

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Surendra Kumar Sinha,**  
**Chief Justice**

**Mrs. Justice Nazmun Ara Sultana**

**Mr. Justice Syed Mahmud Hossain**

**Mr. Justice Hasan Foez Siddique**

**CRIMINAL APPEAL NO.103 OF 2013.**

(From the judgment and order dated 17.07.2013 passed by the International Crimes Tribunal-2 ( ICT-2) in ICT-BD Case No.04 of 2012.)

Ali Ahsan Muhammad Mujahid:

Appellant.

**=Versus=**

The Chief Prosecutor, International  
Crimes Tribunal, Dhaka, Bangladesh:

Respondent.

For the Appellant:

Mr. Khondker Mahbub Hossain,  
Senior Advocate with Mr. S.M.  
Shahjahan, Advocate, instructed  
by Mr. Zainul Abedin, Advocate-  
on-Record.

For the Respondent:

Mr. Mahbubey Alam, Attorney  
General (with Mr. Murad Reza,  
Additional Attorney General, Mr.  
Montazuddin Fakir, Additional  
Attorney General, Mr. Biswajit  
Debnath, D.A.G., Mr. Ekramul  
Hoque, D.A.G., Mr. Masud Hasan  
Chowdhury, D.A.G., Mr. Khondaker  
Diliruzzaman, D.A.G., and Mr.  
Bashir Ahmed, A.A.G., instructed  
by Syed Mahbubar Rahman,  
Advocate-on-Record.

***Date of hearing : 29.04.2015, 04.05.2015, 05.05.2015,  
06.05.2015, 17.05.2015, 24.05.2015,  
23.05.2015 and 26.05.2015.***

***Judgment on: 16-06-2015***

**JUDGMENT**

**Hasan Foez Siddique, J:** This statutory appeal,  
by convict Ali Ahsan Muhammad Mujahid (the  
appellant), has been filed under section 21 of  
the International Crimes (Tribunal) Act, 1973

(in short, ICT Act) against the judgment and order dated the 17<sup>th</sup> day of July, 2013 by the International Crimes Tribunal-2 (ICT-2) in ICT-BD Case No.04 of 2012 (The Chief Prosecutor v. Ali Ahsan Muhammad Mujahid) finding him guilty for the "Crimes against Humanity" enumerated in section 3(2) of the ICT Act listed in charge Nos.1,3,5,6 and 7 and convicting and sentencing him under section 20 of the ICT Act to a "single sentence of death" for the crimes as listed in charge Nos.6 and 7 and also sentencing him to suffer 5(five) years imprisonment for the crimes as listed in charge No.3, and imprisonment for life for the Crimes as listed in charge no.5. However, the Tribunal did not award any separate sentence for the crimes as listed in charge No.1 since charges No.1 and 6 are, in fact, are identical, i.e. charges for intellectual killings for the same period. The ICT-2 acquitted the appellant of the other charges framed against him.

Before considering the accusation made against the appellant chargewise with reference to the evidence and provisions of the ICT Act we would like to narrate the background of the case. It is relevant here to mention that ICT

Act provides that the Tribunal should not require proof of facts of common knowledge but shall take judicial notice thereof. The term "common knowledge" denotes facts those are commonly accepted or universally known, such as, general facts of history. In International Criminal Tribunal for Rwanda, Prosecutor v. Semanza, ICTR-97-20-A Appeal Judgment 20 May, 2005 it has been held that taking judicial notice of the facts of common knowledge is a matter of an obligation and not discretionary. In determining what constitutes common knowledge the ICTR held that these are facts that are so notorious or clearly established or susceptible to determination by reference to readily obtainable and authoritative sources that evidence of their existence is unnecessary. It further elaborated that common knowledge concerns facts that are generally known in the tribunal's jurisdiction and are reasonably undisputable.

Furthermore, this case heard by this Division necessarily carries the greatest burden of establishing the historical context of the crimes concerned. The furthest going

reliance is enabled when the law allows taking judicial notice of adjudicated facts.

People of Pakistan exercised their franchise to elect their representatives to run the Government of the country, the then Pakistan. Their opinion in that regard was reflected in the election of Pakistan National Assembly held in the last part of 1970. The result of the election was as follows:

Total seats-313		
Awami League	- bagged....	167 seats.
Pakistan People's party	- "	....88 seats.
All Pakistan Muslim		
League (Quayyum)	"	....09 seats.
Muslim League		
(Council)	"	....07 seats.
Jamat-ul-Ulema-i- Islam	"	....07 seats.
Markazi Jamat-ul-Ulema	"	....07 seats.
-i-Islam(Thanvi Group)		
National Awami Party	"	....07 seats.
(Wali Khan)		
Jamat-e-Islami	"	....04 seats.
Muslim League	"	....02 seats.
(convention)		
Pakistan Democratic Party	"	....01 seat.
Independent	"	....14 seats.
(source: "The Dawn"		

The verdict of the people of East Pakistan to represent them in the National Assembly as

reflected in the result of Pakistan National Assembly held in East Pakistan was as follows:

Total seats 169	
Awami League	....167(indirectly elected women's seats 07)
Pakistan Democratic Party	....01
Independent	<u>....01</u>
	169

(source: "The Dawn")

That is, the People of East Pakistan did not give any authority to any one from Jamat-e-Islami or its student organization Islamic Chattra Sangha (ICS) to speak on their behalf, in other words, represent them in the Pakistan National Assembly.

To run the Provincial Government in East Pakistan, the People's opinion to represent them was reflected in the result of East Pakistan Provincial Assembly Election which was as follows:

Total seats-310	
Awami League	...298 seats(including 10 indirectly elected women's seats)
Pakistan Democratic Party	.....02 seats
National Awami Party got	.....01 seat (Wali Khan)
Jamat-e-Islami	.....01 seat
Nizam-e-Islami	.....01 seat

......07 seats  
310 seats  
(source: "The Dawn")

In Provincial Assembly election Jamat-e-Islami secured only one seat out of 310 seats. The elected M.P. from Jamat-e-Islami was Md. Abdur Rohman Fakir who got 13,693 votes and his nearest rival was Awami League candidate A.K. Mojibor Rohman who bagged 12,300 votes. (The activities of only elected member Mr. Md. Abdur Rohman Fakir during the war of Liberation was not highlighted in the newspapers or in any other way)

Democracy is a form of government in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation as distinguished from a monarchy, aristocracy, or oligarchy. It means "People's power". It stands for the actual, active and effective exercise of power by the people in this regard. Schumpeter gives a simple definition of democracy as "the ability of people to choose and dismiss a Government". Giovanni Sartori said that democracy is a multi-party system in which the majority governs and respects the right of minority. It is the Government of the

People, for the people and by the people. The politicians and political scientists failed to discover any other better way to change the Government peacefully other than the process of adult franchise. Such process had been adopted and recognized as way of democracy.

In view of the result of election held in 1970 Yahya Khan, the then President of Pakistan, had no other option but to hand over power to the majority party who bagged highest seats. It was his democratic obligation to request majority party leader to form government subsequent after publication of result of the election in the official gazette. If any one claimed to be a democrat or to have slightest respect in democracy he could not deny to allow the majority party to form government respecting the people's will.

Now, let us see what happened in case of the then Pakistan, after holding election in last part of 1970 and in view of the result of the election. Siddiq Salik, military's public relations officer in East Pakistan, in his book, "Witness to Surrender" narrated, "----- a General in Yahya's confidence who came to Dacca in late December. After a sumptuous

dinner at Government House, he declared during an informal chat. Don't worry---- we will not allow these black bastards to rule over us." Subsequent facts reveal that this sentiment was not only one general.

21.12.1970

"Mr. Zulfiger Ali Bhutto, Chairman of the Pakistan People's Party (PPP) declared in Lahore on December 20, 1970 that the PPP is not prepared to occupy the opposition Benches in the National Assembly. He added, "Majority alone doesn't count in national politics." ('The Dawn')

30.01.1971

"About the convening of the Constituent Assembly on February 15 as suggested by Sheikh Mujib, the PPP Chief remained non-committal, but said there was nothing wrong "if we take time up to the end of February at least." ("The Pakistan Times")

13.02.1971

"Summoned the National Assembly to meet in Dhaka on 3<sup>rd</sup> March 1971." ( "The Dawn").

15.02.1971

"Mr. Z.A. Bhutto declared that his party will not attend the National Assembly



Session starting on March 3 at Dacca unless it was made clear to him and his partymen that there would be some amount of reciprocity from the majority party, either publicly or privately."

("The Dawn")

17.02.1971

"Mr. Bhutto said, the Assembly would have been a "slaughter house" ("The Dawn,")

01.03.1971

"Yahya puts off National Assembly Sessions". ("The Morning News")

02.03.1971

"The Sheikh said: "Only for the sake of a minority parties disagreement the democratic process of constitution has been obstructed and the National Assembly Session has been postponed *sine die*. This is most unfortunate so far we are concerned. We are the representatives of the majority people and we cannot allow it to go unchallenged."

("The People")

04.03.1971

"In an emotion choaked voice the Sheikh in his 30 minute speech called upon the people

to continue their struggle in a peaceful and organised manner". ("The Dawn")

04.03.1971

"Report of the Press Conference at Karachi Press Club on March 03, 1971 by Air Marshal (Rtd.) Asghar Khan.

Air Marshal (Rtd.) Asghar Khan yesterday advocated immediate transfer of power to the majority party in the country in order to retrieve the present "close to disaster" situation.

Addressing a hurriedly called Press Conference at the Karachi Press Club he said President Yahya should invite Sheikh Mujibur Rohman and hand over power- "real power" to him in line with the democratic processes and in the interest of preserving national integrity and solidarity.

He told a correspondent that the constitution making job could wait. What now took precedence was the transfer of power to where it belonged, namely, the single largest party in the National Assembly." ("The Dawn" )

06.03.1971

"Army withdrawn to barracks-East Wing  
Protest continues-Firing in Tongi,  
Rajshahi Announcement by Martial Law  
Authorities on March 5, 1971.

The announcement further said,  
"Following Sheikh Mujibur Rohman's appeal  
for peace, there has been considerable  
improvement in the general law and order  
situation during the past 24 hours."

("The Dawn")

07.03.1971

"Tikka Khan, Governor of East Pakistan.

Announcement on March 6, 1971- Chief  
Martial Law Administrator." ("The Dawn")

Bangabandhu Sheikh Mujibur Rahman leader of  
the majority party on 7 March, 1971 declared:

"সামরিক সন মার্শাল ল withdraw করতে হবে। সমস্ত সামরিক বাহিনীর  
লোকদের ব্যারাকের ভিতর ঢুকতে হবে। যে ভাইদের হত্যা করা হয়েছে তাদের তদন্ত করতে হবে।  
আর জনগনের প্রতিনিধির কাছে ক্ষমতা হস্তান্তর করতে হবে"-----

এরপর যদি ১টি গুলি চলে, এরপর যদি আমার লোককে হত্যা করা হয় তোমাদের কাছে  
অনুরোধ রইল, প্রত্যেক ঘরে ঘরে দুর্গ গড়ে তোল। তোমাদের যা কিছু আছে এই নিয়ে শত্রুর  
মোকাবেলা করতে হবে-----প্রত্যেক গ্রামে, প্রত্যেক মহল্লায় আওয়ামী লীগের নেতৃত্বে সংগ্রাম  
পরিষদ গড়ে তুলুন এবং আমাদের যা কিছু আছে, তাই নিয়ে প্রস্তুত থাকুন। রক্ত যখন দিয়েছি

আরো রক্ত দেবো। এ দেশের মানুষকে মুক্ত করে তুলবো ইনশাআল্লাহ। এবারের সংগ্রাম আমাদের মুক্তির সংগ্রাম, এবারের সংগ্রাম স্বাধীনতার সংগ্রাম। জয় বাংলা।”

“Mujib’s carefully calibrated speech fill short of a declaration of secession from Pakistan, as large number of people especially the extremist’ student wing of his own party. But the conclusion of his speech, which implied that his ultimate goal was independence, pacified them.” (S.A. Karim Sheikh Mujib-Thiump and Tragedy) “

০৯-০৩-১৯৭১

“ফি প্রতিনিধির হাতে ক্ষমতা হস্তান্তরই সংকট মুক্তির একমাত্র পথ”

.....সম্পাদকীয়।

-----সংকট এড়াইতে হইলে অবিলম্বে জনপ্রতিনিধিদের হাতে ক্ষমতা হস্তান্তর করা একান্ত জরুরী। এয়ার মার্শাল নুর খান তো স্পষ্টতই বলিয়াছেন যে, শেখ মুজিবুর রহমানের দেশ শাসন করার আইনগত অধিকার রহিয়াছে এবং ক্ষমতা হস্তান্তরের সরকার প্রতিবন্ধকতা অবিলম্বে দর করা উচিত। এয়ার মার্শাল আসগর খান ও শেখ মুজিবুর রহমানের শর্তাবলী অত্যন্ত যুক্তিযুক্ত বলিয়া মনে করেন।”

(“দৈনিক পাকিস্তান”)

১০-০৩-১৯৭১

“গত (মঙ্গলবার) গভীর রাতে পি,পি, আই এবং এনা পরিবেশিত খবরে প্রকাশ চীফ মার্শাল ল এ মিনিষ্ট্রের সংশ্লিষ্ট বিধি পরিবর্তন করিয়া লেঃ জেঃ টিক্কা খান এস পি কে-কে ‘খ’ অঞ্চলের মার্শাল ল’ এডমিনিষ্ট্রের নিয়োগ করিয়াছেন।”

(“দৈনিক ইত্তেফাক”)

১০-০৩-১৯৭১

“লঘিষ্ঠ দলের নেতা ভুে সাহেবের জেদাজেদিতে জাতীয় পরিষদের অধিবেশন স্থগিত রাখার ফলে পরিস্থিতি কতদর গড়াইয়াছে সে সম্পর্কে সরকার নিশ্চয়ই অবহিত। সামরিক কর্তৃপক্ষের প্রেস বিজ্ঞপ্তিতেই প্রকাশ, সারা পূর্ব বাংলায় সপ্তাহব্যাপী গোলযোগে ১৭২ ব্যক্তি প্রা হারাইয়াছেন, আহত হইয়াছেন ৩৫৮ জন। যথাসময়ে জাতীয় পরিষদের অধিবেশন অনুষ্ঠিত হইলে এতগুলি অমূল্য প্রা অকালে বিনষ্ট হইত না।”

(“দৈনিক পাকিস্তান”)

13.03.1971

“Report of the meeting held on March, 13, 1971 at Lahore by Minority Groups in the National Assembly.

The minority groups in the National Assembly at a meeting held here today accepted in principle, the four point demand of Awami League Chief Sheikh Mujibur Rohman, and demanded that interim governments should be set up at the Centre and in the Provinces before the commencement of the Assembly on March 25.”

14.03.1971

“করাচীর জনসভায় :

করাচী, ১৪ই মার্চ (পি পি আই):- পাকিস্তান পিপলস পার্টি প্রধান জনাব জেড, এ, আজ পূর্ব ও পশ্চিম পাকিস্তানের দুই সংখ্যাগরিষ্ঠ দলের হাতে ক্ষমতা হস্তান্তরের পরামর্শ দিয়াছেন।”

(“দৈনিক পাকিস্তান - ১৫ই মার্চ ১৯৭১”)

15.03.1971

"Rule of majority does not apply to Pakistan. PPP cannot be ignored in country's governance."

("The Dawn")

16.03.1971

"Minority parties leaders criticize Bhutto's speech .....Mian Tufail Mahammad acting "Amir" of the Jamat-i-Islami said in Lahore on Sunday that the setting up of two separate governments in the two wings of the country would be a negation of the Legal Framework Order.

..... He said Mr. Z.A. Bhutto, by making this suggestion had clearly stated his purpose of becoming the sole ruler in West Pakistan. He said it was strange that Mr. Bhutto had now started talking about West Pakistan as a single unit. He said that the conditions prevalent in East Pakistan today were a result of the attitude adopted by Mr. Bhutto." (underlined by us)

("The Pakistan Times")

18.03.1971

"ইয়াহিয়া- মুজিব দ্বিতীয় দফা আলোচনা সমাপ্ত  
আলোচনা চলবে"

("দৈনিক পূর্বদেশ")

20-03-1971

“আওয়ামী লীগ প্রধান শেখ মুজিবুর রহমান গতকাল শুক্রবার সকালে প্রেসিডেন্ট জেনারেল আগা মোহাম্মদ ইয়াহিয়া খানের সাথে ৯০ মিনিটব্যাপী দেশের বর্তমান রাজনৈতিক পরিস্থিতি এবং শাসনতান্ত্রিক অচলাবস্থা সম্পর্কে তৃতীয় দফা আলোচনা করেছেন। তাঁরা আজ শনিবার সকাল দশটায় উপদেষ্টাসহ আলোচনায় মিলিত হচ্ছেন।”

(“দৈনিক পূর্বদেশ”)

২১-০৩-১৯৭১

“মুজিব-ইয়াহিয়া বৈঠক সংকট নিরসনের পথে এগুচ্ছে”

(স্টাফ রিপোর্টার)

রাষ্ট্রীয় নীতির বর্তমান সংকট নিরসনের পথে মুজিব-ইয়াহিয়া আলোচনায় গতকাল শনিবার অগ্রগতি সাধিত হয়েছে। সংগ্রামী বাংলার অপ্রতিদ্বন্দী নায়ক শেখ মুজিবুর রহমান গতকাল তাঁর দলের শীর্ষস্থানীয় অপর ৬জন সহকর্মীকে নিয়ে পাকিস্তানের প্রেসিডেন্ট ইয়াহিয়া খানের সাথে ১৩০ মিনিট আলোচনা শেষে তিনি ও তাঁর সহকর্মীগণ সহাস্যবদনে প্রেসিডেন্ট ভবন থেকে বেরিয়ে আসেন। পরে তাঁর বাসভবনে তিনি সাংবাদিকদের বলেন, আলোচনায় কিছুটা অগ্রগতি হয়েছে। শেখ সাহেব বলেন, রাজনৈতিক সংকট সমাধানের পথে তাঁরা এগুচ্ছেন।”

(“দৈনিক পাকিস্তান”)

২২-০৩-১৯৭১

“প্রেসিডেন্টের সাথে আলোচনাঃ

“সব কিছুই ঠিক হয়ে যাবে”

(“দৈনিক সংগ্রাম”)

23.03.1971

“National Assembly Session put off again.”

(“The Pakistan Times”)

23.03.1971

"No legal impediments in power transfer"

Brohi

('The People')

Those are the short and relevant news items published in the different newspapers from the date of publication of the result of election held in Pakistan in 1970 to 25<sup>th</sup> March, 1971, which reflected the attitude of Yahya Khan and Z.A. Bhutto towards democracy. The policy adopted by them was apparently against the democracy and United Pakistan as well. Yahya Khan hatched a conspiracy with Bhutto in Larkana, which had been admitted by the Pakistan Generals and Policy makers subsequently, in which, they decided not to hand over power to the majority Party and thereby adjourned the Session of National Assembly. Husain Haqqani in his book "Pakistan between Mosque and Military" narrated situation with the following words: "The military's apologists as well as Bhutto's opponents blame Bhutto for adopting an undemocratic attitude when he refused to acknowledge the rights of the Bengali majority party. Bhutto's associates and some impartial observers, however, blame the military leadership. The overwhelming



sentiment among the West Pakistani elite against letting the Bengalis dominate Pakistan made it more likely that Bhutto and the military acted in concert, in the interest of West Pakistan as they perceived it."

Regarding conspiracy hatched in Larkana, Mr. S.A. Karim, a member of the then Pakistan Foreign Service in his book "Sheikh Mujib-Triumph and Tragedy" narrated:

"Indeed the lands around Larkana, the home town of Bhutto, are a hunter's paradise abounding in ducks, partridges and wild boar. Providentially, or more likely by pre-arrangement, Bhutto was there to offer Yahya his lavish hospitality in his country estate. Yahya was accompanied by two fellow-hunters, General Hamid and Peerzada. They were not merely to give Yahya company but to make sure that he did not compromise the vital interest of the Army or that of West Pakistan. Next to Yahya they were the most powerful members of the ruling junta.

Yahya and Bhutto talked for five hours without any aides. Because of the secretive nature of their talks not every detail of what

they talked about is known. However, Yahya had to keep his fellow generals in the junta informed and they leaked out some information to others. Bhutto, on his part, gave a sanitized version of their conversation to his close advisers and wrote a paragraph about the meeting in his slim book "The Great Tragedy" published several months later to justify his role in the military crackdown of March 1971. It is possible to reconstruct, therefore, in broad outline what transpired at their Larkana meeting.

After Larkana there could be little doubt that Bhutto had achieved his purpose. No longer would Yahya refer to Mujib as the future Prime Minister of Pakistan.

He further narrated the contingency plan for a possible confrontation with Mujib was already under preparation. The docks needed to be cleared for a possible military action in East Pakistan. To that end, on 22 February, Yahya called a conference of Governors and Martial Law Administrator General Peerzada and Hamid were also present at the conference. Yahya brought up the matter of political deadlock in the Assembly Session and the

desirability of postponing it. Both Governor Ahsan and MLA Yakub were against the idea of postponement and wrote a memorandum bringing out the disastrous implications of rolling back the political situation to what it was in 1969. Yahya seemed somewhat shaken told them: "I am willing to accept your views. But go and convince Mr. Bhutto. He is the one who is insisting on postponement." Ahsan and Yakub went to Karachi to meet Bhutto. He told them: "You need not be apprehensive about the reaction of East Pakistan. Awami League is a bourgeois party. It is not a party of the masses. It cannot fight a guerrilla war. There will be no violent conflict in East Pakistan."

"The decision to use force in East Pakistan was made secretly on 11 February, 1971 by the top Generals, including Hamid Khan, S.G.M.M. Pirzada, Gul Hasan Khan, Tikka Khan, Ghulam Umer and Akbor Khan at the army headquarters. The Deputy Chief of Pakistan's Intelligence Agency, S.A. Saud, who attended the secret meeting, opposed the idea and leaked it to a senior Bengali officer of the Intelligence Department. The Bengali, in turn, informed Mujib of the Army's decision. Yahya's plan to

suppress the Bengalis was apparently given the final shape in early March. Iqbal F. Quadir, a retired Vice Admiral with the Pakistan Navy, got the hint on 8 March, from Admiral Muzaffar Hasan, the Navy Chief. Quadir, who was about to leave for Paris for a stint as Pakistan's Naval Attache, had gone to bid farewell to his Chief when the Admiral told him that a Major General, who was visiting Karachi, had mentioned to him in passing that the Army would be ready for action in East Pakistan by 17 March. Quadir later discovered that the Major General was Akbar Khan, the Military Intelligence Chief.

