IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Muzammel Hossain, Chief Justice

Mr. Justice Surendra Kumar Sinha

Mr. Justice Md. Abdul Wahhab Miah

Mr. Justice Syed Mahmud Hossain

Mr. Justice A.H.M. Shamsuddin Choudhury

CRIMINAL APPEAL NOS.24-25 OF 2013.
(From the judgment and order dated 5.2.2013 passed by the International Crimes Tribunal No.2 (ICT-2), Dhaka in ICT-BD Case No.02 of 2012.)

Government of the People's Republic of Bangladesh, represented by the Chief Prosecutor, International Crimes Tribunal, Dhaka, Bangladesh: Appellant. (In Crl. A. No.24 of 2013)

Abdul Quader Molla: Appellant. (In Crl. A. No.25 of 2013)

=Versus=

Abdul Quader Molla: Respondent. (In Crl.A.No.24 of 2013)

Government of the People's Republic of Bangladesh, represented by the Chief Prosecutor, International Crimes Tribunal, Dhaka, Bangladesh: Respondent. (In Crl.A.No.25 of 2013)

For the Appellant: (In Crl. A. No.24 of 2013) Mr. Mahbubey Alam, Attorney General (with Mr. M.K. Rahman, Additional Attorney General, Mr. Murad Reza, Additional Attorney General, Mr. Momtazuddin Fakir, Additional Attorney General, Mr. Biswajit Debnath, D.A.G., Mr. A.S.M. Nazmul Hoque, D.A.G., Mr. Ekramul Hoque, D.A.G., Mr. Amit Talukder, D.A.G. Mr. Masud Hasan Chowdhury, D.A.G., Mr. Bashir Ahmed, A.A.G., Mr. S.M. Quamrul Hasan, A.A.G., Mr. Titus Hillol Rema, A.A.G., Mr. Protikar Chakma, A.A.G., instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.

For the Appellant: (In Crl. A. No.25 of 2013) Mr. Khon. Mahbub Hossain, Senior Advocate, Mr. Abdur Razzaq, Senior Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.

For the Respondent: (In Crl. A. No.24 of 2013) Mr. Abdur Razzaq, Senior Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.

For the Respondent: (In Crl. A. No.25 of 2013) Mr. Mahbubey Alam, Attorney General (with Mr. M.K. Rahman, Additional Attorney General, Mr. Murad Reza, Additional Attorney General, Mr. Momtazuddin Fakir, Additional Attorney General, Mr. Biswajit Debnath, D.A.G., Mr. A.S.M. Nazmul Hoque, D.A.G., Mr.

Ekramul Hoque, D.A.G., Mr. Amit Talukder, D.A.G. Mr. Masud Hasan Chowdhury, D.A.G., Mr. Bashir Ahmed, A.A.G., Mr. S.M. Quamrul Hasan, A.A.G., Mr. Titus Hillol Rema, A.A.G., Mr. Protikar Chakma, A.A.G., instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.

As Amicus Curiae: Mr. T.H. Khan, Senior Advocate, Mr. Rafique-ul-Huq, Senior Advocate, Mr. M. Amirul Islam, Senior Advocate, Mr. Mahmudul Islam, Senior Advocate, Mr. Rokanuddin Mahmud, Senior Advocate, Mr. Ajmalul Hossain, Senior Advocate, Mr. A.F. Hassan Ariff, Senior Advocate.

Date of hearing: 2nd, 3rd, 4th, 5th, 6th, 12th, 13th, 16th, 17th, 18th, 19th, 20th June, 2013, 8th, 9th, 10th, 14th, 21st, 22nd, 23rd July, 2013 and 17th September, 2013.

Date of Judgment: 17th September, 2013.

J U D G M E N T

Md. Muzammel Hossain,C.J.: I have gone through the judgments to be delivered by my learned brothers, Surendra Kumar Sinha,J. and Md. Abdul Wahhab Miah,J. and A.H.M Shamsuddin Choudhury,J. I agree with the judgment of my learned brother Surendra Kumar Sinha,J.

C.J.

Surendra Kumar Sinha,J.: These statutory appeals arise out of the following facts.

The birth of Bangladesh has been preceded by injustice; false promise and economic and social abuse suspending the session of the elected National Assembly of 1970 *sine die* followed by the persecution of the legally elected people entitled to form the Government and frame the Constitution, by resorting to commit mass killing, rape and arson by an illegal regime headed by a usurper. These atrocities were perpetrated by the

Pakistan's occupation army with their cohorts, i.e., the Rajakar, Al-Badr, Al-shams and various other local killing squads in 1971. Although the killing of unarmed civilians during late March seemed abrupt and sporadic, it soon became a planned act of violence with operation 'Search Light' enforced at midnight, on 25th March, 1971 as part of the central planning and conspiracy hatched at Larkana[1] and reinforced at Rawalpindi by General Yahya Khan and other Generals preparing an operation plan executed in collaboration with their quisling under the umbrella of politico religious military alliance creating formation of local militia as auxiliary force for perpetrating "the cleansing process" and treacherously declared a war on the unarmed people of East Pakistan and started the worst genocide in history, with a view not only to frustrating the result of 1970 election and its fruits but to drive the leaders and supporters of Awami League and the Hindu and minority population in Bangladesh bringing a huge demographic change turning people of the eastern zone a numerical minority by committing genocide and in fact the military regime held a so called election by declaring the seats of the members of the National Assembly (NA) vacant purporting

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

to reconstitute the NA with handpicked people nominated by the then regime.

This age of violence has been witnessed to some of the most gruesome crimes against humanity-bombing of cities of Hiroshima and Nagasaki; death in the gas chamber by the millions; the horrors of the concentration camps and the war in Vietnam. But the devastation and misery wrought on the people of Bangladesh by the Pakistani army is the most horrifying. Invaded and devastated by the vengeful Pakistani army with active participation and collaboration of local Rajakar, Al-Badr, Al-shams the tortured land of Bangladesh cried out for relief and justice. The people of Bangladesh were robbed of everything they owned and the women raped. The military junta committed atrocities in Bangladesh that have no parallel in the world history.

The history of the Pakistani massacres in Bangladesh can be divided into three distinct phases. The first began in Dhaka at dawn of 26th March, 1971. Numerous eye-witness accounts on the spot have revealed that the West Pakistani troops went on a week-long rampage of murder and terror, mainly in Dhaka. Their principal target was the local intelligentsia. At least 50 scholars and intellectuals of Bangladesh including professors of Dhaka University were shot dead by Pakistani army. Dr. A. Rashid and Dr. A. Sharif-all heads of department of the

University-were among those shot dead. All the resident girl students of the Dhaka University were missing.[2]

According to an eyewitness account the whole of Dhaka town and its suburbs were the scene of the Pakistani army's wanton and almost unchallenged atrocities. The army gave no warning before indulging in arson and butchery. They fired at each and every citizen they met, shot or trampled children to death. Those who peered through the windows were sprayed by bullets. In fact the entire Dhaka town looked like a graveyard with thousands of vultures and dogs relishing the dead bodies to their great delight.[3]

The second phase of the slaughter campaign started soon after the happenings in Dhaka. Islamabad decided that the best way to end the threat to its dominance over Bangladesh was to destroy or drive out entire sections of the population that were sympathetic to the Awami League. This campaign was directed particularly against the Bangalee population. Giving evidence of the atrocities committed by the army of Pakistan, United States Senator Adlai Stevenson observed at a news conference that the atrocities were "a calculated policy to extinguish Bengali culture." This was truly genocide. It was a case of killing or causing "serious bodily or mental harm" to members of a group "with intent to destroy, in whole or

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[2]. War crimes and Genocide- B.N. Mehrish.

[3]. Ibidem.

in part, a national, ethnical, racial or religious group."[4]

The third phase began around the time of the surrender of the Pakistani troops to the combined forces of the Indian army and Mukti Bahini in Dhaka. There are several well-authenticated reports to suggest that just before they surrendered. Pakistani soldiers and the para-military forces under their command-the so-called Al Badr and other Razakar groups-sought out Bangalee intellectuals and brutally mutilated and murdered them in a last desperate act of vengeance. Some 200 such bodies were discovered in places as widely separated as Khulna, Dhaka, Sylhet and Brahmanbaria in Bangladesh.[5]

There can be no doubt that some of the acts perpetrated by the Pakistani troops against the civilian Bangalee population of Bangladesh fall under the rubric of "crimes against humanity". Such crimes formed part of the international inquiry by the Nuremburg Military Tribunal set up by the victorious 4 powers-the USA, USSR, Britain and France-to punish the officers of the Axis armed forces at the end of the Second World War in 1945. The Nazi officers found guilty by the tribunal were convicted and sentenced for, among other things, the genocide of Jews perpetrated by Hitler before and during that war. Since then, the UN's Genocide Convention is an

[4] . Ibid.
[5] . Ibid.

additional reason for taking action against the Pakistani Officers, particularly for the crimes against helpless civilians committed by those who were under the military discipline that an armed force of any civilised country is expected to observe.[6]

It was the devil's day, March 25, 1971, when the Pakistani troops, who were clandestinely moved into East Pakistan during the period of talks, brutally machine-gunned the Awami League Party workers and their sympathisers in the streets of Dhaka and everywhere. The Pakistani Army indulged in indiscriminate killings. The houses were razed to ground, women raped and killed and children mercilessly butchered.[7]

This was a holocaust and the political activities in Pakistan were banned and the Awami League Party of Sheikh Mujibur Rehman completely outlawed. The black martial law was reimposed and the press was strictly censored. Foreign correspondents in East Pakistan were huddled together and bundled out. This resulted in a national uprising of an unprecedented character and everyone, men, women, and young and old raised their voice as ONE MAN to safeguard their democratic rights and to free themselves from the tyrannical rule of Yahya Khan.

The stories passed on to by foreign and Indian press correspondents and the refugees who crossed into India,

[6]. Ibid.

[7]. Ibid.

gave a harrowing tale of the brutalities perpetrated against an unarmed and innocent people. What happened after March 25, 1971, was a gruesome and a tragic story of a helpless people, who were being crushed by a powerful military machine. The Swadhin Bangla Betar Kendra reported on March 29, 1971, that the Pakistani Army, Air Force and Navy had massacred 300,000 people and urged free Nations of the world to check this genocide. Pakistan's military authorities selected targets for extinction and fell upon the youth and intellectuals like mad wolves. Dhaka University was fired upon, killing hundreds of students, professors and scholars. Many girl students residing in the University campus were kidnapped by the army and molested. Later, on April 13, the Pakistani troops forced 300 students of St. Francis Xavier School in Jessore to line up and machine-gunned them.[8]

Although the Pakistan Government bundled out all the foreign correspondents, a few of them, however, managed to smuggle out of East Pakistan stories of death and destruction and the horrible cruelties indulged in by the Pakistani army in Bangladesh. In an editorial 'A Massacre in Pakistan, *The Guardian*, London, March 31, 1971 wrote:

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

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[8]. Ibid.

suppress, these facts, filing his air waves and press with evasive propaganda, deporting every journalist he could find. But a few independent reporters escaped this net and their stories-just emerging-reek 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 Bengalis have died .... The fate of Dacca in a crime against humanity and human aspirations; no one should stand mealy-mouthed by."[9]

Mr. A. Hossain of the Pakistan observer speaking to Mr. Petar Hazelhurst of the Times, London, as published in the 'Times', dated May 24, 1971, said:

"I saw many bodies floating down the Buriganga between May 6 and May 10. Their hands were tied together and in some cases six to seven victims had been roped together. There were no signs of violence on the bodies. Some people nearby told me that the victims were workers belonging to the Sattar match factory on the oustskirts of

[9]. Bangladesh Documents, pp.387-388.

Dhaka and that non-Bengalis were responsible for the killings."

Mr. Hassan Ullah Chowdhury, the manager of the Bengali edition of PURAB Desh, was hacked to death two weeks ago by non-Bengalis in his house in Mirpur, nine miles out of Dhaka. This is a non-Bengali residential area and most of the Bengalis were either attacked or killed there after the army took over. If they see any able-bodied Bengalis, they pick them up in a truck and take them away. I don't know what happened to them.

"One of my colleagues was sent to Jessore and told to write a story about the normal conditions there. Every member of his family had been butchered, but they still wanted him to write a story claiming that the situation was normal."[10]

Mr. Anthoney Mascarenhas, former Assistant Editor, *Morning News*, Karachi, in an article, published in *The Sunday Times*, London of June 13, 1971 wrote:

"The pogrom's victims are not only the Hindus of East Bengal who constitute about 10% of the 75 million population-but also amny thousands of Bangali Muslims. These include university and college students,

> *teachers, Awami League and left-wing political cadres and every one the army could catch of the 1,76,000 Bengali Military men and police who mutinied on March 26 in a spectacular to create an independent Republic of Bangladesh.*
>
> *"The bone-crushing military operation has two distinctive features. One is what the authorities like to call the 'cleansing process', an euphemism for massacre. The other is the 'rehabilitation effort'. This is a way of describing the moves to turn East Bengal into a docile colony of West Pakistan. These commonly used expressions and the repeated official references to 'miscreants' and 'infiltrators' are part of the charade which is being enacted for the benefit of the world. Strip away the propaganda and the reality is colonisation and killing."*[11]

Mr. Sydney H. Schanberg, who was one of 35 foreign newsmen expelled from East Pakistan in a cable despatched from Bombay, which was published in The New York Times of March 28, 1971, said:

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[10]. Ibid.

[11]. Ibid., pp.358-361

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

"some fires were still burning and sporadic shooting was continuing early this morning when the 35 foreigners were expelled form Dacca.

'My god, my god', said a student watching from a hotel window trying to keep back terms, 'they' are killing them. They're slaughtering them',

"When the foreign newsmen, all of whom were staying at the Intercontinental Hotel tried to go outside to find out what was happening they were forced back in by a heavily reinforced army guard and told they would be shot if they step out of the building.

"As the soldiers were firing down the alley, a group of about 15 or 20 young Bengalis started along the road towards them, from about 200 yards off. They were shouting in defiance at the soldiers, but seemed unarmed and their hands appeared empty.

"The machine gun on the jeep swung around towards them and opened fire. Soldiers with automatic rifles joined in. the Bengali youths scattered into the shadows on both sides of the

> *road. It was impossible to tell whether any had been wounded or killed."*[12]

The Times, London, in an editorial published on April 3, 1971 wrote:

> *"The more the news from East Pakistan accumulates, the more harrowing it becomes. Senseless murder, hysterical cruelty and what must be a creeping fear run like a current throughout this packed mass of human beings. All this the distant observer may assume despite the protests of Pakistan Government at some of the stories that have been given circulation. By now the picture is a little more clear and a great deal more gruesome. Enough first-hand reports from Dacca itself and from some of the major towns have come into confirm that what is happening is far worse than what might have been expected in a war of East Pakistan resisting the forces of the Central Government in their demand for independence. The accounts pilling up make conditions in East Bengal sound only too much like the massacres that broke out between Muslims and Hindus in the months leading up to the partition of India."*[13]

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[12]. Ibid., pp.380-381.

[13]. Ibid., pp.391-392.

The New Nation, Singapore in an editorial published on April 6, 1971 wrote:

> "*The way the army has acted, it is now clear, surpasses anything that could pass for legitimate use of force. It has resorted to wanton murder of civilians, including women and children, in a deliberate plan to achieve submission by stark terror.*
>
> "*If it was a misguided decision for President Yahya Khan to have ordered his armies out to persist in it is an act of irresponsibility of such cruel magnitude that the world's conscience cannot continue to accept it as a matter that Pakistan only can decide.*
>
> "*The East Pakistan holocaust must stop, appeals to see reason have been made to Rawalpindi by India, Russia and Britain. More countries must join in this effort to demonstrate that the voice of humanitarianism cannot be stilled by pedantic considerations of internal sovereignty.*"[14]

The Hongkong Standard in an article published on June 25, 1971 wrote:

[14] . Ibid., p.393.

> *"For hundreds of years, the name of Genghis Khan has echoed through history as a by word for cruelty and butchery.*
>
> *"In the 20th century, it seems a Pakistani name sake of the great killer is determined to out-do his grisly predecessor.*
>
> *"Pakistan's General Tikka Khan with modern nicely known as the 'pacifier of rebellious East Pakistan' is commanding fierce Punjabi and Pathan troops who are funning wild in a fearsome bloodbath.*
>
> *"There is overwhelming evidence of murder, of sense less slaughter of children, of rape, of prostitution organised by and for senior army officers, of whole sale, maddened, crazed, blood-thirsty determined massacre.*
>
> *"Genghis Khan, for all his bloody faults, at least built up an empire in the course of his carreer.*
>
> *"Tikka Khan and his gang of uniformed cut-throats will be remembered for trying to destroy the people of half a nation."*[15]

The Dagens Nyheter, Stockholm, in an article published on June 27, 1971 wrote:

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[15]. Ibid., p.406.

"The reign of terror in East Bengal is now in its fourth month. The fleecing and hunted people are still streaming across the border into India. There is no limit to the brutality of the Pakistani military dictatorship-very few of the terror victims belong to the Bengali group of leaders whom the aggressors are trying to eradicate. Also the common man falls victim to the 'fiscal solution' which the Pakistani Army, obsessed by power, is trying to force through as the terrible climax to decades of systematic mis-government. Scenes which are a daily occurrence along the border between East Bengal and India expose the miserable lies about the 'return to normalcy' with which the dictatorship is trying to camouflage its crime against its fellowmen.

"The longer this was, this persecution and devastation goes on, the stronger will be our condemnation of the governments which have not yet managed to pull themselves together in a determined effort to stop the bloodbath. The suffering we see in the Bengali women's eyes is a compromising picture of our era's statesmanship. Behind the official inability to bring pressure on Yahya Khan from outside moral, political and above all economic pressure-lie

cynicism and totally unfounded speculations that the Pakistani military dictatorship in future could stand for a kind of stability at all in this part of the world."[16]

The Palavar Weekly of Ghana on July 8, came out with the news story that:

"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, constructing the majority of the people of Pakistan.

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

"According to all available evidence and report the awful genocide which was deliberately planned and executed ruthlessly by the West Pakistan army and has been marked, among other unspeakable atrocities, by the systematic decimation of East Bengal's intellectuals and professions, including eminent professors,

[16]. Ibid., p.406-407.

lawyers, journalists, doctors, students etc. is still continuing.

"The only crime of Sheikh Mujib and his party was that they sought through normal process of democracy, to end the erstwhile colonial status of their part of the country and restore it to a position of respectability within a united Pakistani federation.

"For humanitarian reasons India which has always been regarded by Pakistan as its enemy number one, has despite its own population explosion and sacrifices done whatever it could do to house, shelter and feed the vast number of refugees from East Pakistan.

"The number of refugees fleeing East Pakistan into India is still increasing at a rate of fifty thousand a day. If a government can force millions of its people to seek protection in another country, one wonders what earthly or heavenly right that Government has to remain in power any longer.

"As the situation is reported to be there seems little hope of East Pakistan refugees in India being able to return to their own homes."[17]

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[17]. Ibid., pp.411-422.

An Indian Press Correspondent, Chand Joshi of *The Hindustan Times*, New Delhi narrated the bitter record of the Pakistani Army's barbarities in Bangladesh as follows:

> "*The ears are not yet dry. The stench of death still fills the nostrils as one walks through many of Dacca's streets. Perhaps all this is imagination? One could only pinch oneself to find out whether it was just a cruel night-mare or whether all this was reality.*
>
> *On the Nawabpur Road a pregnant girl ran around, her hair disheveled, her saree torn and shouting "Na, na, na, (no, no, no). She no longer has any name. She is mad but a few months ago, she had a face, a figure and a name. She was a Dacca College student. She was, that is, till the Pakistani Army took her away to the cantonment. Nobody could ask her what happened, for she cannot talk any more. Only at the first sight of people approaching her she shrinks back and shouts 'Na, na, na." An Indian Army officer said that she was perhaps luckier than some others. She might even be cured. Most of them never had a chance.*
>
> *"At the Dacca Cantonment young girls were rounded up and then made to fall in naked. They tried to hide their breasts with their hair. The*

mocking soldiers would brush their hair aside with a "Dekhnay do" (Let us see)". The soldiers would fall into company formations and choose the girls. Innumerable times, innumerable soldiers chose the girls till they collapsed. They would then mockingly cut off their breasts, or bayonet them through the vagina. Those who were liked particularly would be kept for a repeat performance every hour of the day. Most of them who were recovered were pregnant. A majority had been killed. At Brahmanbaria the Indian Army recovered nude women, dead or almost senseless with continued rape, from trenches.

"A part from Dacca, in Jessore, Faridpur, Tangail and almost everywhere the same thing happened. In a village near Dacca, a father was asked at bayonet point to rape his daughter. When he refused the soldiers raped the girl in her father's presence. The soldiers then bayoneted his daughter to death. Mercifully they hanged her father also for the crime of refusing to obey the orders. The story was repeated in exactly the same manner by at least half a dozen persons from the village. It could perhaps be true.

"The living proof of atrocities committed by the occupation forces was the recovery of the bodies

of intellectuals who were killed on Dec.15, a day before the surrender. They included prominent doctors, intellectuals and journalists, including the BBC's representative in Dacca.

"People may exaggerate, but the evidence of one's eyes cannot lie. Burnt-out, broken localities, bullet holes on the walls of houses, the stains of blood all speak of the enemy's barbarity. In one such locality, Sakhari Pati in Dacca, there is not a single house standing. Massive old buidings were razed to the ground after being looted. Some of them were shelled. And what about their inmates? "Those who were lucky stayed in their houses to be buried alive." Those who ran out were moved down by machine-gun fire from all sides.

The law then was simple. If there was an explosion anywhere, the people within a radius of 500 yards were to be punished. A cracker was set off and units of the Army and Razakars moved in and mowed down every body in sight. In village near the Mirzapur industrial area, they shot about 1,000 people on the suspicion that they belonged to the East Pakistan rifles or the East Bengal Regiment. The procedure was direct. All males available would be rounded up and

shot. They would then turn over the bodies to see whether there was any identification supporting their suspicion.

In the Razakar-infested localities of Mohammedpur and Mirpur, there were ceremonial sacrifices of Bengalis. In Sector 12, the quota was fixed at 25 a day. People were picked up and their throats slashed till they bled to death. We met a man from that area. Of a family of 19 members, he was the only one who survived. He says nothing any more. He only wants to get back to search in the local well for the bodies so that he may give his family members a decent burial. There are many such wells in the locality. Nobody drinks water from them since they known that the bottom is full of bodies. The fish from smaller rivers have no buyers for the same reason. They had been fed on corpses. At one point 100 "hilsas" were being offered for Rs.2 but nobody would take it. (Italics supplied)

"It was not only rape and murder. Every single house was visited one time or the other. Most of them were looted. Everything of value was taken away. "We safe ..... almirah kholoy," the Razakars would say pointing out the fridge. And they would rake away even the eatables. In one

> *instance, they looted a house and took away brass utensils thinking that they were made of gold. They then went to a goldsmith and asked for cash in exchange. When the goldsmith told them that they had brought brass and not gold they beat him up mercilessly.*[18]

The object of committing genocide in Bangladesh, as stated above, was to eliminate the Awami League and its supporters in East Pakistan, in order to crush the will of the majority earlier demonstrated in the general election and to turn a majority people into a minority forever by crating terror through indiscriminate killing, rape, arson, and looting, thus forcing ten million people to leave their country, and to seek shelter and in the neighbouring states of India. In this mayhem the members of the Hindu community were the major target. Within the first 48 hours, the massacre ravaged Dhaka and all the major towns and cities in Bangladesh. All foreign journalists were expelled by Yahya Khan's government, leaving only a few who managed to remain in hiding. Simon Dring being one of these very few, recounts how within the first 24 hours, the Pakistani army slaughtered approximately 70,000 people in Dhaka alone, along with

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[18]. The Hindustan Times, New Delhi, December 24, 1971, p.6.

another 15,ooo all over Bangladesh. Simon Dring's[19] description of the attack on Dhaka University as follows:

> *"Led by American-supplied M-24 World War II tanks, one column of troops sped to Dhaka 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 antigovernment students' union, I was told. Two days later, bodies were still smoldering in burnt-out rooms, others were scattered outside, more floated in a nearby lake, an art student lay sprawled across his easel.*
>
> *"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 ass though asleep, their blankets pulled up over their shoulders.*

In the operations on the night of 25-26 March 1971 Dhaka University was among the targets of this first attack on Bangalee Nationalism. On 29 April 1971, Ohio

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[19]. Simon Dring is an award-winning foreign correspondent, television presenter and producer, who alerted the whole world about the massacre in Dhaka.

Republican Senator Willimam Saxbe placed a letter from a constituent, Dr. Jon E. Rohde, in the Senate record. Dr. Rohde had served in East Bengal for three years as a physician with the United States Agency for Independent Development ('USAID'). His letter contained the following account of what he witnessed before he was evacuated from Dhaka.[20]

Dr. Rohde's assessment of the situation in Bangladesh was as follows:

> "*The law of the jungle prevails in East Pakistan where the mass killing of unarmed civilians, the systematic elimination of the intelligentsia, and the annihilation of the Hindu population is in progress*".[21]

Another American evacuated from Dhaka, Pat Sammel, wrote a letter to the Denver Post, which was placed in the House record by Representative Mike Mckevitt of Colorado on 11 May 1971.

> "*We have been witness to what amounts to genocide. The West Pakistani army used tanks, heavy artillery and machine guns on unarmed civilians, killed 1,600 police while sleeping in their barracks (...)demolished the student dormitories at Dacca University, and excavated*

[20]. Rohde's letter is reprinted from the Record of the U.s. Senate as 'Recent events in East Pakistan" in sheelendra Kumar singh et al. (eds). Bangladesh Documents, Vol.I. madras:BNK Press.1971, 349A/51.

[21]. Ibid.

a mass grave for the thousands of students; they've systematically eliminated the intelligentsia of the country, wiped out entire villages. I could go on and on. It's hard to believe it happened.[22]

Further reports of a massacsre at Dhaka University can be found among James Michener's interviews in Teheran with Americans who were evacuated from the East Pakistani capital. Several evacuees reported that they had seen Pakistani leaders with specific lists containing the names of Bengali professors who were slated for execution. They also reported seeing mass graves of students who had been killed.[23]

Mohamedullah Chowdhury, Chief sub-editor, *Daily Ittefaq* stated:

"*At about 4 p.m. on the 26th, a Patton tank came up and took up position on the other side of the road facing the Ittefaq office. First they machine-gunned the board on which the name of the paper was written. After the journalists on the first floor came out to see what was happening. They understood at the sight of the*

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[22]. Reprinted from the Record of the U.s. House of Representatives in ibid.,p.357.

[23]. James A. Michener, "A lament for Pakistan", New York Times Magazine, 9 January 1972.

tank and fell flat on the floor and crawled back to the newsroom. Just at this moment, a canteen boy who was hiding somewhere on the first floor also came out to find out what was happening and had hardly looked out when he was machine-gunned on the forehead and died on the spot. Hearing this shot, a peon named Shamshul who was hiding on the ground floor also came out and another shot hit him on the chest and he died."[24]

Father John Hastings from Norwich, U.K., who served in Bangladesh Volunteer Service Corps stated:

"*In May, there were occasions when I visited Husnabad, Taki, Basirhat called some times at the hospitals round camps. In Bashirhat Hospital there was one woman who had a foot amputated from a bullet wound. She had three children with her, and all of them were injured, either by a bayonet or a bullet. They had bandages on, the baby had a bullet wound across the thighs, and she said her husband had been shot. She was part of, I think, a very big group that were coming from Khulna and crossed at Hakimpur and into West Bengal. And they had been surrounded on the way, a place called jaldanga. This was apparently done with the collaboration of some*

[24]. War crimes and Genocide-B.N. Mehrish, P.122-123.

villagers along the way stopped the thousand who were moving in this direction and passed information to the Army, who came along and then machine-gunned them. And they say some 400 of them died, while they were on their way to what they thought was safety in India. The Army followed them and other groups to the border of India and were in fact shooting at them as they were trying to cross on more than one occasion.

One day the Army came to the river crossing and seized girls who were about to cross into India by boat and carried them off. Other women and girls jumped into the river and tried to swim across and two were drowned. I spoke to one woman who had crossed at that time. I actually have her photograph here, and this woman told of her husband being killed just as he was reaching the border of India.

Then in the Bongaon Hospital, I saw young men, and girls also. Some had been bayonetted in the vagina, and one of them was so demented that she was carrying all the time. They will kill us all, they will, kill as all. It was an incessant refrain that she couldn't cease uttering-at that time, "They will kill us all they will kill us all." It was when I saw the mass graves of 200 people and another grave where they said there

were 65 bodies. This was actually at Shikarpur near the reception centre.

"I was away for some time, but again on return in September and on renewed visits to the border found again many cases of people arriving without clothes, or anything at all. The numbers coming then were perhaps a little less but still seemed to be about 50,000 a week. More recently, there were three girls who had been raped on their way through Bangladesh and they met a Major of the Mukti Fouj and said to him: this is our condition, we cannot live any longer. Please spare three bullets for us. And the major felt the only kindness he could do was to shoot them, so he did. Other women who had become pregnant by rape hanged themselves from trees in Husnabad and others sought and got abortion, others who tried abortion and failed, killed themselves. And we understand there is something like 400 of such pregnant women round about the Bongaon areas, at least 50 in Calcutta and possibly another 500 in other West Bengal camps and many of them are now approaching full term. So we have arranged a very quiet place in Kalyani and we are sending the word to all camps, if any girl wants private attention this can be given to her.

> *"Some of them have put sindoor on their foreheads and pretended to be married and some of them will keep the children. We would like them to be helped to love the children and make homes for them and give them the assistance to do that, rather than spurn the child, having been so impregnated with hate and horror. This is extremely difficult, but worth trying, we feel. It at least gives these girls a chance for a future where probably they are thinking they have no future whatsoever. More so than other refugees they deserved special attention. But how successful this will be, we have no idea."*[25]

Iqbal Hall, student dormitory centre of the Student Council, was attacked on the morning of March 26, 1971 by tanks and soldiers with submachine guns and grenades Inspection of the Hall two days later reveled a building demolished by tank blasts and gutted by fire. Bodies were visible, many of them having been taken to the roof to prevent body count. One man and two children corpses were charred leaning against a widow. The degree of armed resistance offered by the students was not clear. According to one American physician, who inspected the hall saw "a pile of burned rifles. All of these rifles had false wooden barrels, and may have reflected the

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[25]. Ibid., pp.127-128.

degree of armed resistance which these students offered."[26]

Jagannath Hall was the dormitory of the Hindu students at Dhaka University. According to one student survivor who was treated at Dacca Medical College, "all 103 students were killed. Soldiers attacked the dormitory on the morning of March 26, 1971 without warning. Approximately students were spared and forced at gunpoint to dig a mass grave (in a field adjacent to the dormitory). They were then shot. This student was left for dead and was able to crawl away to the hospital under the cover of darkness."[27]

Homes of Professors of Dhaka University were also attacked and several faculty members were killed or wounded during the attack on the university, names and rank of faculty members at Dhaka University who were killed or wounded are as follows:

1. Professor G.C. Dev, Head of Philosophy, killed.
2. Professor Moniruzzaman, head of Statistics, Killed.
3. Professor Ali, Head of History, Killed.
4. Professor Guhathakurta, head of English, killed.
5. Dr. Munim, Instructor of English, killed.
6. Dr. naqui, Instructor, department not known, killed.

[26]. Bangladesh Documents, P.353-354.
[27]. Ibid. pp.353-354.

7. Professor Huda, Head of Depatment of economics, wounded.
8. Professor Innasali, Head of Department of Physics, wounded.[28]

Other faculty members were also killed during the attack on the university, but their deaths could not be verified. Personal reports by wives of faculty members indicated that specific professors were sought by the Pakistani Army, especially those involved with economics, political Science and Bengali Culture. Although the exact circumstances of death were not known, one of the eyewitness accounts from family members described the exact circumstances of death as follows: "On March 28, 1971, Building 34 contained pools of blood on the first and second floor foyers. According to wives of faculty members, troops attacked the building on the morning of March 26th. Apartment A was entered forcibly and the faculty member marched to the courtyard where he was shot. Fortunately he was only injured with a neck wound and was known to be in critical condition at Dacca Medical College. The soldiers then went to Flat D, where Professor Muniruzzaman lived. He, his son, his brother who was an advocate on the East Pakistan High Court and the only son of his sister-in-law were marched to the first floor foyer, lined up against the wall and machine-gunned. The wife of professor Zaman dragged her wounded

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[28]. Ibid. p.354.

husband back to their apartment hiding him in the bedroom. Three hours later when the soldiers returned to remove the bodies they re-entered his apartment, again dragged him down the stairs and killed him."[29]

One American missionary described the army tactics in old Dhaka in these words: "soldiers during the day carried whistles, which were blown when they wanted to search a civilian. At the blowing of a whistle any moving person was immediately shot. An official of USAID, while driving through Gulshan, witnessed a jeep load of soldiers fire submachine guns at three children who were playing in the rice paddies."[30]

There is much evidence about the dreadful sufferings of the people. The acts of murder and violence against the people of Bangladesh committed by Yahya Khan's regime and under its influence, were committed without any shadow of doubt with the express intent. There was also the lack of mercy even towards little children and women. The above eye witness accounts, individual testimonies, editorials and articles appeared in the newspapers are admitted evidence to show the horrific atrocities committed by Pakistani war criminals and their cronies.

The whole public opinion in India and different political parties of the country made an unanimous demand that the Government of India should take concrete

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[29]. Ibid.
[30]. Ibid.

measures to stop the genocide in Bangladesh and fully sympathise with the people of that country who were facing a savage and brutal attack by the Pak Army. They also demanded the recognition of Bangladesh. This mobilisation of public opinion in India resulted in the passing of a resolution in the Indian Parliament moved by the prime Minister herself on March, 31, 1971. The resolution condemned the atrocities and brutalities perpetrated by the Pak Army on the unarmed and peaceloving people of East Pakistan. The resolution also made a fervent appeal to all the governments of the world to prevail upon the Military rulers of Pakistan to put an end immediately to the systematic decimation of Bangalees amounting to genocide. The text of the resolution read as follows:

> "*This House express its deep anguish and grave concern at the recent developments in East Bengal. A massive attack by armed forces, despatched from West Pakistan has been unleashed against the entire people of East Bengal with a view to suppressing their urges and aspirations. Instead of respecting the will of the people of unmistakably expressed through the election in Pakistan in December 1970, the Government of Pakistan has chosen to flout the mandate of the people.*

"The Government of Pakistan has not only refused to transfer power to legally elected representatives but has arbitrarily prevented the National Assembly from assuming its rightful and sovereign role. The people of East Bengal are being sought to be suppressed by the naked use of force, by bayonets, machine guns, tanks, artillery and aircraft.

"The Government and people of India have always desired and worked for peaceful, normal and fraternal relations with Pakistan. However, situated as India is and bound as the people of the subcontinent are by centuries old ties of history, culture and tradition, this House cannot remain indifferent to the macabre tragedy being enacted so close to our border. Throughout the length and breadth of our land, our people have condemned, in unmistakable terms, the atrocities now being perpetrated on an unprecedented scale upon an unarmed and innocent people.

"This House expresses its profound sympathy for and solidarity with the people of East Bengal in their struggle for a democratic way of life. Bearing in mind the permanent

> *interest which India has in peace and committed as we are to uphold and defend human rights, this House demands immediate cessation of the use of force and the massacre of detenceless people. This House calls upon all peoples and Governments of the world to take urgent and constructive steps to prevail upon the Government of Pakistan to put an end immediately to the systematic decimation of people which amount to genocide.*
>
> "*This House records its profound conviction that the historic upsurge to the 75 million people of East Bengal will triumph. The House wishes to assure them that their struggle and sacrifices will receive the wholehearted sympathy and support of the people of India.*"[31]

India also told the United Nations that persons who had committed grave crimes such as genocide, war crimes and crimes against humanity are, in its view, not entitled to any immunity under any of the Geneva Conventions. The Joint Command of the Bangladesh and Indian forces has the right to demand their evacuation of behalf of the Government of Bangladesh so that they could

[31]. Bangladesh Documents, Ministry of External Affairs, Government of India, New Delhi, p.672.

be taken into custody pending appropriate legal action under the law of the land and under international law. India's permanent U.N. representative at the United Nations, Mr. Samar Sen, conveyed this view of the Government of India to U.N. Secretary-General, Mr. Kurt Waldheim, in his letter dated January 14, 1972.[32]

Reaffirming India's stand on the trial of Pakistani prisoners of war, the Prime Minister, Mrs. Indira Gandhi, in an interview, told Mr. Gyoergy Kalmar of the Hungarian journal, *Nopszadadsag* that those who have committed crimes are not exempted from the processes of law. She said:

> "*There is no doubt that the POWs surrendered to the joint command of Indian and Bangladesh forces. This fact is as real as Bangladesh. Bangladesh is recognised by more than 60 sovereign states. It is not a fiction. So far as the trial of some POWs is concerned ... the Geneva Conventions provide for such trials, POWs are not exempted from the processes of law if they have committed a crime.*"[33]

Pakistan, however, asked the President of the Security Council, Sir Colin Crowe of Britain, to intervene with India to forestall the intended trials of

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[32]. The Hindustan Times, New Delhi, January 18, 1972, p.1.
[33]. The Sunday Standard, New Delhi, April 23, 1972, p.1.

West Pakistanis as war criminals in Bangladesh. In a letter to Sir Colin, the Pakistani Ambassador, Mr. Agha Shahi expressed his Government's serous concern about the intention to hold these trials. He said, "India was responsible for the Pakistani prisoners involved and that it had assured their safety under the terms of the Geveva Conventions."[34]

Referring to the genocide and other inhuman atrocities committed during their nine months of occupation, Dr. Kabir Chowdhury said, 'the Pakistani Army and their agents killed the intellectuals including students, teachers and doctors on the eye of liberation of Bangladesh". He described the killings of intellectuals as planned and held Gen. Niazi and Maj. Gen. Forman Ali and other officials responsible for cold blooded murders.

The Pakistani regime was committed militarily to crush the national aspirations of the people of Bangladesh. Yaha regime's policy for Bangladesh had three elements:-

> "*(1) The Bengalis must be ruled by West Pakistanis;*
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> *(2) The Bengalis will have to be re-educated along proper Islamic lines. The "Islamisation of the masses"-this was the official jargon,*

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[34]. The Hindustan Times, New Delhi, April 8, 1972.

which was intended to eliminate secessionist tendencies and provide a strong religious bond with West Pakistan;

"*(3) When the Hindus had been eliminated by death and flight, their property would be used as a golden carrot to win over the under-privileged Muslim middle class. This would provide the base for erecting administrative and political structures in the future.*"[35]

From the evidence available one may conclude that the aim of Pakistan's regime was to wipe out the Awami League leadership so that it could no longer provide an effective leadership for any resistance movement. Sheikh Mujibur Rahman was arrested and taken to Pakistan, where he was charged of 'treason'. The slaughter of students in Dhaka, as likely organizers of guerrilla operations, seems well attested. Eye witness reports from foreign residents evacuated from Dhaka paint a more horrible picture of the carnage that had been unleashed by Yahya's troops than had been suspected. The way the Pakistani Army had acted, surpasses anything that could pass for legitimate use of force. It had resorted to wanton murder of civilians, including women and children in a deliberate plan to achieve submission by stark terror. Army trucks rolled through the deserted streets of Dhaka,

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[35]. Bangladesh Document, p.371.

carrying arrested persons to work-sites for hard labour. Their heads were shaved and they had no shoes and no clothes except for shorts all making escape difficult. The Pakistanis were "discouraging the use of the Bengali language and trying to replace it with their own, Urdu. Soldiers told the Bangalees disdainfully, that theirs was not really a civilized tongue and that they should start teaching their children Urdu if they wanted to get along, merchants, out of fear, had replaced their signs with signs in english because they did not know Urdu."[36]

The Proclamation of Independence of Bangladesh point to the very special tragic link between the crimes committed by Pakistani regime and the establishment of the new State. Relevant paras of the Proclamation may be cited here:

> "*Whereas Gen. Yahya Khan summoned the elect representatives of the people to meet on March 3, 1971, for the purpose of framing a constitution, and*
>
> "*Whereas instead of fulfilling their promise and while still conferring with the representatives of the people of Bangladesh, the Pakistan authorities declared an unjust and treacherous war,*

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[36]. Bangladesh Documents, p.414.

> *"Whereas in the conduct of a ruthless and savage war, the Pakistani authorities committed and are still committing numerous acts of genocide and unprecedented tortures, amongst others on the civilian and unarmed people of Bangladesh, and*
>
> *"Whereas the Pakistan Government by levying an unjust war and committing genocide and by other repressive measures made it possible for the elected representatives of the people of Bangladesh to meet and frame a constitution, and give to themselves a Government.*[37]

These words are not mere rhetoric but historical fact which the law of nations does not ignore. It would not be difficult to prove that there was a subsisting "linking point", since most of the crimes committed by the personnel of the Pakistani Army were perpetrated against the people of Bangladesh. The doctrine of "the linking point" is not new. Hugo Grotius also based his views on "the right to punish" on a "linking Point" between the criminal and his victim. Grotius held that "*the very commission of the crime creates a legal connection between the offender and the victim such as vests in the victim the right to punish the offender or demand his punishment. According to natural justice the*

[37]. The Constitution of Bangladesh.

victim may himself punish the offender, but the organization of society has transferred the natural right to the sovereign State. One of the main objects of the punishment is to ensure that the victim shall not in future suffer a similar injury at the hands of same person or at the hands of others."[38]

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

[38]. The Law of Peace and War (Book 2, Chap, 20), quoted in District Court Judgment in the Eichmann Case, International Law Reports, Vol.36(1968),p.5.

clamp colonial rule on the 75 million people of Bangladesh.[39]

The War crimes and genocide in Bangladesh evoked great resentment and anger against the Pakistan authorities as well as sympathy and friendliness for the suffering millions of Bangladesh. Can any one in his right mind doubt about the criminality of the acts of the Pakistani Army committed in Bangladesh? The existence of criminal intent (*mens rea*) in committing these acts appears to be not lacking. It may be added here that the crime against the people of Bangladesh constitutes the crime of genocide, which is nothing but the gravest type of crime against humanity.

The origins of the modern 'humanitarian' law of war lies less in concern for humankind than for the coffers of the warring states. This was the motive for holding the first international conferences, at St. Petersburg (1868) and The Hague (1899), to limit development of expensive armaments, notably poison gases and the newly invented explosive bullet. The 868 conference dressed up this desire to save money in the language of humanity: projectiles weighing less than 400 grams which were explosive or inflammable were denounced because they 'uselessly aggravate the sufferings of disabled men'. So the conference fixed 'the technical limits at which the

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[39]. War Crimes and Genocide, B.N. Mehrish, P.173.

necessities of war ought to yield to the requirements of humanity', and promised to maintain this balance 'in view of future improvements which science may effect in the armament of troops'. The 1899 conference ended with a convention which followed Dr Lieber in codifying the rules of land warfare. It issued special declarations against the use of dum-dum bullets and 'projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases'. The first Hague Convention, notwithstanding its financial motivation, may be seen as an application of a traditional principle (reflected in the ancient codes prohibiting poison and in the Lateran Council's 1139 edict against the 'unchristian' crossbow).[40]

An exploration of the trials of the major war crimes and genocide reveals that in the Middle Ages several trials were held in Europe. In 1474 the trial of Sir Peter of Hagenbach was held. Hagenbach instituted a regime of terror in the town of Breisach and his crimes were unique in their ferocity. He was sentenced to death on 4th May, 1474. A new system of international law gradually evolved after 'Thirty years war' which marked a new phase in the history of the war crimes trials. After the first world war, the Allied "commission on the Responsibility or the Authors of the War and on

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[40]. Crimes against Humanity, Geoffrey. Robertson QC. P.172.

Enforcement of Penalties" met on 25th January, 1919, to recommend the necessary action to be taken against enemy nationals accused of having committed war crimes. The commission recommended the setting up of a High Tribunal consisting of three members from each of five major Allied Power and one from each of the other powers. The law of the Tribunal would be 'the principles of the law of nations as the result from the usages established among civilized people.[41]

The recommendations of the commission had an important influence on the drafting of the punitive provisions of the Treaty of Versailles Treaty provided that Kaiser William II should 'be publicly arraigned for a supreme offence against international morality and the sanctity of treaties'. Article 228 of the Treaty provided for the right of the Allied and Associated powers to try accused persons for violating the laws and customs of war before military tribunals. The Allied powers consented to let Germany try the persons accused of war crimes, but they reserved the right to institute their own proceedings if the trials conducted by Germany should prove unsatisfactory. The German court met at Leipzing. Of the forty-five cases submitted by the Allies, twelve were tried by the Leipzig court, and six accused were convicted. The Allied powers were highly dissatisfied and as a protest withdraw the outcome of the Leipzig

[41] . American Journal of International Law, 1920, page-95.

trials.[42] In the Nuremberg Trial 19 accused were convicted on one or more counts, three were acquitted.

At the second Hague Peace Conference in 1907, forty-four states reached general accord on the basic rules of war, but signally failed to put in place any mechanism for limiting armaments. They repeated the fundamental principle that 'the right of belligerents to adopt means of injuring the enemy is not unlimited'-a principle objectionable today not so much for the questions it begs as for the notion that states have any right to be belligerent in the first place. It forbade the use of poison and poisonous weapons, attacks on surrendered soldiers, the killing or wounding of the enemy 'treacherously' or by weapons 'calculated to cause unnecessary suffering'. Attacks on undefended towns were prohibited, and belligerents were required to spare hospitals, churches, universities and historic buildings 'provided they are not being used at the time for military purposes'. There was a duty placed on the belligerents to treat prisoners-of-war humanely, to allow them to keep their personal belongings and to practise their religion, and to exempt officers from work and spare their men from tasks connected with the war. A further convention dealt with duties owed to peaceful shipping by belligerents which laid mines; it prohibited

[42]. Robert K. Woetzel, op.cit. p-34.

bombardment by naval forces of undefended ports and asserted the immunity of hospital ships, fishing boats.[43]

All of these rules were broken, sometimes systematically, by all the belligerents in the First World War. War criminals–even amount the defeated Germans–escaped punishment, although in 1921 one Gernman court set an important precedent in the case of *The llandovery Castle* by convicting machine-gunners who massacred defenceless sailors as they took to the lifeboats after their ship was sunk. The defence of superior orders was rejected because the order in question was 'universally known to be against the law'.[44]

After the war, and as result of its horrors, the futile movement to humanize conflict was superseded by the idealistic goal of preventing it altogether. The Covenant of the League of Nations pledged renunciation of 'resort to war', and provided a resort instead to settlements brokered by the league Council or adjudicated by the Permanent Court of International Justice. To this end in 1928 was directed the Paris General Treaty for the Renunciation of War (the Kellogg-Briand Pact) by which the signatories (including the US, which never joined the League) renounced war as an instrument of national policy and agreed to settle disputes by 'pacific means'. With

[43]. The paquete habana case, P.83 and neutral shipping.
[44]. The Llandovery Castle (1921), annual Digest of Public International Law Cases, 1923-4, Case No.238.

these fine, unreal words the nations of the world hastened towards the Second World War, pausing only to clarify the rules relating to their new weaponry.[45]

Aerial warfare had been on the agenda at The Hague in 1923: bombing was only legitimate 'when directed at a military objective', and not when used 'for the purpose of terrorizing the civilian population', although causing civilian terror is, as both the Luftwaffe and the RAF were to prove twenty years later, a modern military objective *par excellence*. In NATO's 'espresso machine war' or Belgrade, too, the enemy appeared to weaken only when bombing of power plants and water supplies deprived its middle classes of their morning coffee. The problem–encountered acutely in the war over Kosovo is that many installations have dual civilian/military uses. A television station, for example, may provide news and entertainment to the public while also being used to send military signals; it will usually have a propaganda function and may be used (like radio in Rwanda) to incite crimes against humanity. At what point does targeting such a station become legitimate because it is a 'military objective'?[46]

It was in the Nuremberg Charter and judgment, and in the war crimes trials which followed in Germany and Japan, that the rules of war first took on the true

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[45]. Geoffrey, P.174.
[46] . Ibid., p.174.

meaning of law, namely a rule for the breach of which there is some prospect of punishment. The Charter empowered the Tribunal to punish not only war crimes, as they could readily be described from the earlier conventions, but crimes against peace (i.e. waging a war of aggression, in violation of international treaties) and a new category of 'crimes against humanity'. This was to prove highly significant in the development of international justice, even though this category was initially limited to heinous large-scale persecution of civilians in pursuance of a war. (This particular consequence of the Nuremberg Charter forms the subject of the Chapter 6; the examination of war law here focuses on the 'good conventions' which followed.)[47]

There was one final achievement of humanitarian law before the Cold War set in to ferment conflicts of a kind which the post-war peacemakers failed to envisage. The four Geneva Conventions of 1949 state the principles of international law as they had by then emerged in relation to the treatment of: sick and wounded combatants on land (I) and at sea (II), prisoners-of-war (POW) (III), and civilians (IV).

These Conventions begin, most importantly, with three articles which are common to each of them. The first (common Article 1) pledges respect for the

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[47]. Ibid., P.175.

Convention 'in all circumstances', thereby excluding any excuse of national necessity or self-defence. Common Article 2 applies to the Convention rules not only to declared wars but to any other armed conflict' arising among the parties, and requires signatories to abide by the rules even if other states do not. The point at which 'armed conflict' begins, thereby attracting the Geneva regime, is not defined. It would require hostile acts by an army rather than a police force, and would seem to exclude occasional border skirmishes and destabilizing tactics which did not involve the use of force.

> *In 1949 no state was prepared to allow international law to intrude upon its sovereignty when it came to putting down insurgencies and armed revolt. Genocide apart, states were not ready to concede to the international community a jurisdiction as of treaty right to punish their officials for torture or other brutalities inflicted upon citizens within their own borders. It was the achievement of international human rights law, by the time of the Tadic Case in 1996, to render academic this distinction between 'international' and 'internal' atrocities It extends the promise of a minimum standard of humanity to wars that are not declared, and to*

violent insurgencies, internecine struggles and armed resistance to state power.[48]

It specifically prohibits murder, torture, hostage-taking, outrages upon personal dignity and extrajudicial executions, and covers any military, police or guerrilla action which has the deliberate result of killing or maiming civilians or prisoners. It applies to the 'High Contracting Parties to the Conventions', which means virtually every state, and must also as a matter of customary law apply by analogy to the leaders of organized guerrilla forces, since those who seek forcibly to control the state take on the basic humanitarian duties of the government they wish to supplant.[49]

The course of international law was changed so dramatically by the Nuremberg Charter, trial and judgment, is attributable to a curious mixture of American idealism and Stalinist opportunism, overcoming British insistence on summary execution for the Nazi leaders. As early as 1941, punishment for war crimes was declared by Churchill to be a principal aim, and by 1943 the Allies were sufficiently confident of victory to set up a commission to gather evidence. But Nazi crimes against humanity did not figure expressly in this thinking and the idea of any trial process was the last thing that British leaders had in mind. Churchill simply

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[48]. Ibid.
[49]. Ibid.

wanted a political decision made as to whom to kill - a list of fifty prominent Nazis was proffered, to be executed without trial as and when they were captured. Eden, his foreign secretary, observed that 'the guilt of such individuals as Himmler is so black that they fall outside and go beyond the scope of any judicial process.[50]

The UK maintained its position 'that execution without trial is the preferable course' until mid-1945, citing these 'dangers and difficulties' of attempting to do justice to international arch-criminals.[51] At first, its view won American support: when the question was first discussed - at the Moscow conference of foreign ministers in November 1943 - US Secretary of State Cordell Hull declared, 'If I had my way I would take Hitler and Mussolini and Tojo and their accomplices and bring them before a drumhead court martial, and at sunrise the following morning there would occur an historic incident.[52]

Truman wanted an international tribunal to try the Nazi leaders for good reason. Joseph Stalin wanted one, too, but for reasons which were bad. He wanted show trials, of the kind that his UN Ambassador, the vicious ex-prosecutor Andrei V. Vshinsky, had rigged for him in

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[50]. Foreign Office paper (18th July 1942).
[51]. UK Aide-Memoire - The Memoirsl of Sir Harteley Shawoross (constable 1995.
[52]. Conference Minutes, quoted by Siro Hartely Shawcross, Tribute to Justice Jackson.

the 1930s: proceedings in which guilt was predetermined, confessions unraveled according to a rehearsed script and, most important or all, each significant defendant would be convicted and shot. It was precisely this danger which makes the British position in some respects defensible in retrospect, but in terms of Allied power politics it meant one Russian vote for American idealism. De Gaulle cast the French vote the same way, and the British reluctantly fell into line, consoling themselves that the suicides of Hitler, Himmler and Goebbels had diminished the danger that the trial would become a soapbox for Nazi self-justification. Supreme Court Justice Robert Jackson was nominated by Truman as chief prosecutor, and the tribunal at Nuremberg took shape with eight judges (two from each of the four Allied powers) presided over by English Lord Justice Ceoffrey Lawrence. International law would never be the same again.[53]

What mattered above all else was that justice was seen to be done: the accused were accorded the right to defence counsel (but only from Germany), to a trial translated into their own language, to a detailed indictment and copies of all documents relied on by the prosecution, to the right both to give evidence on oath and to make unchallenged final summations. The only serious departures from Anglo-American trial procedures

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[53]. Geoffrey Robert Son, p.213.

were standard features of Continental systems, namely the absence of any jury and the admissibility of hearsay evidence. Neither were disadvantages: the post-war populace of Nuremberg had lost its love for the Nazi politicians who had led them to ruin and the hearsay rule is a shibboleth which can handicap the defence as much as the prosecution. In both these respects, Nuremberg set a precedent followed by the Hague Tribunal and by the International Criminal Court statute. Guilt on charges of Crimes against Humanity should be based on logical reasoning by experienced judges and not on the inscrutable verdict of a jury potentially prejudiced by media attacks on the defendant. And all relevant evidence should be available to a court where the discovery of truth is more important than in the ordinary adversary process.[54]

As early as the Tehran Conference, Stalin had proposed that the trial dispense 'the justice of the firing squad'. Very early in the trial he had it visited by Andrei Vyshinsky, choreographer of his own show trials. It was an excruciating occasion, as the Allied judges and prosecutors hosted a dinner in honour of a man who had been complicit in more Crimes against Humanity than those they were trying. True to form, Vyshinsky raised his glass and proposed a toast 'to the speedy

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[54]. Ibid, P.216-17.

conviction and execution of the defendants'. The judges drank it, to their subsequent mortification. The British Attorney-General Hartley Shawcross clamoured for death sentences, in breach of an ethical rule of the English Bar that prosecutors must not urge a particular punishment. He argued, perversely, that upon executing these defendants depended the ways of truth and righteousness between the nations of the world'. Since he also accepted that they were broken and discredited men, 'the ways of truth and righteousness' were hardly paved by killing them.[55]

The Balkan Trials - An international tribunal was established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.The Nuremberg defendants were speedily arrested in a country under Allied occupation and most of them were convicted on overwhelming documentary evidence within the space of twelve months. But the tribunal in The Hague, far away from a continuing and ferocious war, was infuriatingly slow: its first defendant, Dusko Tadic, did not arrive until April 1995 and his trial did not commence until 7 May 1996. Much blood flowed under the bridges of the Drina in the meantime: the worst of the Bosnian Serb crimes against humanity, namely the killing

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[55]. Ibid., p.221.

of 7,000 Muslim men and boys from Srebrenica, took place in July 1995 while lawyers in The Hague were still arguing their preliminary motions. The decision convicting Tadic of eleven separate crimes against humanity was not handed down until 7 May 1997. The mandate of the 60,000-strong 1-For force was 'to detain those indicted persons whom they come across in the course of their duties', so NATO commanders ensured that their duties would make such encounters unlikely.[56]

Civil war in Yugoslavia began in 1991, with the Serb army bombardments of Vukovar and Dubrovnik; by May of 1992, when the Security Council imposed mandatory economic sanctions on Serbia, the atrocities had reached a level Europe had not experienced since the Second World War. Arms embargoes had little impact and in the autumn the United States proposed a war crimes tribunal. There is some tantalizing intercept evidence to suggest that this proposal actually gave pause to the Serbian military commanders - until they realized that any such tribunal would take years to establish.[57] The Security "Council began by appointing a commission of experts, eventually headed by Professor Cherif Bassiouni, to investigate violations of international humanitarian law. With commendable speed he issued an interim report on 26 January 1993, describing ethinic cleansing, mass murder,

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[56]. Ibid., p.285-286.
[57]. Charles Lane and Thom Shaker, Bosnia, New York Review of Books (9th May 1996).

torture, rape, pillage and destruction of cultural, religious and private property. That led, on 22 February, to Security Council Resolution 808, determining that the situation constituted a threat to international peace and security, and deciding to establish an international tribunal to contribute to the realization of peace by putting an end to war crimes and punishing their perpetrators.[58]

This report serves as the Tribunal's mandate. It commences defensively, describing Resolution 808 as 'circumscribed in scope and purpose.... the decision does not relate to the establishment of an international criminal jurisdiction in general nor to the creation of an international criminal court ..... ' It accepts that the normal method of establishing a prosecution agency and a court would be for state parties, either through the General Assembly or after special conferences, to draw up a treaty which would then be open for signature and ratification. The need for urgency permitted action under Chapter VII of the United Nations Charter, given that the Security Council had already determined the existence of a threat to the peace. The Tribunal would derive its legitimacy from the fact that it constituted 'a measure to maintain or restore international peace and

[58]. Resolution 827, in May, adopted a report by the Secretary-General which set out the legal and procedural basis for the new institution (Report of the Secretary General Pursuant to paragraph 2 of SCR 808).

security'. It would be a 'subsidiary organ' of the Council, albeit a judicial one which would in the performance of those judicial functions be independent of the Council or of any political considerations, although its lifespan as an ad hoc court would be limited to the restoration of peace in former Yugoslavia.[59] (Italics supplied).

The first, and most significant, decision by the Hague Tribunal was to rule itself lawfully constituted by the Security Council. Dusko Tadic's preliminary objection that it had no power to put him on trial was rejected by both the Trial and the Appeals Chamber.[60] The Appeal Chamber found that an armed conflict exists whenever there is resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the duration of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring states or, in the case of internal conflicts, the whole

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[59]. Geoffrey Robertson QC. P.289-290.
[60]. Tadic case (Prosecutor V. Dusko Tradic) International Crime Tribunal for the Former Yugoslavia.

territory under the control of a party, whether or not actual conflict takes place there.

The Trial Chamber did so on the unsatisfactory basis that the Hague Tribunal itself had no power to review acts of the Security Council, because this would be to enter a forbidden political territory which was 'non-justifiable'. This is a conservative position, much favoured by appeal judges like Chinese judge Li, who believe courts should be subservient to political masters. He denounced the very idea of judicial review of the Security Council as 'imprudent and worthless' because his colleagues were 'trained only in law' and had 'little or no experience in international political affairs'. The appellate majority, however, treated these arguments about 'political questions' and 'non-justifiable issues' with the contempt they deserve, as part of the old no-go areas of national honour and state sovereignty. It ruled that legal questions of whether the Security Council had charter power to act as it did, and whether its action was taken rationally and in good faith, invited legal answers which the judges were qualified and entitled to give, 'particularly in cases where there might be manifest contradiction with the Principles and purposes of the Charter'.[61]

[61]. Geoffrey Robertson QC P.291-2.

The Hague Tribunal set another important precedent in its Preliminary ruling, namely that international jurisdiction to punish both war crimes and Crimes against Humanity did not require proof of an international armed conflict – an internecine conflict was enough. The reasoning behind this decision settles an arid scholastic debate, and establishes beyond doubt the competence of the international community, should it wish, to punish rulers who brutally oppress their own people, irrespective of whether their plight directly attracts foreign intervention.[62]

Article I of the Hague Tribunal statute empowers it to 'prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991' – a formula which, unbeknown to the UN at the time, would empower the prosecutor years later to investigate allegations about NATO war crimes during the bombing of Serbia. The standard was chosen to avoid any argument about retrospective punishment: the offences would be those clearly established by the time of the outbreak of the Balkan conflict in 1991. By that time the laws and customs of war had been well established, as had the class of 'crimes against humanity' defined at Nuremberg. This precedent, however, related to crimes committed

[62]. Ibid.

during a period of international armed conflict the Nuremberg judges, notwithstanding the language of Article 6(c) of the Charger, declined to convict the Nazis in relation to crimes committed against Jews prior to the outbreak of the Second World War.[63]

Article 2 of its own statute empowers the Hague Tribunal to punish 'grave breaches' of the 1949 Geneva Convention (i.e. willful killing or torture of civilians, wanton destruction of property and ill-treatment of prisoners-of-war and civilians in the course of international armed conflict). Article 3 empowers the Tribunal to punish violations of the laws and customs of war as defined by the 1907 Hague Convention (i.e. use of poisonous weapons, wanton destruction of cities, bombardment of undefended towns, destruction of churches, hospitals or cultural property in the course of armed conflict, whether international or internal). Article 4 empowers it to punish genocide, i.e. attempts to destroy persons because they are members of a national or ethnic or religious group. And Article 5 gives it the jurisdiction to punish crimes against humanity.

On 17 July 1998 in Rome, 120 nations voted to adopt a statute creating an International Criminal Court – the culmination of a fractious five-week diplomatic conference. Twenty-one nations abstained, but only seven

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[63]. Ibid., p.293.

were opposed – although these included the United State, China, Israel and India, representing a massive concentration of people and of power. The Rome Statute is a long and detailed document containing 128 articles: it will not come into effect until ratified by sixty states – a lengthy procedure unlikely to eventuate for several years. It should have marked the triumph of international law over superpower expediency, but in fact it demonstrated how far the human rights movement had yet to go before reality would catch up with its rhetoric.[64]

The idea of a world criminal court received its first concrete shape in 1937, when a draft statute for a court to try international terrorists was produced by the League of Nations. After the Nuremberg and Tokyo tribunals, the UN made a passing reference to an 'international penal tribunal' in the 1948 Genocide Convention and draft statutes were produced over the next few years by the International Law Commission. But the project soon went into the deep freeze of the Cold War, and was not brought out again until the 1980s, when Gorbachev suggested it as a measure against terrorism and Trinidad urged it as a means of combating drug trafficking. The General Assembly asked the ILC to resume work, hurrying it along in 1993 after the favourable public response to its creation of a War Crimes 1994, and

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[64]. Ibid., P.324.

the following year the General Assembly set up a preparatory committee to canvass agreement on a text which could be submitted to a treaty conference in 1998. The committee met for five grueling sessions prior to the Rome Conference, over a period when many governments, under pressure from NGOs active in the human rights arena, came to support the creation of an International Criminal Court.[65]

Much of the debate prior to the Rome Treaty concerned the power of the prosecutor. The United States feared a 'super prosecutor' who might choose to flex legal muscles or play to the non-aligned gallery by investigating Crimes against Humanity of American attacks on its enemies. The NGO lobby and the likeminded nations foresaw the need for a prosecutor with a plentitude of powers, at arms length from the Security Council. The compromise was to establish a prosecutor whose initiatives would be closely monitored by the judges. Even where there is a case there may be good public interest reasons not to proceed; victims may be too traumatized to give evidence; the accused may have a terminal illness: and so forth. The prosecutor's decision not to proceed in such cases will only be effective if it is approved by a three-judge Pre-trial Division which can, by withdrawing approval, force the prosecutor to

[65]. Geoffrey Robertson QC P.324-5.

bring what he regards as unfair or oppressive proceedings[66]. The Judges are required to encroach on the routine investigative work of the prosecutor's office in other ways. Under Article 56(3), for example, the prosecutor must apply to them for permission to take a unique investigative opportunity and the judges may even take such measures on their own initiative against prosecutor's wishes.

The Rome Statute corrects an unfair and prejudicial provision in Rule 61 of the Hague International Criminal Tribunal for the Former Yugoslavia. The ICC will have a pre-trial Division which issues arrest warrants and in due course holds a committed hearing to determine whether there is sufficient evidence to justify the accused being put on trial. If the accused flee or evade arrest, however, there will be no 'Rule 61 hearing'; under Article 61, the Court simply confirms that the prosecutor has sufficient evidence to justify his charges, and at this hearing the court may permit the absconding accused to be represented by counsel, like the counsel for Karadzic and Mladic.

Apart from the recognized legal aspects about the applicability of CIL in these tribunals, there are distinguishing features between the Rome Statute and our Act of 1973. In Haque Tribunal the accused has a right to

[66]. Rome statute of International Criminal Court, Article 53(3)(b).

remain silent, without having this refusal to explain the evidence against him taken as an indication of guilt. It is remarkable to note, how the 'right to silence' is being entrenched in human rights law at the very time it is being rejected by some advanced legal systems, where the view is taken, not unreasonably, that a person confronted with substantial evidence of serious crime has a basic human duty to explain himself, and that failure to do so in these circumstances at trial permits a rebuttable inference of guilt.

The Rome statute goes even further permitting an accused who declines to testify and undergo cross-examination 'to make an unsworn oral or written statement in his defence'. The Rome Statute's provisions on evidence fudge the problem that split the court in the Tadic case namely, the extent to which the prosecution witnesses who have been victims of sexual violence may remain anonymous. If there is 'grave danger' apprehended to a witness or his or her family, the prosecutor may withhold details of identification or evidence at any pre-trial stage. Even at trial, any measures to withhold identification 'shall not be prejudicial to or inconsistent with the rights of the accused'. Article 69 (7) attempts to grapple with a problem litigated more than any other in adversary systems of criminal trial, namely, whether and to what extent, evidence obtained by

unlawful or unfair means should be admitted and used to prove guilt.

In the end, the Rome statute gives the Court jurisdiction either by remit from the Security Council acting under Chapter VII of the UN Charter, or by consent of the state of which the defendant is a national or in which the crime was committed. These state consent provisions mean that nobody occupying a position of *current* political or military power in any state is likely to be put on trial unless they invade another state and commit war crimes on its territory. Any retired war criminal who (like Pinochet in Chile) retains a power base in his state of nationality will in practice be safe, since in retirement they do not constitute a Chapter VII threat to international peace, and their home state will lack the resolve to surrender them to world justice. The class of criminal most likely to be arraigned at <u>The Hague comprises persons who commit barbaric crimes in a cause which has utterly failed, in a country which decides to surrender them because it lacks the facilities to try them itself</u>. Otherwise, the ICC will become a kind of 'permanent ad hoc' tribunal, dependent on references from the Security Council to investigate countries like Rwanda and former Yugoslavia,

where none of the combatants has superpower support.[67] (Italics supplied)

The Court's jurisdiction extends to four offences: genocide, crimes against humanity, war crimes and the crime of 'aggression'. There will, however, be no prosecutions for 'aggression' until states agree on a definition, which will be an item on the agenda of their Review Conference, seven years after the Statute comes into force. These four categories are described as 'the most serious crimes of concern to the international community as a whole'. The rest of 'seriousness' will be applied in deciding whether to prosecute in actual cases. The crimes within the jurisdiction of the ICC endlessly overlap: genocide, for example, is a crime in its own right as well as a crime against humanity and war crime, and the latter category includes behaviour which in peace time would be classed as a crime against humanity. As the Appeals Chamber in the *Tadic Case* pointed out, there is now no good reason why the behaviour of nations at war should be judged by rules different from those for internecine conflicts: these legalistic distinctions have occupied the Hague Tribunal for much too long, and the same hairsplitting exercises are likely to be visited upon the ICC. The individuals responsible for any widespread pattern of barbarity, imposed or supported by

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[67]. Geoffrey Robertson QC., P.328.

the State (though its politicians or police or military) or by armed organizations fighting to attain some (or more) power, should be indictable and the charges against them should not depend on technical legal characterization of the nature of the background conflict.[68]

The prosecutor may begin an investigation on his own initiative, or as the result of a referral by the Security Council or a state party. If there is insufficient evidence, then obviously no prosecution will ensue. Even where there is 'a case' there may be good public interest reasons not to proceed: victims may be too traumatized to give evidence; the defendant may have a terminal illness; and so forth. The prosecutor's decision not to proceed in such cases will only be effective if it is approved by a three-judge Pre-trial Division which can, by withdrawing approval, force the persecutor to bring what he regards as unfair or oppressive proceedings. The judges are required to encroach on the routine investigative work of the prosecutor's office in other ways.

Under Article 56 (3), for example, the prosecutor must apply to them for permission to take a 'unique investigative opportunity' and the judges may even take such measures on their own initiative, against the

[68]. Ibid, P.333.

prosecutor's wishes. These provisions are misguided because they invite the judiciary to take over the job of prosecuting, in the inquisitorial role (familiar in Continental systems) which is incompatible with the Anglo-American adversarial model upon which the Court is principally based.[69]

Article 67 enshrines the basic rights of the accused, drawn from the fair trial' provisions common to all human rights treaties. The accused must have all proceedings translated into language he understands and speaks, and is entitled to have lawyers of his choice and to communicate with them confidentially. He has a right to trial 'without undue delay', but must also have adequate time and facilities to prepare his defence and to cross-examine all witnesses against him and to obtain the attendance of witnesses capable of giving relevant evidence on his behalf.

Bangladesh suffered the crimes perpetrated on the entire people. By conservative estimates, three million of the civilian population were killed. After nine months of resistance against the Pakistani occupation army, victory was won in December 1971 following an effective resistance and mobilisation by the people of Bangladesh. The occupation army of Pakistan surrendered on 16 December 1971 following a short-lived was declared by

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[69]. Ibid, P.353.

Pakistan, while an operation conducted under India-Bangladesh's joint command was formed on 3rd December 1971. This brought an end to Pakistan's occupation of the country, which emerged as Bangladesh through the blood bath of nine months.

Following the victory, initiatives were taken for the trying of 195 prisoners of war against whom there was specific evidence and proof of core Crimes against Humanity. Under the pressure of Pakistan's Western allies and Islamic states headed by the strong lobby of Saudi Arabia and ultimately on the assurance of Zulfikar Ali Bhutto, which was given to both Bangladesh and India that he would ensure the trial of those 195 prisoners of war in Pakistan, they were so returned.

The Hamoodur Rahman,CJ.[70] Commission was constituted by the then Pakistani Government to obtain credibility in the eyes of the international community and the governments of Bangladesh and India by indicating Bhutto's willingness to hold the trial before those 195 POWs were returned. He was also to use it as leverage on Pakistan's military junta in order to secure his political power. The commission so constituted inquired into the atrocities committed during the nine months of occupation. The Commission examined nearly 300 witnesses and hundreds of classified army signals between East and

[70]. Hamoodur Rahman was the Chief Justice of Pakistan and vice Chancellor of Dhaka University. See http://www.bpedia.org/R_0026.php, last accessed on 9 October 2011.

West Pakistan. General Yahya, General Niyazi, and General Tikka's own admissions, along with those admitted by their cohorts and collaborators, are evident from the available Commission reports and documents.

The excesses committed by the Pakistani Army and their cohorts, as summarised by the Commission, fall into the following categories:

a. Excessive use of force and fire power in Dacca during the night of the 25 and 26 March 1971 when the military operation was launched.
b. Senseless and wanton arson and killings in the countryside during the course of the "sweeping operations" following the military action.
c. Killing of intellectuals and professionals like doctors, engineers, etc., and burying them in mass graves not only during early phases of the military action but also during the critical days of the war in December 1971.
d. Killing of Bengali Officers and men of the units of the East Bengal Regiment, East Pakistan Rifles and the East Pakistan police Force in the process of disarming them, or on pretence of quelling their rebellion.

e. Killing of East Pakistani civilian officers, businessmen and industrialists, or their mysterious disappearance from their homes by or at the instance of Army Officers performing Martial Law duties.

f. Rapping of a large number of East Pakistani women by the officers and men of the Pakistan army as a deliberate act of revenge, retaliation and torture.

g. Deliberate killing of members of the Hindu minority.[71]

Indefinite identification of responsibility as revealed from the Hamoodur Rahman Report is as follows:

"*It is, however, clear that the 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 25th of March 1971, and even the other Generals just mentioned were present in Dhaka 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*

[71]. Ibid.

> *have remained behind. There is also evidence that Lt. Gen Tikka Khan, Jajor Gen. Farman Ali and Maj. Gen Khadim Hussain were associated with the 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."*

The demand for trial of war crimes and genocide committed by the collaborators of Pakistani Army in Bangladesh was mounting and if their crimes, during war go unpunished, it would only embolden the perpetrators to recur similar offence in future. Crimes during war must be brought to an end in the interest of law, humanity, and justice. One way to do so is to try war criminals not with vengeance but with justice and impartiality. The object of punishment, to quote Hugo Grotius, "may be the good of the criminal, the good of the victim or the good of the community."[72]

The happenings in Bangladesh underlined two important lessons which world statesmen would do well to ponder over. There is an urgent need to devise an effective institutional machinery to curb violence so that untrammeled cruelty on the people may not be

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[72]. International Law Reports, Vol.36(1968), p.27.

perpetuated under the shelter of the convenient excuse of domestic jurisdiction.

The other lesson is that the concept of national sovereignty should not be allowed to be exploited by rulers to frustrate human welfare and thereby endanger world peace. It is the moral duty of every sovereign state that in case national interests clash with the larger human interest, the former have to be sacrificed in order to ensure world peace and justice. In the present international situation, this may appear to be a distant goal. But unless world statesmen take early steps in this direction, the international peace is likely to be frequently jeopardized by the unbridled acts of rulers.[73]

Today the members of the families of those charged with war crimes and genocide in Bangladesh are clamouring for the repatriation of the prisoners of war. But then those who suffered in Bangladesh and the families of those who were the victims of the crimes are asking for nothing more than a just and fair trial of those who committed offences. The horrible crimes committed by Yahya's regime should be revealed to the full gaze of the world public by holding a fair and just trial of Pakistani war criminals.[74]

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[73]. War Crimes and Genocide-B.N. Mehrish-P.773.

[74]. Ibid.

The investigation, prosecution, and adjudication of core crimes against humanity often take place years or decades after their actual commission. Such delay usually results as societies recovering from mass atrocity are faced with a variety of more pressing reconstructive needs; a fragile political environment; or a lack of criminal justice capacity. Much time may be required before post-atrocity societies are able to implement fair and effective criminal trials. The undertaking of such delayed prosecutions is nevertheless supported by arguments made by various international legal actors that domestic statutes of limitations do not apply to such crimes. There may in fact be an increase in such prosecutions in the future as the pursuit of individual accountability for such crimes becomes a norm, rather than an exception, with societies increasingly willing and able to investigate atrocities perpetrated in their past. Even when such prosecutions are undertaken by international criminal courts, such as the International Criminal Court ('ICC'), experience shows that all too often it is many years before investigations are effectively initiated or an accused person actually brought to trial.[75]

In the process, the fruits of freedom are left to the future generation. The killers were patronised by the

[75]. Old Evidence and Core International Crimes. (Morten Bergsmo and CHEAH Wui Ling) P.1.

new military-backed regime under which some of the killers were given diplomatic assignments abroad and others were encouraged to form a political party and to become members of the Parliament, under the patronage of this regime. The Constitution was changed by decrees in order to change the secular character of the Republic, introducing Islam as the state religion.

A civilised society must recognise the worth and dignity of those victimised by abuses of the past. Co-existence between the *hostis humani generis* and victims of war crimes should end. As early as 1948, the Convention on the Prevention and Punishment of the Crime of Genocide defined this international crime and spelt out the obligations of States Parties to prosecute. Bangladesh considers that the perpetrators of Crimes against Humanity, Crimes against Peace, Genocide, and War Crimes should be tried. The State has an obligation to remedy serious violations of human rights as stated by Article 8 of the Universal Declaration of Human Rights and Article 2(3) of the International Covenant on Civil and Political Rights, which ensure the right to an effective remedy for violations of human rights, and to which Bangladesh has subscribed.[76]

The International crimes (Tribunals) Act, 1973 is the first written statute on core crimes which are recognised as international crimes. The trial of the

perpetrators could not be held due to killing of sheikh Mujibur Rahman. This killing was followed by the killing of four national leaders in prison on 3rd November, 1975. There is no doubt that the trials are held in accordance with international legal and human rights standards. In holding trials, the prosecution obviously need to deal with old evidence and to critically evaluate historical records, and the victim and their relations' recollections as well as to deal with collective memories. Additionally, it helps contextualise both when the events took place and the span of time that has elapsed since the events occurred. The German writer Jurgen Fuchs once said to Adam Michnik a leader of the polish opposition to communist rule about crimes committed during the communist regime in East Germany that 'if we do not solve this problem in a definite way, it will haunt us'. The persons suffered and their family have a powerful sense that what they experienced must not be forgotten, but must be cultivated both as a monument to those who did not survive and as a warning to future generations, so that a nation can be free from these crimes and atrocities; however much a government tries to bury these crimes by defiant, the crimes continue to haunt the nation from the debris of the history in countless ways.[77]

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[76]. Old Evidence and Core International Crimes, P-228-241
[77]. Ibid.

The Act, 1973 was enacted to provide for detention, prosecution and punishment of persons for, *inter alia,* for commission of Genocide, Crimes against Humanity, War Crimes, Crime against Peace and other crimes under international law providing for domestic mechanism to address large scale crimes committed in Bangladesh during the war of liberation in 1971. Section 3 of the Act states that the tribunal shall have the jurisdiction to prosecute, *inter alia,* Crimes against Humanity, Crimes against Peace, Genocide, War Crimes, violation of any humanitarian rules applicable in armed conflicts laid down in the Geneva Conventions of 1949 and any other crimes under international law.

The Act is protected by Article 47(3) of the Constitution which states that "*notwithstanding anything contained in this Constitution, no law nor any provision thereof providing for detention, prosecution or punishment of any person, who is a member of any armed or defence or auxiliary forces or any individual, group of individuals or organisation or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law shall be deemed void or unlawful, or ever to have become void or unlawful, on the ground that such law or provision of any such law is*

inconsistent with, or repugnant to, any of the provision of this Constitution."[78]

On behalf of the convict-appellant Abdul Quader Molla, it was urged that the tribunal failed to consider that Customary International Law (CIL) applies to the appellant's case and as the constituents of CIL are absent in the case, it committed fundamental error in convicting the appellant for Crimes against Humanity. It is further argued that the tribunal failed to notice that for convicting a person on the charge of Crimes against Humanity, it was necessary to prove that there was international armed conflict. Learned counsil added that CIL applies in this case for two broad reasons; first, Article 47(3) of the Constitution expressly recognizes that Genocide, Crimes against Humanity and War Crimes are crimes under international law; second, the short title, the long title and the preamble of the 1973 Act expressly provides that the detention, prosecution and punishment of the accused will be under international law;

In our Act, 1973 the procedure for trial, trial in absentia and the powers have been provided in sections 10, and 11, as under:[79]

S.10 (1) "The following procedure shall be followed at a trial before a Tribunal, namely:-

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[78]. The Constitution of the People's Republic of Bangladesh ("Constitution").

[79]. The International Crimes (Tribunals) Act, 1973.

(a) the charge shall be read out:

(b)the Tribunal shall ask each accused person whether he pleads guilty or not-guilty;

(c)if the accused person pleads guilty, the tribunal shall record the plea, and may, in its discretion, convict him thereon;

(d)the prosecution shall make an opening statement;

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

(f) the witnesses for the defence, if any, shall be examined, the prosecution may cross-examine such witnesses and the defence may re-examine them;

(g) the Tribunal may, in its discretion, permit the party which calls a witness to put any question to him which might be put in cross-examination by the adverse party;

(h) the Tribunal may, in order to discover or obtain proof of relevant facts, ask any witness any question it pleases, in any form and at any time about any fact; and may order production of any document or thing or summon any witness, and neither the prosecution nor the defence shall be entitled either to make any objection

to any such question or order or, without the leave of the Tribunal, to cross-examine any witness upon any answer given in reply to any such question;

Provided that if any witness is examined by the defence, the prosecution shall have the right to sum up its case after the defence has done so;

(1) Any accused person or witness who is unable to express himself in, or does not understand, English may be provided the assistance of an interpreter.

