been proved.

**996.** Now, on careful perusal of the testimony of Pw-6 and Pw-4 who claimed to had seen the Victims at the time of abduction as well as killing appears me to be bogus one on the face of their won testimony. Pw-6 in his Chief has claimed that, both the Victims had been abducted in the last part of the month of November and he had come to know, members of Al-Badr forces led by accused had tortured and subsequently killed them. But in cross, this Pw categorically admitted that, none had told him who, when and how the victims were being captured and nothing he could say about the particulars of Mir Quasem Ali.

**997.** In the same manner, Pw-4 at the fag end of his chief, out of the blue, disclosed, both Tuntu Sen and Ranjit Das had been killed by the Al-Badr Forces when he was replying about their whereabouts so asked by their wives. But surprisingly, in cross, he admitted that he had got no personal knowledge about the killing of Tuntu Sen and Ranjit Das but he has heard about it detailing no sources. With the above testimony of both the PW's, it can perfectly be held that, prosecution has hopelessly failed to prove the charge.

**998.** Regard being had to the above discussions and reasoned observations based on evidence on record, I do find that, Prosecution could not prove its case up to the hilt and thereby has utterly failed to discharge its burden. Hence, accused Mir Quasem Ali is **not found guilty** of the offence of abduction, confinement, torture and murder as Crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and therefore, he be acquitted of the charge.

**999. Adjudication of Charge no.13**

**(Abduction, confinement and torture of Sunil Kanti Bordhon)****Charge Framed :**

In this charge accused Mir Quasem Ali as a leader of Islami Satra Sangha (ICS) has been implicated for instigating some armed member of Al-Badr Bahini to abduct Sunil Kanti Bordhon alias Dulal at Chaktai Shampanghat point while he along with family members were returning his house from his friend's residence at Anderkilla on any day at the end of November,1971 and on taking him to Chaktai Dost Mohammad Punjabi Building(*Chamrar Gudam*) they tortured him there and then victim along with other civilian were shifted to Dalim Hotel on December 14,1971 where he was kept confined till he was released by some Yusuf on December 16, 1971 and by that, Mir Quasem Ali has been charged for abetting and facilitating in committing offence of abduction, confinement and torture as Crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act,1973 on incurring liability under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

**1000. Discussion of Evidences**

To prove the charge Prosecution has produced two witnesses including the alleged victim Sunil Kanti Bordhon basing no documentary evidences in support of the charge.

**Sunil Kanti Bordhon** has been testified as **Pw-4** who in his chief has stated *interalia* that, in the last part of the month of November,1971 he along with his family members were returning to their village home when the armed Al-Badr men intercepted him at Chaktai point and dragged him on to a *Rikshaw* branding him(Victim) a Freedom Fighter and brought him to Dost Panjabi Building-a torture cell of Al-Badr and severely beat him there. Having been informed about his such abduction his mother took several attempts to make him released but it went in vain. During his confinement at Dost Panjabi Building he had been tortured physically and mentally. In the early morning of 14<sup>th</sup> December he along with other abductees were shifted to Dalim Hotel blindfolded and were kept all the abductees confined in a room where accused Mir Quasem Ali remained present. Mir Quasem Ali then kept asking him several questions but as he

had not replied, he(accused) threatened with his life and at one stage, he left the room shutting the door from outside. Eventually, in the early morning on December 16, 1971 his neighbor and friends rescued him from Dalim Hotel.

**1001.** In cross examination, certain questions have been put to this Pw as regards to the alleged event related to the charge. Upon a question, he(pw) replied that, he did not know any of the abductees confined earlier at Dalim hotel and has asserted to see the accused at the Tribunal for the First time after liberation. In another question, he failed to reveal the present or previous owner of Dost Mohammad Panjabi Building. He denied the suggestions of Defence to the effect that- he had not been abducted from Chaktai canal or had been tortured on confining him either at Dost Mohammad Panjabi Building or at Dalim Hotel.

**1002.** Another witness named **Fayez Ahamed Siddiqui** has deposed as **Pw-14** who in his chief claimed to had gone to Dalim hotel in quest of his brother-in-law, Sayefuddin Kha in the morning on December 16, 1971 and amongst 100-150 persons freed there he had seen victim, Sunil Kanti Bardhan there. On this particular point pw has not been grilled by the Defence in cross. Though he admitted that, he has disclosed of going to Dalim Hotel on December 16, 1971 for the first time at the Tribunal as he did not find such scope earlier.

**1003. Submission advanced by the Prosecution :**

Learned Prosecutor rests his entire reliance on the testimony of Victim and submits that, his evidence has proved the charge creating no iota of doubt by the Defence there against. Referring to his testimony, learned counsel for the Prosecution then submits that, this Pw after being abducted from Chaktai had been kept confined in two torture cells in Chittagong where he had been tortured. He has given vivid description about harrowing ordeal he went through during his captivity but defence could not shake his such assertion through cross, rather it has affirmed victim's confinement at Dalim Hotel by asking him whether he could recognize other abductees confined there earlier---learned Prosecutor argued. Victim's Confinement



at Dalim Hotel has further been established with the testimony of Pw-14, who saw him(victim) coming out from Dalim Hotel free on December 16, 1971 which remained un-impeached-learned Prosecutor concluded.

**1004. Contention of Defence :**

Learned Defence Counsel at the very outset submits that, prosecution has hopelessly failed to prove the charge both in letter and spirit. Actually, there is none other than the victim to prove the charge and whatever he has stated as Pw in his entire testimony proves to be full of manufactured story on the face of it, having no truth in it. As regards to the testimony of Pw-14, learned Defence Counsel submits that, mere finding a person in front of Dalim Hotel does not *ipsofacto* proves that Victim had been kept confined at Dalim Hotel.