On 3<sup>rd</sup> March, the State Department sent a cable to the U.S. Embassy in New Delhi, which clearly indicated the United States had anticipated Yahya would use the military to suppress the Bengalis. The telegram said that as the Pakistani political crisis depended with the possibility that the "Martial Law Administrator may be prepared to use force to maintain unity" the attitude of the Indian government took on a growing importance.

On 11 March, the U.S. Consul General in Karachi told the State Department it had further information that Yahya could unleash

the military force in East Pakistan" (Myths and Facts-Bangladesh Liberation War-B.Z. Khasru). "The attitude of the Army was summed up by the general officer commanding, Major General Khadim Hussain Raza, who told an Awami League sympathizer within the hearing of fellow officers: "I will muster all I can- tanks, artillery and machine guns- to kill all the traitors and, if necessary, raze Dacca to the ground. There will be no one to Rule; there will be nothing to Rule." (Pakistan -between Mosque and Military- by Husain Haqqani)"

Now let us see how the Pakistani Rulers, Army, Politicians, and Policy makers dealt with their own majority citizens in East Pakistan after 25.03.1971. How the policy makers, servants of the people and "Patriotic Army" salaried by the people dealt with own countrymen in the name of Islam and defence of Pakistan.

Siddiq Salik, a Pak Army officer who was in Dhaka throughout the fateful year, 1971 as a uniquely privileged observer and participant in political and human drama. He witnessed the activities of Pakistan Army in Bangladesh and was involved in "Operation Searchlight". He, in

his book "Witness to Surrender" gave descriptions of Pakistan Army's 'Operation Searchlight' on the night of Thursday 25<sup>th</sup> March, 1971 with the following words:

"Major General Khadim Hussain was brooding over the possible outcome of political talks on 25 March when his green telephone rang at about 11 a.m. Lieutenant-General Tikka Khan was on the line. He said, 'Khadim, it is tonight'.

It created no excitement for Khadim. He was already waiting for the fall of the hammer. The President's decision coincided with the second anniversary of his assumption of power. General Khadim passed the word to his staff for implementation. The lower the news travelled, the greater the sensation it created. I saw some junior officers hustling about mustering some extra recoilless rifles, getting additional ammunition issued, a defective mortar sight replaced. The tank crew, brought from Rangpur (29 Cavalry) a few days earlier, hurried with their task to oil six rusty M-24s for use at night. They were enough to make a noise on the Dacca streets.

The general staff of Headquarters 14 Division rang up all the outstation garrisons to inform them of H-hour. They devised a private code for passing the message. All garrisons were to act simultaneously. It was calculated that by then the President would have landed safely in Karachi.

The plan for operation SEARCHLIGHT visualized the setting up of two headquarters. Major General Farman, with 57 Brigade under Brigadier Arbab, was responsible for operations in Dacca city and its suburbs while Major General Khadim was to look after the rest of the province. In addition, Lieutenant General Tikka Khan and his staff were to spend the night at the Martial Law Headquarters in the Second Capital to watch the progress of action in and outside Dacca.

A few days earlier, General Yahya had sent Major General Iftikhar Janjua and Major General A.O. Mitha to Dacca as possible replacements for Khadim and Farman in case they refused to crack down. After all, they had formed General Yakub's team untill very recently and might still share his ideas. General Hamid had even gone to the extent of

questioning Khadim's and Farman's wives to assess their husbands' views on the subject. Both the Generals, however, assured Hamid that they would faithfully carry out the orders.

Junior officers like me started collecting at Headquarters, Martial Law Administrator, Zone 'B' (Second Capital) at about 10 p.m. They laid out Sofas and Easy Chairs on the lawn and made arrangements for tea and coffee to last the night. I had no specific job to perform except to be available. A Jeep fitted with a wireless set was parked next to this 'outdoor operations room'. The city wrapped in starlight, was in deep slumber. The night was as pleasant as a spring night in Dacca could be. The setting was perfect for anything but a bloody holocaust. (underlined by us)

At the given hour, Brigadier Arbab's brigade was to act as follows:

13 Frontier Force was to stay in Dacca cantonment as reserve and defend the cantonment, if necessary. 43 Light Anti-Aircraft (LAA) Regiment, deployed at the airport in an anti aircraft role since the banning of overflights by India, was to look after the airport area.



22 Baluch, already in East Pakistan rifles Lines at Pilkhana, was to disarm approximately 5,000 E.P.R. personnel and seize their wireless exchange.

32 Punjab was to disarm 1,000 'highly motivated' policemen, a prime possible source of armed manpower for the Awami League, at Rajarbagh Police Lines.

18 Punjab was to fan out in the Nawabpur area and the old city where many Hindu houses were said to have been converted into armouries.

Field Regiment was to control the Second Capital and the adjoining Bihari localities (Mohammadpur, Mirpur).

A composite force consisting of one Company each of 18 Punjab, 22 Baluch and 32 Punjab, was to 'flush' the University Campus particularly Iqbal Hall and Jagan Nath Hall which were reported to be the strong points of the Awami League rebels.

A platoon of Special Service Group (Commandos) was to raid Mujib's house and capture him alive.

#### **ALLOTMENT OF TROOPS TO TASKS**

#### **DACCA**

Command and Control: Maj. Gen. Farman with

H.Q. M.L.A. Zone B.

#### Troops

H.Q.57 Brigade with troops in Dacca, i.e. 18 Punjab, 32 Punjab (C.O. to be replaced by [Lt. Col.] Taj, GSO I(Int)), 22 Baluch, 13 Frontier Force, 31 Field Regt., 13 Light Act-Ack Regt., Company of 3 Commando (from Comilla).

#### Tasks:

1. Neutralise by disarming 2 and 10 East Bengal, H.Q. East Pakistan Rifles (2500), Reserve Police at Rajar Bagh(2000).
- 2.Exchange and transmitters, Radio, TV, State Bank.
- 3.Arrest Awami League leaders-detailed lists and addresses.
- 4.University Halls, Iqbal, Jagan Nath, Liaquat (Engineering University)
- 5.Seal off town including road, rail and river. Patrol river.
- 6.Protect factories at Ghazipur and Ammo Depot at Rajendrapur.

Remainder: Under Maj. Gen. K.H. Raja and H.Q. 14 Div.

#### JESSORE

Troops:

H.Q. 107 Brigade, 25 Baluch, 27 Baluch,  
Elements of 24 Field Regt., 55 Field Regt.

Tasks:

1. Disarm 1 East Bengal and Sector H.Q. East Pakistan Rifles and Reserve Police incl. Ansar weapons.
2. Secure Jessore town and arrest Awami League and student leaders.
3. Exchange and telephone communications.
4. Zone of security round Cantt. Jessore town and Jessore-Khulna road, airfield.
5. Exchange at Kushtia to be made inoperative.
6. Reinforce Khulna if required.

KHULNA

Troops:

22 FF

Tasks:

1. Security in town.
2. Exchange and Radio Station.
3. Wing H.Q. East Pakistan Rifles, Reserve Companies and Reserve Police to be disarmed.
4. Arrest Awami League students and communist leaders.

RANGPUR-SAIDPUR

Troops:

H.Q. 23 Brigade, 29 Cavalry, 26 Frontier Force,  
23 Field Regt.

Tasks:

1. Security of Rangpur-Saidpur.
2. Disarm 3 East Bengal at Saidpur.
3. If possible disarm Sector H.Q. and Reserve Company at Dinajpur or neutralise by dispersal Reserve Company by reinforcing border outposts.
4. Radio Station and telephone exchange at Rangpur.
5. Awami League and student leaders at Rangpur.
6. Ammo dump at Bogra.

#### RAJSHAHI

Troops:

25 Punjab

Tasks:

1. Despatch C.O.-Shafqat Baluch.
2. Exchange and Radio Station Rajshahi.
3. Disarm Reserve Police and Sector H.Q. East Pakistan Rifles.
4. Rajshahi University and in particular Medical College.
5. Awami League and student leaders.

#### COMILLA

Troops:

53 Field Regiments, 1½ Mortar Barreries,  
Station troops, 3 Commando Battalion (less  
Company)

Tasks:

1. Disarm 4 East Bengal, Wing H.Q. East  
Pakistan Rifles, Reserve District Police.
2. Secure town and arrest Awami League leaders  
and students.
3. Exchange.

SYLHET

Troops:

31 Punjab less company

Tasks:

1. Radio Station, Exchange.
2. Koenno Bridge over Surma.
3. Airfield
4. Awami League and student leaders.
5. Disarm, Section H.Q. East Pakistan Rifles  
and Reserve Police. Liaise with Sikandar.

CHITTAGONG

Troops:

20 Baluch, less advance party; Company 31  
Punjab present ex Sylhet; Iqbal Shafi to lead a  
mobile column from Comilla by road and  
reinforce S.T.0100 Hrs (H hrs) on D-Day.

Mobile Column: Brig. Iqbal Shafi with Tac H.Q. and Communications; 24 Frontier Force; Troop Heavy Mortars; Field Company Engineers; Company in advance to Feni on evening D-Day.

Tasks:

1. Disarm E.B.R.C., 8 East Bengal, Section H.Q. East Pakistan Rifles, Reserve Police.
  2. Seize Central Police Armoury (Twenty thousand)
  3. Radio Station and Exchange.
  4. Liaise with Pakistan Navy (Commodore Mumtaz)
  5. Liaise with Shaigri and Janjua (C.O.8 East Bengal) who have been instructed to take orders from you till arrival Iqbal Shafi.
  6. If Shigri and Janjua feel sure about their outfits then do not disarm. In that case merely put in a road block to town from Cantt. by placing a Company in defensive position so that later E.B.R.C. and 8 East Bengal are blocked should they change their loyalties.
  7. I am taking Brig. Mozamdar with me. Arrest Chaudhury (C.I. E.B.R.C.) on D-Day night.
- Arrest of Awami League and student leaders after above accomplished."

Only insensible man can believe that such barbarious attack targeting unarmed people was made without previous plan. That was brutal attack by Pakistan Army to the citizens of Pakistan who used to pay their salaries. Arrival of Yahya Khan and, thereafter, Z.A Bhutto in Dhaka and sittings and talkings with the leaders of the majority party were mockeries which are apparent from the plan and atrocities committed by the Army.

Archer K Blood, the American Consul General in the then East Pakistan in 1971 in his book "The Cruel Birth of Bangladesh" described the horror watching the same with the following words:

"Together with our house guests, we spent a good part of the night of March 25-26 on the flat roof of the house, watching with horror the constant flash of tracer bullets across the dark sky and listening to the more ominous clatter of machine gun fire and the heavy clump of tank guns. We are able to establish that there was particularly heavy firing in the vicinity of the police lines and the East Pakistan Rifles barracks. We could see many fires burning, some of them in old Dacca. Our

head bearer told us that one particularly large fire was burning in a poor bazaar area where many of his lived." He added, "Let us use the most conservative estimate of the number of students killed at Dacca University, i.e. 500. Our police sources indicated that from 600-800 East Pakistani police were killed in Dacca during the hard fighting on the night of March 25. Probably several hundred Bengali members of the East Pakistan Rifles were killed that night. Also hard to estimate is the number of casualties in the Old City where Army troops burned Hindu and Bengali areas and shot the occupants as they came tumbling out. Most observers put these casualties in the range of 2000-4000.

At this juncture we estimated that as many as 4000-6000 people had lost their lives as a result of military action in Dacca.

On March 28 I sent a telegram captioned 'Selective Genocide' As far as I know, it was the first time that term had been used, but it was not to be the last"

On his return to London, John Stonehouse M.P. was interviewed on the "Today Program" of B.B.C. on April 27, Stonehouse said that



"terrible" things had happened in East Bengal, things which have not been seen since the last war. Describing it further Stonehouse said that what had happened in East Bengal "makes Vietnam look like a tea party. "He talked in particular of the incident at Dacca University on March 25, when staff and students were rounded up and shot in cold-blood."

The news of the atrocities of the said fateful night, and, thereafter, had been reported by Simon Dring of Daily Telegraph, London, published in its 30.03.1971 issue, which was as follows:-

**"GENOCIDE IN BANGLADESH  
SOME EYE-WITNESS ACCOUNTS  
'HOW DACCA PAID FOR A UNITED  
PAKISTAN  
Report by Simon Dring of Daily  
Telegraph, London, March 30, 1971**

7000 slaughtered: Homes burned " In the name of "God and a United Pakistan" "Dacca is today a crushed and frightened city. After 24 hours of ruthless, cold-blooded shelling by the Pakistan Army, as many as 7000 people are dead, large areas have been leveled and East Pakistan's for independence has been brutally put to an end.

It is impossible accurately to assess what all this has so far cost in terms of innocent human lives. But report beginning to filter in from the outlying areas, Chittagong, Comilla and Jessore put the figure, including Dacca, in the region of 15,000 dead.

Only the horror of the military action can be properly gauged the students dead in their beds, the butches is in the markets killed behind their stalls, the women and children roasted alive in their houses, the Pakistani Hindu religion taken out and shot enmasse, the bazaars and shopping areas razed by fire and the Pakistan flag that now flies over every building in the capital.

An estimated three battalions of troops were used in the attack on Dacca - one of armored, one of artillery and one of infantry. They started leaving their barracks shortly before 10 p.m. By 11, firing had broken out and the people who had started to erect makeshift barricades- overturned cars, three stumps, furniture concrete piping- became early casualties as the troops rolled into town.

Sheikh Mujibur was warned by telephone that something was happening, but he refused to

leave his house. 'If I go into hiding they will burn the whole of Dacca to find me,' He told an aide who escaped arrest.

The students were also warned, but those who were still around later said that most of them thought they would only be arrested. Led by American supplied M-24 World War II Tanks, one column of troops speed to Dacca University shortly after midnight. Troops took over the British Council Library and used it as a fire base from which to shell nearby dormitory areas.

Caught completely by surprise, some 200 students were killed in Iqbal Hall, headquarters of the militantly anti-government student's union, as shells slammed into the building and their rooms were sprayed with machine gun fire.

The military removed many of the bodies, but the 30 bodies till there could never have accounted for all the blood in the corridors of Iqbal Hall.

At another hall, reportedly, soldiers buried the dead in a hastily dug mass grave which was then bull-dozed over by tanks. People living near the university were caught in the

fire too, and 200 yards of shanty houses running alongside a railway line were destroyed.

Army patrols also razed nearby market area. Two days later, when it was possible to get out and see all this, some of the market's stall-owners were still lying as though asleep, their blankets pulled up over their shoulders. In the same district, the Dacca Medical College received direct bazooka fire and a mosque was badly damaged.

As the university came under attack other columns of troops moved in on the Rajarbag Headquarters of the East Pakistan Police, on the other side of the city. Tanks opened fire first, witness said; then the troops moved in and leveled the men's sleeping quarters, firing incendiary rounds into the buildings. People living opposite did not know how many died there, but out of the 1,100 police based there not many are believed to have escaped.

### **By 2 O'clock Friday**

Fires were burring all over the city, and troops had occupied the university and surrounding areas and were busy killing off students still in hiding. There was still heavy

shelling in some areas, but the fighting was beginning to slacken noticeably. Opposite the Intercontinental Hotel Platoon of troops stored the empty office of "The People" newspaper, burning it down along with most houses in the area and killing the night watchman.

### **City lies silent**

Shortly before dawn most firing had stopped, and as the sun came up an eerie silence settled over the city, deserted and completely dead except for noise of the crows and the occasional convoy of troops.

At noon, again without warning, columns of troops poured into the old section of the city where more than 1 million people lived in a sprawling maze of narrow winding streets.

For the next 11 hours, they devastated large areas of the "old town", as it is called, where Sheikh Mujibur had some of his strongest support in Dacca English Road, French Road, Naya Bazar, City Bazar were burnt to the ground.

They suddenly appeared at the end of the street", said one old man living in French Naya Bazar area. "Then they drove down it, firing into all the houses."

The leading unit was followed by soldiers carrying cans of patrol. Those who tried to escape were shot. Those who stayed were burnt alive. About 700 men, women and children died there that day between noon and 2 p.m.

The pattern was repeated in at least three other areas of up to a half square mile or more. Police Stations in the old town were also attacked.

### **Constables killed**

"I am looking for my constables", a Police Inspector said on Saturday morning as he wondered through the ruins of one of the bazars. "I have 240 in my district, and so far I have only found 30 of them all dead."

One of the biggest massacres of the entire operation in Dacca took place in the Hindu area of the old town, the soldiers reportedly made the people come out of their houses and shot them in groups. This area too was eventually razed.

The troops stayed on in force in the old city until about 11 p.m. on the night of Friday, March 26, driving around with local Bengali informers. The soldiers would fire a flare and the informer would point out the

houses of Awami League supporters. The house would then be destroyed- either with direct fire from tanks or recoilless rifles or with a can of gasoline, witness said.

One of the last targets was the daily Bengali language paper "Ittefaq". More than 400 people reportedly had taken shelter in its offices when the fighting started. At 4 o'clock Friday afternoon, four tanks appeared in the road outside. By 4-30 the building was an inferno, witnesses said. By Saturday morning only the charred remains of a lot of corpses huddled in back rooms were left."

Now let us see what some other foreign journalists said about the atrocities committed by Pakistan Army in 1971.

The New York Times March 28, 1971

By Sydney H. Schanberg

"The Pakistan Army is using artillery and heavy machine guns against unarmed East Pakistani civilians to crush the movement for autonomy in this province of 75 million people.

The attack began late Thursday night without warning. West Pakistani Soldiers, who predominate in the Army, moved into the streets

of Dacca, the provincial capital, to besiege the strongholds of the independence movement, such as the University."

The Washington Post, March 30, 1971

#### Tragedy in Pakistan

"The Eastern Wing of Pakistan, much the more populous, own national elections last December and began moving peaceably to take over national power. The Western Wing, which has dominated and exploited the East since Moslem Pakistan was carved out of British India in 1947, correctly perceived the threat and rather than surrender power stalled. Talks were begun to see if a constitutional formula could be devised to allow the East autonomy within an all - Pakistan Federation. It is not clear whether the power brokers of West feared that the talks were failing or succeeding at any rate, without notice or armed provocation, last Friday they opened fire with Machine Guns, Recoilless Rifles and Tanks against the largely unarmed or heavily outgunned- citizenry of East Pakistan. Evidently thousands were killed; the number can only be estimated because the government at once imposed censorship and



expelled all foreign correspondents confiscating their notes and film."

The New York Post. Tuesday, March 30, 1971

The Army's American M 24 Tanks, Artillery and Infantry destroyed large parts of East Pakistan's largest city and provincial capital.

"The chief targets were the University, the populous old city where Sheikh Mujibur Rahman and his Awami League were strongest, and the industrial areas on the outskirts of the city of 1.5 million people.

Parhaps 7000 persons were killed in the provincial capital alone.

Touring the still burning battle areas Saturday, and Yesterday, one found the burnt bodies of some students still in their dormitory beds. The tanks had made direct hits on the dormitories."

The New York Times, March 31, 1971

Editorial

In the name of Pakistan

"Acting 'in the name of God and a United Pakistan' forces of the West Pakistan dominated military government of President Yahya Khan have dishonored both by their ruthless crackdown on the Bengali majority seeking a

large measure of autonomy for their homeland in the country's Eastern region."

The Sun, Baltimore, Sunday April 4, 1971

Pakistan is exterminating the Bangalies.

By John. E. Woodruff

"Less than four months ago, the West Pakistan Army said it could not send soldiers and Helicopters to East Bengal to save survivors of the cyclone that took hundreds of thousands of lives in the mouth of the Ganges. If troops and Helicopters were moved from West Pakistan, India might attack, the Army said. By the time the Army statement was issued, India was increasing its offers of relief aid for the cyclone victims.

Today, the same West Pakistan Army shows every sign of being prepared to send its last soldier to more populous East Bengal, if necessary, in an all-out effort to shoot to death the results of December's elections."

The Time Magazine, April 5, 1971

"In Dacca Army Tanks and truckloads of troop with fixed bayonets came clattering out of their suburban, shouting "Victory to Allah" and "Victory to Pakistan" Time correspondent Dan Coggin, who, along with other newsmen, was

subsequently expelled from Pakistan reported: Before long, artillery and rocket blasts rocked half a dozen scattered sections of Dacca. Tracers arched over the darkened city. The chatter of automatic weapons was punctuated with grenade explosions, and tall columns of black smoke towered over the city. In the night came the occasional cry of "Joi Bangla" (Victory to Bengal)" followed by a burst of machine gun fire."

The Time Magazine, April 12, 1971

Pakistan: Round 1 to the West

"There is no doubt" said a foreign diplomat in East Pakistan last week "that the word massacre applies to the situation". Said another Western official: "It's a veritable bloodbath. The troops have been utterly merciless."

The New York Times, April 14, 1971

"The Pakistani military are using Jet fighter-bombers, heavy artillery and gun boats—mostly supplied, by the United States, the Soviet Union and Communist China."

The Washington Post, May 12, 1971

Suffering Bengali

"Pakistan continues to act badly towards the citizens of its Eastern wing, whose movement for political autonomy carried on through legal and democratic channels -was cruelly crushed by the Pakistani Army during the sprint."

The Washington Daily News, June 15, 1971

#### Slaughter in East Pakistan

"Eye witnesses reports, one more ghastly than another, continue to filter out of East Pakistan, telling of the massacre of the Bengali people by the Pakistan Army.

Naturally, the military regime of President Yahya Khan denies it is committing selective genocide. But evidence mounts that it is cold bloodedly murdering minority Hindus, Bengali separatists, intellectuals, doctors, professors, students- in short those who could lead a self governing East Pakistan."

The New York Times, June 16, 1971

#### Appalling Castastrophe

"Hiroshima and Nagasaki and vividly remembered by the mind's eye primarily because of the moral means that brought holocaust to those cities. Statically comparable disasters in Hamburg and Dresden are more easily

forgotten, they were produced by what we already then conceived of a "conventional" methods.

Against this back ground one must view appalling Catastrophe of East Pakistan whose scale is so immense that it exceeds the colorimeter capacity by which human sympathy is measured. No one can hope to count the dead, wounded, missing homeless or sticken whose number grows each days."

The Newsweek, June 28, 1971

"The Terrible Blood Bath of Tikka Khan that the Pakistani Army is visiting a cheadful blood bath upon the people of "East Pakistan is also affirmed by newsmen and others who have witnessed the flight of a 6 million terrified refugees into neighbouring India, Newsweek's Tomy Clifton recently visited India's refugee-clogged border regions and cabled the following report:

Anyone who goes to the camps and hospitals at along India's border with Pakistan comes away believing the Punjabi Army capable of any atrocity, I have seen babies who have been shot, men who have had their backs whipped raw. I've seen people literally struck dumb by the

horror of seeing their children murdered in front of them or their daughters dragged off into sexual slavery. I have no doubt at all that there have been a hundred "Mylais" and "Lidices" in East Pakistan- and I think, there will be more .....