(2) The proceedings of the Tribunal shall be in public:

Provided that the Tribunal may, if it thinks fit, take proceedings in camera.

(3) No oath shall be administered to any accused person.

11. (1) A Tribunal shall have power –

(a) to summon witnesses to the trial and to require their attendance and testimony and to put questions to them;

(b) to administer oaths to witnesses;

(c)to require the production of document and other evidentiary material;

(d) to appoint persons for carrying out any task designated by the Tribunal.

(2) For the purpose of enabling any accused person to explain any circumstances appearing in the evidence

against him, a Tribunal may, at any stage of the trial without previously warning the accused person, put such questions to him as the Tribunal considers necessary:

Provided that the accused person shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the Tribunal may draw such inference from such refusal or answers as it thinks just;

(3) A Tribunal shall –

(a) confine the trial to an expeditious hearing of the issues raised by the charges;

(b) take measures to prevent any action which may cause unreasonable delay, and rule out irrelevant issues and statements.

"A Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof".[80] The term 'common knowledge' denotes facts that are commonly accepted or universally known, such as general facts or history or geography, or the laws of nature. Although Act, 1973 is the first written statute on Crimes against Humanity, the trial could not be held due to the seizure of state power by killing Sheikh Mujibur Rahman, and his family. It was followed by the killing of the four national leaders. In the absence of the President Sheikh Mujibur Rahman, Syed Nazrul Islam

[80]. Article 19(3) of the International Crimes (Tribunals) Act, 1973 (Act 1973).

was the Acting President of the Government in exile in 1971, Tajuddin Ahmed was the Prime Minister, M. Mansur Ali was the Minister of Commerce and Trade, A.H.M. Kamruzzaman was a cabinet Minister leading the liberation movement as a lawful and constitutional government. They were killed in prison on 3 November, 1975 in another orgy operated by the same military group at the Dhaka Central Jail. These are historical facts.

Since the question of the applicability of CIL in our tribunal constituted under the Act, 1973 was vigorously argued on behalf of the appellant, we have heard Mr. T.H.Khan, Mr. Rafique-ul-Huq, Mr. M. Amirul Islam, Mr. Mahmudul Islam, Mr. Rokonuddin Mahmud, Mr. A.F. Hassan Ariff and Mr. Ajmalul Hossain as amici curiae. A brief written submissions prepared by them have been presented to us. Mr. Khan, Mr. M. Amirul Islam and Mr. Ariff argued that CIL will be applicable to the Tribunal. According to Mr. Khan, Act 1973 itself contains provision enabling application of international law by the Tribunal, and since the Act does not contain any definition of 'Crimes against Humanity', the Tribunals are required to adopt the definitions and constituent elements of Crimes against Humanity as have been evolved as part of CIL in the jurisprudence of the international tribunals. By quoting from the American jurisprudence the definition of 'international law' he submited that under the said definition *'international law' means 'law of*

nations, consists of rules and principles of general application dealing with the conduct of states and of international organisations and with their relations with each other, as well as with some of their relations with persons, whether natural or juridical. The law of nations, which is also known as customary international law, is formed by general assent of civilized nations'.

Mr. M. Amirul Islam even argued that in international criminal law, CIL is deemed to have primacy over national law and 'defines certain conduct as criminal, punishable or prosecutable, or violative of international law.' Mr. Ariff also noticed the definition of International Law' defined in Black's Law Dictionary, 2nd Edn. which states:

> *'......a league or agreement between two or more independent states whereby they unite for their mutual welfare and the furtherance of their common aims. "The term may apply to a union so formed for a temporary or limited purpose, as in the case of an offensive and defensive alliance, but it is more commonly used to denote that species of political connection between two or more independent states by which a central government is created, invested with certain powers of sovereignty, (mostly external and acting upon the several component states as its units,*

which, however, retain their sovereign powers for domestic purposes and some others.'

Mr. Ariff also argued that CIL is made up of rules that come from 'a general practice accepted as law, and exist independently of treaty law (emphasis supplied) and is therefore, binding in the context where international law is applicable'. He, however, argued that a state does not have formally accepted customary rule in order to be bound by it or adopt it on own violation - if the practice on which the rule is based is widespread, representative and virtually uniform then that rule is enforceable. These arguments are confused and self-contradictory as will be evident from the following discussions. Mr. Rafique-ul-Huq, Mr. Mahmudul Islam, Mr. Rokonuddin Mahmud and Mr. Ajmalul Hossain argued that CIL or the International law will not be applicable to the tribunal. In support of their contention, they have referred to some decisions and the opinions expressed by authors of Public International Law.

Under Act, 1973 a Tribunal has been given the power to try and punish any person or persons or organisation or any member of any armed; defence or auxiliary forces, who has committed (a) Crimes against Humanity, (b) Crimes against Peace, (c) Genocide, (d) War Crimes, (e) violation of humanitarian rules applicable in armed conflicts laid down in the Geneva Convention of 1949, (f) any other crimes under international law, (g) attempt,

abetment or conspiracy to commit any such crime and (h) complicity in or failure to prevent commission of any such crime. These eight offences are distinct and different and therefore, taking clause (f) above in isolation, it will not be correct and fair to infer that the Act enables the application of international law by the tribunal.

True, the Tribunals have been invested with the power to try any person for violation of 'any other crimes under international law' but this does not mean that they are bound to follow CIL for trial of offences mentioned in clauses (a)-(e), (g)(h) of section 3(2). It is also not correct to infer that the constituent elements of Crimes against Humanity as recognised under the international law must be present for convicting a person in respect of a charge of Crimes against Humanity. When a person irrespective of nationality will be charged with 'any other crimes under international law', he may claim his right to follow CIL. This is evident from the language used in sub-section (2) of section 3, wherein it is stated 'The following acts or any of them are crimes within the jurisdiction of a Tribunal ......," (Italics supplied.)

There is no denial of the fact that the provisions of Act 1973 were based on the foundation of international legal instruments or in the alternative, the Act was structured in conformity with international standards in

consultation with international experts. It is also true that it is the world’s only statutory legislation for detention, prosecution and punishment of persons for Genocide, Crimes against Humanity, War Crimes and other crimes under international law. It may be considered as a model of ‘international due process’. Though there are similarities in respect of some offences used at Nuremberg trials, the legislature has included the acts of imprisonment, abduction, confinement, torture and rape as offences of Crimes against Humanity.

In section 3(2)(e), the legislature also included violation of any humanitarian rules applicable in armed conflicts laid down in the Geneva Conventions of 1949’ and in clause (f) any other Crimes under international law’ respectively, that itself do not convert the Tribunal as an International Tribunal or that the tenor, purport, elements of CIL will be the guiding principles of the Tribunal. The contour between the Act of 1973 on the one side and those of the Charter of the International Military Tribunal at Nuremberg, International Military Tribunal for the Far East (TOKYO), Rome Statute of the International Crimes court, Law on the Establishment of Extraordinary Chambers in The Courts of Cambodia, Statute of the Special Tribunal for Lebanon, Statute of The Special Court for Sierra Leone, Statute of The International Criminal Tribunal for the former Yugoslavia and Statute of The International Tribunal for

Rwanda, on the other side, are that in respect of trial and punishment under the Act, 1973, when any crime is committed by several persons, each such person is liable for that crime in the same manner as if it were committed by him alone. Even, if the offence is committed by a person as per order of his commander or superior officer, if he fails to prevent the commission of such crime, he will be guilty of such crime. Apart from commission of any act or acts enumerated in section 3(2), if any person is connected with any plans and activities involving the commission of such crimes or if he omits to discharge his duty to maintain discipline or to control, he will be liable for such Crimes.

The Tribunal shall be constituted with at least a chairman and two members, the chairman shall be a Judge of the Supreme Court of Bangladesh and the members may be Judges of the District Court. The Tribunal shall be independent in exercise of its judicial functions and shall ensure fair trial. Neither the constitution of a Tribunal nor the appointment of its chairman or members shall be challenged by the prosecution or by the accused. (S.6(8)). No order, judgment or sentence of a Tribunal shall be called in question except in the manner provided for appeal under section 21. No suit, prosecution or other legal proceeding shall lie against the Government or any person for anything, in faith, done or purporting to have been done under the Act. (S.25).

Any investigating officer making investigation under the Act may examine orally any person who appears to be acquainted with the facts of the case. Such person shall be bound to answer all questions put to him and shall not be excused from answering any question on the ground that the answer to such question will incriminate him directly or indirectly. The investigating officer may reduce into writing any statement made to him. The Tribunal shall not be bound by technical rules of evidence. It may adopt nontechnical procedure and may admit any evidence including reports, photographs published in newspapers periodicals, magazines, films etc. It may also receive evidence any statement recorded by a Magistrate or investigating officer if the maker is dead or his attendance cannot be procured without delay. It may not require proof of facts of common knowledge but may take judicial notice thereof etc.

It is to be noted that we have a legacy of administration of justice for more than four hundred years. The legal transformation took place in this sub-continent in four phases; (1) the factory phase (1612-1626); (2) the Mayoral phase (1626-1772); (3) the Adalat phase (1772-1861); and (4) the codification of factories and Criminal Justice to Europeans and Indians. The second phase is remarkable for the introduction of the English law for the first time by means of Charter of 1726. Then came the third phase with its Adalat system in 1772. In

1862 the Indian Penal Code came into operation. The first criminal law was passed in 1861 which applied to whole of India except the Presidency Towns. The Criminal Procedure Code, 1882 for the first time given a uniform law of procedure for the whole of India.

The class of persons to be arraigned at The Hague comprises persons who commit barbaric crimes in a cause which has utterly failed countries which decide to surrender them because they lack the facilities to try them itself. On the other hand, the legal system of Bangladesh is strong enough to hold trial of the perpetrators of Crimes against Humanity. The administration of justice in those countries is very poor. The rise of international criminal tribunals since the early to mid 1990s has served as a catalyst for domestic prosecutions of individuals for War Crimes, Crimes against Humanity and Genocide. This is due in part to the fact that the ICC is premised on the principle of complementarily; it operates under the presumption that the vast majority of prosecutions for international crimes will take place at the domestic level, as it lacks the capacity to prosecute large members of accused, nor would this be appropriate in any event.[81]

Under the Nuremberg, it is a Military Tribunal constituted by the victors of War by an agreement, and

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[81]. Public International Law, 8th Edn. by James Creawford. P 688.

the members of the Tribunal shall be appointed by each of the signatories – four members shall constitute Tribunal. Any layman or any army officer may be a member of the Tribunal. The offences of Crimes against Humanity are not identical. Offences of Genocide and those in clauses (e), (f), (g), (h) of section 3(2) of Act, 1973 are not included. The TOKYO Tribunal is also a Military Tribunal and the Supreme Commander for the Allied powers had power to appoint a member to be president. It is almost similar to Nuremberg Tribunal.

Apart from what mentioned above, the Rome Statute was a Charter of the United Nations. In the preamble it was mentioned that the International Court was established which shall be 'complementary to national criminal jurisdictions.' The court was established as per Article I which '*shall have power to exercise its jurisdiction over persons for the most serious crimes of international concern ...*' So it is an international Tribunal for all practical purposes, not a domestic one for trial of offences within a particular state. Article 4(1) clearly states that 'There shall have international legal personality.' In it, 'The crime of aggression' is also included as a crime and 'Crimes against Peace' has not been included as a part of a widespread or systematic attack' directed against any civilian population with the knowledge or the attack.

Article 1 of the Rome Statute expressly provides that it shall be complimentary to national criminal jurisdiction. Article 17.1(a) of the Rome Statute stipulates that a case is inadmissible for determination by the ICC if the case is being investigated or prosecuted by a State which has jurisdiction over it unless the State is "unwilling or unable genuinely" to carry out the investigation or prosecution. Article 17.2 of the Statute laid down the criterion for determining "unwillingness" of the State. Such criterion is not applicable to Bangladesh as it has not undertaken anything for the purpose of shielding the accused-concerned from criminal responsibility for his crimes. Bangladesh cannot be said to be "unwilling or unable genuinely" to carry out the investigation or prosecution, inasmuch as, it has already investigated and prosecuted the accused-appellant for the crimes committed by him.

There are eleven types of offences under the heading 'Crimes against Humanity' and all of them are not included in the Act of 1973. The offences of 'Attack directed against any civilian population', 'extermination', 'Enslavement', 'Deportation or forcible transfer of population', 'Torture', "Forced pregnancy', 'Persecution', 'The Crime of apartheid' and 'Enforced disappearance of persons' have been defined in sub-article (2) of Article 7 of the Rome Statute. These are completely distinct offences. 'War Crimes' has been

defined in Article 8 of the said statute. In interpreting and applying the offences of 'genocide' 'crimes against humanity' and 'war crimes', apart from definitions as mentioned above, the court shall take assistance of 'Elements of Crimes' mentioned in Article 9, which shall assist the court in the interpretation and application of articles 6, 7 and 8. Articles 6, 7 and 8 refer to 'genocide' 'crimes against humanity' and 'war crimes' and while applying and interpreting those crimes in a given case against an accused person, the court is required to consider the constituent elements of those crimes. These are statutory provisions which should be followed by the courts but in our Act, 1973 no such provision is provided, and thus, the tribunal is not required to take in aid of those elements for trial of an offence of Crimes against Humanity. So, in construing or applying the offences mentioned in section 3 of Act, 1973, there is no scope for taking into consideration the elements of crimes contained in the Rome Statute. The decisions cited by the learned Counsel are based on Article 9, which are beyond the pale of our tribunal.

What's more, the offences mentioned in section 3 of Act, 1973 were not in existence when the Rome Statute was corrected on 10th November, 1998, 12th January 2001 and 16th January, 2002, which came into force on 1st July, 2002. These are quite distinct offences and these offences will not be applicable to all domestic tribunals

as would be evident from the preamble that 'Emphasizing that International Criminal Court established under this statute shall be complementary to national criminal jurisdiction'. The provisions of the Statute were promulgated in accordance with 'the Charter of the United Nations'. The Court may exercise its functions and powers on the territory of any state party 'by special agreement' as provided in Article 4(2).

More so, the crimes mentioned in the Rome Statute and the Statute itself have a lifespan of only seven years. According to Article 121, after the expiry of the period from the entry into force of the Statute, any state party may propose amendments thereto, and such amendment shall enter into force for all 'states parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance'. In respect of a state party which has not accepted the amendment, 'the court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that state party's nationals or on its territory'.[82]

Any state party which has not accepted the amendment may 'withdraw from this statute with immediate effect ....'[83] (Italics supplied). Even after ratification of the Statute by a state party, it may 'by written

[82]. Article 121(1),(2),(3),(4) and (5) of Rome Statute.
[83]. Article 124(6) of Rome Statute.

notification addressed to the secretary-general of the United Nations, withdraw from this statute'.[84] From the above, we find that it is a temporary legislation and the same is applicable to a state party which ratified it. The courts shall exercise jurisdiction regarding the amendment of any of the crimes or withdrawal from the Statute even after ratification at any time. Under such circumstances, how the decisions given by the Internation Criminal Courts or Appeal Chambers relying upon these Statute have persuasive value not to speak of binding force as submitted by Mr. Razzak remain a mystery to me?

What's more, in view of Article 10 of the Statute, which states, the 'existing or developing rules of International Law' shall be applicable to the International Criminal Court, the international laws will be applicable to the court but there is no such corresponding provision in our Act, 1973. Though the appellant was charged with offences of Crimes against Humanity, and his complicity in those crimes, in fact he was convicted for 'murder' and 'rape'. The tribunal constituted under Act, 1973 shall not have jurisdiction over a national, ethnical or religious group or any civilian population or persons other than any individual or group of individuals or organization or any member of any armed defence or auxiliary forces, unless he/it

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[84]. Article 126(1) of Rome Statute.

commits crimes mentioned in section 3(2) in the territory of Bangladesh.

Besides, under the Rome Statute, the accused/defendant has a right to challenge the jurisdiction of the Court,[85] and while applying the law, the court shall take into account the Statute, elements of crimes and its Rules of Procedure and evidence. Apart from the above, it shall consider in appropriate cases, the treaties, rules of international law including the established principles of the international law of armed conflict, the national laws of states that would normally exercise jurisdiction over the crime, provided that 'those principles are not inconsistent with this statute', and with international law and internationally recognized norms and standards[86].

So, the national laws of states which are inconsistent with the Rome Statute shall not be applicable to the International Criminal Court. Therefore, the Rome Statute has primacy over national law. A combined reading of sections 24-26 read with sections 3(2) and 4(1) of our Act would show that the accused person has no right to challenge the jurisdiction of the tribunal except those rights i.e. opportunity to engage a defence counsel and his right during trial as

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[85]. Article 19 of the Rome Statute.

[86]. Article 21 of the Rome Statute.

provided in sections 16 and 17, and the right of appeal after conviction.

The 'Extraordinary Chambers' created for the prosecution of 'Crimes committed during the period from 17th April 1975 to 6th January, 1979 in Kampuchea' now Cambodia in respect of offences of 'Homicide' under Articles 501, 503, 504, 505, 506, 507, 508, 'Torture' under Article 500 and 'Religious Persecution' under Articles 209 and 210 of the Penal Code 1956, the said Statute was extended for an additional thirty years for the crimes enumerated above, which were brought within the jurisdiction of the Extraordinary Chambers. It is provided that those who were responsible for crimes and serious violations of Cambodian laws related crimes, 'international conventions recognized by Cambodia' would be tried by 'Extraordinary Chambers'[87]. It is further provided that 'Crimes against humanity, which have no Statute of limitations, are any acts committed as part of a widespread or systematic attack directed against civilian population, on national, political, ethnical, racial or religious grounds, such as....."[88] (Italics supplied). The Extraordinary Chambers have been given power to bring trial of suspects who have committed or ordered the commission of great breaches of 'the Geneva

87. Article 2 of the Cambodia Statute.
88. Article 5 (ibid).

Conventions of 12 August 1949'[89] and the Chambers were given, powers to try those who were responsible for 'crimes against internationally protected persons pursuant to the Vienna Convention of 1961 on Diplomatic Relations....'[90] The constitution of the Chambers with five professional Judges, two of them foreign Judges. So these Chambers have all the trappings of International Criminal Court under the Rome Statute.

The expenses to be incurred for the foreign administrative officials and staff, the foreign Judges, co-investigating Judge and co-prosecutor sent by the Secretary General of the United Nations shall be borne by the United Nations. The Statute of the Special Court for Sierra Leone[91] has been given power to prosecute persons who have committed or ordered the commission of serious violation of Article 3 common to the Geneva Conventions of 12 August, 1949 for the protection of war victims and of additional Protocol 11 thereto of 8 June 1977. The 'crimes as part of a widespread or systematic attack against any civilian population'[92] mentioned below are taken as crimes against humanity. Though the court has power to try offences described under the Rome Statute,

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[89] Article 6 (ibid).
[90]. Article 8 (ibid).
91. Established by an Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315(200) of 14th August 2000.
[92]. Article 2 (ibid).

and the special court has 'primacy over national courts of Sierra Leone'[93].

The International Tribunal for the prosecution of Persons Responsible for serious violations of International Humanitarian Law committed in the territory of the Former Yugoslavia was established by the Security Council under Chapter VIII of the Charter of the United Nations. The offences include breaches of Geneva Conventions, violations of laws or customs of War, Genocide, Crimes against humanity etc. The territorial jurisdiction of the tribunal shall be extended to the territory of the former Socialistic Republic of Yugoslavia and 'The International Tribunal shall have primacy over national Courts'[94]. The fourteen member Judges of the Tribunal shall be elected by the General Assembly from a list submitted by the security council. Therefore, under no stretch of imagination it is an International Tribunal and there is no doubt that the International Laws and customs are applicable in this Tribunal.

In Hussan Mohammad Ershad[95] Bimalendu Bikash Roy Choudhury,J. observed:

> "*True it is that the Universal Human Rights norms, whether given in the Universal Declaration or in the Covenants, are not*

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[93]. Article 8(2)(ibid).
[94]. Article 9(2) of the Statute for The Former Yugoslavia.
[95]. Hossain Mohammad Ershad V. Bangladesh, 21 BLD(AD)69.

directly enforceable in national courts. But if their provisions are incorporated into the domestic law, they are enforceable in national courts. The local laws, both constitutional and statutory, are not always in consonance with the norms contained in the international human rights instruments. The national courts should not, I feel, straightway ignore the international obligations, which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments. But in the cases where the domestic laws are clear and inconsistent with the international obligations of the state concerned, the national courts will be obliged to respect the national laws, but shall draw the attention of the lawmakers to such inconsistencies."

In Sheikh Hasina[96], this Division observed:

"But our Courts will not enforce the covenants and convention even if ratified by the State unless these are incorporated in municipal laws. However the Court looks into this convention while interpreting the provisions of

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[96]. Bangladesh V. Sheikh Hasina, 60 DLR(AD)90.

Part III to determine rights to life, right to liberty and other rights enumerated in the Constitution."

Mohammad Fazlul Karim,J. of this Division observed:

"Though International Convention, however, could be recognized upon ratification but could be applied in our Country only when its provisions are incorporated in our Municipal laws and thus for enforcing any International Covenants under any Convention to which this Country is a signatory, the provisions of the Convention have to be incorporated in our domestic law."[97]

The English and Indian superior courts also took similar views. It was observed:

"The second is that, as a matter of the constitutional law of the United Kingdom, the Royal Prerogative, whilst it embraces the making of treaties, does not extend to altering the law or conferring rights upon individuals or depriving individuals of rights which they enjoy in domestic law without the intervention of Parliament. Treaties, as it is sometimes expressed, are not self-executing. Quite simply, a treaty is not part of English law

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[97]. M/s. Supermax International Private Ltd. V. Samah Razor Blades Industries, 2 ADC 593.

unless and until it has been incorporated into the law by legislation. So far as individuals are concerned, it is res inter alios acta from which they cannot derive rights and by which they cannot be deprived of rights or subjected to obligations; and it is outside the purview of the court not only because it is made in the conduct of foreign relations, which are a prerogative of the Crown, but also because, as a source of rights and obligations, it is irrelevant."[98]

The Supreme Court of India observed:

"In cases involving violation of human rights, the Courts must for ever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field." [99]

The Court of Appeal while recognizing that the Courts could have recourse to the convention when faced with an ambiguous statute refused to go a step further and held that where wide powers of decision making were given to a minister by an unambiguous statutory provision, the minister in exercising those powers should conform to the provisions of the Convention. To do so, in

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[98]. J.H. RAYNER (MINCING LANE) LTD. V. DEPARTMENT OF TRADE AND INDUSTRY and others (1990) 2 A.C. 418(500).

[99]. Apparel Export Promotion Council V. V.A.K. Chopra, AIR 1999 S.C. 625.

the words of Lord Ackner, would be to incorporate the convention into English law by the back door"[100]

Lord Diplock said 'the interpretation of treaties to which the United Kingdom is a party but the terms of which have not either expressly or by reference been incorporated in English domestic law by legislation is not a matter that falls within the interpretative jurisdiction of an English court of law".[101] Sir Robert Megarry V. C. said "The European Convention of Human Rights is not, of course, law though it is legitimate to consider its provisions in interpreting the law; and naturally I give it full weight for this purpose".[102] Nonetheless, he (and subsequently the Court of Appeal) applied the letter of the Crown Proceedings Act 1947.

The House of Lords argued that the courts do not have some general or residual power either to create new offences or so to widen existing offences as to make punishable conduct of a type hitherto not subject to punishment.[103] The same reasoning applies to the incorporation into domestic law of new crimes in international law. The law concerning safe conducts, ambassadors and piracy is very old. Scalia, J. recently said:

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[100]. R. V. Home Secretary ex. P. Brand (1991) 1 A.C. 696.
[101]. British Airways Board V. Laker Airways Ltd. (1985) A.C. 58.
[102]. Trawnik V. Lennox (1985) 1 WLR 532.
[103]. (1972) 2 All ER 898 at 905, (1973) AC 435 at 457-458.

> *"American law–the law made by the people's democratically elected representatives–does not recognize a category of activity that is so universally disapproved by other nations that it is automatically unlawful here".*[104]

So, English court could not give any effect to the rules of international law unless such rules were proved to have been adapted by Great Britain, in common with other nations in a positive manner. Moreover, if such rules conflicted with the established principles of the English common law, an English court was bound not to apply.[105] "It is a trite observation that there is no such thing as a standard of international law extraneous to the domestic law of a kingdom to which appeal may be made. International law, so far as this Court is concerned, is the body of doctrine....which has been adopted and made a part of the law of Scotland".[106]

Lord Atkin laid down the dictum that "international law as such can confer no rights cognizable in the municipal courts. It is only insofar as the rules of international law are recognised as included in the rules of municipal law that they are allowed in municipal courts to give rise to rights and obligations."[107]

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[104]. Sosa V. Alvarez-Machain (2004) 159 L Ed 2nd 718 at 765.

[105]. R V. Reyn (The Franconia) (1876) 2 Ex. D 63.
[106]. Mortensen V. Peters (1906) 8F (J) 93 (Scotland: Court of Justiciary).
[107]. Commercial and Estate Co. of Egypt v. Board of Trqde (1925) 1 KJB 271.

Lord Denning also held that "the rules of international law only become part of our law insofar as they are accepted and adopted by us". It may be borne in mind that British Courts apply and adopt rules of international law if those are not inconsistent with British statutes and/or those are governed by rules of precedent i.e. *stare decisis*.[108]

No decision of the British Courts before the coming into effect of the Human Rights Act, 1998 was actually based on the European Convention. The Judges wish to keep government officers of their international obligations, but in fact they are challenging the cardinal principle laid down in the Case of Proclamations and Bill of Rights of 1688, that the Executive by itself cannot make law for this realm. Indeed, one might argue that the fact that Parliament had refrained from incorporating the European Convention into English law indicated an intention that its provisions should not be taken into account by the courts, so that Convention ought not to be cited by counsel or looked at by judges.

Lord Atkin noted.

> '*international law has no validity except in so far as its principles are accepted and adopted by our own domestic law. The courts acknowledge the existence of a body of rules which nations*

[108]. Thakrar vs. Home Secretary 1974 QB 684.

> *accept among themselves. On any judicial issue they seek to ascertain what the relevant rule is, and having found it they will treat it as incorporated into the domestic law, so far as it is not inconsistent with rules enacted by statues or finally declared by their tribunals.'*[109]

As far as the American position on the relationship between municipal law and CIL is concerned, it appears to be very similar to British practice apart from the need to take the constitution into account. The U.S. Supreme Court emphasised that, 'As a general proposition, it is of course correct that the United States has a vital national interest in complying with international law'.[110] However, the rules of international law were subject to the constitution. Malcolm D. Fvans[111] noticed the cases of Breard v. Pruett, Breard V. Greene at page 438. Breard was a national of Paraguay convicted of murder by a Virginia court in the United States. A few days before he was to be executed, Paraguay brought proceedings before the International Court of Justice, on the ground that the authorities had failed to inform him of his rights to consular protection under Article 36 of the Vienna Convention on Consular Relations. The ICJ issued an interim order requesting that United States should take

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109. Chung Chi Chung V.R. (1939) A.C. 160.
110. In Boos V. Barry L Ed 2d 333, 345-7 (1988).
111. International Law, second Edn.

all measures to suspend the execution pending its final decision.[112] On the day of the execution, the Supreme Court considered petitions seeking a stay. The issue was whether Article 36 of the Vienna Convention requiring notification to a person arrested of his rights to consular access and protection, was directly effective in a national court. The Supreme Court held:

> *'...neither the text nor the history of Vienna Convention clearly provides a foreign nation a private right of action in United States courts to set aside a criminal conviction and sentence for violation of consular notification provisions.' (134 E3d 615 (1998))*.

Under our Constitution it is the Parliament in general or the President under certain circumstances legislate. Though International Convention could be recognized upon ratification, it could be applied in our county only when its provisions are incorporated in our Municipal laws and thus for enforcing any international Covenants under any Convention to which this country is a signatory, the provisions of the Convention have to be incorporated in our domestic law.

The relation between "International Law" and "Domestic Law" in Halsbury's Laws of England it is stated as follows:

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[112]. Germany V. United States of America, IC J Reports 2001 p.466.

"International law and national legal systems. International law is a legal system distinct from the legal systems of the national states. The relationship between any particular national legal system and international law is a matter regulated by the national law in question, often by the constitutional law of the state concerned. International law requires that a state must comply with its international obligations is good faith, which means, among other things, that each state must have the legal means to implement such of its international obligations as require action in national law. In some cases undertaking an international obligation will require a state to modify its domestic law, although, initially, it is for each state to judge what action is required. Where a state accepts that international obligations may be created for it from time to time by organs of international organizations of which it is a member, it must be able to give effect to each decision in its domestic law when such action is necessary. A state may not rely on an insufficiency in its domestic law as a justification for failing to comply with an international obligation. However, international law does not, of its own

> *effect, have an impact directly in national law so that, for instance, rules of national law which are incompatible with a state's international obligations will remain valid instruments in national law".*[113]

CIL results from a general and consistent practice of states followed by them from a sense of legal obligation. The international law of nations consisted of rules 'consecrated by long usage and observed by Nations as a sort of law.[114] It was based on 'tacit consent' and bound 'only those Nations which have adopted it'.[115] Vattel explained, moreover, that 'if there be anything unjust or unlawful in such a custom it is of no force, and indeed every nation is bound to abandon it, since there can be neither obligation or authorization to violate the Law of Nations'. Besides Vattel, Professors Bradley and Gulati, the Eighteenth Century writers, draw upon three early Supreme Court cases to show that 'customary international law rules were binding only on nations that continued to accept them.'

Chase, J. observed 'The first (general) is universal, or established by the general consent of mankind, and binds all nations. The second (conventional) is founded on express consent, and is not universal, and

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[113]. Halsbury's Laws of England, 5th Edn.

[114]. Emmerich De Vattel, The Law of Nations or The Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns.

only binds those nations that have assented to it. The third (customary) is founded on tacit consent; and is only obligatory on those nations, who have adopted it.[116] Other positives to take Modern Mandatory view was William Hall. In his 1880 treatise, Hall looked to state practice as the sole source of customary international law, Yet he also held that CIL rules could be established by general consent.[117]

The U.S. Supreme Court[118] observed 'That law is universal obligation, and no statute of one or two nations can create obligations for the world. Like all the laws of natures, it rests upon the common consent of civilized communities. It is of force, not because it was prescribed by any superior power, but because it has been accepted as a rule of conduct.

'Every nation must be the final judge for itself, not only of the nature and extent of the duty, but of the occasions on which its exercise may be justly demanded.'[119] It should be remembered that International Orgainsations are established by states through international agreements and their powers are limited to those conferred on them in their constituent document. The Security Council has the authority to make decisions that are binding on all member states when it is

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115. Ibid.
116. 3 U.S. (3 Dall) 199, 227 (1796).
117. William Edward Hall, International Law.
118 . The Scotia, 81 U.S. (14 Wall) 170 (1872).
119. Jopesh Story, commentaries on the Conflict of Laws at 24-38.

performing its primary responsibility of maintaining international peace and security. Individuals are generally not regarded as legal persons under international law. Their link to state is through the concept of nationality which may or may not require citizenship.

CIL has two elements, first, there is an objective element consisting of sufficient state practice. Second, there is a subjective element, known as *opinio juris* which requires that the practice be accepted as law or followed from a sense of legal obligation. The standard formulation of 'opinio juris' is that a practice must be accepted as law.[120] It is generally acceptable principle that international law cannot bind states without their consent, and notions of consent are often said to be the basis for CIL. It follows that CIL binds a state only if that particular state accepts that rule of CIL is a biding obligation.

Halsbury's Laws of England narrated Customary International Law as under:

> *"Customary International Law: The statute of the International Court of Justice lists among the sources of public international law 'international customs, as evidence of a general practice accepted as law'. This refers*

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[120]. Article 38, para 1(b) of the statute of the International Court of justice.

> *to customary international law. Customary international law is to be distinguished from mere usage, in that it arises from state practice coupled with a conviction on the part of the states in question that it is required by or is in conformity with international law. State practice takes many forms, and includes what stated to do, what they say, and what they say about what they do. The practice of an increasing number of states is now published regularly. The English courts will have regard to a wide range of materials in determining rules of customary international law."*[121]

All the international practices are not always peremptory norms on part of the states. Some of the CILs are accepted and recognized by international communities as peremptory norms, which are termed as "*Jus Cogens*". "*Jus Cogens*" means:

> "*Peremptory norms and obligations owed to the international community as a whole. a peremptory norm of general international law, sometimes termed 'jus cogens', is accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be*

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[121]. Halbury's Laws of England, 5th Edn., para-4.

modified only by a subsequent norm of general international law having the same character. The criteria for identifying peremptory norms are stringent; those that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery and racial discrimination, crimes against humanity and torture and the right of self-determination.

There are also certain obligations under international law, usually termed 'erga omnes', that a state owes to the international community as a whole. Whilst there is some overlap in the substance of the obligations concerned, the concept of obligations erga omnes is distinct from that of peremptory norms of general international law."[122]

Though, some obligations are treated as peremptory norms (*Jus cogens*), but breach of such peremptory norms does not entail any penal sanction upon the state. Malcolm N. Shaw QC discussed this issue as follows:

"*Serious breaches of peremptory norms (jus cogens)*

One of the major debates taking place with regard to state responsibility concerns the question of international crimes. A distinction

[122]. Halbury's Laws of England, 5th Edn., para-11.

was drawn in Article 198 of the ILC Draft Articles 1996 between international crimes and international delicts within the context of internationally unlawful acts. It was provided that an internationally wrongful act which results from the breach by a state of an international obligation so essential for the protection of fundamental interests of the international community that its breach was recognized as a crime by that community as a whole constitutes an international crime. All other internationally wrongful acts were termed international delicts. Examples of such international crimes provided were aggression, the establishment or maintenance by force of colonial domination, slavery, genocide, apartheid and massive pollution of the atmosphere or of the seas. However, the question as to whether states can be criminally responsible has been highly controversial. Some have argued that the concept is of no legal value and cannot be justified in principle, not least because the problem of exacting penal sanctions from states, while in principle possible, could only be creative of instability. Others argued that, particularly since 1945, the attitude towards certain crimes

by states has altered so as to bring them within the realm of international law. The Rapporteur in his commentary to draft article 19 pointed to three specific changes since 1945 in this context to justify its inclusion: first, the development of the concept of jus cogens as a set of principles from which no derogation is permitted; secondly, the rise of individual criminal responsibility directly under international law: and thirdly, the UN Charter and its provision for enforcement action against a state in the event of threats to or breaches of the peace or acts of aggression. However, the ILC changed its approach in the light of the controversial nature of the suggestion and the Articles as finally approved in 2001 omit any mention of international crimes of states, but rather seek to focus upon the particular consequences flowing from a breach of obligations erga omnes and of peremptory norms (jus cogens).

Article 41 provides that states are under a duty to cooperate to bring to an end, through lawful means, any serious breach by a state of an obligation arising under a peremptory norm

of international law and not to recognize as lawful any such situation.”[123]

Now, the question is whether CIL can impose any criminal liability and penal sanction upon the individual. Customary International Law certainly developed a body of “international Crimes”. But this CIL developing international crimes does not impose penal sanction upon an individual unless the domestic law assimilates the said concepts of international crimes into the body of domestic law. “International Crimes” and “Sources of International Law”, are distinguished as under:

“*422. International Crimes. In an early codification of international criminal law, the Charter of the International Military Tribunal at Nuremberg listed three crimes within the jurisdiction of the tribunal which have had continuing significance in the development of international criminal law, crimes against*

123. Malcolm N. shaw QC, International Law, 5th Edn., P-720.

[illegible] y.

It remains a matter of contention as to which of these offences were actually established as international crimes by customary law by the time of the commencement of World War II, although it is widely accepted that these

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[123]. Malcolm N. shaw QC, International Law, 5th Edn., P-720.

crimes and attained customary law status by 1950.

The United Nations Security Council accepted that grave breaches of the Geneva Conventions, violations of the laws and customs of war, genocide and crimes against humanity were international crimes by customary law by 1993. It has also been suggested that torture was established as a crime in international law before the UN torture convention of 1984.

The Statute of the International Criminal Court (the 'ICC') contains a list of four international crimes, some set out in grate detail, not every item of which is confirmed by customary international law: aggression (which has yet to be defined and is to be distinguished from the Nuremburg crime of planning etc a war of aggression); genocide, war crimes; and crimes against humanity. Together, these are frequently referred to as the 'core' international crimes and it is suggested that they are surrounded by similar regimes of obligations of jurisdiction, investigation, trail and co-operation."[124]

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[124]. Halbury's Laws of England, 5th Edn., para-422-423.

The international crimes recognized by CIL do not *ipso facto* apply within the domestic jurisdiction. CIL does not create any offence in the domestic jurisdiction, neither does establish any criminal liability in domestic law. In this respect, it is stated in Halsbury's:

> *"Customary international law and English law. In numerous cases in the english courts it has been stated that customary international law is incorporated into and forms part of the law of England (the doctrine of incorporation). In other cases it has been said that international law is only part of English law in so far as the rules of the former system have been accepted by this country and are recognized by the English courts as having been transformed into rules of English law (the doctrine of transformation). While the English courts have resisted a simple answer to the question of which doctrine is to be preferred, the prevailing view appears to be a single rule of the common law allowing the courts to use the rules of customary international law as the basis for their decisions. Each rule of customary international law may be given effect in this way so that the right holder in international law (usually a state or its organs) may rely on it as a cause of action, a*

defence or as providing an immunity. Like all rules of the common law, the reception of customary international law is subject to constitutional constraints, and customary international law may not be given effect contrary to the plain words of a statute, nor may it be used as the basis for establishing criminal liability in domestic law.

Customary international law does not provide grounds for challenging before the courts the exercise of powers of the British government under the prerogative which remain beyond domestic indicial scrutiny. A remedy sought on the basis of the rule of customary international law must be one which it is within the capacity of the courts to give. The traditional rule has come in for criticism. It will be for the person asserting the rule to prove that it exists as alleged by demonstrating that there is evidence which would satisfy the international law rest of custom. The English courts have been troubled by what they perceive as the uncertainty of customary international law."[125]

[125]. Ibid, para-16.

Mr. Rafique-ul-Huq, in the premises, submitted that "International Crimes" cannot be deemed to be crimes under the domestic law automatically unless the same are made as crimes under the domestic law of Bangladesh by legislative action. In this connection, he has referred to a passage of Halsbury's as under:

> "*International crimes and united Kingdom law. Crimes under customary international law of treaties are not crimes in English law without implementing legislation to make them so. There is universal jurisdiction for grave breaches of the Geneva Conventions, and for torture. For the offences of genocide, war crimes and crimes against humanity, jurisdiction is territorial or where conduct abroad is that of a United Kingdom national or resident or a person under United Kingdom service jurisdiction. The implementing legislation frequently makes other provisions, such as providing for extraterritorial jurisdiction.*
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> *Other things being equal, the general part of the criminal law and the law of criminal procedure will apply to the investigation and prosecution of the domestic crime which mirrors the international crime. However, legislation may make offence-specific provisions, where*

domestic law differs from the international law which surrounds the international crime. Where conduct constituting an international crime is made criminal in national law, it will be so only from the date of the statute regardless of the date from which the conduct might have been criminal in international law, except where the stature provides to the contrary."[126]

Cockbun,CJ. observed in this connection as under:

"Nor, in my opinion, would the clearest proof of unanimous assent on the part of other nations be sufficient to authorize the tribunals of this country to apply, without an Act of Parliament, what would practically amount to a new law. In so doing we should be unjustifiably usurping the province of the legislature. The assent of nations is doubtless sufficient to give the power of parliamentary legislation in a matter otherwise within the sphere of international law; but it would be powerless to confer without such legislation a jurisdiction beyond and unknown to the law, such as that now insisted on, a jurisdiction over foreigners in foreign ships on a portion of the high seas."[127]

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[126]. Ibid, para-426.
[127]. R. V. Keyn, (1876)2 Exd 63 at 203.

In the context of genocide, an argument based on automatic assimilation was rejected by a majority of the Federal Court of Australia[128]. It is true that customary international law is applicable in the English courts only where the constitution permits. I respectfully agree with the observations of SIR Franklin Berman[129] answering the question whether customary international law is capable of creating a crime directly triable in a national court. He observed:

"*The first question is open to a myriad of answers, depending on the characteristic features of the particular national legal system in view. Looking at it simply from the point of view of English law, the answer would seem to be no; international law could not create a crime trible directly, without the intervention of Parliament, in an English court. What international law could, however, do is to perform its well-understood validating function, by establishing the legal basis (legal justification) for Parliament to legislate, so far as it purports to exercise control over the conduct of Non-Nationals abroad. This answer is inevitably tied up with*

[128]. Nulyarimma V. Thompson, Buzzacott V. Hill (1999) 8 BHRC 135.

[129]. O' Keefe Customary international Crimes in English Courts (2001) 72 BYIL 293 p 335.

the attitude taken towards the possibility of the creation of new offences under common law. Inasmuch as the reception of customary international law into English law takes place under common law, and inasmuch as the development of new customary international law remains very much the consequence of international behaviour by the Executive, in which neither the legislature nor the Courts, nor any other branch of the constitution, need have played any part, it would be odd if the Executive could, by means of that kind, acting in consent with other States, amend or modify specifically the criminal law, with all the consequences that flow for the liberty of the individual and rights of personal property. There are, besides, powerful reasons of political accountability, regularity and legal certainty for saying that the power to create crimes should now be regarded as reserved exclusively to Parliament".

The lack of any statutory incorporation is not, however, a neutral factor, for two main reasons. The first is that there now exists no power in the courts to create new criminal offences, as decided by the House of

Lords[130]. While old common law offences survive until abolished or superseded by statute, new ones are not crated. Statute is now the sole source of new criminal offences. The second reason is that when it is sought to give domestic effect to crimes established in customary international law, the practice is to legislate. Examples may be found in the Geneva Conventions Act 1957 and the Geneva Conventions (Amendment) Act 1995, dealing with branches of the Geneva Convention of 1949 and the Additional Protocols of 1977; the Genocide Act 1969, giving effect to the Convention on the Prevention and Punishment of the Crime of genocide 1948 (Paris, 9 December 1948; TS 58(1970); Cmnd 4421); the 1988 Act, Section 134 giving effect to the Convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (10 December 1984; UN General Assembly Resolution 39/46,Doc A/39/51; cmand 9593); the War Crimes Act 1991, giving jurisdiction to try war crimes committed abroad by foreign nationals; the Merchant Shipping and Maritime Security Act 1997, section 26, giving effect to provisions of the United Nations Convention of the law of the Sea[131] relating to piracy; and sections 51 and 52 of the 2001 Act, giving effect to the Rome Statute by providing for the trial of persons accused of genocide,

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[130]. Knuller (Publishing, Printing and Promotions) Ltd V. DPP (1972) 2 All ER 898, (1973) AC 435.

[131]. Montego Bay, 10 December 1982 to 9 December 1984; Miscellaneous 11 (1983); Cmnd 8941.

Crimes against Humanity and war crimes, but not, significantly, the crime of aggression. It would be anomalous if the crime of aggression, excluded (obviously deliberately) from the 2001 Act, were to be treated as a domestic crime.

As observed above, International Law is perceived as a law between states whereas national law applies within a state, regulating the relations of its citizens with each other and with that state. James Crawford, explained the position under the headings 'International Law Before National Courts. General Considerations' and 'International Law as the applicable law in national courts'. It is said, 'In the first place, there is a serious problem involved in binding reliable information of the international law, especially customary law, in the absence of formal proof and resort to expert witnesses. Secondly, issues of public policy and difficulties of obtaining evidence on larger issues of state relations combine to produce a procedure whereby the executive may be consulted on certain questions mixed law and facts....'[132] The approach of a national court, it is said, to international law will be largely determined by the rules of the jurisdiction in question. '*Courts may be called upon to adjudicate in conflicts between a*

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[132]. Browlie's Principles of Public International Law, Eighth Edn. by James Crawford at P.56.
[133]. Ibid., P.57.

municipal law on the one hand, and a rule of customary international law on the other. Many municipal systems now appear to have in one way or another accepted customary international law as 'the law of the land' even where no constitutional provision is made, but questions remain as to how it fits within the internal hierchy of a national system. As a general rule, an extant statute will prevail over a rule of customary international law if no reconciliation is possible by way of interpretation'.[133]

The European Communities Act, 1972 gave effect within the united kingdom to those provisions of community law which were, according to the European treaties, intended to have direct effect within member states. This applied both to existing and future treaties and regulations. Even then, the United Kingdom promulgated 'The Human Rights Act 1998. It is stated by A.W. Bradley that 'The doctrine that Parliament may not bind its successors is a major obstacle to enactment of a Bill of Rights to protect human rights against legislation by latter Parliament. In outlining its scheme for the Human Rights Act, the Government denied that it was trying to transfer power from future Parliaments to the Courts:"[134]

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[134]. Constitution and Administrative Law, Fourth Edn.

It is argued by M/S Rafique-ul-Huq, Mahmudul Islam, Rokanuddin Hahmud and Ajmalur Hossain that CIL is developing in international crimes but this developing international crimes do not impose penal sanction upon an individual unless the domestic law assimilates the said consents of international crimes into the body of domestic law and that international crimes cannot be deemed to be crimes under the domestic law of Bangladesh. It is further argued that CIL does not have any applicability to Bangladesh jurisdiction, particularly in the Act, 1973. It is finally contended that the accused under the Act, 1973 shall be tried under and within the sanction and four corners of the Act. The arguments that CIL over the years of the commitment has been constituted a comprehensive legally binding system for the promotion and protection of human rights are not totally correct. International law is perceived as a law between states whereas national law applies within state, regulating the relations of its citizens with each other and with that state. National legal order has the power to create or alter rules of the other. When international law applies in whole or in part within any national legal system, this is because of a rule of that system giving effect to the international law. In case of a conflict between international law and national law, the dualist would assume that a national court would apply national law or

at least that it is for the national system to decide which rule is to prevail.

When we use the word "Law" against the international background, then the word "Law" normally does not mean to have any coercive sanction for violation of any such so called "Law". Here the word law is used normatively. In fact, with reference to the words "International Law", normally justice mean the International obligation/responsibility of states, violation of which does not entail any criminal liabilities upon the states. Following Austin's definition, law is a sovereign command enforced by sanctions, international law cannot qualify as law since it lacks anything by way of sovereign legislature or of sanctions. In the realm of Bangladesh, the sovereignty vests in the people and the Constitution is the supreme law of the Republic, under the authority of which the authority is exercised and effected. Article 1 of the Constitution reads as follows:

> "*Bangladesh is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh*".

Article 7 of the Constitution of Bangladesh provides the constitutional Supremecy as under:

> "7*(1) All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution.*

(2) This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void".[135]

Therefore, the sovereignty means "the will of the people of the Republic through constitutional supremacy". In other words, "Law" means "Law" as asserted under the Constitution of Bangladesh. This provision says the Constitution itself is supreme law and any other law inconsistent with the Constitution is void. Further, 'Law' defined in the Constitution as under:

"Law" means any Act, Ordinance, order, rule, regulation, by-law, notification or other legal instrument, and any custom or usage, having the force of law in Bangladesh".[136]

This law will be effective if the President assents to a Bill passed by the Parliament:

"80(5) When the President has assented or is deemed to have assented to a Bill passed by Parliament it shall become law and shall be called an Act of Parliament".[137]

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135. Constitution of Bangladesh.

136. Ibid., Art.152.
137. Ibid., Art.80(5).

Apart from the above, the President has limited power to promulgate law which has "the like force of law as an Act of Parliament".[138] Subject to above constitutional limitations, the Supreme Court of Bangladesh can also declare what laws are within the jurisdiction of Bangladesh:

> *"the law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either Division of the Supreme Court shall be binding on all courts subordinate to it".*[139]

Nothing but the provision falling within the above constitutional periphery can be law and provision having force of law within the jurisdiction of Bangladesh. Therefore, even any international obligation or responsibility undertook by the Government cannot have any force of law within the jurisdiction of Bangladesh.

It will appear from the above provisions of the Constitution, it is the Parliament in general or the President under certain circumstances legislate and not the Government, and the Courts of law do not require to have regard to the acts of the Government including entering into treaties or adopting the convention when interpreting the law. Though International Convention, could be recognized upon ratification, it could be

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138. Ibid., Art.93.
139. Ibid., Art.111.

applied in our county only when its provisions are incorporated in our Municipal laws and thus for enforcing any international Covenants under any Convention to which this country is a signatory, the provisions of the Convention have to be incorporated in our domestic law. Any international obligations/responsibilities of the Republic or any undertaking taken at the international level or any norms/practices, howsoever regularly honoured by the state at international interactions, cannot be applicable in the domestic tribunal of the country unless the same is incorporated in the domestic law by a legislative action.

So, CIL cannot be applied by a domestic tribunal if those are inconsistent with an Act of Parliament or prior judicial decisions of final authority. The domestic courts have to make sure that what they are doing is consonant with the conditions of internal competence under which they must work. Thus the rule of international law shall not be applied if it is contrary to a statute.

There is no rule of CIL that prohibits our domestic tribunal to proceed with the trial as per our domestic legislation, and as such, it can be safely said that rules of public international law allows our domestic tribunal to proceed with the trial as per our Act. In short, the rules of international law whether applicable or not, our domestic tribunal has the jurisdiction to

continue with the trial in any manner acting in derogation of the rules of public international law. Besides, there is nothing repugnant to CIL in the Act, 1973, which is consonant with the provisions of CIL.

States are under a general obligation to act in conformity with the rules of international law and will bear the responsibility for breaches of it, whether committed by the legislative, executive or judicial organs. The doctrine of "incorporation" implies that international law is part of the municipal law automatically without the necessity for the interposition of a constitutional ratification procedure. The best-known exponent of this theory is the eighteenth century lawyer Blackstone who stated in his commentaries that "the law of nations, wherever any question arises which is properly the object of its jurisdiction, is here adopted in its full extent by the common law, and it is held to be part of the law of the land.

Malcolm N. Shaw[140] stated that the problem of international law within the municipal law system is however, rather more complicated and there have been a number of different approaches to it. States are, of course, under a general obligation to act in conformity with the rules of international law and will be responsible for breaches of it, whether committed by the

[140]. Malcolm N. Shaw. International Law, Fifth Edn.

legislative, executive or judicial organs. Further, international treaties may impose requirements of domestic legislation upon state parties. In this connection, it is said, the approach adopted by municipal courts will be noted.

English courts put forward various theories as noticed by Malcom N. Shaw to explain the applicability of international law rules within the jurisdiction. One expression of the positividualist position has been the doctrine of transformation. This is based upon the perception of two quite distinct systems of law, operating separately, and maintains that before any rule or principle of international law can have any effect within the domestic jurisdiction, it must be expressly and specifically 'transformed into municipal law by the use of the appropriate constitutional machinery, such as an Act of Parliament. This doctrine grew from the procedure whereby international agreements are rendered operative in municipal law by the device of ratification by the sovereign and the idea has developed from this that any rule of international law must be transformed, or specifically adopted, to be valid within the internal legal order. Another approach, the author stated, known as the doctrine of incorporation, holds that international law is part of municipal law automatically without the necessity for the interposition of constitutional ratification procedure.

The author upon analysing some decisions of English cases came to the conclusion that statutes had predominance over customary law, and a British court would have to heed the terms of an Act of Parliament even if it involved the breach of a rule of international law. This is so even there is a presumption in British law that the legislation is to be construed as to avoid a conflict does not occur, the statute has priority and the statute itself will have to deal with the problem of the breach of a customary rule.

It is stated by Browlie that the relationship between international and national law is often presented as a clash at a level of high theory, usually between 'dualism' and 'monism.' Dualism emphasizes the distinct and independent character of the international and national legal systems. International law is perceived as a law between states whereas national law applies within a state, regulating the relations of its citizens with each other and with that state. Neither legal order has the power to create nor alter rules of the other. When international law applies in whole or in part within any national legal system, this is because by a rule of that system giving effect to international law. In case of conflict between international law and national law, the dualist would assume that a national court would apply national law, or at least that it is for the national

system to decide which rule is to prevail.[141] (Italics supplied)

Rosseau propounded similar view characterizing international law as a law of coordination which does not provide for automatic abrogation of national rules in conflict with obligations on the international plane, instead international law deals with incompatibility between national and international law through state responsibility. Once a national court has determined that international law is in some way applicable to a matter before it, it falls to the court to determine how that law may also be any national law that may also be applicable. Indeed, the increasing penetration of international law into domestic sphere has to an extent muddied the distinction between the two. The approach of a national court to international law will be largely determined by the rules of the jurisdiction in question. It is said Brolmaun as a general rule, an extant statute will prevail over a rule of customary international law if no reconciliation is possible by way of interpretation.[142] (Italics supplied)

In systems of municipal law the concept of formal source refers to the constitutional machinery of law making and the status of the rule is to establish by the constitutional law; for example, a statute is binding in

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141. In Browlie's Principles of Public International Law, Eighth Edn.

142. In Nijaman & Nollkaemper (2007) 84.

the United Kingdom by reason of the principle of the Supremacy of Parliament. In the context of international relations the use of the term 'formal source' is awkward and misleading since one is put in mind of the constitutional machinery of lawmaking which exists for the creation of rules of international law. Decisions of the International court unanimously supported resolutions of general Assembly of the United Nations concerning matters of law, and important multilateral treaties concerned to codify or develop rules of international law, are all lacking quality to bind states generally in the same way that Acts of Parliament bind the people of a state. In a sense, 'formal sources' do not exist in international law. As a substitute, and perhaps an equivalent, there is the principle that the general consent of states creates rules of general application. The definition of custom in international law is essentially a statement of this principle.

The statute of the International Court of Justice, provides 'The court' whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) 'international conventions, whether general or particular, establishing rules expressly recognised by the contesting states;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognised by civilized nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.[143]

It further provides, the decision of the court has no binding force except between the parties and in respect of that particular case.[144] Article 38 is generally regarded as a complete statement of the sources of international law. This article does not refer to 'sources' and, if looked at closely, cannot be regarded as a straightforward enumeration of the sources. Brierly[145] remarks that 'what is sought for is a general recognition among states of a certain practice as obligatory'. Ian Browlie stated, although occasionally the terms are used interchangeably, 'custom' and 'usage' are terms of art and have different meanings. A usage is a general practice which does not reflect a legal obligation.

[143]. Article 38.1 of the Statute of International Court of Justice.
[144] . Ibid., Article 59.
[145]. The Law of Nations, Sixth Edn.

The material sources of custom are very numerous and include diplomatic correspondence, policy statements, press releases, the opinions of official legal advisers, official manuals on legal questions, i.e. manuals of military law, executive decisions and practices, orders of naval forces etc., comments by Governments on drafts produced by the International Law Commission, state legislation, international and national judicial divisions' recitals in treaties and other international instruments, the practice of international organs, and resolutions relating to the legal questions in the united Nations General Assembly.

The conclusion reached by Brownlie on the question of the relation between municipal and international law is that three factors operate on the subject matter. The first is organisational: to what extent are the Organs of States willing to apply rules of international law internally and externally? This raises the problem of state responsibility, sanctions, and non-recognition of illegal acts. The second factor is the difficulty of providing the existence of particular rules of international law. In case of difficulty municipal courts may rely on advice from the executive or existing internal precedents, and the result may not accord with the objective appreciation of the law. Thirdly, Courts, both municipal and international, will often be concerned

with the more technical question as to which is the appropriate system to apply to particular issues arising.

There is no gainsaying that a custom may cease to have effect in exactly the same way as it comes into existence, under the impact of a conflicting customary or conventional rule or by desuetude, when the practice which has given rise to it is abandoned or ceases to be generally followed. As to the nation of international criminal law, according to Malcolm D.Evans,[146] international criminal law is a body of international rules designed both to proscribe international crimes and to impose upon states the obligation to prosecute and punish same of those crimes. The first limb of this body makes up substantive law. This is the set of rules indicating what acts amount to international crimes, the subjective elements required for such acts to be regarded as prohibited, the possible circumstances under which persons accused of such crimes may not be held responsible criminally, as well as on what conditions states may, under international rules, prosecute or bring to trial persons of accused of one of those crimes.

Statutes of the International Military Tribunal at Nuremberg and International Military Tribunal for the Far East were adopted in 1945 and 1946, laying down new classes of international criminality – these being Crimes

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[146] . Professor of public International Law.

against Humanity and crimes against peace. They were followed in 1948 by genocide as a special subcategory of Crimes against Humanity and then in 1980 by torture as a discrete crime. This shows that international criminal law is still a very rudimentary branch of law. The reasons why international criminal law displays these characteristics flow from the manner in which it has been formed. First, the relevant treaties and customary rules focus upon prohibiting certain acts, such as, killing prisoners of war or civilians, rather than addressing the criminal consequences of such acts, less alone the conditions for their criminal repression and punishment. Secondly, when international law has criminalized some categories of acts, such as war crimes and Crimes against Humanity, it has left the risk task of prosecuting and punishing the perpetrators to national court which, in consequence, have applied their own jurisdictional and procedural rules as well as following their own approaches to relevant questions of substantive criminal law, such as, *mens rea, actus reus* etc.

Faced with the indeterminacy of most international criminal rules, Malcolm D. Evans stated, national courts have found it necessary to flesh them out and give them legal precision, thus refining notions initially left rather loose and wooly by treaty or customary law. There is no dispute that most customary rules of international criminal law have primarily evolved from municipal case

law relating to international crimes. Thus, as well as the paucity of international treaty rules on the matter, explains why international criminal law is largely the result of the gradual transposition onto the international plane of rules and legal constructs proper to national criminal law or to national trial proceedings.

It is contented on behalf of the appellant that offences specified in section 3(2) of Act, 1973 are not defined and do not contain the element of 'widespread or systematic' for constituting the Crimes against Humanithy. In the absence of definition, the Tribunal ought to have considered the elements and definition of 'Crimes agaisnt Humanity contained in the Rome Statute. He added that an 'attack' may be termed as 'systematic' or 'widespread' if it was in furtherance of policy or plan. To prove the same the prosecuton is required to prove that the offences were perpetrated in furtheranace of any plan or policy, and in its absence the same can not be characterised as 'Crimes against Humanity'. In this connection, the learned counsel has referred to the cases of Prosecutor V. Kumarac, case No. IT -96-23/1A', ICTY Appeal Chamber, Prosecutor V. Tadic, Case NO. IT-94-1-T; ICTY Trial Chambers Prosecutor V. Naletilic, Case NO. IT-98-34-T, Kayishema et al, Case No. ICTR -95-1-T, The Prosecutor V. Jean - Paul AK Ayesu, case NO. ICTR -96-4-T, Prosecutor V. Dario Kordic, case NO. IT-95-14-2A,

Prosecutor V Alfred Masuma, Case No. ICTR-96-13-A, Prosecutor V. Dario Kordic, case NO. IT-95-14/2T and some other cases.

It was urged that the tribunal failed to notice that section 3(2)(a) of the Act must be reflective of Crimes against Humanity in CIL in 1971, inasmuch as, an international armed conflict was an essential element of Crimes against Humanity, and finally, it was urged that the Tribunal erred in law in not directing itself to the core question that crimes of 'murder' and 'rape' did not qualify as underlying acts of Crimes against Humanity in CIL in 1971.

Learned counsel has referred to some cases and observations made therein by the International Criminal Tribunal for Rwanda (ICTR), International Tribunal for the Prosecution of Persons responsible for serious violations of International Humanitarian Law committed in the territory of the Former Yugoslavia (ICTY) and submits that the notion of a widespread and systematic attack in Crimes against Humanity is logically and factually distinct from that of armed conflict. Learned counsel stressed upon the use of the expression 'International' in Act, 1973 and submitted that the use of the said expression presupposes that International laws particularly CIL is applicable to the trial of the appellant for the trial of the offences mentioned in Section 3 of Act, 1973. Learned counsel has also referred

to some pre-trial decisions of the International Criminal Court which are not at all applicable to our Tribunal.

True, in the Act, 1973, the offences of 'Crimes against Humanity' 'genocide' and 'war crimes' have not been defined. In offence of Crimes against Humanity, some offences like, rape, murder, abduction, confinement, extermination, enslavement etc. have been included, of them, the appellant was in fact tried and convicted for murder and rape. Similarly in respect of 'genocide' and 'war crimes' some offences have been included as constituents of those crimes but the appellant has not been tried in respect of those offences. In the absence of definition of those crimes, we are unable follow the definition given in the Rome Statute as submitted by the learned Counsel for the appellant. The offences of murder and rape mentioned in the Act have been defined in our Penal Code and the definition of those offences given in the Penal Code may be taken in aid since this Code has not been excluded by the Act. Besides, almost all laws prevailing in our country are codified laws, these laws have been promulgated following the concepts, principles, rules and traditions of English Common Law, or in the alternative, it may be said that the concepts, principles, rules and traditions of English Common Law, have penetrated into our jurisprudence and the fabric of our judicial system. The definitions given in respect of these offences in those laws are identical. Therefore,

there is no bar to taking the definitions of those laws mentioned in Act, 1973. Under the Common Law the meaning of murder is as under:

(1) Murder: The precise definition of murder varies from jurisdiction to jurisdiction. Under the Common Law, or law made by courts, murder was the unlawful killing of a human being with malice aforethought. The term malice aforethought did not necessarily mean that the killer planned or premeditated on the killing, or that he or she felt malice toward the victim. Generally, malice aforethought thought referred to a level of intent or reck-lessness that separated murder from other killings and warranted stiffer punishment.

The definition of murder has evolved over several centuries. Under most modern statutes in the United States, murder comes in four varieties: (1) intentional murder; (2) a killing that resulted from the intent to do serious bodily injury; (3) a killing that resulted from a depraved heart or extreme recklessness; and (4) murder committed by an Accomplice during the commission of, attempt of, or flight from certain felonies.

Most states also have a felony murder statute. Under the felony murder doctrine, a person who

> *attempts or commits a specified felony may be held responsible for a death caused by an accomplice in the commission of the felony; an attempt to commit the felony; or flight from the felony or attempted felony. For example, if two persons rob a bank and during the Robbery one of them shoots and kills a security guard, the perpetrator who did not pull the trigger nevertheless may be charged with murder.*
>
> *Most states divide the crime of murder into first and second-degrees. In such states, any intentional, unlawful killing done without justification or excuse is considered second-degree murder. The offense usually is punished with a long prison term or a prison term for life without the possibility of parole. Second-degree murder can be upgraded to first-degree murder, a more serious offense than second-degree murder, if the murder was accomplished with an aggravating or special circumstance. An aggravating or special circumstance is something that makes the crime especially heinous or somehow worthy of extra punishment.*[147]

Under the Penal Code section 300 defines murder with reference to the definition of culpable homicide. The

[147]. Source:http://legal-dicstionary.thefreedictionary. com/ murder.)

definition of culpable homicide is an offence described to be the causing of death by doing an act with at least the knowledge in the actor that his act is likely to cause death. In determining the nature of the offence, regard must, then, be had to the essential elements which are common to all such offence; (a) the mentality of the accused, (b) the nature of his act, and its effect upon the human victim. To say otherwise, there must be presence of the causing of death; the doing of an act and the presence of the intention to kill or knowledge that the act was likely to cause death. Section 300 fastens the special requirements of murder upon the definition of culpable homicide. The simple course would probably have been to define 'homicide' first and then to define both 'culpable homicide' and 'murder'. The result would have obviated the circuity which renders the two offences by no means easy of comprehension. Malice prepense, is in English law, the grand criterion which distinguishes from other killing. But this term is explained not so much to mean spite or malevolence to the deceased in particular, as any evil design in general; the dictate of a wicked, depraved and malignant heart. This malice may be either express or implied. Our defination is, however, free from the artificiality of English law. It defines murder somewhat circuitously, which has led to some difficulty in its exposition, but otherwise its language is plain and intelligible.

Rape: At common law, rape was defined as forcible sexual intercourse with a female person without her consent. Because rape at common law had to be unlawful sexual intercourse, a husband could not be convicted of raping his wife. However, some modern statutes have defined rape in such a way that it can now be committed, in certain circumstances, by a husband against his wife. Many modern statutes retain the common law principle that a man cannot rape his wife, although of course, in such a scenario, assault and battery charges may be appropriate.

Further, although the common law defined rape as involving sexual intercourse, the act was considered completed upon even the slightest penetration of the female genitalia. Full penetration by the male was not required in order to obtain a conviction and neither was emission.

Intercourse that is committed where the male forces himself on the female is obviously committed without consent. Further, in situations where the woman does consent but the consent is given as a result of the male putting her in apprehension of imminent harm, the consent is considered ineffective and the

sexual intercourse will be considered rape. Additionally, in situations where the female is legally incapable of giving consent because of a mental deficiency or intoxication or other such condition that renders her legally incapable, her consent will be ineffective and the intercourse will be ineffective and the intercourse will be considered rape.

Under certain circumstances, consent obtained by fraud will be considered ineffective and the intercourse will be considered rape.

First, if the defendant tricks the victim into thinking that the act is something other than intercourse, the consent will be ineffective. So, for example, if a doctor tells a female patient that it will be necessary to insert an instrument into her genitalia as part of an examination and, after she consents to the examination, he has sexual intercourse with her, her consent will be considered ineffective and the doctor can be convicted of rape.

However, if the defendant does not trick the victim as to the nature of the act but lies to her as the medical value of the act, he cannot be convicted of rape. So, for example, if the doctor tells a female patient that it is medically beneficial for her to lose her

virginity and the patient consents to the doctor having sexual intercourse with her, the doctor will not be convicted of rape even if the reasons he gave the patient as to the medical necessity of the intercourse are fraudulent.

If the defendant obtains consent from a woman to have sexual intercourse with her after tricking her into believing that they are married, there is a split of authority as to whether or not this constitutes rape. Some courts hold that this is not rape because here has been no fraud in the factum. That is to say, the victim has not been tricked as to the nature of the act. However, other courts do consider this kind of fraud closely enough related to the nature of the act so that the intercourse can be considered rape. For example; Joe and his finance Marilyn and Jack and his Fiance Jackie decide to go away for the weekend together. They rent a small cabin by a lake where they plan to spend the weekend hiking and fishing. Joe and Marilyn are occupying one room in the cabin, and Jack and Jackie are occupying the other. One night, Jack decides to do some night fishing. While he is away, Joe sneaks into his room and, under cover

of darkness, pretends to be Jack, Joe and Jackie then proceed to engage in sexual intercourse. In this case, Joe’s trickery was with regard to his identity. Therefore, since it does not involve a marital relationship, the sexual intercourse that he has with Jackie is not considered rape.

Intercourse with a woman who is under the age of consent falls under the special category of statutory rape and it is a crime regardless of whether or not the girl consented. Further, statutory rape is a strict liability crime. That means that there is no means rea required for the commission of statutory rape. Therefore, a defendant can be convicted even if he did not know that the girl was underage and even if he reasonably mistook the girl for being over the age of consent. The age of consent varies from state to state.

Many modern statutes have replaced the common law crime of rape with a new offense called sexual assault. The biggest difference between the common law crime of rape and the more modern crime of sexual assault is that, where the common law crime of rape was defined as sexual intercourse with a woman against her will or without her consent, the modern crime

of sexual assault is gender neutral so that both men and women can be the victim of sexual assaults. Further, unlike the crime of common law rape which only outlawed the traditional act of sexual intercourse against a woman's will, the modern statutes of sexual assault are expanded to cover other kinds of non-consensual sex acts as well.[148]

Rape according to our Penal Code is that it is the having of sexual intercourse with a woman without her consent. Taking the legal aspect of 'consent' as stated in section 90, the first four clauses are unnecessary, for they repeat once more what is clearly included in that section. The word 'rape' literally means a forcible seizure, and that element is a characteristic feature of the offence. The five clauses appended to section 375 of the Penal Code are merely explanatory of non-consent, which is of the essence of the crime. The offence is said to be rape when a man has carnal intercourse with a woman (i) against her will, or (ii) without her consent. The meaning of these two clauses may not be apparent, but they are intended to cover two separate contingencies. If the sexual intercourse was without the consent of the woman or against her will, her age is immaterial for the offence of rape. The definition is being entirely on the

[148]. http://nationalparalegal.edu/public documents/courseware_asp_files/criminal Law/

basis of common law, the law as to the meaning of 'sexual inter-course' and 'penetration' has been no different from that of England.

Crimes against Humanity: No record exists of how the term "crimes against humanity" came to be chosen by the framers of the Nuremberg Charter. The term was selected by U.S. Supreme Court Justice Robert Jackson, the Chief U.S. prosecutor at Nuremberg and the head of the American delegation to the London conference that framed the Charter, Jackson consulted with the great international law scholar Hersch Lauterpacht, but they decided to leave their deliberations unrecorded, apparently to avoid controversy. In 1915, the French, British, and Russian governments had denounced Turkey's Armenian genocide as "crimes against civilization and humanity," and the same phrase appeared in a 1919 proposal to conduct trials of the Turkish perpetrators. But the United States objected at that time that the so-called "laws of humanity" had no specific content, and the proposal to try the Turks was scuttled. Apparently, Jackson saw no reason to invoke a precedent to which his own government had earlier objected on rule of law grounds and concluded that the less said, the better.[149] Cherif Bassiouni, who chronicles these events, nevertheless finds the crimes-against humanity terminology "most appropriate", and, aside from

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[149]. M. CHERIF BASSIOUNI, CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW 17-18 (2ND EDN).

worries to be considered below that the term runs the danger of demonizing those who commit such crimes, it is hard to disagree.[150] The phrase "crimes against humanity" has acquired enormous resonance in the legal and moral imaginations of the post-World War II world. It suggests, in at least two distinct ways, the enormity of these offenses. First, the phrase "crimes against humanity" suggests offenses that aggrieve not only the victims and their own communities, but all human beings, regardless of their community. Second, the phrase suggests that these offenses cut deep, violating the core humanity that we all share and that distinguishes us from other natural beings.[151]

This double meaning gives the phrase potency, but also ambiguity-an ambiguity that may trace back to the double meaning of the word "humanity". "Humanity" means both the quality of being human-humanness- and the aggregation of all human beings-humankind.[152] Taken in the former sense, "crimes against humanity" suggests that the defining feature of these offenses is the value they *injure*, namely humanness. The law traditionally distinguishes between crimes against persons, crimes against property, crimes against public order, crimes against morals, and the like. Here, the idea is to

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[150]. Supra.

[151]. 10.J. POL. PHIL. 231, 242-45(2002).

[152]. Supra.

supplement the traditional taxonomy of legally protected values–property, persons, public order, morals–by adding that some offenses are crimes against humanness as such.

The terminology chosen by the framers of the Nuremberg Charter suggests that they were thinking of crimes against humanity in this sense. In Article 6, which enumerates the crimes under the Tribunal's jurisdiction, we find the traditional category of war crimes[153] supplemented by two new categories: *crimes against peace*[154] and *crimes against humanity.*[155] The parallel wording suggests that crimes against humanity offend against humanity in the same way that crimes against peace offend against peace. If this parallelism holds, then "humanity" denotes the value that the crimes violate, just as "peace" denotes the value that wars of aggression and wars in violation of treaties assault.

As argument of Hannah Arendt provides an illustration of how this sense of the phrase "crimes against humanity" figures in legal and moral argument. In the Epilogue to *Eichmann in Jerusalem*, Arendt describes the Holocaust as a "new crime, the crime against humanity–in the sense of a crime 'against the human status', or against the very nature of mankind"[156]. She borrows the phrase, "crimes against the human status"

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[153]. Charter of IMT, Aug 8, 1945.
[154]. Ibid Art.6(c).
[155]. Ibid Art.6(c).
[156] . Hannah Arendt, Eichmann in Jerusalem; A report on the Banality of Evil 268.

from the French Nuremberg Prosecutor Francois de Menthon, and explains it thus: "Genocide is an attack upon human diversity as such, that is, upon a characteristic of the 'human status' without which the very words 'mankind' or 'humanity' would be devoid of meaning"[157]. To attack diversity, in other words, is to attack humanness. This is an intriguing and important argument, to which I will return. For the moment, I wish merely to note that Menthon's phrase and Arendt's explication of it adopt the "crimes against humanness" reading of 'crimes against humanity". The crime, for Menthon, is an attack on whatever it is that makes us human. "Humanity" refers to the quality of being human, that is, to an abstract property, not to the human race or a set of individual humans.

Crimes against humanity are typically committed against fellow nationals as well as foreigners. Reviewing the legislative history of Article 6 (c), Cherif Bassiouni observes that the legal problem it was meant to solve arose from a lacuna in humanitarian law as it existed in 1945. Under prevailing law, the category of war crimes against civilian populations included only offenses against foreign populations, whereas the Nazis committed these crimes against their own Jewish nationals and those of annexed territories in Austria and

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[157]. Ibid at 257, 268-69.

Sudetenland as well.[158] Apparently, the idea that a government would use its resources to murder its own people had not been anticipated adequately by the laws of war although turkey had done precisely that to its Armenian subjects in 1915.[159] Article 6(c) would fill this gap. Crimes against humanity would include atrocities committed before as well as during the war, crimes committed by civilians as well as soldiers, and crimes committed by a government against its own people as well as against an adversary's people. In practice, the last of these three distinctions is the most fundamental. That is because crimes against humanity committed in peacetime and those committed by civilians (e.g., police forces or informal militias like the Rwandan Interahamwe) will most likely be committed against one's own population. After, all, a state has little opportunity to do violence to foreign nationals on foreign territory except in the course of war-international terrorism being the important exception. Violations against fellow nationals typify the "pure case' of crimes against humanity-that is, crimes against humanity that are not also war crimes.

In other words, the unique evil criminalized by Article 6(c) is the horrific novelty of the twentieth century: politically organized persecution and slaughter

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158. Bassiouni, Supra.
159. Vahakn N. Dadrin, Genocide as a problem of National and International Law.

of people under one's own political control.[160] This is not to say that crimes against humanity can be committed only against one's fellow nationals. Nothing in the statutory language limits the category of crimes against humanity it this way, and the human rights that the law aims to defend apply with equal force at home and aboard.

Crimes against humanity are committed by politically organized groups acting under colour of policy. The Nuremberg Charter presupposed that crimes against humanity were committed by agents of a state. Article 6(c) requires that crimes against humanity be committed "in execution of or in connection with "crimes against peace and war crimes, both of which could be committed only by state actors, or by high-placed civilians embroiled with state actors. This state action requirement excludes, for example, "free lance" anti-Semites who decided to piggyback on the Nazi lead and murder Jews on their own, as happened repeatedly in Romania, Latvia, and the Ukraine. Their crimes could be prosecuted as murder under domestic law, but not as crimes against humanity under international law.

Crime against humanity consists of the most severe and abominable acts of violence and persecution. Article 6(c) of the Nuremberg Charter distinguishes between two types of crimes against humanity. The first consists of

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[160]. Nuremberg Charter, At. 6(c).

murder, extermination, enslavement, deportation, and "other inhumane acts," and commentators sometimes use the shorthand term "crimes of the murder type".[161] Crimes of the murder type are those that, in the words of the Canadian Supreme Court's Finta decision, have an "added dimension of cruelty and barbarism."[162]

In the backdrop of above legal position, the words "International law" is a misnomer unless the said international obligations/ responsibilities/ norms/ practices/undertakings are incorporated within the framework of domestic law. In absence of such legislative action, the said International laws are mere state international obligations/ responsibilities. Further, even states cannot be compelled to honour such international obligations/ responsibilities, because at international level there is no mechanism to enforce such international obligations/responsibilities. Therefore, when states cannot be compelled to honour such international obligations/responsibilities, a citizen of the state can not, in any event, be subjected to the said international obligations/responsibilities of the state. But the world community having experienced two great wars felt the necessity to keep harmony amongst the international communities, which led the international communities to harmonize their interactions and practices

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[161]. Egon Schwelb, Crimes against Humanity, 32 BRIT. Y.B. INT'L.L. 178, 190.

in various fields. This tendency of the international communities by elapse of time formulated various practices and norms, which are often termed as "Customary International Law".

So there remains no doubt that the Act of 1973 has primacy over CIL and CIL will be applicable so far as it is not inconsistent with the Act. The submissions of Mr. Razzak that to constitute the Crime against Humanity, the elements that there must be an attack; that the accused must have nexus with the attack; that the attack must be against civilian population; that the attack needs to be widespread and systematic; that there must be existence of prior plan or policy and that there must be an attack on political, racial, ethnic or religions grounds are not only misleading but also foreign to the Act, 1973. The decisions referred to by him were decided in the context of those statutes which are quite distinct from our Act, 1973 and therefore, those decisions have no manner of application in this case.

The courts should forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between international norms and the domestic law occupying the field. Therefore, the findings of the tribunal that '*The history says, for the reasons of State obligation to bring the perpetrators responsible for war*

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[162]. Regina V. Finta (1994) SCR 701, 818.

crimes committed in violation of customary international law to justice and in the wake of nation's demand, Act of 1973 has been amended for extending jurisdiction of the Tribunal for bringing perpetrators to book if he is found involved with the commission of the criminal acts constituting offences enumerated in the Act of 1973 even in the capacity of an 'individual' or member of 'group of individuals'' are not totally correct. The first part of the finding is based on misconception of law.

Next question is whether the appeal filed by the Government is maintainable. The maintainability of the appeal was challenged on the ground that the amendment takes away the vested right of the appellant, which should have prospective effect. It is further contended that since the law prevailing on the date of institution of the proceedings did not allow the Government to file an appeal for enhancement of sentence, the subsequent amendment creating such a forum will not be applicable in the case. It is finaly argued that had it been the intention of the legislature to apply the amendment in the case, it would have used appropriate words and made specific reference to the judgment passed by the Tribunal. In support of his contention the learned counsel has placed reliance on the cases of Garikapati V. Subbiah Chowdhury, AIR 1957 SC 540, Deyawati V. Indrajit, AIR 1966 SC 1423, Ramphal Kundu V. Kamal Sharma, AIR 2004

SC 1657, Sugni Chand Dayaram V. Pakistan, 13 DLR(SC)221, Shamsuddin Ahmed V. Registrar, 19 DLR(SC)483.

The impugned judgment was delivered on 5th February, 2013. The provision for appeal under section 21 on the day of verdict was as under:

> *21. Right of appeal-(1) A person convicted of any crime specified in section 3 and sentenced by a Tribunal shall have the right of appeal to the appellate Division of the Supreme Court of Bangladesh against such conviction and sentence.*
>
> *(2) The Government shall have the right of appeal to the Appellate Division of the Supreme Court of Bangladesh against an order of acquittal.*
>
> *(3) An appeal under sub-section (1) or (2) shall be preferred within sixty days of the date of order of conviction and sentence or acquittal.*

Section 21 was substituted by Act III of 2013 on 18th February, 2013 as under:

> *"21. (1) A person convicted of any crime specified in section 3 and sentenced by a Tribunal may appeal, as of right, to the Appellate Division of the Supreme Court of Bangladesh against such conviction and sentence.*

(2) The Government or the complainant or the informant, as the case may be, may appeal, as of right, to the appellate Division of the Supreme Court of Bangladesh against an order of acquittal or an order of sentence.

(3) An appeal under sub-section (1) or (2) shall be preferred within 30(thirty) days from the date of conviction and sentence, or acquittal or any sentence, and no appeal shall lie after the expiry of the aforesaid period.