**1005. Evaluation :**

As it shows in the Charge, accused had instigated his cohorts, armed member of Al-Badr Forces to abduct victim and accordingly they abducted him from Chaktai and then tortured him on confining him at Dost Mohammed Panjabi Building. It appears from such testimony, his wife and boatman named, Badi remained there when he was alleged to had been abducted. It further appears some Habibur Rahman, the then editor of 'Azan' magazine had been contacted by victim and his mother for arranging his release from Al-Badr Forces but none of those persons have testified supporting the alleged event. Moreover, he(victim) alleged, some Shah Alam was the Commander of Al-Badr at Dost Mohammad Panjabi Building. Had it been so, then how accused could instigate the Al-Badr member in abducting victim and tortured him on confining at Dost Mohammed Panjabi Building remains far from comprehension.

This Pw has also stated to had been taken from Dost Mohammad Punjabi Building to Dalim Hotel with other persons in the morning on 14<sup>th</sup> December, 1971 and confined him with 6 other abductees there where he found accused Mir Quasem Ali who had quizzed him. But on plain reading of the charge, presence of Mir Quasem Ali as well as quizzing victim by him and threatening victim with death on declining to reveal information, is totally absent. Furthermore, victim nowhere in his testimony has ever

stated to had been rescued by any person named Yusuf-so mentioned in the charge. So, in no way accused Mir Quasem Ali be connected with the charge of committing offence of abduction, confinement and torture either at Dost Mohammed Panjabi Building or at Dalim Hotel.

**1006.** Regard being had to the above discussions and reasoned observations based on evidence on record, I do not find that, Prosecution has been able to prove its case in accordance with charge framed and thereby has utterly failed to discharge its burden. Hence, accused Mir Quasem Ali is **not found guilty** of the offence of abduction, confinement and torture as Crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and therefore, he be acquitted of the charge.

**1007. Adjudication of Charge no.14**

**(Abduction, confinement and torture of Nasiruddin Chowdhury)**

**Charge Framed :**

In this charge accused Mir Quasem Ali as a leader of Islami Satra Sangha (ICS) has been implicated for accompanying some armed young members of Al-Badr Bahini(Force) for raiding and abducting Nasiruddin Chowdhury from his house situated at Nazir Ahamed Chowdhury Road under Kotwali Police station, Chittagong some time at the end of November, 1971 and taking him to Al-Badr torture centre at Dalim Hotel where victim was confined and tortured by the member of Al-Badr Bahini under the direction of accused for many days and eventually, victim along with 100/150 persons were released from the Torture Centre on December 16, 1971 by the local people and by that, Mir Quasem Ali has been charged for abetting and facilitating for committing offence of abduction, confinement and torture as Crimes against humanity as specified in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act,1973 on incurring liability under section 4(1) and 4(2) of the Act that are punishable under section 20(2) of the Act.

**1008. Discussion of Evidences**

For proving the charge prosecution has put its reliance upon the oral testimony of three witnesses including victim Nasiruddin Chowdhury and the material portion of their evidences are given hereunder :

**Nasiruddin Chowdhury** as **Pw-3** in his Chief stated, in the last part of the month of November, 1971 on a wee hours, the member of Al-Badr Forces had cordoned his house and took him to Dalim Hotel blindfolded and confined him in a dark room where the members of Al-Badr in a bid to extract information about his co-Freedom Fighters and their arms started inflicting torture. Failing to glean any information, Al-Badr members then left the room on unfolding his folded eyes- pw continued. Thereafter, accused Mir Quasem Ali entered the room and ordered his cohorts, Al-Badr member to lash him again since he did not provide with any information about freedom fighters and instantly they further started lashing him with iron rod, electric wire and at one stage, accused himself had quizzed him enquiring about other freedom fighters, their shelter and arms they used but as victim regretted again, Al-Badr members started torturing him gruesomely leaving his body soiled with blood and at one stage they left the room—victim stated further. This Pw-victim has further stated, in the morning of 16<sup>th</sup> December, 1971 he came out from his captivity with the help of local people, as he heard from them that member of Al-Badr had fled when he saw Zahangir Chowdhury and Freedom Fighter Syed Md. Emran coming out from Dalim Hotel.

**1009.** In reply to first question of the Defence, pw has asserted that, he did not see accused Mir Quasem Ali in his captive room between 6<sup>th</sup> December and 16<sup>th</sup> December, 1971. He further added, he had to stay in the same room at Dalim Hotel from day one he had been taken there and kept confined. Upon a question from Tribunal, Pw has also stated that, Dalim Hotel was called “Mahamaya Hotel” before 1971 and it was renamed as ‘Dalim Hotel’ after being occupied it by ‘Islami Catra Sangha’(ICS) in 1971 and so far as regards to the recognition of accused Pw stated that, apart from Dalim Hotel he did neither witness nor know the accused before. In another question by defence, Pw has replied that, he was familiar with Mahamaya Hotel since 2/3 years before liberation as he had to passed

through the hotel. He has also asserted of not hearing the name of Razakar, Motiur Rahman.

**1010.** Prosecution has also adduced **Syed Md Imran** who has testified before this Tribunal as **Pw-1**. In his chief, this Pw stated to had been abducted at dead of night following 29 November, 1971 and remained confined at Dalim Hotel with numerous abductees captured from different parts of Chittagong city. He has also elaborated frightful ordeal of torture perpetrated upon him and other abductees by the member of Al-Badr Forces at the behest of accused during his captivity at the hotel till he and other 100-150 abductees were rescued by the Freedom Fighters on December 16, 1971 among whom victim, inhabitant of Patia was freed - he knew earlier.

**1011.** Defence has cross examined this Pw extensively and in reply to a question regarding Dalim Hotel, this Pw has stated that he knew Dalim Hotel since 1969 but he did not know its owner .From day one of his confinement till 15<sup>th</sup> December he was kept blindfolded but it had removed when he was quizzed or tortured- pw further stated in reply to cross. Upon a suggestion, this Pw asserted that accused was elected General Secretary of ICS of the then East Pakistan before 7<sup>th</sup> November,1971 though denied that, accused had lived in Dhaka after 7<sup>th</sup> November and asserted to had lived in Chittagong.