Other foreigners too, were dubious about the atrocities at first, but the endless repetition of stories from different sources convinced them. "I am certain that troops have thrown babies into the air and caught them on their Bayonets," says Briton, John Hastings, a Methodist missionary who have lived in Bengal for twenty years. "I am certain that troops have raped girls repeatedly, then killed them by pushing their Bayonets up between their legs."

All this savagery suggests that the Pakistani Army is either crazed by blood lust or, more likely is carrying out a calculated policy amounting to genocide against the whole Bengali population."

The Guardian, London, March 31, 1971

#### A Massacre in Pakistan

"Only now are we getting Pakistani facts to abet fears. President Yahya Khan has written to

suppress these facts, filling his air waves and press with evasive propaganda, deporting every journalist he could find. But a few independent escaped this net and their stories- just emerging- seek with horror: crowds indiscriminately machine gunned, student hostels razed by shells, shanty towns burned and bombed, civilians shot dead in their beds. We do not yet know the fate of those arrested in East or the true level of resistance through the province. But we do know first hand and reliably that many unarmed and unready Bangalies have died."

The Guardian Weekly, April 4, 1971

A cry for help

"The situation in Bangladesh is worsening day by day and it is a pathetic and heartrending spectacle, for there is hardly a liberation movement of the twentieth- century that can claim such unanimous support from people of all classes, nor one that was ever so ill- prepared and ill- equipped to fight for its rights."

The New Statesmen, April 16, 1971

The Blood of Bangladesh

"If blood is the price of a people's right to independence, Bangladesh has overpaid. Of all the recent struggles to bring down governments and charge frontiers in the name of national freedom the war in East Bengal may prove the bloodiest and breifest."

The Sunday Times, June 13, 1971

Genocide

By Anthony Mascarenhas

"West Pakistan's Army has been systematically massacring thousands of civilians in East Pakistan since the end of March. This is the horrifying reality behind the news blackout imposed by President Yahya Khan's government since the end of March. This is the reason why more than five million refugees have streamed out of East Pakistan into India, risking cholera and famine.

The army has not merely been killing supporters of the idea of Bangladesh, an independent East Bengal. It has deliberately been massacring others. Hindus and Bengali Muslims, Hindus have been shot and beaten to death with elubs simply because they are Hindus. Villages have been burned."

The Expression, Stockholm, April 12, 1971



### Mass murders in Bengal

"Hundreds of thousands of people are fleeing from their homes, starvation threatens. The hostilities are directed against the majority of the country's population under the motivation that the unity of Pakistan must be preserved. The military regime is using violence to sweep aside the result of the country's first general parliamentary elections. the rulers were not prepared to swallow the consequences of this election; instead they set the military machinery going. It is obvious that this method will never lead to the reunification of East and West Pakistan. Ruthless occupation are drawn out war; these are the only alternatives".

This is a policy that must be condemned."

The Djakarta Times, April 15, 1971

### Stop this Genocide

"Politicians, teachers, students, doctors, engineers and even unarmed civilians, inducing women and children are wiped out in East Pakistan. Will the Muslim world in general, suffer this? Does Islam permit Killing of unarmed Muslims by armed Muslims? Can Islamic principles justify, the suppression by a

minority of a majority demand for social and economic justice.

Muslim states should act quickly and see that good Muslims are not massacred by fellow Muslims."

The Palaver Weekly. Ghana, July 8, 1971

East Pakistan cry for help

"On March 25, 1971 under cover of darkness, one of the most gruesome crimes in the history of mankind was perpetrated by a blood-thirsty military junta against a whole population of seventy five million, constituting the majority of the people of Pakistan.

Many newspapers, reputed for their objectivity, have come out with documentary evidence in the form of photographs and eye-witness reports one of the greatest genocide excercises in the annals of man."

Indonesian Observer, Djakarta, August 30, 1971

Editorial

"Tragedy of unprecedented proportions

The main reason, why events in East Pakistan continue to get a wide press coverage everywhere, is simply because in that part of the world a tragedy of unprecedented proportion

is unfolding as a result of the endless flow of refugees into India."

Those were the few of news items published in the different foreign newspapers regarding genocide committed by Pakistan Army. Not the whole.

In the book "Bangladesh Politics: Problems and Issues" Dr. Rawnaq Jahan added an appendix with caption, "Eye witness accounts" wherein it had been stated:

"The following eye witness accounts of the 1971 genocide depict different incidents. The first two eye witness accounts describe the mass murders committed on March 25 night on Dhaka University campus. The first account is by a survivor of the killings in one of the student dormitories (Jagannath Hall) where Hindu students lived. The second account is by a university Professor who witnessed and video taped the massacres on Dhaka University campus. The third and fourth eye witnesses testimonies describe the mass rape of women by the Pakistanis. The fifth testimony describes the killings in the village of Bangabandhu Sheikh Mujibur Rahman, the leader of the nationalist movement. The last account describes the

atrocities of the non-Bengali Biharis who collaborated with the Pakistan Army. The testimonies are taken from two sources; one is a Bengali book entitled "1971: Terrible Experiences" (Dhaka: Jatiya Shahitya Prakashoni, 1989), which was edited by Rashid Haider and is a collection of eye witness accounts. Sohela Nazneen translated the accounts from Bengali to English. The other source, "The Year of the Vulture" (New Delhi: Orient Longman, 1972), is an Indian journalist's (Amita Malik) account of the genocide. In the Malik's book Dhaka is spelled as Dacca, the spelling used in 1972.

#### MASSACRE AT JAGANNATH HALL

This testimony is from Kali Ranjan Sheel's "Jagannath Haley Chhilam" ["I was at Jagannath Hall"], in Rashid Haider (ed.), "1971: Vayabaha Ovigayata" (1971: Terrible Experiences) [Dhaka: Jatiya Shahitya Prakashoni, 1989], p.5. It was translated by Sohela Nazneen. Reprinted with permission.

According to Kali Ranjan Sheel: "I was a student at Dhaka University. I used to live in Room # 235 (South Block) in Jagannath Hall. On the night of 25<sup>th</sup> of March I woke up from sleep

by the terrifying sound of gunfire. Sometimes the sound of gunfire would be suppressed by the sound of bomb explosions and shellfire. I was so terrified that I could not even think of what I should do ! After a while I thought about going to Shusil, Assistant General Secretary of the Student's Union. I crawled up the stair very slowly to the third floor . I found out that some students had already taken refuge in Shusil's room, but he was not there. The students told me to go to the roof of the building where many other students had taken shelter but I decided (rather selfishly) to stay by myself. I crawled to the toilet at the north end of the third floor and took refuge in there. I could see that the soldiers were searching for students with flashlights from room to room and were taking them near the Shahid Minar ( Martyr's Memorial) and then shooting them. Only the sound of gunfire and pleas of mercy filled the air. The tin sheds in front of the Assembly and some of the rooms in North Block were set on fire .

After some time about forty to fifty soldiers came to the South Block and broke down the door of the dining room. The lights were

turned on and they were firing at the students who took shelter in that room .... When the soldiers came out they and Pryanath (the Caretaker of the students dormitory) at gunpoint, and forced him to show the way through all the floors of the dormitory. During this time I was not able to see them as I left the toilet by climbing up the open window and took shelter on the Sunshade of the third floor. But I could hear the cracking sounds of bullets, the students pleading for mercy and the sound of the soldiers rummaging and throwing things about in search of valuables. The soldiers did not see me on the Sunshade.

After they had left I again took refuge in the washroom. I peeked through the window and saw that the other students' dormitory, Salimullah Hall, was on fire.... The whole night the Pakistani soldiers continued their massacre and destruction ..... Finally, I heard the call for the Morning Prayer.

The curfew was announced at dawn and I thought that this merciless killing would stop. But it continued. The soldiers started killing those who had escaped their notice during the night before.

It was morning and I heard the voices of some students. I came out of the washroom, and saw the students were carrying a body downstairs while soldiers with machine guns were accompanying them. It was the dead body of Priyanath. I was ordered to help the students and I complied. We carried bodies from the dormitory rooms and piled them up in the field outside.

There were a few of us. There were students, gardeners, two sons of the gatekeeper and the rest were janitors. The janitors requested the Pakistanis to let them go since they were not Bengalis. After a while the Army separated the janitors from us.

All the time the soldiers were cursing and swearing at us. The soldiers said "We will see how you get free Bangladesh! Why don't you shout Joy Bangla (Victory to Bengal)! The soldiers also kicked us around. Downstairs we saw dead bodies piled up, obviously victims from the night before. We were again ordered to carry the dead bodies to the Shahid Minar. The soldiers had already piled up the bodies of their victims and we added other bodies to the

piles. If we felt tired and slowed down, the soldiers threatened to kill us.

As my companion and I were carrying the body of Sunil (our dormitory guard), we heard screams in female voices. We found that the women from the nearby slums were screaming as the soldiers were shooting at the janitors (the husbands of the women). I realized that our turn would come too as the Pakistanis started lining up those students who were before us, and were firing at them. My companion and I barely carried the dead body of Sunil toward a pile where I saw the dead body of Dr. Dev (Professor of Philosophy). I cannot explain why I did what I did next. May be from pure fatigue or may be from a desperate hope to survive!

I lay down beside the dead body of Dr. Dev while still holding onto the corpse of Sunil. I kept waiting for the soldiers to shoot me. I even thought that I had died. After a long time I heard women and children crying. I opened my eyes and saw that the Army had left and the dead bodies were still lying about and women were crying.

I crawled towards the slums. First I went to the house of the Electrician. I asked for



water but when I asked for shelter, his wife started crying a loud and I then left and took refuge in a toilet ..... Suddenly I heard the voice of Idu who used to sell old books. He said "Don't be afraid. I heard you are alive. I shall escort you to safety". I went to old Dhaka City. Then I crossed the river. The boatman did not take any money. From there , I first went to Shimulia, then Nawabganj and finally I reached my village in Barishal in the middle of April."

#### HORROR DOCUMENTARY

This testimony is from Amita Malik's "The Year of the Vulture" (New Delhi: Orient Longmans, 1972, pp 79-83).

At the professors' funeral, Professor Rafiq-ul-Islam of the Bengali Department whispered to me that at the Television Station you will find that there is a film record of the massacre of professors and students at Jagannath Hall. Ask them to show it to us."

This sounded so incredible that I did not really believe it. However, I wasted no time in asking Jamil Chowdhury, the Station Manager of TV, whether he did, indeed, have such a film with him. Oh yes, he said, but we have not

shown it yet because it might have dreadful repercussions. He was, of course, referring to the fact that the Pakistani Army was still very much in Dacca in prisoner-of-war camps in the Cantonment, and it would have been dangerous to show them gunning down professors and students at Dacca University. The people of Dacca had shown tremendous restraint so far, but this would have been going a bit too far. However, I had it confirmed that NBC VISNEWS and other international networks had already obtained and projected the film.

But who shot the film? I asked in wonder. A professor at the University of Engineering, who had a video tape, recorded and whose flat overlooks the grounds of Jagannath Hall. Said Mr. Chowdhury . I was therefore by kind courtesy of Dacca TV that I sat in their small projection room on January 5 and saw for the first time what must be a unique ..... film, something for the permanent archives of world history.

The film, lasting about 20 minutes, first shows small distant figures emerging from the Hall carrying the corpses of what must be the students and professors massacred in Jagannath

Hall. These are clearly civilian figures in lighter clothes and, at their back, seen strutting arrogantly even at that distance, are darker clad figures, the hoodlums of the Pakistan Army. The bodies are laid down in neat, orderly rows by those forced to carry them at gunpoint. Then the same procession troops back to the Hall. All this time, with no other sound, one hears innocent bird-song and a lazy cow is seen grazing on university lawns. The same civilians come out again and the pile of bodies grows.

But after the third grisly trip, the action changes. After the corpses are laid on the ground, the people carrying them are lined up. One of them probably has a pathetic inkling of what is going to happen. He falls on his knees and clings to the legs of the nearest soldier, obviously pleading for mercy. But there is no mercy. One sees guns being pointed, one hears the crackle of gunfire and the lined up figures fall one by one, like the proverbial house of cards or, if you prefer, puppets in a children's film. At this stage, the bird songs suddenly stops. The lazy cow, with calf,

careers wildly across the lawn and is joined by a whole herd of cows fleeing in panic.

But the last man is still clinging pathetically to the jackboot of the soldier at the end of the row. The soldier then lifts his shoulder at an angle, so that the gun points almost perpendicularly downwards to the man at his feet, and shoots him. The pleading hands unlink from the soldier's legs and another corpse joins the slumped bodies in a row, some piled on top of the very corpses they had to carry out at gun-point, their own colleagues and friends. The soldiers probe each body with their Rifles or Bayonets to make sure that they are dead. A few who are still wriggling in their death agony are shot twice until they also stop wriggling.

At this stage, there is a gap, because Professor Nurul Ulla's film probably ran out and he had loaded a new one. But by the time he starts filming again, nothing much has changed except that there is a fresh pile of bodies on the left. No doubt some other students and professors had been forced at gunpoint to carry them out and then were executed in turn. In so far as one can count the bodies, or guess

roughly at their number in what is really a continuous longshot amateur film, there are about 50 bodies by this time. And enough, one should think.

Professor Nurul Ullah's world scoop indicated that he was a remarkable individual who through his presence of mind, the instinctive reaction of a man of science, had succeeded in shooting a film with invaluable documentary evidence regardless of the risk to his life.

I immediately arranged to trace him down and he very kindly asked me to come round to his flat... It was fascinating to sit down in Professor Nurul Ullah's sitting room and see the film twice with him, the second time after he had shown me the bedroom window at the back of his flat which overlooked both the street along which the soldiers drove to the university and the university campus. When he realized what was happening, he slipped his microphone outside (through) the window to record the sounds of firing. The film was shot from a long distance and under impossible conditions. Professor Nurul Ullah's

description of how he shot the film was as dramatic and stirring as the film itself:

"On March, 25, 1971, the day of the Pakistani crack-down, although I knew nothing about it at the time, my wife and I had just had breakfast and I was looking out my back windows in the professors' block of flats in which I and my colleagues from the Engineering University live with our families. Our back windows overlook a street across which are the grounds of Jagannath Hall, one of the most famous Halls of Dacca University. I saw an unusual sight, soldiers driving fast my flat and going along the street which overlooks it, towards the entrance to the University. As the curfew was on, they made announcements on loudspeakers from a jeep that people coming out on the streets would be shot. After a few minutes, I saw some people carrying out what were obviously dead bodies from Jagannath Hall. I immediately took out my loaded video tape recorder and decided to shoot a film through the glass of the window. It was not an ideal way to do it, but I was not sure what it was all about, and what with the curfew and all the tension, we were all being very cautious. As I

started shooting the film, the people carrying out the dead bodies laid them down on the grass under the supervision of Pakistani soldiers who are distinguishable in the film, because of their dark clothes, the weapons they are carrying and the way they are strutting about contrasted with the civilians in lighter clothes who are equally obviously dropping with fright.

As soon as the firing started, I carefully opened the bed room window wide enough for me to slip my small microphone just outside the window so that I could record the sound as well. But it was not very satisfactorily done, as it was very risky.

It so happened that a few days earlier, from the same window I had shot some footage of student demonstrators, on their way to the university. I little thought it would end this way.

Anyway, this macabre procession of students carrying out bodies and laying them down on the ground was repeated until we realized with horror that the same students were themselves being lined up to be shot. After recording this dreadful sight on my video tape-recorder, I

shut it off thinking it was all over only to realize that a fresh batch of university people were again carrying out bodies from inside. By the time I got my video tape-recorder going again, I had missed this new grisly procession but you will notice in the film that the pile of bodies is higher.

I now want to show my film all over the world, because although their faces are not identifiable from that distance in what is my amateur film, one can certainly see the difference between the soldiers and their victims, one can see the shooting and hear it, one can see on film what my wife and I actually saw with our own eyes. And that is documentary evidence of the brutality of the Pak Army and their massacre of the intellectuals.

### **OUR MOTHERS AND SISTERS**

The following testimony is from M. Akhtaruzzaman Mondol's "Amader-Ma Bon" (Our Mothers and Sisters) which appears in Rashid Haider(ed.) "1971: Terrible Experiences". It was translated by Sohela Nazneen, and reprinted with permission.

We started our fight to liberate Vurungamari from the Pakistani occupation



forces on November 11, 1971. On November 13 we came near the outskirts of Vurungamari, and the Indian Air Force intensified their air attack. On November 14 morning the guns from the Pakistani side fell silent and we entered Vurungamari with shouts of "Joy Bangla" (Victory to Bangladesh).

But I still did not anticipate the terrible scene I was going to witness as we were heading toward east of Vurungamari to take up our positions. I was informed by wireless to go to the Circle Officer's office. After we reached the office, we caught glimpses of several young women through the windows of the second floor. After breaking down the door of the room, where the women were kept, we were dumbfounded. We found four naked young women, who had been physically tortured, raped, and battered by the Pakistani soldiers. We immediately came out of the room and threw in four Lungis[dresses] and four bed-sheets for them to cover themselves. We tried to talk to them, but all of them were still in shock. One of them was six to seven-months pregnant. One was a college student from Mymensingh. We found many dead bodies and skeletons in the bushes along the road. Many of

the skeletons had long hair and had on torn Saris and Bangles on their hands. We found sixteen other women locked up in a room at Vurungamari High School. These women were brought in for Pakistani soldiers from nearby villages. We found evidence in the rooms of the Circle Officers office which showed that these women were tied to the window bars and were repeatedly raped by the Pakistani soldiers. The whole floor was covered with blood, torn pieces of clothing and strands of long hair.

#### **THE OFFICER'S WIFE**

This testimony is from Amita Malik's "The Year of the Vulture."

Another pathetic case is that of a woman of about 25. Her husband was a government officer in a Sub-division and she had three children. They first took away the husband, although she cried and pleaded with them. Then they returned him half-dead, after brutal torture. Then another lot of soldiers came in at 8 or 9 A.M. and raped her in front of her husband and children. They tied up the husband and hit the children when they cried.

Then another lot of soldier came at 2.30 PM and took her away. They kept her in a bunker and used to rape her every night until she became senseless. When she returned after three months, she was pregnant. The villagers were very sympathetic about her but the husband refused to take her back. When the villagers kept pressuring him to take her back, he hanged himself. She is now in an advanced stage of pregnancy and we are doing all that we can do to help her. But she is inconsolable. But why, why did they do it? It would have been better if we had both died.

#### **THE MAULVI'S STORY**

This testimony appears in Amita Malik's The Year of the Vulture.

On April 19, 1971, about 35 soldiers came to our village. A couple of days earlier, I had asked the Sheikh's father and mother to leave the village, but they refused. They said, 'This is our home and we shall not go away.' Soon after a soldier came running and said, Here, Maulvi, stop in which house are the father and mother of the Sheikh? So first I brought out his father. We placed a chair for him but they made him sit on the ground. Then Sheikh Sahib's

Amma [mother] was brought out. She took hold of my hand and I made her sit on the chair. The soldiers then held a Sten gun against the back of the Sheikh's Abba [father] and a rifle against mine. We will kill you in 10 minutes, said a soldier looking at his watch.

Then they picked up a diary from the Sheikh's house and some medicine bottles and asked me for the keys of the house. I gave them the bunch of keys but they were so rough in trying to open the locks that the keys would not turn. So they kicked open the trunks. There was nothing much inside except five teaspoon, which they took. They saw a framed photograph and asked me whose it was. When I said it was Sheikh Sahib's, they took it down. I tried to get up at this stage but they hit me with their rifle butts and I fell down from the chair. Finally, they picked up a very old suitcase and a small wooden box and made a servant carry them to the Launch.

Then they dragged me up to where the Sheikh's father was sitting and repeated, We shall shoot you in ten minutes. Pointing to the Sheikh's father. I asked, What's the point of shooting him? He's an old man and a government

pensioner. The soldiers replied, "Is liye, keonki wohne shatian paida kiya hai" ["Because he has produced a devil."]. "Why shoot me, the Imam of the Mosque?" I asked, "Aap kiska Imam hai? Aap vote dehtehain" ["What sort of Imam are you? You vote."], they replied I said: "The party was not banned, we are allowed to vote for it. We are not leaders, we are janasadharan [the masses]. Why don't you ask the leaders?" The Captain intervened to say that eight minutes were over and we would be shot in another two minutes. Just then a Major came running from the Launch and said we were to be let alone and not shot.

I immediately went towards the Masjid (Mosque) and saw about 50 villagers inside. Three boys had already been dragged out and shot. The soldiers asked me about a boy, who, I said, was a Krishak (cultivator). They looked at the mud on his legs and hands and let him go. Khan Sahib, the Sheikh's uncle, had a boy servant called Ershad. They asked me about him. I said he was a servant. But a Razakar Maulvi, who had come with them from another village, said he was the Sheikh's relative, which was a

lie. The boy Ershad was taken to the line up. He asked for water but it was refused.

Another young boy had come from Dacca, where he was employed in a Mill, to enquire about his father. He produced his identity card but they shot him all the same. They shot Ershad right in front of his mother. Ershad moved a little after falling down so they shot him again. Finally, the boy who had carried the boxes to the Launch was shot. With the three shot earlier, a total of six innocent boys were shot by the Pakistani Army without any provocation. They were all good looking and therefore suspected to be relatives of the Sheikh.

After this, the Sheikh's father and mother were brought out of the house. Amma was almost fainting. And the house was set on fire and burnt down in front of our eyes until all that remained was the frame of the doorway which you can still see. Altonissa, the lady with the bloodstained clothes of her son, is the mother of Torab Yad Ali who was shot. They did not allow her to remove her son's body for burial, because they wanted the bodies to be exposed to public view to terrorize the villagers. They

also shot Mithu, the 10-year old son of this widowed lady.

Shaheeda Sheikh, Sheikh Mujib's niece, then added that fortunately all the women were taken away to safety across the river to a neighboring village three days before the Pakistani soldiers came. For months they had lived in constant terror of Razakars pouncing on them from bushes by the village pond. Beli Begum, Mujib's niece, a strikingly lovely woman, told me how she had fled from the village when seven months pregnant and walked 25 miles to safety. Pari, a girl cousin, escaped with a temperature of 104 degrees. Otherwise, they would all have been killed.

#### **MASSACRE AT FAIZ LAKE**

This testimony is from Abdul Gofran's "Faiz Lake-Gonohataya (Massacre at Faiz Lake), which first appeared in Rashid Haider (ed.), "1971: Terrible Experiences". Sohela Nazneen translated it and reproduced herewith :

I own a shop near Akbar Shah Mosque in Pahartali. On November 10, 1971, at 6 a.m. about forty to fifty Biharis came to my shop and forced me to accompany them. I had to comply as any form of resistance would have

been useless against such a large number of people.