(4) The appeal shall be disposed of within 60(sixty) days from the date of its filing.

(5) At the time of filing the appeal, the appellant shall submit all documents as may be relied upon by him."

It is urged on behalf of the Government that by this amendment a forum of appeal has been created providing equal right to the Government or to the complainant, and that since the legislature has power to make necessary amendment in the Act for interest of justice with retrospective effect without destroying the right of the appellant, it can not be said that the appellant's vested right has been curtailed by the impugned amendment. In support of his contention, the learned Attorney General has referred to two passages from the Constitutional and Administrative Law, Third Edn, of Hilarire Barnett, Introduction to the Study of Law of the Constitution, By

A.V. Diecy, the cases of Shariar Rashid Khan V. Bangladesh, 18 BLD(AD) 155, Mofizur Rahman Khan V. Government of Bangladesh, 34 DLR(AD) 321, Tarique Rahman V. Bangladesh, 63 DLR(AD)18, Tarachand V. State of Maharashtra, AIR 1962 SC 130 and State of Bihar V. Kameswar Singh, AIR 1952 SC 75.

Most of the learned Amici Curiae except Mr. T.H. Khan have also referred to some decisions while endorsing the views of the learned Attorney General. Mr. A.F. Hassan Ariff though submitted that this amendment does not make any new offence nor does it increase the gravity of an existing offence under which the appellant is being tried, the right of appeal has been granted after the decision has attained finality and that since the language of the amendment does not indicate that the concluded judgment has been subjected to appeal, the amendment may not apply to the concluded judgment. This submission of Mr. Ariff is apparently self-contradictory.

Learned Attorney General submitted that the concept of vested right cannot be applicable in case of exemption from giving a proper and legal sentence, inasmuch as, the appellate court has all the powers of the tribunal and that if it finds that the tribunal has awarded an improper sentence, the appellate court can award proper sentence irrespective of the appeal being preferred or not against the inadequacy of sentence. On this point,

M/s. Rafique-ul-Huq, M. Amir-ul-Islam, Mahmudul Islam, Rokonuddin Mahmud and Ajmalul Hossain concurred.

A retroactive law in legal sense is one that takes away or impairs a right acquired under the existing law or creates a new obligation or imposes a duty or attaches a new disability in respect to past transactions. Most of the framers of constitutions intended the ex-post facto law to be interpreted literally; that is, 'a law made after the doing of the thing to which it relates, and retracting upon it' was to be prohibited.[163] The U.S. Supreme Court issued four guidelines describing the characteristics of an unconstitutional ex-post facto law. First 'Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes an action'. Secondly, 'Every law that aggravates a crime, or makes it greater than it was, when committed'. Third, 'Every law that changes punishment, and inflicts a greater punishment, than the law, annexed to the crime, when committed'. Fourth 'Every law that alters the legal rules of evidence, and receives less or different testimony, than the law required at the time of the commission of the offence, in order to convict the offender'.[164]

While interpreting the ex-post facto law Jagannadhadas,J. observed:

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[163]. Crosskey, The True Meaning of the Constitutional Prohibition of Ex-post Facto Laws, 14 U. CHI.L.REV 539, 539(1947).
[164]. Calder V. Bull, 3 U.S. (3 Dall) 390.

"In this context it is necessary to notice that what is prohibited under article 20 is only conviction or sentence under an 'ex post facto' law and not the trial thereof. such trial under a procedure different from what obtained at the time of the commission of the offence or by a Court different from that which had competence at the time can not 'ipso facto' be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular court or by a particular procedure, except in so far as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved."[165]

In this connection Mr. M. Amirul Islam has cited a decision of the United States' Supreme Court. In that case the facts are that Earnest Dobbert murdered two of his children between Dec' 1971 and April, 1972. On 17th July, 1972 death penalty provision of the murder at the time of the incident was invalidated. Five months later, the Florida Legislature enacted a revised death penalty statute for murder in the first degree. Dobbert was thus convicted in 1974 of the first degree murder and sentenced to death. On appeal from the conviction,

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[165]. Rao Shiv Bahadur Singh V. The State of Vindhya Pradesh, AIR 1953 SC 394.

Florida Supreme Court affirmed the conviction. The Federal Supreme Court by majority affirmed the conviction holding that the retroactive application of the death penalty statute was not a violation of the constitutional prohibition of ex-post facto laws because Dobbert had received 'fair warning' of Florida's intention to seek the death penalty for the first degree murder he committed.[166]

In an another case the US Supreme Court observed:

> "…… *it was intended by the Criminal Procedure Act of 1878 to make the competency of witnesses in criminal actions and proceedings depend upon the inquiry whether they were, when called to testify, excluded by the rules determining their competency in civil actions. If competent in civil actions, when called, they were, for that reason, competent in criminal proceedings. The purpose was to have one rule on the subject applicable alike in civil and criminal proceedings. The Court principally relied on the rationale that statutes which simply enlarge the class of persons who may be competent to testify in criminal cases are not ex post facto in*

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[166]. In Dobbert V. Florida (1977) 432 US 282.

their application to prosecutions for crimes committed prior to their passage; for they do not attach criminality to any act previously done, and which was innocent when done, nor aggravate any crime thereto fore committed, nor provide a greater punishment therefore than was prescribed at the time of its commission, nor do they alter the degree or lessen the amount of measure, of the proof which was made necessary to conviction when the crime was committed. The crime for which he present defendant was indicted, the punishment prescribed therefor, and the quantity or the degree of proof necessary to punish his guilt, all remained unaffected by the subsequent statute'.[167]

This Division held that Article 35(1) of the Constitution envisages the prohibition on conviction or sentence under ex-post facto law, not trial of the offence alleged to have been committed or the procedure to be followed in the investigation, inquiry in respect of an offence alleged to have been committed. Parliament has power to give retrospective effect to laws other than laws which retrospectively creates offences and punished

[167]. Hopt V. People of the Territory of Utah, (1884)110 US 574.

them.[168] In another case this Division held that the prohibition under Article 35(1) does not extend to merely procedural laws and procedural laws could not contravene ex-post facto law merely because retrospective effect is given to it.[169]

In Mohammad Alam, the incident took place on 18th January, 1963. Accused persons were committed to the Court of Session on 6th June, 1963. During the relevant time trial of sessions cases by the court of sessions were held with the aid of assessors. On 1st April, 1964 the Code was amended introducing the procedure for trial were to be held with the aid of 'jury' or by the Sessions Judge itself. This was challenged by the accused persons on the ground that this trial took away their vested right of being tried with the aid of assessors. S.A. Rahman, J. speaking for the court observed "*where the legislature has made its intention clear that the amending Act should have retrospective operation, there is no doubt that it must be so construed, even though the consequences may entail hardship to a party. But even without express words to that effect, retrospective effect may be given to an amending law, if the new law manifests such a necessary intendment with regard to the procedural laws, the general principle is that alterations in procedure are retrospective unless there*

[168]. Tarique Rahman V. Government of Bangladesh, 63 DLR(AD)18.

[169]. Government of Bangladesh V. Sheikh Hasian, 60 DLR(AD)90.

be so good reason against such a view. If a statute deals merely with the procedure in an action, and does not affect the rights of the parties, it will be held to apply prima-facie, to all actions pending as well as future. It is only if it be more than a mere matter of procedure, that if it touches a right in existence at the passing of the new Act, that the aggrieved party would be entitled to succeed in giving a successful challenge to the retrospective effect of the new Act'.[170]

Similar views are taken by this Division as under:

> *"Retrospective validation may also be conferred upon an Act notwithstanding anything contained in an judicial decision. But to make such retrospective validation the legislature must have competence to make law on the subject within the constitutional limitation. The tests of such validation, besides legislative competence are that the defect in the previous invalid law has been removed and the validation law does not contravene any provisions of the Constitution. Again, in conferring retrospective validation the legislature cannot encroach upon judicial powers of the Court. The legislature can not reverse or set aside the court's judgment, order or decree but it can*

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[170]. Mohammad Alam V. The State, 19 DLR(SC) 242.

> *render the judgment, order or decree ineffective by removing their basis. This may be done by making a valid law with retrospective operation and the making an action valid retrospectively by deeming this action to have been taken under the new Act. Retrospective validations were conferred in this way in the cases discussed above excepting the cases reported in AIR 1969(SC)394 and AIR 1970(SC)1970. In these two cases actions previously taken under invalid laws were sought to be validated without making any valid law to support those actions."*[171]

In Sayeedur Rahman (supra), appellant Sayeedur Rahman was elected a member of the provincial Assembly of East Pakistan. His election was challenged before the Election Tribunal on the ground that he being a Government contractor at the relevant time was disqualified under the Representation of the People Act, 1957 to be a member of the Assembly. The Election Tribunal upheld the objection and set aside his election by order dated 7th February, 1963. He then filed a writ petition challenging the decision in the High Court, which maintained the order of the Election Tribunal. Sayeedur Rahman then preferred a leave petition in the

[171]. Mofizur Rahman V. Government of Bangladesh, 34 DLR(AD)321.

Supreme Court. During the pendency of the leave petition, the Representation of the People (Repeal) Act, 1963 was promulgated on 23rd December, 1963. In the amendment there was a savings clause in section 2 providing that '(1) The Representation of the People Act, 1957 (XXXI of 1957), is hereby repealed, and shall be deemed to have been repealed on the twenty third day of March, 1962'. On 17th March, 1963 the leave was granted to consider 'whether after removal of the bar of disqualification as provided under the Act of 1957 the appellant was entitled to continue as a member of the Provincial Assembly'. The Supreme Court held that '*This court therefore, can take into account the provisions of the new Act which repealed the Act of 1957 and grant relief accordingly even though the High Court had been correct according to the law as it then stood*'.

It is admitted by the learned counsel for the appellant that this amendment is a valid piece of legislation. It was given effective from 14th July, 2009. Therefore, it shall be deemed to have been in existence since 14th July, 2009. Under the amendment, the Government has acquired the right to prefer appeal against the conviction of the appellant as if this provision of appeal was in existence as of the date of its operation. What's more, Mr. Rafique-ul-Huq added that Article 47(3) of the Constitution saves any provision of law enacted for the purpose of prosecution of any person,

who is a prisoner of war, for genocide, Crimes against Humanity or war crimes being void or unlawful due to inconsistency, if any, with the Constitution. Therefore, even if, this amendment is inconsistent with any provisions of the Constitution, still it can not be declared void or unlawful due to such inconsistency. So, this amendment is protected by the constitutional provision.

If the necessary amendment to a Statute shows a clear intention to vary existing rights or affecting the rights of the parties to pending actions, the court must give effect to the intention of the legislature and apply the law as it stands even though there is no express reference to pending actions. The presumption against retroactive operation has no application to enactments which affects only the procedure and practice of the court. No person has a vested right in any course or procedure but only the right of prosecution or defence in the manner prescribed for the time being, by or for the court in which he sues, and if the Act of Parliament alters that mode of procedure he can only proceed according to the alterned mode.

Mr. Rokanuddin Mahmud has cited an English case in this connection. The question involved in that case are thus; section 2 of the Poor Removal Act, 1846 provided that no woman residing in any parish with her husband at the time of his death would be removed from such parish,

for twelve calendar month next after his death so long as she continued to be a widow. It was sought to remove with twelve months period a woman whose husband died before the Act was passed on the ground that to make the section apply in such a case was to construe it retrospectively, the right to remove being a vested right which had accrued on the man's death. The court held that 'the statute is in its direct operation retrospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisite for its action in drawn from time antecedent to its passing.'[172]

What's more, the question of maintainability of the appeal on the point of sentence is according to me, an academic one. Two appeals, one at the instance of the Government and the other at the instance of the convicted accused are being disposed of analogously. It has not been disputed by the learned counsel for the appellant that when the appellate Court hears appeal on merit, it has inherent power to see that the Tribunal has awarded a proper sentence to the accused and if it finds that the Tribunal has awarded a sentence which is not proper, the appellate Court has power to award proper sentence subject to the condition that the convicted person should be served with a notice and afforded opportunity to

[172]. (1884)12 QBR 120, 116 ER 811.

contest on the question of sentence. Apart from powers conferred by section 21 of the Act 1973, this Division has conferred with the powers under Article 104 of the Constitution to pass order as is necessary for ends of justice. It gives wide power to make orders ancillary to its power as it thought fit for doing complete justice. This power is of wide amplitude and is plenary. The power of the appellate Court is co-extensive with that of the original Court.

It is to be noted that where the appellate court is conferred with power without hedging the same with any restriction, the same has to be regarded as one of widest amplitude. The appellate power available to this Division is not circumscribed by any limitation. This Division being the appellate authority has the same power which is available to the tribunal and in exercise of such a power it can award proper sentence to the appellant.[173-175]

In view of what discussed above, I find no merit in the contention of the Razzak. Except one case which does not support him, the other cases cited by the learned counsel have no bearing to the facts and circumstances of the matter and I feel it not proper to dwell with the same since those cases are quite distinguishable on facts and law, and they have no manner of application in the

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[173-175] . Ebralion Aboobakar V. Custodian General of Evacuee Property, AIR 1952 SC 319, Durga Shankar Mehta V. Thakur Raghuraj Singh, (1955) 1 SCR 267, Union Carbie Corp V. Union of India, (1991) 4 SCC 584, E.K. Chandrasenan V. State of Kerla (1995) 2 SCC 99.

appeal. Consequently, I hold that the appeal at the instance of the Government is maintainable.

As regards the maintainability of the appeal against acquittal of charge No.4, it is contended that the power of appeal has been given against the sentence, not against a particular charge of acquittal. This acquittal, according to the learned counsel, is not an acquittal in entirety and the law does not prescribe for an appeal against acquittal of a charge. This submission is devoid of substance. If an accused person is charged with for an offence punishable under section 302 of the Penal Code but the trial court convicted him under section 304 of the Penal Code even though the court did not make observation that the accused was acquitted of the charge under section 302, it would be presumed that he was acquitted of the charge of murder.

In Kishan Singh V. Emperor,[176] the accused was tried for an offence of murder under section 302 but the Sessions Judge convicted him under section 304 for culpable homicide not amounting to murder. No order of acquittal was recorded of the charge of section 302. The Government applied for a revision under section 439 of the Code of Criminal Procedure on the ground that the accused should have been convicted under section 302. The High Court convicted him under section 302 and sentenced

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[176]. AIR 1928 PC 254.

him to death. The Judicial Committee of the Privy Council in an appeal from the said judgment held that the finding of the trial Court was to be regarded as an acquittal on the charge of murder and that under section 439(4) of the said Code the word 'acquittal' did not mean complete acquittal. This view was approved by the Supreme Court of India in Tarachand. The Supreme Court observed:

> *"We are in respectful agreement with the interpretation put on the word 'acquittal' by the judicial committee of the Privy Council and the word 'acquittal' therefore does not mean that the trial must have ended in a complete acquittal but would also include the case where an accused has been acquitted of the charge of murder and has been convicted of a lesser offence".*[177]

The appeal at the instance of the Government is on a better footing, inasmuch as, it was filed against a charge of acquittal, not even partial acquittal of a charge and also against the inadequacy of sentence. The views taken by the Judicial Committee of the Privy Council have been approved by the Supreme Courts of India, Pakistan and this Division. I find no cogent

[177]. Tarachand V. State of Maharashtra, AIR 1964 SC 130.

ground to depart from the above views. The appeal of the Government is, therefore, maintainable.

One technical point was urged on behalf of the appellant about the jurisdiction of the tribunal in holding trial of the appellant under the Act, 1973. It is contended that the Act, 1973 was promulgated for the purpose of trial of 195 listed war criminals of Pakistani army who committed atrocities and the intention of the Act was not for trial of civilians and that since the principal offenders were given clemency by the Government in pursuance of a tripartite agreement executed on 9th April, 1974, the purpose of promulgating Act, 1973 ceased to exist.

In the Original Act,[178] the expression 'auxiliary forces' has been defined in section 2(a) as under:

> "*(a) auxiliary force includes forces places under the control of the Armed Forces for operational, administrating static and other purposes*".

In section 3, the jurisdiction of the tribunal was given to try and punish 'any person irrespective of his nationality who, being a member of any armed, defence or auxiliary forces commits or has committed, in the territory of Bangladesh, whether before or after the commencement of this Act ----.' By an amendment by Act LV

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178. The International Crimes (Tribunal) Act, 1973.

of 2005, clause (aa) was added after clause (a) of section 2 as under:

> "*(aa) armed forces means the forces raised and maintained under the Army Act, 1952 (XXXIX of 1952), the Air Force Act, 1953 (VI of 1953), or the Navy Ordinance, 1961 (XXXV of 1961)'.*

Sub-section (1) of section 3 was substituted in the following manner:

> "*(1) A Tribunal shall have power to try and punish any individual or group of individuals, or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed in territory of Bangladesh, whether before or after the commencement of the Act, any of the crimes mentioned in sub-section (2)." (Italics supplied)*

So, by this amendment the jurisdiction of the tribunal has been extended to try and punish 'any individual' or 'group of individuals' who have committed crimes mentioned in the Act. Previously the jurisdiction was given to try 'a member of any armed, defence or auxiliary' forces and this power has been extended to try 'any individual', and by reason of clause (g) of sub-section (2) of section 3, if any individual commits any of the crimes mentioned in sub-section (2) of section 3 shall also be liable to conviction. In the substituted

provision after the categories of persons 'individual or group of individuals' a (,)'coma' has been used and after the conjunction 'or', the categories of persons 'any member of armed, defence or auxiliary forces' have been added. So, there is no nexus between 'any individual or group of individuals' and 'any member of armed, defence or auxiliary forces'. These groups of persons used in the sub-section are disjunctive, that is to say, if any individual or group of individuals, or organisation, or any member of any armed, defence or anciliary forces, comit any of the offences mentioned in section 3(2) of the Act, the tribunal has power to try and punish him/them. There is no ambiguity in the language used in the substituted provision and the intention of the legislature is clear to come to the conclusion that by this amendment, the Government makes provision for trial of any individual who commits any of the offences mentioned in the Act of 1973. In view of what stated above, the Tribunal is absolutely correct in its opinion that this substitution has been adopted for the purpose of extending '*jurisdiction of the Tribunal for bringing the perpetrator to book if he is found involved with the commission of the criminal acts even in the capacity of an 'individual' or member of 'group of individuals'*.

What's more, Article 47(3) of the Constitution saves any law and/or any provision of law providing detention, prosecution or punishment of any person, who is a

prisoner of war, for genocide, Crimes against Humanity or War Crimes and other crimes under International law from being void or unlawful due to inconsistency with any provision of the Constitution. This protection is given to the law enacted. Article 47A saves action of the Court to hold trial of any person or persons mentioned in section 3(1) in respect of offences mentioned in section 3(2) of the Act. The accused is debarred from questioning the propriety of the tribunals action. Therefore, even if this amendment is inconsistent with any provision, still it can not be declared void or unlawful. The constitutionality of this amendment being protected by the Constitution itself, there is no legal bar to holding trial and convict the appellant under the Act, 1973.

Abdul Quader Molla (the appellant) in criminal appeal No.25 of 2013, was arraigned before the tribunal No.2 to face 6 counts of charge. In respect of first count, the incident was the killing of Pallab on 5th April, 1971 at a place between Edgah Math of Mirpur, Section No.12 and Shahali Mazar. It was stated that the appellant was generally known to the local Bangalee community as 'Abdul Quader Molla Jallad and Kasai'. He was the principal perpetrator of killing thousand of Bangalees of Mirpur particularly at 'Shialbari and Rupnagar'. Pallab was a resident of Taltala, Block-B, Section-11, Mirpur and a student of Mirpur Bangla College. He was organizing the Bangalees and Non-

Bangalees in favour of the liberation struggle and that was the reason for being listed his name as one of the persons to be killed by the anti-liberation forces. After locating his whereabouts, he was brought from Nababpur to Mirpur and as per order of the appellant, his accomplices dragged him to Shah Ali Mazar from Sector No.12 by fastening his hands from behind and then he was dragged to Idgah Math of Section 12. He was kept hanging there with a tree, his fingers of both hands were severed initially, kept him in this manner for two days and then on 5th April, 1971 his accomplice Al-Badar Akhter shot him to death. Two days thereafter, Pallab's dead-body was entombed with seven other unknown dead-bodies near Kalapani Ghat.

In respect of second count, poet Meherunnessa, her mother and two brothers were brutally killed at section 6, Mirpur, Dhaka on 27th March, 1971 by the appellant who was then a leader of Islami Chhatra Sangh being accompanied by his accomplices, the members of Al-Badar, and Non-Bangalee Beharis. On seeing the horrific incident a member of the family, Seraj, lost his memory and still he remains as a mentally retarded person.

In respect of charge No.3, the occurrence took place on 29th March, 1971 sometimes in the evening in which Khandaker Abu Taleb an eminent journalist and a lawyer of Mirpur was murdered. Victim was coming from Arambag to see the condition of his house located at Section No.1,

Block-D, Road-2, Plot No.13, Mirpur. He noticed that his house was soon ablazed into ashes and then on his way back to Arambag, while he reached at Mirpur 10 bus stoppage, the appellant being accompanied by other members of Al-Badar, Rajakar and Non-Bangalees apprehended him, fastened him with a rope and brought him to Mirpur Jallad Khana pump house and then he was slaughtered to death.

In respect of charge No.4, the occurrence took place on 25th November, 1971 between 7.30 a.m. and 11 a.m. at Bhawal Khan Bari and Ghotarchar (Shahid Nagar) in which the appellant and his cohorts killed as many as 24 persons namely Muzammel Haq, Nabi Hossain Bulu, Nasir Uddin, Aswini Mondal, Brindabon Mondol, Hari Nanda Mondal, Reantosh Mondal Uddin, Habibur Rahman, Abdur Rashid, Niaz Uddin, Dhani Matbar, Brindabon Mridha, Sontosh Mondol, Vitambor Mondol, Nilambor Mondol, Lasman Mistri, Surja Kumar, Omar Chand, Guru Das, Panchanan Nanda, Giribala, Moran Dasi, Darbesh Ali, Araj Ali who were unarmed villagers.

In respect of charge No.5, the occurrence was committed on 24th April, 1971 at about 4.30 a.m. at village Alubdi (Pallabi, Mirpur). It is alleged that the Pakistani armed forces landed near the place of occurrence from a helicopter and at that time, the appellant along with fifty Non-Bangalees and Rajaker

raided the village and attacked the civilians with fire arms killing 344 civilians.

The last count of charge was relating to the killing of Hazrat Ali, his wife Amena, his two minor daughters Khatija and Tahmina and his child son aged about two years. The incident took place on 26th March, 1971 at about 6 p.m. in which the appellant being accompanied by local Beharis and Pakistani army went to the house of the victims situated at 21 Kalapani Lane, Sector-12, Mirpur, entered inside the house, abducted Hazrat Ali when his wife Amena resisted and at that point of time she was gunned down and then indiscriminately killed their children. They also gang raped Khatiza and Tahmina which caused their death and then they raped Momena (P.W.3).

The prosecution has examined 12 witnesses and the defence has examined 6 witnesses-they are-Mozaffar Ahmed Khan (P.W.1), Syed Shahidul Huq Mama (P.W.2), Momena Begum (P.W.3), Kazi Rogy (P.W.4), Khandaker Abu Taleb (P.W.5), Shafiuddin Molla (P.W.6), abdul Mazid Patwan (P.W.7), Nur Jahan (P.W.8), Md. Mir Amir Hossain Molla (P.W.9), Syed Abdul Quayyum (P.W.10), Monwara Begum (P.W.11), and Md. Abdur Razzak Khan (P.W.12). First ten witnesses are private witnesses and the rest are officials. On the other hand, the defence witnesses are Abdul Quader Molla (D.W.1), Sushil Chandra Mondal (D.W.2), Md. Moslem Uddin (D.W.3), Mst. Saleha (D.W.4), Altab Uddin Molla (D.W.5) and AIM Loqman (D.W.6).

The appellant was charged under section 3(2)(a)(h) in respect of count Nos.1, 2 and 3 and under section 3(2)(a)(g)(h) in respect of the remaining count of charges, to which, he pleaded not guilty. At the outset, I would like to observe that the tribunal committed a fundamental error in assuming that the prosecution has examined P.Ws.2 and 10 in support of charge No.1; P.Ws.2, 4 and 10 in support of charge No.2; P.Ws.5 and 10 in support of charge No.3; P.Ws.1, 7 and 8, in support of charge No.4; P.Ws.6 and 9 in support of charge No.5 and P.W.3 in support of charge No.6. In fact the prosecution has examined P.Ws.1, 2, 4, 5, 6, 7, 9 and 10 in support of charge No.1, of them, P.Ws.1, 4, 5, 6, 7 and 9 have deposed on circumstantial evidence to connect the appellant in the incident of crime; P.Ws.1, 2, 4, 5, 6, 7, 9, 10 in support of charge No.2, of them, P.Ws.1, 5, 6, 7 and 9 deposed on circumstantial evidence; P.Ws.1, 2, 4, 5, 6, 7, 9, 10 in support of charge No.3, of them, P.Ws.1, 2, 4, 6, 7 and 9 on circumstantial evidence; P.Ws.1, 2, 4, 5, 6, 7, 8 and 9 in support of charge No.4, of them, P.Ws.1, 2, 4, 5, 6 and 9 about circumstantial evidence; P.Ws.1, 2, 4, 5, 6 and 9 in support of charge No.5, of them, P.Ws.1, 2, 4 and 5 on circumstantial evidence; and P.Ws.1, 2, 3, 4, 5, 6 and 9 in support of charge No.6, of them, P.Ws.1, 2, 4, 5, 6 and 9 on circumstantial evidence.

The Tribunal found the appellant guilty of charge Nos. 1, 2, 3, 5 and 6, and not guilty of charge No.4. The tribunal sentenced the appellant to 15 (fifteen) years in prison on charge Nos.1, 3, 5 and life sentence in respect of the other charge. The Tribunal held with regard to charge No.1 as under:

> "*The reason of targeting Pallab was that he was in favour of pro-liberation activities and as such it may be unambiguously presumed that killing him was in furtherance of systematic attack directed against civilian population. As a result, the commission of the murder of Pallab constituting the offence of crime against humanity as specified in section 3(2)(a)(h) of the Act of 1973 which is punishable under section 20(2) of the Act.*"

With regard to charge No.2, it was held:

> "*The circumstances and facts insist to believe that the accused, as he led the gang of perpetrators, know the intent of the principals. Thus, it has been proved that the accused Abdul Quader Molla had, with knowledge and mens rea, conscious complicity to the commission of the offence of murder as crimes against humanity as listed in charge No.2 and thereby he incurs criminal liability for 'complicity' in commission of the murder of*

Meherunnesa and her inmates constituting the offence of crimes against humanity as specified in section 3(2)(a)(h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the said Act."

In respect of charge No.3, it was held as under:

"*Since the testimony of P.W.5 as to the fact of bringing the victim to Mirpur by Non-Bangalee accountant Abdul Halim by his car who handed him over to accused Abdul Quader Molla and at the time of slaughtering the victim accused was present at the crime site carries sufficient probative value the accused is considered to have acted so intending to prove moral support and encouragement to the principals with whom he maintained continuous and culpable association accused Abdul Quader Molla incurs criminal liability for 'complicity' in commission of the murder of Khandoker Abu Taleb constituting the offence of crimes against humanity as specified in section 3(2)(a)(h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the said Act.*"

In respect of charge No.4, the Tribunal held "*…….it has not been proved beyond reasonable doubt that the accused Abdul Quader*

Molla accompanied the Pakistani perpetrators to the crime site having rifle in hand and that the person whom P.W.8 claims to have seen at the crimes site was none but the accused. It is not plansible too that P.W.8 had learnt from P.W.7 that accused Abdul Quader Molla accompanied the principals to the crime site to the accomplishment of the offence of mass killing. Because, testimony of P.W.7, in this regard, has been found to be disgustingly conflicting and contradictory inspiring no credence.

In respect of charge No.5, it was held:

"*Keeping the context of "operation search light' in the night of 25th March 1971 followed by the war of liberation and the fact of over all atrocious activities of the accused in the locality and also in 1970 general election in mind, a person of normal prudence would not hesitate to infer that the presence of accused with the Pakistani troops having rifle in hand, at the crime site, itself establishes his potential anti-liberation position in Mirpur locality and it conveys approval for the crimes which amounts to aiding and abetting …….. It has been proved that the horrific event of mass killing of 300-350 unurmed civilians of Alubdi*

village was perpetrated by a gang of local Bihari Hoolingans and their accomplice accused Abdul Quader Molla and Pakistani army. "Accused Abdul Quader Molla physically accompanied the gang to the crime site having rifle in hand and therefore he is liable for the atrocious event of massacre in the same manner as if it criminal liability under section 4(1) of the Act of 1973 for the offence of the Act of 1973 for the offence of mass killing as crimes against humanity as specified in section 3(2)(a) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the said Act."

In respect of charge No.6, it was held:

"*We are presuaded that the acts of accused Abdul Quader Molla, as has been testified by the P.W.3, in the course of implementation of the actual crime of killings and rape, render him criminally responsible for the commission of the crime that has been established to have taken place as a part of systematic attack and as such the accused Abdul Quader Molla is found to have incurred criminal liability under section 4(1) of the Act for the offence as mentioned in section 3(2) (a) of the Act of*

1973 which are punishable under section 20(2) read with section 3(1) of the said Act.”

The Government preferred an appeal against the inadequacy of sentences and acquittal in respect of the charge No.4, and the appellant also preferred an appeal against the judgment and order of conviction and sentence.

It is contended on behalf of the appellant Abdul Quader Molla that the tribunal was not justified in believing P.Ws.2 and 10, inasmuch as, it failed to notice that P.W.2 was barely a minor boy aged about 16 years in 1969 and it was not probable on his part to remain present in the meeting organized by Jamat-e-Islami against six and eleven points movement of Awami League and to vendalise the microphone and dias when Khandaker Abdul Quyum Khan made indecent comments about Sheikh Mujibur Rahman. It was further contended that Abdul Quader Molla being an activist of Islami Chatra Sangh whose political base was Dhaka University, it was a doubtful story, that he was also present in that meeting. It is also unbelievable story that the appellant Abdul Quader Molla would be involved in the incident of 26th March, 1971 in the absence of any evidence that he was a resident of Mirpur; rather the evidence of P.W.12 revealed that he was a student of Dhaka University at the relevant time. It is added that this witness did not implicate the appellant Quader Mollah in the incidents of

murder and rape at Mirpur in the documentary prepared by Bangladesh Television under the name একাত্তরের রনাঙ্গনের দিনগুলি. It is further contended that P.Ws.2 and 10 made contradictory statements with their earlier statements made before the investigating officer, P.W.12. It was further contended that D.W.4 is a most reliable witness who destroyed the entire prosecution case but the tribunal failed to sift her evidence properly whose statement has corroborated her statements recorded by Satyajit Roy Mojumder of Jallad Khana on 6th June, 2008. In this regard, the learned counsel has drawn our attention to section 19(1) of the Act 1973 and rules 44 and 54(2) of the Rules framed by the tribunal.

In respect of charge No.2, it is contended on behalf of the appellant that the tribunal acted illegally in not disbelieving P.Ws.2, 4 and 10 in failing to consider that these witnesses made inconsistent statements with their earlier statements. He further contended that P.W.2 made hearsay evidence but he did not disclose the source of knowledge and therefore, his evidence could not be legally admitted into evidence. In respect of P.W.4, it is contended that this witness did not mention the complicity of the appellant in her book regarding the killing of poet Meherun Nessa and other members of her family and this shows that that she is a procured witness and cannot be relied upon. He has also drawn our attention about the statements of P.W.12 in relation to

the statements of P.Ws.2, 4 and 10 made before him and their statements in court and since there are serious deviation from their earlier statements, the tribunal acted illegally in believing them.

In respect of charge No.3, it is contended that the tribunal erred in law in believing P.Ws.5 and 10, inasmuch as, P.W.5 made hearsay evidence and that he made concocted story for the purpose of the case. It is further contended that these witnesses made inconsistent statements with their previous statements made to the investigating officer. It is further contended that the prosecution has miserably failed to prove that the appellant Abdul Quader Molla had association with Akhtar Goonda and other Beharis.

In respect of charge No.4, it is contended that the tribunal erred in law in not disbelieving P.W.1, 7 and 8, in failing to consider that P.W.1 made a complaint in which the facts narrated by him did not tally with the statements made before the tribunal and that in the complaint he did not cite P.Ws.7 and 8 as witnesses. It is further contended that in view of the fact that he was a student of class IX in 1969, he was not supposed to know the appellant who was a student leader of Dhaka University. It is further contended that the story introduced by P.Ws.7 and 8 that they recognized the appellant Abdul Quader Molla is totally absurd and not at all believable.

In respect of charge No.5, it is contended that it is not at all believable story that P.Ws.6 and 9 would have witnessed the incident of mass killing of civilian population at Alubdi village. In this regard it is added that the investigating officer has not prepared any sketch map to show the place wherefrom these witnesses have witnessed the incident. Further, it is contended that when all the family members of P.W.6 have left the area, his presence at the place of occurrence is totally unbelievable. He drew our attention to the statement of P.W.12 and submitted that these two witnesses did not say material fact to him and therefore, these witnesses made contradictory statements and on this ground alone their statements should be disbelieved.

In respect of charge No.6, it is contended that due to lawyer's fault the statements made by P.W.3 to the investigating officer were not confronted to her. In this regard, learned counsel has tried to draw our attention to her statements recorded by the investigating officer and submits that for ends of justice, the case should be remanded to the tribunal so that she could be properly cross-examined by the defence.

There is no dispute that the procedure provided for trial of an accused person under the general law prevailing in the country and those offences punishable under the Act of 1973 are completely distinct. There is also no dispute that there are other special laws

prevailing in our country but under those special laws, the provisions of the Code of Criminal Procedure and the rules of evidence under the Evidence Act have not been totally made inapplicable. The Act of 1973 is a special law and the provisions of the Code of Criminal Procedure and the Evidence Act are made not applicable in the proceedings. Rather, it was clearly provided that the provisions of the Act of 1973 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. It has further been contained that no suit, prosecution or other legal proceeding shall lie against the Government or any person for anything, in good faith, done or purporting to have been done under the Act, and no judgment, order or sentence of the tribunal shall be called in question in any manner whatsoever in or before any court or other authority in any legal proceedings whatsoever except in the manner provided in section 21. Section 21 provides for the right of appeal by a convicted person against conviction or by the Government or complainant or informant, as the case may be, against an order of acquittal or sentence. On a cursory glance of the cross-examination made to the prosecution witnesses by the defence, and the submissions made before the tribunal, it appeared that the learned counsel appearing for the appellant presumed that the provisions of the Code of

Criminal Procedure and the Evidence Act are applicable in the proceedings before the tribunal.

It would be appropriate if I reproduce some provisions of the Act and the Rules applicable in the proceedings of the case. Section 13 of the Act provides that no trial before a tribunal shall be adjourned for any purpose unless the tribunal is of the opinion that the adjournment is in the interest of justice. Sub-section (1) of section 19 states that the 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 and published news paper etc., which it deems to have probative value. Couple with these two provisions, sub-rule (5) of rule 43 provides that the accused shall be tried without undue delay. Rule 44 gives discretionary power to the tribunal 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. So, there is no gain saying the fact that the exclusive discretionary power has been given upon the tribunal to admit or not to admit any

evidence and its decision is final. It is also clear that the trial of the case should be held expeditiously without unnecessary delay.

As regards the point of alleged contradiction of the statements made by the witnesses, we are unable to accept the submissions made by the learned counsel for the appellant that the witnesses contradicted in material particulars with their earlier statements. There is no provision either in the Act or the Rules affording guidance for the investigating officers similar to those provided under sections 161 and 162 of the Code of Criminal Procedure (the Code) and rule 265 of Bangladesh Police Regulations, Part One, for recording statements of witnesses in course of investigation of a case. Under section 161 of the Code, a police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case and he may reduce into writing such statement made to him, and if he does so he shall make a separate record of the statement. Similarly rule 265 enjoins the police officers to record or note the statement of any witness examined by them. It further provides that the investigating officer should record statements in the language of the witness and it should be in full containing all the relevant facts connected with the case. During the trial 'the court shall refer to these statements at the request of the defence and shall also furnish with the copies thereof'.

According to proviso of section 162 of the Code, when a witness is called for, the prosecution in the trial, any part of his statement, if duly proved, may be used by the accused and with the permission of the court by the prosecution, to contradict such witness in the manner provided by section 145 of the Evidence Act. This enables the prosecution to explain the alleged contradiction by pointing out that if any part of the statement used to contradict be read in the context of any other part, it would give a different meaning; and if so read, it would explain away alleged contradiction. If one could guess the intention of the Legislature in framing section 162 of the Code in the manner it did in 1923, it would be apparent that it was to protect the accused against the user of the statements of witnesses made before the police during the investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence.

This provisions of the Code are not applicable in view of section 23 of the Act, 1973 which debarred from applying the provisions of the Code and the Evidence Act in the proceedings under the said Act. The Rules are totally silent as to the manner of examination of a witness by the investigating officer. It may be either orally or in writing. Even if it is in writing, there is nothing in the Rules therein guiding the procedure and

the manner of use of the earlier statement of such witness in course of the trial. Sub-rule (ii) of rule 53, speaks of 'contradiction of the evidence given by him'. This word 'contradiction' is qualified by the word 'examination-in-chief' of a witness. So, the contraction can be drawn from the statements made by a witness in his 'examination-in-chief' only, not with respect to a statement made to the investigating officer of the case in course of investigation. This will be evident from a plain reading of this sub-rule carefully, which provides:

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

As regards use of the statements made by a witness to the investigating officer, the other provision contains in the Rules is sub-rule (3) of rule 56 but, it is not for the purpose of contradiction as submitted by the learned counsel. It provides:

'*(3) Any statement made to the investigating officer or to the prosecutor in course of investigation by the accused is not admissible in evidence except that part of the statement which leads to discovery of any incriminating material.*'

This provision is altogether different. It is akin to section 27 of the Evidence Act. What's more, the accused cannot use the Case Diary for the purpose of his defence. It can only be used by the investigating officer or the tribunal. Rule 8(2) empowers the investigating officer to use the Case Diary at the time of his deposition to 'refresh his memory or to explain any fact entered therein'. The defence is totally debarred to use it in view of sub-rule (3) of rule 8 which provides that the defence 'shall have no right to examine or use the Case Diary in defence of a case'. The tribunal may peruse it for 'clarification or understanding of any fact transpired at the time of investigation'.

In the absence of guidance to examine the witnesses in course of investigation, it was not expected from the investigating officer to record the statements of the witnesses in accordance with section 161 of the Code. If he had examined the witness in a slipshod manner, no exception could be taken for such examination. While the witnesses were examined before the tribunal in support of the charges they narrated the facts in detail. 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 as contradiction within the meaning of sub-rule (ii) of rule 53 of the Rules. The contradiction can only be drawn from statements made by the witnesses in course of their examination-in-chief. The defence practically has failed to bring out any such contradiction which affects the prosecution case as a whole. There is nothing in the Rules that any minor omission of the statement of a witness make his testimony unreliable. The Rules also do not provide for taking any contradiction of the statement of a witness made before the tribunal with any other statement made elsewhere and no adverse presumption could be drawn therefrom. Therefore, I find no substance in the argument of the learned counsel.

Now taking these legal aspects into consideration, let us consider whether there is any substance in the submission of the learned counsel for the appellant. First of all let us consider the statements of P.W.2 allegedly made in the interviews with BTV programme একাত্তরের রনাঙ্গনের দিনগুলি. This witness admitted that he gave an interview on 28th April and stated that he gave a correct detailed fact as to what happened from 25th March, 1971 to 31st January, 1972 at Mirpur-Mohammadpur area. In reply to another query he stated that in the documentaries prepared by Sagir Mostafa under the name 'Mirpur the last frontier-1' and 'Mirpur the last frontier-2; he could not remember about the same at the moment and that if he was shown those documentaries, he

could say about them. The defence did not draw his attention about the statements made in his interviews. Therefore, how an adverse inference could be drawn that he made some statements in those interviews which were contradictory to what he stated in court. The learned counsel did not draw our attention to the contents of those interviews and documentaries. Further, under the law, there is no scope to draw contradictions of the statement of a witness with extraneous facts or materials other than the statements made in examination-in-chief.

It was emphatically argued that the prosecution having failed to prove that the appellant Abdul Quader Molla had either permanent or temporary residence at Mirpur, his presence at the scene of incidents was a cock-and-bull story. The point for determination in the case was whether the appellant participated the incidents and whether he was recognized by the witnesses at the time of those incidents. The defence examined some witnesses to negate the prosecution version to show that he was not at all present at Mirpur during the relevant time. As regards the defence witnesses, I would discuss their credibility later on. It is the consistent evidence on record that Abdul Quader Molla was present at Mirpur and worked for professor Gulam Azam in the National Assembly Election in 1970. The tribunal witnessed the veracity of the witnesses and believed that he was actively involved in the Jamat-e-Islami politics since

1970 at Mirpur and that there was no reason to disbelieve the testimony of the witnesses. The witnesses deposed before the tribunal and it had the advantage to see the manner and demeanour of the witnesses. The tribunal had the advantage to see to the high probability regarding the existence or non-existence of fact after considering the statements of the witnesses in chief and cross-examination.

It was impressed by the demeanour of the witnesses that they were trustworthy and that there was no earthly reason to disbelieve them. Though this Division sitting on appeal from the judgment of the tribunal has the power to set at naught any of the findings of the tribunal, it has no privilege to see the demeanour of the witnesses in the manner the tribunal has seen their demeanour in course of examination before it. When a witness is examined before a tribunal, the tribunal is at an advantageous position to see whether the witness is a liar, is a partisan, or has a bias, or whether he/she is a truthful witness struggling to tell an honest tale in spite of physical or mental disabilities, and of his/her unusual surroundings. If the witness is over-forward and over-zealous in giving answers in favour of one side, but reluctant to make any admissions that would go against that side, if his/her memory is clear and precise on all points that tell in favour of one party but hazy and obscure when the truth would benefit the other party,

than it may be safely concluded that he/she is a liar or a partisan. The appellate court should not ordinarily interfere with the tribunal's opinion as to the credibility of the witness as the tribunal alone knows the demeanour of the witness; it alone can appreciate the manner in which the questions are answered, whether with honest candour or with doubtful plausibility, and whether after careful thought or with reckless glibness; and it alone can form a reliable opinion as to whether the witness has emerged with credit from cross-examination. Since the demeanour of a witness is a very important test of his/her credibility, the tribunal is empowered to record remarks about his/her demeanour in the witness box.

As noticed above, the incidents took place in 1971 and the witnesses deposed before the tribunal in 2012 after about 41 years. The witnesses who saw the incidents dared to depose for fear of reprisal and due to such delay most of the material evidence have been destroyed by reason of death of some vital witnesses and the change of political atmosphere in the intervening period. Under such circumstances, the prosecution has collected best evidence available to prove the charges. The defence has not at all denied any of the incidents. It has merely denied the appellant's complicity. Under such circumstances, it is to be looked into whether the story introduced by the prosecution is reliable or the story

introduced by the defence is probable. The tribunal had to weigh the facts and circumstances, the materials placed before it and believed the version given by the prosecution as reliable. It should not be ignored that although huge number of persons were brutally killed and some girls were raped, the prosecution witnesses pointed fingers at one person, the appellant who, with his Behari cohorts perpetrated the incidents. If the prosecution was launched for political victimization, as suggested, it could have implicated other leaders of Jamat-e-Islami in the said incidents.

The submission that the manner of recognition of the incident narrated by P.Ws.6 and 9 in respect charge No.5 is not believable, inasmuch as, the investigating officer has not drawn up any sketch map to show the place where from they saw the same is devoid of substance. A sketch map of the place of occurrence and its surrounding place at the time of investigation of a case is drawn by the investigating officer in accordance with the guidance of the Police Regulations in respect of offences punishable under the Penal Code or other laws. Police Regulations are not applicable under the Act, 1973. More so, as observed above, the incident took place more than 41 years ago, and during this intervening period the topography which existed in 1971 could not have been expected to be same in 2010 or 2011 when the investigating agency conducted the investigation of the

case. The defence has not at all denied the incidents of Alubdi and besides circumstantial evidence, the prosecution has examined two eye witnesses to prove the charge. The defence thoroughly cross-examined them but failed to shake their testimonies in material particulars. Therefore, it is difficult to accept the contention of the learned counsel that merely because no sketch map was drawn up to show the topography of the area wherefrom the witnesses witnessed the incident, the story introduced by the witnesses is unreliable. Their evidence should not be rejected out right on this ground alone. It is also not a legal ground to disbelieve a witness (P.W.9) only because other members of his family have left the village a few days before the incident since, the defence has not denied the incident and the village Alubdi is situated far away from Savar where other members of his family took shelter. The distance between Alubdi and Savar is contiguous as appears from the evidence on record.

As regards the submission to send the case on remand for enabling the defence to cross-examine P.W.3 afresh in respect of her earlier statements made before the police, learned counsel wanted to draw our attention of her statements made before the investigation officer and also the contents from the records of Jallad Khana. As pointed out, as per existing law, there is no scope to draw contradiction of the statement of a witness made in

course of examination-in-chief with his/her earlier statements made to the investigating officer or other agency. Besides, as observed above, the trial under the provisions of Act, 1973 should be concluded expeditiously, and there are provisions that if a person's attendance cannot be procured without an amount of delay, the tribunal may receive evidence any statement recorded by a Magistrate or an investigating officer without examining him.

On perusal of the order-sheet of the case, it is seen that after taking cognizance of the offence by the tribunal, the appellant filed an application on 10th January, 2012 for reconsideration of its earlier order. Then on the prayer of the defence, taking cognizance of the offences was adjourned from time to time and then again, on 16th January, the appellant filed another application for supplying some documents. The matter was adjourned to 22nd January, 2012. On 22nd, the tribunal heard the parties at length and it was pointed out that at the time of taking cognizance of the offence, all the documents were placed before the tribunal and that it was of the opinion that the police report could not be legally supplied to the defence- the accused was entitled to a copy of formal charge, which is prepared on the basis of the investigation report and other documents and that the documents were already supplied to him. Again on 24th January, 2012, he filed another application to give

direction to the jail authority to allow privileged communication between accused and the defence counsel in the jail. On 29th January, 2012 the appellant objected to the hearing of the charge on the ground that some documents supplied to him were not legible. On 2nd February, 2012, accused filed another application to arrange his treatment at BURDEM.

On 19th February, 2012 the appellant filed 3 applications seeking some directions upon the prosecution. Again on 6th March, 2012, the accused filed another application with a prayer for directing upon the jail authority to allow privileged communication between accused and the defence counsel. On the next date, he also filed another application and in this way on every date, the accused-appellant had filed applications and did not allow the prosecution to proceed with the trial. Ultimately, the defence filed another application to consider whether charges could be framed before disposing of its 3 applications. The applications were rejected and then it filed a review petition on 4th June, 2012. The hearing of the review matter was adjourned on many occasions and ultimately the formal charges were framed and then the accused filed another application for review of the formal charge. The tribunal thereupon completed examination of P.W.1 on 9th June, July, 2012 and P.W.2 on 12th July, 2012 and thereafter, again accused filed another application on 16th July, 2012 to recall P.W.2

for further cross-examination and to recall the order dated 12th July, 2012. On 17th July, the examination of P.W.3 commenced and her cross-examination was completed on 18th July, 2012. The cross-examination of P.W.4 was completed on 26th July, 2012, the cross-examination of P.W.5 was completed on 30th July, 2012, the cross-examination of P.W.6 was completed on 6th August, 2012 and in this way, the examination of prosecution witnesses was over on 4th November, 2012.

The tribunal by its order dated 5th November, 2012 fixed 11th November, 2012 for defence witnesses. The defence took repeated adjournments and ultimately on 11th November, 2012, the defence filed three applications for recalling P.Ws.1, 3, 4 and 5 for further cross-examination. The tribaunal by a lengthy order rejected the said application on the next date. Thereafter, from 11th November, 2012 to 13th December, 2012, 6(six) defence witnesses were examined and cross-examined. The arguments on behalf of the prosecution were heard on 17th, 18th and 19th December, 2012 and on the next date, on behalf of the accused four applications were filed. The tribunal fixed those applications on the next date 24th December, 2012 for hearing. The applications were ultimately heard on 26th December, 2012 and the tribunal by a lengthy order rejected those applications and then the arguments were again heard on 26th and 27th December, 2012. The appellant filed another application praying for direction

upon the jail authority to allow privileged communication. Ultimately the defence filed another review application seeking review of the order dated 26th December, 2012 on 3rd January, 2013. The defence filed another review application on 7th January, 2013. The application was rejected on 3rd January. Then again on 7th January, the defence filed another application for modification of the order dated 3rd January and ultimately on 7th January, the defence summed up the defence case (defence argument) in part which continued till 8th January, 2013, and on 9th January, the defence filed the application for calling for two registers from Jallad Khana and prayed for adjournment of the matter. Again the matter was adjourned on many occasions on the prayer of the appellant.

These facts show that from the very beginning the defence was taking dilatory tactics and the above conduct of the appellant leads us to believe that he did not deserve any sympathetic consideration from the tribunal. Though sub-rule (2) of rule 48 empowers the tribunal to re-call and re-examine any person already examined, the facts of the given case it cannot be said that the tribunal has acted illegally. In course of hearing of the appeal, learned counsel Mr. Abdur Razzak failed to explain why the defence did not pray for calling for the documents from Jallad Khana before the completion of the examination of the witnesses or at least, before the

completion of arguments. Learned counsel failed to give any satisfactory reply and submitted that those documents were not within the knowledge of the appellant. We noticed that from the date of framing formal charge on 29th January, 2012, 17 dates were fixed for the purpose, but the case was adjourned on all those dates on the prayer of the accused on this or that ground, and then on 2nd May, 2012 there was partial hearing of charge but on the next date it was again adjourned on the prayer of defence. Thereafter, the matter was adjourned on 7 consecutive dates and the formal charge was framed on 28th May, 2012. Considering these aspects of the matter, I am of the view that the tribunal has committed no illegality in not allowing the prayer for calling for the documents from the Jallad Khana. I want to point out here that there is no scope on the part of a tribunal to consider extraneous facts and to bring tose facts in its judgment which are not legally admitted into evidence. It is also established principles of law that a decision on a point should be based on evidence on record and not otherwise. Therefore, I find no merit in the contention of the learned counsel.

It is to be noted that after framing charge, the defence filed an application on 4th June, 2012 for review of the order of framing charge. The hearing of review application was adjouned on two subsequent dates and then the application was rejected on 14th June, 2012. Section

16 of the Act speaks about the framing of charge against an accused person, which shall contain the name and particulars of the accused; the crime of which the accused person is charged, and such particulars of the charge as are reasonably sufficient to give the accused person sufficient notice of the matter with which he is charged. It is also provided that the accused person shall be furnished with a copy of he formal charge, a copy of each of the documents lodged with the charge at a reasonable time so that he may take proper defence at the trial. The whole object of framing a charge in a criminal case is to enable the accused person to concentrate his attention on the case that he has to meet and to know the substantive charge which he will have to meet and to be ready for them before the evidence is given. An accused person is entitled to know with accuracy and certainty the exact nature of the charge brought against him. Failure to state in any substantial fact and particulars of the offence alleged against the accused person will be defective because in such event there might be likelihood of violating the principles of natural justice. There is, therefore, no scope to hear days together for hearing a formal charge in a case, and to write out a lengthy order as has been done in this case while disposing of the application for review of the order of framing charge-the tribunal has written an order containing 7 pages as if it were writing a judgment. If the necessary documents are

supplied to the accused and the requirements of law as above are followed, there is no need for adjourning the matter for dates together for framing a charge, and to write a lengthy order in an application for review. Either for framing a charge or for review of the said order, the order should be short, concise and cryptic. This would expedite the trial process and save tribunal's valuable time.

In respect of charge No.1 about the killing of Pallab, P.W.2 stated that Pallab @ Tuntuni was apprehended from Thatari Bazar area which was Hakka Goonda's territory and he was brought to Mirpur Muslim Bazar area. Thereafter, his fingers were amputed. He was then hanged with a tree and he was brutally killed on 5th April-the principal actors of the said incident were Quader Molla, Akhtar Goonda and Beharis etc. In course of cross-examination he reaffirmed his statement. This statement has not also been controverted by the defence and thus, this statement remained uncontroverted. He was corroborated by P.Ws.4 and 10. He identified the appellant in the dock and stated that at the time of occurrence the appellant was young and that he had no beard.

P.W.2 also deposed in support of charge No.2, the killing of poet Meherunnessa, her mother and two brothers. Besides circumstantial evidence, he stated that on 27th March poet Meherunnessa, her brothers and mother

were cut into pieces by Quader Molla, Hashmi, Abbas Chairman, Akhtar Goonda, Nehal and others. The defence did not challege this statement. Therefore, the appellant was involved in the killing of Meherunnessa and her brothers and mother was proved beyond doubt.

P.W.4 also deposed in support of charge No.2. This witness obtained the highest decree from Dhaka University in Bengali Literature. She was a resident of Mirpur, Sector No.6, Block-C, House No.8 in 1970. She was close friend of Meherunnessa who was also a resident of section 6, Block-D, Mirpur. She stated that on 27th March in the evening, she learnt that Meherunnessa and her two brothers and mother were slaughtered to death by Abdul Quader Molla and his cohorts and that when Meherunnessa saw that they were coming to kill her, she held a Holy Quran on her chest to save her life but the butchers killed her and other members of her family.

On behalf of the defence it was submitted that in her book 'Shahid Kabi Meherunnessa' ext-B, she did not state that Abdul Quader Molla killed them, rather she stated that the Non-Bangalees suddenly attacked Meher's house and killed her brothers, mother and Meher. She was confornted with this statement in course of cross-examination. In reply she stated that since no steps were taken for the trial of the perpetrators of war crimes, she did not mention any one's name in her book for fear of reprisal in the hands of perpetrators and that she

deposed against Quader Molla at this stage as his trial was proceeding. This explanation appears to me cogent, reasonable, believable in the context of the situation then prevailing in the country. The perpetrators of Crimes against Humanity were rewarded by the authorites in power since August 15, 1975 instead of putting them to justice. It is only this present Government which pledged to the people to put them on trial and after coming to power in 2009 started the process of trial. This is an admitted fact and the court can take judicial notice of this fact. The defence suggested to this witness that in 1971 in the Mirpur locality one Quader Molla namely Behari Kasai was involved in all those atrocities. She denied the suggestion. The defence failed to substantiate its claim to prove the existence of one Kasai Quader Molla other than the appellant. This suggestion sufficiently supported the prosecution version that the appellant was the main perpetrator of all killing and inhuman acts committed at Mirpur.

In support of charge No.3 about the killing of Khandaker Abu Taleb, beisdes circumstantial evidence, P.Ws.5 and 9 made positive statements. P.W.5 is the son of Khandaker Abu Taleb and he was a student of Class-IX, Mirpur, Shah Ali Academy High School during the relevant time. His father an eminent journalist and a lawyer had been residing in the house situated at Plot No.13, Road No.2, Block-B, Section-10, Mirpur. He stated his father

got information for different sources that the Ittefaq Office was dismantled. He went there to see the conditions of colleagues and on the way he saw deadbodies lying there. On 29th March, 1971, his father told that he would go to Mirpur for bringing his car and money from their home and on his way to Mirpur, he had the occasion to meet one Non-Bangalee Abdul Halim, the Chief Accountant of Daily Ittifaq who pretending to take his father to Mirpur with his own car handed him over to accused Quader Molla. Thereafter, his father was slaughtered to death at No.10, Mirpur, Jallad Khana. In the said incident Quader Molla was assisted by Akhtar Gonda and other Non-Bangalees. After the killing his father, his elder brother became imbalanced and his mother was completely broken down. After the death, their family had no source of income and he started selling tea leaves as a hawker to earn livelihood and on one occasion while approaching towards Chalk Bazar, he meet their Non-Bangalee driver Nizam whose house was at Mirpur-10. Through him he came to know that the defeated quarters in the national election i.e. Abdul Quader Molla, Akhtar Goonda, Abdullah and some other Non-Bangalees perpetrated mass killing in the Mirpur area as per order of Abdul Quader Molla.

Of his statements, the statements that after his father was handed over to Abdul Quader Molla, he was slaughtered to death had not been challenged by the

defence and therefore, this incriminating statement is sufficient to hold the appellant responsible for killing his father. He was thoroughly cross-examined by the defence but it failed to shake his testimony in any manner apart from minor contradictions drawn in respect of what he stated to the investigating officer.

P.W.10 stated that on 16th April he went to Nasir Nagar at his village home. Thereafter, in June his friend Faruq Khan came to meet him, when he heard from him that Khandaker Abu Taleb was killed by Non-Bangalees Akhtar Goonda and Abdul Quader Molla at Mirpur-10, Jallad Khana. After liberation on 3rd January, 1972, he came to Dhaka and at that time, he heard that Akhtar Gonda's people attacked him. Thereafter, one day he met Taleb's Non-Bangalee driver Nizam, who told him that Ittifaq's Non-Bangalee accountant Halim met Taleb while he was coming to his Mirpur house but instead of taking Taleb to his house Halim handed over the victim to Beharis and that the Beharis slaughtered him at Jallad Khana. This witness also deposed in support of charge Nos.1 and 2 stating that Bangla College's student Pallab was killed by Abdul Quader Molla which he heard from the people. He identified Abdul Quader Molla in the dock and stated that at the time of occurrence the appellant was not bearded, he was then a young man and that at section 6, poet Meherunnessa lived at her house with her family who were also killed by Non-Bangalees. In course of cross-

examination, he denied the defence suggestion that Abu Taleb was not killed by Abdul Quader Molla or his associates.

In support of the charge No.4, the incident of Ghatarchar and Bhawal Khan Bari killing P.W.7 stated that on 25th March, 1971 he heard sounds of firing from his locality Ghatarchar under Keranigonj police station. He woke up and noticed after coming out of the house that the surrounding houses were burning and that the sounds of firing came from the northern side. Sensing something wrong, he approached towards northern side and stopped in the Ghatarchar School. The area was full of jungles and he kept himself concealed under a tree and at that time, he noticed that the Pak-army were killing people and with them he saw Abdul Quader Molla who was dressed in paijama-panjabi. The massacre continued till 11 a.m. and thereafter, the army and Abdul Quader Molla left the place. After their departure, he along with local people tried to identify the victims. About 60 Hindu-Muslim people were killed by them. At that time, Muktijuddha Commander Mozafar Ahmed Khan came there. Prior to the incident of 25th November, at night a meeting was held in the house of Joynal doctor in which Abdul Quader was present. Joynal doctor's house is situated towards east of his house intervened by 3 houses. After the departure of the army he learned that the panjabi-paijama wearing Non-Bangalee person was Abdul Quader Molla and some other

Bangalees masquerading with borkha clad were also present. He identified the appellant in the dock. He was confronted in course of cross-examination about some statements made to the investigating officer, which he denied.

P.W.8, Nurjahan is the wife of slain Nabi Hossain Bulu. She was 13 years old during the relevant time. She is a resident of Ghatarchar and was staying with her husband. She was pregnant at the time of occurrence. She stated that after Fazar prayer, she heard the sounds of firing and remained hiding under a kot. After firing was over, her husband came out of the house to see what was happening and noticed that Pak-army were coming towards their house. Her husband then moved towards his uncle Muzammel's house. At that time she heard sounds of firing. Sometimes thereafter, she was told by her mother-in-law that Bulu was no longer alive. On hearing the said news, she rushed towards Muzammel's house and found her husband's body lying dead. She also noticed that the army shot at Muzammel Huq. She saw a Bangalee person of black complexion dwarf height with a rifle in his hands who asked her to leave the place. Being frightened she went inside the hut. At about 10/11 a.m. after departure of the army and civilians, she came nearer to her husband and noticed injuries with blood on his face and chest. In the incident Joynal doctor and Mukter Hossain were also present. She heard from her father-in-law that Quader

Molla of Jamat-e-Islami killed her husband. She also heard the same Mozid Palwan. She identified the appellant in the dock and stated that at that time, his hair were short and had no beard. She denied the defence suggestion that she did not hear from her father-in-law that Abdul Quader Molla did not kill her husband. She was also confronted with her earlier statements made to police but she denied the defence suggestion.

In support of charge No.5, the mass killing at Alubdi, besides circumstantial evidence, the prosecution has examined P.Ws.6 and 9. P.W.6 deposed that in the incident of 25th March Pak-army attacked their village. As their village was low lying, they remained hiding in their village inside the ditches. On 24th April, 1971 in the early morning on hearing sound of a helicopter, he came out of the house and noticed the landing of a helicopter at a place near the bank of the river, which was situated towards the western part of their village. Instantaneously he heard sounds of indiscriminate firing. On being frightened they started running to conceal themselves. At that time, many people were cutting paddy in the field. The Pak-army and their supporters had rounded up the villagers and the labours who were working in the paddy filed. Sometimes, thereafter, Abdul Quader Molla was talking with an officer of Pak-army in Urdu but he could not exactly understand the conversation from his place. Sometimes thereafter, those people were compelled

to line-up and then they fired at them indiscriminately. Abdul Quader Molla had a rifle in his hand. In the said incident, his uncle Nabi Ullah, 70-80 labours harvesting paddy with 360/370 people were killed. This massacre continued till 11 a.m. and then they set ablaze the houses of the villagers and looted away valuables.

Of his statements, the statements that at that time of incident of 25th March, he kept concealed himself in a ditch of his village; that Abdul Quader Molla and his accomplices had assembled villagers and paddy harvesting labours at a place; that sometimes thereafter, Abdul Quader Molla was talking with an officer of Pak-army in Urdu; that sometimes thereafter-they compelled them to line-up; that Abdul Quader Molla had a rifle in his hand and that in the said incident, his Uncle Nabi Ullah, 70-80 paddy harvesting labourer and 360-370 villagers were killed remained uncontroverted. This witness is an eye witness and there is no reason to disbelieve his testimony. He was cross-examined by drawing his attention towards the statements made to the police on some irrelevant facts, which he denied, but the incriminating evidence as regards the appellant’s participation in the killing has not been challenged.

P.W.9 stated that on 22nd/23rd April he came to village Alubdi for cutting paddy with his father and passed the night after cutting paddy in the house of Rostam Ali Bepari; that at early dawn of 25th March, he

heard sound of a helicopter towards the western side of Alubdi village and the helicopter landed on the bank of Turag River; that some Pakistani army personnel came with the helicopter; that some Beharis led by Abdul Quader Molla entered into the village from the western side and started firing indiscriminately; that thereafter, they had assembled 64-65 villagers and lined them up in the northern side of the village and shot at them. In the said firing, he stated that about 300/350 people died including the workers who were cutting paddy and that Abdul Quader Molla was with them with a rifle in his hands. He was cross-examined thoroughly by the defence but it failed to shake his testimony as regards his positive statements of hiding on the north western side of the village of occurrence.

P.W.3 is an eye witness who deposed in support of charge No.6, the killing of her father Hazrat Ali Lasker, her mother Amena Begum and Siblings Khodeza and Toslima, and baby Babu. She stated that she was about 12/13 years at the relevant time and her father was a tailor by profession and a supporter of Awami League. He used to attend Awami League processions. Her mother was pregnant and they were residing at Mirpur, Section No.12, Lane No.5, House No.21. On 26th March, 1971, the occurrence took place. Her father rushed to the house screaming that Quader Molla would kill him. Beharis and Pak-army were chasing her father. After entering into the home, her

father locked the door from inside, called her sisters, brother and mother and instructed them to hide under the kot. Soon thereafter, they heard the order of Quader Molla and Beharis directing them to open the door by giving threat that unless they opened the door, they would blow them off by bombing. They detonated a bomb in front of the door and at that time, her mother opened the door with a dao in her hands. Soon thereafter, they shot at her and when her father came to rescue her, Quader Molla caught hold of his neck collar and pulled him away from the house saying that from now he would not be able to involve in Awami League politics nor would he be able to keep in touch with Bangabandhu nor would he participate in the 'Joybangla Parade'. At that time, her father made entreaties by folding his hands to Quader Molla and Akhtar Gonda to pardon him this time. They took him out of the house by force. They also killed her brother by dashing him on the ground. Hearing the cry of Babu, her sisters Taslima and Khodeza started howling and then they dragged them out from under the kot and sexually assaulted them by stripping off their wearing clothes. Their cries stopped after sometime. The witness was wailing and crying at that time and the tribunal recorded the demeanor of the witness to that effect and observed that then she became senseless.

She stated that when she regained her sense, it was dusk and at that time, the perpetrators were searching by

pushing with a pointed stuff for ascertaining whether any one was left alive. The sharpen instrument hit her left leg, when they dragged her out from under the kot and then she lost her sense again. After regaining sense she felt severe pain towards her abdomen and she could not walk. She found her trouser in ragged condition smeared with sticky substance. She then slowly moved and took shelter to Fakir Bari. On seeing her clothes condition they gave her clothes, called a doctor for treatment and arranged for sending her to her father-in-law's house. Her mother-in-law kept her in her lap. She was totally mentally derailed. Kamal Khan was known to her who used to serve tea to freedom fighters. He told her that Quader Molla killed her father. Akkas Mullah, her marriage guardian also told her the same story. She could not forget the killing of her near ones.

This witness was testified in camera and she made heart-breaking horrendous event of killing of her mother and brother, and ravishing her sisters to death. She was so traumatized that she was then mentally imbalanced. The incriminating statements such as, the calling of Quader Molla in front of the door saying "son of a bitch" open the door, otherwise they would detonate bomb; that they detonated bomb infront of the door; that when her mother opened the door with a dao in hand, they shot at her; that Quader Molla holding collar of shirt of her father dragged him outside the house; that they chopped off her

mother and ravished her minor sisters Khudeza and Taslima so much so that they fell into the jaws of death; that on being sustained injury with a pointed substance when she screamed, she was also dragged out from under the kot and then she lost her sense; that when she regained sense, she felt severe pain on abdomen and found her wearing trouser stripped and that Kamal Khan told her that Quader Molla killed her father have not been challenged by the defence. So these statements remained uncontroverted.

She is a very natural eye witness. She lost all members of her family in the horrendous incident. The defence thoroughly cross-examined her but failed to shake any of her statements so far as it related to the manner of incident witnessed by her and the recognition of the appellant and his direct participation in the horrendous incident. Mr. Razzak finds it difficult to discard her testimony and simply pointed out that she was a vitally interested witness. If one goes through her statements, it would be difficult for him to control his emotion and bound to say that such nefarious act could be perpetrated by hyenas only. It is not correct to say that there is no corroborative evidence of P.W.3. She has been corroborated by the circumstantial evidence given by P.Ws.1, 2, 4, 5, 6 and 9.

In support of circumstantial evidence, the star witness is P.W.1 who is admittedly a freedom fighter and was a resident of Karanigonj thana. He was a SSC examinee

during the period of war of liberation and activits of Chatra League. He stated that during non-cooperation movement of 1969, he participated in different political programs with Dhaka University student leaders. He then narrated the role of the appellant in 1970 election. He participated in the election campaign for Awami League candidate Ashraf Ali Chowdhury for Mirpur-Mohammadpur constituency. In that constituency Gulam Azam contested as a candidate for Jamat-e-Islami party and the appellant took active role in the election campaign for Golam Azam. After the election, though Awami League got majority seats in the National Assembly, it was not allowed to form the Government. As a consequence there were meetings between President Yahya Khan and Bangabandhu which yielded no result from which they perceived that something was going to happen. On 25th March Pak forces hounded the innocent Bangalees. On and from Bangabandhu's 7th March speech, they were organizing for freedom fighting. Thereafter on 26th March he along with his friends took preparation for going to India for organizing freedom fighters. In May 1971, he along with 15 others went to India and reached Agartala and registered their names at Congress Bhaban. Towards the end of July, they were taken to Lilapur Cantonment, Asam for guerilla training. After training they returned to Agartala where under the command of Major Haider and Captain Halim Chowdhury they were provided with arms.

Under his leadership 25 freedom fighters entered into Bangladesh and established camp at Kalatia, Keranigonj.

At dawn of 25th November, 1971, they heard the sounds of firing and then he approached towards Ghatarchar area with his troops. On the way he met his father when his father informed him that the Rajakars killed Osman Gani and Gulam Mostafa. The attack was started at the time of Fazar Azan and continued till 11 a.m.. The Rajakars killed 57 Hindus and Muslims and then they attacked Bara Bhawal and Khan Bari killing 25 persons. After departure of Rajakar and Pak army, they found the dead bodies of Osman Gani and Gulam Mostafa at Bhawal Khan and the houses were burning. It was a terrible condition at or around Ghatarchar area-dead bodies soaked with blood were lying hither and thither. Abdul Majid told that on 23/24th November a meeting was held on Ghatarchar, and meeting was arranged by Islami Chhatra Sangh leader Abdul Quader Molla in which Muslim League's Dr. Joynal, K.J. Karim Babla, Mukter Hossain, Foyzur Rahman attended. In that meeting they decided to kill the unarmed persons and the said agenda was materialized on 25th November, 1971. During that time he went in disguise to his maternal uncle's home at Mohammadpur and on his way back, while crossing the physical training centre, Mohammadpur, he noticed that the Rajakar, Al-Badr converted it into a torture centre and that Quader Molla was standing these with arms with him accomplices infront of the gate. The

incident of mass killing, arson, looting which occurred at Ghatarchar on 25th November was perpetrated by the local Rajakars in collaboration with Quader Molla.

He was thoroughly cross-examined by the defence and on a query made by the tribunal as to whether he had seen Quader Molla committing any crime, he replied that he saw him with a rifle in hand in front of physical training centre. Of his statements, the defence did not challenge the statement that he was a freedom fighter and took his training at Lailapul Cantonment, Asham; that Abdul Mazid told him that the meeting held on 23/24 November, 1971 at Ghatarchar, was arranged by Abdul Quader Molla, leader of Islami Chhatra Sangh with Dr. Joynal, Karim Babla, Muktar Hossain, Fayzur Rahman; that Abdul Quader Molla was present in the said meeting; that in the meeting it was decided to kill the unarmed persons and implemented the said agenda on 25th November, 1971; that Abdul Quader Molla that while returning from his maternal uncle’s home at Mohammadpur, he saw Abdul Quader Molla with arms in hand with his accomplices standing on the gate of physical training torture cell, remain uncontroverted.

These uncontroverted pieces of evidence were brought to the notice of the learned counsel for the appellant and wanted to know whether or not the defence had challenged the same. Learned counsel failed to meet the query and remained silent. So facts remain that during the relevant time of liberation struggle, the appellant

being a leader of Islami Chhatra Sangh organized a meeting with some Muslim League leaders and in the said meeting it was decided to kill the unarmed civilians and that he was seen with arms with his cohorts in front of the torture center of Mohammadpur. These uncontroverted evidence negated the defence plea of alibi that the appellant was not present during the relevant time at Mohammadpur-Mirpur area and that he was at his village home. This witness is a veteran freedom fighter and the defence failed to reveal any enmity or grudge of this witness with the appellant. He is not only an impartial witness, but his testimony also inspires confidence as is evident from his statements that he has not implicated the appellant in any of the incidents.

There is no doubt that freedom fighters are the best sons of our soil. Risking their lives they fought against one of the most organized forces in the region against economic exploitation and for political liberation of the people of the country. Thus there is no earthly reason to disbelieve the testimony of this vital witness. Besides, those uncontroverted statements of this witness, the defence practically has admitted the presence of appellant in Mirpur and his participation in the atrocities as observed while discussing the evidence of P.W.4.

P.W.2 stated that in 1966 to counter the six points programme of Awami League, a meeting was organized at Mirpur by Jamat-e-Islami headed by Abdul Quader Molla in which Dr. T. Ali, Hakka Gonda, Akhtar Gonda and others helped him and in the said meeting, Khan Abdul Quayyum Khan came from Pakistan as a central leader for delivering the speech. He corroborated the evidence of P.W.1 stating that Abdul Quader with his Behari accomplices worked for Golam Azam in Mirpur constituency in 1970 election. This statement has not been controverted by the defence. He further stated that on 23rd March, 1971, the Beharis and Quader Molla being elated with joy hoisted Pakistani flags in their houses; that on 26th March, 1971 in the morning the houses of Bangalee people were burning when the Beharis were expressing joy at different points and that as soon as he along with Montu came nearer to them, Quader Molla and others chased them.

P.W.4 stated that in 1970 election Golam Azam had contested from Mirpur constitutency with scale symbol; that Abdul Quader Molla was the leader of Islam Chhatra Sangh and that under his leadership the local non-

Bangalees canvassed for scale symbol. It was suggested to her by defence that another Behari Kasai namely 'Quader Molla' had committed the acts of killing, rape and arson and that the appellant had not participated in those acts. She denied the suggestion. By this suggestion, the defence has practically admitted the appellant's active participation in all the incidents of killing and rape in Mirpur. P.W.5 corroborated P.Ws.1, 2 and 4 regarding Abdul Quader's role in 1970 election at Mirpur constituency. He further stated that after the landslide victory of Awami League in the election, the defeated party perpetrated the barbarous act of killing at Mirpur after 25th March under the leadership of Quader Molla. In cross-examination he reaffirmed his statements in Chief.

P.W.7 stated that in the night preceding 25th Novembers's incident, Abdul Quader Molla held a meeting at Jainal doctor's house; that Jainal doctor's house is situated towards the east of his house intervened by three houses and that after the departure of Pak force from the place of incident after 11 a.m., he learnt that the one who accompanied the gang of perpetrators wearing Paijama-panjabi clad was Abdul Quader Molla. P.W.9 stated that after 7th March, 1971, Abdul Quader Molla organised training for 70/80 activists of Islami Chhatra Sangh at Mirpur for protection of Pakistan in which training, the Beharis also participated. He also corroborated other

witnesses in respect Abdul Quader Molla’s role in 1970 election in the Mirpur constitutency.

P.W.10 is also a resident of Mirpur and was a friend of Khandkar Abu Taleb who worked for Awami League candidate. He stated that in support of the symbol of scale (দাড়িপাল্লা) Nayem Khan, Shafir Uddin and one Molla were worth mentioning. He has also narrated his participation in the pre-agitation movement against Pakistani regime after the national election. His house was also attacked by the Non-Bangalees. He has also sustained injury. On the following day he was taken to Bangabandhu’s house at road No.32 by Taleb with his car. He was then admitted to Dhaka Medical College for treatment. He stated that on the night following 25th March, there was massive bombing at Shahid Minar and innumerable dead bodies were taken into Dhaka Medical College Hospital. He was taken to his friend Faruq Khan’s house at Nabi Nagar where he stayed till 15th April.

Defence, as it appears from the trend of cross-examination of the witnesses and by examining witnesses, took a plea of alibi. Its definite case is that the appellant used to stay in Shahidullah Hall of Dhaka University during the period from March, 1971 to December, 1972. He did not stay or reside at Mirpur during the crucial time of liberation struggle of Bangladesh. On March, 12, 1971, he went to his village home at Amirabad, Faridpur and stayed there till 1972. He

was not in anyway involved in the election campaign of the National Assembly at Mirpur in 1970. He was not involved in Jamat-e-Islami or Islamic Chhatra Sangh political activities nor was he associated with Behari hoolingans of Mirpur locality namely, Akhtar Goonda, Nehal Goonda, Hakka Goonda in the commission of atrocities like killing, arson, rape at Mirpur area. The substance of his defence is that he was not involved in the alleged incidents and that he was implicated in the case after about 40 years in order to victimize him politically.

As noticed above, the defence has examined 6 witnesses in support of its plea of alibi. D.W.1 stated that he went to his village home on 11/12th March 1971 and stayed at his home. He stated that after 1st May, 1971, Pak army came to Faridpur and he used to visit Dhala Mia Pir's house and tutored his two daughters; that Pir Sahab gave him some money for starting a business at his shop situated at Saatrashi Bazar; that he started a business there; that the entire period from 1971 to 1972, he used to go to the bazar on Saturdays and Tuesdays in every week and that he stayed at Pir Sahab's shop and carried on business there. This statement is self contradictory. He, however, admitted that he was the elected president of Islami Chhatra Sangh, Shahidullah Hall, in 1970 and then he became an activist of Islami Chhatra Shibir in 1977. He, however, expressed his

ignorance whether or not Islami Chhatra Sangh was renamed as Islami Chhatra Shibir by deleting the word 'sangh'. D.W.2 stated that after 6/7 days of 7th March speech, Quader Molla took shelter at his sister's house, which is nearer to his house, and at that time on query about the date of arrival, the latter replied that he came three days ago. Then he stated that Quader Molla stated to him that he was staying at Dhala Mia Pir's house; that as per direction of Dhala Mia, Quader Molla was carrying on business jointly with Dhala Mia's elder son and that generally he did not come to this house and stay in Dhala Mia's house. So, there is apparent inconsistency in the statements of these witnesses regarding the defence plea that Quader Molla was staying at his village home Amirabad.

D.W.3 stated that when he met Abdul Quader for the second time at Chanda Rashi Bazar at Faridpur sometimes in late April, 1971, on query about his activities, the latter replied that he was doing business with Dhala Mia Pir's son in compliance with his direction. So we notice three versions from the lips of D.Ws.1-3. Quader Molla stated that he was initially staying at his village home and then he stayed in the shop of Dhala Mia. On the other hand, D.w.2 stated that Quader Molla was staying at Dhala Mia's house. As regards the story of business, Quader Molla stated that he was doing business alone, but D.Ws.2

and 3 stated that he was doing business jointly with Dhala Mia’s elder son.

D.W.4 admitted that Pallab was a student of Mirpur Bangla College and that he was killed by Akhtar Goonda and Beharis. She also admitted the manner of killing Pallab. She simply stated that she did not hear the name of Quader Molla. D.W.5, admitted the killing of 360/370 persons at dawn of 25th March, 1971 at Alubdi village. He was barely 5/6 years old in 1971. He is not only a unreliable but also a motivated witness which will be evident from his statement that neither he nor his villagers heard the name of Quader Molla prior to the date of filing of the case. He claimed that he is an activist of BNP and the writer of ‘Mirpur Muktijuhadda’, and in view of his involvement of political activities with one of the biggest political party, it is difficult to believe his claim that he has never heard the name of Quader Molla prior to the date of filing of case, who is admittedly a central political leader of Jamat-e-Islam. D.W.6 simply stated that sometime late 1972 or early part of 1973, he met Quader Molla when the latter told him that he was staying at village home.

Under our criminal jurisprudence the accused is presumed to be innocent until his guilt is proved. He is not required to prove anything. The burden is always upon the prosecution. But if the accused raises a plea amounting to a confession of guilt, the tribunal can

convict him relying upon the plea. Our Penal Code provides for certain exceptions and in the case of an exception, the burden of proving the existence of circumstances bringing the case within any of the exceptions lies on the accused and the tribunal must presume the absence of such circumstances. Adding to it, the burden of proving the special defence of alibi is on the accused setting it up. The appellant, in this case, failed to create reasonable doubt to the possibility of his being absent at the scene of occurrences; rather it has been established that he was very much present in Mirpur and masterminded all the killing and other heinous crimes against Humanity.