**1012. Fayez Ahamed Siddique** has deposed as **Pw-14** who in his chief claimed to had gone Dalim hotel in the morning on December 16, 1971 in **quest** of his brother-in Law, Saifuddin Khan who alleged to had been abducted from his house on November 24,1971 by the member of Al-Badr Forces. During his stay at hotel, he found 100-150 captives free among whom victim Nasiruddin Chowdhury of Patia was there. Upon a suggestion in cross, this Pw asserted that, he for the first time disclosed the Tribunal to had gone Dalim Hotel on December 16, 1971 as he found no scope to divulge it before. He flatly denied suggestion of the Defence, that accused was not the Commander of Al-Badr Force and Dalim Hotel was not the camp of Al-Badr Forces .

**1013. Submission Advanced by Prosecution:**

In the very inception, the learned Prosecutor has drawn our attention to the material portion of the evidence of the Victim that alleged to have linked accused with the commission of offence. He then submits that, the witness categorically stated how he had been abducted by the member of Al-Badr forces and tortured on confining him at Dalim Hotel repeatedly. Victim has also made a vivid description about the vengeful and cruel role of accused Mir Quasem Ali as he had ordered his cohorts to torture him for gleaning information about the Freedom Fighters. The Defence did not make any question on those material point of abduction, confinement and torture and therefore, failed to dislodge the Pw from his such stance. In such a position, his testimony on those material particulars have been proved without any shadow of doubt - learned prosecutor averred.

**1014.** In his second thought of argument, learned Prosecutor submits that, prosecution has been able to prove the event of confinement and torture of the victim irreversibly even though, Defence has affirmed such confinement and torture by asking questions about the duration of confinement of the victim at Dalim Hotel, occasion in seeing the accused victim's place of confinement (Room) and manner of torture there. More so, defence could not be successful in making Victim's testimony waned in recognizing the accused and that of Dalim Hotel in cross examination. Learned Prosecutor goes on to submits that, victim's confinement and torture at Dalim Hotel has further been proved as he saw Syed Md. Imran(PW-1) when he came out free from Hotel on December 16,1971 which Pw-1 has also corroborated.

**1015.** In regard to the oral testimony, learned Prosecutor urges that, both Pw-1 and Pw-14 found the victim free at Dalim hotel on the very morning of December 16, 1971 as a detainee as well as relative of detainee respectively. Had the victim not been confined at Dalim Hotel invariably they (Pw's) would not have found victim there pointing victim as 'Nasiruddin of Patia'. In that score also, Defence has failed to deviate those Pw's from their firmness in finding victim at Dalim Hotel- learned

Prosecutor emphatically submits. Apart from that, from the respective testimony of Pw-1 and Pw-14 it has been proved that both the Pw's are very much familiar with Dalim Hotel since long and Defence has failed to shake their assertion about identification or recognition of Dalim Hotel – learned Prosecutor concluded.

#### **1016. Contention of Defence**

Learned Defence Counsel in countering the above submission, contends that, Prosecution has utterly failed to prove the charge by convincing evidences. To substantiate his such argument Learned Counsel then submits that, other than the victim, Prosecution has not adduced any witness to countenance the alleged event of abduction, confinement and torture failing which the alleged charge does not lie against accused. Victim in his testimony has admitted to have not seen accused before his alleged confinement at Dalim Hotel, so he was not supposed to recognize accused as well and thus his alleged testimony of recognizing accused while entering his room, quiz him or ordered the member of Al-Badr to torture victim is simply impracticable one and sheer concocted story- learned Defence Counsel further added. Learned Defence Counsel with reference to the testimony of Pw-1 and Pw-14 finally submits that, mere seeing victim in the premises of Dalim hotel does not *epsosfacto* prove the event as alleged in the charge.

#### **1017. Evaluation :**

In this charge accused has been arraigned for committing the offence of abduction apart from confinement and torture in association with other armed members of Al-Badr Forces on raiding Victim's house. Now, it demands proof whether accused had accompanied other armed Al-Badr members from the testimony of the Witnesses or to infer from Strong circumstances. In his chief victim has categorically asserted that when he was being captured by the member of Al-Badr Forces on arousing him from sleep he was blindfolded giving him no scope to identify his captors. But subsequent conversation of the accused with his Al-Badr Cohorts upon entering his confined room made it clear that he was very much there when he was abducted. His (accused) very utterance to the member of Al-Badr-“

Nothing could be gleaned from him Yet? whip him further”- clearly imply, under his stewardship victim had been captured. Apart from that, Victim is a valiant freedom Fighter and had fought in different front fighting and took part various operation in different parts of Chittagong as the first group of (Bangladesh Liberation Force, Shortly “**BLF**”) BLF Force-which made him target of the accused. The very wording ‘Accompany’ does not necessarily mean accused will have to mingle with his Al-Badr accomplices in all the time of abduction. As a leader of Al-Badr force accused could even accompany his cohorts keeping him outside from the the very place of abduction. Moreover, Defence could not prove that, the accused was not accompanied by Al-Badr members while abducting victim.

**1018.** Victim as Pw-3 in his chief claimed to had been abducted by the member of Al-Badr forces but it is accused Mir Quasem Ali whose direction was indispensable in every abduction, he had thought appropriate for elimination of his opponent, Freedom loving pro-liberation civilians and victim had become the prime target to the accused at that time for his(victim) prominence as freedom fighter as well as his fierce operation against the Anti liberation camps located in different parts of Chittagong. And accused had at last, materialized his mission on abducting him. It is found that, at the time of his capture Member of Al-Badr forces had blindfolded him and kept him torturing while bringing him to Dalim Hotel and confined in a dark room of the hotel so that victim could not identify the accused. But, accused as a part of his strategy though made his appearance before victim at Dalim Hotel just to hide his past role of participating in abduction. As, victim made it clear by asserting that upon failing to glean any information from him about Freedom Fighters member of Al-Badr Forces then left his room and before leaving, they unfolded his folded eyes when Victim could only see accused flanked by a group of member of Al-Badr forces. In the given state of affairs, I am of the view that, accused presence was very much there when the victim had been abducted.