They took me to Faiz Lake. As we passed through the gates of Faiz Lake, I saw hundreds of non-Bengalis had assembled near the Pump-house and wireless colony. The Bengalis who had been brought in were tied up. They were huddling by the side of the lake which was at the North of the Pump-house. Many of the Biharis were carrying knives, swords and other sharp instruments. The Biharis were taking at a time and were beating them up brutally and were shoving their victims towards those carrying weapons. These other Biharis were jabbing their victims in the stomach and were severing their heads with the swords. I witnessed several groups of Bengalis being killed in such manner. When the Biharis came for me I punched one of them and jumped into the lake. I swam to the other side and hide among the bushes. The Biharis came to look for me but I was fortunate and bearly escaped their notice. From my hiding place I witness the mass murder that was taking place. Many Bengalis were killed in the manner which had been described earlier.



The genocide went on till about two O'clock in the afternoon. After they had disposed of the last Bengali victim Biharis brought in a group of ten to twelve Bengali men. It was evident from their gestures that they were asking the Bengalis to dig a grave for the bodies lying about. I also understood from their gestures that the Biharis were promising the group that if they completed the task they would be allowed to go free. The group complied with their wish. After the group had finished burying the bodies they were also killed, and the Biharis went away, rejoicing."

The real pictures of Bangladesh have been reflected in a lyrical anthem, 'September on Jessore Road' written by the Beat Poet Allen Ginsberg:

"Millions of fathers in rain  
 Millions of mothers in pain  
 Millions of brother in woe  
 Millions of sisters nowhere to go  
 One Million aunts are dying for bread  
 One Million uncles lamenting the dead  
 Grandfather millions homeless and sad  
 Grandmother millions silently mad  
 Millions of daughters walk in the mud

Millions of children wash in the flood  
 A Million girls vomit & groan  
 Millions of families hopeless alone  
 Millions of souls nineteen seventy one  
 Homeless on Jessore road under grey sun  
 A million are dead, the million who can  
 Walk toward Calcutta from East Pakistan"

There is no doubt that this was probably  
 the greatest and most horrible crime committed  
 in the whole history of the world. Beating,  
 starvation, torture and killing were general.

Mr. Bruce Dauglas- Mann, M.P. British  
 Parliament on 14.05.1971 made a statement  
 saying, "Time and again we were told the same  
 story: Troops of the west Pakistan millitary  
 authorities had entered the village, which had  
 not then been defended, had shot the men in the  
 fields and killed the women and children and  
 then, having killed a great number of people  
 from the village, had burnt it down and left."

The Guardian in its May 27, 1971 Issue  
 described, "Villages have been surrounded, at  
 any time of day or night, and the frightened  
 villagers have fled where they could, or been  
 slaughtered where they have been found, or  
 enticed out to the fields and mown down in

heaps. Women have been raped, girls carried off to barracks, unarmed peasants battered or bayoneted by the thousands." Sir Arther Bottomlay, a British M.P. in a statement said, "This had been the most horrowing mission he had undertaken in his entire public life." News release- issued by the Labour Information Department of United Kingdom on 08.07.1971 stating, "Conference expresses its horror and concern at the terrible human tragedy now taking place in Bengal. It believes that the Pakistan Government must take full responsibility for the terrible suffering endured by the people of East Bengal and conference condemns of Government of Pakistan for its totally unjustified use of military force against the people and democratically elected leaders of East Bengal." It added, "The Pakistan crisis is the worst disaster that has faced the world for the past 30 years. It is also morally the most simple. The villains, those Pakistani Generals who ordered a military attack on their own countrymen last 25<sup>th</sup>, are more obviously in the wrong than military aggressors since Hitler war." Senator Edward Kennedy in a statement said, "This stark

tragedy is not yet understood by the world. I can tell you that not until you see it first hand can you begin to understand its immensity. For only by being there can you sense the failing and understand the plight of the people, and the forces of violence which continue to create refugees and increase the toll of civilian casualties. How could one expect the young people, the Bengali personnel of the armed forces, police and other forces to be spectators while people were being massacred?"

From the aforesaid news items, statements, press releases and articles we are satisfied that it was widespread and systematic attacks against civilian population of Bangladesh. The genocide perpetrated in Bangladesh is a fact of common knowledge. The Tribunal has taken notice of the fact that widespread killings occurred in Bangladesh from March 25, 1971 to December 16, 1971. The most brutal armed anticivilian state machinery in modern times, taking help of auxiliary forces and local collaborators committed such genocide. It was the brutality which had ever been witnessed by the people of the globe. They made the whole Bangladesh a reign of terror unprecedented in human history.

It was the most gruesome crimes in the history of the world perpetrated by blood thirsty Pak Army and its Para-militia Bahini against whole population of Bangladesh.

Let us see the sentiments of some Pakistani Generals, Politicians, Journalists and the persons, who were in power in 1971, regarding activities of Pakistani Administrators, Armies and Politicians in 1971.

Dr. G.W. Choudhury, who served as a member of Pakistan cabinet and member of the three man committee set up by Yahya Khan in his book, "The Last Days of United Pakistan" categorically admitted the atrocities committed by Pak Army in Bangladesh with the following words, "But one thing is certain, the Pakistan Army's actions, which began on the midnight of March 25, 1971, can never be condoned or justified in any way, the Army's murderous campaign in which many thousands of innocent people including women, the old and sick, and even children, were brutally murdered while millions fled from their homes to take shelter either in remote places or in India, constituted a measureless tragedy. The miscalculation on which it was based is beyond

understanding, just as the result in human suffering were beyond description."

In 1998, Muntassir Mamun, a Bangladeshi Professor and Historian took interviews of some Pakistani Generals, who were the players of drama in 1971, some politicians, journalists and other Pakistanis. He published and edited two books (1) "সেই সব পাকিস্তানী" and another is (2) "পাকিস্তানীদের দৃষ্টিতে একাত্তর"। We are quoting some portions to assess their sentiments about their activities in 1971.

The then G.O.C. of Pakistan Eastern Command Lt. Gen. Amir Abdullah Khan Neazi:

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Rowadad Khan, former Information Secretary and Managing Director of PTV.

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M.V. Nakvi

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-Director, Public Relations

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Air Marshal (Rtd.) Asghor Khan, former Chief of Pakistan Air Force said in his interview:

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Faruque Ahmmed Leghari, former President of Pakistan:

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In Hamoodur Rahman Commission Report it was, inter alia, stated:

"It is, however, clear that final and overall responsibility must rest on General Yahya Khan, Lt. Gen Pirazada, Maj. Gen. Umar, Lt.Gen. Mitha. It has been brought out in evidence that Maj. Gen. Mitha was particularly active in East Pakistan in the days preceding the military action of the 25<sup>th</sup> March 1971, and even the other Generals just mentioned were present in Dacca along with Yahya Khan, and secretly departed there on the evening of that fateful day after fixing the deadline for the military action. Maj.Gen. Mitha is said to have remained behind. There is also evidence that Lt. Gen. Tikka Khan, Major Gen. Farman Ali and Maj. Gen. Khadim Hussain were associated with planning of the military action.

At the same time there is some evidence to suggest that the words and personal actions of Lt. Gen. Niazi were calculated to encourage the killings and rape"

G.W. Choudhury in his book stated, "But could there be any justification or rationale for the killing of thousands of innocent villagers who had not the slightest idea of the issues involved in the political dialogues, either before or after the elections in

December 1971? These people had neither wanted secession or been a party to any conspiracy. Why were children killed in presence of their parents and women raped in presence of fathers or husbands? Villages were burnt wholesale by the military Governor, Tikka Khan "butcher of the Bengalis" and destroyer of Pakistan. The most pertinent question is whether the Pakistan Army would have taken such cruel measures in West Pakistan if Bhutto had taken the same position as Mujib on March 23, 1971. Had not Bhutto been largely responsible for the deadlock in the political negotiations after the election by forcing the adjournment of the National Assembly scheduled to meet on March 3, 1971? Why then did Bhutto's action remain unpunished?" He added, "I returned from Dacca bewildered and with a heavy heart. I wrote a lengthy report giving authentic accounts of many cruel acts of the Army including the raping of women." He met Yahya Khan who questioned what he had seen in Dacca. He said, "My prompt reply was that no single foreign newspaper had exaggerated. On the contrary, the people's agony, suffering and humiliation had not been fully exposed. I also told him that it

was not only the number of deaths but the manner in which innocent persons had been killed and women raped that had destroy our cherished homeland for which the Muslims of the subcontinent had sacrificed so many thousands of lives in 1947."

Those are part pictures of thousands incidents and admissions of the then Army Generals, leaders, policy makers and intellectuals of Pakistan. According to all available evidence and report, the genocide which was deliberately planned and executed ruthlessly by the Pakistani Army, their collaborators and para-militia Bahini like Razakars, Al-Badr and Al-Shams, had been marked, amongst other unspeakable atrocities, by the systematic decimation of Bangladeshi intellectuals and professionals, including eminent professors, lawyers, journalists, doctors, students etc. The sanguinary suppression by the Pakistani Rulers of the basic rights and the clearly expressed will of the people of Bangladesh, ruthless terror against millions of people, was an overt violation of the Universal Declaration of Human Rights. Entire world raised voice against

those barbaric atrocities by the Pak Army with the assistance and collaboration of the local para-military forces, i.e. Razakars, Al-Badr and Al-Shams. They were involved in mass killing and those were widespread and systematic against civilian population.

However, the facts of common knowledge does not relieve the prosecution of its burden to prove that the appellant was criminally responsible for specific events alleged in the indictment. The allegation against the appellant is that he was the leader of Al Badar Bahini and one of the responsible men who committed genocide.

Now let us see what are the charges against the convict appellant. What he did when the entire nation was fighting against genocide. "The News Week", June 28, 1971 issue expressed the situation in Bangladesh under caption "The Terrible Blood Bath of Tikka Khan" and narrated, "I have no doubt at all that there have been a hundred Mylais and Lidices in East Pakistan and I think, there will be more". What the appellant did when the politician, teachers, students, doctors, engineers and unarmed civilians, who were appellant's closers

than those of the Pakistani military junta, were wiped out.

### **Charge No.6**

Contents of charge No.6 were that during the War of Liberation in 1971 the occupation Pakistani Army set up a camp at Mohammadpur Physical Training Institute, Dhaka. The members of Razakar and Al-Badr Bahini used to receive their "training" at that camp known as "torture camp". Ali Ahsan Muhammad Mujahid (the convict appellant) being the Secretary of the then East Pakistan Islami Chatra Sangha and subsequently the head of Al-Badr Bahini or as member of individuals used to visit the camp regularly with his co-leaders with an intent to annihilate the "Bangalee Population", used to design planning and conspired with the senior Army Officers at the camp and following such conspiracy and planning, "intellectuals killing" was started from 10 December and thereby accused Ali Ahsan Muhammad Mujahid has been charged for abetting and facilitating the commission of offence of 'murder as crime against humanity' by his conduct which was a part of planned attack against the civilian population as specified in section 3(2)(a)(g)



of the ICT Act or in the alternative, for abetting and facilitating, the commission of offence of 'genocide' committed targeting the 'intellectual group' with an intent to destroy it either whole or in part as specified in section 3(2)(c)(g) of the ICT Act which are punishable under section 20(2) read with section 3(1) of the ICT Act for which the accused has incurred liability under section 4(1) and 4(2) of the said Act.

Mr. S.M. Shahjahan, learned Counsel for the appellant, submits that the prosecution has hopelessly failed to prove that the appellant was any way connected with the charge of intellectuals killings. The learned Attorney General replied that the appellant led, planned, aided, instigated, abetted and facilitated the killings of intellectuals as charged. The prosecution has been able to prove this charge by adducing both oral and documentary evidence beyond all reasonable doubt.

Before taking into consideration of the evidence it is relevant here to reproduce the provisions of rules of evidence provided in the ICT Act and Rules relevant in this regard.

Section 19 of the ICT Act is the relevant laws regarding the evidence which runs as follows:

" 19(1). A Tribunal shall not be bound by technical rules of evidence; and it shall

adopt and apply to the greatest possible extent expeditious and non-technical procedure, and may admit any evidence, including reports and photographs published in newspaper, periodicals and magazines, films and tape-recordings and other materials as may be tendered before it, which it deems to have probative value.

(2). A Tribunal may receive in evidence any statement recorded by a Magistrate or an Investigation Officer being a statement made by any person who, at the time of the trial, is dead or whose attendance cannot be procured without an amount of delay or expense which the Tribunal considers unreasonable.

(3). A Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof.

(4). A Tribunal shall take judicial notice of official governmental documents and reports of the United Nations and its subsidiary agencies or other international bodies including non-governmental organizations."

The relevant provision as to evidence provided in the International Crimes Tribunal Rules of Procedure, 2010 (ICTRP) are as follows:

"40. Whenever the Tribunal considers that the production of any document or other thing is necessary or desirable for the purpose of investigation or trial or other proceedings under the Act, the Tribunal may issue a

summons, or an order to the person in whose possession or power such document or thing is believed to be requiring him to attend and produce it at the time, place and date stated in the summons or order.

44. The Tribunal shall be at liberty to admit any evidence oral or documentary, print or electronic including books, reports and photographs published in news papers, periodicals, and magazines, films and tape recording and other materials as may be tendered before it and it may exclude any evidence which does not inspire any confidence in it, and admission or non-admission of evidence by the Tribunal is final and cannot be challenged.

47. Prior to testifying before the Tribunal, every witness shall swear an oath or make an affirmation in Form 12 of the Schedule.

50. The burden of proving the charge shall lie upon the prosecution.

51(1). The onus of proof as to the plea of 'alibi' or to any particular fact or information which is in the possession or knowledge of the defence shall be upon the defence.

(2) The defence shall also prove the documents and materials to be produced by them in accordance with the provisions of section 9(5) of the Act.

55. Once the document is marked as exhibit, the contents of a document shall be admissible.

56(1). The Tribunal shall give due weight to the primary and secondary evidence and direct and circumstantial evidence of any fact as the peculiar facts and circumstances of the case demands having regard to the time and place of the occurrence.

(2). The Tribunal shall also accord in its discretion due consideration to both hearsay and non-hearsay evidence, and the reliability and probative value in respect of hearsay evidence shall be assessed and weighed separately at the end of the trial.

57. The Tribunal shall apply these Rules which will best favour a fair determination of the matter in issue before it and are consonant with the spirit of the Act.

58(1). Evidence that is produced by the prosecution or the defence shall be suitably identified, proved by the respective party and marked with consecutive numbers as exhibits."

The prosecution examined in total 17 witnesses and produced some documentary evidences. The defence examined one witness and produced some documents.

To prove charge No.6 the prosecution adduced the following evidence:

P.W.1 Shahriar Kabir in his evidence said that Jamat-e-Islami is a cadre based disciplined political party. He came to know about the activities of Islami Chatra Sangha (ICS), which was the student organization of Jamat-e-Islami, from Newspapers in 1971. He described how ICS was emerged as Al Badr bahini in his documentary "War Crime, 1971". He narrated the activities of Bader bahini in the book "স; ট 4 ) ."<sup>5</sup> He collected a copy of book named "Al-Badr" written by Selim Mansur Khaled from Pakistan. That book is a documentary history of the activities of Al-Badr Bahini published by Jamat-e-Islami, Pakistan. Writer of the said book is a researcher of Jamat-e-Islami who came in Bangladesh several times for his research works and talked with the members of Al-Badr Bahini. This witness came to know about the involvement of the members of Razakar, Al-Badr and Al-Shams

Bahini in their pre-planned genocide committed in 1971 from the "Daily Sangram", a Jamat owned newspaper and different articles written by Jamat supporters writers. At that time appellant Mujahid was president of ICS of East Pakistan. Al-Badr Bahini was half secret organization like Gestapo Bahini of Hitler. He added that it could be said conclusively from the book written by Salim Monsur Khaled and other informations that ICS was emerged as Al-Badr Bahini. Al-Badr Bahini committed heinous offence of killings of intellectuals in pre-planned way. From November 16, 1971 to December 15, 1971 they killed thousands of intellectuals and professionals. In the killing lists there were University teachers, journalists, writers, doctors, engineers and lawyers. Professor Munir Chowdhury, Professor Anwar Pasha, Professor Mufazzel Haider Chowdhury and Shahidulla Kaiser were killed along with other intellectuals. Shahidullah Kaiser was the cousin of this witness. His another cousin producer Zahir Raihan went to rescue Shahidullah Kaiser on 30<sup>th</sup> January, 1972, at Mirpur, Dhaka where more than one hundred members of Muktibahini including Zahir Raihan were killed. After 16<sup>th</sup> December

1971, Zahir Raihan formed a citizen's commission for holding inquiry on intellectuals killing who submitted report in the last week of December, 1971 stating that Al Badr Bahini was responsible for killing of intellectuals. Another people's committee was formed headed by Sufia Kamal, a famous Poet found that the appellant was one of the persons who was responsible for the crime against humanity.

In his cross-examination he said that it is not true that he did not say to the Investigating Officer (I.O.) that Jamat-e-Islami was a cadre based well disciplined political organization and its other co-organizations strictly used to follow the directives of its leaders. He denied that he did not state to I.O. that he had collected a copy of Selim Monsur Khaled's book "Al-Badr" from Pakistan and its writer was a researcher of Jamat-e-Islami and he came in Bangladesh and talked with workers and leaders of Al Badr Bahini. He said that it is not a fact that he did not say to the I.O. that the writer of the book "Al Badr" disclosed that a member of the "Al-Badr Bahini told him that, " t CS / ul &

341K.5" In his cross-examination he further said that Ali Ahsan Muhammad Mujahid was not an army man like Motiur Rahman Nizami. He added that Lt. General A.A. Khan Neazi, the Commander of East Zone of Pakistan Army in his book "Betrayal of East Pakistan" had said that though there was difference of opinion regarding formation of Razakar Bahini but facts remain that Razakar Bahini was formed and controlled by the Pakistan Army. Al-Badr and Al-Shams Bahini were two wings of Razakar bahini. He said that one Nasir Ahmmed lodged a First Information Report (F.I.R.) bringing the allegation of abduction of Sahidullah Kaiser after the war of liberation. At the time of such abduction, his wife Panna Kaiser, Nashir Ahmmed, Zakaria Habib, Neela Zakaria and Sahala Begum and other family members were present. He does not know whether name of Al-Badr Commander was mentioned in that F.I.R. or not. He does not know whether Zahir Raihan arrested A.B.M. Khaleque Mojumder or not. Khaleque Mojumder was sentenced to suffer rigorous imprisonment for 7 years under Collaborators Act and he got acquittal from the High Court. In cross-examination he further stated that he does not



know whether on the allegation of killing of Professor Monir Chowdhury two persons were sentenced to imprisonment for life or not. He further stated that 40 cases were filed on the allegations of killings of intellectuals. In reply to a question that the news published in the "Dainik Pakistan" giving reference of Ali Ahsan Muhammad Mujahid on 8<sup>th</sup> November, 1971 there was any word ) ! \$ - or ) - or not, he replied in the negative and added that in that news it was mentioned that the meeting was organized at the instance of ICS. He added that the entire ICS was emerged as Al-Badr Bahini and its leader was Motiur Rahman Nizami and Deputy Leader Ali was Ahsan Muhammad Mujahid. In reply to another question he said,

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, \$, +) /5 \$, + ) 5- He denied the defence suggestion that what he deposed before Tribunal against the appellant is not true.

P.W.2, Jahiruddin Jalal @ Bichchu Jalal in his examination-in-chief said that he was arrested by the Rajakar and Pak Army on 30<sup>th</sup> August, 1971. They severely tortured him

confining in a house situated near M.P. Hostel of Nakhalpara. Freedom fighters Bodi, Juel, Azad, Rumi were also arrested and severely tortured. At about 8.00 p.m., he saw Matiur Rahman Nizami, Ali Ahsan Muhammad Mujahid and 3/4 others going to the room of Captain Quayyum crossing their room. Showing Nizami and the appellant, Juel said that they tortured them and they also disclosed that they might kill them. At one stage, the appellant, taking Stengun from one Mainuddin, gave a blow on the back side of the head of this witness which caused bleeding injury on his head. Thereafter, the appellant assaulting this witness asked him about the persons who effected operation against Army at Dhanmondi area on 25<sup>th</sup> August 1971. The appellant and Nizami requested Captain Quayyum to kill this witness and other freedom fighters, named, Badi, Rumi, Juel, Ajad, and Altaf before declaration of Presidential marcy to be declared on 5<sup>th</sup> September, 1971. In his examination in chief, he further stated that on 4<sup>th</sup> December, 1971 he found some persons in a blue coloured jeep hanging a banner of Al-Badr Bahini making abusive utterance in the name of freedom

fighters by miking. This witness went near the jeep and saw that the appellant Al-Badr Commander Ali Ahsan Muhammad Mujahid, taking microphone in his hand, uttering, "v G\$ +0 C+ /) e\$ 1 9 > ) f P P 3J, + & + 5 9 CS/ \$ 2 O ) ) ! A ) + & + 5- He also said that the appellant was saying, "G \$%& r ' v e\$ 1 9 > f % O ) + & CS/ ) 2! . 5 \$ O ) CS/ \$ ) ! 1 ) . + 4 CS 6 -5 He further uttered, \$ 1 9 > 2 +0 CS ' V 6 ) 4. , & ! w\$ \ + . \$ ul & ! 5 - Giving threat, the appellant further uttered, ,. 2 2 \$ 1 9 > ! \$ / > , / / 1 ! 2 ) ' G A ) 4. + 5- At that time, three planes flew over the area and then, the appellant took shelter behind a building throwing his microphone and, at that time, this witness blasted a hand graned tergating the appellant. Such news was published in different newspapers. The freedom fighters made a plan to effect an operation at Mohammadpur Physical College Al-Badr Head Quarter where the appellant and others used to give training of Al-Badr members. The appellant and others also used to torture the members of EPR, intellectuals, journalists, freedom fighters

and artists in that camp and, thereafter, killing them, threw their dead bodies at Rayerbazar area. Due to bunkers constructed by Pakistani Army and Al-Badr Bahini surrounding the said camp, they could not effect their operation. In his cross examination, he had denied the defence suggestion that he deposed falsely.