On an analysis of the above evidence it is evident that Abdul Quader Molla was staying at Mirpur since 1970 where majority of the people were Non-Bangalee Beharis. He took active role as a leader of Islami Chhatra Sangh, firstly working for Golam Azam, who contested the election with symbol of scale and later on, participating in the atrocities perpetrated after 25th March, 1971. Since majority people residing in Mirpur were Non-Bangalee Beharis, who admittedly supported Pakistani forces atrocities, a few Bangalee people residing in that locality were known to each other which is natural. Abdul Quader Molla being the only Bangalee person who was admittedly a supporter of Pakistani regime and participated in all inhuman activities like killing,

rape, looting and torching Bangalee houses at Mirpur, his identification by the witnesses could not be doubted. Apart from the above, the circumstantial evidence suggest inferences about Abdul Quader Molla's association with the local Non-Bangalee Beharis and Pakistani army, and his complicity in all the atrocities committed at Mirpur. These facts are relevant and can be used as corroborative evidence. The court can also take judicial notice of these admitted facts.

The circumstantial evidence proved by P.Ws.1, 2, 4, 5, 7 and 9 are direct and most of them remain uncontroverted. These circumstances leading to particular inference about the relationship to true facts are more apparent than real. These circumstantial evidence are approximate to truth and be preferred to direct evidence. Circumstantial evidence is the best sort of evidence because, as the saying goes, 'men may lie but circumstances will not'. Taking these circumstances in mind, if we consider the motive, conduct and demeanour, admission, identification of the appellant at the time and places of commission of crimes by the witnesses as discussed above, a reasonable inference could be drawn that the appellant masterminded the Crimes against Humanity at Mirpur.

More so, a tribunal is bound to take judicial notice of the fact of hostilities between the then Government of Pakistan and the people of then East Pakistan; the 7th

March speech of Sheikh Mujibur Rahman; his declaration of independence in the mid-night of 25th March, 1975; the atrocities committed by the Pakistani army to the entire East Pakistan between 25th March and 15th December, 1971 with the aid of collaborators like of local Rajakars, Al-Badr, Al-Shams and other auxillary armed forces. It is also an admitted fact that the Jamat-e-Ialam and its student front 'Islami Chhatra Sangh' not only supported the Pakistani regime but also aided, participated and collaborated in the commission of Crimes of murder, extermination, abduction, confinement, torture, rape, tooting, torching houses or other inhumane acts committed against civilian population which are included in Crimes against Humanity. It is also an admitted fact that the appellant Abdul Quader Molla was a leader of Islami Chhatra Sangh. There are uncontroverted evidence on record that the appellant in collaboration with local Beharis and Pakistani armed forces participated in the mass as well as isolated killing and rape at Mirpur during the time of liberation war.

It is found from a thorough sifting of the evidence on record that the appellant participated in all incidents of inhuman acts of murder and rape. All these crimes were perpetrated against civilian population during the war of liberation when most of the people were fighting with the Pakistani regime, a few of anti-liberation elements like the appellant collaborated the

occupation regime and tried to exterminate the supporters of liberation war. The defence admitted that during the relevant time inhuman atrocities were perpetrated to innocent civilian population by the millitary jaunta and their collaborators. The appellant and his political party collaborated the Pakistani army to suppress the war. So apparently he cannot avoid the criminal liability. There is no doubt that the murders and rape were perpetrated in a planned and concerted manner with the aim in view that in case the liberation of the country was achieved, it would be possible for the Awami League to run the country. So the killing was perpetrated in a concerted manner. Three minor girls were raped, four including a minor boy died on the spot and one survived. Therefore, there is no gainsaying the fact that all the ingredients of offences of crimes against Humanity are present in this case. There is direct evidence about the appellant's participation in the incidents of killing. In respect of the killing of Hazrat Ali, the evidence on record proved that the appellant alone is responsible only because Hazrat Ali was an activist of Awami League. He has also participated in the killing of his wife, two daughters and the minor son. These offences are worst types of Crimes against Humanity so far perpetrated around the globe.

As noticed above, the tribunal on piecemeal consideration of the evidence on record found the

appellant guilty of five counts. Though I noticed some inconsistency in its findings, those inconsistencies have not materially affected in the ultimate decision of the tribunal in respect of finding the appellant guilty of five counts. The findings of the Tribunal in respect of charge No.1 that '*accused Abdul Quader, for the reason of his continuing culpable association with the principals, had 'complicity' to the criminal acts constituting the offence of Pallab killing as he 'consciously' used to maintain such culpable association with the perpetrators in materializing the design of Pakistani occupation forces....*, are based on non application of judicial mind. Here the Tribunal found the appellant not as the principal offender but that he assisted the killing with the principal offenders of the said incident. There is positive evidence that he is the principal offender. P.W.2 stated that, "এই ঘটনার মূল নায়ক ছিল কাদের মোল্লা, আণ্ডার গুন্ডা ও বিহারীরা যাদের নাম আগে বলেছি।" This witness stated that the appellant was the principal offender of the killing of Pallab with Akhtar Goonda and others. As observed above, this statement remained uncontroverted. So is the statement of P.W.10 who stated that Bangla college's Pallab was killed by Abdul Quader Molla as he heard. So, there is no doubt that in respect of the killing of Pallab, the appellant is the principal offender.

In respect of charge no.2, P.W.2 stated that on 27th March Quader Molla, Hasib Hasmi, Abbas Chairman, Akhtar

Goonda, Hakka Goonda and Nehal slaughtered poet Meherunnessa, her brother and mother to death. P.W.4 stated that Quader Molla led accomplices to the house of Meherunnessa and slaughtered to death of four inmates of the house. Though P.W.10 stated that the Non-Bangalees killed Meherunnessa, he then said, he could not recollect the other facts. He is an old man and deposed after 41 years of incident. If the tribunal believed P.Ws.2 and 4 as reliable witnesses, its findings that '*Abdul Quader Molla had, with knowledge and mens rea, conscious complicity to the commission of offence of murder as crimes against humanity as listed in charge no.2 and thereby incurs criminal liability for 'complicity' in commission of the murder of Meherunnessa and her inmates ....*, are inconsistent with its earlier finding that 'the accused, as he led the gang of perpetrators, knew the intent of the principals'. If the appellant took active part in the killing with his cohorts in the house of the victims and slaughtered them to death, legally he would be taken as principal perpetrator. There is no evidence on record that after entering into the house as per his order, other accused persons killed them. So, there is no doubt that the appellant is the principal offender of the killing of Meherunnessa and others.

In respect of count no.3 for the killing Kh. Abu Taleb, the appellant was found guilty as he was in association with the principals. The tribunal then

concluded its finding holding that '*the aforementioned killing formed part of a systematic or organised attack against the civilian population*'. There is no allegation that the accused persons including the appellant participated in the mass killing of civilian population. The Tribunal was confused with the arguments of the learned counsel for the accused that for constituting the offence of Crimes against Humanity the attack must be 'widespread and systematic' without comprehending the law as it stands under the Act of 1973. Learned Counsel has made similar arguments in this Division as well. This submission was made relying upon the decisions of the Appeal Chamber of ICTR, ICTY and the Trial Chamber of ICTR, which cases are not at all applicable in this case in that the law applicable to the tribunal is quite distinguishable from those cases.

As observed above, under the Rome Statute, Article 7 defines 'crimes against humanity' means any of the following acts when committed as part of 'a widespread or systematic attack directed against any civilian population......, In the statute of the International Criminal Tribunal for Rwanda, Article 3 defines 'Crimes against Humanity'. It says, the International Tribunal for Rwanda shall have power to prosecute persons responsible for the following crimes ' when committed as part of a widespread or systematic attack against civilian population .....' So under both statutes, the

jurisdiction of the tribunals was given to try offences of 'crimes against humanity' such as murder, extermination, deportation, torture, rape etc of person/persons when they committed as part of a widespread or systematic attack against civilian population on national, ethnic, racial or religious grounds.

Whereas, under our Act, 1973 the tribunal has jurisdiction to prosecute and punish any person irrespective of his nationality who being a member of any armed, defence or auxiliary forces commits, whether before or after the commencement of the Act, Crimes against Humanity, Crimes against Peace, Genocide and other crimes connected therewith during the period of war of liberation. The offences of murder, extermination, rape or other inhumane acts committed against civilian population or persecutions on political, racial, ethnic or religious grounds are included in the offence of Crimes against Humanity. For commission of the said offence, the prosecution need not require to prove that while committing any of the offences there must be 'widespread and systematic' attack against 'civilian population'. It is sufficient if it is proved that any person/persons committed such offence during the said period or participated or attempted or conspired to commit any such crime during operation search light in collaboration with the Pakistani Regime upon unarmed

civilian with the aim of frustrating the result of 1970 National Assembly election and to deprive the fruits of the election result. However, the prosecution has been able to prove by adducing reliable evidence beyond any shadow of doubt that the acts of killing and rape were widespread and systematic against innocent unarmed civilian population.

In respect of charge no.5, the killing of Alubdi village, the appellant was found guilty for his being accompanied 'the gang and remained physically present at the crime site having rifle in hand'. P.W.6 stated that Quader Molla led his gang to hound up the villagers and paddy harvesting labourers and at one stage, he shot at the people who had assembled there, killing villagers and the labourers totaling 360/370. His positive statement is that 'সেখানে কাদের মোল্লার হাতেও রাইফেল ছিল সেও গুলি করে।' P.W.9 also stated that Quader Molla led the Beharis who along with Pak army perpetrated the killing. Therefore, there is no doubt that he was one of the principal killers.

In respect of charge No.6, P.W.3 specifically mentioned that when her father came home on being chased by Quader Molla and Beharis, her father was saying 'কাদের মোল্লা মেরে ফেলবে' and then stated that Quader Molla took her father forcibly by holding his neck collar from back side. They also raped her two sisters till they fell into the jaws of death. Victim Hazrat Ali Laskor did not return thereafter. She stated that she heard from Kamal

khan that Quader Molla killed her father. The defence has not challenged this statement. Therefore, the findings that '*the accused is found to have actively and substantially encouraged and abetted the gang of perpetrators in committing the crime of killing of family inmates of Hazrat Ali Laskor...... his illegal act of forcibly dragging Hazrat Ali Laskor out of house he substantially facilitated the commission of crimes committed by the principals..... although his (Quader Molla) acts had not actually caused the commission of the crime of killing in the crime site*' are contrary to the evidence on record. The appellant is the principal offender plain and simple as evident from the evidence of P.W.3. Her evidence coupled with the circumstantial evidence lead us to the conclusion that the appellant is one of the principal offenders of the killing and rape.

As regards charge no.4, the Tribunal disbelieved P.Ws.7 and 8 on the ground of glaring indiscrepencies in their statements and also with their earlier statements made to the investigating officer. The tribunal suspected the claim of P.W.7 on the reasonings that it was not probable on his part to approach towards the crime site despite that there was indiscriminate firing from the northern end of the village. It disbelieved P.W.8 on the reasoning that from her statement it was revealed that she learnt from P.W.7 that Quader Molla killed her husband and that as P.W.7 was disbelieved in view of his

inconsistent statements, her evidence does not carry any value. P.W.7 narrated regarding the killing of 60 villagers of Ghater Char village and he claimed to have witnessed the incident and recognized Abdul Quader Molla as one of the assailants who had a rifle in his hands.

As regards the contradiction of his earlier statements, P.W.7 denied the defence suggestion that pajama-panjabi dressed person was not present with Pak force. In his chief, this witness stated that Quader Molla had a rifle in his hands and that he also shot at the people. This statement has not been challenged by the defence. It is found from the evidence of P.Ws 6 and 7 that they have witnessed two incidents, one at Alubdi village and the other at Ghaterchar. The tribunal believed P.W.6 who also claimed that at early dawn he heard sound of firing and at that time, he kept him concealed in a ditch under bush and witnessed the incident. If the claim of P.W.7 was improbable, the claim of P.W.6 to the same extent ought to have been disbelieved. The tribunal illegally disbelieved the witnesses on the ground that they contradicted with their earlier statements. As observed above, under the law there is no scope to draw contradiction of the statements made before the tribunal with the statements made before the investigating officer. The tribunal can infer contradiction of the statements made in the examination-in-chief with the cross-examination only and not

otherwise. There is no such contradiction. The circumstantial evidence coupled with the admission of the defence by way of giving suggestion to P.W.4 that one Behari Kader Molla residing at Mirpur who was involved in all the killing in Mirpur, which it failed to substantiate, there is no doubt that Quader Molla was the one who was involved in the killing of Ghaterchar.

In respect of P.W.8, the tribunal has totally misread her evidence. First mistake it has committed is that the tribunal, presumed that P.W.8 heard from P.W.7 alone. She stated that just after hearing about the killing of her husband, she rushed to the house of Muzammel Huq, her uncle-in-law, and saw the dead body of her husband and a Bangalee with a rifle in hand whose identity she learnt from Luddu Mia and Mazid Palwan that he was Quader Molla. She identified the appellant in the dock who was the person whom she saw with a rifle in hand at the site of incident. She also stated that apart from Luddu Mia and Mazid Palwan, she heard from the villagers that Quader Molla killed her husband. So, the tribunal did not apply its judicial mind in appreciating the evidence of P.Ws.7 and 8. P.Ws.7 and 8 disclosed two different incidents, although P.W.7 also mentioned the name of Nabi Hossain who was amongst 60 persons who were killed at Ghaterchar and Bhawal Khanbari. If the uncontroverted statement of P.W.7 and those of P.W.8 are taken together with the circumstantial evidence, it is

proved beyond doubt that the prosecution has been able to prove the charge No.4 as well. The appellant was also involved in the killing of Nabi Hossain. The tribunal, in the premises, was wrong in finding the appellant not guilty of charge.

Over and above, on perusal of the evidence on record it is found that most of the incriminating statements of witnesses have not been challenged by the defence. The discrepancies referred to by the learned counsel according to my opinion are minor, insignificant, natural and not material. I have not found any material discrepancy in the statements of the witnesses which materially affected the prosecution case. The discrepancies which were drawn to our attention are that Quader Molla had fastened a white paper on his head while entering into the house of Meherunnessa; that when Meherunnessa saw that the killers approached towards her, she pressed a Quran on the chest in order to save her life; that after the liberation, P.W.4 wanted to visit Meherunnessa's house; that P.W.5's father was a slain reporter; that as a slain lawyer his name ought to been kept in the Bar Association's room etc. These are not so material to discard the testimonies of the witnesses. These are minor omissions which have occurred due to normal errors of observation, normal extinction of memory due to lapse of time, due to mental disposition, such as, shock and horror at the time of occurrence and the like.

It is the duty of the tribunal to separate the grain from the chaff. Where the chaff can be separated from the grain, it would be open for the tribunal to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove the guilt. Falsity of a particular material witness or material particular would not ruin the case from the beginning to end.[179-180]

As regards sentence, section 20(2) provides the 'sentence of death or such other punishment proportionate to the gravity of the crime .....' A plain reading of sub-section (2) shows that if the tribunal finds any person guilty of any of the offences described in sub-section (2) of section 3, awarding a death sentence is the rule and any other sentence of imprisonment proportionate to the gravity of the offence is an exception. Therefore, while deciding just and appropriate sentence to be awarded for any of the offences to any accused person, the aggravating and mitigating factors and circumstances in which the crimes have been committed are to be balanced in a disproportionate manner. In awarding the appropriate sentence, the tribunal must respond to the society's cry for justice against perpetrators of Crimes against Humanity. The perpetrator like the appellant has committed most worst and barbarous

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[179-180]. State of Rajastan V. Kalki, (1981) 2 SCC 752,
Rizan V. State of Chhattisgarh, (2003) 2 SCC 661.

types of Crimes against Humanity. He participated in the killing and rape of innocent persons without just cause. His acts are comparable with none. His horrific crimes have been highlighted in the beginning of the judgment. Entire world raised voice against his barbaric Crimes against Humanity. Justice demands that it should impose a sentence befitting the crime so that it reflects public abhorrence of crime. In Cases of murders in a cold and calculated manner without provocation cannot but shock the conscience of the society which must abhor such heinous crime committed on helpless innocent persons.

It is now established by judicial pronouncements by the superior courts that while considering the punishment to be given to an accused, the court should be alive not only to the right of the criminal to be awarded just and fair punishment by administering justice tempered with such mercy as the criminal may justly deserve, but also rights of the victims of the crime to have the assailant appropriately punished and the society's reasonable expectation from the court for the proportionate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused.

We noticed the atmosphere that was prevalent during the recording of the evidence of P.W.3 from the note sheet of the tribunal. She was narrating the events of brutal killing of her mother and siblings; two of them

were so much ravished that they fell into the jaws of death and the other-a child of two years was dashed to death. She was lamenting at the time of deposing as evident from the remarks noted by the tribunal like a baby, and then lost her sense. A pathetic heart-breaking atmosphere seized the proceedings of the tribunal. If one reads her testimony it will be difficult to control emotion. The murders were extremely brutal, cold blooded, diabolical, revolting so as to arouse intense and extreme indignation of the community. It was perpetrated with motive. On a close reading of the evidence of P.W.3 one can instantaneously arrive at a conclusion that there is something uncommon about the incidents of murder which render sentence of imprisonment for life inadequate and deserve for a death sentence.

The term of Crimes against Humanity has come to mean anything atrocious committed on a large scale. These crimes are committed against civilian population during war; or persecution on political or racial or religious grounds in execution of any crime. These offences by nature are heinous. In the instant case, the appellant along with his cohorts attacked the house of Hazarat Ali Laskar, killed his wife, raped two minor daughters and then killed them with a minor son only because he supported the Awami League and was an admirer of Sheikh Mujibur Rahman. These nafarious acts were perpetrated in a preplanned manner and in doing so, the appellant, who

led the team exceeded all norms of humanity. He was involved in Islami Chhatra Sangh and Jamat-e-Islami politics from before the 1970 general election at Mirpur and accordingly, he had harboured grudge against Hazrat Ali Lasker. The aim of the perpetrators was to wipe out the family of Hazrat Ali Lasker, but incidentally P.W.3 survived. The horrible picture of the carnage that had been unleased was so brutal that the sentence of death is to be taken as the proper sentence. If no such sentence is passed in the facts of the case, it will be difficult to inflict a death sentence in other cases. The appellant participated in the incident in a planned and concerted manner with his cohorts and therefore, he cannot escape the maximum sentence for the offence he committed despite finding that the offences committed by the appellant are predominantly shocking the conscience of mankind.

The appellant did not show any sort of repentance any point of time for his acts and deeds. The learned counsel for the appellant also did not pray for awarding the minimum sentence in case the Government's appeal against the sentence is found maintainable. There is no cogent ground to take lenient view in awarding the sentence. Therefore, the sentence of imprisonment of life awarded to the appellant in respect of charge No.6 is based on total non application of mind and contrary to the sentencing principle. Awarding of a proper sentence in the facts of a given case is to assist in promoting

the equitable administration of the criminal justice. Punishment is designed to protect society by deterring potential offenders. P.W.3 is a natural witness and it is only possible eyewitness in the circumstances of the case who can not be said to be interested. In such incident, death sentence is the only proper sentence. Similar views have been expressed by the Supreme Court of India.[181-182]

The tribunal observed that the testimony of a single witness on a material fact does not as a matter of law require corroboration; that corroboration is not a legal requirement for a finding to be made; that a sole witness testimony could suffice to justify a conviction if the court is convinced beyond all reasonable doubt. The tribunal has arrived at such conclusion taking P.W.3 as the single witness to prove charge No.6. It is to be noted that the tribunal erred in inferring as such in failing to notice that besides P.W.3, the prosecution led circumstantial evidence to corroborate her by examining P.Ws.1, 2, 4, 5, 7 and 9. Their evidence prove the motive of the appellant right from the 1970 election and this existence of motive is a circumstance corroborative of the case against the appellant. His motive raises strong presumption that he committed the crimes. Coupled with it, the previous conduct of the appellant must have reference to the incidents he was involved.

[181-182]. Bachan Singh V. State of Punjab, (1980) 2 SCC 684.
Machhi Singh V. State of Punjab, (1983) 3 SCC 470.

While awarding the sentence of imprisonment for life, the tribunal was of the view that the 'sentences must reflect the predominant standard of p*roportionality between the gravity of the offence and the degree of responsibility of the offender*'. This finding is inconsistent and not inconformity with law. If the gravity of the offence is taken as the basis for awarding sentence to the appellant, it is one of the fittest case to award the appellant the highest sentence in respect of the charge no.6 in which the killing and rape were brutal, cold blooded, diabolical and barbarous. If the tribunal does not award the maximum sentence considering the gravity of the charge, it will be difficult to find any other fit case to award such sentence. Another aspect which I feel need to be addressed. While awarding the sentence of life imprisonment, the tribunal has not stated the actual period of time the appellant would suffer in gaol.

In the Act, 1973 it has not defined or explained the meaning of 'life imprisonment'. In the absence of any explanation, we may consider the provisions contained in the Penal Code. Life imprisonment does not enable the drawing of any fiction of period. A sentence of imprisonment for life must, therefore, be treated as one of imprisonment for the whole of the remaining period of the convicted person's natural life. Sometimes, it is argued that life imprisonment means a period of thirty

years of sentence in view of section 57 of the Penal Code. This is based on wrong premise. Section 57 does not say that imprisonment for life shall be deemed to be imprisonment for thirty years for all purposes nor does it enable to draw any such inference. So, Prison authorities are bound to keep the accused persons who are sentenced to imprisonment for life in jail treating such sentence for the whole of the remaining of the convicted person's natural life unless he has earned recursions for good conduct. In other words, it is not for a definite period.

In view of what stated above, Criminal Appeal No.24 of 2013 filed by the Government is maintainable. The order of acquittal passed by the tribunal in respect of charge No.4 is set aside and the accused Abdul Quader Molla is found guilty of the said charge and sentenced to imprisonment for life. The sentence of life imprisonment awarded to the accused Abdul Quader Molla in respect of charge No.6 is also set aside and in its place, he is sentenced to death by hanging. The other appeal being Criminal Appeal No.25 of 2013 filed by the accused Abdul Quader Molla is dismissed.

J.

Md. Abdul Wahhab Miah, J: These two statutory criminal appeals are directed against the judgment and order dated the 5th day of February, 2013 passed by the International Crimes Tribunal-2 (ICT-2) in ICT-BD Case No.02

of 2012 finding Abdul Quader Molla (appellant in Criminal Appeal No.25 of 2013 and respondent in Criminal Appeal No.24 of 2013) guilty "of the offences of 'crimes against humanity' enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 as listed in charge nos.1, 2, 3, 5 and 6" and sentencing him to "single sentence of 'imprisonment for life' for charge nos.5 and 6 And also for the crimes as listed in charge nos.1, 2 and 3 to a single sentence of 'imprisonment for fifteen (15) years under section 20(2) of the Act, 1973" and acquitting him of the charges brought against him "as listed in charge no.4." The Tribunal further ordered that "as the convict Abdul Quader Molla is sentenced to 'imprisonment for life', the sentence of 'imprisonment for 15 years' will naturally get merged into the sentence of 'imprisonment for life'." The Tribunal further ordered that "the sentence shall be carried out under section 20(3) of the Act, 1973."

Criminal Appeal No.24 of 2013 has been filed by the Government of the People's Republic of Bangladesh, represented by the Chief Prosecutor, International Crimes Tribunal Dhaka, Bangladesh with the following prayers, amongst others:

(a) To enhance and award the highest sentence as envisaged under section 20(2) of the International Crimes (Tribunals) Act, 1973 in respect of each of charge Nos.1, 2, 3, 5 and 6;
(b) To set aside the order of acquittal in respect of charge No.4 and convict and sentence the accused to death in respect of the said charge as well.

Appeal No.25 of 2013 has been filed by convict- Abdul Quader Molla (hereinafter referred to as the accused) with the prayer to set aside the order of conviction and sentence passed against him as detailed hereinbefore.

Both the appeals have been heard together.

During hearing of the appeals, besides other points (other points will be dealt with hereinafter at appropriate place), the following two major points emerged for decision by this Division, namely: (i) whether the customary international law shall apply to the trials under the International Crimes (Tribunals) Act, 1973 (the Act, 1973), (ii) whether the amendment brought to the Act, 1973 on the 18th day of February, 2013 by substituting section 21 thereof giving the right of appeal to the Government or the complainant or the informant, as the case may be, to this Division against an order of acquittal or an order of sentence shall be applicable to the present case, in the other words, whether Criminal Appeal No.24 of 2013 preferred by the Government of the People's Republic of Bangladesh, represented by the Chief Prosecutor of the International Crimes Tribunals against the order of acquittal of the accused of the charges listed in charge No.4 and also against the inadequacy of sentence awarded against the accused is maintainable in law.

On the points, we felt the necessity of the assistance from the Bar and accordingly, 7(seven) Senior Advocates of this Court, namely: Mr. T.H.Khan, Mr. Rafique-ul Huq, Mr. M. Amir-Ul Islam, Mr. Mahmudul Islam, Mr. A.F. Hassan Ariff, Mr. Rokanuddin Mahmud and Mr. Azmalul Hossain were invited to make their submissions on the points and they appeared and made their valuable submissions, which have been detailed in the judgments proposed to be delivered by my learned brothers, S.K.Sinha, J and A.H.M.Shamsuddin Chowdhury, J. Therefore, I do not consider it necessary to repeat their submissions in my judgment.

I have had the privilege of going through the judgments prepared by my learned brothers on behalf of the majority. Though I agree with the views taken by my learned brothers on the points that customary international law shall not apply to the trials under the Act, 1973 and that the amendment brought to the Act, 1973 on the 18th day of February, 2013 by substituting section 21 thereof giving the right to the Government or the complainant or the informant, as the case may be, to this Division against an order of acquittal or an order of sentence shall apply in the present case and consequently, Criminal Appeal No.24 of 2013 filed by the Government is maintainable. I regret that I could not persuade myself to agree with the findings and decisions given by my learned brothers affirming the order of conviction and sentence passed against the accused by the International Crimes Tribunal-2(hereinafter referred to as the Tribunal) in respect of the charges of the commission of crimes as listed in charge Nos.1, 2, 3 and 5, the finding of guilt as to the commission of crimes as listed in charge No.4 and the sentence of death awarded against the accused in respect of charge No.6 setting aside those passed by the Tribunal. Therefore, I find no other alternative, but to give my own findings and decisions in respect of the charges listed in charge Nos.1, 2, 3, 4 and 5 and in maintaining the sentence of imprisonment for life awarded by the Tribunal against the appellant for the commission of crime as listed in charge No.6.

On the two points as formulated hereinbefore, my learned brothers (S.K.Sinha and A.H.M.Shamsuddin Chowdhury, J.J) have made discussions with much detailed elaboration by referring to the comments and observations of the various celebrated authors and jurists and the decisions of this Division

as well as other superior Courts, therefore, I do not feel so to make any further discussions, as that will be nothing but repetitions and will make the judgment voluminous which is already so. However, I would like to add that the back ground in enacting the Act, 1973 is historical. In a short compass it is that free elections for the constitution of a National Assembly were held from 7th December, 1970 to 17th January, 1971 under the Legal Framework Order, 1972 (President's Order No.2 of 1970) for the purpose of framing a Constitution for the then Paskistan and in that election all political parties including the then All Pakistan Awami League participated. Awami League got 167 seats out of 169 seats in the election in the then East Pakistan and thus emerged as a majority party. The then military Ruler of Pakistan General Yahia Khan summoned the elected representatives of the people to meet on 3rd March, 1971 for the purpose of framing a Constitution, but the Assembly so summoned was arbitrarily and illegally postponed for indefinite period. Thereafter, the Pakistan Government by levying an unjust war and committing genocide and by other repressive measures made it impossible for the elected representatives of the people of Bangladesh to meet and frame a Constitution and give themselves a Government. In the circumstances, the people of Bangladesh, having proclaimed their independence on the 26th day of March, 1971 and, through a historic struggle for national liberation, established the independent, sovereign People's Republic of Bangladesh. In the context, it may be stated that Bangabandhu Sheikh Mujibur Rahman in his historic speech at Suharwardi Uddayan on 7th March, 1971 declared "এবারের সংগ্রাম আমাদের মুক্তির সংগ্রাম, এবারের সংগ্রাম স্বাধীনতার সংগ্রাম।" The Constituent Assembly, which was constituted under

President's Order No.22 of 1972 under the nomenclature 'The Constituent Assembly of Bangladesh Order, 1972' for framing a Constitution for the Republic, framed a Constitution which was adopted, enacted and given to ourselves on eighteenth day of Kartick, 1379 B.S. corresponding to the fourth day of November, 1972. It is also a historical fact that from 25th March, 1971 till 16th December, 1971 atrocious and barbarous and inhuman acts were perpetrated on the soil of Bangladesh by Pakistan armed or defence forces and their auxiliaries on a large scale and of a nature that outraged the conscience of mankind. And in order to detain, prosecute or punish any person, who is a member of any armed or defence or auxiliary forces or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law, the first amendment to article 47 of the Constitution by inserting sub-article (3) by Act XV of 1973 giving immunity to the law or any provision thereof to be enacted from being challenged as void or unlawful, or ever to have become void or unlawful, on the ground that such law or provision thereof is inconsistent with, or repugnant to, any of the provisions of the Constitution was brought. The above amendment to article 47 of the Constitution, by way of addition, was made on 15th July, 1973 and thereafter, the Parliament passed the Act, 1973 which was gazetted on 20th July, 1973 being Act No.XIX of 1973. The Act, 1973 was enacted in line with the provisions of newly inserted sub-article (3) of article 47 of the Constitution making provisions for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law and for matters connected therewith.

The Constitution is the supreme law of the land and when the Constitution has given blanket protection to the Act, 1973 and any provision thereof, its provisions have to be adhered to. It is to be mentioned that the Act, 1973 is the first codified legislation in the world which gave jurisdiction to the Tribunal to be set up under section 6 thereof to try and punish any person irrespective of his nationality who, being a member of any armed, defence or auxiliary forces commits or has committed in the territory of Bangladesh, whether before or after the commencement of the Act any of the crimes as mentioned in sub-section (2) of section 3. The People's Republic of Bangladesh being an independent and sovereign State, its Parliament had/has every right to enact law, such as the Act, 1973 for the trial of the person(s) who commits or has committed the crimes as mentioned in the Act. So, when we have a codified law, we need not travel to seek assistance from the other trials held or being held by the Tribunals/Courts either under the charter of agreements of the nations or under other arrangements under the mandate of the United Nations or other international body, such as Nuremberg trial and the Balkan trials.

The Act, 1973 is a domestic/municipal law and at the same time is a special law. The Parliament took the care to incorporate all the provisions in the Act, 1973 that are required to prosecute a person who commits or has committed crimes as mentioned in sub-section (2) of section 3 thereof for fair trial including the right of appeal by the accused in case, he is found guilty and sentenced accordingly. The Act has made provisions prescribing the procedure of prosecuting a person(s) guilty for the commission of a crime as mentioned

therein, for the setting up of a Tribunal for the trial of such person(s), appointment of prosecutor to conduct the prosecution before the Tribunal, establishment of an Agency for the purpose of investigation into the crimes as specified in section 3 of the Act, the procedure for commencement of the proceedings before the Tribunal, the procedure of trial to be followed by a Tribunal, the powers of the Tribunal, the framing of charges, right of the accused person during trial, the Rules of evidence, giving the Tribunal power to regulate its own procedure and the judgment and sentence to be passed by the Tribunal including the provisions as to how a judgment shall be written and passed. So, where is the scope of application of the customary international law in respect of the proceedings before the Tribunal for a trial of a person(s) under the Act, 1973. And in this regard, I consider it sufficient to rely on the observations made by this Division in the case of Hossain Muhammad Ershad-Vs-Bangladesh and others, 21 BLD(AD)69. In that case Bimalendu Bikash Roy Chowdhury, J. observed that:

> "*True it is that the Universal Human Rights Norms, whether given in the Universal Declaration or in the Covenants, are not directly enforceable in national courts. But if their provisions are incorporated into the domestic law, they are enforceable in national courts. The local laws, both constitutional and statutory, are not always in consonance with the norms contained in the international human rights instruments. The national courts should not, I feel, straightway ignore the international obligations, which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments. But in the cases where the domestic laws are clear and inconsistent with the international obligations of the state concerned, the national courts will*

be obliged to respect the national laws, but shall draw the attention of the law-makers to such inconsistencies."

A.M.Mahmudur Rahman, J. (the author Judge) observed:

"With regard to submission resting on Article 13 of the Universal Declaration of Human Rights we are of the opinion that such right is in the International Covenant and not a part of Municipal Law. Therefore, it has no binding force for Article 36 provides complete answer."

Latifur, C. J. also concurred with the observations made by Bimalendu Bikash Roy Chowdhury and A.H.Mahmudur Rahman, J.J. We have gone through the provisions of the Act, 1973, we have not got a single provision which is unclear or unambiguous for which the Tribunal or this Division needs the help and aid of customary international law. Mr. Razzaq, learned Counsel, for the accused also failed to point out any ambiguity in any of the provisions of the Act and that any of the provisions of the Act is inconsistent with any customary international law or international obligations of the Government of the People's Republic of Bangladesh. The Court/Tribunal never legislates the law. It is the duty of a national Court or a Tribunal to follow the domestic law even if the same is inconsistent with the customary international law in dispensing justice, be it criminal or a civil trial. From the impugned judgment and order, it appears that the Tribunal instead of sifting the evidence in its entirety in the light of the provisions of the Act and the Rules of Procedure framed by it in arriving at the findings of guilt against the accused in respect of the charges alleged against him proceeded in a manner as if they were holding the trial under the customary international law and relied upon the principles as enunciated by Pre-trial Chamber, Trial Chamber and Appeal Chamber of trials

held not under a codified law like the Act, 1973, but under international covenants and under the mandate of United Nations.

Mr. Razzaq tried to make out a point that in the Act, 1973 'Crimes against Humanity' have not been defined, it has merely listed a number of crimes only in clause (a) of section 3(2) thereof, so, as of necessity, the Tribunal and this Division as the Appellate Court, have to look to the customary international law for such definition.

From the charges levelled against the accused as listed in charge Nos.1, 2, 3, 4, 5 and 6, it appears that he was charged with the allegations of committing murder in charge Nos.1, 2, 3, 4 and 5 and in charge No.6, he was charged with the allegations of committing murder as well as rape. And no charge was framed against the accused for the commission of crimes against peace, genocide, war crimes, violation of any humanitarian rules applicable in armed conflicts laid down in the Geneva Conventions of 1949 and any other crimes under international law as mentioned in clauses (b)(c)(d)(e) and (f) of section 3(2) of the Act, 1973. Murder and rape have been mentioned under the head 'Crimes against Humanity' and in our domestic law, namely, the Penal Code both have been defined. In the context, it is pertinent to state that the Penal Code has not been made in-applicable in any proceedings under the Act, 1973. So, when, in our domestic law, the offences of murder and rape have been defined, we need not look to the customary international law or to look to any other jurisdiction for the definition of murder and rape with which the accused has been charged. And we have to decide the guilt or innocence of the accused of the charges brought against him keeping in view the definitions of

murder and rape given in the Penal Code along with the other clauses, namely, clauses (g) and (h) of section 3(2) of the Act, 1973. So, we find no merit in the point made by Mr. Raqqaq.

The Parliament has the right to give retrospective effect to a law enacted by it, and in fact, the Parliament gave retrospective effect to the amendment made to the Act, 1973 on 18th February by substituting section 21 thereof with effect from 14th July, 2009, i. e. long before the commencement of the proceedings before the Tribunal on 18th December, 2011. It will be clear if we see sections-1 and 2 of the Act 03 of 2013 by which amendment was brought to the Act, 1973 which read as follows:

> “১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।-(১) এই আইন International Crimes (Tribunals) (Amendment) Act, 2013 নামে অভিহিত হইবে।
> (২) ইহা ৩০ আষঢ়, ১৪১৬ মোতাবেক ১৪জুলাই, ২০৯ তারিখে কার্যকর হইয়াছে বলিয়া গণ্য হইবে।”

Mr. Razzaq in his all fairness has submitted that the amendment made to the Act, 1973 dated 18th day of February, 2013 is a valid piece of legislation. He does not also dispute the legal proposition that the Parliament can give retrospective effect to a legislation, but his objection is that since the proceedings of the case in question was terminated with the pronouncement of judgment, a right accrued to the accused under the Act, 1973, which stood on the date of termination of the proceedings and that right could not be taken away by giving retrospective effect to a law enacted after the termination of the proceedings. Further contention of Mr. Razzaq is that if the Parliament had any intention to take away the right of the accused, which existed on the date of termination of the proceedings, it would have used appropriate words, i.e.

would have used the words "notwithstanding the judgment and order dated the 5th day of February, 2013 passed by the International Crimes Tribunal-2 in ICT-BD Case No.02 of 2012", but the Parliament has not used any such words. Therefore, Criminal Appeal No.24 of 2013 filed by the Government purusant to the amendment is not maintainable and the same be dismissed on the ground of maintainability alone. I do not find any substance in the contention of Mr. Razzaq. From the amendment as brought to the Act, 1973, it is clear that the Parliament only gave a right of appeal to the Government or the complainant or the informant, as the case may be, to this Division against an order of acquittal or an order of sentence. And in giving such right of appeal, the right of the accused to file appeal against the order of conviction and sentence passed by the Tribunal has not, in any way, been affected. If the Parliament had any intention to undo the judgment and order passed by the Tribunal, then possibly, the contention of Mr. Razzaq would have some force. From the Act, it is clear that the intention of the Parliament was just to create a forum of appeal for the Government or the complainant or the informant, as the case may be to this Division against an order of acquittal or an order of sentence. And lastly, the amendment was made within 30(thirty) days, the period of limitation prescribed for filing appeal against the order of conviction.

As a human being and as a son of the soil, I have reasons to be shocked and emotional as to the atrocities which were committed on the soil of Bangladesh by the Pakistan armed forces, its auxiliary forces and other persons, but I am oath bound to faithfully discharge the duties of my office according law and do right to all manner of people according to law, without

fear or favour, affection or ill-will. I re-call my oath of office which I took which is as follows:

> "I, ... having been appointed Judge of the Appellate Division of the Supreme Court do solemnly swear that I will faithfully discharge the duties of my office according to law:
>
> That I will bear true faith and allegiance to Bangladesh:
>
> That I will preserve, protect and defend the Constitution and the laws of Bangladesh:
>
> And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will."

In the above background, the other points to be decided in these two appeals in view of the charges brought against the accused, the evidence adduced by the parties (both the prosecution and the defence) and the findings of the Tribunal are: (i) whether, in view of the clemency given to 195 admitted prisoners of war pursuant to a tripartite agreement dated the 9th day of April, 1974 amongst Bangladesh, India and Pakistan, the accused could be tried by the Tribunal for the commission of the crimes as alleged against him under the Act, 1973, (ii) whether the delay in initiating the proceedings against the accused long after 41(forty one) years for the commission of the crimes under the Act, 1973, has rendered the prosecution case *ipso facto* doubtful and shaky entitling him to be acquitted of the charges brought against him, (iii) whether the Tribunal was justified in finding the accused guilty of the charges of the commission of crimes under the Act, 1973 as listed in charge Nos.1, 2, 3, 5 and 6 and as to whether the Tribunal was justified in sentencing him to suffer imprisonment for life instead of hanging, in the facts and circumstances of the case, and the evidence on record, (iv) whether the Tribunal was justified in

acquitting the accused of the charges of the commission of crimes as listed in charge No.4.

Before I proceed to consider the points as formulated hereinbefore, I deem it profitable to consider and quote some of the provisions of the Act, 1973 and the Rules framed thereunder by the Tribunal in exercise of its power vested under section 22 of the Act, 1973 under the nomenclature 'the International Crimes (Tribunal-2) Rules of Procedure, 2012 (hereinafter referred to as the Rules of Procedure).

Sub-section (2A) of section 6 of the Act, 1973 has provided that the Tribunal shall be independent in the exercise of its judicial functions and <u>shall ensure fair trial</u>(emphasis supplied).

Original sub-section (1) of section 3 of the Act, 1973 stood as follows:

> "3.(1) A Tribunal shall have the power to try and punish any person irrespective of his nationality who, being a member of any armed, defence or auxiliary forces commits or has committed, in the territory of Bangladesh, whether before or after the commencement of this Act, any of the following crimes."
>
> (Crimes have been described in sub-section (2) to the section.)

Sub-section (1) of section 3 was amended on the 14th day of July, 2009 by Act 55 of 2009 as under:

> "3.(1) A Tribunal shall have the power to try and punish any individual or group of individuals, or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of Bangladesh, whether before or after the commencement of this Act, any of the crimes mentioned in sub-section (2)."

Originally the Tribunal was given the jurisdiction to try and punish any person irrespective of his nationality who, being a member of any armed,

defence or auxiliary forces commits or has committed, in the territory of Bangladesh, whether before or after the commencement of the Act, any of the crimes as mentioned in sub-section (2) of section 3 of the Act, 1973, but by the amendment, the Tribunal was given the jurisdiction to try and punish any individual or group of individuals, or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of Bangladesh, whether before or after the commencement of the Act, any of the crimes mentioned in sub-section (2) thereof.

Section 9 of the Act, 1973 has provided as to when and how the proceedings before a Tribunal shall commence in respect of crimes alleged to have been committed by each of the accused persons and also for fixation of the date of trial of such accused person by the Tribunal, the duty of the Chief Prosecutor as to furnish to the Tribunal a list of the witnesses to be produced along with the recorded statement of such witnesses or copies thereof and copies of documents, which the prosecution intends to rely upon in support of charges at least three weeks before the commencement of the trial, list of witnesses for the defence, if any, along with the documents or copies thereof, which the defence intends to rely upon to be furnished to the Tribunal and the prosecution at the time of commencement of trial. Section 10 of the Act, 1973 has provided the procedure of trial to be followed at the trial before the Tribunal. Section 10 reads as follows:

> "10. (1) The following procedure shall be followed at a trial before a Tribunal, namely:-
>
> (a) the charge shall be read out;
>
> (b) the Tribunal shall ask each accused person whether he pleads guilty or not-guilty;

(c) if the accused person pleads guilty, the Tribunal shall record the plea, and may, in its discretion, convict him thereon;
(d) the prosecution shall make an opening statement;

(e) the witnesses for the prosecution shall be examined, the defence may cross-examine such witnesses and the prosecution may re-examine them;
(f) the witnesses for the defence, if any, shall be examined, the prosecution may cross-examine such witnesses and the defence may re-examine them;
(g) the Tribunal may, in its discretion, permit the party which calls a witness to put any question to him which might be put in cross-examination by the adverse party;

(h) the Tribunal may, in order to discover or obtain proof of relevant facts, ask any witness any question it pleases, in any form and at any time about any fact; <u>and may order production of any document or thing or summon any witness</u> (emphasis supplied), and neither the prosecution nor the defence shall be entitled either to make any objection to any such question or order or, without the leave of the Tribunal, to cross-examine any witness upon any answer given in reply to any such question;
(i)the prosecution shall first sum up its case, and thereafter the defence shall sum up its case;

Provided that if any witness is examined by the defence, the prosecution shall have the right to sum up its case after the defence has done so;
(j) the Tribunal shall deliver its judgment and pronounce its verdict.

(2) All proceedings before the Tribunal shall be in English.

(3) Any accused person or witness who is unable to express himself in, or does not understand, English may be provided the assistance of an interpreter.

(4) The proceedings of the Tribunal shall be in public:
Provided that the Tribunal may, if it thinks fit, take proceedings in camera.

(5) No oath shall be administered to any accused person."

Sub-section (3) of section 11 reads as follows:

"(3) A Tribunal shall-

(a) confine the trial to an expeditious hearing of the issues raised by the charges;

(b) take measures to prevent any action which may cause unreasonable delay, and rule out irrelevant issues and statements."

Section 16 has clearly provided what shall be stated in the charge brought against an accused. Section 16 reads as follows:

"16.(1) Every charge against an accused person shall state-

(a) the name and particulars of the accused person;

(b) the crime of which the accused person is charged (emphasis supplied);

(c) such particulars of the alleged crime as are reasonably sufficient to give the accused person notice of the matter with which he is charged (emphasis supplied).

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

Section 19 has provided as to the Rules of evidence to be adopted by the Tribunal, the section is 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 newspapers, 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 following rules of the Rules of Procedure are also very relevant for the disposal of the appeals.

"2(9) **"evidence"** means all statements which the Tribunal permits or requires to be made before it by witnesses, and it includes all other materials, collected during investigation, placed before the Tribunal in relation to matters of fact;"

Sub-rule (2) of rule 43:

"(2) A person charged with crimes as described under section 3(2) of the Act shall be presumed innocent until he is found guilty."

"50.The burden of proving the charge shall lie upon the prosecution beyond reasonable doubt."

"51. (1) The onus of proof as to the plea of 'alibi' or to any particular fact or information which is in the possession or knowledge of the defence shall be upon the defence.
(2) The defence shall also prove the documents and materials to be produced by them in accordance with the provisions of section 9(5) of the Act.
(3) Mere failure to prove the plea of alibi and or the documents and materials by the defence shall not render the accused guilty(emphasis supplied)."
"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 demand 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.
(3)Any statement made to the investigation officer or to the prosecutor in course of investigation by the accused is not admissible in evidence except that part of the statement which leads to discovery of any incriminating material."

From the provisions of the Act and the rules of the Rules of Procedure as discussed and quoted hereinbefore, it appears to me that although the Code of Criminal Procedure and the Evidence Act have not been made applicable in case of the proceedings before the Tribunal, in fact, the essence of a fair trial as envisaged in the said two laws and the principles of law as propounded by this

Court as well as the superior Courts of other jurisdiction has been substantially and clearly infused in the Act, 1973 and the Rules of Procedure. And I am of the view that in sifting, assessing and weighing the evidence on record, both oral and documentary, with reference to the charges levelled against the accused, we must bear in mind the above mentioned provisions of the Act and the Rules of Procedure, particularly, section (2A) of section 6, sub-section (3) of section 11 and sub-rule (2) of rule 43 and rules 50, 51 and 56(1) of the Rules of Procedure, besides the other provisions of the Act and the rules that may appear to be relevant during discussions.

The proceedings in question before the Tribunal commenced on 18th December, 2011 (at that time there was one Tribunal) upon the submission by the Chief Prosecutor in the form of a petition of formal charges of crimes alleged to have been committed by the accused- Abdul Quader Molla as required under section 9(1) of the Act, 1973 and rule 18 of the Rules of Procedure. Eventually, after the creation of Tribunal No.2, the case was transferred to it and it by the order dated 28.05.2012 framed charges against the accused on as many as 6(six) heads listing the charges as charge Nos.1-6 which are as under:

> "**Charge-01:**
> that during the period of War of Liberation in 1971, one Pallab, student of Bangla College was one of the organizers of War of Liberation. For such reason anti-liberation people, in order to execute their plan and to eliminate the freedom loving people, went to Nababpur from where they apprehended Pallab and forcibly brought him to you at Mirpur section 12 and then on your order, your accomplices dragged Pallab there from to Shah Ali *Majar* at section 1 and he was then dragged again to *Idgah* ground at section 12 where he was kept hanging with a tree and on 05 April 1971, on your order, your notorious accomplice Aktar, Al-Badar,

killed him by gunshot and his dead body was buried, by the side of 'Kalapani Jheel' along with dead bodies of 07 others.

Therefore, you accused Abdul Quader Molla, in the capacity of one of prominent leaders of Islami Chatra Sangha as well as significant member of Al-Badar or member of group of individuals are being charged for participating and acts, in concert with Al-Badar members, causing murder of Pallab, a non-combatant civilian which is an offence of murder as crime against humanity and for complicity to commit such crime as specified in section 3(2)(a)(h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge-02

that during the period of War of Liberation, on 27 March 1971, at any time, you, one of leaders of Islami Chatra Sangha as well as a prominent member of Al-Badar or member of group of individuals, being accompanied by your accomplices, with common intention, brutally murdered the pro-liberation poet Meherun Nesa, her mother and two brothers when they had been in their house located at section 6, Mirpur, Dhaka. One of survived inmates name Seraj became mentally imbalanced on witnessing the horrific incident of those murders. The allegation, as transpired, indicates that you actively participated and substantially facilitated and contributed to the attack upon unarmed poet Meherun Nesa, her mother and two brother causing commission of their brutal murder.

Therefore, you, in the capacity of one of leaders of Islami Chatra Sanghs and as well as prominent member of Al-Badar or member of group of individuals are being charged for participating and substantially facilitating and contributing to the commission of the above criminal acts causing murder of civilians which is and offence of 'murder as crime against humanity' and for 'complicity to commit such crime' as specified in section 3(2)(a)(h) of the International Crimes (Tribunal) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge-3

that during the period of War of Liberation, on 29.03.1971 in between 04:00 to 04:30 evening, victim Khondoker Abu Taleb was coming from Arambag to see the condition of his house located at section-10, Block-B, Road-2, Plot-13, Mirpur, Dhaka but he found it burnt into ashes and then on the way of his return to Arambag he arrived at Mirpur-10 Bus Stoppage wherefrom you, one of leaders of Islami Chatra Sangha as well as potential member of Al-Badar, being accompanied by other members of Al-Badars, Razakars, accomplices and non-Bengaleese apprehended him, tied him up by a rope and brought him to the place known as 'Mirpur Jallad Khana Pump House' and slaughtered him to death. The allegation, as transpired, sufficiently indicates that you actively participated, facilitated and substantially contributed to the execution of the attack upon the victim, an unarmed civilian, causing commission of his horrific murder.

Therefore, you, in the capacity of one of leaders of Islami Chatra Sangha as well as potential member of Al-Badar or member of group of individuals are being charged for participating, facilitating and substantially contributing to the commission of the above criminal acts cussing murder of a civilian which is an offence of 'murder as crime against humanity' and for 'complicity to commit such crime' as specified in section 3(2)(a)(h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge-4

that during the period of War of Liberation, on 25.11.1971 at about 07:30 am to 11:00 am you along with your 60-70 accomplices belonging to Rajaker Bahini went to the village Khanbari and Ghotar Char (Shaheed Nagar) under police station Keraniganj, Dhaka and in concert with your accomplices, in execution of your plan, raided the house of Mozaffar Ahmed Khan and apprehended two unarmed freedom fighters named Osman Gani and Golam Mostafa there from and thereafter, they were brutally murdered by charging bayonet in broad-day light.

Thereafter, you along with accomplices attacking two villages know as Bhawal Khan Bari and Ghotar Chaar (Shaheed Nagar), as part of systematic attack, opened indiscriminate gun firing causing death of hundreds of unarmed villages including (1) Mozammel Haque (2) Nabi Hossain Bulu (3) Nasir Uddin (4) Aswini Mondol (5) Brindabon Mondol (6) Hari Nanda Mondol (7) Reantosh Mondol Zuddin (8) Habibur Rahman (9) Abdur Rashid (10) Miaz Uddin (11) Dhoni Matbor (12) Brindabon Mridha (13) Sontosh Mondol (14) Bitambor Mondol (15) Nilambor Mondor (16) Laxzman Mistri (17) Surja Kamar (18) Amar Chand (19) Guru Das (20) Panchananon Nanda (21) Giribala (22) Maran Dasi (23) Darbesh Ali and (24) Aroj Ali. The allegation, as transpired, sufficiently indicates that you actively participated, facilitated, aided and substantially contributed to cause murder of two unarmed freedom fighters and the attack was directed upon the unarmed civilians, causing commission of their horrific murder.

Therefore, you, in the capacity of one of leaders of Islami Chatra Sangha as well as prominent member of Al-Badar or member of group of individuals are being charged for accompanying the perpetrators to the crime scene and also aiding and substantially facilitating the co-perpetrators to the crime scene and also aiding and substantially facelifting the co-perpetrators in launching the planned attack directing the non-combatant civilians that resulted to large scale killing of hundreds of civilians including 24 persons named above and also to cause brutal ‘murder as crime against humanity’, ‘aiding and abetting the commission of murder as crime against humanity’ and also for ‘complicity in committing such offence’ as mentioned in section 3(2)(a)(g)(h) of the International Crimes (Tribunal) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge-5

that during the period of War of Liberation, on 24.04.1971 at about 04:30 am, the member of Pakistani armed forces landing from helicopter moved to the western side of village Alubdi near Turage ricer and about

50 non-Bengaleese, Rajakers and members of Pakistani armed force under your leadership and guidance also came forward from the eastern side of the village and then you all, with common intention and in execution of plan, collectively raided the village Alubdi (Pallabi, Mirpur) and suddenly launched the attack on civilians and unarmed village dwellers and opened indiscriminate gun firing that caused mass killing of 344 civilians including (1) Basu Mia son of late Jonab Ali (2) Zahirul Molla (3) Jerat Ali (4) Fuad Ali (5) Sukur Mia (6) Awal Molla son of late Salim Molla (7) Sole Molla son of late Digaj Molla (8) Rustam Ali Bepari (9) Karim Molla (10) Joinal Molla (11) Kashem Molla (12) Badar Uddin (13) Bisu Molla (14) Ajal Haque (15) Fajal Haque (16) Rahman Bepari (17) Nabi Molla (18) Alamat Mia (19) Moklesur Rahman (20) Fulchan (21) Nawab Mia (22) Yasin Vanu (23) Lalu Chan Bepari (24) Sunu Mia constitution the offence of their murder. The allegation, as transpired, sufficiently indicates that you actively participated, facilitate4d, aided and substantially contributed to the attack directed upon the unarmed civilians, causing commission of the mass murder.

Therefore, you in the capacity of one of leaders of Islami Chatra Sangha as well as prominent member of Al-Badar or member of group of individuals are being charged for accompanying the perpetrators to the crime scene and also aiding the Pak army and co-perpetrators in launching the attack that substantially contributed to the execution of the planned attack directing the hundreds of non-combatant civilians that resulted to their death and as such you have committed the offence of 'murder as crime against humanity', 'aiding and abetting' to the commission of such offences' and also for 'complicity in committing such offence' as mentioned in section 3(2)(a)(g)(h) of the International Crimes (Tribunal) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge-6

that during the period of War of Liberation, on 26.03.1971 at about 06:00 pm you being accompanied by some *biharis* and Pakistani armi went to the house being house number 21, Kalapani Lane No.5 at Mirpur Section-12 belonging to one Hajrat Ali and entering inside the house forcibly, with intent to kill Bangalee civilians, your accomplices under your leadership and on your order killed Hazrat Ali by gun fire, his wife Amina was gunned down and then slaughtered to death, their two minor daughters named Khatija and Tahmina were also slaughtered to death, their son Babu aged 02 years was also killed by dashing him to the ground violently. During the same transaction of the attack your 12 accomplices committed gang rape upon a minor Amela aged 11 years but another minor daughter Momena who somehow managed to hide herself in the crime room, on seeing the atrocious acts, eventually escaped herself from the clutches of the perpetrators. The atrocious allegation, as transpired, sufficiently indicates that you actively participated, facilitated, aided and substantially contributed to the attack directed upon the unarmed civilians, causing commission of the horrific murders and rape.

Therefore, you, in the capacity of one of leaders of Islami Chatra Sangha as well as prominent member of Al-Badar or member of group of individuals are being charged for accompanying the perpetrators to the crime scene and also aiding, abetting, ordering the accomplices in launching the planned attack directing the non-combatant civilians that substantially contributed to the commission of offence of 'murder as crime against humanity', 'rape as crime against humanity', 'aiding and abetting the commission of such crimes' and also for 'complicity in committing such offences' as mentioned in section 3(2)(a)(g)(h) of the International Crimes (Tribunal) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Thus, the above charges sufficiently indicated that you have committed the offences under section 3(2)(a)(g) and (h) which are punishable under section 20(2) read with section 3(1) of the Act."

The charges were read over and explained to the accused to which he pleaded not guilt and claimed to be tried. The Tribunal fixed 20.06.2012 for opening statement and examination of witnesses. And examination of witnesses commenced on 03.07.2012.

The prosecution in total examined 12(twelve) witnesses and they were duly cross-examined by the defence. The defence also examined 6(six) witnesses including the accused and they were duly cross-examined by the prosecution.

The case of the defence, as it appears from the trend of cross examination of the prosecution witnesses and examination of the defence witnesses, was that of total innocence. The accused was not, at all, involved with any of the crimes as alleged in the charges. The accused also took the plea of *alibi* that he had gone to his village home at Amirabad under the District of Faridpur after 7th March, 1971 and stayed there till March, 1972.

After conclusion of trial, the Tribunal by the impugned judgment and order found the accused guilty of the charges as listed in charge Nos.1, 2, 3, 5 and 6 and accordingly, sentenced him as stated at the beginning of this judgment. The Tribunal also acquitted the accused of the charges as listed in charge No.4; hence these appeals.

Before entering into the factual aspects of the case, it is necessary to meet the two legal objections taken by Khandakar Mahbub Hossain and Mr. Abdur Razzaq, learned Counsel for the appellant- Abdul Quader Molla in Criminal Appeal No.25 of 2013 as well as respondent in Criminal Appeal No.24 of 2013 as formulated in point Nos.(i) and (ii) hereinbefore.

The first legal objection taken by the learned Counsel for the convict-appellant is that the Act, 1973 was, in fact, enacted by the Parliament to try only 195 admitted prisoners of war and since pursuant to a tripartite agreement dated the 9th of day April, 1974 amongst the States: Bangladesh, India and Pakistan, they were given clemency and repatriated to Pakistan, the appellant, a citizen of the country, could not be tried for the commission of alleged crimes as mentioned in section 3(2) thereof and as such, the whole trial was without jurisdiction. In support of his contention, Mr. Razzaq has relied upon the proceedings of the parliamentary debates.

It is a fact that when the Act, 1973 was enacted in section 3(1) thereof, power was given to the Tribunal to try and punish any person irrespective of his nationality who, being a member of any armed, defence or auxiliary forces commits or has committed, in the territory of Bangladesh, whether before or after the commencement of the Act, any of the crimes as mentioned in sub-section (2) (original sub-section (1) of section 3 has been quoted hereinbefore). By subsequent amendment made on 14th July, 2009, power was given to the Tribunal to try and punish any individual or group of individuals in addition to a member of any armed, defence or auxiliary forces, irrespective of his nationality who commits or has committed offence, in the territory of Bangladesh, whether before or after the commencement of the Act any of the crimes mentioned in sub-section (2) thereof (first amendment to the section has been quoted hereinbefore). Therefore, the appellant, an individual, came within the jurisdiction of the Tribunal to be tried. It may be kept on record that by another amendment made to the section on the 18th day of February, 2013 “or

organisation" has also been brought under the jurisdiction of the Tribunal. It needs no elaboration that the Parliament has the power to amend a law. The Act, 1973 is a protected law and the moment, sub-section (1) was amended by way of substitution in the manner as stated hereinbefore it became part of the statute and it got the protection of any legal challenge to be void or unlawful or ever to have become void or unlawful in view of the provisions of article 47(3) of the Constitution. So, even it is accepted that originally, the Act was enacted to try only 195 admitted war criminals, who were given clemency, in no way, improves the case of the accused that he cannot be tried. It further needs to be mentioned that although clemency was given to 195 admitted prisoners of war, on the 9th day of April, 1974, the Act, 1973 remained, in other words, the Act was not repealed and in the meantime, amendment was brought to section 3(1) thereof bringing an individual like the appellant under the jurisdiction of the Tribunal. The clemency given to the admitted prisoners of war, in no way, either made the Act, 1973 or any of its provisions ineffective, invalid or void and mere failure of the successive Governments to act in accordance with the Act for a longer period (forty one years), in any way, gave any right to the accused to be exonerated from being tried for the commission of crimes as mentioned in sub-section (2) of section 3 thereof. Therefore, the objection taken by the learned Counsel for the appellant is not sustainable. The Tribunal did not commit any illegality in trying the appellant.

The other legal objection taken by the learned Counsel for the convict-appellant is that the crimes for the commission of which he was charged and tried were allegedly committed during the period of 1971, whereas, the petition

of formal charge was filed by the prosecution as per section 9(1) of the Act, 1973 only on 18.12.2011, that is, long after 41(forty one) years without giving any explanation whatsoever for such inordinate delay in commencing the proceedings and this long unexplained delay was enough to doubt the prosecution case, *prima facie*, the Tribunal ought to have acquitted the accused of the charges brought against him without entering into the factual aspects of the case chargewise. The case in hand is not a case under the general laws of the land. As stated hereinbefore, the proceedings of the case giving rise to these appeals commenced under a special and protected law enacted by the Parliament for certain classified crimes as mentioned in sub-section (2) of section 3 of the Act, 1973. The case was not initiated either by filing a First Information Report (FIR) or by filing a petition of complaint. In the Act, a special detailed procedure has been laid down as to when and how proceedings thereof shall be commenced before the Tribunal. In the Act, 1973, no limitation has been prescribed for initiating proceedings against any individual or group of invidividual or organisation or any member of any armed, defence or auxiliary forces irrespective of his nationality for the commission of crimes as mentioned in sub-section (2) of section 3 thereof as well as for holding their trial. This will be clear if we consider the provisions of sections 7, 8 and 9 of the Act, 1973 which are as follows:

> "7. (1) The Government may appoint one or more persons to conduct the prosecution before a Tribunal on such terms and conditions as may be determined by the Government; and every such person shall be deemed to be a Prosecutor for the purposes of this Act.
>
> (2) The Government may designate one of such persons as the Chief Prosecutor."

“8. (1) The Government may establish an Agency for the purposes of investigation into crimes specified in section 3; and any officer belonging to the Agency shall have the right to assist the prosecution during the trial.

(2) Any person appointed as a Prosecutor is competent to act as an Investigation Officer and the provisions relating to investigation shall apply to such Prosecutor.

(3) Any Investigation Officer making an investigation under this Act may, by order in writing, require the attendance before himself of any person who appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

(4) Any Investigation Officer making an investigation under this Act may examine orally any person who appears to be acquainted with the facts and circumstances of the case.

(5) Such person shall be bound to answer all questions put to him by an Investigation Officer and shall not be excused from answering any question on the ground that the answer to such question will incriminate, or may tend directly or indirectly to incriminate, such person:

Provided that no such answer, which a person shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding.

(6) The Investigation Officer may reduce into writing any statement made to him in the course of examination under this section.

(7) Any person who fails to appear before an Investigation Officer for the purpose of examination or refuses to answer the questions put to him by such Investigation Officer shall be punished with simple imprisonment which may extend to six months, or with fine which may extend to Taka two thousand, or with both.

(8) Any Magistrate of the first class may take cognizance of an offence punishable under sub-section (7) upon a complaint in writing by an Investigation Officer.

(9) Any investigation done into the crimes specified in section 3 shall be deemed to have been done under the provisions of this Act."

"9.(1) The proceedings before a Tribunal shall commence upon the submission by the Chief Prosecutor, or a Prosecutor authorised by the Chief Prosecutor in this behalf, of formal charges of crimes alleged to have been committed by each of the accused persons.

(2) The Tribunal shall thereafter fix a date for the trial of such accused person.

(3) The Chief Prosecutor shall, at least three weeks before the commencement of the trial, furnish to the Tribunal a list of witnesses intended to be produced along with the recorded statement of such witnesses or copies thereof and copies of documents which the prosecution intends to rely upon in support of such charges.

(4) The submission of a list of witnesses and documents under sub-section (3) shall not preclude the prosecution from calling, with the permission of the Tribunal, additional witnesses or tendering any further evidence at any stage of the trial;

Provided that notice shall be given to the defence of the additional witnesses intended to be called or additional evidence sought to be tendered by the prosecution.

(5) A list of witnesses for the defence, if any, along with the documents or copies thereof, which the defence intends to rely upon, shall be furnished to the Tribunal and the prosecution at the time of the commencement of the trial."

A reading of sub-section (1) of section 7 shows that the Government may appoint one or more persons to conduct the prosecution before a Tribunal on such terms and conditions as may be deemed by the Government and every such person shall be deemed to be Prosecutor for the purpose of the Act. Sub-section (2) of section 7 has further stipulated that the Government may designate one of such persons as the Chief Prosecutor. Sub-section (1) of

section 8 shows that the Government may establish an Agency for the purpose of investigation into the crime specified in section 3 and any officer belonging to the Agency shall have the right to assist the prosecution during trial. Sub-section (2) has provided that any person appointed as a prosecutor is competent to act as an Investigation Officer and the provisions relating to investigation shall apply to such prosecutor. The other sub-sections of section 8 have dealt with the power of the Investigation Officer to require the attendance of any person before him acquainted with the circumstances of the case, power of Investigation Officer to examine orally any person who appears to be acquainted with the facts and circumstances of the case and the other ancillary provisions such as if any person fails to appear as required by the Investigation Officer. Section 9 is the utmost important, as it has dealt with as to how the proceedings before a Tribunal shall be commenced. Sub-section (1) of section 9 has provided that the proceedings before a Tribunal shall be commenced upon the submission by the Chief Prosecutor, or a Prosecutor authorised by the Chief Prosecutor in this behalf, of formal charges of crimes alleged to have committed by each of the accused persons. Other sub-sections have dealt with how the proceedings shall be continued before the Tribunal and the documents to be filed by the prosecution and the defence including the provision of calling additional witnesses or tendering any further evidence at any stage of the trial and the procedure as to how the additional witnesses shall be called or additional evidence shall be tendered. Section 22 of the Act has provided that subject to the provisions of the Act, a Tribunal may regulate its own procedure and pursuant to that section, Tribunal No.2 which held the trial of the accused

promulgated the Rules of Procedure, for investigation, prosecution, trial of the offences as are prescribed and enumerated in the Act by way of adopting the procedure including all of its amendments thereto embodied in the International Crimes (Tribunals) Rules of Procedure, 2010 formulated by Tribunal No.1 in 2010 (initially, there was only one Tribunal) and also by incorporating and also by some additions and changes in rules 18(4), 26, 29(1), 43, 53, 54(1) and 55 for smooth functioning of the Tribunal. In the Rules of Procedure also, no limitation has been prescribed either for initiating a proceedings or for investigation of a case in respect of a crime described in section 3(2) of the Act. Only in sub-rule (5) of rule 9 of the Rules of Procedure, it has been provided that if an accused is in custody during investigation period, the Investigation Officer shall conclude the investigation within one year of his arrest under the Rules and in case of failure to complete the investigation within the time, the accused may be released on bail subject to fulfilment of some conditions as imposed by the Tribunal. In the sub-rule, it has further been provided that in exceptionable circumstances, the Tribunal by showing reasons to be recorded in writing, may extend the period of investigation and also the order detaining the accused in custody for a further period of six months. Sub-rule (6) has provided that after every three months of detention of the accused in custody, the Investigation Officer through the Prosecutor shall submit a progress report of investigation before the Tribunal on perusal of which it may make a review of its order relating to the detention of the accused. In rule 5, it has been provided that the Investigation Agency shall maintain a complaint Register with necessary particulars on putting date

and serial numbers of the complaints meant for initiating investigation under the Act. Rule 6 has provided that if the Investigation Officer has reason to believe that any offence has been committed, he shall proceed in person to the spot, investigate the facts and circumstances of the case and if necessary, take steps for the discovery and arrest of the accused and rule 7 has provided that if the Investigation Officer finds and is satisfied that there is no sufficient ground for investigation, he may stop investigation with the concurrence of the Chief Prosecutor.

From the above discussions, it is clear that no limitation has been prescribed by the Act, 1973 and the rules framed thereunder for initiating/commencing the proceedings against a person for the commission of crime as mentioned in sub-section (2) of section 3 thereof. Therefore, the delay in commencing the proceedings in question against the accused after 41(forty one) years *ipso facto* cannot be a ground to doubt the truth or veracity of the prosecution case. At the risk of repetition, it is stated that for the inaction of the executive or for the failure of the executive to act in accordance with the provisions of a statute, (here the Act, 1973) for a considerable period, or for a long period, neither the law nor any of its provisions can be made ineffective and nugatory, particularly, in case of a criminal act of a person and such delay cannot also give an accused the benefit of doubt as to the commission of an offence or crime as may be given in the case of a trial under the ordinary laws of the land. Mr. Abdur Razzaq has cited some decisions of this Division as well as of the other superior Courts on the question of delay. But all those cases arose out of the FIR under the ordinary law of the land. Therefore, the principles of law

enunciated in those cases do not help Mr. Razzaq to substantiate his submission.

For the reasons stated above, I do not find any substance in the submission of Mr. Abdur Razzaq on the question of delay in commencing the proceedings in question

I shall now consider the points as formulated in point Nos.(iii) and (iv) hereinbefore. In deciding these points, I propose to proceed chargewise, and as both these points would require sifting, assessing and weighing of the evidence, both oral and documentary, I consider it necessary to have a look at the depositions of the prosecution witnesses (emphasis supplied).

PW1 is Muzaffar Ahmed Khan. This PW stated in his examination-in-chief that at the time of liberation war, he was an S.S.C.examinee and was the student of Atibaul High School. In 1969, he was the president of Chhatra League of Keraniganj Thana. During the mass movement of 1969, he participated in the various programmes with the student leaders of Dhaka University. He participated in the election campaign of 1970. Asraf Ali Chowdhury was the candidate of Awami League. He worked for the Awami League candidate at Mirpur-Mohammadpur constituency in Dhaka City. Professor Golam Azam was the candidate of Jamat-E-Islami in Mirpur-Mohammadpur constituency. Abdul Quader Molla worked for Golam Azam. Though Awami League secured majority seats in the election, it was not allowed to sit in the Assembly. As the talk, between Yahia Khan, the President of Pakistan and Bangabandhu, failed, he could understand that something was going to happen. After the speech of Bangabandhu on 7th March, 1971, the PW was preparing for *muktijuddha*. The Pakistan army attacked the innocent

Bangalees on 25th March, 1971. After 26th March, he along with his friends took preparation for going to India for organizing *muktijuddha.* In May, 1971, he along with 15(fifteen) other friends started for India. At first, they went to Agartala, India where they made entry of their names at the Congress Bhaban. At the end of July, the PW along with his friends was sent to Lailapur Cantonment, Assam for armed training and there they took training on arms. After completion of training, he came back at Melagor, Agartala where they were given arms under the leadership of Major Haider and Captain Halim Chowdhury. He entered into Bangladesh as a leader of 25(twenty five) freedom fighters and established a freedom fighters' camp (মুক্তিযোদ্ধের ক্যাম্প) at Kalatia under Police Station Keraniganj. During the liberation war, on 25th November, 1971, he first heard the sound of firing at dawn (ভোর রাতে) and then he along with his troops from Kalatia, Nazirpur moved towards Ghatarchar. In the meantime, the PW met with his father who asked him where he was going, he replied that he was going towards Ghatarchar. His father forbade him to go to that direction. He (father) further stated that their house was attacked and was set on fire, freedom fighters, Osman Gani and Golam Mostafa were killed by the local Razakars. His father also advised him not to open fire from his arms. The PW further stated that he sat at the low lying place (no mention of the place) along with his troops asking his father to go to his camp. The attack was (আক্রমনটা ছিল) at the time of Fazar prayer and the same continued till 11:00 a.m. In Ghatarchar, 57 persons were killed both Hindus and Muslims. From Ghatarchar, they attacked Khanbari and then Bara Bhawal and killed 25(twenty five) persons. At 11:00 a.m. the PW got the information that the Rajakars and

the Pakistan army had left the place. He went to Khanbari with his troops from back side without going through the main road and saw his house ablaze and also found the dead bodies of Osman Gani and Golam Mostafa. After making arrangement of the burial of the dead bodies of Osman Gani and Golam Mostafa at Khanbari, the PW went to Ghatarchar by the back road, going to Ghatarchar, he saw a deadly situation (বিভৎস অবস্থা) and found only blood and dead bodies. There he met with the local people named Taib Ali, Abdul Mazid (PW7) and many others, who identified the dead bodies of the Hindus and the Muslims. He inquired of them who caused the occurrence (কারা এই ঘটনা ঘটিয়েছে), Abdul Mazid told that there was a meeting on 23/24th November, 1971 at Gatarchar and in that meeting, Dr. Zainul, K.J.Karim Babla, Muktar Hossain, Faizur Rahman of Muslim League were present, who arranged the meeting in liaison (যোগযোগ করে) with Abdul Quader Molla of Islami Chhatra Sangha and Abdul Quader Molla was also present therein. In that meeting, decision was taken to kill the unarmed people and that decision was executed on 25th November, 1971. During the liberation war, once he went to the residence of his maternal uncle at Mohammadpur area in disguse and while he was returning to his village home, he saw Quader Molla standing with arms along with his companions in front of the gate of the torture cell of Mohammadpur Physical Training Centre. The mass killing, setting fire (অগ্নি সংযোগ) and looting, which took place at Ghatarchar on 25th March, then said 25th November, were committed by the local Rajakars in liaison (যোগাযোগে) with Abdul Quader Molla and under his leadership. He had been demanding the trial of the offences committed against humanity for quite a long time. He along with Shahid

Jahanara Imam, Colonel Nuruzzaman, leaders of *Ghatak Dalal Nirmul Committee,* also demanded the trial of the pertetrators of crime against humanity. In 2007, he filed a complaint case being C.R.Case No.17 of 2007 in the Court of Chief Judicial Magistrate, Dhaka which was subsequently registered as Karaniganj Police Station Case No.34(12)2007. He demanded the punishment of the war criminals (যোদ্ধ অপরাধীদের). He identified accused Quader Molla on the dock.

In cross examination, the PW stated that he had voter I.D. card which he could show and he produced the same. In the voter I.D. card, his date of birth was recorded as 3rd March, 1953. He could not remember whether he was a voter in 1970. Atibaul High School was under Police Station, Keraniganj. He passed the S.S.C. examination from Atibaul High School in 1972 and then H.S.C. from Hafej Musa College in 1974. The said College was under Lalbag Police Station and now under Hajaribag Police Station. He got himself admitted in B.Sc in Sheikh Burhanuddin College, in 1974, but he did not appear in the examination and thereafter, he did not achieve any further degree. He could not say who were the VP and G.S. of the various Halls of Dhaka University in 1974. He further stated that in 1969, the then students' leader, Nur-e-Alam Siddiqui, recognized him as the president of Chhatra League of Keraniganj, Thana. Nur-e-Alam Siddiqui is still alive and is an ex-member of Parliament. In 1969, there was no office of Keraniganj Chhatra League. There was a 21-member committee of the Thana Chhatra League, Zafarullah was the Secretary and he is dead. Out of 20, 15 are alive and out of 15, one is the Secretary to the Government of Bangladesh and the others are Md.

Shahabuddin, Md. Khalilur Rahman, Anwar Hossain Faruqui, Shajahan Faruqui, Shahanewaj, Azizur Rahman Khan, Mofizuddin, Abdul Jalil, Mahmudul Haque, Fazlur Rahman, Shamsul Haque, Nazrul Islam, Abdul Aziz and he could not remember the names of two others at the moment. Of these 15(fifteen), Md. Shahabuddin, Anwar Hossain, Faruqui, Shajahan Faruqui, Nazrul Islam and Mofizuddin were freedom fighters and they were of his age. Md. Shahabuddin, Golam Mostafa, Md. Abdul Hakim, Md. Mujibar Rahman, Md. Babul Mia, Md. Ershad Ali, Md. Hasan, Sree Hiralal Ghos, Sirajul Haque, Shahidullah, Md. Alauddin, Md. Abdul Awal, Abdus Sohban, Md. Shah Alam, Md. Abdul Mannan went to *muktijuddha* with the PW and of these persons: Sobhan, Hasan, Babul Mia, Hiralal Ghos and Md. Ershad are dead. After taking training at Lialapur camp, Asam, he returned at Melagor in a truck along with 20-25 others. He was on rest for 7(seven) days along with others at Melagor. The number of members, in which the PW teamed, was 25(twenty five) and from Melagor, they were sent to Bangladesh with arms via Comilla C & B road. Out of 25, 15 were from Keraniganj Thana and 10 were from the neighbouring Thana. They established their camp in a private house at Kalatia under Police Station, Keraniganj. The owner of the house was Matiur Rahman, who is still alive. Matiur Rahman is an aged man and he cannot move. He further stated that the camp was established on 28th August, 1971. As a freedom fighter, he carried out the first operation on 5th September, 1971 at Tulshikhali under Syedpur. The operation started at 10 a.m. against Pakistan army. Pakistani army first attacked the freedom fighters' camp at Paragram. Yahaya Khan Chowdhury Pinto was in charge of paragram camp. On getting

information from Nazirpur, the PW and the other freedom fighters proceeded to the place of occurrence. The other freedom fighters also started coming from the various camps. There were 5(five) camps of the freedom fighters at Kalatia. Exchange of firing between Pak army and the freedom fighters continued upto 4:00 p.m. In the fight, freedom fighters, Omar Ali embraced martyrdom and 10(ten) others along with the PW were injured. Omar Ali was under the command of Pinto shaheb. In his group, except the PW, none was injured. In the fight, 53(fifty three) Pakistani army peronnel were killed. The PW was taken to the house of Dr. Abdus Salam at Kalatia in injured condition and he had been under treatment there for 7(seven) days. At the relevant time, there were some Rajakars and Al-Badars of his age. The brother of Dr. Salam was also a freedom fighter, who died in the war, but he could not remember his name. He returned to Nazirpur after 7 days. Doctor Salam took Dr. Aktaruzzaman of Mitford Hospital to Nazirpur camp to cut his stitch. He had been in rest at Nazirpur camp for 15(fifteen) days. Then said he had been in rest for 3(three) weeks from 5th September, other freedom fighters took part in operation to resist the Rajakars. The local Razakars and the Al-Badars knew that there was a camp of freedom fighters at Nazirpur, but neither Pakistan army nor the Rajakars attacked the Nazirpur camp. Nazirpur camp was in existence (চালু ছিল) till 16th December, 1971. He further stated that he had gone to India in the first week of October for treatment and had been in Bishalgor Muktijoddha Hospital for 15(fifteen) days. After release from the hospital, he went to see his sector Commander, Major Haider at Melagor and stayed there for 2(two) days and then came back Nazirpur at the end of October (অক্টোবরের

শেষে) with new responsibility along with arms and explosives. After coming to Nazirpur camp, he found all his co-freedom fighters. Sector Commander gave him a special responsibility, that is, to blow up the Rajakars' camp at Mohammadpur; Nazirpur was about 10(ten) miles away from Mahammadpur Rajakars' camp. On 01.11.1971, he came to Mohammadpur by a boat from Atibazar. He got down from the boat probably at Satmasjid Ghat at Mohammadpur at 10 a.m. The distance of Mohammadpur Razakars' camp from the boat ghat was about quarter mile. He was alone and he kept only a small arm with him for his safety. He further stated that he came for raking with some vegetables and gourd in order to see the camp properly (ভাল করে দেখার উদ্দেশে). He walked in front of the camp and went to the residence of his maternal uncle. The name of his maternal uncle was Giasuddin who died in the meantime. The Razakers' camp was at the Physical Training Institute, Mohammadpur. There was no signboard in front of the Razakars' camp. He stayed at his maternal uncle's house for 10 minutes and he had gone for the first time on that date. He knew the number of his maternal uncle's house, but he would not disclose the number for their security. His maternal aunt-in-law (মামী) also died, but his five cousins (মামাত বোন ৩জন +মামাত ভাই ২জন) are alive. He further stated that in 1971, the eldest son of his maternal uncle was major, but he would not tell his name for security reason. He further stated that from his maternal uncle's house, he straightaway went to Bhawal Khanbari and took his lunch with his mother. The distance of the house of his maternal uncle at Mohammadpur and his mother's house was five miles, he returned to Nazirpur in the evening. He further stated that from Mohammadpur to Kalatia, there was

no camp of freedom fighters, but there were two camps of Razakars: one at Ghatarchar and the other at Kulchar (Atibazar). During raking, he came to know that Mohammadpur and Mirpur were the Bihari dominated areas. After raking, no operation could be done in Mohammadpur. He further stated that he went to India on 10th November, 1971 and reported there and after staying two days again came to Nazirpur. In 2008, Lalbag was his constituency. Doctor Mustafa Jalal Mohiuddin was the candidate of Awami League and he worked for him. Though he (the PW) lives at Lalbag, he runs his business at Keraniganj. Shaheed Osman Gani and Golam Mostafa were freedom fighters and their certificates as freedom fighters are with their families. The mother of Osman Gani and his two brothers and five sisters are alive. Father's name of Golam Mostafa is Ahmed Hossain @ Tukub Ali. Father's name of Osman Gani is Mohammad Hossain. Mostafa has a son and a daughter and they are alive. The daughter was married and possibly son also got married. In the incident, which took place on 25th November, 1971 as stated by him, in his examination-in-chief, only the two freedom fighters were killed. After 25th November, 1971, they did not go for any operation and they surrendered their arms on 16th December to Mostafa Mohsin Monto, the Commander of Mujib Bahini, who deposited those arms to Bangabandhu at Dhaka Stadium in January. The houses of Taib Ali and Abdul Mazid as mentioned in his examination-in-chief are at Ghatarchar Tanpara and Ghatarchar Khalpara respectively. Abdul Mazid told him that there was a meeting at the house of Doctor Zainul Abedin at Ghatarchar Khalpara, on 23/24th November, Abdul Mazid is alive and he is at Ghatarchar. He further stated that in the election of

1996, he worked for Mostafa Mohsin Montu, a candidate from Awami League. The case filed by him in 2007 being C.R.Case No.17 of 2007 and subsequently numbered as Keraniganj Police Station Case No.34(12)2007, was transferred to the Tribunal. He denied the defence suggestion that he was not the voter from Keraniganj area in 1996 and 2008. Then said, in 1996, he was a voter of Keraniganj. He further stated that possibly, Tofail Ahmed was the Secretary of DAKSU in 1970, then said he could not remember correctly. Possibly, Quader Molla of Islami Chhatra Sangha was the G.S. of Shahidullah Hall in 1970. He had no personal rivalry with Quader Molla, but there was political rivalry. He knew Quader Molla as the leader of the central committee of Islami Chhatra Sangha as he used to come with the procession at Madhur Canteen at Bat Tala of Dhaka University. He gave statements before the Chief Judicial Magistrate, Dhaka in C.R.Case No.17 of 2007 and then he was testifying before the Tribunal and in between, he did not testify anywhere (অন্য কোথাও). None wanted his certificate as a freedom fighter, so he did not give the same to anyone. His original command certificate, which was with him, was destroyed (নষ্ট হয়ে যায়) when he jumped into the river seeing the Pak army while he was coming from India. Then said it was not a certificate, but an appointment letter. Subsequently, he went to India and asked for the appointment letter from Major Haider, but since there was no photocopy machine, the copy of the original certificate was not given to him. In between the period January, 1972-2007, he did not testify before any Court or authority as testified by him in the case before the Tribunal.