**1019.** From the testimony of victim it has already been found that, accused Mir Quasem Ali accompanied by other Al-Badr members entered his

confined room at Dalim Hotel soon after another group left it. He ordered his notorious accomplices to whip and in his presence cruel torture had been perpetrated upon him- it reveals from his testimony. It is further found that, at one stage of torture accused himself started quizzing victim, but on failure to glean his expected information, his cruelty towards victim aggravated and ultimately left him severely wounded that smeared his body with blood. So, in view of the above assertion of victim, it appears, accused had played a decisive role on the event of abduction, confinement and torture as it has already been found that, accused Mir Quasem Ali was the commander of Al-Badr forces in Chittagong and led all atrocities perpetrated at Dalim Hotel- operated as torture camp or cell of Al-Badr Forces during liberation war.

**1020.** On the face of testimony of victim, I do not find any tangible attempts to have been made by the defence to shake the above assertion of victim about his abduction, confinement and enduring torture at Dalim Hotel. Rather, replies of question given by the Victim on cross, has conversely affirmed his confinement at Dalim Hotel as well as torture there, as victim in his such reply made it clear that, he had been tortured upon taking him in different rooms of Dalim Hotel that continued such ordeal until 14th December. His such confinement at Dalim Hotel has further been established with the testimony of Pw-1 and Pw-14 who with oblique reference of his(Victim) place of abode ('Patia) found him released in Dalim Hotel on December 16,1971 saying "Nasiruddin Chowdhury of Patya" making no deviation by Defence on such vital point revealed by those two Pw's in their respective cross examination.

**1021.** In the summing up hearing, Defence has raised a point about recognition of accused by the Victim as he admitted to had not seen accused before, other than at Dalim Hotel. It is not disputed that victim was a Freedom Fighter and obviously they were the main targets of the Al-Badr Forces as it has been found while disposing of other charge herein before. It was the mission and vision of member of Al-Badr Forces to eliminate Freedom Fighters and as a part of accomplishing such mission, victim was just abducted, confined and tortured inhumanly and the way and



manner of quizzing and torturing him randomly to glean information about Freedom Fighters and their source of arms clearly proves their such nefarious mission.

**1022.** In the foregoing paragraph I have already observed the benchmark of knowing a person which is equally applicable in recognizing accused by the victim. Further, neither the accused nor his party, ICS he belonged had any visible role before liberation war that could ever make him known to the cross section of people in Chittagong, so also to the victim. Rather, It is quite natural of not coming across such insignificant person. Again, the naked support by Jamat-E-Islami (JEI) in the barbaric crackdown by Occupation Pakistan Army on unarmed Bangalee Civilian, accused position in ICS(student wing of JEI) and its(ICS) firm anti liberation stance and cruelty of accused at Dalim Hotel during liberation war had spread his disrepute in entire Chittagong District during liberation war left no scope, rather unnatural and quite improbable for a Freedom Fighter, like victim(Antagonist to accused) to meet and come across accused physically. So, the alleged contention of the Defence about previous acquaintance with accused is totally opposed to the ground reality prevailed at that juncture. Instead, it is practicable not to saw or knew accused personally before being confined at Dalim Hotel as the accused and his party had earned hatred from cross section of people of entire nation for their brutality and Victim has perfectly asserted so. Since Victim in reply to cross has asserted to had confined in the same room of Dalim Hotel during his entire period of captivity so, it would be futile exercise to give any finding about the recognition of Dalim Hotel by victim.

**1023.** Having been considered the evidences, and the observation and reasoning made thereby I am convinced that Prosecution has been able to prove the charge beyond any reasonable doubt. Therefore, accused **Mir Quasem Ali** is held responsible for actual commission of offence of abduction, confinement and torture to un-armed Civilian constituting the offence of crimes against humanity as enshrined in section 3(2)(a)(g)(h) of the Act of 1973 and thus accused Mir Quasem Ali incurs criminal liability under section 4(1) of the Act of 1973.

**1024. Verdict of Conviction :** In view of the evidences and submissions of the learned Advocate of the parties I find accused Mir Quasem Ali **Guilty** of the offence of complicity to commit abduction, confinement and torture as “ Crimes against humanity” and he is liable to be convicted and sentenced under section 20(2) of International Crimes(Tribunals) Act, 1973.

**1025. Verdict of Sentence :** The un-impeached narration victim made in his testimony about his harrowing ordeal at Dalim Hotel unerringly proves that, accused Mir Quasem Ali played a very perfidious role while torturing victim - an un-armed civilian confining at Dalim Hotel to glean information about the freedom fighters and their arms. It demonstrates his cruel and vengeful lust towards the Freedom Fighters who have liberated this nation risking their life. Regard being had to the nature of atrocities, accused deserves no leniency in awarding punishment. Therefore, the accused **Mir Quasem Ali** be condemned to a single sentence of imprisonment for **10(Ten)** years for the crimes of abduction, confinement and torture under section 20(2) of International Crimes(Tribunals) Act, 1973.