P.W.3, Mahbub Kamal in his examination in chief said that there was a camp of Rajakar Bahini in the house of one Firoj Member @ Firu Member of " \$ , " situated about 150/200 yards from his house. Mujahid Saheb used to visit that camp. He was known to this witness. That camp was a conversion camp. The members of Rajakar Bahini, who showed their efficiency, were promoted to the members of Al-Badr Bahini who were subsequently emerged as killer Bahini. In his cross-examination he said that in the middle of July, 1971 he came to know that a Rajakar camp had been established in the house of Firu member.

P.W.4 Shahin Reja Noor, in his testimony stated that by the leaders and workers of ICS another Bahini named Al-Badr Bahini was formed and said Bahini was identified as "Ghatok

Bahini or Gestapo Bahini" who were involved in the crimes against humanity. Ali Ahsan Muhammad Mujahid was the President of ICS from October to December 1971 and used to perform his duties as Commander of Al-Badr Bahini. Making plan, in collusion with the Pakistani Army, the members of Al-Badr Bahini killed intellectuals just before the victory. His father Siraj Uddin Hossain, who was performing as News Editor of the "Daily Ittefaq", published some articles in the "Daily Ittefaq" in September, 1971, out of which, one article was published with the caption, "F" " wherein the activities of Pak Army had been criticised. The "Daily Sangram" in its issue dated 16.09.1971 published an article with the heading " F" 4 " criticising that article. The writer of that article threatened the father of this witness treating him as collaborator of India and "Brhamonizm". On the night of 10<sup>th</sup> December, 1971 he heard the sound of knocking door of his house situated at No.5, Chamelibag and woke up from sleep. His father opened the door but did not find anyone at that time. At about 3.00-3.30 a.m. they again heard the sound of knocking their door and found that their

landlord Dr. Shamsul Huda was asking him to open the door. Accordingly, he opened the door. Then and there, 4/6 armed miscreants entered into the room and directed them to put their hands up. The miscreants went there putting monkey cap and mafler on their mouths. His father, mother and others woke up from sleep. His father tried to wear his "panjabi" and at that time, the miscreants directed him to put his hands up and also asked him to disclose his identity. The father of this witness Siraj Uddin Hossain disclosed his identify. Then, the miscreants kidnapped him and directed the inmates of the house to shut the door. He informed the matter to Barrister Mainul Hossain, owner of the 'Daily Ittefaq' who requested Rao Forman Ali and other higher Army officers to know the whereabouts of his father but they did not give proper reply. He also requested Governor Malik. He came to know that along with his father some other intellectuals, namely, journalists Nazmul Huq, Shahidullah Kaiser, A. N. M. Golam Mostafa, Nizamuddin Ahmed, Prof. Mofazzel Haider Chowdhury, Prof. Munir Chowdhury, Prof. Gias Uddin Ahmed, Prof. Rasidul Hasan, Dr. Alim Chowdhury, Dr. Fazle

Rabbi and journalist Selina Parvin had also been kidnapped within a few days. On 18 December, 1971 Advocate Aminul Huq (who was subsequently appointed as Attorney General for Bangladesh) went to their house with tearful eyes and requested this witness to go to Rayerbazar. This witness rushed to Rayerbazar and found a huge number of dead bodies. Out of them, the decomposed dead bodies of Dr. Fazle Rabbi, Selina Parvin and Munir Chowdhury were identified. He found 10/15 dead bodies in a ditch. Perhaps the dead body of his father was lying under the dead bodies of the others. He came to know from the persons, who were searching their dear ones, that they had been kidnapped from their respective houses in a similar way. Subsequently, after the victory, photographs of the killers were published in different newspapers and they were the members of Al-Badr Bahini. Out of them Chowdhury Mainuddin was a journalist of the 'Dainik Purbadesh'. A case was filed against him on the allegation of killing his colleague A. N. M. Golam Mostafa. Chowdhury Mainuddin was Operation in Charge of Al-Badr Bahini and Ashrafuzzaman Khan was an active member. The

members of Al-Badr Bahini, with the help of Pakistani Army, had killed the intellectuals. Ali Ahsan Muhammad Mujahid was commander of Al-Badr Bahini. Under his superintendence, directions and orders such killings of intellectuals were held. He identified the convict appellant on the dock. In his cross-examination he said that in 1972-73 he filed a case under the provisions of Collaborators Act bringing the allegation of kidnapping and killing of his father. In connection with that case, one Khalil made a confessional statement and he was convicted and sentenced to imprisonment for life. He stated that none, including he himself, wrote any article implicating the appellant that he was involved in kidnapping and killing of his father. But he wrote that the members of Al-Badr Bahini had kidnapped and killed his father. In his cross-examination he said that except before this Tribunal he did not bring any allegation against the appellant.

P.W.5 Md. Rustom Ali Mollah son of Raham Ali Mollah in his testimony stated that his father was a fourth class employee of Mohammadpur Physical Training College. His



father used to work as security guard of the College. He used to live in a quarter of the said College along with his other family members. The Pakistani Army established a camp taking possession of the said College. They confined the members of EPR, who were 100/150 in number, in the gymnasium of the said College. Few days thereafter, Pakistani Army killed those members of EPR Bahini. They tortured the people, freedom fighters, intellectuals and women confining them in the College. They kept some women confined in the quarter of the principal and tortured them. Some of them died. Members of Rajakar and Al-Badr Bahini used to take their training in the field of the said College. One day, at the time of crossing the gate of the said College, he found Golam Azam, Nizami and the appellant Mujahid in a Jeep of Pak Army. Though he was not previously acquainted with them but the members of Rajakar and Al-Badr Bahini, who were on duty in the gate, told that they were Golam Azam, Matiur Rahman Nizami and Mujahid. They visited the camp. He decided to go to India for taking training to participate in the freedom fighting. Accordingly, he went to a

camp of freedom fighters situated at Atibazar where he met freedom fighter Bichchu Jalal who requested this witness that since he had been living in the main camp of Al-Badr Bahini, he would be able to supply informations regarding activities of Pak Army, Razaker and Al-Bdr Bahini to the freedom fighters. The Pakistani Army, Rajakar and Al-Badr Bahini arrested intellectuals, artists, lawyers and others. Keeping them confined in the dining hall of the college, they tortured and killed them and threw their dead bodies at Rayerbazar area. 7/8 days before victory, the members of Al-Badr and Rajakar Bahini arrested intellectuals, artists and freedom fighters. He saw 100/150 pieces of uprooted eyes near the brick field of one Rahim Bepari situated behind the physical college. He further stated that, on the day of victory, the Pakistani Army left the college for Cantonment and, thereafter, the members of Rajakar and Al-Badr Bahini fled away from the camp. At the time of leaving, they killed Bengali doctor of the said college. He himself recovered the dead body of the doctor. He also found nine pieces beheaded heads lying besides the gymnasium. He identified the appellant on the dock. In the

cross-examination he denied the defence suggestion that he did not stay at Physical Training College during the War of Liberation. He also denied that his father sent him to their village home under the police station Damudya, Shariatpur and that he deposed falsely.

Now let us see the documentary of evidence regarding activities of the appellant, when the unfortunate people of Bangladesh were facing an unprecedented tragedy.

### Documentary Evidence

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Ext. 2/2 "i) 12 \$" dated 12.08.1971

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Ext. 2/5 "i) ! 2' \$" dated 16.09.1971

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9 TH & \* M ) 3 \$ 9 . \$ ) ! \$  
) 3 + 5 , & ! \$ G ! \$ . , ! C  
C + , 5 "

Ext. 2/6 "i) ! 2' \$" dated 19.09.1971

Photograph

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, \$ / ! ! ! \$ / + ! \$ , + ) 4 7  
\$ \ % / 5 "

Ext. 2/7 "i) ! 2' \$" dated 25.09.1971

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\$ % & \$ G 1 % . + 5 ooooo ! \$ 1 H ! 2 '  
\* , \$ , + ) ) H ! W CS ! \* G  
P ) / . 5 G ! \$ / \* ! 2 T , \$ / , / 4  
CS % 2 ! + ) 5 \$ I 7 H / \$ \*  
+ \$ ? ) . Ht CS . \$ 9 RS ! 2 T \$ /  
\$ 5 . , + ! / \$ RS ' . CD % 4 ! " ^ W  
C . 5 "

Ext. 2/9 "i) ! 2' \$" dated 15.10.1971

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Ext. 2/11 "i) ! 2' \$" dated 26.10.1971

### Photograph

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) ! ) ! & ! " x ' Z % 1 H 5"

Extj 2/13 "The Observer", 08.11.1971

"Badr day rally in city-----Mr. Mujahid said from today (Monday) no library would be allowed to have books written by Hindu Writers or Pro Hindu Muslim Writers. He said their volunteers would burn those books if found in the libraries to save Muslims from unislamic influences."

Ext. 2/14 "i) CS " 3 Q mQ ks ;

) ) !

" CS 3N 4 ! 2+ 6 ) H ! 2 ] T B 000 ' , \$ . W

CS G! \$/ \* ! 2 T ! , / +! \$+ " x \$ , +) G

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3 ) G +0 ) ) / 3 CS ) G / Cd

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CS U U / C# ! , U . ! Z ) 5 ! \$

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. 7 j' ~ ; 5 \$ ) 1 CS 7 m5 / \$ , +) CD

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) 3 \$ G & ) 5 "

Ext. 2/16 "i) , ) " dated 11.12.1971

Photograph

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0000 W CS \$/ \* ! 2 T ! , \$ , +)

+0 C+ ! " ^! ) \$ T + ' v & \_ & > +4 .

, & , ! % ' ) t + , 5 "

Ext. 16 series Identity Card of Al-Badr  
Force.



"The bearer of  
this card belongs  
to the AL-BADAR FORCE"

The AL-BADAR FORCE is a composition of the youths aspiring to implement the ideology of Pakistan and highly imbued with the national consciousness. This FORCE has been extending all out co-operation to the Pakistan Army. The AL-BADAR is a symbol of fear and undomitable challenge to the miscreants and Indian infiltrators."

**Ext.18 series:**

Top secret fortnightly Report on Political Situation by A.M. Meshbahuddin, Deputy Inspector General of Police, Special Branch, East Pakistan

"Activities of Islami Chhatro Sangha (ICS)":

On 17.10.71, a Conference (100) of Pakistan ICS, Rangpur Branch was held in Rangpur town with A.T.M. Azharul Islam (ICS) in the chair. Amongst others, Ali Ahsan Md. Mujahid, Acting President, EPICS, addressed the Conference explaining the present situation of the country and urging the party workers to mobilize the youths of Islamic spirit and launch strong movement

against anti-Islamic activities. He also urged them to form Al-Badar Bahini at different levels for defending the country from internal and external attack."

"The same day (17.10.1971) a workers Conference of ICS Rangpur town was also held there wherein Ali Ahsan Mojahid spoke on the above line and asked the party workers to ensure that no person of unislamic attitude gets access in the Al-Badr Bahini."

"Observance of Al-Badr Day- by the students belonging to Islami Chhatra Sangha (ICS)"

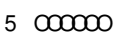
The ICS students observed 'Al-Badr Day' jointly with JI workers at various places of the Province on 07.11.1971 through meetings, procession, etc. Ali Ahsan Mohammad Mujahid President, EPICS, declared that they would not rest till India is wiped out from the world map and Baitul Mukaddas is liberated from Israili occupation. He urged upon the people to remain vigilant against the activities of Indian agents and destroy the book stalls

which sell books written by Hindu Writers  
and Indian agents."

Ext.20/2 "The Daily Bhorer Kagoj", dated  
30.10.2007

+/) >, / / ) T \$, + ) , j) + / -  
C#% 9 > + ) CS/ + / ) \$ , \$ G! \$/  
! K 7 , ! Q \$ , 7 ! ! \$ , & \$RD /  
+! \$ + "x \$, +) t T O ) + / ' F G 6 RS+ 5  
CS ! \$ , RS 2 ) \$% W& ! ) ! / + ! 4 \$ F  
, G \$, +) 5 G u ] ) / T k \$ ! ! !  
\$ 1 ! 2' \$ B ' P , . 8 + & +. ) &  
>, / / ) 5 G + ! , T & \$ G + & 9o . \$, + ) ! K . z U  
' F O ) + / , j) 5 , \$ G! \$/ 4 V / @  
! 2' F G! \$/ \* ! 2 T ! ) ! & & 00000005-

The prosecution also produced M. Exhibit-5,  
a book named Al-Badr written by Selim Mansur  
Khaled published from Lahore, Pakistan,  
February, 2010. That book was written in Urdu  
Language which was translated in Bangla by a  
Professor of Dhaka University at the instance  
of the prosecution as stated by the  
Investigating Officer of this case. In its  
introductory chapter the writer, inter alia,  
stated:

G . RSW +/) ) &' / , / , 3 T7 / ! 2' +  
 , &+ A e W CS f ! ? 5 = ' \$ 9RST  
 A . 5 2 ! 2 ) G ) U) & . %& 4 , /  
 \$+ ! C ) 3 ! 6 5 ? ) 6 & \$W  
 3J ' F ! 5 A 4 ) \$, +) ) ! 2' i F  
 + . 5 +/) ) T I, 4 E ) L 5 !  
 G2 , ! 7 7 ' ) ! 6 V . 5 B.  
 2 . 3 . 5 3 I ! CS . ! 5 A  
 3 CS / ! CD + / \$W 1 ) C\$H 4 W CS  
 +, ! ! CS @ ) ! 6 V 4 5   
 G C\$H \$ 2 ! 26 w G +! 4 9 ! P . 5  
 , &, M + , 6 Y ! \$W Z C\$H F' + /  
 M 9 , 9 \$ \$ +. ' 2 \$ 7  
 + ( /. 2 ) , / / U4 +) ! " ^ 2  
 6 z ) /T5 % 2 T7 4 C+ ! " ^ % &1  
 \* 5-

In the said book, it had been, inter alia,  
 stated:

W CS G! \$/ \* ! 2T ; \$ ; ks ; = ) \$, ! L 4  
 , , \$ ) u F + 93 ) ! \$' C+  
 9 7 ! " q & C \$ %& 9 7 G .  
 & RS +. 5 ! \$. L% G 7 3 ~  
 ; 5 C+ , ' ) . P ) / ) ! @/ + . 9 4 . 5  
 m5 C+ , ' ) . 2 6 W 5  
 5 C+ \$ A T . ) . 5

CS 6 P 4 \$, \$, ' +? 9 , & &C \$.) / + .  
 , ) . U 5 00000000 ) % & 9 \*  
 ! 2 T G Q M U W u F G ! > R S . 9 G! \$/ \* ! 2 T CS 6 P 4  
 , ' , \$ 4 G +? 9 , & ! \$ ' ! + 5 "

It had further been stated in that book that Major Riyad Hossain Malik of 31, Belus Regiment, had stated regarding formation of Al-Badr Bahini, that while performing his duty in Sherpur area, he started giving training of 47 ICS members on May 16, 1971. On 21<sup>st</sup> May, 1971 he addressed those trained 47 ICS members and said that they should be named as "Al-Badr". In the last part of 1971, Al-Badr was organized in entire East Pakistan taking training for 7-12 days. They got training to use Light Arms, Rifles, Light Mortar Gun, Anti Air Craft Gun, Ghantam gun, Hand Graned, Mine, Rivolver, etc.

The Organizing structure of Al-Badr Bahini was:

1-Unit	313 cadet.
2-Unit	Three companies each having 104 members.
1-Company	3 Platoon. Each platoon having 33 members.

1-Platoon 3 troops. Each troop having 11 members.

In the said book it had further been stated:

= ! 2T z 0 \$ , , +/ \$ ! ! 6 V 5 G  
 BB + + 0 C / ) V ) \$ 2 ) B . !  
 +. 5 , ) +/\$ , 4 ? \$ / ! 2 ' ! 6 4  
 ) 5 ~ +! j+ ) ' F & \$ )  
 F ' G G ) 5 ' . / = + ) G , 91 + 5  
 % \$ N = + ) + . 7 Y +. 5 -

On the day of victory, that is, on 16.12.1971, the convict appellant addressed the members of Al-Badr Bahini which had been quoted in the said book which is as follows:

; n ! " # G + ! ! G ) ) . ) 7 ' C+ + 5 )  
 ! ! \$ . ) Z \$ Y CS ) ) G  
 T 0 ' = + ) + . 7 ) \$ , + ) \*  
 " + . Z \$ ! > RS , . 4 . T 0 9 7 , / T 7  
 9 & ' ' P 4 K 0 5 ) ) / T ! ? \$ A  
 ' C+ + 5 , \* + . P A + . 9 4 . C+ . '  
 + . 5 \_ & > CS ! B G C 3 % / RS ' + 5  
 ' P ) . ' V ! ' / ) \$ [ W CS G ! \$ / \* ! 2 T , \$ ) J A .  
 r Z U . ) M ) ' v & ~  
 ! \$ j + + \$ / +/\$  
 + ) G + G j r

4. + ) P\$+ " x) ) r 4. ! r G P!

X. G \$ \$ , \$ / \$ , / 4 \$ \$H& \$ \* j+  
.  
 , 85

\$, +) ! /

\$ ) ) + 4 L% 2 L%G G! \$ , 85 \$ G! \$ , &G

! , 5 \$ [ \$ j+ 4 ! W j+ e! ~f ! P 9 . /

! F , \$5 \$ CS ‘ ! & \$ . \$! , ) \$

\$ ) [ J 4 \$ ) BV ‘ &C \$5 \$ ) G ,

‘ ’ + 4. 5 9 ‘

, 9 \$ ) ! \$ ! RH G \$385

7 j+ G 9 \$ , / , 3 . A 5 /6 .

! G \$r \$ G ! + 9& . 2 4 ! G \_

, C+ \$ 9 4. I 5

4 + \$, \$ CS ! + . ! RS

\$ ) ! 2 ’ , 9 + \$ 9 4. ’ ! ! " ^

4. + \$5 , \$ ! B. 4. + 9 ! P ’ \$/

\$ ) , & . ! 5 \$ 9 4. ’ , &

! P ’ \$/ ) , & 5 /6 j+ UU % 5 \$ )

3 + . 9 /6 & j+ + G + 5 Rh /6

9 ) ! G A + u% 9& , & ) . 4 \$. / . j+ ! \$

[ J A + 5

, ! 7 7 F /6 ! \$ . ‘ ) + . 5 ’ \$/

7 ‘ ) + % % Q . H . 5 \$ ) j+ ! RH

‘ ! RS + 5 ! /6 , \$ ) & 4 u%9 .

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\$ U 9 G ) . ). \$ 7 !\ ’ & 9

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4 + ) . ! ! ? & . . E

\$W& ! " ^) / . \$ ! & ! 6 & ) . 4 G! \$/

j , & ) , / +? 9 ) ‘ ? , 5 9 )

) T )+ , Q ) , & E 2 \$ . Q CS

) , & ! 2 / ) . +. + +, 9 5

+, + j+ M 9 ! ? 5 +, j+ ! B

/ ! P 5

+, l 4 ) ~3! \$W . \$ , ! 3 ) ! / 4

! + . \$ ! / , / / ’ + 5 , / E

\$N Q G + 5 5 G

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! 3 G G , U 5

4 + \$ G .

, 9 ’ \$/ \$ ) \$ %& , / 2

! ) 3 + 5 43 &G ! 6 V+ 5 G , ’ A .

9 4 . ’ ! G + Q ) 3 5 G 1 Q ! B

\$ @ > + 5 +. 4 3 \* +



5 \$ ) 9 ) 9 ) + \$ 4

3 \$ + 5

! / E G .

3 \$ ) C H + . 9 + 5 )

Q \* 5 j+ \$ ) ! + . 4 ! + 9& /5 ! \$

) . ! ) . ) G5 ? \$ j+5-

In the said book it had further been

stated: “;n !"# ! T7 5 k 7 ) + 5 \$

. \$\$ ? ) G , . ’ ’ \$ . 5 \$ &"^ 4

+ 5 \$ ! \$. W CS \* ! 2 T ! 4 = 3 !

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L 9 + / CD! \$ 5 \$ + . 7 z

Cd7 , 5 \$ \$ 9 \$ + ! \$. G5 ) 7 Q M UW

G + 5 \$ \$ + 9 + / CD! \$

3 7 ’ N 5 \$ \$ ! 7 G 5 Rh , W \$

\$ + . 7 . ’ 5 4 3 \$ +, , / ! 2 ’ ! 6 + 5

+ . ’ . / ) ! 2 ’ ! 6 5 ’ .

! + ! 2 ’ ! 6 + 5 + / 4 \$ ) \$ [ 9 ’ 9 ’ 6

) . U 5 7 ’ ) ! Cd , 9 5 3 \$C\$

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5 \$ G [ \$ 9 CS / ? \, +0 CS /  
 ? ) CD! \$ 5 \$ ) 7 /4  
 G \$ !+& , & CS .5 \$ \$ , \$ ) !  
 ! + . ) . ) 9Q 3 ) \$ ! \$ 5 \$ ) +  
 ) \$ A G 5 ' . ! + 6 G 5  
 ' \$ ) 6 \$ G 7 5 \$ )  
 C 5 9 ' r \$ ! 9 C+ . G \$ ) \$  
 +. 5 "

Those are instances of the activities of the appellant and the members of Al-Badr Bahini during the War of Liberation. From the evidence of P.Ws.1, 2, 3 and 4, the documentary evidence exts. 2/2, 2/4, 2/11, 2/16 and contents of M. exhibit-5 proved beyond all reasonable doubt that members of Islami Chattra Sangha were emerged as Al-Badr Bahini and the appellant was their leader. As the President of East Pakistan Islamic Chattra Sangha, he became the leader of Al-Badr Bahini and it is apparent from exhibit-2/16, which is a photograph and has got probative value since the same is documentary evidence. From exhibit 5 it appears that ICS on 10.03.1971 in its conference took decision to act against the verdict of the people reflected in the election held in 1970. In

that conference, ICS took decision to the effect: Cd \$ A T . ) 4.5 CS 6 P 4 \$, \$, ' +? 9 , & &CS\$.) / +. , ) . U 5- And for doing so, the members of ICS, taking training and arms, helped the brute Pak Army in every steps supporting the genocide started from 25.03.1971. It is proved that the appellant led the Al-Badr Bahini, a killing squad, to thwart the birth of Bangladesh as an independent nation in the globe.

The submission of the learned Counsel for the convict-appellant regarding charge No.6 is that there is no specific allegation of kidnapping or murder or extermination as has been alleged by the prosecution against the appellant.

Referring section 16 of the ICT Act, Mr. S.M. Shajahan submits that every charge against an accused shall state the name and particular of the accused, the crime of which the accused is charged and particular of the alleged crime as are reasonably sufficient to give the accused notice of the matter with which is charged but here, there is no particulars of the alleged crime in the charge as framed against the appellant. In reply, learned Attorney General submits that in case of mass killings it is difficult to narrate the names of victims in the charge.