The Tribunal put a specific question to the PW as to whether he saw Quader Molla commit any offence in 1971 with his own eyes. He replied in the affirmative (in the deposition sheet, in Bangla, the question as put to the PW has been recorded as: প্রশ্ন ঃ ১৯৭১ সালের স্বাধীনতাযুদ্ধকালীন সময়ে কাদের মোল্লাকে কোন অপরাধ করতে স্বচক্ষে দেখেছেন কি-না?). Then on further question by the Tribunal to the effect what was the offence committed by Quader Molla which he saw? (in the deposition sheet, in Bangla, the question put to the witness has been recorded as: প্রশ্ন ঃ তাকে কি অপরাধ করতে আপনি দেখেছেন?). The PW replied that he saw him (Quader Molla) standing with a Chinese rifle in his hand in front of the Gate of Physical Training Centre (in the deposition sheet, in Bangla, the answer has been recorded as: আমি তাকে চাইনিজ রাইফেল হাতে সহ ফিজিক্যাল ট্রেনিং সেন্টারের গেইটের সামনে দেখেছি।). Then again on further question by the Tribunal to the effect as to whether he saw him (Quader Molla) to do any other thing (in the deposition sheet, in Bangla, the question put to the PW has been recorded as: প্রশ্ন ঃ আপনি তাকে আর কিছু করতে কি দেখেছিলেন?). The PW replied that he did not see doing any other thing with his own eyes (in the deposition sheet, in Bangla, the answer has been recorded as: আমি স্বচক্ষে আর কিছু করতে দেখি নাই). The PW denied the defence suggestion that it is not a fact that he deposed falsely before the Tribunal as tutored by the prosecution. He also denied the defence suggestion that it is not a fact that he did not know Quader Molla till before the filing of the instant case and that Quader Molla had gone to his own house at Faridpur after the speech delivered by Bangabandhu at Race Course Moidan on 7th March, 1971 and he stayed at his village home till February, 1972 and during this period, he did not come to Dhaka. The PW denied the further defence

suggestion that it is not a fact that Quader Molla was made an accused in the case for political reason only to harass him as he was involved with the politics of Jamat-E-Islami and in student life, he was involved with the Islami Chhatra Sangha and that he deposed in an imaginary way (ইহা সত্য নহে যে, আমি মনগড়া জবানবন্দি দিলাম). He further stated that Ghatarchar and Khanbari are under Police Station, Keraniganj and the distance of Khanbari from Ghatarchar is quarter mile. Khanbari is nearer to Atibazar. He further stated that he filed the C.R.case as stated in his examination-in-chief on 17.12.2007 and in the said case, the incident of 25th November was narrated, but the fact of holding meeting on 23/24th November and presence of Quader Molla in the meeting or the fact of calling the meeting after consultation with Quader Molla, were not stated. He also admitted that in the said C.R.case, it was not stated that the mass killing, setting fire, looting, which took place at Ghatarchar on 25th November, were done by the local Razakers in liaison and under the leadership of Quader Molla (কাদের মোল্লার সঙ্গে যোগাযোগ করে). He could not remember as to whether in para 5 of the case, he stated that upto 1975, all the accused were in jail. He further stated that till date (09.07.2012), he did not file any paper with the Tribunal to show that he had gone to India and took training there and that after training, he came back Bangladesh and participated in the *muktijuddha* and that he got the certificate as freedom fighter. But if the Tribunal wants, he can file those papers. He denied the defence suggestion that it is not a fact that he did not see Quader Molla in front of the Gate of Mohammadpur Physical Training Centre with a rifle in his hand along with his companions while returning back from the house of his maternal uncle. He denied the further

defence suggestion that it is not a fact that as he was an Awami Leaguer and Quader Molla was a leader of Jamat-E-Islami, he deposed falsely to injure him for political reasons (রাজনৈতিক কারনে ক্ষতিগ্রস্থ করার জন্য).

PW2, Syed Shahidul Huq Mama, stated in his examination-in-chief that his father was a prominent Advocate who became a resident of Mirpur in 1960. His school life was started at Sunfranchisco School, Laxmi Bazar, and after going to Mirpur, he got himself admitted in Bengali Medium Junior High School at Mirpur which subsequently was known as Bengali Medium High School. The school was the centre point of movement. He took part in 1962 movement against the infamous Hamidur Rahman Education Commission Report. He also took part in the six points movement in 1966. The six points movement and the eleven points movement were for the emancipation of the country (দেশব্যাপি মুক্তির আন্দোলন). During the 6(six) points and 11(eleven) points movement, he along with others went near Beauty Cinema Hall at Mirpur, S.A. Khaleque, the then leader of Convention Muslim League and Khasru, son of Governor, Monayem Khan attacked on their procession and opened fire. At that time, Quader Molla of Jamat-E-Islami, Doctor T. Ali, Hakka Gunda, Aktar Gunda, Nehal, Hasib Hashmi, Abbas Chairman, Kasai Hafiz, Bidi Member and others called Khan Abdul Quayum Khan, known as Tiger of the frontier (সীমান্তের বাঘ) to hold a meeting at Mirpur against the six points and the eleven points movement. The said meeting was sponsored by Anzuman-E-Mohajerin and was instigated (ইন্ধন যুগিয়েছিল) by Jamat-E-Islami. The present Mirpur stadium was an open field at that time and a big meeting was held there. In that meeting, Khan Abdul Quayum Khan was the chief guest. In the meeting, Khan

Abdul Quayum Khan stated "শেখ মুজিব পাকিস্তানকা গাদ্দার হ্যায়, দুষমন হ্যায়।" The moment, Khan Abdul Quayum Khan made the said comments, the PW along with others jumped into the stage and snatched away the microphone from the hand of Abdul Quayum Khan. After the PW had snatched away the microphone, he and his other companions were given mass beating (in the deposition sheet, in Bangla, it has been recorded as: 'প্রচন্ড গণধোলাই ও মারধোর করে'). His companion, Amin was thrown into a dustbin by lifting (চ্যাংদোলা) him. The PW was taken to Mirpur Police Station beating, where the Police gave a lathi blow and asked him to say "জয় বাংলা." He said "জয় বাংলা". At that stage, the intensity of beating was increased and said, would he say joy bangla (বলবি, জয় বাংলা)? even then, the PW said "জয় বাংলা". After the movement in Bangladesh had reached its pick, the rule of Ayub Khan came to an end and then Yahia Khan came to power and imposed Martial Law. After the imposition of Martial Law, a false case was filed against the PW from which he was acquitted. The persons, who deposed as defence witnesses, Quader Molla, Aktar Gunda, Nehal, Hasib Hashmi, Hashem Chairman, Bihari and Jamat-E- Islami who are the sons of the same mother (যারা এক মায়েরই সন্তান তারা) apprehended them and killed them. In 1970's election, Bangabandhu nominated Advocate Zahiruddin for National Assembly and Dr. Mosharaf Hossain for the Provincial Assembly. He and others sought votes door to door for the candidate nominated by Bangabandhu. In that election, infamous Golam Azam, the Amir of Jamat-E-Islmi contested the election with the symbol 'দাঁড়িপাল্লা'. Advocate Dewan Barasat was the candidate of Anjuman-E-Mohajerin, an organization of Biharis at Mirpur, Mohammadpur. At one stage, Dewan Barasat withdrew his

candidature in favour of Golam Azam. The Biharis, Abdul Quader Molla and others, Aktar Gunda, Hakka Gunda, Abbas Chairman, Hasib Hashmi and Nehal campaigned for Golam Azam. In their election campaign, they used to give slogan uttering*Naraye Takbir Allahu Aakbar, Pakistan Zindabad, Pakistan hai hamara Moulk hai, Joy bangla, Joy Hind, Longi chhurka dhutipin (in the deposition sheet, in Bangla, it has been recorded as:□□□'নারায়ে তকবির আল্লাহ আকবর, পাকিস্তান জিন্দাবাদ, পাকিস্তান হ্যায় হামারা মুলুক হ্যায়, জয় বাংলা, জয় হিন্দ লুঙ্গি ছোড়কা ধুতি পিন্দ"),* Quader Molla out of immense joy used to give slogan along with the Biharis *"gali gali me shor hai, Sheikh Mujib Pakistanka dusmon, gaddar hai(in the deposition sheet in Bangla, it has been recorded as: "গালি গালি মে শোর হ্যায়, শেখ মুজিব পাকিস্তানক্যা দুষমন, গাদ্দারহ্যায়")"*. The PW further stated that in their campaign, they used to give only slogan *Joy Bangla Joy Bangabandhu* (জয় বাংলা জয় বঙ্গবন্ধু). Another slogan which used to be given by Quader Molla and his companions was "*Kahatera Bangladesh, dekh ebar tamasha dekh, dhamaka dekh(in the deposition sheet, in Bangla, it has been recorded as:"কাহা তেরা বাংলাদেশ, দেখ, এবার তামাশা দেখ ধামাকা দেখ।")*". Historic 7th March was born following the non co-operation movement. In the meeting, held on that date, lacs of people attended and Bangabandhu gave direction saying "*এ বারের সংগ্রাম মুক্তির সংগ্রাম, এবারের সংগ্রাম স্বাধীনতার সংগ্রাম, তোমাদের যার যা কিছু আছে তাই নিয়ে শত্রুর মোকাবেলা কর।*" On that date, Jamat and Pakistanis were identified as the enemies. In response to the call of Bangabandhu, the PW started preparation for collecting arms for *muktijuddha*. He used to hold meeting at the *Abhijatri* Drug House of Dr. Sheikh Haider Ali, Senior Vice Chairman of Awami Juba League. On the 23rd day of March, the Pakistan day, the Pakistani expressed their joy by

hoisting flags engrafted with *chan tara* in their houses where Quader Molla was physically present. The Bangalees tried to hoist Bangladeshi flag with the map of Bangladesh. In presence of 100 Biharis, the PW hoisted the flag engrafted with Bangladesh map at the top of the water tank at Mirpur-1 by pulling down the Pakistani flag. The Jamatis and the Biharis had been waiting to take revenge for hoisting the said flag and Mirpur was not an exception of the genocide which was started by Pakistan army in the name of operation search light on 25th March, 1971. In the said night, the PW and one Mazhar Hossain Montu took shelter at the club of the Bangalees situated by the side of Shah Ali's Mazar at Mirpur. Coming out from the said club at 8 a.m. on 26th March, 1971, the PW saw ablaze on the houses of the Bangalees at Mirpur. In the morning, when the PW started for his residence at Mirpur-1, he saw the Biharis to express their joy. When the PW and Montu went to the Biharis, Quader Molla and others (the names which he told earlier) who took part in the dreadful and destructive affairs (তান্ডব), said "*শহীদ আগিয়া, শহীদ আগিয়া, পাকড়াও পাকড়াও*', then he started running and they also followed him. He went to Bangaon by crossing the river-Turag passed by the side of his house swimming and from there, to Sadullahpur via Chakulia. After going to Sadullahpur, the PW came to know that his father, his maternal grandmother and his cousin (ফুপাত ভাই) were sitting under a tree. He found a lot of dead bodies floating in the river and the procession of the people (*মানুষের কাফেলা*) while crossing the river and from there, he again went to Bangaon. As he was a students' leader, the local people gave shelter to his father at *Ghontighar*. His old friends: Zakaria, Ratan and television and film actress-Sahera Banu were also with him.

The PW stated that two incidents were notable (উল্লেখ যোগ্য), one took place on 27th March on which date Quader Molla, Hasib Hashmi, Abbas Chairman, Akter Gunda, Hakka Gunda, Nehal and others killed poetess-Meherunnesa, her brothers and mother by cutting into pieces. The *Akhra* of Hakka Gunda was at Thataribazar from where Pallab @ Tuntuni was apprehended by Akter Gunda and his accomplices, who then took him at Muslim Bazar, Mirpur where his fingers were cut and then he was hanged with a tree. Thereafter, by crossing all limits of atrocities, they killed him (in the deposition sheet, in Bangla, it has been recorded as: "নির্মমতা ও পৈশাচিকতার সীমা লংঘন করে তাকে হত্যা করা হয়"). Possibly, that day was 5th April. The main hero of the incident was Quader Molla, Aktar Gunda and the Bharis whose names, he disclosed earlier. The PW further stated that his elder brother came to Bangaon under Savar Police Station in search of him and from there, he and his father were taken to Dhaka City by a boat full of fire-wood (লাকরী ভরা নৌকায়) and on way, he got down at Rayerbazar with his elder brother. From there, he went to the house of her maternal aunt (খালা) at Nazirabazar near the house of former Mayor, Hanif and he stayed there. From there, he was sent to the house of Bazlur Rahman at Gopibag by his maternal grandmother (নানী) as his staying there was not felt safe. After staying there for some days, he along with Mullukchan Badi and others started for India and went to Agartala via Ram Chandrapur. After staying for some days at Agartala, he went to Melagor, head office of Sector No.2 for training for *muktijuddha*. Major General Khaled Mosharraf and Major Haider, both of whom were *Bir uttom,* trained them. He took special guerrilla training and he was directed to attack the enemy camp. After coming to Dhaka, he carried out operation. One

of his brothers was arrested. The Pakistan army gave a condition that his brother would be released if the PW was produced. His elder brother was also taken to Cantonment. Advocate Zahiruddin, a good friend of his father got him released by going to Cantonment. Possibly, in the last part of October, he along with his entire group, which was known as Mama bahini, and he as its head, came with the assignment to carry out guerrilla operation at Mohammadpur-Mirpur area at the order of Major Haider. He and his group used to wait when Pakistani bahini would come (আমরা সুযোগে থাকতাম). He and his group hid themselves at Bosila and Ati area by changing their place of stay. On 16th December, about 99,000.00 Khan Senas surrendered, on that very day, they attacked the head quarter of the then Pakistani army, torture centre at Graphic Art Institute and Physical Training Centre. Then said they attacked Graphic Art Institute in the evening. At one stage, the Pakistani army left the place and mixed themselves with the Biharis at Mohammadpur and Mirpur. The Biharis, the Khan senas, Jamatis and those who used to do Islami Chhatra Sangha created the wall of resistance and in that area, Pakistani flag flew (পতাকা উড়তে থাকে) and then they said "নও মাহিনা মে তুমলোক বাংলাদেশ বানায়া, ইসকো হামলোক দোবারা পাকিস্তান বানায়েগা". After the Khan Senas left the Graphic Art Institute, they went inside the institute and found clotted blood on the floor and the wall. On 17th December, he himself recovered the injured dead bodies of the intellectuals at slaughty-place (বধ্য ভূমি) of Rayerbazar and also found the eyes of the people in a small sack (বস্তা). He further stated that the eyes found in the sack were then kept under earth (মাটি চাপা দেই). At one stage, he arrested the killers of the intellectuals who were hiding at Mohammadpur and then as per confession of

the arrested killers recovered the injured dead bodies of the intellectuals from the bricks' field of Rayerbazar which is known as the place of slaughter/execution(বধ্য ভূমি). The atrocities were committed by the Al-Badars and the Rajakars. Subsequently, talking with the people, who lost their near and dear one, he came to know that the intellectuals were taken there by the Razakars and the Al-Badars. He further stated that by entering into Mirpur Bangla College, he found a lot of dead bodies, then he went to his own house at Mirpur and found a lot of dead bodies at the lake side passed by his house, he also found his house looted and destroyed. On the 31st day of January, 1971, Mirpur area was freed from enemies under his leadership and the enemies were Khan senas, Jamatis, Biharis, Al-Badars, Rajakars and Al-Shams. Quader Molla was not isolated from any of the incidents.

In cross-examination, the PW stated that the address of his house at Mirpur was 1/B Avenue, 1/16. <u>His date of birth was 01.10.1953</u> (emphasis supplied) and after the death of his father, his younger brother, Shahin lives there. Since 1986, neither he nor any one of his family members lives in that house. Since 1986, he lives abroad. In Mirpur area, everybody knows him as Shahidul Haque mama. In 1969, he was an S.S.C. candidate, but he could not appear in the examination. In 1970, he passed out S.S.C. examination from Bengali Medium High School and he was one of the founders of that school. Subsequently, possibly, in 1972, he passed H.S.C. examination from T & T College and then started his education carrier with honours in history in Dhaka University in 1973, he was a student of Mohsin Hall. Possibly, at that time, Mia Mostaq was the VP of the Hall. For political reason, he could not complete

the honours course. Probably, in 1976, he joined Bangladesh Biman as an employee and worked upto 1986 and since then, he has been living abroad with his family members and presently, he is a citizen of Sweden and he has come to Bangladesh with the passport of Sweden (E.E.C.Passport). Possibly, this time, he came to Bangladesh on the 26th day of January, 2012. In 1969-70, out of the total residents at Mirpur, 90% were Biharis and 10% were Bangalees. In 1969-70, the political parties, which were in existence, were Awami League, Jamat-E-Islami, Convention Muslim League, Council Muslim League, Nejami Islam, NAP (Bhasani), NAP (Muzaffar), Communist Party(Mani Singh) and of these political parties, Awami League was the biggest political party. He could not say when Anzuman-E-Mahjerin was borne. Because of the 1969 movement, Bangali nationalistic feeling ("বাঙ্গালী জাতি গোষ্ঠির মধ্যে জাগরণ সৃষ্টি হয়।") was aroused for which Awami League got 167 sets out of 169 in the National Assembly of the then East Pakistan and thus secured absolute majority. Bangabandhu did not compromise with Yahia Khan on his six points. After the historic speech of Bangabandhu on 7th March, operation search light (genocide) was started on 25th March. The PW further stated when they were leading the procession towards Beauty Cinema Hall, the then Muslim League Leader, S.A.Khaleque and Khasru, son of infamous Monayem Khan opened fire on the procession. He could not say whether any one was injured or killed because of the firing, but they fled away. He could not remember the date and time of the occurrence which took place in 1969. The meeting of Khan Abdul Quayum Khan was held at Mirpur in 1969, but he could not remember the time and the date. He could not remember the number of the case started against him for

attacking the meeting of Khan Abdul Quayum Khan. He reiterated his statement made in examination-in-chief that after coming out from the club situated by the side of Shah Ali's Mazar, he saw the houses of the Bangalees at Mirpur ablaze, Pak Senas, Biharis, and Jamatis and Abdul Quader Molla were present during the destruction (ধ্বংশ-যজ্ঞের সময়). After coming out of the club, he could not go home and proceeded towards Nobaberbag which was 15(fifteen) minutes walking distance. The river, Turag was 10(ten) minutes walking distance. He crossed the river, Turag swimming and then went to Sadullahpur via Bangaon and Chakulia. It took one hour to go to Bangaon from the bank of the river and it took 20/25 minutes to go to Sadullahpur from Bangaon to Chakulia. He went to Sadullahpur from Bangaon to Chakulia in the evening. He heard from someone of *Janator Kafela* that his father, maternal grandmother and cousin (ফুপাত ভাই) were sitting beneath a tree. The *Ghontighar* was at Sadullahpur bazar where his father was given shelter by the locals. After meeting his father and grandmother, he went away, he did not pass night with them. He, his friends-Zakaria, Ratan and actress-Saira Banu took shelter at a house at Bangaon and he stayed in that house for about a week, but he could not remember the name of the owner of the house. His father, maternal grandmother and cousin (ফুপাত ভাই) also boarded the boat in which the PW was brought to Dhaka by his elder brother. They started from Bangaon at noon and reached Rayerbazar in the evening. He stayed at the house of his maternal aunt (খালা) at Nazirabazar for two weeks. From Nazirabazar, he went to the house of Bazlur Rahman at Gopibag and stayed there for some days and from there he, Mollukchan, Badi and 11/12 others went to India. He could not say the date

when he entered India. After taking training at Melagor, Tripura for about one month, he was appointed as the Commander of Platoon Nos.12, 13 and 14. The higher authorities directed them to take steps judging the circumstances. After completion of training, he entered into Bangladesh at the last part of October. A lot of locally trained freedom fighters along with 39-40 Indian trained freedom fighters were with them. They took shelter around Mohammadpur for first operation and from there, they carried out their operation. He further stated that upto 16th December, they stayed at different places such as Bosila of Mohammadpur, Ati and other neighbouring places. On 16th December, when Pakistan army surrendered, 150-200 freedom fighters were at Bosila area. Physical Training Centre was situated behind the Graphic Arts Institute. At about 5 p.m. on 16th December, the PW and his group attacked Graphic Arts Institute, the fort of the Khan Senas, fight continued for about one hour. After the fight, one group of Pakistani army mixed with the Biharis and other group went Mirpur. He further stated that at that time, it would take half an hour to reach to Mirpur by car. He could not say whether the Pak Senas went to Mirpur in disguise. But when he entered inside the Graphic Arts Institute, he found arms and dresses of Pakistan army in abandoned condition. At that time, the freedom fighters were armed with weapons at Mirpur and other parts of Dhaka. They did not find any dead body of Pakistan army, but saw clotted blood in different rooms. After occupying the Graphic Arts Institute, the freedom fighters established their camp there and stayed in the night. He further stated that he heard the crying of the people who lost their near and dear ones and they told that their brother and father were killed by the Al-Badars after

apprehending them (ধরে নিয়ে হত্যা করেছে). He told the said facts to Major Haider. From 16th December, 1971 upto 31st January, 1972, there were camps at different places of Mohammadpur and Mirpur including Graphic Art Institute. Possibly, on 17th December, they entered Bangla College at Mirpur and saw a lot of dead bodies lying here and there. Thataribazar is at the back portion of Bangabhaban, the residence of the President. It takes one hour by taxi to go to Muslim Bazar, Mirpur from Thataribazar. There is a mosque beside Muslim Bazar which is known as *Eidga*. The area of Muslim Bazar is Bihari dominated area. He heard about the killing of Meherunnesa, her brothers and mother on 27th March, from *Janatar Kafela* (in the deposition sheet, in Bangla, it has been recorded as "আমি কাফেলার জনতার কাছে থেকে শুনেছি"). He also heard about the fact of apprehending Pallab from Thataribazar and then killing him at Muslim Bazar, Mirpur after torture from the mass people (in the deposition sheet, in Bangla, it has been recorded as "আমি জনতার কাছে থেকে শুনেছি"). Then he again said that he heard about the two incidents, that is, the killing of Meherunnesa and Pallab from his known persons and the people of *Kafela* at Mirpur. He saw Quader Molla every day in 1970 to campaign for Golam Azam, but during the election campaign, there was no exchange of good wishes with him. He knew that Quader Molla was from Faridpur, but he saw him canvass at Duaripara, No.12 Muslimbazar and No.1 Paikpara for 'দাড়িঁপাল্লা'. He pleaded his ignorance as to whether Quader Molla used to live at Mirpur or Mohammadpur in his own house or in a rented house. He further stated that possibly, S.A.Khaleque of Mirpur is still alive. After coming to Bangladesh in January, he gave interview to Media. On 20th April of this year, he gave an interview in BTV in a

programme titled as “একাত্তুরের রনাঙ্গনের দিনগুলি” and in the said interview, he stated in detail about the occurrences/incidents which happened/took place in Mirpur-Mohammadpur area during the liberation war from 25th March, 1971 to 31st January, 1972 and in the said interview, he told the truth (in the deposition sheet, in Bangla, it has been record as: “আমি এ বছর ২০ এপ্রিল তারিখে বিটিভিতে ‘একাত্তরের রনাঙ্গনের দিন গুলি’ অনুষ্ঠানে সাক্ষাতকার দিয়েছি। এই সাক্ষাতকার অনুষ্ঠানে ২৫ মার্চ, ১৯৭১ থেকে ৩১ শে জানুয়ারী ১৯৭২ পর্যন্ত মিরপুর-মোহাম্মদপুর এলাকায় মুক্তিযুদ্ধে সে সকল ঘটনা ঘটেছে তার বিশদ বর্ণনা দিয়েছি। আমি ঐ সাক্ষাতকারে সত্য কথাই বলেছি।”). He further stated that whatever statements he gave in newspapers and electronic media from 31st January, 1972 to 20th April, 2012, he tried to speak the truth, but the Journalists sometime cut off some part of the statements and sometime also add new words for which he could not be held responsible (in the deposition sheet, in Bangla, it has been recorded as “১৯৭২ সালের ৩১ জানুয়ারী থেকে ২০/৪/২০১২ তারিখ পর্যন্ত পত্র পত্রিকায় ও ইলেকট্রনিক মিডিয়ায় যে সকল বক্তব্য দিয়েছি তা সঠিক বলার চেষ্টা করেছি। তবে সাংবাদিক সাহেবরা অনেক সময় বক্তব্যের কোন অংশ বাদ ফেলে দেন আবার নতুন শব্দ জুড়ে দেন। এর দায়-দায়িত্ব আমার নয়।”). He gave statements to the Investigation Officer of the case on 17th March, 2012 at his house at Rupnogar. He did not know whether any photograph showing his participation in the freedom fight was printed in the newspaper from 25th March, 1971 to 31st January, 1972 and whether the Investigation Officer submitted any such photograph. He denied the defence suggestion that it is not a fact that he never saw accused Quader Molla in Mipur-Mohammadpur area. He denied the defence suggestion that it is not fact that the crmines, such as: setting fire, murder, looting, were not committed at Mohammadpur-Mirpur area at the order of Quader Molla. He denied the

further defence suggestion that it is not a fact that Quader Molla as the leader of Islami Chhatra Sangha gave order to kill poetess-Meherunnesa and her family members. He denied the defence suggestion that it is not a fact that he did not give any statement anywhere against Quader Molla before mentioning his name to the Investigation Officer. He denied the defence suggestion that it is not a fact that Quader Molla was not in Dhaka from 7th March, 1971 to 31st January, 1972 and that he did not canvass for Golam Azam in his election. The PW could not remember about the documentary films produced by one Sagir Mostafa under the title 'Mirpur the last frontier-1' and 'Mirpur the last frontier-2' and only after watching film, he could say whether he saw the film earlier. He denied the further defence suggestion that it is not a fact that as the accused did not do Awami League, so he was implicated in the case falsely and whatever he(the PW) said about him (Quader Molla) was not correct.

PW3, Momena Begum, stated in her examination-in-chief that during the *muktijuddha*, she was aged about 12/13 years. They were four sisters and one brother. Amongst the brothers and sisters, she was the eldest. Her father's name was Hajrat Ali Laskar who was a Tailor by profession. He was an Awami Leaguer and was fond of Bangabandhu. Her father used to join the procession and used to pest poster of the symbol, 'নৌকা'. Her father used to give/deliver slogan, *joy bangla* in the procession. Her mother, Amina Begum, was a house wife. On 26th March, 1971 her mother was pregnant. At that time, they resided at house No.21, Lane No.5, Kalapani Mirpur-12. The occurrence took place on 26th March, 1971 in the evening and before sun set. At that time, her father came running and said Quader Molla would kill him. Aktar Gunda,

the Biharis and the Pak bahinis were coming running to kill her father. Her father closed the latching of the door (দরজার খিল লাগায়ে দেয়). Her mother, brother and sisters were inside the room. Her father told them to hide themselves beneath the cot. Then she and her sister Amena hid beneath the cot. Quader Molla and the Biharis came in front of the door and told "এই হারামী কা বাচ্চা দরজা খোল, বোম মার দেংগা". As they did not open the door, a bomb was blasted. Her mother opened the door with a dao in her hand. The moment, her mother opened the door, she was shot. When her father went to hold her mother (ধরতে গেলে), accused Quader Molla held the collar of his shirt from behind and said "এই শুয়ারের বাচ্চা, এখন আর আওয়ামী লীগ করবি না? বঙ্গবন্ধুর সাথে যাবি না? মিছিল করবি না জয় বাংলা বলবি না?" Then her father with folded hands told Quader Molla to let him off. He also told Aktar Gunda to let him off. Then they dragged the father of the PW out of the room and slaughtered her mother with a *dao*. Khodeja and Taslima were also slaughtered with a *Chapati*. The PW had a brother named Babu, aged about 2 years, who was also killed by throwing on the floor (আছড়িয়ে মারে). Babu cried out saying 'Maa' 'Maa'. Hearing the cry of Babu, Amena cried out and then she was pulled out, her dress was torn and then they started violating her (in the deposition sheet, in Bangla, it has been recorded as: "টেনে বের করে তারা আমেনার সব কাপড়-চোপর ছিড়ে ফেলে। ছিড়ে ফেলে তারা তখন আমার বোনকে নারী-নির্যাতন করতে থাকে"). Amena cried for sometime and at one stage, she stopped crying. In the meantime, it became dark and they were pricking with something to see whether there was any one inside the room. At one stage, one of the prickings stuck her left leg, she got hurt and then she was pulled out and then she could not say anything and lost her sense. Then said after being hurt, she

cried out and lost her sense. When she regained her sense, it was dead of night, she felt sever pain at her abdomen and wet and could not walk. She found her pant torn (ফাড়া). Then she very slowly (আস্তে আস্তে) with great difficulty (অনেক কষ্টে) went to Fakirbari and entreated to open the door saying "মা দরজটা খোল, বাবা দরজটা খোল" then they opened the door. Seeing the clothes on her body soaked with blood and pant torn (ফাড়া), the inhabitants of Fakirbari bandaged her injured leg by a cloth and gave a big sallower to her for wearing. On the next day, they got her treated bringing a doctor and gave her medicine. She was married at a very young age, but till then she did not go to her husband's house. The inmates of Fakirbari asked about her house and husband and they informed her father-in-law and then her father-in-law came and took her and got her treated. She further stated that in the night, her mother-in-law used to keep her in her chest (in the deposition sheet, in Bangla, it has been recorded as: "আমার শ্বাশুড়ী আমাকে রাতে বুকের মধ্যে রাখতেন"). She further stated that she used to run hither and thither like mad (পাগলের মত) and her mother-in-law used to catch hold of her and kept her in her chest (in the deposition sheet, in Bangla, it has been recorded as: "আমি পাগলের মত এদিক-সেদিক দৌড়াদৌড়ি করতাম আমার শ্বশুর-শ্বাশুড়ি আমাকে ধরে ধরে নিয়ে এসে বুকে জড়ায়ে রাখতো।"). Though Bangladesh became independent, Mirpur was not independent. She used to go to look for the dead bodies of her parents by taking 3(three) hours time written on a paper from the technical. She further stated that she did not find any one at their residence, she only found bad smell. Many people were killed there. There was a man named Kamal Khan who used to serve tea to the freedom fighters and he told her that Quader Molla killed her father. Akkas Molla, her 'উকিল বাবা', also told the same thing

and told her to pray to the Almighty Allah for justice to try Quader Molla. After liberation of the country, she had been mad for about 3(three) years and she had to be shackled for the same. She could not forget the scene of the killing of her parents, her brother and sisters in 1971, for which she was mad-like. Though she is alive, in fact, she is dead-like. She demanded justice. She identified Quader Molla in the dock and said in 1971, he was young and was in *panjabi*. She further wanted to ask Quader Molla "আমার বাবা কোথায়?" She further stated that the Investigation Officer examined him.

In cross examination, the PW stated that her father was a man of this soil, but once he had gone to Asam and then again came back to this Country. She was of very tender age when her father came to this country and he told her that he had gone to Asam, but she could not say what her age was at that time. She was given into marriage 15/20 days before the *muktijuddha* (in the deposition sheet, in Bangla, it has been recorded as: "যুদ্ধের ১৫/২০ দিন আগে আমার বিয়ে হয়।"). The name of her father-in-law was Felu Talukder who died in the meantime. The house of her father-in-law was at Zinjira, the name of her mother-in-law was Sarala Bibi. Her husband had a brother named Siraj and had two sisters named Hosne Ara and Roushan Ara. Siraj was elder than her husband and was married, but sisters were not married. Her father-in-law used to live in a joint family. She could not remember when she had gone to the house of her father-in-law, but she stayed at the house of her father-in-law till the country was liberated. Her father-in-law and husband took her to their house at Zinjira on the lap (কোলে করে). Their house at Mirpur was in the name of her father, that house is still therein, but she sold the same for her treatment.

She could not tell the name of the person to whom the house was sold and also the year in which the same was sold. Presently, she is residing at a house nearer to their previous house. The house in which she is living, neither belongs to her nor she is a tenant, but is Government property. The house of her father was allotted as a refugee. Her husband is alive and he is a heart patient and ring has been fitted in his heart; he cannot work, he gasps/pants if he works for sometime and gets the work done by the sons. She has three sons and a daughter and her two elder sons are married; one son lives with her and the other son lives in a rented house. Fakirbari was at a distant place (একটু দূরে আছে), but she could not say how many miles away. It would take half an hour to reach Fakirbari from the house of her father. Fakirbari is at Mirpur-10, but she could not say the block number. She further stated that she had been in Fakirbari for four days. She could not tell the name of the owner of the house as well as his wife of the Fakirbari where she took shelter. After liberation, she went to the house of Fakirbari, but she did not find any one. Most of the neighbours of her father's house were Biharis, but there were Bangalees as well. She and her younger sister, Amena were given into marriage at a time, but they were not taken to their respective father's-in-law house. She could not tell the name of the village where she was married. Her husband went abroad before some days, then said after the birth of their children (in the deposition sheet, in Bangla, it has been recorded as: "আমার স্বামী কিছু দিন আগে বিদেশে গিয়েছিলেন ছেলে মেয়ে হওয়ার পরে"). Her husband had been in Saudi Arabia for 10/12 years and came back to the country less than one year before. There was a heart attack of her husband in Saudi Arabia and a ring was fitted in there. In the three roomed

house, where they were staying, there was a high cot and beneath that, there was a trunk and she and her sister hid by the two sides of the trunk. The distance between the door and cot was only 3/4 hands. On her way to Fakirbari, she did not meet any one. There were houses on *Tilas* (টিলা টিলা) at distant place, on the road to Fakirbari from the house of the PW (in the deposition sheet, in Bangla, it has been recorded as: "আমার বাড়ী থেকে ফকির বাড়ী যাওয়ার রাস্তায় অনেক দুরে দুরে টিলা টিলা বাড়ী ছিল"). She further stated that she wore the clothes given by the inmates of Fakirbari after cleansed her body by putting off her clothes. But she did not take those clothes with her while she went to the house of her father-in-law. She re-asserted that after liberation of the country as well as Mirpur, she went to the house of her father to look for the dead bodies of her parents by taking pass for three hours from the Police at technical centre gate. She did not see who killed her father, but Quader Molla dragged her father by catching hold of his collar which she saw from beneath the cot (in the deposition sheet, in Bangla, it has been recorded as: "আমার বাবাকে কে মেরেছে আমি দেখি নাই তবে ঐ সময় কাদের মোল্লা আমার বাবার কলার ধরে টেনে-হিচড়ে নিয়ে যায় আমি খাটের নিচ থেকে তা দেখেছি।"). She further asserted that she had been about mad (প্রায় পাগলের মত ছিলাম) for about three years, after she had not found the dead body of her father and she used to be shackled. After liberation of Bangladesh, but before liberation of Mirpur, she went to Mirpur twice and during these two times, she was not mad, but she was mentally sick. After she had been cured, she did not file any written complaint to anybody. Before marriage she did not attend any meeting of any political party or joined any procession. She denied the defence suggestion that it is not a fact that as she, her mother and sister were pardanshin, so she did not

attend any meeting and joined any procession. She asserted that as they were very young, did not attend any meeting. She could not say whether there was any election in 1970, but there was an election of Bangabandhu and she could not also say who passed in the election. Many people came to her before and took her photograph, but she did not tell the name of Quader Molla and Aktar Gunda out of fear. She is not a voter at Zinjira, (the residence of her father-in-law), but is a voter at Mirpur. She has no passport and did not bring any identity card with her photograph where the name of her father and husband has been written or any other paper attested by the Ward Commissioner. She had been at Fakirbari in injured condition for four days and then her father-in-law took her to Zinjira and then she was treated there by calling the doctor at the house. She could not remember how long she was treated, but she was treated till she was cured. After liberation of the country, she first came to her residence at Mirpur and then said after few months of the liberation of Mirpur, she came back to Mirpur for living permanently. Then she said voluntarily that she was in mad condition at her father's-in-law house. She further admitted that she did not file any paper to show that she was mad. After she had been cured, she did not file any complaint with any Police Station or Court. Neither her husband nor her son accompanied her to Court. In 1969, 70 and 71, none of the other parties came to their residence. At that time, the men of 'দাঁড়িপাল্লা' and 'জয় বাংলা' participated in the election. The neighbouring Biharis used to work for 'দাঁড়িপাল্লা'. She could not say whether all the neighbourers of their house were the supporters of 'নৌক'. She further stated that she did not see Quader Molla before the occurrence, but on the date of occurrence, she saw the man

who spoke in Bangla while accompanied the Biharis along with Pak army while her father came to their house rasing hue and cry. The man, who dragged her father by catching hold of his collar, was Quader Molla. She further stated that she saw Quader Molla take her father out of the room by holding of his collar from beneath the cot. Her father after bolting the latch entered into the room told them to hide beneath the cot. The door of the house was towards the road. Her mother did not hide herself beneath the cot, only the two sisters hid beneath the cot. The door was not opened by the struck of the bomb, but her mother opened the door with a dao in her hand and the moment, the door was opened, she was shot. When her father went to hold her mother, he was pulled out of the room by holding his collar, then her mother fell down. Her mother was slaughtered inside the room after shooting and her father was dragged out of the room. She did not see to kill her father. She further stated that her mother was killed a bit inside the door, then her sister Khudeza was slaughtered by the Biharis inside the room and the Pak Bahini and the Biharis killed her brother throwing(আছঁড়াইয়া) on the ground. She could not say by what means she was pinched while she was hiding beneath the cot. She did not lose her sense when she was pinched, but she lost her sense when she had been pulled out after she had cried out. She further stated that the Biharis and the Pak Bahini pulled her out. Khudeza and Toslima were slaughtered inside the room. Her sister, Amena cried out when her younger brother was being killed by throwing on the ground and then she was pulled out and the Pak Bahini and the Biharis tortured her (in the deposition sheet in Bangla, it has been recorded as "তার উপর পাকবাহিনী ও বিহারীরা একের পর এক নির্যাতন চালায়"). She further stated that she could not know the

whereabouts of her father after he was taken. After liberation of the country, Akkas Member told her that Quader Molla killed her father. Akkas Member is not alive. This PW denied the defence suggestion that it is not a fact that at the time of occurrence, there was no light inside the room and she asserted that the room was brightened (ফর্সাছিল). She denied the defence suggestion that it is not a fact that Akkas Member did not tell her that Quader Molla killed her father. She asserted that after liberation, Akkas Member told the fact of killing of her father standing at the courtyard of his house, but she could not tell the date; there was none when Akkas Member told her about the killing of her father. She denied the further defence suggestion that it is not a fact that she did not go to the house of Akkas Member and that at the time of the occurrence, her father did not enter into the room shouting the names of Quader Molla and Akter Gunda and she said so being tutored. She denied the further defence suggestion that it is not a fact that she did not see Quader Molla at the time of the occurrence, who, then was young and was in *panjabi* and that after the instant case, she was shown Quader Molla and accordingly, she identified him at the dock. She further stated that 8/10 months ago on being asked by Nasiruddin, she had gone to Zallad Khana and told everything to Monowara, an officer. She pleaded her ignorance as to whether Nasiruddin was the president of Ward Awami League. She further asserted that at the time of occurrence, 10/12 persons entered into their house and of them, only one spoke in Bangla and he was in *panjabi* and that was Quader Molla. She further said that her father told her so and she also saw. She denied the defence suggestion that it is not a fact that she was not the daughter of Hajrat Ali Lasker and not the wife of Habibur

Rahman. She denied the defence suggestion that at the relevant time, Quader Molla did not reside at Mirpur. She denied the defence suggestion that it is not a fact that Kamal Khan and Akkas Member did not tell that someone named Quader Molla used to live at Mirpur. She denied the defence suggestion that it is not a fact that her father had no house at Kalapani at Sector No.5, Mirpur-12. She denied the defence suggestion that no occurrence took place in the said house as stated by her and that she did not sell the house, after the occurrence, she did not go to Fakirbari and she was neither treated at Fakirbari nor at the house of her father-in-law at Zinjira after she was allegedly taken by her father-in-law. She denied the further defence suggestion that after the liberation of the country, she did not take pass twice from the Mirpur technical and went to her father's house. She denied the further defence suggestion that she did not show the occurrence house to the Investigation Officer and that she deposed falsely.

PW4, Kazi Rosy, stated in her examination-in-chief that in 1970, she used to live at house No.8, Block No.C, Avenue No.4, Section-6, Mirpur. She knew poetess Meherunnesa who was her friend. Meherunnesa used to live at Block No.D, Section-6, Mirpur, but she could not remember the house number. Meherunnesa was her neigbhour. In the election of 1970, Professor Golam Azam was the candidate from Mirpur with the symob 'দাঁড়িপাল্লা'. At that time, there was an organization named Islami Chhatra Sangha, Quader Molla was at the leadership of Islami Chhatra Sangha, so to say, he was the chief of the organization. At the leadership of Quader Molla, the local non-Bangalees used to work with him for the symbol 'দাঁড়িপাল্লা'. Advocate Zahir was the candidate with the symbol, 'নৌকা'. Poetess Meherunnesa always used to stay with her,

because they formed an action committee of which she was the president and poetess, Meherunnesa was the member of the committee along with others. In Mirpur, the Bangalees were subjected to harassment and humiliation, so they formed the action committee and they used to hold meeting at different time at different places with the view to unite the Bangalees at Mirpur. On 7th March, 1971, she, poetess Meherunnesa and many others went to the Race Course *Moidan* to hear the speech of Bangabandhu. In that speech clear call was made for the independence of the country. The Bangalees at Mirpur accepted the call, but the non-Bangalees at Mirpur became more hostile to the Bangalees. Knowing the said mentality of the non-Bangalees, the PW and others of the committee used to hold meeting, every day, in the process came the 25th day of March, 1971. They also held a meeting in the morning on 25th March and in that meeting, the PW could understand that something was going to happen. After the meeting was over, she returned to her house and sometime thereafter she got the information that her house would be raided and there would be some disorder at the house of poetess Meherunnesa (in the deposition sheet, in Bangla, it has been recorded as: "আর কবি মেহেরুন্নেসার বাসায়ও হাঙ্গামা হবে"), because they were the only two female members in the action committee. After hearing the said information, she sent message to Meher that she would leave the house on that very date and advised her to leave (in the deposition sheet, in Bangla, it has been recorded as: "বাসা থেকে তোমরাও চলে যাও"). On receipt of the said information, Meher through her younger brother sent information to the PW that where would she go with her mother and two brothers? The PW told the brother of Meherunnesa to convince her and her mother that it was necessary to

leave the house and thereafter she (the PW) left Mirpur, but Meher did not. The occurrence, which took place in the black night of 25th March., is known to everybody. In the evening of 27th March, she got the information that Quader Molla and his accomplices, many of whom were in *white patti* (সাদা পট্টি) or *red patti* (লাল পট্টি) on their head, entered into the house of Meher at 11 a.m. When Meher saw that they came to kill them, she held the holy Quran on her chest to save herself, but all the four (Meher, her mother and two brothers) were slaughtered. Meher was her friend, but she could not do anything for her. They entered into the house of Meher under the leadership of Quader Molla, but she could not say whether Quader Molla himself entered into the house of Meher or not. After the liberation of the country, the PW wanted to go to the house of Meherunnesa, but she knew that someone was living there. After two/one day (দুয়েক দিন পর), Golzar, a non-Bangalee and another Bihari told like that that after killing Meher, her head was hanged tying with her hair with a fan and then Meher was fidgeting like a slaughtered hen (in the deposition sheet, in Bangla, it has been recorded as: "মেহের তখন কাটা মুরগির মত ছটফট করেছিল"). She further stated that accomplices of Quader Molla, non-Bangalees and Biharis caused the occurrence. Golzar and another non-Bangalee, from whom she heard about the occurrence, are not in the country. She demanded justice for the war criminals (আমি যুদ্ধাপরাধিদের বিচার চাই). She further stated that she saw the man in the dock before is no one else Quader Molla.

In cross examination, she stated that she got acquainted with poetess Meherunnesa at Mirpur in 1967-68. In 1970's National Assembly election, Advocate Zahiruddin was the candidate of Awami League and he was a non-

Bangalee. She returned to the house at Mirpur after March, 1972 which she had left on 25th March, 1971. That house at Mirpur was allotted to her father by the Government as a Journalist. Her father died in 1996 at Mirpur, his dead body was taken to his village home at Satkhira and he was buried there. She could not say the date and time when she came to her present residence at Mohammadpur, but it would be 7/8 years. It would take ten minutes to go to the house of poetess Meherunnesa from her house at Mirpur. Meherunnesa started living at Mirpur before the PW. She (the PW) is a member of *'Jatio Kabita Parishad.'* While she was a university student, her writings used to be published in different newspapers and magazines. Some books written by her have been published and those are available in the market and all her writings are based on the spirit of Bangali nationalism (বাঙ্গালী জাতীয়তাবাদের চেতনায় উদ্বুদ্ধ) and through her writings she got connected (যোগাযোগ স্থাপিত হয়) with poetess-Sufia Kamal, poetess-Jahanara Imam and others. She was always affectionate (স্নেহ-ভাজন) to poetess-Sufia Kamal and poetess-Jahanara Imam. She knows about the book written by Jahanara Imam under the title "একাত্তুরের দিনগুলো" and in that book, the character of Bangalees in 1971 has been depicted. There were many Biharis around her house at Mirpur and her close door neighbours were also non-Bangalees, namely: Aktar, Gulzar, Niaz, Khalil, Jasim, Afzal, Mafiz, Muktar and others, presently, none of them is at Mirpur. After liberation, she met only with Gulzar and another unknown Bihari. Poetess-Meherunnesa was a natural poetess, she had no educational background and she got herself educated by her elder sister. Many poems of poetess-Meherunnesa have been compiled and published. Many of the writings of Meherunnesa have been

printed (লেখা ছাপা হয়েছে) in the then 'the Weekly Begum.' For economic reasons, Meher could not publish any of her books. Long after completion of her education in the University, she got a government job and joined as research officer under the Ministry of Information and she retired at the end of December, 2006. She gave a speech on 27.05.2009 in a seminar held at *Muktijuddha Jadughar* under the title 'war crime victim'. She further stated that she did not give any statement outside the Court, then said she gave statements to the Investigation Officer one month before. The members of the action committee which was formed by them at Mirpur were 15(fifteen) and generally all the members used to remain present in the meeting. In order to oversee the progress of the action committee sometime (মাঝে-মধ্যে), Khandaker Abu Taleb (one of the victim), Doctor Mosharraf Hossain Manik, A.S.M. Abdur Rab and Pankaj Bhattachariya used to take information (খবরা-খবর নিতেন). After liberation there was no necessity of the action committee. She was involved with *Swadhin Bangla Betar Kendra* where she used to recite the poem regularly. After liberation, she came to the country in the last part of January and stayed at the house of her maternal uncle (মামা). She heard about the death of Meher from people (লোক মুখে). She further said that she heard about the death of Meher on 27.03.1971, but she could not remember from whom she heard the said news first after coming from Kalkata. She heard the news of killing of Meher first while staying at the house of her maternal aunt (খালা) at Kalabagan, Dhaka. She heard from the people who came from Mirpur (in the deposition sheet, in Bangla, it has been recorded as "মিরপুর থেকে আসা লোকের মুখে"), but she could not name them and she had no communication (সংযোগ) with the persons

from whom she heard about the killing of Meher and she also could not say whether they are alive, but she also does not meet with them. After she had come back from Kolkata, she did not file any complaint with the Police Station, Court or with any other authorities about the killing of Meher and the members of her family. Through writings, they disclosed many things about Meher. There was a Mass Investigation Commission, but she was not the member of that Commission. Poetess-Sufia Kamal was the Chairman of the Mass Investigation Commission. She could not remember the date of formation of Mass Investigation Commission, possibly on 26th March, 1992. In the report of that Commission, there are narrations of the incidents/ occurrences which took place every day in Dhaka City in 1971. In the report, there are narrations of the tortures of the Biharis upon the Bangalees. On the question put by the Court as to whether she herself had read the report of Investigation Commission, the PW replied in the negative, but said it was natural that report would contain the occurrences. She further stated that 'ক্ষনিকটা গল্প তোমার' is the compilation of the poems written by her, there are some poems where the occurrences of 1971 have been narrated. The book 'শহীদ কবি মেহেরুনেছা' is written by her. In that book, she tried to write everything about Meherunnesa right from the beginning till the end of her life. The Investigation Officer took a copy of the book 'শহীদ কবি মেহেরুনেছা।' She is still the member of the Film Censor Board. She could not remember as to whether any one named Sagar Sagir took her interview. A boy whose name she forgot gave her information coming to her house that her house would be raid, the boy was known to her and then she by another boy gave message to Meher to leave the house and she

could not tell the name of that boy as well. On 27th March, 1971 she was at her maternal aunt's house (খালার বাসায়) at Kalabagan. She heard the news of death of Meher and her family members from a person who came from Mirpur. She could not also tell the name of the man who gave her the news of the killing of Meher just before the sun set. She denied the defence suggestion that it is not a fact that she did not tell the Investigation Officer that Abdul Quader Molla and his accomplices who entered into the house of Meher at 11 a.m. many of them had *white patti* (সাদা পট্টি) or *red patti* (লাল পট্টি) on their head. She denied the defence suggestion that it is not a fact that she did not tell the Investigation Officer that Meher wanted to live by holding the holy Quran on her chest when she saw that they came to kill them, but all the four were slaughtered and that after liberation of the country, she wanted to go to the residence of Meherunnesa though she knew that there was none at her residence. She denied the defence suggestion that it is not a fact that she did not tell the Investigation Officer that the head of Meher was hanged tying with the hair with a fan and then Meher was fidgeting like a slaughtered hen. She denied the defence suggestion that it is not a fact that she did not tell the Investigation Officer that she heard about the killing of Meher from Gulzar and another non-Bangalee. She further stated that she was not present at the place of occurrence and did not see the occurrence. She had never any talk with Quader Molla and she did not also see him physically. She did not meet Quader Molla in any meeting, procession or assembly or she met him in the University. She did not see Quader Molla in the polling centre; since 1970's election, she heard the name of Quader Molla many times. She denied the defence suggestion that it is not a

fact that Quader Molla never lived at Mirpur and he never went there. She heard that in 1970's election, Quader Molla worked for Golam Azam, he did not go to her house. She further stated that she could not say from whom she heard the said fact, but from the talk of the people (in the deposition sheet, in Bangla, it has been recorded as "কার কাছে শুনেছি তা বলতে পারবোনা তবে জনতা যখন কথা বলে তাদের থেকে শুনেছি"). She denied the defence suggestion that it is not a fact that Quader Molla was not in Dhaka from first part of 1971 till March, 1972. She denied the defence suggestion that it is not a fact that in 1971, there was a *Bihari Kasai* named Quader Molla who used to do the misdeeds (অপকর্ম গুলো) and accused, Quader Molla was not the said *Kasai* Quader Molla. She further stated that as there were no arrangements for trying (বিচারের ব্যবস্থা) the war criminals, she did not mention the name of anyone in her book 'শহীদ কবি মেহেরুন্নেছা' and since presently, there have been arrangements for trying the war criminals, she deposed mentioning the name of Quader Molla and she waited long for this day. She further stated that in her book 'শহীদ কবি মেহেরুন্নেছা', she has stated that the family of poetess-Meherunnesa was killed by non-Bangalees and because of her previous fear, she did not mention the name of anyone. The book was published in June, 2011. She denied the defence suggestion that it is not a fact that after the arrest of Quader Molla, he was shown to her and identified to her, so she could identify him in Court. She denied the further defence suggestion that it is not a fact that she deposed in the case to suppress Quader Molla politically as he is a leader of Jamat. She denied the further defence suggestion that it is not a fact that she deposed falsely as tutored.

PW5, Khandaker Abul Ahsan, in his examination-in-chief stated that in 1971, he was a student of class-IX of Shah Ali Academy High School at Mirpur and he used to live with his parents at plot No.13, Road No.2, Block-B, Section-10, Mirpur Housing Estate, Dhaka. His father, Shaheed Khandaker Abu Taleb was a Journalist, litterateur and Advocate. His father worked with the weekly Ittehad, the Daily Azad, the Daily Ittefaq, the Daily Sangbad, the Morning News and the Daily Observer at different time and also used to do a part time job with the 'Paigum'. In 1961-62, his father was the Secretary General of Journalist Union of the then East Pakistan and he was a believer of Bangali nationalism (বাঙ্গালী জাতীয়তাবাদ) and in the independence of Bangladesh. In 1970, Advocate Zahiruddin contested the election with the symbol, 'নৌকা' and against him, Golam Azam of Jamat-E-Islami contested the election with the symbol, 'দাঁড়িপাল্লা'. In the election, Abdul Quader Molla campaigned for Golam Azam. During the election, his father worked for the symbol, নৌকা. After 25th March, 1971, the defeated party in the election committed various types of inhuman killing (বিভিন্ন ধরনের নৃশংস হত্যাকান্ড সংঘটিত করে) under the leadership of Abdul Quader Molla. 23rd March, 1971 was the Pakistan day, but the Bangalees observed the day as Bangladesh Day. On 23rd March, the students all over the country hoisted black flag and the flag engrafted with Bangladesh map to protest the killing by the Pakistan army at different places of the country from 1st March, 1971 to 23rd March, 1971 and on that day, they half hoisted a black flag and the flag of independent Bangladesh at Bangla School at Mirpur-10 by pulling down Pakistani flag. At that time, the Headmaster of the school was Syed Quayum (PW10). On that day, at one

minute past 12:00, Pakistan Television ended its telecast with the song "আমার সোনার বাংলা আমি তোমাই ভাল বাসি।" At that time, Syed Quayum was staying at their residence. Syed Quayum used to live at Block-C, Mirpur-10. At 2:30/3:00 o'clock in the night of 23rd March, 1971, 3/4 persons entered into the residence of Syed Quayum by breaking his door and asked him why he hoisted the flag of 'স্বাধীন বাংলা' and rebuked him in filthy language and attacked him and caused bleeding injuries by giving knife blows on his body one after another and when he tried to flee away to save his life, he fell on the road. Then one Bangali came out and somehow took him to the house of the PW. A Bangali doctor was brought from Mirpur Radda Barnen Hospital which was previously the Government out-door clinic and he was given primary treatment. The doctor bandaged his entire body with rag (নেকরা) and advised to take him to Dhaka Medical College Hospital in the morning. Accordingly, on the next day, the father of the PW took Syed Quayum to Dhaka Medical College Hospital and got him admitted there. From the hospital, the father of the PW straightaway went to the residence of Bangabandhu and informed him about the incidents which took place at Mirpur. Bangabandhu instantly telephoned the EPR and told to deploy EPR at Mirpur and asked his father to stay at Mirpur. The mother of the PW was mentally broken seeing the condition of Syed Quayum and they on 24th March, moved to the residence of his paternal aunt (ফুফুর বাসায়) at Shantinagor keeping his father at their residence at Mirpur. 7/8 persons including the neighbourers of the PW and his father were residing at their house. The father of the PW informed them that tension was going on at Mirpur and the Biharis were very much excited (in the deposition sheet, in

Bangla, it has been recorded as: "মিরপুরে খুব টেনসন চলছে, বিহারীদের মধ্যে খুবই উত্তেজনা দেখা যাচ্ছে"). There was a crack down on 25th March, 1971. On 27th March, curfew was withdrawn for short period. At that time, the father of the PW was the part time feature editor of *Paigum* and also used to work in an Advocates' firm called BNR and there he got the information that the office of the Ittefaq was razed to the ground and then he went there to see the condition of his colleagues and saw some dead bodies. On 29th March, 1971 his father told that he would go to Mirpur to bring his car and money. Subsequently, he heard that while his father was going to the Advocates' firm, he met with the then non-Bangalee Chief Accountant of the Daily Ittefaq, Abdul Halim who took him to Mirpur by his car and handed him over to Abdul Quader Molla. His father was taken to Zallad Khana at Mirpur-10 and there he was killed by giving knife blows one after another. At that time, Abdul Quader Molla along with Akter Gunda and some non-Bangalees was there. After the killing of the father of the PW, on 29th March, 1971, his elder brother became mentally imbalanced, his mother almost became mad and that being the condition, they went to the residence of a known person at village, Bewra, Pubail. After the death of the father of the PW, they had no place to live and no income and his mother became totally mad. He came back to Dhaka and used to sell tea leaf on *ferri* by purchasing the same from Chowkbazar. At that time, one day, while he was going towards Chowkbazar, he met their non-Bangalee driver, Nizam who was the resident of Mirpur-10 and from him, he came to know that the men of the defeated party in the national election, that is, Abdul Quader Molla, Akter Gunda, Abdullah and some Biharis all of Mirpur at the order of Quader Molla

carried out the massacre (হত্যাজ্ঞ চালায়). The Bangalees after being caught from Gabtali bus stand and technical area were killed at Shialbari, Muslim Bazar Baddha Bhumi and Zallad Khana. At that time, thousands of Bangalees were killed. He further stated that he did not see Abdul Quader Molla face to face, but he saw his photograph in the Television and the newspapers. As a member of martyred intellectuals (শহীদ বুদ্ধিজীবি) family, he demanded trial of the mass killing (ব্যাপক হত্যাকান্ডের).

In cross examination, the PW stated that while he was a student of Shah Ali Academy High School, he was aged about 13/14 years, his date of birth was 15th February, 1957. He is an Assistant Director of Cantonment Executive Office. He joined the service in 1977. They have been living in the same house of Mirpur which was allotted to his father. His family and his sister live in the house. His elder brother died in the meantime. When there was killing in the night of 25th March, 1971, they were staying at their paternal aunt's house (ফুফুর বাসায়) at Shantinagor, he, his mother and other members of his family came to the residence of his paternal aunt in the evening of 24th March and stayed there upto 29th March. He further stated that after the liberation of the country, he went to their house at Mirpur in 1973, but he could not remember the date. He and his brother, Khandaker Abul Hasan went to their house and found nothing, the floors of the house were excavated (খুড়ানো). He went to Mirpur continuously for the next 2/3 weeks to make the house habitable and possibly in the last part of 1973, they started living there. Syed Quayum is alive and he lives at his own house at Mirpur-6. He further stated that it took two days to go to village-Bewra at Pubail by boat and possibly he came to Dhaka in July from

Pubail while his mother, brother and sister had gone to their village home at Satkhira. His mother, brother and sister came to Dhaka and from Dhaka went to the village home by bus. When he used to sell tea leaf in 1971, he stayed at House No.5 Chamelibag, the house of Shaheed Journalist, Sirajuddin Hossain, possibly, he stayed there from July to 1st December, 1971. From July to 1st December, 1971 he never went to Mirpur. He passed S.S.C. examination from Pranonath High School, Satkhira in 1973 and then he did not continue his study further and he never associaed himself with any political party. After passing S.S.C. examination, he started living in Dhaka and did not go to village (in the deposition sheet, in Bangla, it has been recorded as:"গ্রামে খুব একটা যাওয়া হয়নি") He got into his own house (নিজ বাসায় উঠে ছিলাম) at Mirpur after passing S.S.C. examination, but he could not remember the month. At that time, except his elder brother, none was earning member in their house. He did not see with his own eyes the occurrences which took place in 1971 and it was not possible for any Bangali to see the same except a few. Nizam driver drove their Fiat Car for two years. Nizam driver is alive and he is in Pakistan. He further stated that he heard from driver, Nizam that after the landslide victory of Awami League, the defeated party committed various inhuman killings (নৃশংস হত্যা কান্ড) at Mirpur after 25th March, 1971 under the leadership of Abdul Quader Molla and he himself did not see anything with his own eyes. He could not say whether the fact of killing under the leadership of Abdul Quader Molla at Mirpur as deposed in Court were published in news papers or not. After liberation of the country, he filed GD entry with Mirpur Police Station making complaint about the looting of their house and setting of fire thereon, but did not file any complaint

about the killing of his father either with the police station or anywhere else. He further stated that in 1971, he went to the BNR Law firm to look for his father where he was told by Advocate, Khalilur Rahman that he saw non-Bangalee Chief Accountant, Abdul Halim of the Ittefaq to take his father by his car. That Khalil shaheb is dead. He had not the mental condition to ask Advocate Khalil where his father met with the Chief Accountant, Abdul Halim. He heard from driver, Nizam that Abdul Halim handed over his father to Abdul Quader Molla and others. He did not hear at what place his father was handed over to Quader Molla and he did not also make any query to that effect. Nizam told the PW that his father was killed at Zallad Khana. Most of the people knew that Abdul Quader Molla used to stay at Duaripara, Mirpur, but he could not say any particular name from whom he heard the said fact. He denied the defence suggestion that it is not a fact that he told the name of Abdul Quader Molla being tutored. He did not know whether Abdul Quader Molla was in Dhaka in 1971 and in the first part of 1972. Then said it was unbelievable that Quader Molla was not in Dhaka. He denied the defence suggestion that it is not a fact that on 25th March, 1971 there was none in the name of Abdul Quader Molla at Mirpur area. He denied the defence suggestion that it is not a fact that on 23rd March, at 12:01 hours in the night, Syed Quayum was not in their house or that at 2:30/3:00 o'clock in that night, 3/4 persons did not enter into the house of Syed Quayum by breaking the door of his house or did not cause bleeding injuries by giving knife blows one after another or while he tried to flee away out of fear of his life, he fell on the road. He gave statements to the Investigation Officer, but he could not remember the date and the place. He

denied the defence suggestion that it is not a fact that he did not tell the Investigation Officer that a Bangali doctor was brought from Radda Barnen Hospital which was preivously Government out-door clinic and primary treatment was given to Syed Quayum. He denied the defence suggestion that it is not a fact that he did not tell the Investigation Officer that Syed Quayum fell on the road when he tried to flee away out of fear and then a Bangali came out and somehow took him to their (the PW) house and that in the next morning, he was admitted to Dhaka Medical Hospital. He denied the defence suggestion that it is not a fact that none in the name of Nizam, a Bihari was at Mirpur and he was not their driver. He denied the defence suggestion that he did not tell the Investigation Officer that Abdul Halim took his father to Mirpur by his car and handed him over to Abdul Quader Molla. He denied the further defence suggestion that he did not tell the Investigation Officer that through Nizam driver he could know that the people who were defeated in the national election, that is, Abdul Quader Molla, Aktar Gunda, Abdullah and some Biharis, at the order of Abdul Quader Molla committed the mass killing. He denied the last defence suggestion that he deposed falsely implicating Abdul Quader Molla with various incidents as tutored by the political coterie.

PW6, Md. Shafiuddin Molla, in his examination-in-chief stated that in 1970, he was aged about 19 years and he was a voter. He was involved with Chhatra League, his family and all the villagers were the supporters of Awami League. In 1970's National Assembly election, Advocate Zahiruddin was the candidate for Awami League in the Mirpur contituency, with the symbol 'নৌকা', as against him Professor Golam Azam contested with the symbol

'দাঁড়িপাল্লা।' He campaigned for Advocate Zahiruddin, whereas Quader Molla the then leader of Islami Chhatra Sangha, his companions and Biharis campaigned for 'দাঁড়িপাল্লা।' He knew Abdul Quader Molla. In 1970's election, Awami League got majority seats in the Pakistan National Assembly, but the Pakistanis did not hand over power to Awami League for which Bangalees continued their movement (in the deposition sheet, in Bangla, it has been recorded as: "আমরা বাঙ্গালীরা আন্দোলন সংগ্রাম চালিয়ে যাই") and because of the movement, the situation turned from bad to worse. In the speech delivered by Bangabandhu on 7th March, 1971, he asked for preparation for the independence of the country and thereafter he along with others started training in their village for preparation for the *muktijuddha*. Many occurrences took place on 25th March. The Pak Hanadars attacked. They remained in the village because of the existence of low-lying lands around the village. On 24th April, 1971, at the time of Fazar Ajan, they heard the sound of a helicopter. On coming out, he found that the helicopter landed on the high land by the side of the river situated on the western side of the village. Sometime thereafter, he heard the sound of firing from the western side. At the same time, he also got the sound of firing from the East, the South and the North and then they started running hither and thither in the village. When darkness was fading slowly, he found two/one (দুই এক জন) dead body lying scatteredly. He hid himself in a ditch under the bush (ঝোপ) on the northern side of the village(emphasis supplied). It was harvesting season and many people came to their village from outside for harvesting. He saw Pak army bringing the people who came for harvesting and the villagers together from the western side and keeping all of them at one place (একত্রে জড়ো

করছে). Then he saw Quader Molla, his cadre, Pak bahini and non-Bangalee-Biharis bringing the people who came for harvesting and the villagers together from the eastern side and taking them to the same place. Some time thereafter, he saw Quader Molla speaking in urdu with the officers of Pak Bahini, but he could not hear what was said by Quader Molla as he was at a distance. Sometime thereafter, he saw shooting those people. Quader Molla had a rifle in his hands and he also shot. In the incident, 360/370 persons were killed including 70/80 villagers with his paternal uncle, Nabiullah and the labourers who came for harvesting. All the persons killed were Bangalees. The massacre continued from Fazar Azan till 11 a.m. Thereafter they looted the houses and ablaze the houses. The PW identified Quader Molla on the dock. On 16th October, 2010, the Investigation Officer called him to Pallabi Police Station and examined (জিজ্ঞাসাবাদ করে) him.

In cross examination, the PW stated that he did not bring voter identity card or he did not give the same to the Investigation Officer. He was a student of Mirpur Adrasha High School and he passed S.S.C. in second batch in 1972. He is a voter and he cast his vote in the last Parliament election. The particulars given in the voter list at serial No.2220 as to his name and address have been correctly metnioned. Then said his date of birth has been wrongly mentioned. He further stated that he did not file any paper in Court about his date of birth. He denied the defence suggestion that it is not a fact that he did not cast his vote in 1970’s election. In 1971, there was paddy field towards the north of village-Alubdi and there was another village at a distance of 5 kilometers on the north, but he could not say the name of the village. Duaripara was on the

North of village Alubdi and Botanical Garden, village-Digun was 500 yards away to the East, to the West there was paddy field and after the paddy field, the area of Savar Police Station. Village-Alubdi was quarter mile long on the North-South direction (উত্তর-দক্ষিণে পোয়া মাইল লম্বালম্বি ছিল). Their house was in the middle of the village towards the West. There were many houses on the northside of their house. At that time, there were paddy fields around the village. There were many stakes of paddy (ধানের আটি) at the low lying land outside the courtyard of their house. In 1971, he had four brothers and three sisters and all are alive. Amongst the brothers and sisters, he is the eldest. The names of the other brothers are: Altabuddin Molla, Nasiruddin Molla and Sharifuddin Molla. He pleaded his ignorance as to whether his younger brother, Altabuddin Molla wrote any book about the killing at Alubdi village. He had his education at Adarsha High School, Mirpur-10 and he completed his school education in 1972. He did not know in which school or college, Abdul Quader Molla took his education. His father had four brothers and according to the seniority his father Habullah Molla was the eldest and the names of other younger brothers are: Nabiullah Molla, Abdus Subhan Molla, Fazlul Haque Molla and Sirajul Haque Molla. Their house was at the last end of their village. At a bit distance on the North of their house there was a bush (ঝোপ), where he hid himself. At that time, from the place where he hid, nothing could be seen on the South after his house. The ditch was about four feet deep beneath the bush from the ground level. He was the same height in 1971 as he is now, there may be a slight difference (সামান্য কম-বেশী হতে পারে). The ditch was created by man. There were harvesting people in the paddy field on the northern side, but

he could not say their number. Then on being asked by the Tribunal, the PW stated that as the occurrence took place during Fazar prayer, no one was harvesting paddy (in the deposition sheet, in Bangla, it has been recorded as: "ফজরের সময় ঘটনা শুরু সে জন্য ঐ সময় মাঠে কোন লোক ধান কাট ছিলনা"). At that time, harvesting was yet to be completed. Then he said a man could hide himself by standing in the paddy field. There were high paddy fields on the western side. He denied the defence suggestion that it is not a fact that because of the high paddy field on all the four sides, he could not see anything from the ditch beneath the bush. He denied the further defence suggestion that it is not a fact that the Pakistan army burnt the dead body of his paternal uncle by putting fire on the stakes of hay by keeping the dead body therein. Then said Pak army killed only his paternal uncle of his family. He was a student and he could not say where from Advocate Zahiruddin hailed and he could not also say whether Zahiruddin was Bangali or non-Bangalee. Advocate Zahiruddin went to their area for campaigning, but did not go to their village. He had no talk with Zahiruddin. He did not go to Zahiruddin as he was young (ছোট ছিলাম). On 24th April, 1971, he, his father and paternal uncle were at their house. Presently, he is not involved with politics. Amongst the paternal uncles, only two are alive and they are not involved with politics. Amongst the brothers, possibly Altabuddin Molla is involved with BNP politics. His paternal uncle-Nabiullah has four sons and two daughters and they all are alive. He further stated that after the occurrence of 24th April till the liberation of the country, they lived at Savar. The neighbours of their house also took shelter in different places of Savar. He would not be able to say the name of the village of accused Abdul

Quader Molla. He denied the defence suggestion that it is not a fact that in 1970-71, he did not know Abdul Quader Molla and that Quader Molla did not go to their village in 1970-71. He could say which areas were included in the constituency of Advocate Zahiruddin at Mirpur. He could not also say the name of voters and vote centres of his village in 1970. On 24th April, 1971 Harun Molla was the Chairman of their Union. During that time, helicopter was used only by the army. He denied the defence suggestion that it is not a fact that in 1970, his age was not 19 years or that he was minor. He denied the defence suggestion that it is not a fact that he did not see the occurrence by hiding in the ditch under the bush. He denied the further defence suggestion that it is not a fact that before the occurrence giving rise to the instant case, he was never involved with politics. He denied all the defence suggestions that it is not a fact that whatever he stated in Court in his examination-in-chief regarding the occurrence he did not state those to the Investigation Officer (the suggestions were given to the PW to show the contradictions in between his testimoney made in court and the statements made to the Investigation Officer). He denied the defence suggestion that it is not a fact that whatever he stated implicating Abdul Quader Molla with the occurrence, which took place in village-Alubdi, were false and fabricated. He did not file any voter list in court to show that in 1970, he was a voter and he did not also give the same to the Investigation Officer. He denied the defence suggestion that it is not a fact that he did not know Abdul Quader Molla in 1970-71, in any manner. He denied the defence suggestion that it is not a fact that he did not see the Pak army bringing together the people who came to harvest and the villagers at one place. He

denied the defence suggestion that it is not a fact that Abdul Quader Molla had no bahini or he was not present there or he did not talk to Pak bahini in urdu or he was not present there with rifle or he did not shoot. He further stated that as per National Identity card, his date of birth is 24.11.1953. He is the father of three sons, he could not remember the date of his marriage, the date of birth of his sons. He could not say when the Azan of Fazar was given on 24.04.1971 and when the sun rose. On 24.04.1971, the sky was cloudy, when the firing started after the helicopter had landed, the people of the village started running inside the village, about 2500/3000 people used to live in the village at the relevant time. He denied the defence suggestion that it is not a fact that as the sky was cloudy he could not see anything from the ditch. He asserted that the front of the ditch was open field, the paddy field was at 3/4 steps down. He denied the defence suggestion that it is not a fact that he was not hiding in the ditch under the bush. After 11 a.m. he went out of the village through the paddy field at an opportune moment. The people of the village, the hanadar bahini and their accomplices were in the village even after 11 a.m. on the said date. After coming out from the ditch at 11 a.m. he did not go to his house. He further stated that his parents, brothers and sisters had been outside the village from before. His mother, brothers and sisters had gone one week before and his father left the village in the evening of the previous day leaving the house (in the deposition sheet, in Bangla, it has been recorded as: "আমার বাবা-মা, ভাই-বোন আগেই গ্রামের বাহিরে ছিল, মা-ভাইবোন সপ্তাহ খানেক আগে এবং বাবা ঘটনার আগের দিন বিকাল বেলা বাড়ী ছেড়ে গ্রামের বাহিরে চলে যায়।"). He further stated that the female and the children of the house of his paternal uncle had gone outside the village one week/ten

days before leaving the house, then said many people of the village left the village one week/ten days before and many also left before. In this way, many other villagers had left their houses after the incidents which took place on 25th March. He denied the further defence suggestion that it is not a fact that he had also gone outside the village one week/ten days before with his parents. He did not meet with the Investigation Officer on or after 16th August, 2010. He further stated that he did not see the Investigation Officer in his village. He went to the police station on being asked by the Police of the Police Station. He denied the defence suggestion that it is not a fact that on 24th April, 1971 when the occurrence took place at the village, he did not see Abdul Quader Molla in his village or near it. He denied the further defence suggestion that it is not a fact that there was dark at the time of occurrrence and he did not see anyone. Then said when the occurrence started, it was dark. He denied the further defence suggestion that it is not a fact that he being a politician and being involved with political ideology, deposed falsely as tutored or he also gave false statement to the Investigation Officer by suppressing the truth as tutored by him.

P.W.7, Abdul Mazid Palwan, in his examination-in-chief stated that the name of his village is Ghatarchar and it is under Police Station Keraniganj. The Hindus and the Muslims used to live together in their village. Before liberation of the country except a few, all of their villagers used to do Awami League. Their village comprises of five Mohallas. In the morning of 25th November, 1971, they heard the sound of firing then said on hearing the sound of firing, he woke up from sleep and went down of his house (বাড়ীর নামায় যাই) and saw ablaze

all around. He heard the sound of firing from the North direction and then he very slowly proceeded towards the north and stopped near the school field of Ghatarchar. At that time, there were bushes in their village and he hid himself behind a tree. He saw the Pak bahini killing people, along with the Pak bahini, there were some persons in *paijama* and *panjabi* and one of them was Abdul Quader Molla. He continued to say that the Pak Bahini killed the people, Quader Molla also fired from his rifle in hand. The firing and killing continued from dawn to 11 a.m. After 11 a.m. the Pak army and the bahini of Quader Molla left the areas and thereafter he called other people and tried to identify the dead bodies. In total 60 people were killed, both the Hindus and the Muslims. While identifying the dead bodies, Muktijudha, Commander-Muzzafar Ahmed Khan (PW1) came and he narrated the occurrenc to him. On the previous night of 25th November, Abdul Quader Molla held a meeting at the house of Doctor Zainal. The house of Doctor Zainal was just after three houses of the house of the P.W towards the East. After the the Pak army had left the place at 11 a.m, he came to know that the short stature man in *panjabi* and *paizama,* who accompanied them, was Abdul Quader Molla, there were other people as well with the Pak army who wore veil (borka) so that they could not be identified easily. Abdul Quader Molla was identified in the dock. He further stated that he gave statements to the Investigation Officer on 27.06.2012.