**1026. Plea of Innocence of Defence :**

It is the universal Jurisprudence of Criminal Justice System that, the burden of proving the charge always lies upon the prosecution beyond reasonable doubt. Defence is not obliged or required to prove his innocence and burden conclusively lies upon the prosecution to prove the accused guilty. Though defence may have any case that usually derives from cross examination to the prosecution witnesses and documents it produces. The instant Act is no more exception to that very legal proposition also. Keeping the very proposition in vogue, this Act vide its section 9(5) and 10(f) authorizes the Defence to adduce and produce witnesses and documents respectively. In line with that provision Defence has produced 3 Witnesses and has relied upon certain documents to prove the accused innocent. Following are the testimonies of the Defence Witnesses :

**1027.** Defence adduced some **Momtaj Nuruddin**, the younger sister of accused, Mir Quasem Ali who has testified before this Tribunal as **Defence Witness no.-1**. (herein after referred to as **DW**) In her chief, she claimed to had been living with her husband and children in a rented house at Agamosi lane, Dhaka in 1971 and subsequently shifted to Comilla in the month of March, 1972 as her husband got a job at a College in Comilla, while her elder brother, accused Mir Quasem Ali came to her residence in the first week of November,1971 and stayed with them until she had shifted to Comilla. She claimed that her brother went elsewhere in the month of March, 1972 from her house.

**1028.** In cross, by the prosecution, she stated that, she got married on 14<sup>th</sup> December, 1969 and after staying some days in her father's house she came to her husband in Dhaka. In her second thought, she instantly stated to had come to her husband's house in the middle part of October, 1971. In reply to another question, she stated that her husband had been serving in a private company named 'Jane soap' where he served until 1972 but could not name the month he had last served with the company. In reply to questions, made from Tribunal she stated that, her brother Mir Quasem Ali came to her residence to give her company and he(accused) also went back to Comilla at his father's residence when Dw shifted to her husband's new place of job in Comilla.

**1029.** Some **Mohammad Ali** claimed to be a Freedom Fighter has also deposed as **Dw-2** who in his chief has stated to have returned to country on November 20, 1971 upon taking arms training in India. After arriving at his residence in Chittagong town, he amongst others, came to learn that Dalim Hotel had been operated as torture camp and some Motiur Rahman alias Motya Gunda having been occupied the same run different sorts of unsocial activities there, including torturing the general people in association with some Rajakar and Biheries. He claimed to had known Motya Gunda who used to black market tickets of cinema hall named 'Cinema palace'. He knew nothing about torture being perpetrated at Dalim Hotel or of accused Mir Quasem Ali having been involved with such activities- Dw further added.

In reply to cross, this Dw has expressed his ignorance of having any Razakar, Al-Badr or Al-Shams in Chittagong or they had ever dumped the dead body of general people in to Karnaphuly river after killing. In another question, he asserted that he was not involved with Chittagong Muktijoddah Sangsad . Upon a question from Tribunal, this Dw replied that, since 1985-86 he knew Mir Quasem Ali as he was a Director of Islami Bank.

**1030.** Another Dw named **Abu Taher Khan** has testified as **Dw-3** who in his testimony has stated that, he had been serving as Store Clerk at Railway in Chittagong and during 9 month long period of liberation war he had stayed at his village home at Patia though he had worked in favour of liberation war and returned to the job on December 20, 1971. On getting information about him as a Freedom fighter- the son of Mir Quasem Ali, Barrister Arman met him in the month of September-October, 2013 and requested him to divulge him - he knew about torture occurred at Dalim Hotel as his father had been incriminated with the offence of Torture perpetrated at Dalim Hotel—Dw continued. He (Dw) then retorted to Barrister Arman that, some Motiur Rahman and his accomplices had occupied Dalim Hotel in 1971 and run it as Torture camp where general people had been tortured by those hooligans---Dw added. This Dw has further stated in his chief that, he advised Barrister Arman to look in to a case- as the owner of Dalim hotel had lodged a case at Kotwali Police station in 1972. After 2/3 months, he was informed by Barrister Arman of finding documents relating to the case-Dw added further. This Dw produced certain documents which have been marked as Exhibits.

**1031.** In reply to cross, this Dw claiming to be the supporter of Awami League replied that, he could tell the names who had been leading Awami league in Chittagong in 1971 but could not tell the name of the leaders of PDP, Muslim League, Jamat-E-Islami, Nezami Islami. He could even only tell the name of the leader of Catra League but could not say the name of any leader of Islami Catra Sangha.

In another question he replied that, he heard the name of the accused for the first time after 1983 when he was the Director of Islami Bank and as he was

a labour leader, he came to Dhaka to collect advertisement of the Bank for publishing it to their magazine. He had got no personal knowledge about the case lodged in connection with Dalim hotel, nor he ever read documents he has produced- Dw further replied. He asserted to had come to Chittagong for the first time on December 20, 1971 after liberation war. This Dw in cross further asserted that, there remained Peace Committee, Razakar, Al-Badr and Al-Shams in Chittagong Town also his village home at Patia but could not say who had led peace Committee, Razakar, Al-Badr and Al-Shams at Patia. In reply to a question put from the Tribunal this DW has stated that, he did never see Motiur Rahman alias Moitya Gunda and he heard his name only in the middle part of the month of January, 1972

### **1032. Documentary Evidences :**

Defence has produced an information slip (**Annexure-A**, Defence Documents) which shows, some Motiur Rahman alias Motya Gunda had been acquitted upon withdrawal of the case by state under section 494 of the Code of Criminal Procedure. Defence has also relied upon a book titled "*Pramanyo Dalil Muktijuddeh Chattggram*" authored by Gazi Sahuddin, published on February, 2012 (**Annexure-B**, Defence Documents, Vol-1) wherein there described Criminal Cases and name of the accused lodged in connection with offences committed during liberation war under different police stations of the then Chittagong District. Defence intends to show that, the name of the accused has not been mentioned there. Defence has produced another book named '*Anowara Ekatturer Gonohatta O Muktijuddah*' authored by Jamaluddin, published on November 20, 2010 (**Annexure-C**, Defence Documents, Vol-1) wherein the author has given a chronological history in the emergence of Bangladesh, heroic operation of different Freedom Fighter's Group and atrocities committed in Anowara Police station during nine month long war by the Pakistan Occupation forces and their collaborators.