On perusal of the contents of the charge No.6, it appears that there is specific allegation against the appellant that he was involved in conspiracy and planning in the act of intellectual killings or abetting and facilitating the commission of genocide targeting the intellectual group.

In Gacumbitsi (Appeal Chamber) Judge Shahabuddeen observed that it is settled jurisprudence that, in the case of a mass killing, individual victims do not have to be specifically referred to in the indictment.

In view of the contents of the charge No.6, it is difficult to accept the submissions that the particulars of the charge of the crime were not reasonably sufficient. P.W.4 Shahin Reja Noor in his evidence stated that on the night of 10.12.1971 his father Sirajuddin Hossain, Executive Editor of 'Dainik Ittefaq' was lifted from his house in his presence. He also stated that, thereafter, he came to know that some other intellectuals, namely, Nazmul Huq, Shahidullah Kaiser, A. N. M. Golam Mostafa, Nizamuddin Ahmed, Prof. Mofazzel Haider Chowdhury, Prof. Munir Chowdhury, Prof. Giasuddin Ahmed, Prof. Rashedul Hasan, Dr. Alim

Chowdhury, Dr. Fazle Rabbi and Journalist Selina Parvin were also lifted. On 18<sup>th</sup> December, 1971 getting information from Advocate Aminul Huq he rushed to Rayerbazar and saw the brutal massacre held there. He identified the dead bodies of Dr. Fazle Rabbi and Munir Chowdhury. He found 10/15 dead bodies in one ditch. P.W.1 specifically disclosed the names of some intellectuals who were killed in between 10 December to 16 December, 1971 by the appellant's Al-Badr Bahini. The appellant cross examined this witness extensively on the material points. So, non mentioning of the names of the victims, the appellant's right to defend himself has not been affected.

The learned Counsel for the appellant, submits that the ICT -2 did not find that the appellant was directly involved in the killing of any intellectuals. He submits that there is no specific date or time when the appellant was alleged to have visited the camp of Al-Badr Bahini and what the appellant alleged to have designed, planned and conspired and what was the contribution of the appellant in making that plan.

The defence did not deny that the appellant was not the President of Islami Chatra Sanga (ICS) Faridpur District Branch, and, thereafter, during the War of Liberation he was elected as Secretary General of ICS of the then East Pakistan and then in September he was appointed as President of ICS of East Pakistan. ICS was the student Wing of Jamat-E-Islami, Pakistan. We have already found that ICS in a resolution dated 10.03.1971 decided to act against the result of the election and independence of Bangladesh. It is evident that the ICS was converted into the Al-Badr Bahini during the War of Liberation. Different newspapers published during the War of Liberation, M. exhibit-5 and oral evidence proved that the appellant was leader of Al-Badr Bahini. In exhibit-5 it has been stated that Al-Badr Bahini fought against the freedom fighters in different places and killed them during the War of Liberation. Some leaders and members of Badr Bahini who fled away in Pakistan categorically admitted so making statements as described in the book "Al Badr". Exhibit-16 shows that member of Al-Badr Bahini was identified as a symbole of fear and

undomitable challenge to the miscreants. It is evident that the appellant always termed the freedom fighters as miscreants and collaborators of Hindustan. In his article, CD M> CD9 1 .- published in the "Daily Sangram" on 10.09.1971 the appellant stated, 9\$ \$ \$Q + ) +2! + + G 4. 9. 5- The appellant Ali Ahsan Mujahid termed the freedom fighters, the best sons of the soil, as "dogs" and openly declared in different meetings to kill the freedom fighters. Exhibit 2/7 the "Daily Sangram" dated 25.07.1971 shows that the appellant declared, "G! \$/ \*! 2 T , \$/ , / 4 cs %! + ) 5" Exhibit 2/4 shows that he gave slogan, " ) 3 \$ 5" Exhibit 2/16 shows that on 11.12.1971, when major part of the country was liberated, he gave open speech in a gathering near Baitul Mokarram Mosque as leader of Al-Badr Bahini. From the evidence of P.W.2, it appears that this witness was arrested by the Rajakar and Pakistani Army and kept confined in a room near old Parliament Bhaban at Nakhalpara. He found freedom fighters Badi, Juel, Azad, Rumi and Altaf Mahmud there who were seriously injured due to assault caused by

Pak Army. This appellant went there and taking a Stengun assaulted this witness and kicked him on the floor. He requested Captain Quayyum to kill all those freedom fighters including this witness before declaration of Presidential marcy on 5<sup>th</sup> September, 1971. It is also evident that the appellant administered oath in a meeting of Al-Badr Bahini to kill the freedom fighters terming them as Agents of India on 7<sup>th</sup> November, 1971. On 4<sup>th</sup> December 1971, he had declared to kill the freedom fighters terming them as "gaddar". P.W.2 stated, "c % B ' P; ks; ! < !"# , . / 2. 7 , \$ G J% O ) & [ . & B. \$ 1 9 > ) ' ' ) 5 ' . \$ ) 3 ! G O ) \$ N / +! \$, +) \$ G K ? + ' v G\$ +0 CS / ) e\$ 1 9 > ) f P P 3 , + & + 5 " It is evident from material ext.5 that Al-Badr Bahini killed freedom fighters in different places. It is relevant here to reproduce some activities of the Al-Badr Bahini published in the newspapers subsequent after 16<sup>th</sup> December, 1971.

The "Dainik Ittefaque" in its issue dated 19.12.1971 (Ext.12) published a news as under:

"! 2 . \$ + ! H2! \$ + & 9o ! 2 ) ! + & %& V! 4 > , / ! + % ! ) + 5



eG t ? 7f

! / V! M + /5 CS / ! \$ , RS 4 ) 3 ) ! ! #

+ / Z \$ W / . ) ) 6 l ) ! \$ %\$/. ? & 7

, \$ G! \$/ 4 ! \$\$ P Rd) N + / O ) O \$! =

>, / / ! 2 ) ! + & %& 3 V! , / zB ) 4

o / ' ? 4 + . 5 + ) . ! G , T & \$ T )

+ + G. 5 ? ' \$ +G +7 ' &! "# 9RS r \$ B

4 \$+B + & N + / \$ L . 5 Rh ! 2 G !

! RS ) + & N U ! , T & \$ + & N \$ . ) . 5 =

\$ + \$Z 7 . , U / "x: (sic) G ] 4 H2!

! CD+ & N (sic) CS / ! \$ , RS B H2! ! CD' + & 2

(sic) >, / / \$W (sic) 30 O G 7 ' ) 4 ' 4 H

2 4 ! \$ & \$ 7 ) 4. C+ . A G. 7 G. A. +. 5 ! Q

\$H ) + 3 % \$ . F Q . 7 T +M 2 ) G +

1 . % 5 Q 3 ' A G. ? +G. 5 Q \$H ) +

G \$ %&G O . + +G. 2 \_ ! \$H ) + L%

A G. A. +. 5

LK +M= . ! 2 ) ! \* ! G. G %& \$

' . G + ! G Y \$ + &9 o \$ ) 3 5 ~ '

e f Cd /. 4 r ! 23 & ) / ! 2 ) \* 4 74. 4

7 % %& W ) 9 5 + ) Z C# 4 E E G

! 2 ) G. ↓ ) ! E 5 %& \$ (sic) ) H& ) 3. G o

+ 4 \$W +G. A 5 ||

"The Observer", January 5, 1972 published a news describing the brutality with the following words:

"Al-Badr victims Bodies of 4 D U teachers identified.

By A Staff Correspondent

Four of seven bodies recovered by the police on Tuesday were identified as those of Dacca University teachers Dr. Serajul Huq Khan, Dr. Faizul Mahi, Mr. Shantosh Chandra Bhattacharjee and Dacca University's Medical Officer Dr. Murtaza.

They were, among many intellectuals, kidnapped and taken to unknown destination by Pakistan Army backed Al-Badar goondas on the eve of surrender of the occupation forces in Bangladesh.

All the seven bodies were exhumed and recovered on Tuesday afternoon from a field near a mazar, on the outskirts of the city.

The bodies all decomposed were taken to Dacca Medical College Hospital for post-mortem. While four of the bodies could be identified by their relations, the three other bodies were yet to be identified.

According to a source body of Dr. Serajul Huq Khan, a Professor of the Institute of Education and Research, Dacca University was identified by his son Enamul Huq. The victim's trousers, shirt and waist belt helped the identification. Dr. Murtaza's body was identified by his wife's brother Mr. Omar Hayat. Dr. Murtaza's lungi, shirt, a shoe and his daughter's saree which the kidnappers had used for blindfolding him helped the identification of the body.

Body of Dr. Faizul Mahi of the Institute of Education and Research, Dacca University was identified by his brother Mr. Abdul Awal. The victim's trousers and gamchha (indigenous towel) used for blindfolding him helped the identification of the body.

Body of Mr. Shantosh Chandra Bhattacharjee of the History Department, Dacca University was identified by his son Mr. Prodip and colleague Mr. Nuruddin. The victim's lungi and grey hair helped the identification of the body. The three other bodies recovered from the same place are also believed to be those of Dacca University teachers kidnapped by Al-Badar goondas.

It may be recalled that nine eminent teachers of Dacca University and the University's Medical Officer Dr. Mohammad Murtaza were lifted from their respective places on December 14 when the city was under curfew.

The intellectuals lifted are all believed to have been killed.

Those lifted by Al-Badr goondas included Dacca Medical College professors, students, lawyers and Government officials, besides eminent members of the teaching profession. Tuesday's police operation which led to the recovery of the seven bodies was conducted under the guidance of Mr. M.M. Khan, the new D.I.G. of Special Branch and Intelligence Branch of Police. The team of police officials working on it included, among others, Mr. A. Samad Talukder, DSP, Intelligence Branch and Mr. Ishaq, Inspector, Intelligence Branch."

John Stone House, British Labour M.P. to P.T.I. in an interview in New Delhi (published in the Hindus Times on 21.12.1971) said, "---- during his visit to Dacca yesterday ( December 1971) he got the names of these Pakistani army Officers who organised the murders, and members

of "Al-Bader", an extremist Muslim group carried out these heinous crimes just before the surrender of Pakistani forces in Dacca. "

It appears evident from material Ext.1 (the book " 4 ) .") that a statement was published on 21<sup>st</sup> December, 1971 in the 'Dainik Bangla' under heading %& W o -y One Md. Delwar Hossain, Chief Accountant of Greenland Marcantile Company Limited, who was kidnapped and tortured severely along with others confining in a room, gave a statement regarding atrocities of the appellant's Badr Bahini. He found confined some other people including the Professors of Dhaka University, doctors, journalists in the said room who were also mercilessly tortured. Contents of the said statement of Md. Delwar Hossain were as follows:

; < G ! " # ! . 7 5 RS ' \$ ! . \$ L . \$ 5 + F V G  
/ . \$ 5 A ? J ) . . ) 3 . , G ? % /  
! 5 T ) , . ! , , % 8 ) ' 5 C # O  
{ T ) , 3 5  
{ \$ T . ' 5 ! .  
7 \$ ! 7 4 % . 5 \$ ) \$ '  
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J . 5 | " The narrated massacre is comparable with the massacre of Jalianwalabag, Amritashwar, India.

Those are the instances of "Mylais" and "Lidices" in Bangladesh perpetrated by blood-thirsty Al-Badr Bahini and the appellant was the top leader of that Bahini. The aforesaid grosse crimes in the history of mankind and tragedy of unprecedented proportion were committed by the Bahini led by the appellant in the name of Islam and in defence

of Pakistan. The aforesaid wholesale atrocities had been committed by the members of Badr Bahini as were committed by the members of the SS, the SD and the Gestapo Bahinies during second world war.

In his book "Al-Badr" (M. Ext-5) written by Salim Mansur Khaled narrated the statement of one Ashrafuzzaman, who was member of Al-Badr Bahini, while giving description of the incidents before surrender on 16 December, 1971. He said, "n !"# ! T7 5 k 7 ) + 5 \$

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\$ !\$. W CS \* !2T ! e defence admitted that the appellant Ali Ahsan Muhammad Mujahid was the President of the then Islami Chatra Shanga 4

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 the appellant and his accomplices expressed  
 their determination to fight against freedom  
 fighters even after surrender of Pak Army on  
 16.12.1971.

"The Patriot", New Delhi in its 23<sup>rd</sup>  
 December, 1971 issue published a news under  
 caption:

"Butchery- By Al-Bader"

"When the Pakistanis were overpowered, they  
 left the killing to the fascist Al Bader the  
 armed wing of the Jamat-e-Islami. This fascist  
 body has already butchered about 200 leading  
 intellectuals, doctors, professors, and  
 scientists, including such eminent men like  
 Sahidullah Kaiser and Munir Chowdhury."

Justice demands that none who participated  
 in those acts of savagery shall go unpunished.  
 All who share in the guilt shall share the  
 punishment, Prime Minister Winston Churchill  
 subsequent after Second World War declared

that it is quite clear that all concerned who may fall into our hands, including the people ,who only obeyed orders by carrying out the butcheries should be put to death after their association with the murders has been proved.

Knowing full well about the atrocities committed by the Pak Army started on the night of March 25, 1971, which was an act of treachery unparalleled in the contemporary history, a programme of calculated genocide, this appellant extended his hands to help brute Pak Army. The appellant being a student leader had definite knowledge about the genocide and atrocities committed by Pak Army. The offences of intellectual killings just before victory were predominantly shocking to the conscience of mankind. The fierceness of the events of the attack of intellectuals was launched in such grotesque, diabolic and detrimental to basic humanness. "The Newsweek" in its 28.06.1971 issue described a statement of an eye witness which were:

"I am certain that troops have thrown babies into the air and caught them on their bayonets"----- "I am certain that troops have raped girls repeatedly, then killed them by

pushing their bayonets up between their legs."

As Muslim what was the duty of the appellant?

"The Djakarta Times" in its 05.04.1971 issue questioned, "Does Islam permit killing unarmed Muslims by armed Muslims? Can Islamic Principles justify the suppression by a minority of a majority demand for social and economic justice?" It was stated that Muslim States should act quickly and see that good Muslims are not massacred by fellow Muslims.

It is to be mentioned here that the President Roosevelt on October 7, 1942, declared, "It is our intention that just and sure punishment shall be meted out to the ringleaders responsible for the organized murder of thousands of innocent persons in the commission of atrocities which have violated every tenet of the Christian faith". With regard to crimes against humanity, there is no doubt whatever those mass people, political opponents and leading intellectuals of the country were killed during the War of Liberation and that many of them kept confined in circumstances of great horror and cruelty. The pattern of the killings and of the circumstances under which those took place bring to mind the bitter

memory of the Hitlerite hordes on slaughters on culture. It was the cruelest blow to all the Bangalees.

Now let us consider the jurisprudence relating to War Crimes consistent with the facts and circumstances of the case in hand.

Martin Witteveen who has been serving as a Prosecution Expert in the European Union Rule of Law Mission stated: "Special attention needs to be drawn to the perpetrators usually involved in international crimes. The crimes are perpetrated by accused persons acting in groups, rather than as individuals. Sometimes, the structures of the groups are quite loose and badly documented. Sometimes the perpetrators are senior figures in a army or a paramilitary group with a well-defined structure and meticulous documentation. Tribunals, as a policy, aim their efforts at prosecuting the most responsible for the crimes under investigation, most likely the leaders of these military or paramilitary groups. National systems, although they base their jurisdiction on the nationality of the defendant or on their physical presence in the territory that state, are also faced with leadership cases. More

often these most responsible persons or leaders were not involved in the crimes directly in the sense that they personally killed or mutilated victims. They may have ordered or otherwise instigated the killers and attackers, but often they are military commanders or political leaders, who have a more indirect criminal responsibility for the crimes."

In the Nuremberg Trials it was observed: "It would not be necessary to prove individual acts of barbarity if the accused was found to be member of one of the named criminal organizations. The seven named organizations were: the Reich Cabinet, the leaders of corps of the Nazi Party; the SS; the Gestapo, the SD; and the General Staff and High Command of the German Armed Forces. The Trials did establish a precedent for the prosecution and punishment of those responsible for the sort of crimes that the international community considers intolerable wherever and by whomever they might be committed."

Alfred Musema (Case No. ICTR-96-13T (Trial Chamber) the director of the Gisovu Tea Factory in Kibuye prefecture, a member of the



"Council prefectorial" in Byumba prefecture and a member of the Technical Committee in the Butare consmune, was put on trial. Trial Chamber held, "It is well established that the post world war trials unequivocally support the imposition of individual criminal responsibility for war crimes on civilians where they have a link or connection with a party to the conflict. The principle of holding civilians responsible for breaches of the laws of War is, moreover, favoured by a consideration of the humanitarian object and purpose of the Geneva Conventions and the Additional Protocols, which is to protect war victims from atrocities. Thus, the accused, as a civilian could fall in the class of individuals who may be held responsible for serious violations of international humanitarian law, in particular serious violation of Common Article 3 and Additional Protocol II." The Appeal Chamber affirmed the convictions for genocide and exterminations as a crime against humanity. The ICTY Appeals Chamber in the case of Sylvestre Gacumbitsi v. Prosecutor, Case No. ICTR-2001-64-A (Appeal Chamber) has emphasized that proof of a plan or

policy is not a prerequisite to a conviction for extermination. In the said case Gacumbitsi a high ranking administrative official was convicted for planning, instigating, ordering, committing and aiding and abetting genocide. In Prosecutor v. Kamubanda, Case No. ICTR-95-54A-T (Trial Chamber) it was held that the principle that criminal responsibility for any crime in the statute is incurred not only by individuals who physically commit that crime, but also by individuals who participate in and contribute to the commission of a crime in other ways, ranging, from its initial planning to its execution, as specified in the five categories of acts: planning, instigating, ordering, committing, or aiding and abetting. In Prosecutor v. Kayishema and Puzindona, (Case No. ICTR-95-1-T (Trial Chamber) the Chamber distinguished individual, from command responsibility, stating that individual responsibility is based not on the duty to act, but from the encouragement and support that might be afforded to the Principles of the crime.

In Prosecutor v. Rutaganda, Case No. ICTR-96-3 (Trial Chamber) the Chamber held that the

accused may be held criminally responsible for criminal acts committed by others if, for example, he planned such acts, instigated another to commit them, ordered that they may be committed or aided and abetted another in the commission of such acts.

In *Nahimana, Barayagwiza and Ngeze v. Prosecutor*, Case No. ICTR-99-52-A (Appeal Chamber) it was observed that for a defendant to be convicted of instigation to commit a crime, it must be established that the acts charged contributed substantially to the commission of the crime, but they need not be a sine qua non condition for its commission. It was further held that for the appellant to be convicted for instigating genocide, it must have been established that specific acts and omissions of the appellant themselves constituted on instigation to the commission of genocide. An alternative would be that specific acts or omissions of the appellant may have substantially contributed to instigation by others. The Appeal Chamber finds that it has not been shown that the Trial Chamber was in error when it found that certain of appellant Barayagwiza's acts in the context of his CDR

(Political Party) activities instigated the commission of genocide; The Appeal Chamber is of the view that there can be no doubt that the appellant had the intent to instigate other to commit genocide. The Appellant's conviction for instigating the commission of genocidal acts by members of the CDR and its Impuzamugambi (CDR youth group militia) is therefore upheld.

In Prosecutor v. Zigiranyirazo, Case No. ICTR-01-73-T (Trial Chamber) it was held that it was not necessary to prove that the crime would not have been perpetrated without the involvement of the accused; it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime.

In Semanza V. Prosecutor, Case No. ICTR-97-20-A (Appeal Chamber) it has been observed that for an accused to be convicted of instigating, it is not necessary to demonstrate that the accused had "effective control" applies in the case of responsibility as a superior. Even though the Trial Chamber found that it had been proven that the appellant had effective control over others and thus refused to convict him on the basis of his superior responsibility, this

does not mean that the appellant could not be convicted for instigating.

In Prosecutor v. Serouba, Case No. ICTR-2001-66-A (Appeal Chamber) the Appeal Chamber recall the superior responsibility is a distinct mode of responsibility from individual responsibility for ordering a crime. Superior responsibility requires that the accused exercise "effective control" over his subordinates to the extent that he can prevent them from committing crimes or punish them after they committed crimes. To be held responsible for ordering a crime, on the contrary, it is sufficient that the accused had authority over the perpetrator of the crime, and that his order had a direct and substantial effect on the commission of the illegal act. The Trial Chamber erred in law when it considered effective control as an element necessary to prove that Athanase Seromba participated in the crimes by "ordering".

In the Samenza v. Prosecutor, Case No. ICTR-97-20-A (Appeal Chamber) the Appeal Chamber explained:

" As recently clarified by the ICTY Appeal Chamber in Kordi and Cerkoz, the actus reus of

"ordering" is that a person in a position of authority instruct another person to commit an offence. No formal superior-subordinate relationship between the accused and the perpetrator is required. It is sufficient that there is proof of some position of authority on the part of the accused that would compel another to commit a crime in following accused's order.

The Appeal Chamber noted that this element of "ordering" is distinct from that required for responsibility under Article 6(3) of the Statute, which does require a superior subordinate relationship (albeit not a formal one but rather one characterized by effective control). Ordering requires no such relationship it requires merely authority to order, a more subjective criterion that depends on the circumstances and the perceptions of the listener.

Kamubanda v. Prosecutor, Case No. ICTR-99-54A-A (Appeal Chamber) held that superior responsibility of the Statute requires that the accused exercise "effective control" over his subordinates to the extent that he can prevent them from committing crimes or punish them

after they committed the crimes. To be held responsible for ordering a crime, on the contrary, it is sufficient that the accused had authority over the perpetrator of the crime, and that his order had a direct and substantial effect on the commission of the illegal act.

In the Case of Prosecutor v. Seromba Case No. ICTR-2001-66-A (Appeal Chamber), March 12, 2008 it was held,

"The specific intent of genocide may be inferred from certain facts or indicia, including but not limited to (a) the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others, (b) the scale of atrocities committed, (c) their general nature, (d) their execution in a region or a country, (e) the fact that the victims were deliberately and systematically chosen on account of their membership of a particular group, (f) the exclusion, in this regard, of members of other groups, (g) the political doctrine which gave rise to the acts referred to, (h) the repetition of

destructive and discriminatory acts and (i) the perpetration of acts, which violate the very foundation of the group or considered as such by their perpetrators."

In the case of *Semanza v. Prosecutor*, Case No. ICTR-97-20A (Appeal Chamber), it was held, "For an accused to be convicted as perpetrator or co-perpetrator of genocide, it is not necessary that he or she fulfils a 'key coordinating role' or that a 'high level genocidal plan' be established even if the existence of a plan to commit genocide can be useful to prove the specific intent required for genocide."