In cross examination, the PW stated that he read upto class-V. Their village is comprised of five Mahallas, the name of his Mohalla is Ghatarchar Khalpar. While he was 10/12 years of age, the *murubbis,* who lived by the side of his house, were Kafiluddin Bepari, Luddu Mia, Okiluddin, Nur Hossain,

Nazimuddin and Lal Chand. He could not say who was the Chairman at that time? There was a Member from their village named Doctor Zainal Abedin. He could not say whether the persons named above saw the occurrences of 25th November, 1971. Pak bahini did not go to their village before or after 25th November, 1971. He asserted that in 1971, he was not minor, his age was 19 years or may be 2/1 year less. He has national identity card, he could not say the date of birth recorded therein. He could not also say the date of birth written in the voter list. Out of the five Mohallas of their village, in one Mohalla, the Hindus were the dominant residents and the Mohalla of the PW was just 200 yards away on the East from the Hindu Mohalla. He could not say whether the people of the village fled away running hearing the sound of firing. On hearing the sound of firing, he proceeded to the direction from where the sound of firing was coming. He could not say where his father, paternal uncle, brothers and sisters were and what they were doing. The Hindu Mohalla was towards the South from his house, Noaga Mohalla was towards the North. He did not run through Noaga Mohalla, but ran towards the field on the south. He went near the field by keeping the Hindu Mohalla on the right side. When he ran, none accompanied him. When he stood by the side of the field, he did not see any one of his village by his side. On returning to his house after 11 a.m., the PW did not find the inmates of his house. He heard that the inmates of the house went away on the other side of the river passed by the side of their village. Coming to his house after 11 a.m., he took a glass of water and then again went at the side of the field and at that time, Lal Chand accompanied him and he saw many people present. Lal Chand is still alive, his father's name is

Mohar Chand. Fire broke out on all sides of the Hindu *Mahalla* and the *Mohalla* situated by the side of the field. He could not say where the people of these two mohallas went when fire broke out (আগুন লাগার সময়), the question of coming to put off the fire (আগুন নিভাতে) does not arise at all, as the people of other Mohallas fled away on hearing the sound of firing. He denied the defence suggestion that it is not a fact that like others, he also fled away hearing the sound of firing and that on the date of occurrence, he on hearing the sound of firing did not go to the direction where the occurrence took place. None of his age went to the direction where he went on hearing the sound of firing. He denied the defence suggestion that it is not a fact that as, at the time of occurrrence, he was very young (ঘটনার সময় আমি ছোট ছিলাম বিধায়), his parents took him to the other side of the river in their laps and his paternal cousins (চাচাত ভাই-বোনেরাও) also went there. He denied the defence suggestion that it is not a fact that at the time of occurrence, he was 10/12 years of age and used to read in primary school. He could not say the name of the twelve months of English calender and he could not also count upto hundred in English. He denied the further defence suggestion that it is not a fact that he mentioned 25th November, 1971 as tutored. He could not say the date of his marriage, the date of his father's death but could say the year. He has five sons and two daughters, but he could not say their date of birth. On 25th November, 1971, he went out of his house with rising of the sun (সূর্য উঠার সাথে সাথে), but could not say the time. The house of Luddu Mia was just adjacent to his house on the North. On the South, there was land; on the East, there was the house of Kafiluddin Matabar; on the West, there was agricultural land. He knew the house of

Muktar Hossain which was just after three houses of his house on the East. At the relevant time, Muktar Hossain was a goverment servant, he along with his family members used to live in the village. Muktar Hossain had two brothers and two sisters who used to live in the same house. On the date of occurrence, about 200 Pak bahini came and the Rajakars were also there. He saw the members of the Pak Bahini walk to a big launch in the river. He could not say whether his date of birth mentioned in the voter list was correct or not, but said his name and address was correctly mentioned in the voter list. The members of the families who were killed in the village were 60 in number. Some members of those families are alive and some are dead. He could not say the names of the father and the brother of 60 (sixty) persons who were killed, but he could say the name of two, four, ten (in the deposition sheet, in Bangla, it has been recorded as: "দুই চার দশ জনের নাম বলতে পারবো"). At the time of identifying the dead bodies, the relatives of some of the killed persons came and many did not come and all were crying. The dead bodies were not taken to the respective house and all were buried from the field. Two brothers of Taib Ali were killed, Taib Ali is alive. One of the brothers of Samiruddin Samu was killed, Samiruddin is alive, one of the brothers of Okiluddin named Mujari was killed, Okiluddin is alive. He could not mention the name of other persons who were killed except the three mentioned above. He could not say whether any of the relatives of the 60(sixty) persons killed in the occurrence is witness in the case. After the occurrence, he called 7/8 persons to the place of occurrence, those were Lat Mia, Islam, Sukkur Ali, Tamizuddin Matabbar, Nazimuddin, Burhanuddin and 2/4 others (in the deposition sheet, in Bangla, it has been

recarded as: "আরো দু' চারজন"). He could not say whether those persons had been cited as witnesses in the case. He did not show the Investigation Officer the tree under which he hid at the time of occurrence, but he told the Investigation Officer about the tree. The Investigation Officer examined him in his office in Dhaka, he was called there by letter. The house of Muktijoddha Commander, Muzaffar Ahmed Khan (PW1) was one and half kilometer away towards the West from the house of the PW. There were *beel* and land in between the house of the PW and the house of Muktijoddha Commander Muzaffar Ahmed Khan, presently there are houses in those vacant places. When he narrated the incident to Muzaffar Ahmed Khan, Lal Chand, Malek, Khaleq, Shahidul Islam, Raja Mia and others were present. Most of them are alive. Muzaffar Ahmed Khan hails from village-Bhawal Khan Bari. He denied the defence suggestion that it is not a fact that he did not tell the Investigation Officer that there are five Mohallas in the village or he woke up from sleep on hearing the sound of firing or after going to the downwards of his house, he saw ablaze all around or heard the sound of firing on the north or he proceeded very slowly towards the North hearing the sound of firing or he stopped near the school field of Ghatarchar or there were bushes in the village or he hid himself behind a tree or there were some persons with Pak bahini in *paijama* and *panjabi* and one of them was Abdul Quader Molla. He denied the defence suggestion that it is not a fact that on the date of occurrence, he did not see Abdul Quader Molla at the place of occurrence or he did not go. He denied the defence suggestion that it is not a fact that he did not tell the Investigation Officer that Abdul Quader Molla had a rifle in his hand and he also shot. He denied the defence suggestion that it

is not a fact that on the date of occurrence, Quader Molla had no rifle or he did not shoot. He denied the defence suggestion that it is not a fact that he did not tell the Investigation Officer that on the previous night of 25th November, Abdul Quader Molla held a meeting at the house of Doctor Zainal or the house of Doctor Zainal was just after three houses on the East from his house or on the date of occurrence, after the Pak bahini had left the place after 11 a.m., he could know that the man in short stature in *pajama* and *panjabi* who accompanied them, was Abdul Quader Molla and there were other people wearing veil so that they could not be identified. He further stated that he is the president of ward Awami League of his area. He denied the defence suggestion that it is not a fact that he did not see Quader Molla on the date of occurrence or before the occurrence and thereafter as well. He denied the further defence suggestion that it is not a fact that he identified Quader Molla being shown by the prosecution. He denied the further defence suggestion that it is not a fact that he being a party man of the present Government deposed falsely as tutored. He also denied the defence suggestion that it is not a fact that at the time of occurrence, Abdul Quader Molla did not wear *pajama* and *panjabi*. He asserted that at the time of occurrence, he saw Quader Molla in *pajama* and *panjabi*. He denied the last defence suggestion that it is not a fact that he did not see the occurrence hiding behind the bush.

PW8, Nurjahan, stated in her examination-in-chief that at the time of *muktijuddha,* she was 13(thirteen) years old and was pregnant. During the *muktijuddha* an occurrence took place on 25th November while she was staying with her husband at village-Ghatarchar. On that date, after Fazar prayer firing

started. Hearing the sound of firing, she and her husband hid beneath the cot. After the firing was stopped, she came out to see what happened. She saw the army coming towards their house from the side of the *bondh* (মাঠ). Her husband went to the house of his paternal uncle-in-law (চাচা শশুর), Mozammel Haque. Again she heard the sound of firing. Then she became restless and entered into the room and then came out and then again entered into the room (in the deposition sheet, in Bangla, it has been recoraed as: "তখন আমি একবার ঘরের বাইরে যাই আবার ঘরে ঢুকি"). At that time, her maternal aunt (মামী) came and told her mother-in-law, *Bulur Maa re Bulur Maa* her Bulu was no more (in the deposition sheet, in Bangla, it has been recorded as: "বুলর মারে বুলুর মা তোর বুলুতো নাই"). Hearing the same, the PW cried out and ran to the house of her paternal uncle-in-law and saw that he (paternal uncle-in-law) was shot. She found some army, one short stature Bangali with black complexion and she also saw her husband lying on the ground. Then she cried out and went to catch hold of her husband (ধরতে যাই) crying, then that Bangali by pointing something like rifle asked her to leave the place and she being frightened ran away. After ten or eleven she raised/lifted her husband who was lying with the face downwards (in the deposition sheet, in Bangla, it has been recorded as: "উবু হয়ে পড়ে থাকা অবস্থা থেকে উঠাই"). She saw earth in the mouth and the forehead of her husband and found blood when she touched his chest. Then she started crying and gave information to her mother-in-law to come. Thereafter, she took her husband to her own house with the help of 5/6 others. She further stated that he heard that in the incident, 50/60 people of Ghatarchar were killed. At the time of occurrence, Zainal Doctor and Muktar Hossain were there. She heard from her

father-in-law, Luddu Mia that Quader Molla of Jamat killed her husband. Besides her father-in-law, Luddu Mia, she heard the said fact of killing of her husband from others including Abdul Mazid Palwan. The accused was identified in the dock. She further stated that at the time of occurrence, the hair of the accused was short and he had no beard.

In cross examination, the PW stated that her father's house was also at village-Ghatarchar and she was married to her cousin (ফুপাত ভাই). She did not study (আমি লেখাপড়া করিনি।). She did not go to school, but read the holy Quran. In the election of 2008, she voted for Awami League candidate. She lives at Paribag, Dhaka. She works as a domestic aid. The owner of the house where she presently works is Engineer Swadhan Das, the address of the house being Bhaduri Tower-A-1, Paribag. She was married thrice and presently, she has no husband. The name of her 2nd husand was Lat Mia who died due to snake biting. The name of her 3rd husband is Nurul Islam and he is from Noakhali. Amongst his father and paternal uncles, none is alive. About 3000 people live in Ghatarchar Khalpar Mohalla in which their house is situated. She denied the defence suggestion that it is not a fact that Mazid Palwan did not tell her anything. The Investigation Officer of the case examined her about the occurrence giving rise to this case, but she could not remember the date. The Investigation Officer examined her in his office at Baily Road. She denied the defence suggestion that it is not a fact that she did not tell the Investigation Officer that at the time of occurrences, her age was 13(thirteen) years and that she was pregnant. She denied the defence suggestion that it is not a fact that she did not tell the Investigation Officer that on the date of occurrence, hearing

the sound of firing, she and her husband hid beneath the cot. She denied all other defence suggestions given to her to the effect that it is not a fact that whatever she stated in Court, she did not say so to the Investigation Officer (suggestions put to the PW are not repeated, contradictions between her testimony in Court and the statements made to the Investigation Officer will be referred to in giving finding in deciding the fate of the charge in respect of Ghatarchar incident). She further stated that her father-in-law, Luddu Mia had two sons and two daughters and they have their children who are alive. She did not know whether her date of birth was 03.05.1976, then stated that she would not be able to say her date of birth. She could not say on which date and year her parents died, she could not also say the date on which her husband, Lat Mia (2nd husband) and Nurul Islam (3rd husband) died. She further stated that she herself did not show the Investigation Officer the place where her husband was killed. She denied the defence suggestion that it is not a fact that she did not tell anything to the Investigation Officer against Abdul Quader Molla. She further stated that she did not lodge any complaint with the Police Station or anywhere else about the killing of her husband. She did not get any notice from the Court, but the Investigation Officer told her that she has to give evidence. She denied the defence suggestion that it is not a fact that she was not even born in 1971. She denied the further defence suggestion that it is not a fact that presently, she is aged about 55 years. She denied the last defence suggestion that she was a tutored witness and deposed falsely suppressing the truth.

PW9, Amir Hossain Molla, stated in his examination-in-chief that he was from village-Duaripara, presently Police Station, Rupnagor previously

Pallabi. Village-Alubdi is about 150 yards away from his house. During *Muktijuddha*, he was 24(twenty four) years old. He went to Suhrawardi Uddan on the 7th day of March, 1971 to hear the speech of Bangabandhu. Bangabandhu in his speech spoke about the independence of the country and preparation for *Muktijuddha* and he being inspirited by the speech of Bangabandhu raised *Swechchhasebak Bahini* at Mirpur area. Then he took training in the then Iqbal Hall of Dhaka University under the supervision of *Swadhin Bangla Chhatra Sanggram Parishad*. At that time, Abdul Quader Molla along with 70/80 people of Islami Chhatra Sangha used to train the Biharis at Mirpur to protect Pakistan. Seeing the condition of the country precarious (in the deposition sheet, in Bangla, it has been recorded as: "দেশের অবস্থা ভয়াবহ দেখে"), on 23/24th March, he, his parents and the members of the family first took shelter at a school at Savar then at the house of a relative, then said on 22/23rd April he along with his father came nearer to village-Alubdi (in the deposition sheet, in Bangla, it has been recorded as: "আমাদের গ্রাম আলুবদির কাছে আসি") for harvesting their paddy. After harvesting paddy, they passed night at the house of his maternal uncle (খালু), Rostam Ali Bepari. On 24th April, during Fazar Ajan the Punjabis landed from helicopter on the bank of the river-Turag on the West of the village-Alubdi. From the East, 100-150 Biharis and Bangalees with Punjabis came under the leadership of Abdul Quader Molla and started firing indiscriminately killing some people (in the deposition sheet, in Bangla, it has been recorded as: "এলোপাথাড়ি গুলি করে তখন বেশ কিছু লোক সেখানে মারা যায়"). Thereafter, they entered into the village and after catching hold (ধরে এনে) of people from the houses numbering 64/65 lined them up on the North of the

village and also brought 300/350 persons who came to the village for harvesting paddy and lined them up at the same place and then shot them, Quader Molla and Aktar Gunda had also rifle in their hands and they also shot along with the Punjabis and in the process, 400 people were killed. In the incident, 21 of his relatives were killed. Those, who were killed, included his maternal uncle(খালু), Rustom Bepari, maternal uncle (মামা), Salim Molla, cousin (মামাত ভাই)- Abdul Quader Molla, another maternal uncle (মামা)-Karim Molla, five other cousins (মামাত ভাই), namely: Zainal Molla, Fazal Huq, Ozal Huq, Lal Chand Bepari and Sunu Mia, one of his *Talui* named Kashem Dewan and another cousin (জেঠ্যাতো ভাই), Nabi Molla, cousin (চাচাত ভাই), Zura Molla, paternal uncles (চাচা) : Nawab Ali and Mukhlesur Rahman and a sister-in-law (ভাবী), Yesmin Banu. After the incident, the PW had gone to Lailapur, Asam, India in the first part of June and took training there for *muktijuddha*. After training, he came to Melagor, took arms and came to Bangladesh in the first part of August. The country was liberated on 16th December, 1971, but Mirpur was not liberated till then. At that time, under the leadership of Abdul Quader Molla about 700/800 members of Al-badars and some Punjabis came to Mirpur and joined the Biharis there and they together hoisted the Pakistani flag with the view to convert Bangladesh as Pakistan. That being the position on 18th December, 1971 under the leadership of group Commander, Hanif, Assistant Commander, Rafiqual Islam, Zahiruddin Babar, Mominul Huq and the PW himself along with about 150 freedom fighters attacked Zandi Radar Camp at Mirpur where there was an *Astana* of the Al-Badar Bahini of Quader Molla and the Punjabis. There was counter attack from the camp with heavy arms and in

the fight, Abdus Satter, a freedom fighter, embraced martyrdom on river-Turag, the PW was injured with bullet on his right knee and right arms and they retreated. Thereafter on 31st January, the co-freedom fighters in collaboration with the Indian *Mitra Bahini* under the leadership of *muktijudda* high Command attacked Mirpur from all sides and after defeating the Pak senas and the Al-badar under the leadership of Quader Molla, the flag of independent Bangla was hoisted. He further stated that in 1970's election, he campaigned for Advocate Zahiruddin, a candidate of Awami League and Quader Molla campaigned for Golam Azam with the symbol, 'দাঁড়িপাল্লা'. At that time, Abdul Quader Molla was the leader of Islami Chhatra Sangha, Abdul Quader Molla was identified in the dock.

In cross examination, the PW stated that he was a voter in the election of 2008 and he cast his vote. In the voter list his name, address and date of birth have been correctly recorded. In 1972-73, in L.A.Case No.5, many properties or lands of their area were acquired by the Government. They used to live in the said acquired lands. They carried out movement for giving compensation and other benefits to the owners of the acquired lands, but the Government did not give any plot. In 1973 election, he was the supporter of Awami League and at that time, Bangabandhu Sheikh Mujibur Rahman was the chief Executive. As freedom fighter, he did not go to Bangbandhu with the demands of their movement. Then on being asked by the Tribunal, he stated that they carried out the movement in 1977, so the question of going to Bangbandhu does not arise at all. Till date they are living with the family members on the acquired land. Though many got allotment from the land acquired in the L.A.case in question,

they did not get any plot, then said he is living on the land earmarked for rehabilitation. They heard that plots were earmarked for rehabilation of the affected persons in L.A. Case No.5 (no year mentioned), but plots have been allotted to the persons who are not affected by such acquisition. They are living in the acquired land by constructing semi-pacca room. He denied the defence suggestion that it is not a fact that till 1996, he supported the party which came to power. When Awami League came to power in 1996, they placed their demand to the Government to give them plot and did not make any demand to the next Government for getting plot. They have been demanding the allotment of plot to the present Government and process is going on. He denied the defence suggestion that it is not a fact that as the process of giving the plot to him is going on, so he came to depose in favour of the prosecution. He further stated that in the area, the people also call him Hossain Molla. He denied the defence suggestion that it is not a fact that the people of the area also call him as *Lat Bhai*. He denied the defence suggestion that it is not a fact that there is a bahini in the area as Molla Bahini of which he is the leader. He denied the defence suggestion that it is not a fact that he had to go to jail hajat for many times for occupying the plot of others illegally. He asserted that the report published in the daily Inqilab on 14th December, 2001 to the effect that he is known to all in the area as *Lat Bhai* and that he is an infamous (কুখ্যাত) extortionist (চাঁদাবাজ), terrorist, peddler of drugs and illegal arms dealer and occupier of huge Government properties and that he got injured with bullet when after liberation of the country on 16th December, 1971, he went to loot different houses was false. He denied the defence suggestion that it is not a fact

that he collected the certificate as freedom fighter taking the advantage of being injured by bullet. He denied the defence suggestion that it is not a fact that he along with others occupied a plot of Justice A.F.M. Ali Asgor for which there was a case. Then said he along with 5(five) others surrendered before the lower court in connection with the said case on 15.05.2012 and in that case, he was sent to jail hajat. He denied the defence suggestion that it is not a fact that he demanded taka 4,00,000.00(four lac) as subscription while filling up the land of justice A.F.M. Ali Asgor. He pleaded his ignorance as to whether someone in the name of Moniruzzaman Mia used to look after the property of Justice Ali Asgor. He denied the defence suggestion that it is not a fact that he is by profession an infamous extortionist, terrorist, dealer of drugs and arms and illegal occupier of Government land and the property as reported in the daily Inquilab on 14.12.2011. He denied the defence suggestion that it is not a fact that to resort to terrorism, collection of illegal tolls/subscription and illegal occupation of property are the professions of himself and his sons. He further stated that he was in jail hajat in an arms case for about one month, but that was a pre-arranged case. The case has been disposed of and he has been acquitted therefrom. He denied the defence suggestion that it is not a fact that the Police arrested him with arms in connection with the firing which took place in front of waqf office or he was sent to the Court and then said he has been acquitted in that case as well. He further stated that after the election of 2008, he filed a petition case against some of the accused including the accused of the instant case which, after investigation by the Police was sent to CID and he could not say what happened thereafter. From Botanical garden village-

Duaripara was 400/450 yards away on the East-North. The village-Duaripara was "উত্তর-দক্ষিনে লম্বালম্বি". In 1971, there were cultivable land (আবাদী জমি) on the East, the West and the North at village-Duaripara. Village-Alubdi was just 100/150 yards away on the North of their village. He admitted that the case filed by Moniruzzaman Mia being Pallabi Police Station Case No.16 dated 04.04.2012 is still going on. He further stated that the news might have been published on 14.12.2001 in the daily 'Jugantor' under the head "অর্ধশত মামলার আসামী লাট ভাই গ্রেফতার", but this was done with political motive. He asserted that he had been acquitted from all the cases mentioned against him. The area, where he lives, is organizationally Ward No.92 and he is the president of Awami League of the said ward, but administratively, it is Ward No.6 and it is a big Ward. In 1986, during the regime of Ershad, he was appointed as Ward Commissioner of that Ward as a freedom fighter and he worked in that capacity for about one year and six months. He pleaded his ignorance about the lodging of a G.D.entry by one Safura Huq on 21.04.2001 with Pallabi-Police Station being No.1202. In 1996, he campaigned for Awami League. Before the election of 1970, villages-Duaripara and Alubdi were simple backward villages (নিরেট অজ পাড়াগাঁ ছিল). During the rainy season, three sides of village-Duaripara and all the sides of village-Alubdi used to remain under water and after the rainy season except the period for cultivation of boro, the rest period of the year used to remain under water. He pleaded his ignorance whether there was GD entry against him on 23.10.2011 being No.1919 and another GD entry on 06.03.2012 and whether charge sheet was submitted on 04.04.2012 in Pallabi Police Station Case No.16 dated 04.04.2012 and Pallabi Police Station Case

No.24 dated 06.03.2012. In 1971, Pakistani army installed a cannon at the Radar Camp at Zandi, Mirpur and on 24th April, 1971 the Pakistani army fired towards the village-Alubdi. In 1970, there were 7/8 sections in Mirpur. On 22/23rd March, 1971 they left their village and went to village Birulia at Savar which was two miles away on the West-North from villages-Duaripara and Alubdi. He knew Shafiuddin Molla of village-Alubdi. On 22/23rd March, 1971 majority of the women and others left the village, but he could not say whether Shafiuddin Molla left the village or not. Then again said, at that time, all of Duaripara including themselves left the village. At the relevant time, only boro paddy was cultivated in the area once a year through irrigation. Boro saplings were planted in the month of Poush and harvesting started on 5/6 day of the month of Baishakh. He could not say where Abdul Quader Molla used to study (কোথায় লেখাপড়া করত). He denied the defence suggestion that it is not a fact that since 16th December, 1971 till 31st January, 1972 Mirpur was under the Bihari Regiment of Indian army. He established the *Swechchha Sebak Bahini* with 21 members and all of whom were agriculturists and all were from their village and out of 21 members, only one is alive named, Abbas and presently, he is staying abroad. He denied the defence suggestion that it is not a fact that he did not establish any *Swechchha Sebak Bahini* or the story of establishing *Swechachha Sebak Bahini* is imaginary, concocted and false. He did not know whether Haji Abdul Karim was the eye witness to the occurrence which occurred on 24th April, 1971 as stated by him and he did not know him. Rustam Bepari has two sons, namely: Anamat Bepari and Neyamat Bepari. His maternal uncle (মামা) Salim Molla had two sons, but he could not remember

their names, he could not say their age even on assumption. He could not say how many children had his cousin, Awal Molla, he had a son named Satter Molla and at the time of occurrence he was about 12/13 years. His *Talui* (তালই), Kashem Dewan had a son named Nurul Islam and at the time of occurrence, he was 24/25 years. His cousin (জেঠাতো ভাই), Nabi Molla had two sons and he could not say whether he had any daughter, names of the sons are Andes Ali Molla, Obaidullah Molla and at the time of occurrence, they were 16/17 years old respectively and both are alive. His paternal uncle (চাচা) Mukhlesur Rahman had a son and was aged about 12/13 years at the time of the occurrence. He did not know Abdul Barek of village-Alubdi and he did not also know whether he was an eye witness to the occurrence which took place on 24th April, 1971. He knew Birangana Most. Laili of village-Alubdi. He knew Kalu Molla, Monsur Ali Dewan, War Ali Dewan, Gadu Bepari, Barek Matbar, Rahman Bepari, Kitab Ali, Chunu Bepari and Abdul Hai of village-Alubdi and these people were affected this way or that way during the liberation war. He admitted that the children of 21, who were killed, were more affected than him. He denied the defence suggestion that it is not a fact that Bangladesh army and Police took control of Mirpur from Indian army on 27th January, 1972 and till then from 16th December, Bihari Regiment of Indian army kept Mirpur-12 encircled for the safety of the innocent people of the area. He pleaded his ignorance as to whether any Court was constituted/established under the Collaborators Act. He knew Aktar Gunda of Mirpur, but he could not say whether Aktar Gunda was sentenced by the Court. He further stated that after 31st January, 1972, Aktar Gunda was in jail, but he could not say whether he went to Pakistan after

serving out his sentence. He denied the defence suggestion that it is not a fact that his testimony given in his examination-in-chief that Quader Molla with 70/80 persons of Islami Chhatra Sangha used to give training to the Biharis in Mirpur for protecting Pakistan, were false and concocted. He denied the defence suggestion that it is not a fact that whatever he stated in his examination-in-chief accusing Quader Molla directly or indirectly were false and concocted. He gave statements to the Investigation Officer and possibly, on 16.08.2010 sitting at Pallabi Police Station. The Investigation Officer informed him through the Police of Pallabi Police Station to appear there. Before or after 16.08.2010, he never met the Investigation Officer. He denied the defence suggestion that it is not a fact that he did not hide in dip/ditch (ডোবায়) with his familes then said voluntarily (নিজে বলেন) that he and his father hid under water-hyacinth on the West-North corner of village-Alubdi and from there, they witnessed the occurrence. He denied the defence suggestions that it is not a fact that the facts stated by him were concocted and false. The PW further stated that in the complaint filed by him, the fact of saving himself (আত্মরক্ষা) along with his family by hiding in the water-hyacinth of the *beel* has been stated, then said he could not say what Okil shaheb wrote. He further stated that he signed every page of the complaint case. In the complaint case, it was written that after 25th March, 1971, the complainant was in a fix what to do, where to go with his parents, brothers and sisters and the relatives, but he stayed at his house in alert condition and he knows what was written by his lawyer.

PW10, Syed Abdul Quayum, stated in his examination-in-chief that he joined Mirpur Bangla School as its Headmaster in December, 1968. In 1970's election, there was a polling centre at Mirpur and he discharged his election duties in the polling centre. In the said election Advocate Zahiruddin was the candidate for the National Assembly with the symbol, নৌকা; Professor Golam Azam was also a candidate for the National Assembly with the symbol, 'দাঁড়িপাল্লা'. During the election, he did not work for anybody, but used to move with those who were the Awami Leaguers and he also used to keep their information, one of such person was Khandaker Abu Taleb. Khandaker Abu Taleb was the supporter of Awami League. Naim Khan, Shafiuddin, one Molla, who worked for the symbol, 'দাঁড়িপাল্লা', were the prominent. He was very affectionate to Khandaker Abu Taleb. During leisure hours, he used to go to him. Khandakar Abu Taleb was also a member of the Advisory Council of the School. Basically, Khandakar Abu Taleb was a Journalist. He was an Advocate as well. Khandaker Abu Taleb was the Secretary of East Pakistan Journalist Union. The PW attended the public meeting of Bangabandhu at Race Course on 7th March, 1971 and thereafter on his call he participated in the non co-operation movement and accordingly, closed the schools and colleges. On 23rd March, the Pakistan day, except Mirpur in the whole of Dhaka City the flag of independent Bangla was hoisted. On that day, at 8/8:30 a.m. some of his students collected Swadhin Bangla flag and went to school along with him and hoisted the same. After hoisting the flag, while he was coming to his residence, he heard from the mouth of Biharis "হুকুমাত কিয়া হো গিয়া". He did not understand urdu language well. He went to his house and in the evening, went to the

residence of Khandakar Abu Taleb and through him, he got the various news of the country. Normally, Pakistan Television used to end its telecast at 11:30 p.m. but on that date, it ended its telecast after 12 o'clock. He was watching the television at the house of Khandakar Abu Taleb and was waiting to see which flag would be shown, at the time of ending the telecast, Pakistan flag or Swadhin flag of Bangladesh. After 12 o'clock, when the telecast was stopped, Pakistan flag was shown then he came back to his residence and after taking dinner went to bed. At about 1:35 minutes in the might, the PW heard some people saying from outside to break the door and the window of his residence and they were also telling to beat him by uttering his name. He, out of fear, went out of his residence through the back side and by leaping over (টপকিয়ে) a wall proceeded towards the house of Abu Taleb through the drain, on the way, 3/4 persons detained him and asked him why he hoisted the flag in the school, when he was going to reply, one of them made attempt to stab him with a knife. He caught hold of the knife and when the same was pulled out, his palm was cut causing bleeding injury and then he could understand that the knife was double eged. In that condition, he ran towards the house of Abu Taleb and fell down when he tried to cross a drain by leap. The attackers also followed him and when he tried to stand, he understood that his knee and elbow were numbed and were not moving (শিথিল হয়ে গেছে নড়ছে না) and saw the attackers chop on his shoulder. When he tried to resist the chopping by his left hand, one of the chop stuck on his left hand and cut the bone of his hand. He sustained injuries on the fingers of his left hand and the other parts of his body. Hearing his cry, the moment, one Molla from neighbouring house of the occurrence

opened the door, the attackers stopped suddenly (থমকে যায়) and went away. The man of Molla informed Abu Taleb at his residence and then he and his men came with gun and took the PW to his (Khandakar Abu Taleb) house and nursed him and gave him primary treatment. On the next morning, the PW was taken to the residence of Bangabandhu at Road No.32, Dhanmondi by the car of Abu Taleb along with others. At that time, he was half unconscious. At the order of Bangabandhu, he was admitted into Dhaka Medical College Hospital and a team of doctors treated him there. He regained his sense in the morning of 25th March, 1971. As there was delay in regainging his sense, the people of Mirpur thought that he died. At 10/11 a.m. of 25th March, he saw many people, who came to see him, at Dhaka Medical College Hospital and also saw them whispering. At 10/10:30 o'clock in the night, he saw bombing at the shahid minar causing jingling (ঝনঝন) to the beds in the hospital. Within a short time, the hospital was filled up with dead bodies and half dead people. Curfew was relaxed on 27th March, 1971. Then one of his colleagues named Faruq Ahmed Khan took him to his sister's house at Sabujbag on his lap (কোলে করে) with the dress of the hospital, at that time, the militaries were also killing people by entering into the houses (বাসায় বাসায় ঢুকে). On 3rd April, 1971 a gentle man of Kuliarchar took him to the Ghat of the river at Demra by his car. He was accompanied by his friend, Faruq Khan and sister. Faruq Khan first took him to his house at village Birgaon under Police Station-Nabinagor where he stayed upto 15th April. On 16th April, the PW went to his own hosue at village-Nasirpur under Police Station-Nasirnagor. The people of the area were surprised seeing him, because on 9th April, 1971, they did his qulkhani. In June,

Faruq Khan went to the house of the PW to see him when he heard that Khandaker Abu Taleb was killed at Zallad Khana at Mirpur-10 by the non-Bangalees, local Aktar Gunda and Abdul Quader Molla s (in the deposition sheet, in Bangla, it has been recorded as: "অবাঙ্গালীরা, স্থানীয় আক্তার গুন্ডা ও আব্দুল কাদের মোল্লারা" মিরপুর ১০ নম্বরের জল্লাদ খানায় নিয়ে হত্যা করেছিল"). After liberation of the country, he came to Dhaka on 3rd January, 1972 and again started the school, then he heard from Molla who saved his life that the men of Aktar Gunda attacked him (the PW) and caused injuries to him. Thereafter, one day, he met Nizam, the non-Bangalee, driver of Taleb shaheb who told him that while Taleb shaheb was going to his own house at Mirpur with Halim, a non-Bangalee Accountant of the Ittafaq, he (Halim) without taking him to his house handed him over to the Biharis and the Biharis killed him at Zallad Khana. Poetess-Meherunnesa lived at her own house at Section-6 and she was also killed along with her family members by the non-Bangalees. He further stated that he gave statements to Abdur Razzaq, Investigation Officer. He heard that Pallab, a student of Bangla College was killed by Abdul Quader Molla. Quader Molla was identified in the dock. During the occurrence, he (Quader Molla) was young and he had no beard.

In cross examination, this PW stated that in 1968, he was a bachelor. At that time, he used to reside at a two roomed rented house at Mirpur-10. In that rented house, one of his peons named Monir used to stay with him. Monir cooked food for him. Till he left the house, Monir had been with him in the house. When the Biharis came to his house and knocked (ঠক ঠক করছিল) at the window, Monir was not at his residence. As the movement of non co-operation

was going on, Monir had gone to his village home. He did not go to the said rented house after he had left the same on 23rd March, 1971. While he was the Headmaster of Bangla School, there were in total 12/13 teachers in the school. Besides the teachers, there were 3(three) peons and 1(one) clerk. On 23rd March, when the flag of Swadhin Bangla was hoisted, three students of class-IX were there and they hoisted the flag. At the time of hoisting the flag except him no teacher was present. He further stated that the school was closed on 8th March, 1971 and was opened first on 3rd January, 1972. He heard the name of poetess Meherunnesa and poetess Kazi Rosy and he knew them as they were Bangalees. In student life, he used to do Chhatra League, but presently he does not do any league. During 1970's election, except few Bangalees, there was none with whom he could mix. He did not know whether any action committee was formed at Mirpur in 1971. The residence of poetess Meherunnesa was 500 yards away on the north-west side from his house. The residence of poetess Kazi Rosy was 450 yards away on the north-west side of his residence. The residence of Abu Taleb was 100/150 yards away on the West from his house. Abu Taleb had two sons named Chanchal, Anju and a daughter named Dipu. The surname of Khandaker Abul Ahsan is Anju and he is the second son of Abu Taleb. He denied the defence suggestion that it is not a fact that Khandaker Abu Taleb did not go to bring him from the place where the attackers injured him and he fell down. Khandaker Abu Taleb was a member of the Advisory Council of the school since 1970. Holding number of the house in which he (the PW) used to stay in 1971 so far he could remember was 10/B, 16/5 Mirpur and there were many other houses around his house. In the

neigbhouring houses, the people used to stay with their family members. When the Biharis were pushing (ধাক্কাধাক্কি) the door and the windows of his house, he did not raise any hue and cry. There were boundary walls on the four sides of the house and there was a gate on the South of the house. His residence had two rooms and there were two doors; one on the northern side and the other on the western side. The Biharis pushed (ধাক্কাধাক্কি) from the southern side and on the other 3(three) sides, there were houses. He went out through the northern side. While he ran, he did not raise any cry as he was frightened. The house of Abu Taleb was just 75/100 yards away from the place where he fell down. There were houses of the non-Bangalees around the place where he fell down, but none came. 15/20 people came from the house of Taleb shaheb to rescue him, but except the name of Taleb, he would not be able to say the name of others. He denied the defence suggestion that it is not a fact that 15/20 persons including Mr. Taleb did not come to rescue him. Khandaker Abul Ahsan (PW5) son of Abu Taleb possibly was a student of class-IX and he was aged about 13/14 years. Ahsan knew him. On the date of occurrence, he (Ahsan) was in their residence. The PW denied the defence suggestion that it is not a fact that a Bangali took him to the house of Taleb. He denied the defence suggestion that it is not a fact that on the date of occurrence, the Biharis entered into his house by breaking the door and then beat him. His physical condition was such that he could say whether any Bangali doctor treated him or not. He denied the defence suggestion that it is not a fact that he was senseless. He further stated that after the occurrence, on 23rd March, he did not lose his sense. He was at the house of Abu Taleb till 8 a.m. and one of his friends named Dr.

Sheikh Haider Ali gave him primary treatment and at 10 a.m. of 24th March, he got himself admitted into Dhaka Medical College Hospital and remained in hospital up to 8 a.m. of 27th March and then went to his village home in the night of 16th April. On 25th March, many people went to the hospital to see him including the then Director of the Health Directorate, Doctor Nakib, Khandaker Abu Taleb, Abdul Hannan, Chartered Accountant, Alam and Israil. He met Bangabandhu in the morning on 24th March, 1971. He neither filed any case nor filed any complaint on 3rd January, 1972 or thereafter on the incident of 24th March, on his attack on 23rd March, 1971. The PW further stated that he did not make any GD entry or file any case with Nasir Nagor Police Station on 16th April or thereafter. The incident of attack on him was published in the daily Ittefaq in its front page on 25th March, 1971. He read the news in hospital, but he did not preserve the copy of the Ittefaq in which the news was published. When he came back to Dhaka on 3rd January, 1972, he used to meet poetess Kazi Rosy oft and often, who used to live at the adjacent house. Kazi Rosy was the relative of Abu Taleb, she had known the fact of attack on the PW by the Biharis before the PW came to Dhaka. The father of Kazi Rosy was also a Journalist. The PW knew Aktar Gunda who used to come to his school sometime. Aktar Gunda was not a Bangali. He knew driver Nizam of Taleb Shaheb after he had purchased the car in 1970. On many times, Nizam used to give him lift in case of his necessity. He did not know the non-Bangalee, Accountant, Halim of the Ittafaq, but he heard his name. Subsequently, he met the man who saved his life and whenever he (the PW) met him at whatever place, he used to entertain him with tea-tiffin. The name of the man was Molla

and he had long beard. He further stated that he gave statement to the Investigation Officer, Abdur Razzaq in the first part of May in the current year possibly sitting at Bangla School, Mirpur. The Investigation Officer one day also went to his house. He denied the defence suggestion that it is not a fact that he heard that Khandaker Abu Taleb was killed by non-Bangalees, Aktar Gunda and Abdul Quader Mollas at Zallad Khana, Mirpur-10 and it was a tutored one, false and concocted. He denied the defence suggestion that it is not a fact, he heard that Pallab, a student of Bangla College was killed by Abdul Quader Molla and it was also a tutored one, false and concocted. He denied all the defence suggestions that whatever he stated in his testimoney in Court, he did not tell those to the Investigation Officer (the suggestions were given to show the omissions between his testimony given in Court and the statements made by him to the Investigation Officer. Details of the suggestions are not repeated herein, the contradictions will be referred to at the relevant place). He further stated that poetess-Kazi Rosy might have written something about him, but he did not know whether she wrote anything about Abdul Quader Molla. He denied the further defence suggestion that it is not a fact that he deposed at the pressure of the party in power and as tutored. He denied the further defence suggestion that it is not a fact that whatever he stated about Abdul Quader Molla implicating him with the crimes was false, without any basis, concocted and suppression of actual facts.

PW11, Monowara Begum, stated in her examination-in-chief that she is posted at the *Tadanta Sangstha* of International Crimes Tribunal as Investigation Officer. She joined the *Sangstha* on 14.02.2011, pursuant to the

Memo of the police Head Quarter being No.জিএ/৩০-২০১০/আন্তর্জাতিক অপরাধ ট্রাইবুনাল/২৬৬/১/(২২), dated 02.02.2011. As per requisition of Mr. Abdur Razzaq Khan, PPM, Investigation Officer of the *Tadanta Sangstha* of the International Crimes Tribunal, she recorded the statements of some concerned witnesses who suffered and were tortured including some expert witnesses (in the deposition sheet, in Bangla, it has been recorded as: "আমি অত্র মামলার কয়েকজন এক্সপার্ট উইটনেস সহ সংশ্লিষ্ট ভুক্তভোগী ও নির্যাতিতার জবানবন্দি গ্রহণ করি"). Out of those persons, on 13.08.2011, she recorded the statements of victim-Momena Begum (PW3), daughter of Shaheed Hazrat Ali Lasker, mother-Shaheed Amena Begum, wife of Habibur Rahman of village-Badardi, Section-12, Block-D, Shaheedbag, Lane-24, Mirpur, Police Station-Pallabi, Dhaka. In 1971, the address of Momena Begum was House No.21, Lane-05, Block-D, Section-12, Mirpur. She recorded the statements of Momena Begum sitting at the Pump house, at Mirpur-10 which once was known as Zallad Khana. She submitted the statements recorded by her to the Investigation Officer through supplementary case dairy.

In cross examination, the PW stated that she got the requisition in writing from the principal Investigation Officer on 15.02.2011. She recorded the statements of 10(ten) witnesses, namely: Dr. Md. Anisul Hasan (M.A. Hasan), Shahriar Kabir, Professor Dr. Muntasir Uddin Khan Mamun, Dr. Sajid Hossain, Ferdousi Prio Vasini, Father Richard William Team, Sakhina Helal, Zulfikar Ali Manik, Hossain Aktar Chowdhury @ Akku Chowdhury and Momena Begum (PW3). Besides recording the statements of the said witnesses, she collected the video of digging the slaughty-house (বধ্য ভূমি) at

Muslim Bazar by 46 Brigade of Bangaldesh Army from Hossain Aktar Chowdhury @ Akku Chowdhury. She handed over the book 'forty years in Bangladesh' written by Father Richard William Team to the Investigagion Officer, Abdur Razzaq Khan, PPM. She collected the book "একাত্তরের যুদ্ধ শিশু" from Dr. Sajid Hossain and a writing by Australian Surgeon Dr. Zefri Davis, wherein he gave a report about the dreadfulness of the violation on women in 1971. In the said report, it was stated that four lac/four lac fifty women were violated. She investigated the case of 3(three) accused including the accused of the instant case as per serial No.1 of the complaint register with reference to one requisition. After completion of investigation, she submitted her supplementary case dairy to the principal Investigation Officer on 02.10.2011. Then said she wrongly mentioned the date of submission of supplementary case dairy to the principal Investigation Officer as on 02.10.2011, but the actual date would be 25.10.2011. She, on 23.03.2011, recorded the statements of Dr. Sajid Hossain sitting at Chittagong, circuit house. Her place of posting was at the International Crimes Tribunal, Head Office, Dhaka. The complete supplementary case dairy was not with her at the moment. But she started her investigation, the day she got the requisition. She further stated that as the supplementary case dairy was not with her, it was not possible to say on which date she started the investigation. When she was cross examined on 16.10.2011 (previously she was cross examined on 15.10.2012), she said that she came to Court with the supplementary case dairy. On a specific question put to the effect what specific information was known to Dr. Sajid Hossain about accused, Abdul Quader Molla for which she had gone to Chittagong, the PW

replied that Dr. Sajid Hossain wrote a book "একাত্তরের যুদ্ধ শিশু" and while investigating the case about the crimes committed against humanity throughout the whole country as per requisition, it appeared to her that it was necessary to record the statements of Dr. Sajid Hossain for which she had gone to Chittagong to record his statement. Dr. Sajid Hossain who is the Commandant of Marine Academy came to the circuit house as per her request over telephone and she herself recorded his statement. In the complaint register-1, there were complaints against four accused, namely: Matiur Rahman Nizami, Ali Ahsan Md. Mujahid, Kamaruzzaman and Abdul Quader Molla. During investigation, she got the primary information about witness, Momena Begum (PW3) from the *Sreeti Pith* of the slaughty-place (in the deposition sheet, in Bangla, it has been recorded as: "বধ্য ভূমি স্মৃতিপিঠ") at Zallad Khana, Mirpur-10, a part of *Muktijuddha Zadughar*. She did not go to the place of occurrence, i.e. the house of Momena's parents, but the Investigaton Officer went. While she examined Momena, she did not feel the necessity to collect her identity card, but during examination, she saw her identity card with her photograph. On a specific question to the effect whether she filed the identity card of Momena with photograph along with her invetigation report (in the deposition sheet, in Bangla, it has been recorded as "প্রশ্নঃ মোমেনা বেগমের ছবি সম্বলিত আই ডি কার্ড আপনার তদন্ত প্রতিবেদনের সঙ্গে দাখিল করেছেন কি?"), she replied in the negative. She tried to give an explanation stating that the name of Momena Begum, daughter of Shaheed Hazart Ali Laskar was mentioned in the Register of Shaheed Paribar maintained with *Muktijuddha Zadughar, Zallad Khana*, *Baddhya Bhumi*, *Sreeti Pith* and that the name of Momena Begum along with her telephone number is

very much there, she added that photograph of Momena Begum was not there. She pleaded her ignorance as to whether the house of Momena Begum was nearer to Zallad Khan and further added that it could be said by the principal Investigation Officer. On 13.08.2011 at 10:10 minutes, she started for *Baddhya Bhumi Sreeti Pith*, Zallad Khana at Section-10, Mirpur. She did not give any written notice to Momena Begum, but on the previous day, she asked Nasiruddin, in charge of Zallad Khana, *Baddhya Bhumi Sreeti Pith* to inform her to remain present on the next day. Accordingly, he (Nasiruddin) produced Momena Begum by communicating her at her present address. She further stated that she did not feel the necessity to examine, Nasiruddin for the identification of Momena, because the Register of Shaheed Paribar was enough to identify her. She ascertained that Momena examined by her was the daughter of Hazrat Ali Laskar. She could ascertain that Momena examined by her was the daughter of Hazrat Ali Laskar from the fact that she (Momena) got a cheque of taka 2000/- from Bangabandhu. A specific question was put to the witness to the effect whether she got the existence of any village named Duaripara (in the deposition sheet, in Bangla, it has been recorded as "প্রশ্নঃ আপনি তদন্তকালে দোয়ারী পাড়া নামের কোন গ্রামের সন্ধান পেয়েছেন কি না?"), she replied that she did not investigate into the case, but she recorded the statement of Momena and in her statement, village-Duaripara has been mentioned. During the recording of the statements of Momena, she heard that she was married. She further stated that while recording the statements of Momena, she told the name of her husband and that is how she came to know that Momena was married. She denied the defence suggestion that it is not a fact that Momena Begum whom

she examined was not the wife of Habibur Rahman or the daughter of Shaheed Hazrat Ali Laskar. She denied the defence suggestion that it is not a fact that House No.21, at Lane No.5, Block-D, Section-12, Mirpur did not belong to Momena's father and they did not live there. She denied the defence suggestion that it is not a fact that Momena Begum whose statements she recorded as the daughter of Hazrat Ali Laskar was not the actual Momena Begum or she was a fake Momena Begum. She denied the further defence suggestion that it is not a fact that she did not investigate the case properly as per requsition and that she without going to the place of occurrence recorded the statements at her office as per her own sweet will. She admitted that she did not visit any place connected with the case. The principal Investigation Officer visited the place of occurrence and she examined her (the PW). She further stated that during investigation whatever document, she got through requisition, she submitted the same to the principal Investigation Officer and it is his matter which documents he has used and which he has not used. She collected the CD of *Zallad Khana Baddhya Bhumi* and Muslim Bazar *Baddhya Bhumi* from Akku Chowdhury and deposited those to the principal Investigation Officer. She further stated that she deposed in the case as part Investigation Officer.

PW12, Md. Abdur Razzaq Khan, PPM, stated in his examination-in-chief that he is the Investigation Officer, *Tadanta Sangstha* (তদন্ত সংস্থা) of the International Crimes Tribunal, Bangladesh and he was the Investigation Officer of the instant case as well. He was appointed as the Investigation Officer vide Memo No.সমঃ(আইন-২)/তদন্তকারী সংস্থা-১-৫/২০১০/১০১ dated 25.03.2010 issued by the Ministry of Home Affairs, Government of the People's Republic of

Bangladesh. He joined the *Tadanta Sangstha* on 28.03.2010 and still he is working. While taking preparation for investigation of the case, he collected different books connected with the history of *muktijuddha* of Bangladesh and its background after going through those books (in the deposition sheet, in Bangla, it has been recorded as: "মামলা তদন্তের প্রস্তুতিকালে বাংলাদেশের মুক্তিযুদ্ধের ইতিহাস ও পটভুমি সংক্রান্তে বিভিন্ন বইয়ের সংশ্লিষ্ট অংশ পাঠপূর্বক সংগ্রহ করি।"). He on receipt of the judicial Nathi on 21.07.2010 of Pallabi Police Station Case No.60 dated 25.01.2008 through the Registrar of the International Crimes Tribunal included (অর্ন্তভুক্ত করা হয়), the same on 21.07.2010 in the complaint register-1 maintained with the *Tadanta Sangstha* as per bidhi-15 of the Bidhimala framed on 15th July, 2010 and on that very day, he was given the charge of investigation of the case from the *Sangstha*. During investigation, he examined the complaint. On 25.07.2010, he received Keraniganj Police Station Case No.34 dated 31.12.2007 from the Registrar, International Crimes Tribunal vide his office Memo No.আন্তঃ অপঃ ট্রাইঃ/৯৮/১০ dated 22.07.2010. On examining the allegations of the said two cases, it appeared that from 25th March, 1971 up to 16th December, 1971, i.e. the date on which the occupation Pakistan army and their auxiliary forces surrendered, the accused mentioned therein, their party and their leaders and the workers in collaboration with Pak Senas committed the crimes of killing, mass killing and setting on fire in Mirpur and Keraniganj Police Station and thus the accused of the said two cases committed the offences under section 3(2) of the Act, 1973. For proper and effective investigation of the cases, he filed application before the Tribunal on 22.07.2010 through the Chief Prosecutor for showing them arrested. On such

application, the Tribunal vide order dated 02.08.2010 passed an order to arrest the concerned accused and detain them in jail hajat. From the informations collected during investigation about accused Abdul Quader Molla, it was revealed that while he was a student of H.S.C. in Rajendra College, Faridpur, he involved himself with the politics of Islami Chhatra Sangha. In 1970, he was the president of Islami Chhatra Sangha, Shahidullah Hall, Dhaka University. The PW recorded the statements of the witnesses on 16.08.2012 while making investigation at village-Alubdi as to the fact of throwing the dead bodies of 350 innocent un-armed Bangalees killed at Fazar prayer by the Bahini of Quader Molla under his leadership and the Pakistani army on the bank of the river-Turag and village-Alubdi by firing indiscriminately all around, which included harvesting labourers. Of the 350, 100/150 were killed on the bank of the river-Turag. On 17.08.2010, he prepared the sketch map and the index of the well in which the dead bodies were thrown and the bank of the river-Turag. On 15.01.2011, he recorded the statements of the witnesses, prepared the sketch map, the index and took the still photographs after visiting the places of occurrences about the mass killing which took place on 25.11.1971 at Bhawal Khanbari and Ghatarchar Shaheednagor under Police Station, Keraniganj by Abdul Quader Molla, the local Rajakars in collaboration with the Pakistan army. On 30.08.2011, he investigated the brutal killing of shaheed poetess-Meherunnesa, her mother and two brothers at House No.6, Road No.12, Block-D, Section-6 on 27.03.1971 by Quader Molla and his bahini and the brutal killing of shaheed Pallab @ Tuntuni Mia, son of late Manik Sardar of House No.18, Lane No.18, Block No.D, Section-12, Mirpur,

on 5th April, 1971 after torturing at *Eidga Math* at Section-12, Mirpur and recorded the statements of the concerned witnesses. In order to assist him in investigating the case, particularly, to examine the tortured/violated women (বিশেষত নির্যাতিতা নারীদের) and to record their statements, he gave requisition on 15.02.2011. As per his requisition, Monowara Begum, Investigation Officer of the *Tadanta Sangstha* examined the witnesses including the victim witness-Momena Begum and gave the same to him through additional case dairy. Pursuant to the order of the Tribunal, Quader Molla was taken under the custody of the *Tadanta Sangstha* on 15.06.2011 and was interrogated and during interrogation, the facts found during investigation, were reflected. During investigation, on 09.06.2011, as documentary evidence, he seized the book "সানসেট এ্যাট মিড-ডে" written by Mohiuddin Chowdhury published by Karitas Publications in 1998, from Sagar Publishers, 23-Natok Swarani new Baily Road along with other books. In line 7, at para-2, page 97 of the said book, it was written "The workers belonging to purely Islami Chhatra Sangha were called Al-Badar." The book was seized by a seizure list. The seizure list was proved as exhibit-1 and the signature of the PW therein as exhibit-1/1. The book, "সানসেট এ্যাট মিড-ডে" was proved as exhibit-2. He on investigation on the spot (সরেজমিনে তদন্ত করে) found evidence, both oral and documentary, as to the individual complicity of accused, Abdul Quader Molla in committing the crimes under section 3(2)(a)(h) and 3(2)(a)(g)(h) of the Act, 1973 and accordingly, submitted the investigation report to the Chief Prosecutor on 30.10.2011. After submission of the investigation report on 30.10.2011, he continued his endeavour to collect additional evidence against Quader Molla and during

collection of additional evidence, he recorded the statements of 15(fifteen) witnesses as to the commission of the crime under section 3(2) of the Act, 1973. On 09.05.2011, he seized Volume-V of the book "জীবনে যা দেখলাম" written by Professor Golam Azam from Sagar Publishers, 23 Natok Swarani, New Baily Road, Dhaka published in June, 2005 by Kamiab Prakashana Ltd. At page 153 of the said book, it has been written "মোল্লা এক সময়ে ঢাকা বিশ্ববিদ্যালয়ে শিবিরের সভাপতি ছিলেন", in the 3rd line of the writing under the title "আমার একান্ত সচিব হিসেবে আব্দুল কাদের মোল্লা". The book was seized by a seizure list. He proved the seizure list as exhibit-3, his signature therein as exhibit-3/1 and the seized book as exhibit-4. After submission of the investigation report, he submitted the statements of the additional witnesses recorded by him against the accused, the seizure list and the seized books to the Tribunal through the Chief Prosecutor under section 9(4) of the Act, 1973.

At the very beginning of the cross-examination of this PW, a specific question was put to him as to whether he deposed seeing the writing on a white paper (in the deposition sheet, in Bangla, it has been recorded as: "প্রশ্নঃ আপনি সাদা কাগজে লেখা দেখে বিজ্ঞ ট্রাইবুনালে সাক্ষ্য দিলেন?"), the PW replied that as the Code of Criminal Procedure and the Evidence Act were not applicable to the Tribunal, so he deposed seeing the notes taken down on a white paper as to the information (তথ্যাবলী) which he got during his investigation. He got the records of Karaniganj Police Station Case No.34 dated 31.12.2007 and Pallabi Police Station Case No.60 dated 25.01.2008 vide office Memo (particulars of the Memo not given) of the Registrar of the Tribunal. He pleaded his ignorance as to when the Officer-in-Charage of the concerned Police Station started the

process of investigation. During investigation, he examined the juidicial records of the two cases. From the first date: 26.01.2008 up to 21.07.2010 as many as 31(thirty one) dates were fixed for submission of the police report (number of particular case is not mentioned). He could not say who was the first Investigation Officer of the case, but from the order dated 21.07.2010 it appeared that Md. Nurul Islam Siddiq, Police Inspector, CID, was the Investigation Officer and the informant of the case was Md. Amir Hossain Molla (PW9), son of late Haji Surjat Ali Molla of village Duaripara, Police Station-Pallabi. Amir Hossain Molla (PW9) filed Petition Case No.10 of 2008 before the Chief Metropolitan Magistrate, Dhaka on 24.01.2008. He could not say who signed the petition of that case. It was not in the record as to whether Abdul Quader Molla was arrested in the said case. He could not also say in which case accused- Abdul Quader Molla was detained, but he applied for showing him arrested in the instant case as per complaint register No.1 dated 21.07.2010 of the *Tadanta Sangtha* of the International Crimes Tribunal. Then going through the application told that it was mentioned in his application that Abdul Quader Molla was in jail hajat in connection with Pallabi Police Station Case No.60 dated 25.01.2008. He denied the defence suggestion that it is not a fact that he told lie that it was not in the judicial record of the Pallabi Police Station case that Abdul Quader Molla was arrested. Then said it is in the judicial record that by order dated 14.07.2010 Quader Molla was sent to jail hajat in connection with Pallabi Police Station Case No.60 dated 25.01.2008. No application was filed for extension of time for investigation of Pallabi Police Station case. By the order dated 21.07.2010, the Chief Metropolitan

Magistrate, Dhaka sent the case to the International Crimes Tribunal. He further stated that he did not get the case dairy of the Investigation Officer of the said case for which he had no chance to examine the case dairy. He did not also examine the Investigation Officer of the said Pallabi Police Station Case during his investigation. The PW denied the defence suggestion that it is not a fact that as, after investigating the case for long time, the Investigation Officer did not find any truth in the allegations made in the case, he did not examine the Investigation Officers of the case. Pallabi Police Station case was under investigation from 25.01.2008 to 21.07.2010. Since Pallabi Police Station case was under sections 148/448/302/34/201/326/307/436 of the Penal Code, he did not feel the necessity to go through the case dairy of the case. The Chief Metropolitan Magistrate sent the Pallabi Police Station case to the Tribunal on the application of the prosecution. In the complaint petition of Pallabi Police Station case, names of some witnesses were mentioned and they were: Gaizuddin Molla, Abdus Sattar Molla, Fazlul Huq, Anamat Hossain Bepari, Md. Ali Matabbar, Muktijodha Kamaluddin, Kadam Ali Bepari, Anaruddin Bepari, Haji Ambar Ali Molla, Matiur Rahman Molla, Zuman Molla, Reazuddin Fakir, Haji Abdur Rashid Molla. Of the witnesses mentioned in the petition of complaint, he examined complainant: Amir Hossain Molla, Gaizuddin Molla and Abdus Sattar Molla. The complaint was filed by Mr. Addur Razzaq, Advocate and during investigation, he did not examine him. The houses of all the witnesses mentioned in the petition of complaint have been shown at village-Alubdi. He denied the defence suggestion that it is not a fact that as except three witnesses, the other witnesses mentioned in the

petition of complaint of Pallabi Police Station Case did not support the allegations made therein, he did not examine them. Before registration of Keraniganj Police Station Case No.34 dated 31.12.2007 under sections 447/448/436/302/109/114 of the Penal Code, the same was filed before the Chief Judicial Magistrate, Dhaka as a petition case and in the petition of complaint, eight persons including the complainant were shown as witnesses and they are: Muzaffar Ahmed Khan (PW1), Ansaruddin Khan, Taib Hossain Khan, Mabia Khatun, Monowara Begum, Bibi Ayesha, Habibur Rahman Khan and Nazimuddin Khan. And of these witnesses except Bibi Ayesha, the houses of others were shown at Bhawal Khanbari under Police Station-Keraniganj and in that case, the number of the accused were 13(thirteen). The first judicial order in the case was passed on 01.01.2008. The petition of complaint was filed before the Judicial Magistrate Court No.3 on 17.12.2007. From 01.01.2008 up to 22.07.2010, 37(thirty seven) orders were passed and these orders were passed in connection with the submission of the report of the Investigation Officer and also in connection with other matters. The Investigation Officer of Keraniganj Police Station case neither submitted any investigation report nor made any prayer for extension of time to submit the report. Except witness-Bibi Ayesha mentioned in the petition of complaint of Keraniganj Police Station case, he examined all and recorded their statements. The petitions of complaint giving rise to Keraniganj Police Station case and Pallabi Police Station Case, were filed by the same lawyer. Mr. Asaduzzaman, Officer-in-Charge of Keraniganj Police Station was the Investigation Officer of Keraniganj Police Station case and in the said case, Abdul Quader Molla was

shown arrested on 14.07.2010, he did not get the records of that case, so he had no chance to see how many witnesses were examined by the Investigation Officer of the said case. During investigation, he did not examine the Investigation Officer of Keraniganj Police Station Case. Judicial Magistrate Court No.3, Dhaka by his order dated 22.07.2010 sent the case to the Tribunal for further proceedings. He denied the defence suggestion that it is not a fact that as the Investigation Officer of Keraniganj Police Station case did not get any substance in the allegations during investigation, he did not examine him. To a query made by the Tribunal, he stated that he did not consider it a must to examine the proceedings of the Investigation Officer of the case. Only Pallabi Police Station case was registered at serial No.1 of the complaint register of *Tadanta Sangstha*. He denied the defence suggestion that it is not a fact that he after joining the *Sangstha* on 28.03.2010 made *tadbir* for sending Pallabi Police Station case to the Tribunal. He further stated that after taking the charge of investigation of the case on 21.07.2010, he reviewed (পর্যালোচনা) the ejahar of Pallabi Police Station case. On 16.08.2010, he examined: Md. Amir Hossain Molla (P.W.9), Md. Shafiuddin Molla (P.W.6), Md. Abdus Sattar Molla, Mst. Rekha, Md. Joinuddin, Haji Abdur Rouf Molla, Mst. Shahida Begum, Md. Rafique Bepari, Md. Sadequallah Dewan, Md. Kitabuddin, Md. Daliluddin and Md. Rahim Badsha and he recorded their statements sitting at Pallabi Police Station. Before investigation, he collected the names of the witnesses along with their addresses through source. He appointed 7/8 sources to assist him in the investigation of the case. On 16.08.2010, he along with two other officers named Md. Matiur Rahman and Md. Nurul Islam recorded the

statements of three witnesses. Thereafter, on 28.09.2010, he and Monowara Begum (PW11) examined Md. Harun Matbar, Md. Goejuddin, Md. Sadar Ali Matbar, Md. Naimuddin Mia, Md. Hossain Ali, Md. Muslim, Haji Abdul Khaleque, Al-haj Md. Kadam Ali Matbar, Abdul Malek Bepari, Md. Hashem Molla, Kalachan Mia and Md. Wajul Huq Matbar and recorded their statements sitting at Pallabi Police Station. He examined the witnesses after collecting information through the sources with the help of Police of the Police Station.

On 15.01.2011, he along with two other officers named Z.M.Altafur Rahman and G.M. Idris Ali examined: Muzaffar Ahmed Khan (PW1), Md. Enam Mia, Mst. Romeza Khatun, Mst. Monowara, Mst. Zamila Khatun, Mst. Mahmuda Begum, Mst. Angura, Mst. Fatema Begum, Monowara Begum, Md. Habibur Rahman Khan, Md. Nazimuddin Khan, Md. Muslim Uddin Khan, Taib Hossain Khan, Md. Munsur Ali, Akhtaruzzman, Rusmatun, Mir Jasimuddin, Ansaruddin Khan, Haji Md. Belayet Hossain, Nurul Islam, Marzina Begum, Rahim and Nasimuddin and recorded their statements sitting at the Auditorium of Keraniganj Upazila Parishad. He further stated that first they recorded the statements of the witnesses in their own hand and then those were typed in computer. Without seeing the main manuscript (পাণ্ডুলিপি) of his case dairy, he would not be able to say the statements of which witnesses, he recorded and the statements of which witnesses were recorded by his co-officers. Since 15.01.2011 till the submission of the investigation report, he recorded the statements of 14(fourteen) other witnesses. The other Investigation Officer, Monowara Begum as per his requsition dated 15.02.2011

after completing her investigation submitted report to him by supplementary case dairy. Monowara Begum (PW11) recorded the statements of ten witnesses. She recorded the statements of those witnesses pursuant to the requisition given by him on 15.02.2011. She after completing investigation of her part gave the supplementary case dairy to him and he has the statements of those 10(ten) witnesses with him. Till submission of investigation report, in total he examined 48(forty eight) witnesses and in his investigation report, he cited 40(forty) of them as witnesses. He submitted his investigation report on 30.10.2011. During investigation, he recorded the statements of Muzaffar Ahmed Khan (PW1) and reviewed (পর্যালোচনা) the same (in the deposition sheet, in Bangla, it has been recorded as: "তদন্তকালে মোজাফফর আহম্মেদ খানের জবানবন্দি আমি রেকর্ড করেছি এবং তা পর্যালোচনা করেছি।"). On 3rd July, 2012, he made arrangement for bringing Muzaffar Ahmed Khan to depose before the Tribunal. He denied the defence suggestion that it is not a fact that after examination of Muzaffar Ahmed Khan before the Tribunal, he recorded the statements of Abdul Mazid Palwan (PW7), then stated that on 27.06.2012, he recorded the statements of additional witness-Abdul Mazid Palwan (PW7) sitting at the office of *Tadanta Sangstha*. He denied the defence suggestion that it is not a fact that he recorded the statements of Abdul Mazid Palwan illegally.

The PW further stated that in the petition of complaint filed by Muzaffar Ahmed Khan (PW1) as complainant, Abdul Mazid Palwan (PW7) and Nurujahan (PW8) were not cited as witnesses. He denied the defence suggestion that it is not a fact that he recorded the statements of Abdul Mazid Palwan (PW7) on seeing the deposition of Muzaffar Ahmed Khan given before

the Tribunal giving back date willingly. He denied the defence suggestion that it is not a fact that after Muzaffar Ahmed Khan had deposed before the Tribunal, he recorded the statements of Nurjahan (PW8). He further stated that through sources, he could know about this witness (Nurjahan) and he recorded her statements as additional witness on 30.06.2012 sitting at the office of the *Tadanta Sangstha*. He denied the defence suggestion that it is not a fact that violating law, the statements of Nurjahan Begum were recorded. The source brought Nurjahan Begum from Bhaduri Tower-A-1 at Paribag to the office of *Tadanta Sangtha*. He denied the defence suggestion that it is not a fact that he recorded the statements of Abdul Mazid Palwan (PW7) and Nurjahan (PW8) showing back date after the examination of Muzaffar Ahmed Khan (PW1) to cure the defect in the prosecution case. He further stated that after the framing of charge in the case, he recorded the statements of 6(six) additional witness, namely: Abdul Mazid Palwan (PW7), Nurjahan Begum (PW8), Constable No.22507-Md. A.K.Robin Hasan (not examined), Abdul Matin(not examined), Mrs. Monowara Begum(not examined) and Maizuddin(not examined). He further stated that after 30.10.2011 (investigation report was submitted to the Chief Prosecutor on 30.10.2011), he recorded the statements of 15(fifteen) additional witnesses and of them, he recorded the statements of Khandaker Abul Ahsan (PW5) and Sahera(DW4) on 08.01.2012, Syed Shahidul Huq Mama (PW2) on 17.03.2012, Md. Salehuddin Bhuiyan(not examined) and Momena Begum, daughter of late Abdur Razzaq(not examined) on 10.04.2012, poetess-Kazi Rosy(PW4) on 15.04.2012, Dr. Muzzamel Hossain Ratan(not examined) and Constable No.4554 Md. Sohag Parves(not examined) on

09.05.2012, Syed Abdul Quayum (PW10) on 12.05.2012, Md. Maizuddin(not examined) and Mrs. Monowara Begum(not examined) on 11.06.2012, Abdul Mazid Palwan (PW7) on 27.06.2012, Nurjahan (PW8) on 30.06.2012, Ebajuddin Mia (not examined) and Masumul Kabir (not examined) on 27.08.2012. He deposited (জমা দেই) the statements of seven additional witnesses, namely: Khandakar Abul Ahsan(PW5), Sahera (DW4), Syed Shahidul Huq Mama(PW2), Md. Salauddin Bhuiyan @ Faiz Bhuiyan(not examined), poetess Kazi Rosy(PW4), Momena Begum, daughter of late Abdur Razzaq(not examined), Dr. Muzammel Hossain Ratan(not examined) to the office of the Chief Prosecutor on 04.07.2012 and those of the additional witnesses, namely: Syed Abdul Quayum (PW10), Mrs. Monowara Begum(not examined), Md. Moizuddin(not examined), Abdul Mazid Palwan (PW7), Nurjahan (PW8) to the Chief Prosecutor on 19.07.2012 and those of the additional witnesses, Constable No.22507, A.K. Robin Hasan (not examined), Md. Abdul Matin(not examined) and Masimul Kabir(not examined) to the Chief Prosecutor on 10.09.2012. He denied the defence suggestion that it is not a fact that as 32(thirty two) witnesses did not support the prosecution case, they were not cited as witnesses in the investigation report. He admitted that he cited Amir Hossain Molla (PW9) as a witness in the case seeing his petition of complaint. He produced Syed Shahidul Huq Mama (PW2) on 10.07.2012 before the Triubnal to depose. He recored the statements of Syed Shahidul Huq Mama (PW2) sitting at his residence in Dhaka and he got his name through source. He denied the defence suggestion that it is not a fact that he did not deposit the statements of additional witness, Syed Shahidul Huq Mama (PW2)

to the Chief Prosecutor on 04.07.2012. On a specific question to the effect who were the witnesses whose statements were deposited to the Chief Prosecutor by the forwarding report dated 01.04.2012 (in the deposition sheet, in Bangla, it has been recorded as: "প্রশ্নঃ ০১/৪/২০১২ তারিখের ফরোয়ার্ডিং মূলে আপনি কোন কোন অতিরিক্ত সাক্ষীর জবানবন্দী চীফ প্রসিকিউটর বরাবরে জমা দিয়েছেন?"). The PW replied that he deposited the statements of Khandakar Abul Ahsan (PW5), Sahera(DW4), Syed Shahidul Huq Mama (PW2) to the Chief Prosecutor with a forwarding, then of his own stated that (নিজে বলেন) on 01.04.2012, the concerned Prosecutor of the case Md. Mohammad Ali received the statements unofficially by hand (হাতে হাতে) and subsequently, when it appeared to him that the statements were not deposited in due process of law, he deposited (জমা দেই) the same to the Chief Prosecutor on 04.07.2012 with a forwarding letter. He further stated that on 01.04.2012 when he deposited the statements of the additional witnesses, he did not mention any date below the statements of the witnesses, but on 04.07.2012, when he deposited the statements of the additional witnesses to the Chief Prosecutor, he mentioned the date below the statements showing the date of recording. In his case dairy, it was mentioned that on 01.04.2012, he deposited the statements of three additional witnesses, namely: Khandakar Abul Ahsan(PW5), Sahera(DW4) and Syed Shahidul Huq Mama(PW2) to the Chief Prosecutor. He deposited the statements of additional witness, Abdul Mazid Palwan (PW7) to the Chief Prosecutor after the examination-in-chief of Muzaffar Ahmed Khan (PW1) (before cross examination). Of the 15(fifteen) additional witnesses, except the statements of Ezabuddin Mia (not examined), Masumul Kabir(not examined), Khandakar Abul Ahsan (PW5), Sahera (DW4)

and Syed Shahidul Huq Mama (PW2), he did not deposit the statements of other additional witnesses to the Chief Prosecutor on 04.07.2012. In the column of accused of the investigation report, he mentioned the name of one accused only and in the column of witnesses of the investigation report, he mentioned the name of 17(seventeen) witnesses. Of these 17(seventeen) witnesses, he mentioned the names of three persons as the witnesses to the occurrence which took place at Ghatarchar under Keraniganj and other areas and they are: Muzaffar Ahmed Khan(PW1), Taib Ali (not examined) and Rukhsana Khatunnesa(not examined), the remaining persons are: Chhakhina Helal, Zulfiquar Ali Manik, Sheikh Shariful Islam @ Bablu, Momena Begum(PW3), daughter of Shaheed Hazrat Ali Laskar, Dr. M.A.Hassan(not examined), Hossain Akhtar Chowdhury @ Akku Chowdhury(not examined), Md. Amir Hossain Molla(PW9), Md. Shafiuddin Molla(PW6), Md. Abdus Sattar Molla(not examined), Mst. Rekha(not examined), Md. Jainuddin(not examined), Haji Abdur Rouf Molla(not examined), Mst. Shahida Begum(not examined), Md. Rafique Bepari(not examined). Till submission of the investigation report, he did not record the statements of any other witness except the witnesses mentioned above.

The PW further stated that Shaheed Pallab @ Tuntuni was a student of Mirpur Bangla College in 1971. At that time, his family used to live at House No.8, Road No.1, Lane No.7, Block No.B, Mirpur, Section-11. Shaheed Pallab had five brothers and they used to live together along with their parents. He examined Sahera (DW4), sister-in-law (ভাবী) of Shaheed Pallab @ Tuntuni. During investigation, he did not go to Bangla College. He did not collect any

documentary evidence during investigation to show that Pallab was a student of Mirpur Bangla College. As there was none who lived around the house of Pallab in 1971, he could not examine anyone. The Government acquired the house of Pallab and its neighbouring areas. When he examined Sahera (DW4), then she was the resident of 11-F, Taltala Basti, Pallabi at main Road No.4. He recorded the statements of Sahera sitting at Mirpur *Zallad Khana*. To a specific question put to the PW as to whether he sent any notice to Sahera before examining her, he replied in the negative, then said he told Nasir Shaheb, the in-charge of Mirpur *Zallad Khana Sreeti Biddha Pith* to inform Sahera seeing the list of the martyrs (শহীদদের তালিকা) maintained in the Mirpur Zallad Khana and accordingly, Sahera was informed. During investigation, besides witness-Nurjahan (PW8) of Ghatarchar of Keraniganj, he talked to the other members of the Shaheed family as to the mass killing, namely:Taib Ali(not examined), Roksana Khatunnesa(not examined) and Mst. Momena Begum(not examined). He could not ascertain how many families were affected due to the mass killing at Ghatarchar in 1971, but he could ascertain the number of persons killed. During investigation, he found that Nurjahan was from Ghatarchar Khalpar. He went to Ghatarchar Khalpar for investigation. He did not mention in his CD who were the owners of the houses around the house of Nurjahan. The place of mass killing was five kilometers away on the North from the house of Nurjahan. He did not mention in the CD the distance of the house of Abdul Mazid Palwan (PW7) and to which direction it is situated from the place of mass killing. There is no mention in his CD as to the distance of Ghatarchar from Bhawal Khanbari and in which direction. There is no mention in his CD

how to communicate to the place of occurrence at Ghatarchar from Dhaka, in 1971. As he did not find any one of the contemporaneous time of the occurrence, he did not ask as to how they used to come to Dhaka from Ghatarchar. During investigation, he found three places of occurrences the 1st at Bhawal Khanbari, the 2nd at village-Monoharia and the 3rd at Ghatarchar. He denied the defence suggestion that it is not fact that during investigation, he found three places of occurrences at Bhawal Khanbari. He further stated that the house of witness-Muzaffar Ahmed Khan (PW1) was at Bhawal Khanbari. He visited all the three places of occurrences in a day. It was not mentioned in his CD in which Union the three villages were included at the relevant time. During investigation, he did not examine the Chairman and the Members of the Union Parishad of that area. He denied the defence suggestion that it is not a fact that he examined Abdul Mazid Palwan (PW7) and Nurjahan (PW8) as fabricated (বানোয়াট) witnesses to the occurrences and recorded their statements. He ascertained as to whether there were any other freedom fighters in the areas of the three places of occurrences except witness-Muzaffar Ahmed Khan. Of the freedom fighters: Md. Shahjahan, Commander, Upazila Muktijuddha Command, Md. Siddiqur Rahman, Deputy Commander, Mahfuzul Alam Chowdhury, Md. Awlad Hossain, Mainuddin Sheikh, Md. Shahjahan Faruqui, Md. Rahmatullah were prominent whom he found in the area. He examined those freedom fighters verbally, but did not record their statements. He did not mention in his CD the school in which Muzaffar Ahmed Khan used to read. When witness-Nurjahan was examined, she told that she was a domestic maid in a house. During investigation, he went to village-Alubdi for inspection on

16.08.2010 at 1:40 hours. Alubdi was 7/8 kilometers on the North from Pallabi Police Station. The present distance of river-Turag from Alubdi is 8/9 kilometers on the West. During investigation, he did not ascertain the distance of river-Turag on the West at the time of occurrence and nothing has been mentioned in the CD in that respect. When he visited village-Alubdi on 16.08.2010, the other inspectors of the *Tadanta Sangstha*, namely: Md. Matiur Rahman and Md. Nurul Islam were with him. He prepared the sketch map of village-Alubdi on 16.08.2010 at 1:40 minutes. There is no mention in the sketch map prepared by him whether there was any canal (খাল) on the North of village-Alubdi. In the sketch map prepared by him, there is mention of a *Baddhya Bhumi* (কোপ) on the North of village-Alubdi. He did not ascertain as to whether there was any canal on the North of village-Alubdi or there was vast cultivable land. He did not investigate whether there was any village on the South and the South-East of village-Alubdi in 1971. At the time of occurrence, there was *chatak* ('চটক' local language) or vacant field on the West of village-Alubdi up to the river-Turag which remained under water during the rainy season. At the time of occurrence, there was open field on the East of village-Alubdi.