By producing this book, Defence intends to show, though in this book the name of numerous Razakar Commander and their horrendous operations have been described but name of accused has not been mentioned in the entire book. Another book titled "*Ekatturer Juddahoparadhider Angshik*

*Talika*” authored by Dr. SM Zahangir Alam, published on February, 2009(**Annexure-D**, Defence Documents, Vol-1) wherein as many as 600 names of accused of War Crimes with respective case number have been mentioned but the name of accused has not been mentioned there.

**1033. Submission advanced by Defence:**

Learned Counsel for the Defence quoting the relevant portion of the testimony of those three witnesses submits that, all the Witnesses have been able to prove that, accused Mir Quasem Ali had not lived in Chittagong from November, 1971 till March, 1972 for which the crime alleged to have been perpetrated at Dalim hotel and prosecution’s alleged attempt to show him (accused) leading such crime therein has proved to be a futile effort. It has further been contended by learned Counsel that, none but some local thug, Motiur Rahman alias Motya Gunda had occupied Dalim Hotel in 1971 and it had become a den of notorious people who had turned it as a torture cell where civilians were being tortured and unsocial activities were rampant there during entire period of liberation war. Learned Counsel further added. Learned Counsel on quoting Exhibit ‘A’ finally submits that, for illegally occupying Dalim Hotel, its owner had lodged a case against Motiur Rahman in 1972 and the evidences of Dw’s clearly prove that, accused had not been in Chittagong during the period - occurrence alleged to have been taken place and he has falsely been prosecuted on allegedly showing him commander of Al-Badr forces on terming Dalim as their (Al-Badr Forces) torture cell under his control during liberation war. As regards to other Documentary evidences (Exhibit-B, C, D) learned Defence Counsel readily submits that, had accused committed any atrocities as alleged commander of Al-Badr in Chittagong during liberation war his name would have surely been found place on those important documents.

**1034. Contention of Prosecution :**

Learned Prosecutor on the other hand, has countered such submission of the Defence and contends that, the way the defence has produced the witness and they made their respective revelation before the Tribunal has itself proved, it was pre-arranged endeavour to save the accused from the heinous atrocities he perpetrated at Dalim Hotel leading Al-Badr Forces staying

there during liberation war. It appears clearly, from their way of giving chief, that all the above witnesses are set witnesses as, which witness would testify in respect of which episode of defence version has previously been tutored and accordingly, all those three Dw's have been given their respective portion of testimony just as parrots fashion but prosecution by cross, has vitiated their such ill attempts and proved the involvement of the accused with the commission of offences staying at Dalim hotel as the commander of Al-Badr during respective period mentioned in the charges. In adverting the contention of documentary evidences defense is relying, learned Counsel submits that, since Prosecution has overwhelmingly proved the charges by the live witnesses mostly of whom are Victims or the members of victim families such documents are of no use for proving alleged defence case.

**1035 . Evaluation :**

From the trend of the testimony of the Defence Witness it reveals that, Defence has tried to establish his innocence alleging that he had not been in Chittagong during the period of occurring alleged offences as has been specified in the charges in other words, *Plea of Alibi*. Defence further tried to make out a case that, Dalim Hotel was under the control of local thug, Motiur Rahman alias Motya Gunda under the stewardship of Pakistan Army in 1971 having no reason to operate it as a torture cell of Al-Badr Forces or that of accused was at its helm.

**1036.** To materialize the alleged *alibi*, Dw-1 came up to prove stating that, accused had stayed her house in certain period of time and in cross, clarified the reason of his such short stay to give her 'company'. But why such fact being propagated showing the accused needed to stay certain period of time at her younger sister's house could not be hard to fathom out by any man of general prudence. Perceptibly, It was for no reason but to show accused had been stay away from Chittagong in certain period of time keeping consonance with the period mentioned in the charges. It sounds absurd and unbelievable, a powerful student leader holding the post of General Secretary of ICS in the then East Pakistan would confine himself and sacrifice his political activities only by giving company to his married

younger sister. Further, naturally question crop up, a young couple having children had at all require 'company' of an elder brother for certain period of time, rather it goes beyond our prevailing social norms and reality and make her entire statements nothing but a farce.

**1037.** Apart from that, on the face of evidences of this Dw-1 it also proves untrue, as in the chief she has stated his brother(accused) went away elsewhere in the month of March though in her last statement in reply to cross, she stated, his brother went to her father's house in Comilla in March,1971. In the same vein, she in one place of her chief stated that after some days of staying in her father's house on getting married (marriage held on 14th December,1969) she came to her husband in Dhaka. But in next breath, she stated to have come Dhaka in the middle part of the month of October, 1971. It could not be hard to comprehend she(Dw-1) made her second version only to **correlate** accused alleged arrival and stay at her house and deposed accordingly, in an ill motive to nullify the date of offences prosecution so alleged in the charges.

**1038.** This Dw adopted same manoeuvre about her tenure of stay in Dhaka as well as period of service, her husband had served in a private company. As, she in her chief stated, they went to Comilla in March, 1971 on her husband's acquiring a job at a College in Comilla while in cross, she asserted, her husband served with 'Jane Soap' company(located in Dhaka, Dw asserted in cross) till the year of 1972. So, with all these proven contradictory version, it can be maintained without any hesitation that, this Dw with an ill motive has deliberately made untrue statements to absolve her elder brother from being convicted. Defence perhaps could not fix its case either, as while cross examining Pw-2, Sanaullah Chowdhury in refuting Charge no.3 it has suggested the Pw that, accused had not stayed in Chittagong from 7<sup>th</sup> November till victory day- which the Pw-denied meaning defence asserted, after 16<sup>th</sup> December, 1971 accused was very much there in Chittagong which is stark contradiction of what Dw-1 deposed about the alleged duration of stay of accused out of Chittagong. With such perplexity of Defence, it has been proved, accused had never



stayed in Dhaka or elsewhere but in Chittagong on the dates of alleged events leveled in the charges.