*Prosecutor v. Mpambana*, Case No. ICTR-01-65-T (Trial Chamber), the Chamber has observed, "The actus reus of genocide does not require the actual destruction of a substantial part of the group; the commission of even a single instance of one of the prohibited acts is sufficient provided that the accused genuinely intends by that act to destroy at least a substantial part of the group."

Similarly, in the case of *Prosecutor v. Ndindabahizi*, Case No. ICTR-2001-71 (Trial Chamber), the Chamber held, "The fact that



only a single person was killed on this occasion does not negate the perpetrators' clear intent, which was to destroy the Tutsi population of Kibuye and of Rwanda, in whole or in part. Accordingly, the killers of Nors committed genocide."

Recently, this Division in Kamaruzzaman's Case (Criminal Appeal No.62 of 2013) observed that the authority of a "superior or commander" may not be de jure in nature, it may be de facto too and it is not needed to be proved by any formal documentary evidence. De facto nature of superior position can be lawfully inferred even from circumstances and relevant facts depicted from evidence presented. In Prosecutor v. Blagojevic and Jokic (ICTY) it was held that a de facto commander who lacks formal letters of appointment, superior rank or commission but does, in reality, have effective control over the perpetrators of offence could incur criminal responsibility under the doctrine of command responsibility. It cannot be expected that civilian superiors will have disciplinary over their sub-ordinates equivalent to that of military superiors in an analogous command position, even no formal letter or document is needed to show the status

of 'superior'. It is not necessary to demonstrate the existence of a formal relationship of subordination between accused and the perpetrator; rather it is sufficient to prove that the accused was in some position of authority that would compel another to commit crime following accused's order. The relationship is not limited to a strict military command style structure. The present appellant as superior was aware of the on going commission of the crimes committed by his Badr Bahini but he did not take any measure to stop or prevent them.

In view of the oral and documentary evidence as quoted above and connecting laws and the interpretations it is proved beyond reasonable doubt that the appellant was the leader of Islami Chatra Shanga (ICS) and Al Badr Bahini and his Bahini was directly involved in the killing of intellectuals in between 10<sup>th</sup> December to 16<sup>th</sup> December, 1971 and that they were responsible for such atrocities and genocide. The appellant, being leader of Al-Badr Bahini having had full control and authority over the Bahini, is also liable for the charge of killing the intellectuals. He

always instigated, actively suggested, intentionally aided and supported his Al-Badr Bahini for commission of such brutal killings in the name of Islam and defence of United Pakistan. He also instigated his Bahini to kill the freedom fighters addressing them as miscreants, "Dalals of Hindustan", Gadders, etc. Sometimes the appellant compared the freedom fighters with "dogs". The appellant knew and had reason to know that his subordinates were preparing to commit or had been committed the offence alleged. From his activities, speeches and conduct clearly proved that he instigated his subordinates to commit such brutal offence. In the case of Kamubanda, (ICTR Chamber January 22, 2004) the Trial Chamber observed that the assistance need not have actually caused the commission of the crime by the actual perpetrator, but must have had a substantial effect on the commission of crime by the actual perpetrator. In the case of Tadic, (ICTY Trial Chamber May 7, 1997) the Trial Chamber observed 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 "concern with the killing". Instigate means to goad urge forward, provoke, incite or encourage to do an act. A person is said to instigate another when he actively suggests or stimulates him to the act by any means, or language, direct or indirect whether it takes the form of express solicitation or of hints, insinuation or encouragement. From the facts, circumstances and evidence on record, the elements of instigation to Badr Bahini by the appellant to commit such atrocities has been proved beyond reasonable doubt.

### **Charge No.1**

Charge No.1 is, in substance, part of charge No.6. The Tribunal found the appellant guilty for charge No.1 as well, we are of the view that since the charge No.1 is also for abducting facilitating and contributing the crime against humanity, more particularly, killing of Sirajuddin Hossain who was one of the intellectuals and was killed in between 10<sup>th</sup> December to 16<sup>th</sup> December, 1971, it would be improper to adjudicate the charge of killing of Sirajuddin Hossain, one of intellectuals,

separately. Thus, the appellant is acquitted of the charge No.1

### **Charge No.3**

The summary of this charge against the appellant was that one morning in the first week of June 1971 during the War of Liberation the Razakars, as a part of attack against the civilian population and also with discriminatory intent, apprehending one Ranjit Nath @ Babu Nath son of late Ramesh Chandra Nath of Rathkhola under Kotwali Police Station, district Faridpur from near the Khabashpur mosque of Faridpur town brought him to Pakistani Major Akram at Faridpur old Circuit House where accused Ali Ahsan Muhammad Mujahid being the leader of Islami Chatra Sangha and subsequently the head of Al- Badr Bahini and or as member of group of individuals were also present and then on getting signal from him, after having talked with that Major, some Razakers and non bengalees, with intent to kill brought him to the house of one Abdur Rashid situated to the eastern side of the "Bihari camp" wherein he was kept confined and tortured. Later on, during the night Ranjit Nath @ Babu Nath managed to escape. Therefore,

Ali Ahsan Mohammad Mujahid has been charged for abetting and facilitating the commission of offence of 'confinement as crime against humanity' by his conduct which was part of attack against the Hindu civilian populations specified in section 3(2)(a)(g) of the ICT Act which are punishable under section 20(2) read with section 3(1) of the ICT Act and thereby he incurs liability under section 4(1) of said the Act.

The victim Ranjit Nath @ Babu Nath was examined as P.W.7. In his examination in chief he said, “ks; ! m; + ) + / ? ) ! \$ + ' . + / . G5 , \$ ! \$ ! w + ) \$ \$ 1 9 > 3 , 3 4. , & + = 5 ' \$ ) . \$ 93 W 3 + \$ ) ! \$ ! 3 + \$ \$ \$ 1 + / + ! +M \$ % \$ , ) 4 ? , \$. 2 + / + ) . 5 \_ ! \$. \$ % \$ ! 9 ' ? ) ! 7 + ' , . ! 5 ! 3 \$ , G \$ , CS / \$ ? ! \$ , + ) ? , ! + , \$ 72 5 3 ! 3 \$ , + ) \$ 4 ? G “G! +7 4 ||5 \_ 3 \$ 3 J% , 4 + / ? ) , C \$ F C+ ' ' A . . ! 5 \_ 3 \$ ! . 5 . \$ 7 7 ' A/ ! 5 \_ ' A ' , {Q \$ 4! + / ! ) . ) ! \$ , G |5 \_ 3

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! 1|. In the cross examination he denied the suggestion that he implicated the appellant falsely. He also denied that entire period in 1971 the appellant had been living in Dhaka.

D.W.8 Md. Lutfor Rahman in his evidence said that Ali Ahsan Mohammad Mujahid, after

arrival of Pak Army in Faridpur started helping them. He further said that the appellant used to stay with Army at Faridpur Circuit House.

From the evidence discussed earlier while deciding charge of charge No.6 we have seen that Ali Ahsan Mohammad Mujahid, the appellant being leader of ICS and thereafter the leader of Al-Badr Bahini involved himself in anti Liberation activities in 1971. It is proved that during the War of Liberation he used to go to Faridpur and stayed at Circuit House and victim P.W.7 Ranjit was arrested and brought before him at the Circuit House. He gave a signal to Abul Kalam Azad @ Bachchu Razaker. After getting such signal, the victim was lifted near a field located in front of Faridpur Zilla School wherein he was assaulted, and thereafter, kept confined in the house of one Rashid wherefrom he narrowly escaped. The appellant had ample opportunity to direct the member of Rajakar Bahini to release Ranjit but he allowed Bachchu Razakar to assault him keeping confined. In view of such circumstances, we are of the view that the



Tribunal has rightly convicted and sentenced the appellant for charge No.3.

### **Charge No.5.**

The contention of charge No.5 is that 'on 30 August at about 08.,00 p.m. during the time of War of Liberation in 1971 accused Ali Ahsan Muhammad Mujahid being the Secretary General of East Pakistan Islami Chatra Sangha and subsequently the head of Al- Badr Bahini and or as a member of group of individuals being accompanied by Matiur Rahman Nizami, the Al-Badr Chief came to the Army camp at old MP Hostel, Nakhalpara, Dhaka where he started scolding Altaf Mahmud, Jahir Uddin Jalal, Bodi, Rumi, Juel and Azad who were kept confined there and then he told one army captain that before proclamation of clemency by the President the detainees would have to be killed. Following this decision he, with the assistance of his accomplices, killed the above civilian detainees by causing inhuman torture. Dead bodies of the victims could not be traced even. Therefore, accused Ali Ahsan Mohammad Mujahid has been charged for participating, abetting and facilitating the commission of

offence of '**murder as crime against humanity**' by his conduct forming part of attack against the civilian population as specified in section 3(2)(a)(g) of the ICT Act which are punishable under section 20(2) read with section 3(1) of the ICT Act has incurred criminal liability for the above offences under section 4(1) and 4(2) of the ICT Act.

In order to prove the charge, the prosecution examined P.W.2 Jahiruddin Jalal @ Bichchu Jalal who in his testimony, inter alia, said,

! \$ 3J, 2 j , < l 7 . ; k ' GC 7  
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f ! G ! . , ) ! \$ ) u F + 5 \$ ! 3  
& + 5 \$ \$ \$ N , , ) \$ \$ ! 7 + ' !  
! m ' , ' t ! G ! ! \$ 9 G5 + F V J 3 ,  
3 , \$ N ) G 7 CD+ . . , T ) A 5 ! ) + N .  
. , 5 3 G \$' , ) \$ , A \$ ! 3  
! \$ 5 , ) ! & 7 ) . \$ ' v \$ ) & V GN. ) \$  
) ' A/ 5 \$ , A 2 \$ 7 \$ A ) . ! ,  
, ' J \$ + l ' ) . 7 ! \$ ' . + 7 ' ) A  
7 ) \$ = 5 , G A/ 7 X \$ 3 A ; ; m "#  
A/ 5 ! E & s 7 . 7 ! ! 5 \$ , 37 37  
\$ M\$ ! \$ \$ 5 6 \$ % & G \$ 0 / M\$ 7 ) ,

, C+. . = 5 ) ) 3 ? G \$ \$ ' F \$ 5

\$ \$ + . ' \$5 ) 3 \$ \_ ; , ! G \$ 1 9 > 9 ) !

\$ \$ ' & " ^ 6 . \$5 ) \$ %& ) , . , ) M\$ G

) 3 \$5 , 9 \$ ? \$ +\$) 9 ? M /

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+ ) . 5 ? \$ +\$ ) F 7 ) 7 \$ ? 5

4 + & ) . 5 , . G . ! \$. ) 3 \$

) + g G 5 4 \$ ) 1 , \$ 7 5 , . G \$

) 3 4 93 4 7 3 \$ 5 , . G

j \$ + I T ? & ! 2 . [ . \$ + 07 ) .

7 5 \$ 3 ' ' \$ . ' \$ = . 3 j I G

) . 3 . 3 . 7 5 93 \$ 3 7 , 5 3 G

& G9 \$ ! \$ ' +\$ , \$/ 4 \$, +) ! + < , CD+

\$ M\$ ! \$ ) . & G. \$ M\$ ' 5 , . G \$ ' +\$ , \$/

4 / +! \$ + \$Z \$, +) ) 3 . j G 2 . , \$

) G 7 5 j 9 ! \$. \$, +) , \$/ ) \$

? 5 & G. \$ 3 ) , ul ! 5

ক্যাপ্টেন কাইয়ুম আমাকে রুম থেকে বের করে নিয়ে আসার জন্য হাবিলদার গুলকে পাঠাল ।

হাবিলদার গুল আমাকে নিয়ে ক্যাপ্টেন কাইয়ুমের সামনে দাড়াতেই সাদা কাগজে নাম লিখে

দস্তখত নিল এবং মাদারচোং বাইনচোং গালি দিয়ে সত্য কথা বলার জন্য চাপ দিতে থাকল।

তখন নিজামী তার কোমরে রাখা ফাইভ ষ্টার পিস্তল হাতে নিয়ে মাদারচোং গালি দিয়ে জিজ্ঞাসা

করল ভিতরে থাকা বন্দীদের সাথে কি কথা বলেছিস, তুই কিভাবে ওদের চিনিস, কতদিন যাবৎ ওদের সাথে পরিচয় জানতে চেয়ে পিস্তল দিয়ে আমার দুহাতের কজির উপর জোরে একের পর এক আঘাত করতে থাকল। পিস্তলের আঘাতে আমার দুহাতের আঙ্গুল চামড়া ছিড়ে রক্ত বের হতে থাকল। তারপরও আমি মুখ না খুলে আমাকে হুমকি দিল বাসা থেকে আমার মাকে, বোনকে তুলে আনবে। তখনই পাশে দাড়িয়ে থাকা আলী আহসান মোহাম্মদ মুজাহিদ ঐ সময় মইনউদ্দিন নামে একজনকে ডাকলে অস্ত্র হাতে সে ঘরে ঢুকল। মুজাহিদ তখন মইন উদ্দিনের হাত থেকে স্টেনগান টেনে নিয়ে আমাকে মাদারচোৎ গালি দিয়ে আমার মাথার পিছনে বাট দিয়ে আঘাত করল। সাথে সাথে ফিনকি দিয়ে মাথা থেকে রক্ত ঝরছিল ৫ তারপর প্রচণ্ড জোরে লাথি মেরে আমাকে ফ্লোরে ফেলে দিয়ে মারতে থাকল। আমাকে মাটি থেকে নিজাম/, মুজাহিদ দুজনে গর্দান টেনে তুলে বন্দীদের রুমে নিয়ে গেল। মুজাহিদ বন্দীদের হাল দেখিয়ে আমাকে বলল যে- সত্য কথা না বললে তোকেও এই হাল করব। মুজাহিদ জিজ্ঞাসা করছিল ২৫ আগস্ট ধানমন্ডি আর্মিদের বিরুদ্ধে যে অপারেশন করেছিল সেই অপারেশনে তোর সাথে কে কে ছিল এবং তোদের হাতে কি কি অস্ত্র ছিল। আমি কথার জবাব না দিলে আবার আমাকে লাথি, গুতা মেরে ফ্লোরে ফেলে দেয়। তখন মুজাহিদ রুম থেকে বের হয়ে ক্যাপ্টেন কাইয়ুমের রুমে গিয়ে নিজামি ও মুজাহিদ দুজনেই বলতে থাকে ১৯৭১ সালের ৫ সেপ্টেম্বর প্রেসিডেন্ট যে সাধারণ ক্ষমা ঘোষণা করেছে সেই সাধারণ ক্ষমার আগেই ২ / ৩ দিনের মধ্যেই ঐ হারামজাদা , গাদ্দার বদি, রুমি, জুয়েল, আজাদ, আলতাফদের সাথে এই পিচ্ছিকেও (আমাকে) গুলি করে লাশ গুম করে দিতে হবে। আমি ফ্লোরে রক্তাক্ত অবস্থায় পড়ে থাকাকালীন সময় এই কথাগুলো শুনেছিলাম। কিছুক্ষণের মধ্যেই ক্যাপ্টেন কাইয়ুম আমাকে ফ্লোর থেকে বের করে এনে দুইজন সৈন্য সহ প্রায় ২৫০ ফিট হাটিয়ে এম পি হোস্টেলের লেং কমে হেজাজির রুমে নিয়ে যায়। সেখানে গিয়ে দেখি সার্কিট হাউজের পাঞ্জাবী এডিসি সিএম আফজাল বসে আছেন। আমাকে দেখতে পেয়ে বললেন ভয় নেই তোমাকে নিতে এসেছি। তখন কর্নেল হেজাজী একটি সাদা কাগজে আমার নাম ঠিকানা লিখে দস্তখত নিয়ে এডিসির হাতে তুলে দিলে এডিসি আমাকে তার গাড়িতে চািয়ে এমপি হোস্টেল থেকে বাসা যাওয়ার পথে চিৎকার শব্দ শুনেছি। ভাবছি নিজামী, মুজাহিদ গংরা বদ , রুমি জুয়েল ভাইদের আবারও টর্চার শুরু করে দিয়েছে। গাড়ীতে যাবার সময় এ ডি সির কাছে শুনলাম আমাকে যখন

আর্মিরা জিপে চড়িয়ে বাংলা মোটর ভি আই পি ষ্টোরের কাছ থেকে গাড়ি ট . এম পি হোস্টেলে নিয়ে যায় তখনই তিনি দেখতে পেয়ে পিছু পিছু এখানে চলে আসেন। আমি সার্কিট হাউসে গিয়ে এ ডি সির বাসায় রাত্রি যাপন করি। দু দিন পর আবার আমি সীমান্ত পেরিয়ে সেক্টর - ২ হেড কোয়ার্টার মেলাঘরে ে ৷ । সেখানে রুমি, বদি, জুয়েল ভাইদের বন্দী এবং হানাদার পাকিস্তানী আর্মির সহযোগী মুজাহিদ নিজামীদের ৭ করার কথা জানালে সেক্টর-২ এর সকল মুক্তিযোদ্ধারা ক্ষুব্ধ হয়ে ওঠে। পরবর্তীতে ক্যাম্পে যারা ছিলাম সবাই বেশী বেশী অস্ত্র গোলা বারুদ সংগ্রহ করে হানাদার পাকিস্তানী আর্মি ও তাদের দোসর রাজাকার, আল-বদর, আল- শামস সহ সব মুক্তিযুদ্ধ বিরোধীদের দাঁতভাঙ্গা জবাব দেওয়ার জন্য সীমান্ত পেরিয়ে ঢাকা শহরে চলে আসি। ঢাকা আসার পরে আমরা যারা গেরিলা ছিলাম সবাই আমাদের সহযোদ্ধা বদি, রুমি, জুয়েলদের খবর নিতে থাকি কিন্তু কোন খবর না পাওয়ায় আমরা ধরে নিয়েছি সাধারণ ক্ষমার আগেই হয়ত এ মুজাহিদ, নিজামীরা তাদেরকে হত্যা করে লাশ গুম করে ফেলেছে। আমরা তাদের না পেয়ে কোম্পানী কমান্ডারের নির্দেশ চোরাগুহ হামলা বাড়িয়ে দিলাম। In his cross examination he denied the defence suggestion which are as following word:

{ G+ ! & . 9 ' I ; ks; \$ ' ? +4. ; ; m " # 3 A ) A A/ \$ 7 3 2 9 ! 3 ) , . , ) M\$ ? \$ +\$ ) 3 2 ) ! 2' 2 ) u) + 9 +M ) 3 2 ! 3 / +! \$ + \$ 7 \$ , + ) 4 \$ ' +\$ , \$ / ) 3 2 \$ ) 9 , o ! ) \$ \$ 9 ! & . 5 G+ ! & . 9 \_ G 3 \$ + ) Q ! 2' & G. \$ M\$ 9 4 . ! 3 \$ ' +\$ , \$ / 4 / +! \$ , + ) ' C+ ml ' I ; ks; % \$ N \$ ) M> 2 ) + CD \$ \$ , o ! ) I ! " # ; ks; 3 ! 07 z ! % 6 \$ T B W G \$ ! + M\$ , . , ) ) ? ) + & Q\$ ) 4 . b / ! ! \$ ? , \$ + I \$ . ! 2 ! . \* 9 ! & . 5 G+ ! & . 9

' I ;ks; T7 ! / +! \$ + \$Z \$, +) , A 9  
 ! &4 . 75 G+ ! & . 9 \$ \$ 1 9> / ! \$ . 3 4 / +!  
 \$ + \$Z \$, +) ! + ) 3 \$ ! 9 ' \$  
 4 ) 3 4 ! " ^ 9 ! 6 & ) . ! & . 5 |

The defence cross examined this witness but did not bring anything to disbelieve the testimony of this witness. It is well settled that the testimony of a single witness on a material fact may be accepted without the need of corroboration. (Prosecutor v. Begilishema, Case No. ICTR-95-IA-A. Appeal Chamber) Mr. Shahajahan, the learned Advocate, questioned the reliability of testimony of this witness since he was a minor, at the relevant time. The learned Attorney General in his reply submits that at the time of occurrence this witness was aged about 14/15 years. He participated in the War of Liberation. He has given vivid description of the occurrence as injured witness. In Gacumbitsi v. Prosecutor, Case No. ICTR-2001-64-A Appeal Chamber found, "it was reasonable for the Trial Chamber to accept witness TAX's testimony despite her young age at the time of the events (11 years old). The young age of the witness at the time of the events is not itself a sufficient reason

to discount his testimony." There is no rule requiring the Court to reject per se the testimony of a witness who was child at the events in question. The probative value to be attached to testimony is determined to its credibility and reliability. The P.W.2 is an injured witness. The Tribunal accepted his testimony as reliable. In this circumstances, we are of the view that the Tribunal did not commit any error of law in finding the appellant guilty of the Charge No.5 relying upon the testimony of P.W.2. The jurisprudence of both the ICTR and ICTY shows that Tribunal has the primary responsibility for assessing and weighing evidence, determining whether a witness is credible or not. In the case of Nyiramasuhuka (ICTR Trial Chamber 24<sup>th</sup> June 2011) it has been observed that there is no requirement that convictions be made only on evidence of two or more witnesses---corroboration is simply one of potential factors in the Chamber's assessment of the credibility of a witness. If the Chamber finds a witness credible, the testimony of that witness may be accepted even if not corroborated.

**Charge No.07**

The contentions of the charge No.7 were that on 13 May at about 02.00-02.30 pm during the War of Liberation in 1971 accused Ali Ahsan Muhammad Mujahid being the Secretary General of the then East Pakistan Islami Chatra Sangha and subsequently the head of Al- Badr Bahini and or as a member of group of individuals being accompanied by Razakar Kalu Bihari, Wahab, Jalal and others came to the office of the peace committee at Khalilpur Bazar Community Center, P.S. Kotwali, District-Faridpur by a jeep where he attended a meeting. At the end of meeting accused along with his accomplices, with discriminatory and persecutory intent, launched attack upon the village "Bakchar" under Kotwali P.S. directing against the "Hindu Community" . By causing such attack villagers, namely, Birendra Saha, Nripen Sikder, Sanu Saha, Jogobandhu Mitra, Jaladhar Mitra, Satya Ranjan Das, Norod Bandhu Mitra, Prafulla Mitra, Upen Saha were tied up. Wife of Upen Saha requested to release her husband even in exchange for money and jewelries but the attempt became futile. Rather following



accused's instruction his accomplices (Razakars) killed all the apprehended civilians belonging to "Hindu Community" . The Razakars, during the same transaction of the incident, committed rape upon Jharna Rani, daughter of Sushil Kumer Saha's sister. The accused and his accomplices looted and burnt the house of one Anil Saha and by such discriminatory and persecutory conducts the accused compelled the villagers to deport to India. Therefore, the accused Ali Ahsan Mohammad Mujahid has been charged for participating and facilitating the commission of offence of **"murder as crime against humanity"** or in the alternative, for participating and facilitating the commission of offence of **"persecution as crime against humanity"** by his conduct which was a part of attack against the "Hindu Community", belonging to the civilian population as specified in section 3(2)(a)(g) of the ICT Act which are punishable under section 20(2) read with Section 3(1) of the ICT Act and thus he is liable for the above offences under section 4(1) and 4(2) of the ICT Act."