During investigation, he went to village-Duaripara on 16.08.2011, but he did not prepare any sketch map of village-Duaripara. Villlage-Duaripara is 6.7 kilometers away on the West from Pallabi Police Station. He along with his co-investigating officers named Z.M. Altafur Rahman started for Duaripara at 10 a.m. and reached there at 12:40 o'clock. He further stated that he and his co-officers went to Duaripara to verify the statements of witnesses: Monowara

Begum (PW3), daughter of Shaheed Hazart Ali Laskar and Sakhina Helal (not examined as PW), daughter of Shaheed Khandakar Abu Taleb that accused Quader Molla used to live at Duaripara and they came back to their office from Duaripara at 10:20 hours in the night. He started investigation of the case on 21.07.2010 and completed the investigation on 27.08.2012 and closed the case dairy on 26.09.2012. During investigation, he could not examine any relative of Osman Gani (a freedom fighter who was killed at Ghatarchar) as none was available. He examined Marzina Begum, wife of Shaheed Golam Mustafa (a freedom fighter who was killed at Ghatarchar) and recorded her statement. During investigation, he never went to the house of witness-Amir Hossain Molla (PW9) at Duaripara. The distance of Duaripara from village-Alubdi was approximately 1(one) kilometer to (1) one and half kilometers on the North-West. He got the said distance while prepared the sketch map of village-Alubdi. He could not say correctly what the distance of the river-Turag was and on which side from village-Duaripara. Village-Alubdi was on the North of village-Duaripara and he could not say which villages were on the other 3(three) sides. Mirpur is situated on the South-East side of village-Alubdi. He denied the defence suggestion that it is not a fact that the distance of Duaripara from village-Alubdi was one kilometer to one and half kilometers on the North-West side and that village-Alubdi was on the north side of village-Duaripara. He denied the defence suggestion that it is not a fact that he never went to village-Alubdi. He further stated that during investigation, he came to know that on the four sides of village-Duaripara, there were canal (খাল), ditch (ডুবা) and river at the time of occurrence. During his investigation, he could not

ascertain what were the establishments on both sides of the river, Turag at the time of occurrence? During investigation, he did not find any elderly (বর্ধিষ্ণু) man who lived in the area in 1971 and those who gave statements to him could not also say about the same. During investigation, besides the books 'সান সেট এ্যাট মিড-ডে' and 'জীবনে যা দেখলাম' he seized many other books, but in the instant case, he exhibited two books only. During investigation, he got the trace of four affected families at Duaripara and they are: Md. Sakawat Hossain (not examined as PW), Haji Abdul Gafur(not examined as PW), Md. Fariduzzaman(not examined as PW) and Amir Hossain Molla (PW9). During investigation, he got trace of 8(eight) affected families at village-Alubdi, they are: Shafiuddin Molla (PW6), Abdus Sattar Molla(not examined as PW), Mst. Rekha(not examined as PW), Zainuddin(not examined as PW), Haji Abdur Rouf Molla(not examined as PW), Mst. Sahida Begum(not examined as PW), Rafique Bepari and Md. Daliluddin(not examined as PW). During investigation, Shafiuddin Molla (PW6) might have told him that at that time, he was involved with Chhatra League, his family and all the villagers were the supporters of Awami League, but he did not mention the same while recording his statements. He further stated that it is a fact that Shafiuddin Molla (PW6) did not tell in his statements made to him that Advocate Zahiruddin or his election symbol was 'নৌকা' or against him there was a candidate named Golam Azam with the symbol 'দাঁড়িপাল্লা' or they canvassed in the election for Advocate Zahiruddin or on the other side Abdul Quader Molla, the then leader of Islami Chhatra Sangha canvassed for 'দাঁড়িপাল্লা' or he knew Abdul Quader Molla or after election they started training at their village for *muktijudha* (in the deposition

sheet, in Bangla, it has been recorded as: "ইহা সত্য সে, এ্যাডভোকেট জহির উদ্দিন বা তাঁর নির্বাচনী প্রতিক ছিল নৌকা বা ওনার বিপরীতে একজন প্রার্থী ছিলেন দাড়িঁপাল্লা মার্কার অধ্যাপক গোলাম আজম সাহেব বা তারা এ্যাডভোকেট জহির উদ্দিন সাহেবের পক্ষে নির্বাচনী প্রচারনা করেছিলেন বা অপর পক্ষে দাড়িঁপাল্লার পক্ষে নির্বাচনী প্রচারনায় অংশ গ্রহণ করেন তৎকালীন ইসলামী ছাত্র সংঘের নেতা জনাব আব্দুল কাদের মোল্লা বা তিনি আব্দুল কাদের মোল্লাকে চিনতেন বা এরপর তারা তাদের গ্রামে মুক্তিযুদ্ধের প্রস্তুতির জন্য ট্রেনিং আরাম্ভ করে এ কথা গুলে সাক্ষী শফিউদ্দিন মোল্লার (পি ডব্লিউ-৬) আমার কাছে প্রদত্ত জবান বন্দীতে নাই"). He further admitted that in the statements of Shafiuddin Molla(PW6) made to him, there is no mention that the Pak Hanadars attacked, but there being low land (নিচু জমি) around their village, they stayed at their village or then he saw two one dead bodies lying hither and thither or he hid himself beneath a bush (ঝোপের নীচে) on the North of their village or after catching hold of the harvesting labourers and the villagers they were brought together at one place or thereafter he saw Quader Molla, his bahini, Pak bahini and non-Bangalee Biharis bringing the harvesting labourers and the villagers from the eastern side at the same place or Abdul Quader Molla talked to the officers of Pak bahini in urdu which he could not hear as he was away. (in the deposition sheet, in Bangla, it has been recorded as: "ইহা সত্য যে, তদন্তকালে আমার কাছে প্রদত্ত সাক্ষী শফিউদ্দিন মোল্লার (পি ডব্লিউ-৬) এর জবানবন্দীতে উল্লেখ নাই যে, পাকহানাদাররা আক্রমন করে তাদের গ্রামে আশে-পাশে নিচু জমি থাকায় তারা গ্রামেই থাকে বা তখন দেখতে পান এদিক সেদিক দুই এক জন লোক মৃত অবস্থায় পড়ে আছে বা তিনি তাদের গ্রামের উত্তর পাশে একটা ঝোপের নিচে গর্তে লুকান বা ঐ সকল ধান কাটার লোকজন এবং গ্রামের লোকজনকে ধরে এনে একত্রে জড়ো করছে বা এরপর দেখেন যে পূর্ব দিক থেকে ঐ সকল ধান কাটার লোকজন এবং গ্রামের লোকজনদেরকে কাদের মোল্লা তার বাহিনী, পাক বাহিনী ও নন বেঙ্গলী বিহারীরা ধরে এনে একই জায়গায় জড়ো করছে বা আবদুল কাদের মোল্লাকে পাক-বাহিনীর অফিসারদের সংগে উর্দুতে কথা বলতে দেখেন দূর থেকে তা শুনতে পাননি।"). He

further stated that it is a fact that Shafiuddin Molla (PW6) did not tell him that then he was a voter or he was involved with Chhatra League, his family and all the villagers were the supporters of Awami League or Abdul Quader Molla, the then leader of Islami Chhatra Sangha, his associates and Biharis took part in the campaign of the election for Golam Azam with the symbol-'দাঁড়িপাল্লা' or he knew Abdul Quader Molla. He further stated that it is a fact that Shafiuddin Molla (PW6) did not tell him that he hid in a ditch under a bush on the northern side and from there he could see Quader Molla with a rifle in his hand and that he also shot fire, but he stated that he through the gap of the stakes of paddy saw Abdul Quader Molla shoot on the innocent, unarmed Bangalees who were standing (in the deposition sheet in Bangla, it has been recorded as: "ইহা সত্য যে, সাক্ষী সফিউদ্দিন মোল্লা (পি ডাব্লিউ-৬) এইভাবে আমার কাছে বলেনি যে, উত্তর পাশে একটি ঝোপের নিচে একটি গর্তে লুকাই এবং সেখান থেকে সে দেখতে পায় কাদের মোল্লার হাতে রাইফেল ছিল এবং সেও গুলি করে। তবে এই সাক্ষী এইভাবে বলে যে, "আমি ধানের স্তুপের ফাঁক দিয়ে তাকায়ে দেখি আব্দুল কাদের মোল্লা একটি রাইফেল দিয়ে দাঁড়ানো নিরিহ, নিরস্ত্র বাঙ্গালীদের গুলি করে।"). The PW admitted that he did not examine any one of Nabiullah's family, a victim of the occurrence which occurred at village-Alubdi. He examined Goejuddin Molla. He denied the defence suggestion that it is not a fact that he did not cite Goejuddin Molla, an eye witness, in his investigation report intentionally. He further stated that it is a fact that Syed Abdul Quayum (PW10) during investigation did not tell him that those who canvassed for the symbol-'দাঁড়িপাল্লা', Naim Khan, Safiruddin and one Molla were notable. He further stated that it is a fact that witness-Syed Abdul Quayum did not tell him that hearing his cry the moment one Molla (জনৈক মোল্লা), who was by the side of the place of occurrence, opened the door,

the attackers stopped suddenly (থমকে যায়) and then went away. PW10 told him that hearing his cry when Molla shaheb of the adjacent house came out, the Biharis fled away (in the deposition sheet, in Bangla, it has been recorded as: "তবে এই সাক্ষী বলেছিল যে, "তখন আমার চিৎকারে পাশের বাড়ীর মোল্লা সাহেব বাড়ী হতে বাহির হইয়া আসিলে বিহারীরা পালাইয়া যায়।"). He did not examine this Molla of the adjacent house (পাশের বাড়ীর) as he is not alive. The PW denied the defence suggestion that it is not a fact that Molla of the adjacent house is alive. He further stated that he could not know the full name of the Molla of the adjacent house. He denied the defence suggestion that it is not a fact that the Molla of the adjacent house took part in the election compaign for Golam Azam or in place of Molla of the adjacent house(পাশের বাড়ীর), he has implicated the accused in the case falsely to fulfil the political design of the Government. He asserted that during investigation, he did not find any one as Abdul Quader Molla except the accused. He examined Momena Begum (PW3), daughter of Shaheed Hazrat Ali Laskar, but did not record her statement seperately. In the investigation report of the killing of Khandakar Abu Taleb, he showed Momena (PW3) as a witness. During investigation, he read many books for the sake of investigation. He denied the defence suggestion that it is not a fact that he did not read the book 'শহীদ কবি মেহেরুন নেসা' written by witness-Kazi Rosy (PW4). He denied the defence suggestion that it is not a fact that in that book, it has not been written as to how Meherunnesa was killed and knowing fully well about the same, he intentionally said that he did not read the book. He further stated that during investigation, he found that poetess-Kazi Rosy formed an action committee at Mirpur of which she was the president and poetess-Meherunnesa

was a member. In his report, Nabi Hossain Bulu of Ghatarchar Shaheed Nagor has been mentioned as a Shaheed. During investigation, he did not examine the kabinnama to see whether Nurjahan was the wife of Shaheed Nabi Hossain Bulu. He denied the defence suggestion that it is not a fact that he did not examine the kabinnama willingly because he would not be able to prove that Nurjahan was the wife of Shaheed Nabi Hossain Bulu. He denied the defence suggestion that it is not a fact that at the time of occurrence, Nurjahan was not the wife of Shaheed Nabi Hossain Bulu and that at the time of occurrence, Nurjahan was not born even. He denied the defence suggestion that it is not a fact that he did not cite any member of Shaheed families of Ghatarchar as witness. He further stated that it is a fact that witness-Kazi Rosy (PW4) did not tell him during investigation that many of the associates of Quader Molla and Quader Molla himself were in white *patti* (সাদা পট্টি) or red *patti* (লাল পট্টি) on their heads while they entered into the residence of Meher at 11 a.m. Kazi Rosy did not tell him that Meher wanted to live by holding the holy Quran on her chest when she saw that they (Quader Molla and his associates) came to kill her. It is a fact that Kazi Rosy did not tell him that after liberation of Bangladesh, she wanted to go to the residence of Meherunnesa though she knew that some one was living in the house or after killing Meher, her neck was cut and then was hanged with the fan tied with her hair. He stated that Kazi Rosy told him that after entering into the house of Meher, she was first slaughtered and her head was separated from her body. Kazi Rosy told him that she heard about the killing of Meher from Gulzar and another non-Bangalee. He further stated that it is a fact that witness-Khandakar Abul Ahsan (PW5) did

not tell him that Abdul Halim took his father to Mirpur by his car and handed him over to Abdul Quader Molla. He stated that PW5 stated to him that he heard from Khalil that Halim came with his car and took his father to Mirpur.

The PW further stated that witness-Abdul Mazid Palwan (PW7) did not tell him in toto that there were five Mahallas in their village or he woke up from sleep hearing the sound of firing or going downwards of his house saw ablaze on all sides or he heard sound of firing from the northern side and he very slowly proceeded towards the North following the sound of firing or he stopped near the field of Ghatarchar school or there were bushes in their area or he hid himself behind a tree or there were other people in *panjabi* and *pajama* with Pak army and one of them was Abdul Quader Molla or Abdul Quader Molla had rifle in his hand and he also shot or in the previous night of 25th November, Abdul Quader Molla held a meeting at the house of Doctor Zainal or the house of Doctor Zainal was just after three houses on the East of the house of the witness or after the Pak bahini had left the place of occurrence, he came to know that the man of short stature in *pajama* and *panjabi* with them was Abdul Quader Molla and there were some other persons wearing veil so that they could not be easily recognized. The PW further stated that he did not examine any one of any Hindu family who was either killed or suffered. He denied the defence suggestion that it is not a fact that he recorded the statements of witness-Nurjahan (PW8) and Abdul Mazid Palwan (PW7) as tutored by him after examination of witness-Muzaffar Ahmed Khan (PW1) or they were not the actual witnesses to the occurrence.

The PW further stated that while he recorded the statements of Nurjahan (PW8), she did not tell him that her age was 13(thirteen) years. Nurjahan did not also tell him that at the time of occurrence, she was pregnant. Nurjahan did not tell him that on the date of occurrence hearing the sound of firing, she and her husband hid beneath a cot. He denied the defence suggestion that it is not a fact that Nurjahan did not tell him that after sitting for sometime under the cot when the firing was stopped they came out to see what happened and where happened? or then she saw the army coming to their house from the bondh (মাঠ) or after going there again she heard the sound of firing or then she went out of the house then again entered (in the deposition sheet, in Bangla, it has been recorded as "বা তখন সে বাড়ীর বাইরে যায় আবার ঢুকে"). Nurjahan stated that after going to the house of her paternal uncle-in-law, Mozammel Haque, she saw Muzammel Haque and her husband lying dead on the court yard. He admitted that Nurjahan did not tell him that she saw some army, a Bangali of short stature with black complexion or she went to catch hold of her husband crying and then the Bangali man pointed something like rifle to her and told her to leave the place or she out of fear ran to the room. Nurjahan did not tell him that at 10 a.m. or after 11 a.m. she raised her husband who was lying with the face downwards (উবু হয়ে পড়ে থাকা অবস্থায় থেকে উঠান) or she saw earth in his face and forehead and then she by giving her hands on his chest found blood or thereafter she started crying and informed her mother-in-law to come and then took her husband to her house with the help of 5/6 others. Nurjahan did not tell him that at the time of occurrence, Zainal doctor and Muktar Hossain were there, but she told that Zainal Abedin of Ghatarchar, his brother-in-law (শালা),

Muktar Hossain and Faizur Rahman brought Pakistani army from Dhaka and Razakar Bahini of Quader Molla and got killed 60 persons of their village- Ghatarchar and set ablaze on the houses. The PW further admitted that witness- Nurjahan did not tell him that she heard from the mouth of her father-in-law that someone named Quader Molla of Jamat killed her husband. Nurjahan told him that she heard the said fact from others besides her father-in-law, but she did not tell him that she heard the said fact from Abdul Mazid Palwan (PW7). He admitted that Nurjahan did not tell him that at the time of occurrence the hair of Abdul Quader Molla was short and he had no beard. He denied the defence suggestion that it is not a fact that at the time of occurrence, in 1971, accused- Abdul Quader Molla was staying at his house in Faridpur. He further stated that during investigation, he did not collect any photograph of the accused taken during the period of occurrence. During investigation, he found that in 1966 while Abdul Quader Molla had been a student of B.Sc. first year of Rajendra Government College, Faridpur, he was involved with left politics and subsequently, he joined Islami Chhatra Sangha. A specific question was put to the PW as to whether he got any paper to show that the accused joined Islami Chhatra Sangha to which he replied that he did not get any paper, but through the report of the Officer-in-Charge of Sadarpur Police Station submitted to the Superintendent of Police, Faridpur during investigation, came to know that accused- Abdul Quader Molla was a member of Islami Chhatra Sangha of the then East Pakistan and subsequently, he became an Assistant Secretary General of Jamat-E-Islam. The PW admitted that it is a fact that witness-Amir Hossain Molla did not tell him that on 22/23rd April, he along with his father came to

their village-Alubdi for harvesting paddy or after harvesting paddy passed the night at the house of his maternal uncle-in-law(খালু), Rustom Ali Bepari. Witness-Amir Hossain Molla did not tell him that Quader Molla had also a rifle in his hand, Aktar Gunda had a rifle in his hand and they along with the Punjabis also shot and 400 people were killed there, but Amir Hossain Molla(PW9) told him that at the leadership of Abdul Quader Molla, Ashim, Aktar Gunda, Newaj, Latif and Duma along with 140/150 others came from the East and encircled (ঘিরিয়া ফেলে) village-Alubdi and then fired indiscriminately. Amir Hossain Molla did not tell him that after the incident, he had gone to Lailapur, Asam, India in the first part of June and there he took training for *muktijudha* or after taking training came to Melagor and from there took arms and entered into Bangladesh in the first part of August or then 700/800 members of the Al-Badars from Mohammadpur Physical Institute under the leadership of Quader Molla and some Punjabis came to Mirpur and they along with the Biharis hoisted Pakistani flag. Amir Hossain Molla(PW9) told him that 800/900 members of the Al-Badars came from Mohammadpur Physical Institute under the leadership of Abdul Quader Molla at Mirpur and took shelter under Rajakar Bahini. He stated that it is a fact that Amir Hossain Molla did not tell him that in 1970, he canvassed for Awami League candidate Advocate Zahiruddin with the symbol 'নৌকা' and Abdul Quader Molla canvassed for Golam Azam with symbol 'দাঁড়িপাল্লা' or at that time, Abdul Quader Molla was a leader of Islami Chhatra Sangha. He further stated that he recorded the statements of Amir Hossain Molla sitting at Pallabi Police Station, he did not enquire about any criminal case against Amir Hossain Molla. He further stated

that it is a fact that there is no mention in the statements of witness-Syed Abdul Quayum (PW10) that the moment one Molla from neighbouring house opened the door hearing his cry, the attackers stopped suddenly (থমকে যায়) and went away or having been informed by the man of Molla to the house of Taleb Shaheb, he (Taleb Shaheb) himself along with his men came forward (এগিয়ে আসেন). He further stated that it is a fact that witness-Abdul Quayum (PW10) did not tell in his statement that he heard that Khandakar Abu Taleb was killed at Zallad Khana, Mirpur-10 by non-Bangalees local Gunda Aktar and Abdul Quader Molla. Syed Abdul Quayum told him that in June, 1971, he came to know from Faruq Ahmed Khan that Khandaker Abu Taleb was killed. Syed Abdul Quayum did not state in his statements that he heard that Abdul Quader Molla killed a student of Bangla College named Pallab. He denied the defence suggestion that it is not a fact that the investigation report submitted by him in respect of the allegations brought against the accused was false, concocted and motivated. He denied the further defence suggestion that it is not a fact that Abdul Quader Molla was not involved with any of the incidents of the instant case in any manner. He denied the further defence suggestion that it is not a fact that he submitted the investigation report falsely against the present accused leaving aside the actual offender, Abdul Quader Molla. He denied the further defence suggestion that it is not a fact that he submitted the investigation report to fulfil the political design of the Government and to belittle the accused politically and that he submitted a false report suppressing the actual facts.

<u>Chargewise discussions of Point Nos.(iii) and (iv):</u>

Although the prosecution examined 10(ten) public witnesses to substantiate the allegations made in the charges as listed in charge Nos.1-6, all the witnesses are not relevant to all the charges. It may be stated that PWs'11 and 12 are the Investigation Officers.

Charge No.1:

Charge No.1 relates to the killing of Pallab, a student of Bangla College, Mirpur. The allegations made in this charge were that as Pallab was one of the organizers of liberation war, anti-liberation people, in order to execute their plan and to eliminate the freedom loving people went to Nababpur from where they apprehended Pallab and forcibly took him to the accused- Abdul Quader Molla at Mirpur, Section-12 and then at his order, his accomplices dragged Pallab therefrom to Shah Ali *Mazar* at Section-1 and then he was again dragged to *Eidga* ground at Section-12 where he was kept hanging with a tree and on 5th April, 1971 at the order of the accused, his notorious accomplices: Aktar, the Al-Badar killed Pallab by gun shot and his dead body was buried by the *Kalapani Jheel* along with the dead bodies of 7(seven) others. The accused as one of the prominent leaders of Islami Chhatra Sangha as well as "significant member of Al-Badar or member of group of individuals" participated and substantially, facilitated and contributed to the commission of the above criminal acts in "concert with Al-Badar members, causing murder of Pallab, a non-combatant civilian" and thus, committed an offence of murder, a crime against humanity and for complicity to commit such crimes as specified in section 3(2)(a)(h) of the Act, 1973 which are punishable under section 20(2) read with section 3(1) thereof.

From the allegations made in the charge, it is clear that the accused has been implicated with the killing of Pallab alleging: (i) the anti-liberation people after apprehending Pallab from Nababpur forcibly took him to the accused at Mirpur, Section-12, (ii) at the order of the accused, his accomplices dragged Pallab therefrom to Shah Ali *Mazar* at Section-1, Mirpur, (iii) then again, Pallab was dragged to *Eidga* ground at Section-12, Mirpur where he was kept hanging with a tree and (iv) on 5th April, 1971 at the order of the accused, his accomplice-Aktar, the Al-Badar killed Pallab by gunshot and then his dead body was buried by the side of *Kalapani Jheel* along with the dead bodies of 7 others. In view of the allegations made in this charge, the issues to be decided are whether after Pallab had been apprehended by the anti-liberation forces from Nababpur, was taken to the accused at Mirpur, Section-12 and then at his order, Pallab was dragged to Shah Ali *Mazar* at Section-1, Mirpur and again was dragged to Eidga ground at Section-12, Mirpur where he was kept hanging with a tree and whether on his order, his accomplices, namely:Aktar, the Al-Badar killed him by gunshot on 5th April, 1971. In fact the complicity of the accused with the killing of Pallab has been shown as an order giver after he was apprehended by the anti-liberation forces from Nababpur.

In clause (a) of sub-section (2) of section 3 of the Act, 1973 under the head ‘Crimes against Humanity’ murder has been mentioned as a crime against humanity. Clause (h) of section 3(2), with which the accused has also been charged, reads as follows:

> “complicity in or failure to prevent commission of any such crimes.”

To substantiate the charge, the prosecution examined two witnesses, Syed Shahidul Huq Mama (PW2) and Syed Abdul Quayum (PW10). Their

testimonies have been reproduced in English earlier in extenso. I shall refer only to those portions of their testimonies which are relevant to the issues involved in this charge. Let us see whether the prosecution could prove the allegations made in the charge beyond reasonable doubt (rule 50 of the Rules of Procrdure).

Both these witnesses are hearsay witnesses. From the examination-in-chief of PW2, it appears that the Tribunal allowed him to depose in a free style manner beyond the allegations made in the charge although clause (a) of section 11(3) of the Act, 1973 has mandated that the Tribunal shall confine the trial to an expeditions hearing of the issues raised by the charges. So far as this charge is concerned, PW2 in his examination-in-chief stated that the *Akhra* of Hakka Gunda was at Thataribazar from where Pallab @ Tuntuni was apprehended by Aktar Gunda and his accomplices who then took him at Muslimbazar, Mirpur where his fingers were cut and then he was hanged with a tree. Thereafter, by crossing all limits of atrocities (নির্মমতা ও পৈশাচিকতার সীমা লংঘন করে), possibly on 5th April, Pallab was killed. He further stated that the main hero of the incident was Quader Molla, Aktar Gunda and the Biharis, namely: Hasib Hashmi, Abbas Chairman, Nehal. From the deposition of PW2, it is clear that Pallab was apprehended by Aktar Gunda and his accomplices from Thataribazar and then he was taken to Muslimbazar, Mirpur where his fingers were cut, he was hanged with a tree and then he was killed on 5th April, 1971 by shooting. The PW implicated the accused by saying that he along with Aktar Gunda and the Biharis were the main hero of the incident (in the deposition sheet, in Bangla, it has been record as: “এই ঘটনার মূল নায়ক ছিল কাদের

মোল্লা, আক্তার গুন্ডা ও বিহারীরা যাদের নাম আগে বলেছি।”), although, in the charge, he was implicated as an order giver to kill Pallab after he had been apprehended by the anti-liberation people (no name mentioned) from Nababpur. PW2 did not say anything as to how the accused was the main hero. He did not also say how could he know about the said fact of killing of Pallab at Mirpur after he had been apprehended at Thataribazar? But in cross examination, he stated that he could know about the fact of killing of Pallab after he had been arrested at Thataribazar from the public and further stated that he came to know about the killing of Meherunnesa and Pallab from the persons known to him and from the *Kafela* of Mirpur (in the deposition sheet, in Bangla, it has been record as: “পল্লবকে ঠাটারী বাজার হতে ধরে নিয়ে এসে মিরপুর মুসলিম বাজারে নির্যাতন ও হত্যা করার বিষয়টি আমি জনতার কাছে শুনেছি। মেহেরুন্নেস (charge No.2) ও পল্লবকে হত্যা কান্ডের ঘটনা দুটি আমি পরিচিত মানুষের কাছ থেকে এবং মিরপুরের জনতার কাফেলার মানুষের কাছ থেকে শুনেছি।”). The PW in his testimony before stating the facts of killing of Meherunnesa and Pallab made statements claiming that he was a students' leader of Mirpur while he read in school, he took part in the 1962, movement against infamous Hamidur Rahman Education Commission Report, Six and Eleven points movement which took place in 1966 and in 1969 respectively, accused- Abdul Quader Molla a pro-Pakistani campaigned for Golam Azam in 1970's National Assembly election who contested in the election with the symbol, 'দাড়িঁপাল্লা', in the election campaign Quader Molla used to give slogan along with the Biharis in favour of Pakistan and mocking the slogan 'Joy Bangla, Joy Banga Bandhu' and Bangladesh and thus he could know him.

So far as the criminal trial under the ordinary laws and even under the special laws of the land are concerned, hearsay evidence is not admissible in evidence in view of the provisions of section 60 of the Evidence Act. In section 23 of the Act, 1973, it has specifically been provided that the provisions of the Code of Criminal Procedure, 1898 and the Evidence Act, 1872 shall not apply in any proceedings under the Act and thus, the provisions of the said two Acts have been made non-applicble. By sub-rule (2) of rule 56 of the Rules of Procedure both hearsay and non-hearsay evidence have been made admissible in the case of trial under the Act, 1973. In this sub-rule, it has been clearly stipulated that the reliability and probative value in respect of hearsay evidence shall be assessed and weighed separately at the end of the trial. In this regard, it needs be mentioned that in rule 2 of the Rules of Procedure although as many as 26 definitions have been given, but the hearsay evidence has not been defined. So as of necessity, we have to see the dictionary meaning of the word hearsay and take the aid of other authors in seeing the proper meaning of the word hearsay in legal parlance.

In Black’s Law Dictionary, 9th Edition, it has been said as follows:

> “1. Traditionally, testimony that is given by a witness who relates not what he or she knows personally, but what others have said, and that is therefore dependent on the credibility of someone other than the witness. Such testimony is generally inadmissible under the rules of evidence. 2. In federal law, a statement (either a verbal assertion or nonverbal assertive conduct), other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Fed. R.Evid. 801(c) Also termed hearsay evidence; secondhand evidence.”

> As per Taylor "In its legal sense, 'Hearsay' Evidence is all evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person"(Taylor on Evidence, 9th Edition, 368).

So, whatever PW2 said is anonymous hearsay evidence, and as admittedly PW2 did not mention any one's name, the question of judging or considering the credibility of "some one other than the witness" or "some other person" than the PW does not arise at all. And as per sub-rule (2) of rule 56 of the Rules of Evidence, the reliability and probative value of the hearsay evidence of PW2 shall have to be assessed and weighed separately at the end of the trial. I am of the view that the reliability and probative value of a hearsay evidence shall depend upon the truthfulness of a witness, in other words, on the credibility of the witness. And in assessing and weighing the hearsay evidence, regard must be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise in evaluating the weight, if any, to be attached to admissible hearsay evidence.

Let us see whether PW2 is a truthful witness. From the cross examination of the PW, it appears that he was born on 01.10.1953, but in his examination-in-chief, he stated that he took part in the movement against the infamous Hamidur Rahman Education Commission Report which took place in 1962. He further stated that he also took part in the six points movement in 1966 and also in the eleven points movement in 1969. If we count his age from the date of his birth, his age would be 10(ten) years and 14(fourteen) years in 1962 and 1966 respectively. I fail to understand how a boy of 10(ten) years old could participate in the movement launched in 1962 against Hamidur Rahman

Education Commission Report and in six points movement in 1966 while he was only 14(fourteen) years. The PW asserted in his cross examination that in 1969, he was an S.S.C. candidate, even this assertion of the PW is believed then in 1962, he must be a student of class-IV and in 1966, a student of class-VII. This *prima-facie* shows that he lied in giving his testimony in Court, that he took part in the above movements in 1962 and in 1966. That the PW lied is further apparent from his testimony given in his examination in chief to the effect that during the 6(six) points and 11(eleven) points movement when he along with others went near Beauty Cinema Hall at Mirpur, S.A. Khaleque, the then leader of Convention Muslim League and Khasru, son of Governor Monayem Khan attacked their procession and opened fire. Is it believable that a boy of 14(fourteen) years and 16/17 years would dare to go with the procession in 1966 and 1969 respectively at Mirpur area at that time? This PW in order to prove that Abdul Quader Molla as leader of the then Islami Chhatra Sangha was very much active in Mirpur area in favour of the then Pakistan and he (the PW) knew him, stated a story that Abdul Quader Molla of Jamat-E-Islami, Dr. T. Ali, Hakka Gunda, Aktar Gunda, Nehal, Hasib-Hashmi, Abbas Chairman, Kana Hafiz, Bidi Member and others called Khan Abdul Quayum Khan(he was a political leader of the then West Pakistan) known as the tiger of the frontier to hold a meeting at Mirpur against six points and eleven points movement, that meeting was sponsored by Anzuman-E-Muhajerin and it was instigated by Jamat-E-Islam. The meeting was held in 1969 (No date mentioned. In cross examination the PW admitted that he could not remember the date of the meeting) at Mirpur at the open place where present Mirpur

Stadium has been built. And in that meeting, Khan Abdul Quayum Khan was the chief guest. In the meeting, Khan Abdul Quayum Khan made the comment that "শেখ মুজিব পাকিস্তানকা গাদ্দার হ্যায়, দোষমন হ্যায়।" The moment, Khan Abdul Quayum Khan made the said comment the PW along with others jumped on the stage and snatched away the microphone from the hand of Khan Abdul Quayum Khan and then he and his companions were given mass beating and he was taken to Mirpur Police Station where the Police gave him lathi blow and asked him to say 'joy Bangla', he said 'Joy Bangla'. At that stage, the intensity of beating was increased and the police asked him whether he would say 'Joy Bangla', even then he said 'Joy Bangla'. But the said story does not appear to be believable for 4(four) reasons: (i) the PW failed to show any connection/link with the then Jamat-E-Islami and Anzuman-E-Muhajerin as well as Khan Abdul Quayum Khan for which he would come to Mirpur all the way from the then West Pakistan for holding such a meeting at the call of Abdul Quader Molla and the other local Biharis; (ii) At the relevant time, accused- Abdul Quader Molla was admittedly a students' leader of Islami Chhatra Sangha and not a leader of Jamat-E-Islam and therefore, he could not call Khan Abdul Quayum Khan for holding such meeting; (iii) At the relevant time, the PW who was a student of a school, was not supposed to know a students' leader of Dhaka University of the student wing of a political party that, in fact, had not that much roots and popularity in the then East Pakistan. In this regard, it may further be stated that at the relevant time, the media, both electronic and print were not that much available and cheap that the accused, a leader of the student wing of Jamat-E-Islami had a chance of frequent

appearance before the media for which he could be known to the PW; (iv) It is unbelievable that the PW who was a boy of 16/17 years only could make a such a violent protest in a public meeting held at that time at Mirpur.

Another striking fact is that the PW in his cross examination, admitted that after coming to Bangladesh in January, 2012, he on 20th April, gave an interview to BTV in a programme under the title "একাত্তরের রনাঙ্গনের দিনগুলি"and in that interview, he gave a detailed accounts about the occurrences/incidents which happened/took place in Mirpur-Mohammadpur area during the liberation war from 25th March, 1971 to 31st January, 1972. The PW further stated that in the said interview, he told the truth and whatever statements he gave in the newspapers and the electronic media from 31st January, 1972 to 20th April, 2012, he tried to speak the truth. But from exhibit-'1' series, a CD containing the two video programmes, one on "একাত্তরের রনাঙ্গনের দিনগুলি" broadcast by BTV on 20th April, 2012 and the other one, a documentary film under the title 'Mirpur the Last Frontior-1' and 'Mirpur the Last Frontier-2' produced by Sagir Mustafa, it appears that he did not implicate the accused in any manner whatsoever with the commission of crimes in Mirpur, from 25th March, 1971 to 16th December, 1971 and thereafter including Pallab killing. In the interview, although the PW stated the fact of resistence at Mirpur in 1969 and holding of meeting in the same year where Khan Abdul Quayum Khan was allegedly present and made the derogatory remarks about Banga Bandhu and the fact of protest by him did not at all say that Quader Molla of Jamat-E-Islam along with others asked Khan Abdul Quayum Khan to hold the meeting though in his examination-in-chief he said so (typed copies of the interview given by the PW

in both programmes have been supplied). When the attention of the PW was drawn to the above facts in cross examination, he tried to give an explanation that the Journalists sometime cut off a part of the statements and sometime also add new words for which he could not be held responsible. And this explanation given by the PW for non-mentioning the name of the accused, particularly in the programme broad cast by BTV has been accepted by the Tribunal with the findings*"206. First, earlier statement or any account made to any non judicial forum is not evidence and it may simply be used to see inconsistencies or omission with the evidence made in Court. The explanation offered by PW2 is reasonable and thus if such prior interview is found to have not contained any narration hinting involvement of the accused with any of atrocities alleged (sic) committed in Mirpur his sworn testimony made in Tribunal is not liable to be brushed aside, provided if his evidence in its entirety inspires sufficient weight in light of attending circumstances. Secondly, P.W.2 does not claim to have witnessed the accused in committing the event of killing Pallab. If really he had any motive he could testify falsely by claiming that he saw the accused committing the crime alleged. But he did not do it. This demeanor is appositely relevant in assessing his sworn testimony made in Tribunal."* The Tribunal was absolutely wrong in taking the said view. In taking the said view, the Tribunal did not at all take notice of section 19(1) of the Act (section 19 has been quoted at the beginning of this judgment) and rules 44 and 54(2) of the Rules of Procedure which clearly made such interview in the form of CD admissible in evidence and in fact, the same was admitted into evidence as exhibit-'1'series. Rules 44 and 54(2) read as follows:

"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 maganines, 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."

"54(2). pursuant to section 19(1) of the Act, the Tribunal may admit any document or its phot copies in evidence if such documents initially appear to have probative value."

Section 19(1) has clearly provided that a Tribunal shall not be bound by technical rules of evidence and may admit any evidence, including reports and photographs published in newspapers, periodicals and magazines, films and tape-recordings and other materials as may be tendered before it, which it deemds to have probative value. And, in fact, the Tribunal admitted CD's of the said two programmes. The Tribunal also failed to consider rule 55 which is as follows:

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

And by all means the CD's are document. So where is the scope to ignore the interview given by PW2 in the programme of BTV and in the documentary films to assess and weigh his testimonies given in Court in considering their reliability and probative value within the meaning of such-rule (2) of rule 56 of the Rules of Procedure.

The explanation given by the PW does not appear to me at all reasonable and conscionable, because had the PW mentioned the name of Quader Molla (the convict) in the interview given in the programme "একাত্তরের রনাঙ্গনের

দিনগুলি” implicating him with the incidents of murder and rape at Mirpur area including the instant one, then the anchor of the programme had no reason to cut the same, particularly, the programme being arranged/sponsored by BTV and when the names of so many non-Bangalees who were involved with the atrocious activities at Mirpur have been mentioned. It is to be noted that the PW did not give any explanation so far as his omission in not mentioning the name of the accused in his interview in the documentary films mentioned above, but the Tribunal did not consider the said fact. In the context, I find no other option but to reproduce the entire interview of the PW given in the programme "একাত্তরের রনাঙ্গনের দিনগুলি" and only his versions from the documentary films 'Mirpur the Last Frontier-1' and 'Mirpur the Last Frontier-2' which are as follows:

"মুক্তিযুদ্ধ বিষয়ক অনুষ্ঠান-'রণাঙ্গনের দিনগুলি'

প্রচারের তারিখঃ	২০.০৪.২০১২
প্রচারিত চ্যানেলঃ	বি.টি.ভি
সময়ঃ	রাত ১১:৩০ মিনিটে প্রচারিত
আলোচনাঃ	সৈয়দ শহিদুল হক মামা
আবৃত্তিঃ	নাসরিন পাঠান
সংগিত পরিবেশনাঃ	রুখসানা মুমতাজ
গ্রন্থনা ও উপস্থাপনাঃ	নাসির উদ্দিন ইউসুফ
অনুষ্ঠানটির দৈর্ঘ্যঃ	২০ মিনিট ২২ সেকেন্ড

০০.০৪.০৫

উপস্থাপক- ১৯৭১ সালে মহান মুক্তিযুদ্ধে যে ৩০ লক্ষ মানুষ জীবন দিয়েছে সেই মানুষদের সেই শহীদদের পরিবারের কথা তাদের জীবিত সদস্যদের মুখ থেকে শুনে নেই।

আরো শুনি বিরঙ্গনাদের কথা নির্যাতিত নারীদের কথা যারা পাকিস্তানি হানাদার বাহিনী, রাজাকার আলবদরদের দ্বারা নির্যাতিত হয়েছিল ১৯৭১ সালে।

সৈয়দ শহিদুল হক মামা-মহান স্বাধীনাতা যুদ্ধে আমি মোহাম্মদপুর, মিরপুর থানার গেরিলা বাহিনীর কমান্ডার ছিলাম এবং মিরপুর ও মোহাম্মদপুর এ দুই এলাকা ছিল সবচেয়ে ভয়ংকর জায়গা।

বিহারীরা এ মিরপুরে যে তান্ডবলীলা শুরু করেছিল। ১৯৬৯ এর গণঅভ্যুত্থান থেকে আমরা ৬ দফা ও ১১ দফা এ'দুটা দাবিকে নিয়ে মিরপুরে তখন প্রতিরোধের প্রাচীর তৈরী করেছিলাম। আর অবাঙ্গালীরা তারা সমস্ত অফিস-আদালত, শিক্ষা প্রতিষ্ঠান তারা উর্দু ভাষা ব্যবহার শুরু করলো এবং বাংলাকে টোটালি নিষিদ্ধ করে দিল। ৬৯ এর গণঅভ্যুত্থান যখন তুঙ্গে, তখন এই অবাঙ্গালী বিহারীরা পাকিস্তানি সীমান্তে বাঘ বলে পরিচিত

<u>খান আব্দুল ওয়ালী খানকে কাইউম খানকে, এই যেটা বর্তমানে যেটা স্টেডিয়াম মিরপুরে এটা তখন খালি মাঠ, এখানে তারা বিশাল সভা আহবান করলো ৬ দফা ১১ দফার বিরুদ্ধে। আমরাও তার মোকাবেলা করার জন্য সেখানে সশরীরে হাজির ছিলাম। খান আব্দুল কাইউম খান বলল, শেখ মুজিবুর রহমান গাদ্দার হ্যায়। আমরা ঝাপিয়ে পড়লাম, তার হাত থেকে মাইক্রোফোন কেড়ে নিলাম এবং শত শত বিহারীরা আমাদেরকে সেদিন গণধোলাই দিল। আমিনকে আধমরা অবস্থায় ডাস্টবিনে ফেলে দিল</u> (emphasis supplied)। আর আমি রক্তাক্ত অবস্থায় আমাকে ধরে নিয়ে থানায় ফ্যান খুলে ঝুলিয়ে একেকটা রাইফেলের বাট দিয়ে বাড়ি দিয়ে বল-জয় বাংলা, জয় বাংলা। তো এখন এই ভাষা আন্দোলনের ২১শে ফেব্রুয়ারীর প্রভাত ফেরি থেকে শুরু হতো বিহারী বাঙ্গালীদের সাথে দাঙ্গা। একুশের সিড়ি বেয়েই একাত্তরের মুক্তিযুদ্ধ। এই ২৩শে মার্চ মিরপুর ১নং বিশাল টাংকির উপরে পাকিস্তানি পতাকা পুড়িয়ে দিয়ে এই মানচিত্র অঙ্কিত পতাকা উড়ালাম টাংকির উপরে। হাজার হাজার বিহারী তারা সেদিন আমাকে ঘেরাও করলো। যে পাকিস্তানিকা পতাকা তোমরা অপমান করেছো এবং সেখানে আমরা মাথানত করি নাই। তারপর ২৫শে মার্চের কালো রাত্রিতে মিরপুরে যে তান্ডবলিলা তারা করলো। আকস্মিক যে আক্রমন সকাল বেলা সারা মিরপুর হয়ে গেছে রণক্ষেত্র। নিরস্ত্র বাঙ্গালীদের বাড়িঘরে আগুন লাগানো। যেখানে বাঙ্গালী পেল কচুকাটা করলো। আমার সহকর্মীরা যারা আমার পাশে থেকে প্রতিরোধের প্রাচীর তৈরী করেছিল আজকে আমাদের মাঝে অনেকে নেই। এ্যাডভোকেট শাহ আলম, মঞ্জু, জিল্লুর, হায়দার, হাসেম অনেক বন্ধু বান্ধবরা আজকে এ পৃথিবী ছেড়ে চলে গেছে। কিন্তু অত্যাচার নির্যাতনের কেন্দ্র বিন্দু ছিল এই মোহাম্মদপুর এবং মিরপুর।

মুক্তিযদ্ধে অংশগ্রহণ করলাম। আমার ভিতরে যে আগুন জ্বলছিল বিহারীদের যেসব অত্যাচার নির্যাতন স্বচোক্ষে দেখেছি। কিভাবে মা বোনদের তারা ধরে নিয়ে গেল, উন্মুক্ত আকাশের নিচে তাদেরকে ধর্ষণ করলো। আমাদের সয়ংক্রিয় অস্ত্র ছিল না। আমরা সিভিল গান সংগ্রহ করে এই গান দিয়ে তাদের মোকাবেলা করেছি। <u>আপনারা অনেকেই জানবেন কুখ্যাত আখতার গুন্ডা। যার নাম শুনলে মানুষ থরথরায় করে কাপতো। হাক্কা গুন্ড, নেহাল, হাসিম হাসমি, হাসেম চেয়ারম্যান এরা সমস্ত মিরপুরের এই অবাঙ্গালিদের নেতৃত্ব দিয়েছিল। আর কুখ্যাত জামায়াতের ইসলামীর গোলাম আযম ৭০ এর নির্বাচনে এই মোহাম্মদপুর, মিরপুর, তেজগাও অংশ বিশেষ এলাকা নিয়ে সেদিন বঙ্গবন্ধুর খুব আপনজন এ্যাডভোকেট জলিল উদ্দিন তিনি নৌকা মার্কা নিয়ে ৭০ এর নির্বাচনে প্রতিদন্ধিতা করেছিলেন</u> (emphasis supplied)। আমরা জীবনের বাজি রেখে, মৃত্যুর সাথে পাঞ্জা লড়ে অলি গলিতে গিয়ে এই বঙ্গবন্ধুর প্রিয় এই ক্যান্ডিডেটের বিজয়ী মুকুট ছিনিয়ে এনেছিলাম। কিন্তু ভাগ্যের নির্মম পরিহাস রণাঙ্গনে যখন গেলাম আমার একটাই আমার ভিতরে প্রতিশোধ কি করে আমি মিরপুর আক্রমন করবো, আমি কি করে মোহাম্মদপুর আক্রমন করবো। পাকিস্তানি হানাদার বাহিনীদের ২নং সেক্টরের যে অপারেশনের দায়িত্ব আমাকে দেয়া হয়েছিল। সেই খান সেনাদের টর্চার সেন্টার গ্রাফিক এন্ড ইন্সটিউট হোল ঢাকা জেলার কেন্দ্রবিন্ধু ছির। এখান থেকেই তারা যেসমস্ত বাঙ্গলীদেরকে বুদ্ধিজীবিদেরকে ধরে নিয়ে এই গ্রাফিক এন্ড ইন্সটিটিউটের নিচেই তাদেরকে হত্যা করতো এবং আমরা যাদেরকে গ্রেফতার করেছিলাম সেই আঞ্জুমান মহাজেরিনিদের বিহারীদের নেতা এ্যাডভোকেট

বারাসাত সে তখন বলল, আমাকে মেরো না আমি সব তথ্য দিব। তখন তার স্বীকারোক্তি এবং আরো দুইজন বিহারীর এরা নেতা বলল, সবুর খানের বাসায় সমস্ত ডকুমেন্ট পাওয়া যাবে। আমরা সাথে সাথে খান আব্দুল সবুর খানের বাসায় গেলাম। তার আলমারি থেকে সমস্ত ফাইল উদ্ধার করলাম। এই ফাইলগুলো উদ্ধারে সমস্ত ডিটেইলস লেখা ছিল। যে সমস্ত সম্মানিত ইউনিভারর্সিটি শিক্ষকবৃন্ধ, যে সমস্ত সাংবাদিক, বুদ্ধিজীবি যারা আগেই তাদের তালিকা তৈরী করা হয়েছিল। যারা আলবদর রাজাকার আলশামস তাদেরকে বাড়ি থেকে ধরে নিয়ে এই রায়ের বাজারের বদ্ধভূমিতে ১৪ ডিসেম্বর যে লাশগুলো আমরা উদ্ধার করেছিলাম এ লাশের পাশে পেয়েছিলাম বাজারের ছোট ব্যাগ ভর্তি এক বস্তা মানুষের চোখ।

আলবদর, রাজাকার, আলসামসরা বুদ্ধিজীবিদের হত্যা করেছিল লাশ রায়ের বাজার বদ্ধভূমিতে নিক্ষেপ করে রেখিছিল এবং তাদেরই জবানবন্দি নিয়ে এ লাশগুলো উদ্ধার করলাম।

যে সমস্ত বদ্ধভূমি আমরা উদ্ধার করেছি প্রায় ১১টার মতো। যে জল্লাদখানা যেখানে নিয়ে বাঙ্গালীদেরকে জবাই করে এই ম্যানহোলের ভিতর ফেলে দিত। আর সবচেয়ে ভয়ংকর যুদ্ধ করেছি সম্মুখ যুদ্ধ ২নং সেক্টারের এই সালদা নদী, চালনা আখাউড়া, চকবস্তা। সালদা নদীতে খান সেনাদের সাথে ফেস টু ফেস লড়াই করেছি।

এই যুদ্ধে আমাদের সহকর্মী জাকির শহীদ হয়েছে, মোস্তাক আহত হয়েছে, পপ সম্রাট আজম খানও আহত হয়েছে এবং সেই যুদ্ধ থেকে আমাদেরকে একসময় ২নং সেক্টর কমান্ডার মেজর হায়দার স্পেশাল অপারেশন দিয়ে ঢাকায় পাঠানো হলো। আমরা যখন এই ফিজিক্যাল আর্টস গ্রাফিক্স আর্টসে খান সেনাদের হেড কোয়ার্টারে আক্রমন করলাম এবং আমরা হিট এন্ড রান আমরা আক্রমন করে চলে যেতাম বছিলালয় এবং মিরপুরে আক্রমন করতাম তুরাগ নদীতে নৌকায় এসে এই বিহারীদের উপর আমরা অতর্কিত আক্রম করতাম, রাডার স্টেশনে আক্রমন করতাম এবং সবচেয়ে দুঃখজনক ব্যাপার যে, ১৯৭১-এ এই হানাদার বাহিনী সহোরাওয়ার্দী উদ্যানে ৯৯ হাজার খান সেনারা আত্নসমর্পন করলো। মিরপুর ছিল এরচেয়ে ব্যতিক্রম। মিরপুর হানাদার মুক্ত হয়েছে ৩১শে জানুয়ারী। এই মিরপুর উদ্ধার করতে গিয়ে স্বনামধন্য, প্রখ্যাত, চিত্র পরিচালক, সাংবাদিক জহির রায়হান নিখোজ হলেন, এসপি নদী সেখানে মারা গেলেন, লেফটেনেন্ট সেলিম মারা গেলেন, তোরাব আলীর গোটা পরিবার যার মার বয়স ছিল নব্বই বছর তাকেও টুকরা টুকরা করেছে। অসংখ্য বাঙ্গালী বন্ধু বান্ধবদের শুধু লাশ আর লাশ লাশ আর লাশ।

আজকে এইসব অপারেশনের কথাগুলো আমাদের যখন মনে পড়ে, সুইডেন থেকে বাংলাদেশে ছুটে আসি। এই মুক্তিযুদ্ধের এই ঘটনাগুলো রণাঙ্গন থেকে স্বদেশে এসে যেসমস্ত অপারেশন করেছি, যে সমস্ত খান সেনা, মানে রাজাকার, আলবদর এদর মোকাবেলা করেছি। আর তারচেয়ে ভয়ংকর জায়গা ছিল ইসলামপুর। মিরপুর আর ইসলামপুর ঢাকার পুরানা শহরে অলিগলিতে আমরা আক্রমন করেছি।

মুক্তিযুদ্ধের এই স্মৃতিচারন করতে গিয়ে অনেক স্মৃতি আমার চোখে ভাসে। ৭০ সনের নির্বাচনে নুর হোসেন ডেকোরেটর বিশাল আকারে নৌকা বানিয়ে দিয়েছিলেন। যে নৌকাকে মডেল হিসেবে ঢাকা শহরের বিভিন্ন ডেকোরেটরেরা নৌকা বানিয়েছিল। এ অপরাধে তাকে বিহারীরা জবাই করলো, তার শ্বশুরকে জবাই

করলো, শালাকে জবাই করলো। মতিউর রহমানের ছেলে মঞ্জু আমাদের সাথে দেয়ালে এই চিকা মারতো। যে কারনে তাকে হটাৎ ২৬শে মার্চ পেয়ে যখন জিজ্ঞাসা করলো অপেক্ষা করো তোমার বাবা মার কাছে ফিরিয়ে দিচ্ছি। তাকে ওখানে গোস্তের দোকানে খাটাইতে টুকরা টুকরা করে এই মাংশ গুলো উড়িয়ে দিল। অসংখ্য। যে কারণে বললাম মুক্তিযুদ্ধে ঝাপিয়ে পড়লাম। স্বচোক্ষে দেখলাম এই বিহারীদের অত্যাচার, নির্যাতন। এই রাজাকার আলবদর আলসামস জামায়াতে ইসলামের কেন্দ্রবিন্দু ছিল মোহাম্মদপুর মিরপুর যেখানে এই গোলাম আযম ৭০ সনে দাড়িপাল্লা নিয়ে নির্বাচন করেছিল। আর যত ধরনের হত্যাকান্ড ঘটেছিল যেখানে আজকের বুদ্ধিজীবিদের যে স্মৃতিসৌধ ১৪ ডিসেম্বর আসলে রায়ের বাজারের বদ্ধভূমি এই স্মৃতিসৌধে সবাই সমবেত হয়। এখানেই এই বুদ্ধিজীবিদের লাশ পড়া ছিল। এই সব ঘাতকরাই তাদের মেরেছে। আবার এরাই পরবর্তীতে এই ৩০ লক্ষ রক্তে রঞ্জিত শহীদের এই লাল সবুজের পতাকা নিয়ে তারা দেশ শাসনও করেছে। তো আজকে এই যুদ্ধপরাধীদের বিচার স্বচোক্ষ্যে দেখার জন্য সুইডেন থেকে এসেছি। রায়ের বাজারের বদ্ধভূমির এই এক বস্তা চোখ, এই যে ক্ষত বিক্ষত লাশ এগুলো আমাদের স্মৃতিতে আছে যুগ যুগ ধরে থাকবে। যথক্ষন পর্যন্ত এই অপরাধীদের বিচার না হয়।

“মিপুর দা লাষ্ট ফ্রন্টিয়ার-১”
প্রমান্য চিত্র পরিচালক-সগির মোস্তফা
৯ মিনিট ৩ সেকেন্ড

সায়েদ শহীদুল হক মামাঃ ১৯৬০ সন থেকে আমরা মিরপুরে বসবাস করছি। ১ নম্বর সেকশনে কোন বাঙ্গালি স্কুল ছিল না। এখানে শুধু বিহারী ছাড়া কোন বাঙ্গালিই বাংলা ভাষা চর্চা করা যাবে না। তারা বলেছে যে বিহারী আন্‌জুমান মহাজিরেনকা এলাকা হেই, তেয়াপার উর্দু প্র্যাকটিস হোগা, তেয়াপার উর্দু চলে গা, কোগি বাংলা স্কুল নেহি চলে গা। জুনিয়ার স্কুলকে প্রতিষ্ঠা করতে গিয়ে এখানে রায়েড পর্যন্ত হয়েছে।

হক মামাঃ আজকে মুক্ত বাংলা যে মার্কেট এখানেই ছিল আমাদের শহীদ মিনার। এখানে আমরা একত্রিত হতাম। এখানে পেয়েছি কবি সুফিয়া কামালকে। এখানে পেয়েছি কবি মেহেরুন্নেছাকে। তার ইন্টার ফ্যামিলিকে জবাই করেছে। টুকরা টুকরা করেছে। একটা অপরাধ প্রতি মিছিলের অগ্রভাগ উনি ছিলেন। কাজি রোজি এখনো বেচে আছে। ওকে তো স্ট্যাফ করে দিয়েছিল। আমি জাপায়া যদি সেই চাকুটা না ধরতাম। আজকে কাজি রোজি এই পৃথিবীর আলো বাতাস দেখতো না। যে ট্যাঙ্কিতালির গোরে এক নম্বর ঐতিহাসিক ট্যাঙ্কি ২৩শে মার্চ বিহারীরা সেখানে পাকিস্তানি পতাকা উড়াইছিল। সেই পাতাকা আমরা তখন বিশ্বাসই হয় নাই কি করে আমি ঐ ট্যাঙ্কির উপরে উঠলাম? কি শক্তি, কি সাহস সেদিন আমার ভিতরে সৃষ্টি হয়েছিল। সেই ট্যাঙ্গির মাথায় উঠে পাকিস্তানি পতাকা ফেলে দিলাম হাজার হাজার বিহারির সামনে। বাংলাদেশের মানচিত্র আকা ঐ পতাকা উড়ালাম।

হক মামাঃ মিরপুরে তখন এই নিউক্লিয়াস কলণী বাংলাদেশের শ্রমিকরা। বিশেষ করে লেবার, রাজমিস্ত্রিরা এই যে চার তলা যে বিল্ডিং গুলো হোইছে অনেক আগে পাকিস্তানি আমলে। এখানেই তারা ঘুমাইতো, কাজ করতো। এদেরকে টুকরা টুকরা টুকরা করা হইছে। আমাদেরই বন্ধু মঞ্জুকে ২৬শে মার্চ যখন মিরপুরে আসলো বাপ-মার খোজ নিতে কসাইদের খাটিয়াতে জবাই করে তাকে টুকরা টুকরা করছে। তোইয়েব আলীর ইন্টার ফ্যামিলিকে তারা জবাই করছে। তার মায়ের বয়স ছিল ৯০ বছর, সমস্ত চুল সাদা, লাঠি দিয়ে

খুরায়া খুরায়া হাঠতো। তাদের হাত কাপে নাই। তাই মিরপুরে বিহারীদের অত্যাচার নির্যাতনের প্রতিশোধ নেয়ার জন্য আমি মুক্তিযুদ্ধে জাপিয়ে পড়েছিলাম।

হক মামাঃ কিন্তু মিরপুরে আমাদেরকে আবারো জীবন দিতে হলো। রক্ত দিতে হলো। যেহেতু তারা পরিস্কারভাবে পাকিস্তানি পতাকা উড়াইলো। তারা স্বাধীন বাংলার পতাকা উড়াই নাই।

"মিপুর দা লাষ্ট ফ্রন্টিয়ার-২"
প্রমান্য চিত্র পরিচালক-সগির মোস্তফা
৯ মিনিট ২৩ সেকেন্ড

হক মামাঃ এই ঘুপটি মেরে পাকিস্তানি আর্মি, বিহারীরা। বিহারীরা যেমননি জল্লাদ, তারা সেদিন আমার মুক্তিযোদ্ধা গাড়ির বহরের উপর অতর্কিত আক্রমণ করল। সেই যুদ্ধে রফিক মারা গেল। অসংখ্য নিরীহ বাঙ্গালিরা। তারা মৃত্যুবরণ করলো। তখন এ লাশ নিয়ে বঙ্গবন্ধুকে জিজ্ঞাসা করলাম-বঙ্গবন্ধু আপনি বলেছিলেন আর শহীদ নয় গাজী হয়ে বাচবো। তাহলে এই শহীদের মার কাছে কি জবাব দিবো? কেন স্বাধীন বাংলা মাটিতে গাজীদের আবার শহীদ হতে হলো? তখন বঙ্গবন্ধু খালেদ মোশাররফকে তলব করলেন ইমিডিয়েড মিরপুরকে তোমরা মুক্ত করো। তো সে সময় আমাদেরই অনেক আওয়ামী অফিসার তাদেরকে জীবন দিতে হলো। লেফটেন সেলিম, জহির রায়হান নিখোজ হলো। রায়ের বাজারের বদ্ধভূমি থেকে মৃত দেহ যখন উদ্ধার করলাম। তাদেরই স্বীকারোক্তমূলক জবানবন্দি দিয়া এক বস্তা বাজারের ব্যাগ ভরা চোখ উদ্ধার করলাম। বাংলাদেশের ইতিহাসের খন্ডের পর খন্ড ইতিহাস লেখা হলো। অথচ এই কথাগুলো উপেক্ষা করা হলো। প্রজন্মকে জানতে দেয় নাই। বাংলাদেশের মুক্তিযুদ্ধের সবচেয়ে ভয়ানক জায়গা রায়ের বাজারের বদ্ধভূমি আর এই মিরপুরের এই জল্লাদ খানা, শিয়ালবাড়ী আরও অনেক জায়গা। বাঙ্গলা কলেজ। বাঙ্গলা কলেজ তো গণ হারে লাশ পরে থাকতো।"

The omissions of PW2 in not implicating the accused with any occurrence/incidents at Mirpur from 25th March, 1971 to 16th December, 1971 and thereafter, including the fact of canvassing for Golam Azam in 1970's National Assembly election and the holding of meeting in 1969 in which Khan Abdul Quayum Khan was present in his interview in the programme of BTV under the title "একাত্তরের রনাঙ্গনের দিনগুলি" and the documentary films are so material that those were absolutely glaring contradictions in between his testimony in Court and his earlier statements at least in the programme telecast by BTV and such contradictions made his entire testimony in Court implicating the accused with the allegations made in the instant charge totally unreliable

and made the whole case of the prosecution doubtful, the benefit of which must go to the accused.

Further the testimony of PW2 in his examination-in-chief that in the night of 25th March, 1971 when the Pakistani army started genocide in the name of operation search light, he along with one Mazahar Hossain Montu took shelter in a club of the Bangalees situated by the side of Mirpur Shah Ali *Mazar* and when he came out from the club on 26th March, 1971, at 8 a.m, he saw ablaze on the houses of Bangalees at Mirpur and then when he proceeded towards his house, he saw the Biharis expressing their joy and when he reached near them, they said "শহীদ আগিয়া, শহীদ আগিয়া, পাকড়াও পাকড়াও।" and that when he started running they also followed him to apprehend him and then he went to Sadullahpur via Bonagaon and Chakolia by swimming river-Turag where he came to know that his father, his maternal grandmother and cousin (ফুপাত ভাই) were sitting under a tree and that as he was a students' leader, his father was given shelter in a Ghunti Ghar by the locals and his other stories of his elder brother coming to Bonagaon and his stay at Bongaon and the story of taking him and his father to Dhaka by a boat full with firewood, which have been reproduced in English earlier, are so unnatural and contradictory per se that he cannot be accepted as a truthful witness. A perusal of the testimonies of the PW further shows that he is a partisan witness and was bent upon to say whatever was needed to implicate the accused with the atrocious occurrence alleged in this charge and charge No.2.

From the investigation report as well as the evidence of PW12, the Investigation Officer, it is clear that at the relevant time, the accused was a

student of Dhaka University and was the president of Islami Chhatra Sangha of Shahidullah Hall and it is not the case of the prosecution that the accused used to live at Mirpur, none of the PWs, particularly, PWs' 2, 6, 9 and 10, who were the residents of main Mirpur, villages-Duaripara and Alubdi, at the relevant time, in their statements, said that the accused was a resident of Mirpur, rather PW2 in his cross examination stated that he did not know whether Quader Molla used to live at Mirpur or Mohammadpur in his own house or in a rented house (in the deposition sheet, in Bangla, it has been recorded as: "আমি জানি না যে কাদের মোল্লা মিরপুর বা মোহাম্মদপুর এলাকায় নিজ বাড়ী বা ভাড়া বাসায় বসবাস করতেন কিনা।"), so presence of the accused at 8 a.m. at Mirpur on 26th March, 1971 is also not believable. The Tribunal without comprehending and sifting the evidence of the PW in his cross-examination in its entirety erroneously observed that the hearsay version of PW2 as to the killing of Pallab has not been denied in cross examination. The above observation of the Tribunal is based on misreading of the evidence in cross examination.

The other witness is Syed Abdul Quayum (PW10). This PW in his examination-in-chief stated that Naim Khan, Safiuddin and one Molla were notable, who worked for 'দাড়িঁপাল্লা'. He did not say the name of the accused with specification. So far as charge No.1 is concerned, this PW simply stated that he heard that Pallab, a student of Bangla College, at Mirpur was killed by Abdul Quader Molla, the accused. The accused was identified by him in the dock (in the deposition sheet, in Bangla, it has been recorded as:"বাংলা কলেজের পল্লব নামের একজন ছাত্রকে আব্দুল কাদের মোল্লা হত্যা করেছে বলে আমি শুনেছি।", but this PW while examined by the Investigation Officer, PW12, did not say so. PW12 in clear

terms stated in his cross examination that "ইহা সত্য যে, বাঙলা কলেজের পল্লব নামের একজন ছাত্রকে আব্দুল কাদের মোল্লা হত্যা করেছে বলে আমি শুনেছি তা এই সাক্ষীর জবানবন্দিতে এই মর্মে উল্লেখ নাই।" Non-mentioning of the fact of his hearing of the killing of Pallab by Abdul Quader Molla to the Investigation Officer is a material omission and that amounts to material contradiction and made the testimony of the PW10 unreliable, but as it appears that the Tribunal has not considered this material contradiction in the testimony of PW10 and most erroneously gave finding that PW10 corroborated the testimony of PW2 who heard that Quader Molla killed Pallab. It further appears that the Tribunal accepted PW2 as a natural witness and was swayed with his testimony about the alleged activities of the accused prior to 25th March, 1971, i.e. during the mass movement in 1969 and his campaigning for Professor Golam Azam in the election of National Assembly in 1970 as well as in the morning of the 26th March, 1971 without considering his admitted age, the contradiction *per se* in his testimony and the probability of the story given by him as pointed out hereinbefore. Besides the above state of evidence of PWs 2 and 10, DW4-Mst. Sahera, the sister-in-law(ভাবী) of Pallab totally destroyed the prosecution case. DW4 in her examination-in-chief categorically stated that Aktar Gunda and Biharis killed Pallab at the *Eidga* field at Muslim Bazar in 1971. She further stated that she heard that while her brother-in-law (দেবর) was going to India for joining *muktijuddha*, he was apprehended from Nababpur and was taken to Muslim Bazar and was killed there. She further stated that she heard from public about the fact of killing of Pallab (in the deposition sheet, in Bangla, it has been record as: "আমি জনগনের কাছে থেকে শুনেছি পল্লবের হত্যাকান্ডের ঘটনা"). By cross examining this DW her

assertions made in her examination-in-chief that Aktar Gunda and the Biharis killed Pallab could not be shaken. In cross examination, she further asserted that she heard the name of Akter Gunda first from her mother-in-Law. She further stated that Aktar Gunda and the Biharis of Mirpur were hostile to her brother-in-Law (দেবর) Tuntuni (Tuntuni is the surname of Pallab) (in the deposition sheet, in Bangla, it has been recorded as: "আক্তার গুন্ডাও মিরপুরের বিহারীরা আমার দেবর টুনটুনির বিরুদ্ধে খুব খ্যাপা ছিল"). She further stated that in March, 1971, they had taken shelter at Savar out of fear of Aktar Gunda and the Biharis. She further asserted that she did not hear that Aktar Gunda was the number one accomplice (সহচর) of Abdul Quader Molla. She further stated that she did not hear that since her brother-in-law @ Tuntuni was organizing *maktijuddha*, his name was listed in the hit list at the order of Quader Molla. She further stated that she did not know that at the order of Quader Molla, Aktar Gunda, Hakka Gunda, Nehal and Bihari Gundas apprehended Pallab from Nababpur. She further asserted that she did not hear that at the order of Quader Molla, Aktar Gunda cut the fingers of Tuntuni and killed him. The prosecution gave suggestion to her that she deposed in favour of Quader Molla out of fear of life and for money which she flatly denied. Thus, it is clear that DW4 withstood the test of cross examination by the prosecution though volleys of questions were put to her with an attempt to extract from her mouth that somehow Quader Molla was involved with the killing of Pallab and I do not see any reason not to accept her as a truthful witness. But the Tribunal while disbelieving her testimony did not consider the above consistent and unimpeachable testimony. The reasons given by the Tribunal in disbelieving the testimony of DW4 do not

appear to me cogent and also not in conformity with the principle of even handed justice. One of the reasons assigned by the Tribunal is that she was listed as a prosecution witness, but she deposed as a defence witness. The Act, 1973 under which the trial was held and the Rules of Procedure framed by the Tribunal to regulate its own procedure under section 22 thereof, there is no such bar. The Tribunal also failed to consider that the testimony of DW4 is quite in conformity with the interview given by PW2 in the television programme "একাত্তরের রনাঙ্গনের দিনগুলি" and the documentary films "Mirpur the Last Frontier-1" and "Mirpur the Last Frontier-2." The Tribunal also failed to consider the record of *Zallad Khana* which is a part of *Jatia Zadughar* as admitted by PW11, the part Investigation Officer. In *Zallad Khana*, there are recorded statements of DW4, where she also implicated the Biharis. Her statement was recorded on 06.06.2008 by Mr. Sattajit Roy Mojumder, Manager (Development, Education and Publication) of *Jatia Zadughar* and she stated as follows:

> "ভোটাভুটি হয়ে যাওয়ার পর ধরাধরি শুরু হয়। আমি ভোট দিয়েছিলাম। তখন আমার এক ছেলে ফারুকের বয়স পাচ মাস বঙ্গবন্ধুর ভাষণের কথা মনে আছে। তার পর থেকে আমরা ঘরে থাকতে পারিনি। আশ্রয়ের জন্য আমরা বিভিন্ন জায়গায় ঘুরে আবার ঢাকায় আসি। সাভার থাকার সময় আমার দেবর টুনটুনি মিয়া বাসা ছেড়ে চলে যায়। কারণ ও ছিল মুক্তিযোদ্ধা। পরে আবার এক দিন সাভারে আমাদের কাছে এসেছিল। কিন্তু শুধু বলিছিল যে, আমি মুক্তিযোদ্ধা, আমি বসে থাকতে পারি না। বিহারিরা তাকে খুজছিল তা সে জানতে পারে। ফলে সে ভারতে যাওয়ার জন্য পথে বের হয়। নবাবপুর রোডে বিহারিরা তাকে ধরে ফেলে। কেউ তার হাত কাটে, কেউ তার পা কাটে, এভাবে তাকে হত্যা করে বিহারিরা।
>
> বিয়ের জন্য আমরা রসিকতা করলে সে বলত, 'আমি রাজনীতি করি, আমার বিয়ে হবে ভালো পরিবেশে।' শেষ রাতের তারা নামে একটা সিনেমায় সে অভিনয় করেছিল। নাটকে অভিনয় করত। আমাদের বলত সিনেমা দেখাতে নিয়ে যাবে। টুনটুনি মিয়া তার কলেজে প্যারেড করাতো। সেই গল্প আমাদের শুনাত বাসায় এসে। পেটে বাচ্চা বেঁধে দৌড়াতে হতো সেই প্যারেডে। আর সে থাকতো খুব ফিটফাট। কবি নজরুলের ভক্ত ছিল টুনটুনি মিয়া। কবির মতো তার গায়ে পেচানো থাকতো একখানা চাদর। সে কত ভালো ছিল তা আর কি বলব! আমার সন্তানটাকে কোলে নিয়ে ঘুরত সব সময়। বাইরে বাইরে থাকত প্রায়ই। তবু তার জন্য এত দিন পরেও আমার চোখে জল আসে।"

The statements of DW4 recorded in *Zallad Khana* as quoted hereinbefore also show that DW4 told the truth and she is a truthful witness. In this context, it may be stated that on behalf of the accused photostat copy of the said recorded statements of *Zallad Khana* along with the statements of other witnesses were filed before the Tribunal and prayer was made for calling the records from *Zallad Khana*, but the Tribunal without calling for the records kept the application with the record to be considered at the time of final judgment, but eventually the Tribunal refused to consider the same on the ground that those were the photostat copies and not authenticated. It may be stated that from the record of the Tribunal, it does not appear that the authenticity of the photostat copy of the statements of the DW made to *Zallad Khana* was challenged by the prosecution. Be that as it may, the Photostat copy of the statement of the DW along with the typed copy has been incorporated in the paper book filed before this Court (Vol-V, Page 1749) and Mr. Razzaq has relied upon the same (in this regard, detailed discussions have been made while considering charge No.6 and the same have to be read in this charge as well).

Section 11(3)(a) clearly mandates that a Tribunal shall confine the trial to an expeditious hearing of the issues raised by the charges. Section 11(3)(b) further mandates that the Tribunal shall take measures to prevent any action, which may cause unreasonable delay and rule out irrelevant issues and statements, but from the recording of deposition of PW-2, it appears that the Tribunal ignored the said provision of law in allowing him to depose facts beyond the charge and also failed to address and decide the proper issues in the charge with reference to the relevant evidence.

In order to fix up the accused in the complicity of the killing of Pallab as provided in clause (h) of section 3(2) of the Act, 1973, the prosecution was obliged to prove that the accused used to live at Mirpur and thus, he had association with the Biharis and through them got Pallab killed, but the prosecution failed to prove the same. It is true that the accused took the plea of *alibi* that after 7th March, 1971, he went to his village home at Amirabad under Faridpur District and stayed there till March, 1972, but in view of the provisions of sub-rule (3) of the rule 51 of the Rules of Procedure, he cannot be found quilty even if he failed to prove the said plea.

For the discussions made above, I am constrained to hold that the prosecution totally failed to prove beyond reasonable doubt that the accused had any complicity in the comission of murder of Pallab as alleged in the charge within the meaning of section 3(2)(a)(h) of the Act, 1973 and the Tribunal acted illegally in finding him guilty of the said charge brought against him and sentencing him accordingly. Therefore, the order of conviction and sentence passed against the accused in respect of charge No.1 cannot be sustained and accordingly, the same is set aside and he is acquitted of the said charge.

Charge-2:

In this charge, the allegations brought against the accused, besides the other common allegations, like charge No.1 are that "on 27th March, 1971 at any time" he accompanied by his accomplices with common intention brutally murdered the pro-liberation poetess-Meherunnesa, her mother and two brothers when they had been in the house located at Mirpur-6, Dhaka. One of the

survived inmates named Siraj became mentally imbalanced on witnessing the horrific incident of those murders. The accused "actively participated and substantially facilitated and contributed to the attack upon unarmed poetess Meherunnesa, her mother and two brothers causing commission of their brutal murder" and thus he committed "an offence of 'murder as crime against humanity' and for 'complicity to commit such crime' as specified in section 3(2)(a)(h) of the International Crimes (Tribunals) Act, 1973." which are punisable under section 20(2) read with section 3(1) of the Act.

PWs' 2, 4 and 10 deposed as to the killing of Meherunnesa, her mother and two brothers as hearsay witnesses.

So far as this charge is concerned, PW2, Syed Shahidul Huq Mama, stated in his examination-in-chief that on 27th March, poetess Meherunnesa, his brothers and mother were killed and were cut into pieces by Abdul Quader Molla, Hasib Hashmi, Abbas Chairman, Aktar Gunda, Hakka Gunda, Nehal and many others. Like Pallab killing, he did not disclose, in his examination-in-chief, his source of knowledge of the said facts. In cross examination, he stated that he heard about the killing of Meherunnesa, her brothers and mother, on 27th March, from the people of *Kafela* (in the deposition sheet, in Bangla, it has been recorded as: "২৭মার্চ মেহেরুন্নেসা তার ভাই ও মাকে হত্যার বিষয়টি আমি কাফেলার জনতার থেকে শুনেছি।"). He again stated that he heard about the killing of Meherunnesa and Pallab from the persons known to him and the people of *Kafela* at Mirpur (in the deposition sheet, in Bangla, it has been recorded as: "মেহেরুন্নেসা ও পল্লবকে হত্যা কান্ডের ঘটনা দুটি আমি পরিচিত মানুষের কাছে থেকে এবং মিরপুরের জনতার কাফেলার মানুষের কাছে থেকে শুনেছি।"). For the same reasons as assigned while deciding charge No.1, the

testimony of this PW cannot be relied upon as to the complicity of the accused in the killing of Meherunnesa, her mother and brothers.

PW4, Kazi Rosy, another hearsay witness, in her examination-in-chief stated that in Mirpur, the Bangalees were subjected to harassment and humiliation for which they formed an action committee of which she was the president and Meherunnesa was the member and they used to hold meeting at different time, at different places with the view to unite the Bangalees at Mirpur for their better living. In the morning of 25th March, they held a meeting and in that meeting, she could understand that something was going to happen. After the meeting was over, she returned to her residence, sometime thereafter, she got the information that her residence would be raided and there would be disorder at the residence of Kabi Meherunnesa (in the deposition sheet, in Bangla, it has been recorded as: "কবি মেহেরুন্নেসার বাসায় ও হাঙ্গামা হবে"), because they were the only female members in the action committee. After hearing the said information, she sent a message to Meher that she would leave the house on that very date and advised her (Meher) to leave (in the deposition sheet, in Bangla, it has been recorded as: "বাসা থেকে তোমরাও চলে যাও"). On receipt of the said information, Meher through her younger brother sent information to the PW that where would she go with her mother and two brothers? The PW told the brother of Meherunnesa to convince her and her mother that it was necessary to leave the house and thereafter, she (the PW) left Mirpur, but Meherunnesa did not leave. She further stated that in the evening of 27th March, she got the information that Quader Molla and his accomplices, many of whom in white *patti* (সাদা পট্টি) or red *patti* (লাল পট্টি) on their heads entered

into the house of Meher at 11 a.m. and when Meher saw that they came to kill them she held the holy Quran on her chest to save herself, but all the four (Meher, her mother and two brothers) were slaughtered. They entered into the house of Meher under the leadership of Quader Molla. She could not say whether Quader Molla himself entered into the house of Meher or not. After liberation of the country, she wanted to go to the residence of Meher, but she knew that someone was living there. After two one days (দুয়েক দিন পর), she learned from Gulzar, a non-Bangalee and another Bihari some thing like that (এই ধরনের একটি কথা যে) after killing Meher, her head was hanged tying with her hair with a fan after cutting her neck and then Meher was fidgeting like a slaughtered hen. She further stated that accomplices of Quader Molla, non-Bangalees and Biharis caused the incident.

In cross examination, the PW stated that she heard about the death of Meher from people (লোক মুখে). She further stated that she heard about the death of Meher on 27.03.1971, but she could not remember from whom she heard the said news first after coming from Kolkata. Then said she first heard the news of killing of Meher while staying at the house of her maternal aunt (খালা) at Kalabagan, Dhaka. She further stated that she heard from the people who came from Mirpur (in the deposition sheet, in Bangla, it has been recorded as: "মিরপুর থেকে আসা লোকের মুখে"), but she could not name them and she has no communication (সংযোগ) with the persons from whom she heard about the killing of Meher and she could not also say whether they are alive. She further stated that she could not say from whom she heard the said fact, but from the talk of the people (in the deposition sheet, in Bangla, it has been recorded as:

"কার কাছে শুনেছি তা বলতে পারবনা তবে জনতা যখন কথা বলে তাদের থেকে শুনেছি"), after she had come back from Kolkata, she did not file any complaint either with the Police Station, Court or with any other authority about the killing of Meher and the members of her family. Through writings they disclosed many things about Meher. She further stated 'খানিকটা গল্প তোমার' is the compilation of the poems written by her, there are some poems where the occurrences of 1971 have been narrated. She further stated that the book 'শহীদ কবি মেহেরুন নেছা' was written by her and in that book, she tried to write everything about Meher from the beginning till the end of her life. She further stated that as there were no arrangements (বিচারের ব্যবস্থা) for trying the war criminals, she did not mention the name of anyone in the book 'শহীদ কবি মেহেরুন্নেছা' and as presently, there have been arrangements for trying the war criminals, she deposed mentioning the name of Quader Molla and she waited long for this day. She further admitted that she in her said book has stated that the family of poetess Meherunnesa was killed by the non-Bangalees and because of her previous fear, she did not mention the name of any one. She further admitted that the book was published in June, 2011. The Investigation Officer took a copy of the book 'শহীদ কবি মেহেরুন্নেছা'. A boy, whose name she forgot, gave the information coming to her house that her house would be raided, the boy was known to her and then by another boy, she gave message to Meher to leave the house, but she could not tell the name of the boy. She could not also tell the name of the man who gave her the news of the killing of Meher, just before sun set. PW12, Investigation Officer, in his cross examination stated that it is a fact that witness-Kazi Rosy, during investigation, did not tell him that Abdul Quader Molla and many of his

associates, in white *patti*(সাদা পট্টি) or red *patti* (লাল পট্টি) in their heads entered into the house of Meher at 11 a.m. PW12 further stated that it is a fact that during investigation, Kazi Rosy did not tell him that when Meher saw that they came to kill them, she held the holy Quran on her chest and thus wanted to save her life. He further stated that it is a fact that Kazi Rosy did not tell him that after killing Meher, her neck was cut and then head was kept hanging tying the same with her hair with the fan, but she told him that after entering into the house of Meherunnesa, she was slaughtered first and her head was separated from her body; the PW further told him that she heard about the killing of Meher from Gulzar and another non-Bangalee.

As already held while dealing with charge No.1 that reliability and probative value of hearsay evidence shall depend upon the truthfulness or credibility of a witness and that in assessing and weighing the hearsay evidence regard must be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise evaluating the weight, if any, to be attached to admissible hearsay evidence (the meaning of hearsay and other observations as to hearsay evidence as made in respect of charge No.1 shall have to be read in respect of this charge as well). Let me now see whether PW.4 is a truthful or a credible witness. PW4 is admittedly a hearsay witness. From her testimony, it is clear that she did not mention any body's name from whom she heard about the killing of Meherunnesa, her brothers and mother and therefore, like PW2 her evidence is also anonymous hearsay. In her testimony, there are two parts concerning the occurrence, first part is that she got an information before noon on 25th March, 1971 that her residence would be

raided and there would be disorder at the house of poetess Meher as they were the only female members of the action committee formed by them at Mirpur with the view to unite the Bangalees at Mirpur as the Bangalees at Mirpur were subjected to harassment and humiliation and then she sent message to Meher that she would leave the house on that very date and advised her to leave Mirpur. She (the PW) left her house, but Meher did not, and second part is that in the evening of 27th of March, she got the information that Quader Molla and his accomplices many of whom in white *patti* (সাদা পট্টি) and red *patti* (লাল পট্টি) on their heads entered into the house of Meher at 11 a.m. and she, her mother and brothers were slaughtered. In her examination-in-chief, she did not say anything as to the source of her said information or how she could know the said fact or who told her on that date, i. e. 27th March, 1971 about the said facts. The PW also stated that after two one days (দুয়েক দিন পর), Gulzar, a no-Bangali and another Bihari told her some thing like that after killing Meher, her neck was cut and then her head was kept hanging tying the same with the fan with her hair and then Meher was fidgeting like a slaughtered hen.

From the cross examination, it appears that the PW was repeatedly asked as to the source of her information that Quader Molla and his accomplices, non-Banglais and Biharis killed Meher, she could not name any one. The PW gave the following answers:

> “আমি লোকমুখে মেহেরুন্নেছার মৃত্যু সংবাদ শুনি। আমি ১৯৭১ সালের ২৭ মার্চেই মেহেরুন্নেছার মৃত্যু সংবাদ শুনি তবে কলকাতা থেকে এসে প্রথম কার মুখে ঐ সংবাদটি শুনি এই মুহুর্তে মনে নাই। আমি ঢাকার কলা বাগানে খালার বাড়ীতে থাকাকালীন সময় প্রথম মেহেরুন্নেসাকে হত্যা করার খবর শুনেছিলাম। মিরপুর থেকে আসা লোকের মুখে ঐ হত্যাকান্ডের কথা শুনেছিলাম তাদের নাম বলতে পারবোনা। যাদের কাছ থেকে আমি মেহেরুন্নেসার হত্যার সংবাদ পেয়েছিলাম তাদের সংগে আমার কোন সংযোগ নেই। তারা জীবিত আছেন কিনা বলতে পারবোনা। তাদের সংগে আর দেখা হয়নি। . . . একজন ছেলে নাম মনে নাই এসে আমাকে খবর দিয়েছিল যে আমার বাসা

রেইড হবে। সেই ছেলেটি আমার পরিচিত ছিল। আমি অন্য আরেক ছেলেকে দিয়ে মেহেরের বাসায় খবর পাঠিয়েছিলাম বাসা থেকে চলে যেতে। সেই ছেলেটির নাম বলতে পারছিনা।
২৭ মার্চ আমি কলাবাগানে আমার খালার বাসায় ছিলাম। মিরপুর থেকে আগত একজনের কাছ থেকে আমি মেহের ও তার পরিবারের লোকজনের হত্যাকান্ডের খবর শুনতে পাই। যে আমাকে সন্ধার একটু আগে মেহেরের হত্যার খবর দেয় সেই লোকের নামাও বলতে পারবোনা।"

From the above, it is clear that the PW got the news of death of Meher while she was at the house of her material aunt (খালা) at Kalabagan and not from the horse's mouth or from the *Kafela* of the people as stated by PW2. But someone came to the house of her maternal aunt at Kalabagan and gave her the information before sun set. It is inconceivable that after 25th March, 1971 (as the situation prevailed in Dhaka at that time) except known person, one would dare to go to someone, specially to a lady, here the PW, to see in one's relative's house, so it is quite natural that had the PW been informed by someone at the residence of her maternal aunt, she would have definitely recollected his name, but she could not, this shows that either she did not get any such information or she was not telling the truth. Interesting thing is that though the PW could not remember the name of the persons, who informed her that her house would be raided and that there would be disorder at the residence of Meher and who informed her at the residence of her maternal aunt that Meher, her mother and brothers were killed respectively, she remembered the name of one non-Bangalee, Gulzar who along with another non-Bangalee informed her that after killing, the neck of Meher was cut and then her head was hanged with a fan being tied with her hair and Meher was fidgeting like a slaughtered hen. It is also unbelievable that a non-Bangalee would know the address of the residence of the aunt of the PW and would come all the way from Mirpur and inform her about the above facts. This coupled with the fact that in the book 'শহীদ কবি মেহেরুন্নেসা' written by the PW, wherein as per her own

admission, she tried to state everything about Meherunnesa from the beginning till the end her life, but did not at all mention the name of Quader Molla having complicity in any manner with the killing of Meher, besides the omissions, she made to the Investigation Officer while examined by him rendered her testimony totally unreliable. In this regard, it is pertinent to state that she candidly admitted that in the book, she stated that the family of Meherunnesa was killed by the non-Bangalees. She gave an explanation that she did not mention the name of anyone out of fear as there were no arrangements for the trial of the war criminals and now arrangements having been made for the trial of the war criminals, she deposed mentioning the name of the accused.