**1039.** By adducing Dw-2 Defence has tried to prove that, Dalim hotel had neither been operated as a torture Cell of Al-Badr Forces nor accused Mir Quasem Ali had involved with any atrocities perpetrated therein during liberation war on picking some Motiur Rahman alias Motya Gunda in the forefront and made him shouldered of committing crimes. Defence has tried no stone unturned to portray this Dw as a Freedom Fighter for making a strong impression upon the Tribunal that, a freedom Fighter must know about the activities of their antagonistic forces. And keeping such view in its mission, this Dw has just been adduced which would be proved while assessing his own testimony.

**1040.** Whatever this Dw has stated as regards to occupying Dalim Hotel and running unsocial activities including killing by some Motiur Rahman alias Motya Gunda during liberation war—he has just heard about it, elaborating nothing about the source of such knowledge, leaving his entire testimony on that score simply redundant having no reason to discuss about it further. This Dw has claimed to be a Freedom Fighter though he admitted to have not involved with Muktiyoddah Sangshad. But the alarming part of evidences of this self-proclaimed armed trained Freedom Fighter is that, he did not have any knowledge whether there were any Razakar Force, Al-Badr Force or Al-Shams Force in Chittagong or the members of those Forces have ever killed the civilian and dumped their dead bodies in to Karnaphuly river during the war of liberation.

**1041.** If I take in to account of his testimony, it goes without saying that, this Dw has absolutely played a perfidious role under the disguise of Freedom Fighter else, it is next to believe that, a Freedom Fighter could not know the name of valiant Freedom Fighter like Syed Md. Emran, their enemies(Razakar, Al-Badr,and Al-Shams) and their perpetration of horrendous crime in his vicinity of Chittagong town during war and could only know about the alleged local thug, Motya Gunda and about his alleged capture of Dalim hotel. Given the above scenario, it can safely be perceived

that, this Dw is absolutely an incredible witness and whatever he has stated about the position of accused and that of Dalim Hotel is totally frivolous and untrue one.

**1042.** Now comes **Abu Taher Khan**, whom Defence has adduced as **Dw-3**. In his chief amongst other, this Dw gave testimony specially claiming himself conversant with the alleged case filed by the Owner of Dalim Hotel against Motiur Rahman and disclosed such information to the son of accused in last part of the year, 2013. His testimony depicts, he had been made evolved by the Defence for the purpose of producing certain Defence documents through him. Apart from that, he in his chief, made some evasive statements claiming Dalim Hotel to had been run as torture camp in 1971 by some Motiur Rahman and there had been lodged a case over its ownership in 1972 which he disclosed to the son of accused. But fact remains, he in his chief asserted that, he stayed in his village home, Patia in the entire 9 month long war, so how could he see such alleged activities of Motiur Rahman at Dalim Hotel in 1971 remain shrouded in mystery.

**1043.** Moreover, this Dw did not disclose from where and by whom he could know about such activities at Dalim Hotel or of lodging the alleged Case, though in his cross he flatly agreed that, he had got no knowledge about such case of Dalim Hotel that ultimately proves his statements regarding alleged occupying of Dalim Hotel by Motiur Rahman untrue. This Dw though claimed that, he was a supporter of Awami League in 1971 but his inability to divulge the name of the leader of Jamat-E-Islami, Nezami Islami, PDP, Muslim League, ICS and even the name of the leader of Peace Committee, Razakar, Al-Badr of his native, Patya makes his entire testimony totally invented one. Whatever he said to the son of accused regarding alleged lodging of case against Motiur can never be believed as he has just been set to divulge so, only for the purpose of producing the alleged information slip(**Exhibit-A**) and other documents(**Exhibit-B,C,D**) by him and nothing more, as whatever he has said in the chief out of blue, simply devoid of any basis or sources. In view of the above, it is proved that, in order to save the accused from being convicted all the three Dw's have testified falsely before this Tribunal.

**1044.** Again, by producing information slip Defence has indented to impress upon this Tribunal that, since Motiur Rahman had forcibly occupied Dalim Hotel and run unsocial activities there in 1971, its owner Chandra Mohon Nath as informant lodged the alleged case which negates the prosecution case that Dalim Hotel had been run as torture cell of Al-Badr led by accused in 1971 . But with such information slip (**Exhibit-A**), nothing has been derived as alleged by the Defence. Because, by producing the slip it could not be proved that Motiur Rahman had any sorts of control over Dalim Hotel in the entire period of 1971 and run unsocial activities there and Al-Badar had not been operating it as torture cell led by accused. Similarly, Exhibit-**B,C,D** cannot *ipsofacto* be treated as an exclusive proof of innocence of accused. Because, there might have several unseen and undisclosed reason for not inserting accused name in those documents exhibited, but mere not publishing his name does not absolve him from being convicted if he is found guilty through proven evidence and in that event, there is no earthly reason to take the defence documents as benchmark of his innocence. In other words, those documents are not so sacrosanct that accused will be rendered totally innocent if his name is not included there. By all accounts, defence alleged plea of alibi and its multitude cases for proving accused innocence has just fallen apart.

**1045. Sentences awarded to be served out :**

In the latter part, I hand down sentences against respective charges where accused has been found guilty. In meting out so, accused **Mir Quasem Ali**, Son of- Late Mir Tayeb Ali and Late Rabeya Begum, Village-Munshidangi Sutelari, Police station-Harirampur, District-Manikganj at present-House no.287,Mollahpara, South Manipur, Ward no.13, Mirpur-2, Dhaka Metropolitan Police, Dhaka is found guilty of committing offence of “Crimes against humanity” as enumerated in section 3(2) of the International Crimes (tribunals) Act, and is convicted and sentenced under section 20(2) of International Crimes(Tribunals) Act, 1973.

**1046.** Now, I do hereby proclaim the following order of sentence accused Mir Quasem Ali will have to undergo against each charge he found guilty.