In support of his charge, the prosecution examined P.W.12 and P.W.13 .

P.W.12 Chitta Ranjan in his examination in  
chief said: “? ) + / ! ;ks; ! \$ ! m;

3 ) 5 \$, +) ! + \$ ? ) RS \$ 7 ' F 5  
.  
\$ ) ' \$ , 2 + / \$ ) ! \$CS A/T  
A . ) .5 A 7 ) . \$ 7 T \$ A G ' \$G  
\$ 6 / ' \$ ) T B A/ 9 G5 ! 3 \$  
3 , 7 4 ! \$ e \$! / ' \$ G &) f &! \$5  
;ks; ! ; \$ \$ mk u 3 ! ; ; 7 ) \$ ) E  
6 / 9 4. ! \$. ) 3 \$ 7 3 , / ; Q m , \$ )  
! \$ ) . ? ! ) 9 5 \_ C+ ) 3 \$ / ! RS+ . 9 G 2  
, I ) , o ! & \_ ' A/ ! 5  
3 \$ , , 3 \$ G' . RS \$ 7 B . \$ 72 + ! G  
, &? ) RS \$ 7 / +! \$ + \$ Z \$, +) ? , '   
' v 3 J + / 2 . , \_ , / ? ! 9 5 G  
L \$ 9 + ! 23& T +0 2 4. \$/ /' ! + ! 3 .  
6 / ' \$5  
\_ ) \$ 7 ) 3 , RS \$ 7  
, , & ! 5 , ! \$ 3 ) ! ! \$ ) \$ & ! + ! )  
) , \$ RS \$ 7 \$ 72 ! + / 4 O  
) ! + \$ ) +0 j = 5 6 3 \$ r  
\$ ? 5 \$ A G . C+ , , &  
\$ ) 4 +G5 ) ) A/ \ \ ) \$ A  
G \$ ? e ! \$. ! 6 / [ y f5 \$ ) ) A/ @ .  
' . Q 7 A ) 35 \$ %& \$ ) ) ! + 4 5

Q \$ %& ? j \$\* , ' E \$\* H ) ' ! + ! + )  
 ) 3 G5 \$ L \$ \$ 3A G ! / ! + A/ . .  
 ! " # E \$ . [ & 4 Q RS \$ 7 + / 4  
 O ) + & 9 ) \$ W ' ß 5 \_ 3 \$ ! G  
 \$ . 7 ) 3 9 G5 ' . ) 3 ! / T \ ' ! G \$ . 7 1 1  
 C+ . A 5 \$ . 7 ' . Q ) ' 5 \$ \ ) \$ F  
 3 2 9 G \$ 3 4  
 9 . ) 3 4 \$ ? 5 3 \$ .  
 3 ) ! 5 + . ) 3 \$ 0 ! + . , ! 2 ' ) 3  
 + . 5 3 ) \$ \$ \$ ) ) \$ ? 9 ) ! \$  
 ) ) ! + & & ) ! V ! \$ 7 ) ! 5 9 ) \$ ) 3  
 ) ! % / @ Q + & 2 ) / @ G  
 ) 3 G5 + . ) 2 \$ 0 / @ ) 6 Q \$ 7 ) . 5  
 [ / 4 G C+ \$ 7 ) 4 . + . 5 ]

In the cross examination he denied the defence suggestion that the appellant was not present at the time of commission of occurrence of Bakchar and that he had deposed falsely and as tutored by the prosecution.

P.W.13 Shakti Shaha in his evidence said:

{ mk u 3 ! ; 7 ; ; 7 \$ %& \$ 3 , 9 G5 3 7  
 3 , / \$ , + ) ' v 3 J . \$ & , \$ \ / 3 , ! 5  
 ! ) RS \$ 7 ' F ' v & 3 , ? ! ! 5 G  
 T7 7 \$ ) 3 \$ 3 , ' C+ 5 \$ \$ A/

? 9 G5 3 6 % A . ' ' ' F ' 3 4 . , & 5 3 ' ' j3

&1 ' ) \$ 72 ! ' \$ . ! A/ ! \$ m my \$~

!\$. , / \$5 G!\$. \$, + ) + 7 2 + / ) +

G ? 5 \$ ' 0 . ! + ! + . , % )

F \$ A J%5 A ) % . ! 5 )

\$ \$ 2 ) ! ) ) . \$ 6 . 5 3

\$ A ) 5 ) A ) . : 7 . / @ .

; ; m , G ) A . 3 \$, + ) + , G ) 2

Q 4 . , +. 5 3 \_ Q Q > \$ ! + & 4

\$ 7 7 . A e G!\$. ! 6 / [ y f 5 %T07 ' ,

\$ ! ) 3 \$ +/) \$ 7 7 . A 5

\$ ! + \$ ) +0 . A

9 G 2 ! 3 ' . / . G5 4 + + / \$ , ,

\$ \$ F G ? 7 ) . T 5 T7 !\$. ' . 0 7

\$ . \$ A/ ! \$ [ 5 + / %B

Q + & 5 7 \$ . \$ \$ 4 %B

Q + & 5 9 ) T7 ) \$ ! 2 ' + & +. )

\$ %&9 ) \$ \$ + ~ H ! ) ! + 4 & & 5 |

In his cross examination he further said:

“ : 7/ ' ' A . A/ % U \$ ! 2 ' & ) , O

) \$, +/) 4+ 4 Q + & 5 ! \$CST7 Q \$ \$ O )

! \$ ' ' ' ) 3 4 L 5” He denied the

defence suggestion that it was impossible to

hear and see the occurrence from “gabgach”.

From the evidence of P.W.12 and 13, quoted above, it appears that they have corroborated each others on material particulars. The Tribunal has rightly found the appellant guilty of the Charge No.07 and convicted him accordingly.

**Summary of the activities of the appellant during the War of Liberation as appeared from the materials on record:**

Initially the appellant was President (Nazem ) of Islami Chattra Sangha (ICS), Faridpur District Unit.

08.07.1971

The appellant was elected General Secretary of East Pakistan, ICS. (Ext-2/1, the "Daily Sangram". )

25.09.1971

Ext. 2/7, the daily Sangram shows that he was elected acting President of East Pakistan ICS.

26.10.1971

The appellant was elected President (Nazem) of East Pakistan ICS.

**Summary of the documentary evidence about  
the activities of the appellant during the  
War of Liberation:**

10.03.1971

A conference of Mojlish-e-Sura and District  
Nazems of ICS was held in Dhaka where ICS  
took resolution to change the situation  
prevailing in the country. In that meeting  
it was resolved:

"1.---

2.---

3. C+ \$ A T . ) . 5 CS 6 P 4 \$, \$ , '  
+? , , & &CS\$.) / + . , ) . U 500000000000  
\$ ) G! \$/ 1 . ) \$ ! \$.) ! 2T / +  
&) 6 \$ \J ! 2 % , & \$ ) \$ I

5- eM. Ext. 5) The aggressive intentions, and  
that the conspiracy of ICS stemmed from the  
aforesaid decision dated 10.03.1971.

14.03.1971

It was decided that four members committee  
of provincial Sura would visit the district  
to inform the aforesaid decision to the  
workers. (M. Ext.5)

15 and 16 March, 1971

Those four members committee left Dhaka for distributing the informations and completed visits within 7 days. It was stated, "i F ! \$ AG M + 5 j+ ) + ,

GI \$ 4 CS 6 P , & ) . + 5 G ) .

! / C 7 , ) . 9 3 ) .

C ) 3 + 5" eM. Ext. 5)

10.05.1971

Lt. Col. Azam and Operation Chief Fatmi talked with ICS at Chittagong .

5.05.1971

In a meeting of ICS held in Dhaka it was decided to form Razakar Bahini (M. Ext.5).

16.05.1971

47 members Bahihi started getting their training at Sherpur, Maymenshing (M. Ext.5)

21.05.1971

That Bahini was named as Al Badr Bahini (M. Ext.5) it was stated: "\$, , 4 ? \$ / ) 4 \$ ! 9 \$ 86 ) 5 G ) 7 ! 2 F C# ! / P ) / ) \$ . ) , , 5" (M. Ext. 15).

12.08.1971

The appellant along with others issued a Press release stating, inter alia, "CH /) \$ ? ' G + 5- ( Ext. 2/12, The "Daily Sangram").

16.08.1971

In a meeting held at Dhaka University the appellant and others said: " cs 7 3 N \$ . o 7 ) \$5- eExt.2/3).

15.09.1971

The appellant wrote an Article in the "Daily Sangram", with a heading, " CD M> CD 91 .- wherein he stated, "9\$ \$ \$Q + ) +2! + + G 4. 9. 5 - He compared the freedom fighters with the dogs. (Ext. 2/4).

16.09.1971

The appellant in a meeting held in Faridpur said, - "TH& K )3 \$ 9 . \$ ) ! \$ )3 + 5 - (Ext.2/5).

19.09.1971-

The Daily Sangram published a photograph wherein it appears that the appellant along



with Prof. Golam Azam, Motiur Rahman Nizami and others were giving speech.

25.09.1971

He addressed a meeting which was published in the Daily Sangram (Ext.2/7) . He said, “

G! \$/ \* ! 2 T , \$/ , / 4 CS % 2! +  
 ) 5 \$ ) 7 H / \$ \* + \$ ? Ht CS  
 . \$ 9RS 2 T \$/ \$ 5-

15.10.1971

The convict appellant issued a Press release published in the “Daily Sangram” (Ext. 2/9) under heading, “ , ) W ! " ^  
 t \$RS & ) -

26.10.1971

The appellant addressed the meeting of provincial conference of ICS ( “The daily Sangram” Ext.2/10) stating, “9 cs csu  
 % 2! , & ‘ F A ’ CS \* , 4 CSU  
 3 \$ ) H ! 2 ] ’ + Z 9 \$! \$ ! + ) 7  
 9 \$! \$ \$ 1 ) + 5-

26.10.1971

“The Daily Sangram” published a picture where from it appears that the appellant

was addressing the conference of ICS. (Ext. 2/4).

08.11.1971

"The Daily Observer" published a picture of procession of ICS bearing a banner, "  
3 \$ -5 The appellant was at the front of the procession (Ext. 2/13).

08.11.1971

"The Dainik Pakistan" also published a picture of the same procession. It was stated that before procession the appellant declared, "  
+0 CS \$ \* \$ U  
9 ) 9RS) . +0 CS \$ \$ ) . 9 ) \$  
\$ 5- In the procession they uttered slogan / \$, +) CD% 3 \$ 0000 ) 3 \$  
G &) 5- (Ext. 2/14)

05.12.1971

"The Daily Sangram" (Ext.1/15) published a news wherefrom it appears that the appellant congratulated the Pakistan Army.

05.12.1971

"The Daily Purbodesh" published a picture of a procession. At the bottom of the picture it was mentioned, "  
= . /. + \$  
) + O ) ' )&' Y 7 ! ) H& -

11.12.1971

"The Daily Azad" ( Ext. 2/16) published a picture of rally where the appellant was

addressing. At the bottom of the said picture it was mentioned, “ , Q, !H / )

M> r . / ) . ) . , ! . 1 H

O ) % , \$, +) /5-

30.08.1971

“The Daily Azad” published a news under caption, “ , O ) + / / UW % ' \ \$.

+ /5 - eExt.8/17)

14.09.1971

“The Daily Sangram” published an Article stating the activities of Al-Badr Bahini in different places (Ext. 8/2).

05.11.1971

“The Daily Sangram” (Ext. 8/5) published a news with the caption, “ 3 . O ) + /

Y -5

07.11.1971

“The Daily Sangram” published a news item with the caption, “ \$! 4 ) + / ! ? &

9 5 - eExt.8/7).

07.11.1971

“The Daily Sangram” published another news item with the caption, “ ) + / ! ? 9

' b ; ; , / . ' ? - eExt. 8/8).

08.11.1971

"The Daily Sangram" published a news under the caption, " \$! ) + / / U4 ! +! . / . , + 5 -

10.11.1971

"The Daily Sangram" published a news with caption, " ' G E . O ) ! ) 7 2-5

11.11.1971

"The Daily Sangram" published another news with caption , " ) + / 9 ' \$ < , ) CH / ' ? 5 - eExt. 8/11).

14.11.1971

The relevant news item published in the "Daily Sangram" was , " PC+ ) ) ! ∞ G! \$/!\$, Y ] 9 / , & CS + 5 - (Ext. 8/13).

26.11.1971

"The Dainik Azad" published news with caption, " , % / ) + / \$ O + 4 \$ ' O 3 \$ +0 CS 5 -

16.12.1971

The appellant as Nazem of ICS addressed his last to the member of Al Badr Bahini at Al Badr Head Quarter (M. Ext.5)

16.12.1971

On the morning of 16.12.1971, the appellant along with other Badr leaders met the higher Pakistani Army officers in Dhaka

Cantonment and demanded their arms, which the Pak Army decided to surrender to joint forces, for fighting against freedom fighters. (M. Ext-5))

19.12.1971

"The Daily Ittefaque", published a news as:

"! 2 . \$ + ! H2! \$ + &9o ! 2 ) ! + & %&  
VI 4 >, / !+ % ! ) + 5-

23.12.1971

"The Daily Azad" published another news with a caption: " ) + / H2! + & N / 0 5 -

### **Summary of oral evidence**

P.W.1 deposed that the appellant was the President of East Pakistan ICS. During the war of Liberation, ICS emerged as Al-Badr Bahini. They killed the intellectuals preparing their list from November 15, 1971 to December, 15, 1971.

P.W.2 deposed that on 31.08.1971 after his arrest by Pak Army and Razakars, they confined him in a house situated at Nakhalpara. The appellant went there and assaulted him severely and requested Captain Quayyum to kill this witness and other freedom fighters, namely, Bodi, Rumi, Juel, Azad and Altaf Mahmud before declaration of Presidential mercy on 6<sup>th</sup>

September, 1971. Those freedom fighters were subsequently killed. This witness attacked the appellant in December, 1971 when the appellant was leading a rally.

P.W.3 said that the appellant used to go to a Razakar camp situated near his house. In that camp Razakars took training and, thereafter, were promoted to Al-Badr Bahini. Al Badr was, in fact, a killer Bahini.

P.W.4 said that the appellant was President of ICS and he was the Commander of Al-Badr Bahini. He prepared a list of intellectuals and killed them just before the victory. Father of this witness namely Shiraj Uddin Hossain, Executive Editor of "The Daily Ittefaq" was lifted on the night following 10.12.1971 and, thereafter, he was killed. In the same way, the appellant's Al- Badr Bahini lifted and killed journalist Nazmul Haque, Shahidullah Kaiser, A.N.M. Golam Mostafa, Nizamuddin Ahmed, Prof. Mofazzel Haider Chowdhury, Prof. Munir Chowdhury, Prof. Giasuddin Ahmed, Prof. Rashidul Hasan, Dr. Alim Chowdhury, Dr. Fazle Rabbi, Journalist Salina Perveen and others.

P.W.5 said that he saw the appellant along with the leaders of Jamat-e-Islami at Mohammadpur Physical Training Centre, the Head Quarter of Al-Badr Bahini.

P.W.7 was a victim who saw this appellant holding meeting at Faridpur Circuit House and seeing this witness the appellant said, "G! +F 4 " |

P.W.8 deposed that the appellant taking a sword in his hand used to visit Faridpur in a Jeep with Pak Army and hatched conspiracy with them.

P.W.12, a resident of village Bakchar, Faridpur saw the appellant going to Khalilpur for formation Machchar Union Peace Committee . Thereafter, the appellant and his Bahini went to village Backchar Hindu Polli and killed many Hindus.

P.W.13 narrated that he saw the appellant directing his Bahini to kill the Hindus of village Backchar. He saw a Revolver in the hand of the appellant. As per direction of the appellant his Bahini killed the father of this witness and 10/12 others and raped one Jhorna.

We have critically gone through the evidence of all the material witnesses and documents and have thoroughly scanned the same, except some minor discrepancies, there are no serious material discrepancies in the evidence warranting to completely discard their evidence. There is no reason to doubt the credibility of the witnesses. Moreover, in the appeal of Abdul Kader Molla (The Public Prosecutor v. Abdul Kader Molla, Criminal Appeal No.24-25 of 2013), this Division observed that even if it is assumed that contradiction of the statements of witnesses can be drawn in the manner provided under section 145 of the Evidence Act, it may best be said that the witnesses omitted to make some statements before the investigating officer as they were not asked properly, and those omissions cannot altogether be treated or termed contradiction within the meaning of sub-rule (ii) of Rule 53 of the Rules of the Evidence. The contradiction can only be drawn from statement made by the witnesses in course of their examination-in-chief. The defence practically has failed to bring any such contradiction which affects the prosecution



case as a whole. The appellant failed to show any such vital contradiction.

Mr. Khondker Mahbub Hossain, the learned Senior Counsel for the appellant, submits that there is no direct evidence that the appellant hatched conspiracy or designed any plan to commit the offences charged. Conspiracy can seldom be proved by means of direct evidence and has, almost invariably, to be inferred from circumstantial evidence consisting of generality of evidence as to the conduct of the parties on certain occasions and in relation to certain matters. A conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. It is obvious, that where there is confederacy in committing criminal acts, such conspiratorial acts are not committed within the glare of publicity, so as to expose the criminal to the view of others. The offence can be only be proved largely from the inferences drawn from acts or illegal omissions committed by the conspirators in pursuance of common design. It is evident that the appellant's Badr Bahini actively participated in the crimes mentioned above, on a larger scale and more shocking

than the world has ever had the misfortune to know. Leaders and organizers of Badr Bahini, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the crimes defined in the ICT Act are responsible for the act performed by any one of them in execution of such plan.

The appellant prepared Badr Bahini and led, facilitated, encouraged, instigated and supported their brutal activities. This Division in the appeal of Kamaruzzaman v. The Public Prosecutor (Criminal Appeal No.62 of 2013) case has observed that in the Tribunal's jurisprudence, aid and abetting refers to all acts of assistance that lend encouragement or support to the commission of a crime. This encouragement or support may consists of physical acts, verbal statements, or, in some cases, mere presence as an "approving spectator". Except in the case of the "approving spectator" the assistance may be provided before or during the commission of the crime, and an accused need not necessarily be present at the time of criminal act.

The Badr Bahini was organized and formed for a common purpose and its members committed offences of crimes defined in the ICT Act. They took every possible step to destroy the people's will and, thereby, fought against Bangladesh and mercilessly killed the people since the people supported the struggle for creation of Bangladesh. They did not and could not know that united Pakistan had been finished just after opening firing of Machine Guns and Tank Guns by Pak Army on the night of 25, March 1971. Pakistan Army finished Pakistan and democracy opening fire on the innocent people and the appellant was their collaborator. The appellant could not deny his responsibility in view of the evidence quoted above. It is evident that he personally, in writing, encouraged the recruitment of young ICS members in Badr Bahini to implement the objects of brute Pakistan Army.

In view of discussions made above, facts, circumstances and evidence on record and pre and post conduct of the appellant it is difficult to accept the submissions of Mr. Khondker Mahbub Hossain that the appellant was not, in any way, responsible for the acts of

killing the intellectuals from December 10 to December 16, 1971.

### **Conclusion**

The evidence regarding the activities and conduct of the appellant during the War of Independence conclusively proved that the appellant was the leader of Al-Badr Bahini. Before starting of the War of Independence, ICS took their stand against verdict of the people reflected in the general election held in 1970 inasmuch as the people of Bangladesh did not allow them to represent them. Thereafter, during the war of Independence, the appellant and other members of ICS, taking support of Pak Army formed Al-Badr Bahini and started fighting against mass people at large and freedom fighters in particular. At one stage, they kidnapped and killed the intellectuals, who were the best sons and daughters of the soil.

Considering the oral and documentary evidence together with the pre and post operation conduct and activities of the appellant during the war of Independence, we have no hesitation to hold that the ruthless Al-Badr Bahini, under the leadership of the

appellant and being instigated, suggested, aided, provoked and incited by him, had kidnapped and killed the intellectuals just before the victory. It was cold blooded savagery. Such barbaric, gruesome and brutal crime which the Badr Bahini committed at the instigation of the appellant is comparable with Hitler's gas chamber genocide. The entire world witnessed such genocide and brutality committed by Al- Badr Bahini. The appellant was under obligation to prevent the commission of the offence and did not do so rather he, along with some other members of his Bahini, planned, participated and instigated genocide and lastly rushed to the Cantonment and met the high Pak Army officials, on the morning of 16<sup>th</sup> December, 1971 and demanded arms which were to be handed over by Pak Army, for fighting against freedom fighters when Pak Army had already decided to surrender. The appellant was liable for instigating, planning, abetting and commission of genocide. He urged, encouraged, aided, prompted and advised his Badr Bahini to commit such atrocities. He substantially contributed to and had a substantial effect on, the completion of the

crime of genocide. Definitely he was a war criminal. We are of the opinion that the crime indulged in by the appellant was undoubtedly gruesome, cold-blooded heinous, atrocious and cruel. If we look into the manner in which the crime was committed, the weapon used, the brutality of the crime, number of persons killed, the helplessness of the victims, we cannot come to any other conclusion except the one, the Tribunal arrived at. Motive of killings of intellectuals was cold-blooded with a deliberate design in order to cripple the future of this new born country. It is the duty of the Court to award proper sentence having regard to the nature of the offence and depending upon the degree of criminality, the manner in which it was committed and all attended circumstances. The occurrences of killing of intellectuals were committed with the extremely cruel and beastly manner which demonstrated index of the depraved character of the perpetrators. It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. The Judges are carrying out the duty under the Law. The

sentence awarded by the Tribunal for intellectuals killings is not disproportionate in view of the nature of charge and evidence adduced. The people of this earth did not forget Hiroshima and Nagasaki. This Nation did not and shall never forget 1971.

### **Court's Order**

The appeal is allowed in part. Appellant Ali Ahsan Muhammad Mujahid is acquitted of charge No.1. His conviction in respect of Charge Nos.3,5,6 and 7 is maintained. His sentence in respect of charge Nos.3,5 and 6 is maintained. His sentence in respect of charge No.7 is commuted to imprisonment for life.

**C. J.**

**J.**

**J.**

**J.**

**The 16<sup>th</sup> June, 2015**  
M.N.S/words-36577 /