Hence, it is

**ORDERED**

Accused **Mir Quasem Ali** is convicted and sentenced to suffer rigorous imprisonment for **20(Twenty )** years for committing crimes as listed in **Charge no.2**

Accused **Mir Quasem Ali** is convicted and sentenced to suffer rigorous imprisonment for **7(Seven )** years for committing crimes as listed in **Charge no.3**

Accused **Mir Quasem Ali** is convicted and sentenced to suffer rigorous imprisonment for **7(Seven )** years for committing crimes as listed in **Charge no.4**

Accused **Mir Quasem Ali** is convicted and sentenced to suffer rigorous imprisonment for **7(Seven )** years for committing crimes as listed in **Charge no.6**

Accused **Mir Quasem Ali** is convicted and sentenced to suffer rigorous imprisonment for **7(seven)** years for committing crimes as listed in **Charge no.7**

Accused **Mir Quasem Ali** is convicted and sentenced to suffer rigorous imprisonment for **7(seven )** years for committing crimes as listed in **Charge no.9**

Accused **Mir Quasem Ali** is convicted and sentenced to suffer rigorous imprisonment for **7(seven)** years for committing crimes as listed in **Charge no.10**

Accused **Mir Quasem Ali** is convicted and sentenced to **Death** for committing crimes as listed in **Charge no.11**

Accused **Mir Quasem Ali** is convicted and sentenced to suffer rigorous imprisonment for **10(ten )** years for committing crimes as listed in **Charge no.14**

The sentences awarded in respect of charge **no.2,3,4,6,7,9,10, and 14** shall run concurrently.

Convict **Mir Quasem Ali** is sentenced to **Death** for the crimes as listed in charge no.11 and he be hanged by the neck till he is dead under section 20(2) of the International Crimes (Tribunals) Act , 1973.

However, convict **Mir Quasem Ali** is sentenced to death in respect of **Charge no.11** the sentence of imprisonment for 20 years for charge no.2

7 years for charge no.3, 7years for charge no.4, 7 years for charge no.6, 7 years for charge no.7, 7years for charge no.9, 7 years for charge no.10 and 10 years for charge no.14 will obviously get merged in to the sentence of **Death**.

Since, convict Mir Quasem Ali is found not guilty of offences in respect of charge no.8, 12 and 13 so he be acquitted of the charges.

Furthermore, Prosecution has not led any evidences in support of charge no.1 and 5 and therefore, convict-Mir Quasem Ali also be acquitted of the charges.

The sentence awarded herein above shall be carried out in compliance with section 20(3) of the International Crimes (Tribunals) Act, 1973.

Let the convict Mir Quasem Ali be sent to the prison with a conviction warrant accordingly.

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

## **TRIBUNAL'S ORDER ON SENTENCE**

That the accused **Mir Quasem Ali** son of Late Mir Tayeb Ali and Late Rabeya Begum of village- Munshi Dangi Satalori, Police Station- Harirampur, Dist. Manikgonj, at present- House NO. 287, Mollapara, South Monipur, Ward No.13, Mirpur, Dhaka is found **UNANIMOUSLY guilty** of the offences of abduction, confinement and torture as '**crimes against humanity**' enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 as **listed in charge nos. 2,3,4,6,7,9,10 and 14**. Accordingly, he be convicted and condemned to the **sentence as below for these eight charges**, under section 20(2) of the Act of 1973:

**Sentence of imprisonment for 20[twenty] years** for the crimes as listed in **charge no.2;**

**Sentence of imprisonment for 7[seven] years** for the crimes as listed in **charge no.3;**

**Sentence of imprisonment for 7[seven] years** for the crimes as listed in **charge no.4;**

**Sentence of imprisonment for 7[seven] years** for the crimes as listed in **charge no.6;**

**Sentence of imprisonment for 7 [seven] years** for the crimes as listed in **charge no.7;**

**Sentence of imprisonment for 7[seven] years** for the crimes as listed in **charge no.9;**

**Sentence of imprisonment for 7 [seven] years** for the crimes as listed in **charge no.10;**

**AND**

**Sentence of imprisonment for 10[ten] years** for the crimes as listed in **charge no.14**

The sentence so awarded above **in respect of charge nos. 2, 3,4,6,7,9,10 and 14** shall run concurrently.

The accused **Mir Quasem Ali** is found **UNANIMOUSLY** guilty of the offence of **'murder'** as crimes against humanity enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 **as listed in charge no.11.** Accordingly he be convicted and condemned **UNANIMOUSLY** to a **'sentence of death'** for the crimes as listed in this charge and he be hanged by the neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973.

The accused **Mir Quasem Ali** is found **BY MAJORITY** guilty of the offence of **'murder'** as crimes against humanity enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 **as listed in charge no.12.** Accordingly he be convicted and condemned **BY MAJORITY** to a **'sentence to death'** for the crimes as listed in this charge and he be hanged by the neck till he is dead, under section 20(2) of the International Crimes (Tribunals) Act, 1973. This sentence will get merged into the **'sentence of death'** so awarded in respect of **charge no.11.**

However, as the convict **Mir Quasem Ali** has been condemned to **'single sentence of death'**,as above, the **'sentences of imprisonment'** awarded in respect of charge nos. **2,3,4,6,7,9,10 and 14** will get merged into the **'sentence of death'**. This sentence shall be carried out under section 20(3) of the Act of 1973.

Accused **Mir Quasem Ali** is found **UNANIMOUSLY** not guilty of offences as listed in **charge nos. 1, 5,8 and 13** and thus he be acquitted thereof.

The sentence awarded shall commence from the date of this judgment as required under Rule 46(2) of the Rules of Procedure, 2012(ROP) of the

Tribunal-2[ICT-2] and the convict be sent to the prison with a conviction warrant accordingly.

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

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

**Justice Obaidul Hassan, Chairman**

**Justice Md. Mozibur Rahman Miah**

**Justice Md. Shahinur Islam, Member**