The Tribunal accepted this explanation given by the PW with the observations:

> "241. PW.4 Kazi Rosy admitted that she did not mention anybody's name in her book titled 'Shahid Kabi Meherunnesa' as there had been no judicial mechanism of prosecuting the perpetrators. She further explained that for the reason of fear she could not name any perpetrator responsible for the killing of Meherunnesa and her family. Since a judicial forum has been set up she is now testifying implicating accused Abdul Quader Molla.
>
> 242. First, the oral evidence of a witness may not be identical to the account given in a prior statement. A witness may be asked different questions at trial than he/she was asked in prior interviews and that he/she may remember additional details when specifically asked in court. Second, presumably a predictable fear might have prevented PW.4 in mentioning name of perpetrators in her book. Undeniably, for the reason of lack of a favourable situation and well-built consensus the issue of prosecuting and trying the perpetrators of dreadful crimes committed during the war of liberation in 1971 remained halted for several decades. Third, in the intervening time the pro-Pakistan political

organisation has been able to revitalize its position in the independent Bangladesh, without any substantional impediment.

243. For the rationales as stated above, a pro-liberation individual like PW.4 usually is not likely to come forward with all details in narrating the account in the book written by her prior to making testimony before the Tribunal, for the reason of apprehended fear and risk. Explanation offered for the differences by the PW.4 seems to be attuned to circumstances prevailing till setting up of a judicial mechanism under the Act of 1973. On contrary, defence could not suggest or establish any motive whatsoever for testifying such version which differs from her earlier account. Therefore, mere lack of specificity of perpetrator(s) or any omission in the book written by her earlier does not turn down her sworn testimony made before the Tribunal branding it to be a glaring contradiction, provided if it inspires credence in light of other relevant facts and circumstance."

In accepting the explanation given by PW4 on the observations as quoted above, the Tribunal failed to consider the provisions of clause (II) of rule 53 of the Rules of Procedure which has clearly provided that the cross-examination shall be strictly limited to the subject matter of the examination-in-chief of a witness, but the party shall be at liberty to cross examine such witness on his credibility and to take contradiction of the evidence given by him. When the PW herself is the author of the book 'শহীদ কবি মেহেরুন্নেসা' and claimed that in the book, she tried to write everything about Meherunnesa from the beginning to the end of her life and when Meherunnesa was killed in such a cruel and barbarous way including her family members, if the PW knew that Quader Molla was the man, who either himself killed Meherunnesa or got her killed by his accomplices. It was quite natural that she would have mentioned his name, but she did not. Not only that she specifically stated in the book 'শহীদ

কবি মেহেরুন্নেসা’ that it is the non-Bangalees who killed the family of Meherunnesa. The book was exhibited as exhibit-‘B’ and I have perused the same. In the book, she stated as follows:

> “২৭শে মার্চ মেহেরদের বাড়িতে অবাঙ্গালীরা অতর্কিত আক্রমন করে। মেহেরের দুই ভাই রফিক এবং টুটুলকে প্রথমেই মেরে ফেলার উদ্যোগ নেয়। মা বাধা দিতে গেলে ধাক্কা মেরে দূরে ফেলে দেয়। মেহের বুকে কোরান শরীফ চেপে বলে- আমরা তো মুসলমান আমাদের মারবে কেন? . . . আর যদি মারতেই হয় আমাকে মার। ওদের কোন দোষ নেই। ওদের ছেড়ে দাও . . . এর পর ওরা মেহেরের উপর আক্রমন চালালো। বাচঁতে পারলেন না মেহের।”

After such specific statement in her book that it is the non-Bangalees who suddenly attacked the house of Meher and killed her and her family members, can her testimony in Court that Quader Molla and his accomplices killed Meher, her mother and brothers be believed? The testimony of the PW given in Court was totally contradictory as to the account of Meher’s death given by her in the book written by her. Had the PW been really afraid of mentioning anyone’s name specifically, she could have, at least, said that a Bangali or Bangalees were also involved or responsible for the killing of Meher and her other family members along with the non-Bangalees or Biharis. Further from the impugned judgment, it appears that the Tribunal (1st Tribunal) was constituted on 25th March, 2010 and as per the evidence of PW.12, Investigation Officer, the accused was shown arrested (he was carlier arrested in connection with another case) in the case on 14.07.2010, so after constitution of the Tribunal, PW4 could not have any fear of life and she got more than 1(one) year time from the date of constitution of the Tribunal (the book was published in June, 2011) to make necessary addition/correction in the book. In this regard, it may be stated that the act of constitution of the Tribunal

for the trial of the crimes under the Act on 25th March, 2010 was a well publicised act of the present Government and by constituting such Tribunal, it fulfilled one of its election pledge so, it cannot be said that the PW had no knowledge of the constitution of such Tribunal and therefore, no scope of making necessary addition/correction in her book stating the name of the accused. The omission on the part of the PW in not stating the name of the accused about his complicity with such a heart breaking occurrence in her book specifically written on Meher is a material omission and amounts to glaring contradiction of her oral testimony in Court and this made her testimony absolutely unreliable and rendered her as a partisan and tutored witness to fit in the allegations made in the charge. It may be stated that the book was admissible in evidence under section 19(1) of the Act and rule 44 of the Rules of Procedure and its contents were also admissible in view of the provisions of rule 55.

But the Tribunal without considering the pertinent facts revealed during the trial pointed out hereinbefore and the provisions of law as discussed above, accepted the hearsay evidence of PW4 in finding the accused guilty for the killing of Meherunnesa without giving the benefit of doubt in view of the unreliability of the testimony of PW4. The Tribunal wrongly shifted the onus upon the defence overserving that *"on contrary, defence could not suggest or establish any motive whatsoever for testifying such version which differs from her earlier account"* in clear contrast to the provisions of rules 50 and 55 of the Rules of Procedure as discussed hereinbefore.

PW10 is another hearsay witness. He stated in his examiantion-in-chief that Meherunnesa who lived at Section-6, Mirpur was killed along with her family members by the non-Bangalees (in the deposition sheet, in Bangla, it has been recorded as: "৬ নম্বর সেকশনে নিজ বাড়ীতে কবি মেহেরুন্নেসা থাকতেন। তাঁকেও স্বপরিবারে নিজ বাড়ীতে অবাঙ্গালীরা হত্যা করে।"). Thus, it is clear that PW10 did not, at all, mention the name of Quader Molla, who allegedly went to the house of Meherunnesa along with his other accomplices as alleged in the charge and rather the PW in unequivocal language stated that it is the non-Bangalees who killed poetess Meherunnesa along with her family members. In fact, the testimony of PW10 clearly contradicted the oral testimony of PWs' 2 and 4 making their hearsay evidence doubtful. The Tribunal failed to consider that mere happening of the incident was not enough to find the accused guilty of the charge of murder though it was a shocking and heart breaking one, the onus was upon the prosecution to prove the complicity of the accused with the incident beyond reasonable doubt as stipulated in clause (h) of section 3(2) of the Act, 1973 which the prosecution failed to discharge. The Tribunal without giving its attention to the above legal aspect of the case with reference to the evidence on record relied upon the concept of "planned or systematic attack" and that it is the 'attack' not the acts of the accused which must be directed against the target population, and the accused need only know that his acts are part thereof" as in the case of customary international law and relied upon the decision of a Trial chamber of ICT for the purpose. The Tribunal failed to sift the evidence of the PWs in its proper perspective with reference to the actual specific allegations made in the charge against the accused in clear violation of

section 11(3)(a) of the Act, 1973 and the definition of murder as given in section 300 of the Penal Code.

For the discussions made above, my irresistable conclusion is that the prosecution failed to prove the allegations made in the charge against the accused beyond reasonable doubt and consequently the order of conviction and sentence passed against him cannot be sustained and accordingly, the same is set aside, he is acquitted of the charge.

Charge-3:

This charge reads as follows:

> "That during the period of war of liberation, on 29.03.1971 in between 04:00 to 04:30 evening, victim Khandakar Abu Taleb was coming from Arambag to see the condition of his house at Section-10, Block-B, Road-2, Plot-13, Mirpur, Dhaka but he found it burnt in to ashes and then on the way of his return to Arambag he arrived at Mirpur-10 Bus stoppage wherefrom you, one of leaders of Islami Chatra Sangha as well as potential member of Al-Badar, being accompanied by other members of Al-Badars, Razakars, accomplices and non-Bangalees apprehended him, tied him up by a rope and brought him to the place known as 'Mirpur Zallad Khana Pupm House' and slaughtered him to death. The allegation, as transpired, sufficiently indicates that you actively participated, facilitated and substantially contributed to the execution of the attack upon the victim, an unarmed civilian, causing commission of his horrific murder.
>
> Therefore, you, in the capacity of one of leaders of Islami Chhatra Sangha as well as potential member of Al-Badar or member of group of individuates are being charged for participating, facilitating and substantially contributing to the commission of the above criminal acts causing murder of a civilian which is an offence of 'murder as crime against humanity' and for 'complicity to commit such crime' as specified in section 3(2)(a)(h) of the International Crimes (Tribunals)

Act, 1973 which are punishable under section 20(2) read with section 3(i) of the Act."

The allegations center round facts. The facts disclosed in this charge are:

(i) On 29.3.1971 in between 4:00 p.m. to 04:30 p.m. the victim, Khandakar Abu Taleb went to Mirpur from Arambag to see the condition of his house at plot No.13, Road No.2, Block-B, Mirpur, Section-10.

(ii) On the way of his return to Arambar when the victim arrived at Mirpur-10 bus stoppage the accused being accompanied by other members of the Al-Badar, the Razakars and the non-Bangalees apprehended him, tied him up by a rope and then took him to the place known as 'Mirpur Jallad Khana Pump House' and slaughtered him to death.

Let us now see whether the prosecution witnesses could prove these facts.

PW's 5 and 10 are the concerned witnesses so far as this charge is concerned. PW5 is none else, but the son of the victim. The testimony of this PW has been reproduced earlier in English in extenso. Now I shall refer to only those statements of the PW which are relevant for this charge. PW5 stated in his examination-in-chief that at the relevant time, his father was the part-time feature editor of 'the Paigam' and also used to work in an Advocate's Firm, BNR. On 29th March, 1971 the victim told that he would go to Mirpur to bring his car and money. Subsequently, the PW heard that while the victim was going to the Advocate's Firm, on the way, he met the then non-Banglai Chief Accountant, Abdul Halim of the 'Daily Ittefaq' who took him to Mirpur by his car and handed him over to Abdul Quader Molla and then he was taken to *Zallad Khana* at Mirpur-10 and was killed by giving knife blows one after another. At that time, Aktar Gunda and some other non-Bangalees accompanied Quader Molla. After the killing of his father on 29th March, 1971, his elder brother was about to be mentally imbalanced and his mother also was about to be mad (in the deposition sheet, in Bangla, it has been recorded as: "আমার বড় ভাই মানসিক

ভারসাম্য হারিয়ে ফেলার মত অবস্থায় ছিল মাও মাগল প্রায়”) and that being the situation, they went to the house of a known person at village Bewra, Pubail. After the death of his father, they had no place to live in and no income as well and his mother became totally mad, then he (the PW) came to Dhaka and used to sell tea leaf on ferry purchasing the same from Chowkbazar. During that time, one day when he was going towards Chowkbazar, he met their non-Bangalee driver named Nizam whose residence was at Mirpur-10 and through him, he could know that after the election of National Assembly, the defeated people, i.e. Abdul Quader Molla, Aktar Gunda, Abdullah and other Biharis of Mirpur at the order of Abdul Quader Molla carried out mass killing. They used to apprehend the Bangalees at Gabtali Bus Stand and Technical area and then killed them at Shialbari, Muslim Bazar *Baddhya Bhumi* and at *Zallad Khana*. He further stated that he never saw Abdul Quader Molla face to face, but he saw his photograph in television and newspaper.

In cross examination, the PW stated that in 1971, he was a student of Shah Ali Academy and was aged about 13/14 years, his date of birth is 15.02.1957. It took two days by river to reach village-Bewra, Pubail from Dhaka. Possibly, in July, he came to Dhaka from Pubail, his mother, brother and sister went to their village home at Satkhira. Mother, brother and sister came to Dhaka and from Dhaka, they went to their village home by bus. When he used to sell tea-leaf in 1971, in Dhaka, he used to stay at the house of Shaheed Journalist, Sirajuddin Hossain at No.5 Chamelibag. Possibly, he stayed there from July to 1st December, 1971 and during this period, he never went to Mirpur. He further stated that he passed his S.S.C. examination in

1973, from Pranonath High School, Satkhira. Thereafter, he did not continue his study. So far as he could remember after liberation of the country, he and his brother, Khandakar Abul Hassan first went to their residence at Mirpur in 1973, but could not remember the date. He went to their house at Mirpur continuously for 2/3 weeks to make it habitable and possibly, they got into the house in the last part of 1973. Whatever happened at Mirpur, in 1971, he himself did not see with his own eyes. He further stated that he heard from driver-Nizam that after the landslide victory of Awami League in the election, the defeated party, at the leadership of Abdul Quader Molla, committed the heinous killings of various types at Mirpur, but he himself did not see. After liberation of the country, he lodged a GD entry with Mirpur Police Station about the looting of their house and setting fire thereon, but did not file any complaint either with the Police Station or with any other authority about the killing of his father. When he went to BNR law firm to inquire about his father, he could know that Advocate Khalil saw the non-Bangalee, Accountant of the Ittefaq taking his father by his car. He heard from driver-Nizam that Halim handed over his father to Abdul Quader Molla and others. He denied the defence suggestion that there was no Bihari in the name of Nizam at Mirpur and he was not their driver. He denied the defence suggestion that it is not a fact that he did not tell the Investigation Officer that Abdul Halim took his father to Mirpur by his car and handed him over to Abdul Quader Molla. He denied the further defence suggestion that it is not a fact that he did not tell the Investigation Officer that he through driver-Nizam came to know that the defeated people in the National Assembly election, namely: Abdul Quader Molla, Aktar Gunda,

Abdullah and other Biharis of Mirpur, at the order of Abdul Quader Molla, committed the mass killing. The PW also denied the defence suggestion that it is not a fact that his testimonies implicating Abdul Quader Molla with the various incidents were false, concocted and were prepared by the political coterie.

Let us consider and weigh the reliability and probative value of the evidence of PW5 keeping in view the provisions of sub-rule (2) of rule 56 of the Rules of Procedure and also the legal proposition on the subject as stated while deciding charge Nos.1 and 2. Admittedly, PW5 is a hearsay witness. At the beginning, it is to be pointed out that the facts alleged in the charge and the facts stated by PW5 in his examination-in-chief are diametrically opposite and this itself creates a doubt about the prosecution case so far as this charge is concerned. In the charge (the entire charge has been quoted hereinbefore), it was alleged that the victim on the date of occurrence (29.03.1971) in between 04:00 p.m. to 04:30 p.m. while coming back to Arambag after seeing the condition of his house at Mirpur and reached “Mirpur-10 Bus stoppage” the accused along with his other accomplices tied him up by a rope and took him to ‘Mirpur *Zallad Khana* Pump House’ and was slaughtered to death there. But PW5 gave a different story stating that he heard that on the fateful day, while his father was going to Advocate’s Firm, on the way, he met the then non-Bangalee, Chief Accountant of the Daily Ittefaq, Abdul Halim who took him to Mirpur and handed him over to the accused and thereafter, his father was taken to *Zallad Khana*, where he was killed by giving knife blows one after another.

At that time, Abdul Quader Molla along with Aktar Gunda, the other non-Bangalees were present.

As per own admission of PW5, at the relevant time, he was a student of class-IX and was aged about 13/14 years. So, it is unbelievable that he would be allowed by his mother and elder brother and sister to come to Dhaka in July, 1971 in view of the situation prevailing in the country, particularly, in Dhaka City when they went to their village home at Satkhira. The further fact that the PW passed S.S.C. examination in 1973 from a school at Satkhira (Pranonath High School) makes his testimony that in 1971, he used to sell tea-leaf in Dhaka City by purchasing the same from Chawkbazar and one day, on his way to Chawkbazar, he met driver-Nizam who told him about the fact of handing over of his father by non-Bangalee, Abdul Halim to Abdul Quader Molla, a concocted one. This is also substantiated from the further fact that PW admitted that he has been staying in Dhaka after passing S.S.C. examination and he does not visit his village home (in the deposition sheet, in Bangla, it has been recorded as:"এসএসসি পাশ করার পর আমি নিয়ামিত ঢাকায় থাকি গ্রামে খুব একটা যাওয়া হয় না।"). And this is further borne out from the testimony of PW12, the Investigation Officer, who clearly stated in his cross examination that it is a fact that PW5 did not tell him that Abdul Halim took his father to Mirpur by his car and handed him over to Abdul Quader Molla. PW12 further stated that PW5 told him that he heard from Khalil that Abdul Halim took his father to Mirpur. The above omissions of PW5 in not stating to the Investigation Officer that a non-Bangalee, Accountant of the Ittefaq, handed over his father to the

accused- Abdul Quader Molla, is definitely a material omission and the same is nothing, but a glaring contradiction making his testimony absolutely unreliable.

Further PW5 categorically stated in his cross examination that after liberation of Bangladesh, he filed a GD entry with Mirpur Police Station about the looting of their house and also setting the same on fire, but did not file any complaint about the killing of his father either with the Police Station or with any where else and it shows that he, in fact, did not know how his father was killed, had the fact of killing of his father in the manner as stated by him in Court was known to him, he would have also lodged complaint with the Police Station disclosing such facts along with the GD entry filed over looting of their house and setting fire thereon. The inconsistencies in between the allegations made in the charge and the testimony of PW5 in Court and the material contradictions between the testimony of PW5 in Court and his statements made to the Investigation Officer show that the story of handing over the victim, Khandker Abu Taleb to the accused by non-Bangalee Accountant of the Ittefaq was created subsequently to connect him with the killing of Khandakar Abu Taleb. But in believing PW5, the Tribunal did not at all consider the above apparent inconsistencies in the allegations made in the charge and the testimony of PW5, the principal witness, the material contradictions between his testimonies in Court and his statements made to the Investigation Officer. The Tribunal of its own came to the aid of the prosecution as to the omission made by PW5 in not disclosing to the Investigation Officer that Abdul Halim handed over his father to the accused by observing that *"It would be only an omission presumably due to his not being questioned on the point [Abdul*

Halim handed his (PW5) father over to Abdul Quader Molla and his accomplices at Mirpur] by the IO, during investigation. Therefore, that cannot be of any benefit to the defence to suggest that the witness is now making intelligent improvements." A Court or Tribunal is to assess and weigh the evidence of a witness as it is and it cannot supplement anything beyond the evidence. It also appears that the Tribunal did not sift the evidence of PW5 in its entirety, particularly, the cross examination which favoured the accused and thus made a fundamental mistake. It further appears that the Tribunal accepted the evidence of PW5 in a manner as if there was no cross examination. The Tribunal did not also consider the apparent improbability of the story of PW5 of his staying in Dhaka, in 1971 and selling tea-leaf as claimed by him discussed above. The Tribunal was also wrong in recording that "In cross-examination, PW5 stated that he came to know from Advocate Khalil of BNR (Law Firm) that one non-Bangalee, Abdul Halim, the chief accountant of the 'Daily Ittefaq' brought his father by his car and Abdul Halim handed his (PW5) father over to Abdul Quader Molla and his accomplices at Mirpur." We have checked the entire cross examination of PW5, but we have not found any such cross examination, what PW5 stated in his cross examination is " আমি ১৯৭১ সালে বিএনআর (ল' ফার্ম) গিয়েছিলাম আব্বাকে খোজ করতে বিএনআর গিয়ে জানতে পারলাম যে, এ্যাডভোকেট খলিল সাহেব দেখেছেন যে ইত্তেফাকের অবাঙ্গালী চীফ একাউন্ট্যান্ট আব্দুল হালিম আমার বাবাকে তার গাড়ীতে করে নিয়ে গিয়েছিলেন। সেই খলিল সাহেব মারা গেছেন। আব্বার সংগে চীফ একাউন্ট্যান্ট আব্দুল হালিম এর কোন জায়গায় দেখা হয় এটা জিঙ্গাসা করার মত মানসিকতা আমার ছিল না। আব্দুল হালিম আমার আব্বাকে মিরপুর আব্দুল কাদের মোল্লা গং দের কাছে হস্তান্তর করে।'' So, the Tribunal totally misread the evidence of PW5 in making the above observation.

PW10 is Syed Abdul Qayum. He is also a hearsay witness. All his testimonies are not relevant to deal with the issues involved in this charge, so, like PW5, I shall refer to only the relevant portion of his testimonies. PW10 in his examination-in-chief stated that when in June, 1971, Faruq Khan had gone to his village home at Nasirpur under Police Station-Nasirnogar to see him, he heard that Khandakar Abu Taleb was killed at *Zallad Khana*, Mirpur-10 by the non-Bangalees, local Gunda Aktar and Abdul Quader Molla. He further stated that after liberation of the country, he came to Dhaka on 3rd January, 1972 and started the functioning of his school, then one day, he met Nizam, non-Bangalee, driver of Taleb Shaheb who told him that Abu Taleb was going to his own house at Mirpur with non-Bangalee, Accountant, Halim of the office of the Ittefaq, but Halim instead of taking him to his own house handed him over to the Biharis and the Biharis killed him at *Zallad Khana*. From the above testimony of PW10, it is clear that he gave two versions about the killing of Abu Taleb: (i) that he was killed by Biharis, local Gunda Aktar and Abdul Quader Molla and (ii) that Nizam driver informed him (জানায়) that while Taleb Shaheb was going to his own house at Mirpur along with the non-Bangalee, Accountant of the office of the Ittefaq, Halim, he instead of taking him to his own house, handed him over to the Biharis and the Biharis killed him at *Zallad Khana*. Which one is to be believed? The PW himself having given two versions as to the killers of Taleb as stated above, he made himself an untruthful witness so also his hearsay testimony doubtful and thus unreliable. Moreso, PW12 in his cross examination stated that it is a fact that PW10 did not tell him that he heard that Khandker Abu Taleb was killed by the non-

Bangalees, local Gunda Aktar and Abdul Quader Molla taking him to *Zallad Khana* at Mirpur-10. In view of the allegations made in the charge, the above omission of PW10 in not stating the fact that he heard the name of Abdul Quader Molla as one of the killers of Khandker Abu Taleb is a material omission. Therefore, the hearsay testimony of PW10 has no probative value and as such his testimoney cannot be relied upon for arriving at the finding of guilt against the accused.

It being the specific case of the prosecution as stated by PW5 (though the allegations made in the charge are otherwise) that while Khandker Abu Taleb was going to Mirpur with the non-Bangalee, Accountant, Halim of the Ittefaq by his car who without taking him to his house at Mirpur, handed him over to Abdul Quader Molla, the onus was squarely upon the prosecution to prove the same beyond reasonable doubt (rule 50 of the Rules of Procedure). But as it appears, the Tribunal, in deciding the guilt of the accused in respect of the charge, proceeded borrowing the principle of customary international law such as *"the killing formed part of a systematic or organised attack against the civilian population*" without assessing and weighing the hearsay evidence of PWs' 2, 5 and 10 keeping in mind the universal rule of criminal jurisprudence that if a doubt is created as to the prosecution case from the inconsistent and contradictory evidence, the benefit of such doubt must go to the accused and not to the prosecution.

The Tribunal was absolutely wrong in observing that *"The fact of handing the victim over to accused Abdul Quader Molla is denied by the defence. But the involvment of Aktar Gunda and local Biharis in slaughtering*

the victim to death remains also unshaken" inasmuch as the prosecution failed to adduce any tangible evidence whatsoever that the accused had any association with Aktar Gunda and the local Biharis. Moreso, the accused had no onus to prove a negative fact that he had no association with Aktar Gunda and the other local Biharis. In making the said observations the Tribunal forgot rule 50 of the Rules of Procedure which in clear terms has provided that the burden of proving the charge shall lie upon the prosecution beyond reasonable doubt. I also failed to see any basis of the finding of the Tribunal that *"Amongst 10% of Bangalee residents of Mirpur locality why accused Abdul Quader Molla opted to be associated for almost all the time with local Biharis hooligans, namely: Aktar Goonda, Nehal, Hakka Goonda, Hasib Hashmi who were extremely antagonistic to Bangalees of the locality, instead of saving fellow Bangalee residents? Of course, such association of the accused fueled (sic) the principals targeting the local pro-liberation Bangalee civilians in furtherance of 'operation serach light on 25th March 1971*" as no such evidence has been adduced by the prosecution, rather the interview given by PW2 in the programme "একাত্তরের রনাঙ্গনের দিনগুলি", and the documentary films 'Mirpur the Last Frontier-1' and 'Mirpur the Last Frontier-2' as quoted above and the writings of PW4 in his book "শহীদ কবি মেহেরুন্নেসা" show that it is only the Biharis who committed the atrocities in Mirpur area after 25th March to 16th December, 1971.

In view of the discussions made above, I find no other alternative but to hold that the prosecution failed to prove the charge brought against the accused for the commission of murder of Khandaker Abu Taleb beyond reasonable

doubt within the meaning of section 3(2)(a)(h) of the Act, 1973 and as such, he is entitled to be acquitted of the said charge and accordingly, he is acquitted of the charge as listed in charge No.3.

Charge-4:

In this charge, it was alleged that on 25.11.1971, at about 7:30 a.m. to 11 a.m., accused- Abdul Quader Molla along with his 60-70 *"accomplices belonging to Rajaker Bahini went to the village Khanbari and GhotarChar (Shaheed Nagor) under police station Keraniganj, Dhaka*" and in concert with his accomplices in execution of his plan raided the house of Muzaffar Ahmed Khan and apprehended two unarmed freedom fighters named Osman Gani and Golam Mostafa therefrom and thereafter, they were brutally murdered by charging bayonet in broad day light. Thereafter, the accused along with his accomplices *"attacking two villages known as Bhawal Khanbari and Ghotar Chaar (Shaheed Nagor), as part of systemic attack, opened indiscriminate gun firing causing death of hundreds of unarmed villageers*" including 24 mentioned in the charge actively participated, facilitated, aided and substantially contributed to cause murder of two unarmed freedom fighters and the *"attack was directed upon the unarmed civilians, causing commission of their horrific murder.*" Therefore, the accused "committed the offence of 'murder as crimes against humanity' 'aiding and abetting the commission of murder as crime against humanity' and also for complicity in committing such offence" as mentioned in section 3(2)(a)(g)(h) of the Act, 1973 which are punishable under section 20(2) read with section 3(1) thereof. Clause (g) of section 3(2) reads as follows:

"(g). attempt, abetment or conspiracy to commit any such crimes."

To substantiate the charge, the prosecution examined three witnesses, namely: PWs' 1, 7 and 8. The Tribunal on consideration of the evidence of the PWs disbelieved their testimony and acquitted the appellant of the charges brought against him with the clear finding that *"prosecution has failed to prove participation or complicity or act on part of the accused to the commission of the offence of crimes against humanity by adducing lawful and credible evidence*." The finding arrived at by the Tribunal is based on proper sifting of the evidence of the PWs. The reasonings given by the Tribunal in coming to the above finding, are not perverse, therefore, I do not find any ground to interfere with the same.

Be that as it may, I want to add the following in support of the finding of acquittal given by the Tribunal. Admittedly, PW1 did not see the occurrence and as per PW7, he (PW1) came to the place of occurrence while he (PW7) was identifying the dead bodies after the army and the people of Quader Molla Bahini had allegedly left the place of occurrence, after 11 a.m. PW1 himself also stated in his examination-in-chief that after 11 a.m. when he got the information that the Razakars and the Pak Bahini had left the place, he from the backside reached the place of occurrence. The PW further stated that he met the local people: Taib Ali and Abdul Mazid (PW7) and on his query who caused the occurrence, Abdul Mazid told that there was a meeting on 23/24th November, 1971 at Ghatarchar and in that meeting, Dr. Zainul, K.G.Karim Babla, Muktar Hossain and Faizur Rahman of Muslim league were present who in liaison (যোগাযোগ করে) with Abdul Quader Molla of Islami Chhatra Sangha

arranged the meeting and Abdul Quader Molla was also present in the meeting, wherein decision was taken to kill the unarmed people and that decision was executed on 25th March, 1971. This PW further stated that in 2007, he filed a complaint case being C.R. Case No.17 of 2007 before the Chief Judicial Magistrate, Dhaka which was subsequently registered as Keranigang Police Station Case No.34(12)2007 for the trial of the offence of the instant case, but in cross examination, he admitted that although in the C.R. case, the occurrence, which took place on 25th November, was narrated, but the fact of holding the meeting on 23/24th November and presence of Abdul Quader Molla therein and also the fact of calling the said meeting after consultation with him (Quader Molla) were not stated. He also admitted that in the said C.R. Case, it was not stated that the mass killing, setting fire, looting, which took place at Ghatarchar on 25th November, were done by the local Razakars in liaison and under the leadership of Abdul Quader Molla. He further stated that he could not remember as to whether in para-5 of the case, he stated that upto 1975 all the accused were in jail. The above omissions of the PW in not stating in his petition of complaint, are material omissions which are nothing but contradictions. When PW1 in his petition of complaint filed in 1977, did not say the facts as stated hereinbefore which he stated in his testimony in Court how he can be believed; the contradictions as pointed out hereinbefore rendered him as an untruthful witness and thus created a doubt about the allegations made in the charge. The charge was framed against the accused under clause (g) of section 3(2) of the Act, 1973 along with clause (a), the onus was heavily upon the prosecution to prove the fact of holding meeting on

23/24th November, 1971 where decision was allegedly taken for mass killing and that the meeting was allegedly convened in liaison with the accused and he was present in the meeting and that the occurrence took place to execute the decision taken in the said meeting which the prosection failed to prove.

PW12, Investigation Officer, in his cross examination categorically stated that Abdul Mazid (PW7), Nurjahan (PW8) were not cited as witnesses in the petition of complaint filed by Muzaffar Ahmed Khan (PW1). If PW7-Abdul Mazid Palwan saw the occurrence and was present after the occurrence when PW1 came there after the Pak Bahinis and the Razakars had left the place at 11 a.m. and PW7 told the occurrence to PW1, there was reason not to cite PW7 as a witness in the petition of complaint. Similarly, had PW8 Nurjahan saw the occurrence as stated by her and had her husband been killed by thy Pak army and the Bangalee of short stature with black complexion (in the deposition sheet, in Bangla, it has been recorded as:"একজন বাঙ্গালী খাটো এবং কালো বর্ণের") in the manner as stated by her and had she heard from PW7 that a man named Quader Molla killed her husband, she would have been also cited as a witness in the petition of complaint filed by PW1. It may be stated that though, as per the prosecution case, so many people were killed but other than PW8, none of the other affected families was made witness in the case.

Admittedly, in 1970, the accused was one of the leaders of Islam Chhatra Sangha and was the president of Islami Chhatra Sangha of Shahidulla Hall, Dhaka University. Therefore, he was not supposed to be known to the people of a village like Ghatarchar or Bhawal Khanbari under Keraniganj Police Station during the relevant time; at best, he would be known to the

students' community of Dhaka University and to the students of Chhatra Sangha. Therefore, it does not inspire confidence in the testimoney of PW8 that PW7 and others including Luddu Mia, her father-in-law could identify the accused as Quader Molla and they told her that he killed her husband. It may not be out of place to mention that in 1970-1971, media, both electronic and print, were not so easy to get publicity of a leader of the student wing of a party like Jamat-E-Islami with his photograph that he would be known even to the villagers of a remote area under Police Station-Keranigong. So, the story of identification of Quader Molla on the date of occurrence by PW8 and the other people as stated by her cannot be believed. Further PW12, the Investigation Officer, clearly admitted in his cross examination that PWs'7 and 8 were cited in the case as additional witnesses, thus it is clear that originally these two PWs were not cited as witnesses. PW12 further admitted that the statements of additional witness Abdul Mazid Palwan (PW7) were deposited to the Chief Prosecutor after examination-in-chief of Muzaffar Ahmed Khan (PW1) but before cross examination (in the deposition sheet, in Bangla, it has been recorded as: "এই মামলায় এক নম্বর স্বাক্ষী মোজাফফর আহম্মেদ খানের আদালতে প্রদত্ত জবানবন্দী (জেরার পূর্বে) প্রদানের পর অতিঃ সাক্ষী আব্দুল মজিদ পালোয়ানের জনাবন্দী চীফ প্রসিকিউটরের নিকট জমা দিয়েছি।"), the case of the defence that the statement of Mazid Palwan (PW7) and Nurjahan (PW8) were recorded by the Investigation Officer seeing the testimony of PW1 and as tutored cannot be brushed aside. In the context, it may be stated that in the instant case, the sole accused is Quader Molla, so it is not a difficult task to identify him on the dock. For the same reason, the testimony of PW1 that during the war of liberation, once he went to the

residence of his maternal uncle at Mahammadpur when he saw Quader Molla standing with arms along with his companions in front of the gate of the torture cell of Mohammadpur Physical Training Centre cannot be believed. As per his own statement, PW1 was an S.S.C. candidate in 1971 from a school named Ati Baul High School under Keraniganj Police Station, so in 1969, he was a student of Class-IX only, but he claimed that during the mass movement in 1969, he took part in the various programmes with the students of Dhaka University. This is unbelievable that in 1969, a student of Class-IX of a village school would come all the way from a village under Karanigonj Police Station to join the students' leader of Dhaka University, this story appears to have been concocted just to fit in the case of identification of the accused by the PW with arms in his hand before the Mohammadpur Physical Training Centre.

In conclusion, I maintain the order of acquittal passed by the Tribunal against the accused in respect of charge No.4.

Charge No.5:

In this charge, it was alleged that on 24.04.1971, at about 4:30 a.m, the members of Pakistan armed forces *"Landing from helicopter moved to the western side of village-Alubdi near Turag-river*" and about 50 non-Bangalees, Razakars and members of Pakistan armed forces under the leadership and guidance of the accused also came forward from the eastern side of the village and then they all with common intention and in execution of plan, collectively raided village-Alubdi (Pallabi, Mirpur) and suddenly launched the attack on civilian and unarmed village dwellers and opened indiscriminate gun firing and caused mass killing of 344 civilian (including 24 mentioned in the charge) and

thus the accused actively participated, facilitated and aided and substantially contributed “to the attack directed upon the unarmed civilians, causing commission of mass murder” and thus committed the offence of ‘murder as crime against humanity’, ‘aiding and abetting’ to the commission of such offences and also for ‘complicity in committing such offence’ as mentioned in section 3(2)(a)(g)(h) of the Act, 1973 which are punishable under section 20(2) read with section 3(1) thereof.

PWs’ 6 and 9 are the concerned witnesses examined by the prosecution to substantiate the charge. The evidence of these two witnesses has been reproduced in English earlier. Now I shall refer only to the evidence of the PWs which are relevant to decide the charge.

PW6 is Md. Shafiuddin Molla and he is from village-Alubdi, presently Police Station-Pallabi, at the time of occurrence, it was Mirpur. PW6 stated in his examination-in-chief that on 24th April, 1971, at the time of Fazar prayer, they heard the sound of a helicopter. On coming out, he found that the helicopter landed on the high land by the side of river-Turag on the western side of the village. Sometime thereafter, he heard the sound of firing from the western side. At the same time, he also got the sound of firing from the East-South and the North. Then they started running hither and thither in the village. When darkness was fading slowly, he found two one dead body (in the deposition sheet, in Bangla, it has been recorded as: “আস্তে আস্তে ফর্সা হতে থাকে তখন দেখতে পাই এদিক সেদিক দুই একজন লোক মৃত অবস্থায় পড়ে আছে”) lying scatteredly. He hid himself in a ditch under the bush (ঝোপ) on the northern side of the village. It was harvesting season and many people came from outside to their village for

harvesting. He saw pak army bringing the people who came for harvesting and the villagers together from the western side and keeping all of them at one place. Then he saw Abdul Quader Molla, his Cadre, Pak-Bahini, non-Bangalees and Biharis bringing the people who came for harvesting and the villagers together from the eastern side and to take them to the same place. Sometime thereafter, he saw Abdul Quader Molla speaking in urdu with the officers of Pak-Bahini, but he could not hear what was said by him as he (the PW) was at a distance. After a while he saw shooting people. Abdul Quader Molla had a rifle in his hand and he also shot. In the incident, 360/370 person were killed including 70/80 people of their village which included his paternal uncle, Nabiullah and the labourers who came for harvesting. All the persons killed were Bangalee. The massacre continued from Fazar Ajan till 11 a.m. Thereafter, they looted the houses and set fire on them. The PW identified Abdul Quader Molla on the dock.

From the examination-in-chief of PW6, it appears that he claimed to be an eye witness to the occurrence. Now we are to see as to whether he can be accepted as an eye witness to the occurrence, i.e. as to the massacre which allegedly took place at village-Alubdi on 24th April, 1971. PW6 in his examination-in-chief stated that he saw the occurrence hiding himself in a ditch under a bush on the northern side of his village. Let us see how far this statement of PW6 is acceptable in other words, whether it was possible for the PW to see the occurrence hiding in a ditch under the bush. In cross examination, the PW stated that the ditch was 4(four) feet deep and beneath a 'ঝোপ' from the ground level. In this regard, it is necessary to state that no

sketch map of the place of occurrence was prepared by the Investigation Officer which was a must to have a topographical picture of the area where the PW was allegedly hiding. Although the PW claimed that his height at the time of occurrence was all most same, yet it does not appear to me believable that he could see the occurrence as narrated by him from the ditch which was under a bush. Another aspect needs to be considered to evaluate and assess the testimony of PW6 as an eye witness. In his examination-in-chief, he stated that many things happened after 25th March, 1971, Pak-hanadars attacked, but they remained in their village, there being low lying land around their village. In cross examination, he categorically stated that his parents, brother and sister had been outside the village from before, his mother and sister had gone one week before and that his father left the village in the evening of the previous day leaving the house (in the deposition sheet, in Bangla, it has been record as:‘‘আমার বাবা-মা, ভাই-বোন আগেই গ্রামের বাহিরে ছিল, মা-ভাই-বোন সপ্তাহ খানেক আগেই এবং বাবা ঘটনার আগেরদিন বিকাল বেলা বাড়ী ছেড়ে গ্রামের বাহিরে চলে যায়।”). He further stated that the family and the children of the house of his paternal uncle had gone outside the village one week/ten days before, leaving the house, then said many people of the village had left the village one week/ten days before and many had also left before, in this way, many others of the village had left their houses after the incident which took place on 25th of March, 1971. When the mother, brother and sister had left the village one week before of the occurrence and father left the house before the date of occurrence, it is unbelievable that the PW, though he claimed to be 19 years old in 1971, would be allowed to stay at his house in the village alone.

PW12, Investigation Officer, in his cross examination stated that it is a fact that during investigation, PW6 did not tell him that the Pak-hanadars attacked, they remained in their village as there were low land around their village or he saw two one dead bodies hither and thither or he hid in a ditch under a bush on the northern side of their village or the harvesting people and the villagers were caught hold of and they were being brought to one place or then he saw that the harvesting labourers and the villagers were being brought by Quader Molla, his Bahini, Pak Bahini and the non-Bangalee Biharis from the eastern side to assemble at one place or he saw Abdul Quader Molla talking in urdu with the officers of Pak Bahini and as he was at a distance, he could not hear the conversation. PW12 further categorically stated that it is a fact that PW6 did not tell him that he hid in a ditch beneath a bush on the northern side and from there he could see that Abdul Quader Molla had a rifle in his hand and he also shot. PW12 stated that PW6 told him that he saw Abdul Quader Molla shooting the standing innocent unarmed Bangalees by peeping through the gap of the stakes of paddy (in the deposition sheet, in Bangla, it has been recorded as:‘‘তবে এই সাক্ষী এই ভাবে বলেছে যে, আমি ধানের স্তুপের ফাঁক দিয়ে তাকায়ে দেখি আব্দুল কাদের মোল্লা একটি রাইফেল দিয়ে দাঁড়ানো নিরিহ, নিরস্ত্র বাঙ্গালীদের গুলি করে।”). The statements made by PW6 to PW 12 as to the seeing of the accused shooting the standing innocent unarmed Bangalees peeping through the gap of the stakes of paddy is noting but a glaring contradiction of his testimony made in Court that he saw the occurrence from the ditch beneath a bush and thus made his entire story of seeing the occurrence as an eye witness doubtful and the benefit of such doubt must go to the accused. When the very fact of seeing becomes doubtful, other

evidence of implicating the accused with the occurrence automatically falls through.

The claim of PW6 that he saw Abdul Quader Molla along with his associates and the Biharis canvassing for professor Golam Azam in 1970's National Assembly election with the symbol 'দাঁড়ি পাল্লা' and that he (the PW) canvassed for Advocate Zahiruddin, the Awami League candidate and thus he could know the accused cannot also be believed due to the other material omissions made by him while he was examined by the Investigation Officer. PW12 in his cross examination categorically stated that it is a fact that PW6 did not tell him that Advocate Zahiruddin or his election symbol was 'নৌকা' or against him there was a candidate with the symbol 'দাঁড়িপাল্লা', namely, Professor Golam Azam or they canvassed for Advocate Zahiruddin or on the other hand, Abdul Quader Molla the then leader of Islami Chhatra Sangha canvassed for the symbol 'দাঁড়িপাল্লা' or he knew Abdul Quader Molla. The above omissions of PW6 in his statement made to the Investigation Officer are material omissions which amount to contradictions and made the claim of PW6 in his examination-in-chief that he saw Abdul Quader Molla in 1970 while he campaigned for the symbol 'দাঁড়িপাল্লা' and thereby Abdul Quader Molla was known to him and he could identify him at the time of alleged occurrence including the overt act by him absolutely false. PW6 in his cross examination stated that he used to read in Mirpur Adarsha High School and he passed S.S.C. examination in the 2nd batch in 1972, if that be so, how he could be 19 years old in 1970 as claimed by him in his examination-in-chief. In cross examination, he further stated that he did not bring the voter identity card and did not also give the same to the

Investigation Officer. He further stated that presently, he is a voter and he had cast his vote in the last Parliament election. Then said in serial No.2220 of the voter list name and addresses were correctly mentioned, but his date of birth was wrongly mentioned, he did not file any paper in Court about his date of birth (in the deposition sheet, in Bangla, it has been recorded as: "গত সংসদ নির্বাচনে আমি ভোট দিয়েছি। ভোটার লিষ্টে আমার তথ্যাদি সঠিক ছিল। সংশ্লিষ্ট ভোটার লিষ্টের ক্রমিক নং ২২২০ এ আমার নাম ও ঠিকানা সঠিকভাবে দেওয়া আছে। এখানে আমার জন্ম তারিখ ভূল আছে। আমার জন্ম তারিখ সম্পর্কিত কোন কাগজ-পত্র আদালতে দাখিল করিনি। ইহা সত্য নহে ১৯৭০ সালের নির্বাচনে আমি ভোট দেইনি।"). The very dispute raised by the PW as to the correctness of his date of birth in the voter list also shows that he was suppressing his actual date of birth and therefore, his claim that in 1970, he was 19(nineteen) years old cannot be accepted. The claim of PW6 that in 1970's election, he was a voter and he was involved with Chhatra League and he canvassed for Zahiruddin, the Awami League candidate falls through, as he, in his cross examination, stated that he could not say where the house of Advocate Zahiruddin was, he could not also say whether Advocate Zahiruddin was Bangalee or non-Bangalee, Advocate Zahiruddin went to their area for election campaign, but he did not go to their village and he never talked to Zahiruddin and he never went to him as he was young (in the deposition sheet, in Bangla, it has been recorded as under: "আমরা যেহেতু ছোট ছিলাম সেহেতু আমরা তার কাছে যেতাম না।"). Further, PW12 in his cross examination categorically stated that PW6 did not tell him that in 1970, he was a voter or he was involved with Chhatra League, his family and the villagers all were supporters of Awami League or Abdul Quader Molla the then leader of Islami Chhatra Sangha, his associates and Biharis took part in the

election campaign for the symbol 'দাড়িঁপাল্লা'. The Tribunal did not consider the omissions of PW6 in not stating the facts to the Investigation Officer as pointed out hereinbefore which were material omisions and amount to contradictions and thus made him an unreliable witness. The Tribunal, as it appears, failed to consider the purport of cross examination. If the evidence of a witness in cross examination is not considered, assessed and weighed with his evidence in his examination-in-chief then cross examination shall be totally meaningless and there would be no need of cross examination. The Tribunal also failed to consider that the contradictions of a witness between his testimony made in Court and the statements made to the Investigation Officer shake his creditbility as a witness. In this regard, I may conveniently refer to sub-rule (II) of rule 53 of the Rules of procedure which is as follows:

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

The contradictions between the testimony of PW6 in Court and the statements made to the Investigation Officer as pointed out hereinbefore, rendered him as an untruthful witness and consequently, he cannot be accepted as an eye witness to the occurrence. The Tribunal in assessing and sifting the evidence of PW6 while arriving at the finding of guilt against the accused in respect of charge No.5 failed to consider the contradictions as pointed out hereinbefore in its proper perspective keeping in view the above quoted provisions of the rule.

The other witness is PW9, Amir Hossain Molla. He also posed to be an eye witness. This PW is from village-Duaripara. Let us consider the evidence of this PW briefly. He stated in his examination-in-chief that after the speech of Bangabandhu on 7th March, 1971, at Suhrawardi Uddyan, he having been inspired raised Swechchhasebak Bahini at Mirpur and thereafter took training in the then Iqbal Hall of Dhaka University under the supervision of Swadhin Bangla Chhatra Sangram Parishad. At that time, Abdul Quader Molla used to give training to the Biharis at Mirpur with the 70/80 people of Islami Chhatra Sangha to protect Pakistan. He further stated that seeing the condition of the country picarious, he, his parents and other members of the family around 23/24th March, first took shelter at a school at Savar and then in the house of a relative. On 22/23rd April, he along with his father came to village-Alubdi for harvesting their paddy (in the deposition sheet, in Bangla, it has been recorded as: "২২/২৩ এপ্রিল আমার বাবাকে নিয়ে আমাদের ধান কাটার জন্য অমোদের গ্রাম আলুবদির কাছে আসি"). After harvesting paddy, they passed night at the house of his maternal uncle (খালু), Rustom Ali Bepari. On 24th April, during Fazar Ajan, the Punjabis landed from helicopter on the bank of river-Turag on the West of village-Alubdi. From the East, 100/150 Biharis, Bangalees and Punjabis came under the leadership of Abdul Quader Molla and started firing indiscriminately all around killing good number of people (in the deposition sheet, in Bangla, it has been recorded as under: "চর্তুদিকে এলাপাথাড়ি গুলি করে তখন বেশ কিছু লোক সেখানে মারা যায়"). Thereafter, they entered into the village and after catching hold (ধরে এনে) of the people from houses numbering 64/65 lined them up on the North of the village and also brought 300/350 persons who came to the village for

harvesting paddy and lined them up at the same place and then shot them. Abdul Quader Molla, Aktar Gunda had also rifle in their hands and they also shot along with the Punjabis and in this process, 400 people were killed. In the incident, 21 relatives were killed (names are not mentioned here). He further stated that after the incident, in the first part of June, he had gone to Lailapur, Asam, India and took training there for *muktijudda*. After training, he came to Melagor, took arms and came to Bangladesh in the first part of August. The country was liberated on 16th December, 1971, but Mirpur was not liberated till then. At that time, under the leadership of Abdul Quader Molla about 700/800 members of the Al-Badar and some Punjabis came to Mirpur and joined the Biharis there and they together hoisted the Pakistani flag with the view to convert Bangladesh as Pakistan. That being the position, on 18th December, 1971 under the leadership of group Commander, Hanif, Assistant Commander, Rafiqul Islam, Zahiruddin Babar, Mominul Haque and the PW himself along with about 150 freedom fighters attacked Zandi Radar Camp at Mirpur where there was an *Asthana* of the Al-badar Bahini of Quader Molla and the Punjabis. There was counter attack from the camp with heavy arms and in the fight Abdus Sattar, a freedom fighter embraced martyrdom on river-Turag and the PW was also injured with bullet on his right knee and right arm and then they retreated. Thereafter, on 31st January, the co-freedom fighters in collaboration with Indian Mitra Bahini under the leadership of *muktijuddha* high command attacked Mirpur from all sides and defeated the Pak Senas and the Al-Badars under the leadership of Abdul Quader Molla and the flag of independent Bangla was hoisted. He further stated that in 1970's election, he campaigned for

Advocate Zahiruddin, a candidate of Awami League with the symbol 'নৌকা' and Abdul Quader Molla canvassed for Golam Azam with the symbol 'দাড়িঁপাল্লা'. At that time, Abdul Quader Molla was the leader of Islami Chhatra Sangha.

Let us see whether this PW can be accepted as an eye witness to the occurrence and as to whether his testimony as to the occurrence in the manner as stated by him inculding the prsence and participation of the accused in the mass killing can be relied upon. The very fact stated by the PW in his examination-in-chief that seeing the condition of the country picarious, he, his parents and other members of his family around 23/24th March, first took shelter at a school at Savar and then at the house of a relative at Savar, it is unnatural that on 22/23rd April, he would come with his father to harvest paddy and would stay at the house of his relative (খালু), Rustom Ali Bepari after harvesting paddy. The PW did not say where from and how he saw the occurrence. He stated that he is from village-Duaripara and village-Alubdi was just 150 yards away. PW6 is a man of Alubdi and we have got from his evidence that his parents, brother and sister and many of the villagers had left the village one week/ten days before and in that situation it does not inspire any confidence in the testimony of the PW9 that after leaving the house on 23/24th March, they would dare to come to harvest paddy on 22/23rd April and would opt to stay at the house of his maternal uncle when his village was just 150 yards away from village Alubdi. The PW in his cross examination also categorically admitted that on 22/23rd March, 1971, he had gone to village-Birulia at Savar by leaving their village. He further stated that village-Duaripara and village-Alubdi were two miles away on the West-North

direction from village-Birulia. He knew Safiuddin Molla (PW6) of village-Alubdi. At that time, all of their village (Duaripara) including themselves had left the village. He further stated that they took shelter at the house of the father-in-law of his elder brother.

In cross examination, PW12 stated that it is a fact that PW9 did not tell him that on 22/23rd April, he along with his father came to their village-Alubdi for harvesting paddy and after harvesting paddy passed the night at the house of his maternal uncle-in-law (খালু), Rustam Ali Bepari, in deed these are very material omissions and amounts to material contradictions and creates doubt about the very fact of the presence of the PW on 24.04.1971 at the place of the occurrence not to speak of seeing the occurrence. PW12 further stated that it is a fact that PW9 did not tell him that Quader Molla had a rifle in his hand, Akter Gunda had a rifle in his hand and they along with the Punjabis also shot and 400 people were killed. PW12 further stated that PW9 told him that at the leadership of Abdul Quader Molla, Ashim, Aktar Gunda, Newaj, Latif and Duma along with 140/150 others came from the East and encircled (ঘিরিয়া ফেলে) village-Alubdi and then fired indiscriminately. PW12 further stated that it is a fact that during investigation, PW9 did not tell him that after the incident, in the first part of June, he had gone to Lialapur, Asam, India and there he took training for *muktijuddha* or after taking training came to Melagor and from there took arms and entered into Bangladesh in the first part of August or then 700/800 members of the Al-Badars from Mohammadpur Physical Training Centre under the leadership of Abdul Quader Molla and some Punjabis came to Mirpur and they along with Biharis hoisted Pakistani flag. But PW9 told him

that 800/900 members of the Al-Badar came from Mohammadpur Physical Training Centre under the leadership of Abdul Quader Molla and took shelter under the Razakar Bahini. PW12 further stated that PW9 did not tell him that in 1970, he canvassed for Awami League candidate, Advocate Zahiruddin with the symbol 'নৌকা' and Abdul Quader Molla canvassed for Golam Azam with the symbol 'দাড়িঁপাল্লা' or at that time, Abdul Quader Molla was a leader of Islami Chhatra Sangha.

Form the evidence of PW12, it is clear that PW9 made some material omissions, while he was examined by him, particularly, as to the participation of the accused with the Punjabis and Akter Gunda with a rifle in his hand and the fact of firing/shooting from his rifle, but the Tribunal found the same to be minor discrepancy. In the facts and circumstances of the case read with other contradictions between the statements of the PW made to the Investigation Officer and his testimony in Court and his complicity in so many criminal cases which earned him the title of 'Lat Bhai' rendered his testimony unreliable and therefore, he cannot be accepted as an eye witness. The fact that PW9 did not see the occurrence is further apparent from the fact that though in his examination-in-chief, he did not say as to how and from where, he saw the occurrence, in cross examination, he stated that in the petition of complaint filed by him which was eventually registered as Pallabi Police Station Case No.60 dated 25.01.2009, it was stated that the complainant (PW9 was the complainant in the complaint case) and his family saved their lives by hiding under hyacinth, whereas in his examination-in-chief, he stated that around 23/24th March, he, his parents and members of the family had taken shelter first

at a school at Savar then at the house of one of his relative at Birulia at Savar. When the family of the PW had already shifted at Savar how he and his family could be at village-Duaripara and save their lives hiding under hyacinth. And then he further stated of his own (নিজে বলেন) in his cross examination that he and his father hid themselves under hyacinth at the West-Nort corner of village-Alubdi and from there they saw the occurrence.

It is also very significant to note that though PWs 6 and 9 claimed to have witnessed the occurrence, neither PW6 stated that PW9 saw the occurrence nor PW9 stated that PW6 saw the occurrence and the narration of the happenings of the occurrence and the overt acs allegedly done by the accused are also not in the similar manner and this also creates a doubt about the fact of seeing the occurrence by them. Had both of them seen the occurrence than they would have named each other. It is also very significant to state that in the petition of complaint filed by PW9 which was eventually registered as Pallabi Police Station Case No.60 dated 25.01.2009, PW6 was not cited as a witness and PW12 clearly admitted that PW9 was cited as a witness in his report seeing his petition of complaint. PW6 is a man of Alubdi and had he seen the occurrence as claimed by him there was no reason not to cite him as a witness in the petition of complaint filed by PW9. To me, it appears that both these witnesses are procured and tutored witnesses. But the Tribunal failed to consider these apparent factual aspects of the case in assessing and weighing the testimonies of PWs’ 6 and 9 in accepting them as eye witnesses.

The Tribunal was also wrong in giving finding that the accused was also a resident of Duaripara, Mirpur relying on a stray statement of PW5 Khandker

Abul Ahsan in his cross examination to the effect "আব্দুল কাদের মোল্লা সাহেব মিপুরের দোয়ারী পাড়ায় থাকতেন তা অধিকাংশ লোকই জানে তবে নির্দ্দিষ্ট করে কারো নাম বলতে পারবোনা কারে কাছে থেকে শুনেছি।" This statement of PW5 in no way can be construed to be a positive piece of evidence in the eye of law and cannot be relied upon to come to a finding of fact in the case. In this regard, it is necessary to state that none of the PWs stated in their examination-in-chief that the accused used to live at Duaripara. PWs' 6 and 9, who are from villages-Alubdi and Duaripara respectively were the best persons to say that the accused used to live at Duaripara, but none of them said so. PW2, Syed Shahidul Haque Mama, Kazi Rosy (PW4) and Syed Abdul Quayum (PW10) who were also the residents of Mirpur at the relevant time did not say that the accused used to live either in his own house or in a rented house at Mirpur. The positive evidence in this regard as stated by PW12 is that at the relevant time, the accused was the student of Dhaka University and he was the president of Islami Chhatra Sangha of Shahidulla Hall, so he had no reason to live at Mirpur. The Investigation Officer in his examination-in-chief did not also assert that he accused used to stay or live at Duaripara, Mirpur or at any other place at Mirpur. In this respect, the Tribunal also failed to consider the evidence of PW12 in his cross examination that "এই মামলার আসামী কাদের মোল্লা দোয়ারী পাড়ায় থাকতেন মর্মে সাক্ষী মোমেনা বেগম, পিতা-শহীদ হয়রত আলী লস্কর, এবং সাক্ষী ছখিনা হেলাল, (not examined in the case) পিতা-শহীদ খন্দকার আবুতালেব গং এর জবান বন্দীতে প্রদত্ত বক্তব্য যাচাই করার জন্য আমি এবং আমার সংগীয় অফিসার দোয়ারীপাড়ায় যাই। দোয়ারীপাড়া থেকে আমরা আমাদের অফিসে ঐ দিন রাত ১০ঃ২০মি. ফিরে আসি।" and no where in his deposition, PW12 stated that he could ascertain that the accused lived at Duaripara. From the testimonies of PW3 (Momena

Begum), it does not appear that she made any positive statement or assertion that the accused used to live at Duaripara, Mirpur as stated by PW12. PW2 in his cross examination stated that he did not know whether Quader Molla used to live at Mirpur or Mohammadpur. In 1971, PW5 was aged about 13/14 years and while deciding the charge listed in charge No.3, I have already held that his evidence cannot be accepted (reasons are not repeated herein). Be that as it may, PW5 was not competent and reliable witness to say about the residence of the accused and the Tribunal ought not to have relied upon the above quoted stray testimony of the PW5 to come to the finding that the accused used to live at Duaripara as well. And this finding is also uncalled for and beyond the facts as disclosed in the charge.

For the discussions made above, I hold that the prosecution failed to prove beyond reasonable doubt that the accused was present at the time and place of the occurrence and he, in any way, abetted in causing the crime of the mass killing at village-Alubdi on 24.04.1971 or he had any complicity with the said occurrence in any manner as alleged in charge No.5 within the meaning of clause (a)(g) and (h) of section 3(2) of the Act, 1973, the Tribunal erred in law in finding him guilty of the said charge and therefore, he is entitled to be acquitted and accordingly he is acquitted of the said charge.

Charge No.6:

In this charge, it was alleged that on 26.03.1971 at about 6 p.m., the accused accompanied by some Biharis and Pakistan army went to house No.21, Kalapani Lane No.5 at Mirpur, Section-12 belonging to one Hazrat Ali and after *"entering inside the house forcibly, with intent to kill Bangalee civilians",*

his accomplices under his leadership and at his order *"killed Hazrat Ali by gun fire, his wife Amina was gunned down and then slaughtered to death, their two minor daughters named Khatija and Tahmina were also slaughtered to the death, their son Babu aged 02 years was also killed by dashing him to the ground violently."* During the same transaction of attack 12(twelve) accomplices of the accused gang raped upon a minor girl named Amena aged about 11 years, *"but another minor daughter, Momena who some how managed to hide herself in the crime room, on seeing the atrocious acts, eventually escaped herself from the clutches of the perpetrators."* The atrocious allegations *"as transpired, sufficiently indicates"* that the accused actively participated, facilitated and aided and substantially contributed to the attack directed upon the unarmed civilians causing the commission of *"horrific murders and rape."* The accused was also charged for accompanying the perpetrators to the crime scene and also "aiding, abetting, ordering the accomplices in launching the planned attack directing the non-combatant civilians that substantially contributed to the commission of offence of 'murder as crime against humanity' 'rape as crime against humanity' 'aiding and abetting the commission of such crimes' and also for 'complicity in committing such offences' as mentioned in section 3(2)(a)(g) and (h)" of the Act, 1973 which are punishable under section 20(2) read with section 3(i) thereof.

To substantiate the allegations made in the charge, the prosecution examined the sole witness-Momena Begum, as PW3. Her evidence has been reproduced in English earlier. I shall now refer to the evidence of her, which

are relevant to decide the allegations brought in the charge against the accused. PW3 in her examination-in-chief stated that the occurrence took place on 26th March, 1971 in the evening but before sun set (in the deposition sheet, in Bangla, it has been recoded as: "২৬ শে মার্চ, ১৯৭১ সন্ধ্যায় বেলা ডুবার আগেই ঘটনাটা ঘটে।"). Her father, Hazrat Ali came running and said Abdul Quader Molla would kill him. Aktar Gunda, the Biharis and the Pak Bahini were coming running to kill her father. Her father closed the latches of the door. Her mother, brother and sister were inside the room. Her father told them to hide themselves beneath the cot, then she and her sister, Amena hid beneath the cot. Quader Molla and the Biharis came in front of the door and told "এই হারামীকা বাচ্চা দরজা খোল, বোম মারদেংগা". As they did not open the door, a bomb was blasted. Her mother opened the door with a dao in her hand. The moment her mother opened the door she was shot. When her father went to save her mother, accused- Abdul Quader Molla caught hold of the collar of his shirt from behind and said "এই শুয়ারের বাচ্চা, এখন আর আওয়ামী লীগ করবি না? বঙ্গবন্ধুর সাথে যাবি না? মিছিল করবি না জয় বাংলা বলবি না?" then her father by folding his hands told Abdul Quader Molla to let him off. He (father of the PW) also told Aktar Gunda to let him off. Then they dragged the father of the PW out of the room and slaughtered her mother with dao. They slaughtered Khodeja and Taslima, two sisters of the PW with *chapati.* The PW had a brother named Babu, aged about two years who was killed by throwing on the floor (আছঁড়িয়ে মারে). Babu cried out saying 'Maa' Maa'. Hearing the cry of Babu, Amena cried out and then she was pulled out, her dress was torn and then they started violating her (in the deposition sheet, in Bangla, it has been recorded as: "টেনে বের করে তারা আমেনার সব কাপড়-চোপর ছিড়ে

ফেলে। ছিড়ে ফেলে তারা তখন আমার বোনকে নারী নির্যাতন করতে থাকে।”). Amena cried for some time and at one stage, she stopped crying. In the meantime, it became dark, they were pricking sometime to see whether there was any one inside the room. At one stage, one of the prickings stuck the left leg of the PW, she got hurt and then she was pulled out and she could not say anything and lost her sense. Then said after being hurt, she cried out and lost her sense. When she regained her sense, it was dead of night, she felt severe pain at her abdomen and wet and could not walk. She found her pant torn (ফাড়া), then very slowly (আস্তে আস্তে) with much strain (অনেক কষ্ঠে) went to Fakirbari and entreated to open the door saying 'মা দরজা টা খোল, বাবা দরজাটা খোল' then they opened the door. Seeing the clothes on her body soaked with blood and pant torn (ফাড়া), the inhabitants of Fakirbari bandaged her injured leg by a cloth and gave a big salwor to her for wearing. On the next day, they got her treated bringing a doctor and gave her medicine. The inmates of Fakirbari asked her about her house and husband and they informed her father-in-law who came and took her to his house and got her treated. In the night, her mother-in-law used to keep her in her chest (in the deposition sheet, in Bangla, it has been recorded as: "আমার শ্বাশুড়ি আমাকে রাতে বুকের মধ্যে রাখতেন"). She used to run hither and thither like mad (পাগলের মত), her father-in-law and mother-in-law used to catch hold of her and her mother-in-law kept her in her chest (in the deposition sheet, in Bangla, it has been recorded as: "আমি পাগলের মত এদিক-সেদিক দৌড়াদৌড়ি করতাম। আমার শ্বশুর-শ্বাশুড়ি আমাকে ধরে ধরে নিয়ে এসে বুকে জড়ায়ে রাখতো"). Though Bangladesh became independent, Mirpur was not independent. She used to go to look for the dead bodies of her parents by taking 3(three) hours time written on a paper from

technical institute. There was a man named Kamal Khan who used to serve tea to the freedom fighters and he told her that Abdul Quader Molla killed her father. Akkas Molla her ‘উকিল বাপ’ also told her same thing and asked her to pray for justice to the Almighty Allah against Quader Molla. After liberation of the country, she had been mad for about three years and she had to be shackled for the same. She could not forget the scene of killing of her parents, brother and sisters in 1971 till date for which she was about mad-like (পাগল প্রায় ছিলাম). She identified the accused on the dock and said in 1971 he was young and was in *panjabi*.

From the testimony of the PW, it is apparent that she claimed to have seen the occurrence of killing of her mother, two sisters and one brother, dragging out of her father out of the room and the act of violating her sister Amena. During cross examination, no suggestion was given to the PW that whatever she stated in Court to the above effect, she did not state the Investigation Officer during investigation to take contradictions between the evidence given by her in Court and the statements made to the Investigation Officer during investigation with the meaning of clause (ii) of rule 53 of the Rules of Procedure, and thus the statements made by the PW in her examination-in-chief remained unassailed. From the cross examination of the PW, it appears that the defence tried to challenge her identity as the daughter of Hazrat Ali and that she did not see who killed her father and that she was not mad and that it was not possible to recognize the accused from beneath the cot and that she did not hear her father saying the name of Quader Molla while he came running and she did not see Quader Molla and that Akkas Member and

Kamal Khan did not tell her that Abdul Quader Molla killed her father and that Quader Molla did not live at Mirpur in 1971.

Mr. Razzaq having felt the difficulties to assail the testimony of PW3 as to the complicity of the accused in the killing of her parents, sisters and brother and the commission of rape upon Amena made a clean breast submission to send the case back on remand to the Tribunal giving chance to the accused to cross examine PW3 for doing complete justice invoking article 104 of the Constitution. He further submitted that the mistake in not cross examining PW3 to take contradictions in between her testimony in Court and the statements made to the Investigation Officer was caused due to the fault of his first engaged lawyer. Mr. Razzaq referred to the application filed on behalf of the accused before the Tribunal on 11.11.2012 under rule 48(1) read with 46A of the Rules of Procedure by which prayer was made to recall PW3 along with the other PWs for cross examination which was rejected by the Tribunal. An application was filed on 25.11.2012 for reviewing the order dated 11.11.2012 but that was also rejected. In this regard it may be stated that interlocutory order passed by Tribunal has not been made appealable. From the application dated 11.11.12(the application is in Vol-IV of the paper-book prepared by the convict-appellant) it appears that prayer was made before the Tribunal for recalling 5(five) PWs, namely: 1, 2, 3, 4 and 5 for cross examination on some specific questions to be asked to the respective witness. So far as PW3 is concerned the following questions were formulated to take contradictions, between her testimony as a witness in Court and her statements made to the investigation officer.

<u>মোমেনা বেগম (পি.ডাব্লিউ-০৩)</u>

“১. আপনি তদন্ত কর্মকর্তার নিকট বলেননি যে, সেই সময়ে আমার আব্বা দৌড়াইয়া দৌড়াইয়া আসে এবং বলতে থাকে কাদের মোল্লা মেরে ফেলবে।

২. আপনি তদন্ত কর্মকর্তার নিকট বলেননি যে, কাদের মোল্লা বা বিহারীরা দরজার সামনে এসে বলে যে, “এই হারামীকা বাচ্চা দরজা খোল, বোম মারদেঙ্গা।”

৩. আপনি তদন্ত কর্মকর্তার নিকট বলেননি যে, আমার আব্বা আমার আম্মাকে ধরতে গেলে অভিযুক্ত কাদের মোল্লা পিছন থেকে শার্টের কলার টেনে ধরে বলে “এই শুয়ারের বাচ্চা, এখন আর আওয়ামীলীগ করবিনা? বঙ্গবন্ধুর সাথে যাবি না? মিছিল করবিনা জয় বাংলা বলবিনা?” তখন আমার বাবা হাত জোড় করে কাদের মোল্লাকে বললো, “কাদের ভাই আমাকে ছেড়ে দাও।” আক্তার গুন্ডাকে বললো, “আক্তার ভাই আমাকে ছেড়ে দাও।” তখন তারা আমার বাবাকে টেনে হেছড়ে ঘরের বাইরে নিয়ে যায়।

৪. আপনি তদন্ত কর্মকর্তার নিকট বলেননি যে, আমাদের বাড়ীতে আমি কাউকে পাইনি শুধু দুর্গন্ধ আর দুর্গন্ধ, সেখানে অনেক লোক মেরেছে। কামাল খান নামে একটা লোক ছিল সে মুক্তিযোদ্ধাদের চা-বানিয়ে খাওয়াত। তিনি আমাকে বলতো কাদের মোল্লা তোর বাবা-মাকে মেরে ফেলেছে। আক্বাছ মোল্লা আমার উকিল বাবা ছিলেন তিনিও একই কথা বলতেন। তিনি বলতেন আল্লার কাছে বিচার চাও আল্লা কাদের মোল্লার বিচার করবে।”

Mr. Razzaq also drew our attention at page 670 of Volume-II, of the paper book, i.e. the statements of PW3 recorded by the Investigation Officer, Monowara Begum (PW11) to show that no statement was made by her (PW3) to the Investigation Officer implicating the accused either with the killing of her mother, sisters, brother, her father and the commission of rape upon her sister or upon herself and has reiterated his submission that because of the fault of the lawyer the accused should not suffer particularly when capital sentence has been provided for in the Act and the Government has filed Criminal Appeal No.24 of 2013 in view of the amendment brought to the Act, 1973 on 18th Februoury, 2013 for enhancement of the sentence. Mr. Razzaque also drew our attention to the statements made by PW3 to the Jallad Khana on 28.09.2007 which shows that two days before the incident she went to her

father's-in-law house, but the Tribunal failed to consider these facts in finding the accused guilty of the charge.

From the records, it appears that cross examination of PW3 was completed on 18.07.2012. Examination of the last public witness, namely, PW10 was completed on 26.09.2012 and examination of PW11 who recorded the statements of PW3 was completed on 16.10.2012. PW12, principal Investigation Officer was examined on 08.10.2012 and cross examination started on that very date and his cross examination was completed on 04.11.2012 and then date was fixed for examination of the defence witnesses. It further appears that PW12 was cross examined on as many as 6(six) days. Then the application for re-calling the PW along with PWs' 1, 2, 4 and 5 was filed for cross examination. Therefore, it appears that the accused got enough time to take steps in the matter to re-call PW3 if actually he thought to have been prejudiced for the failure of his first engaged lawyer in not cross examining PW3 on the questions as formulated in the application. Although rule 48(1) has empowered the Tribunal to re-call and re-examine any person already examined at any stage of trial, section 11(3)(a) (b) of the Act has mandated that the Tribunal shall confine the trial to an expeditions hearing of the issues raised by the charges, and take measures to prevent any action which may cause unreasonable delay, we do not see any illegality with the orders of the Tribunal in refusing the prayer for recalling PW3, therefore, we find no reason to send the case back on remand to the Tribunal to give chance to the defence to re-call PW3, particularly for 1(one) charge out of six charges.

Be that as it may, I have gone through the statements of PW3 recorded by the Investigation Officer (the statements of PW3 have been included in Vol-II of the paper book prepared by the convict-appellant). From the statements it appears that it is a fact that PW3 in her statements made to the Investigation Officer during investigation did not implicate the accused with the horrific incident which took place on 26.03.1973 and specifically stated that the Biharis and the Pakisan army committed the crime. The statements are as under:

> "২৪। সাক্ষী মোমেনা বেগম
> সূত্রঃ আন্তর্জাতিক অপরাধ ট্রাইব্যনাল, তদন্ত সংস্থার কমপ্লেইন্ট রেজিষ্টারের ক্রমিক নং-০১ তারিখ-২১/০৭/২০১০। আমার নাম মোমেনা বেগম। ১৯৭১ সনে মুক্তিযুদ্ধের সময় আমার বয়স ছিল ১২ বৎসর। তখন আমি ১০ নম্বর ফকিরবাড়ী স্কুলে ক্লাস থ্রিতে পড়তাম। আমরা ১ ভাই ৪ বোনের মধ্যে আমি সবার বড় ছিলাম। আমার মা গর্ভবতী ছিল। আমরা তখন কালাপানির ৫ নম্বর লাইনের ২১ নম্বর বাসায় ছিলাম। আমার আব্বা দর্জির কাজ করতেন। মিরপুরের একটা পরিত্যক্ত বাসায় আমার আব্বা উঠেন। মুক্তিযুদ্ধের সময়ের ঘটনা আমার মনে আছে। মার্চ মাসের ২৫ তারিখ যুদ্ধ লাগে। পাকিস্তানীরা যুদ্ধ লাগাইয়া দেয়। মুসলিমবাজার বধ্যভূমির কাছে আমার আব্বার দোকান ছিল। ২৬ তারিখ সন্ধ্যার দিকে আমার আব্বা হাফাইতে হাফাইতে দৌড়াইয়া বাড়ীতে আসিয়া আমাদের সবাইকে নিয়া ঘরে ঢুকে দরজা বন্ধ করিয়া দিয়া বলেন, আমাদের এখানেও যুদ্ধ লাইগ্যা গেছে"। আমি ও আমার ছোটবোন আমেনা চৌকির (খাট) নিচে ট্রাংকের পিছনে লুকাই। বাহির থেকে ১২/১৩ জন জোরে জোরে দরজায় লাথি মাইরা আমার আব্বাকে দরজা খুলতে বলতেছিল। ওরাই আমার আব্বাকে ধরার জন্য দৌড়াইতেছিল। দরজা না খুললে বোমা মারবে বলতেছিল। আব্বা দরজা খুলেনা দেইখ্যা বোমা মাইরা দেয়। আমার আম্মু একটা দা'হাতে নিয়া দরজা খুলে। ওরা ঘরে ঢুইক্যাই প্রথমেই আমার আম্মুর পেটে গুলি করে। গুলি মারার সাথে সাথে আমার আম্মা চিৎকার দিয়া পইরা যায়। <u>ওরা বিহারী ছিল। পাকিস্তানি আর্মি সহ ওরা ঢুকে। বিহারী সবাইরেই আমি চিনি।আক্তার গুন্ডা সাথে ছিল। সে আমাদের এলাকায় আগেই গুন্ডা হিসাবে পরিচিত ছিল। যুদ্ধ লাগলে দুয়ারী পাড়ার কাদের মোল্লার সাথে যোগ দিয়া মিপুর এলাকায় মানুষ মারা শুরু করে। তখন আক্তার গুন্ডার নিদের্শে তার সাথের বিহারীরা আমার মাকে জবাই করে। পরে আমার ছোটবোন (৩নম্বর) খোদেজাকে জবাই করে। পরে তাসলিমাকে জবাই করে (সবার ছোটবোন) আমার ছোটভাই বাবু বয়স ২ বৎসরকে মাটিতে আচরাইয়া মারে। এটা দেখে আমার ২ নম্বর বোন আমেনা চিক্কইর দেয়। ওরা আমার বোনকে চৌকির নিচে ট্রাংকের পিছন থেকে টাইন্যা বাইর কইরা নির্যাতন শুরু করে ঘরের মেঝেতে ফালাইয়া। আমি চিৎকার দেই নাই। ওরা আমারে দেখে নাই ট্রাংকের পিছনে থাকাতে। আমার বোনকে ওরা নির্যাতন করার সময় আমি দেখি। তাহা দেখিয়া আমার চিৎকার আসেও নাই। সন্ধ্যার আগে থেকে ওরা আমাদের ঘরে আক্রমণ শুরু করে। আমার বোনকে একজন একজন করে নির্যাতন করতে করতে তখন ঘরের ভিতর প্রায় অন্ধকার হয়ে যায়। ১২ জন পর্যন্ত আমি আমার বোনকে নির্যাতন করতে দেখি। আমার বোন প্রথম দিক দিয়া চিৎকার করতে ছিল। পরে ৭/৮ জন নির্যাতন করার পর তার চিৎকার থাইমা যায়</u>(emphasis supplied). আমি কখন জ্ঞান হারাইয়া ফেলি বলতে পারবনা। অনেক রাতে আমার জ্ঞান ফিরে। অন্ধকারে কিছুই দেখতে পাই না। তবে আমি আমার বাম পয়ে খুব ভ্যাথা অনুভব করতে লাগলাম। আস্তে আস্তে খুব কষ্টে খাটের নিচে দিয়ে বের হয়ে পায়ে হাত দিয়ে বুঝলাম রক্ত বাইর হইতেছে এবং কাটা। পরনে ফ্রগ ছিল। আমার আব্বাকেও আমার ছোটবোন আমেনাকে ডাকতে ছিলাম। কারো কোন সাড়া শব্দ নাই। আমি ঘর থেকে বাইর হইয়া কাটা পা নিয়া দৌড়াইয়া ১০ নম্বর সেনপাড়া পর্বতা ফকির বাড়ীতে আসি। তারা আমার পায়ের চিকিৎসা করায়। আমার তখন বিয়া পড়াইয়া রাখছিল, উঠাইয়া নিছিল না। জিঞ্জিরায় আমার স্বামীর বাড়ী ছিল। উনারা আমার সব কথা শুনে আমার শ্বশুর বাড়ীতে খবর দেয়। উনারা এসে ৩/৪ দিন পর আমাকে নিয়া যায়। ঐখানে ২/৩ মাস চিকিৎসা করা হয়। আমার বাপের আর কোন খোজ পাই নাই। মানুষের মুখে মুখে কাদের মোল্লা এবং আক্তার গুন্ডাসহ তার বাহিনীর কথা শুনেছিলাম। স্বাধীনের পর ১৬ই ডিসেম্বরের পর আত্নীয় স্বজন বাবাকে খোজার জন্য টেকনিক্যাল থেকে ৩ ঘন্টার জন্য পুলিশ স্লিপ দিলে আব্বাকে খোজার জন্য আসি। মা বোনের লাশ দেখতে আসি, লাশ পাই নাই। ঘরে রক্ত আর রক্ত। সারা এলাকায় লাশ আর লাশ ছড়াইয়া ছিটাইয়া পড়ে ছিল। শিয়াল কুকুরে লাশ খাচ্ছিল। বাড়ীর সব মালামাল লুট হয়ে যায়। তখনও মিরপুর স্বাধীন হয় নাই। তার ৬/৭ মাস পর মিরপুরে আসি। আমি পাগল হয়ে গিয়ে ছিলাম। ৩ বৎসর শিকল দিয়ে আমাকে বাইন্ধা রাখছিল। পরে সুস্থ্য হই। কাদের মোল্লা কর্তৃক সংগঠিত হত্যাকান্ড, ধর্ষনের ঘটনা সমূহ যারা দেখেছে তাদের কাছ থেকে জানতে পারি। আমরা বাঙ্গালিরা বেশি ছিলাম না। জল্লাদখানায় আসিয়া মাথার

খুলি, হাড় দেখি। জল্লাদখানায় যেসব নারীদের হত্যা, বাচ্চাদের জবাই করে হত্যা করা হত, তাদের চুড়ি, শাড়ী কাপড় পাওয়া যায় শুনেছি। শেখ সাহেব আমাকে ২ হাজার টাকা দেওয়ার চিঠি দেয়।"

But since attention of the PW was not drawn to her omissions in not stating the facts to the Investigation Officer as stated by her in Court implicating the accused with the occurrence as provided in clause (ii) of rule 53 of the Rules of Procedure, the statements made by her to the Investigation Officer cannot be taken into consideration, whatever may be the nature and degree of the omission(s) made by her.

From the records as well as from the impugned judgment, it further appears that on behalf of the accused application was filed before the Tribunal for calling for the records of Jallad Khana which is a part of the *Muktijuddha Zadughar*. The Tribunal kept the application with the record to be considered at the time of final disposal of the case. From the impugned judgment, it appears that the application was filed at the stage of summing up of the case and along with the application, photostat copies of the statements of three witness including PW3 made to *Zallad Khana* were filed. The defence claimed that they obtained those from *Zallad Khana*, Mirpur. It further appears from the judgment that the defence submitted that the statements made to *Zallad Khana* needs to be considered to test the credibility of the testimonies of the said witnesses relaing to the material facts, as "narration made therein earlier is inconsistent with what have been testified before the Tribunal" and that the Tribunal was authorized to make comparison of "sworn testimoney of witnesses with their earlier satement." The Tribunal refused to consider the photostat copies of the statements of the witnesses made to *Zallad Khana* including those of PW3 with the findings and reasoning as follows:

“391. First, the ‘photographed copy’ of alleged statement submitted before this Tribunal is not authenticated. Defence failed to satisfy how it obtained the same and when. Second, ‘photographed copy of statement’ does not form part of documents submitted by the defence under section 9(5) of the Act and thus the same cannot be taken into account. Third, the alleged statements were not made under solemn declaration and were not taken in course of any judicial proceedings. In the circumstances, the value attached to the said statements is, in our view, considerably less than direct sworn testimony before the Tribunal, the truth of which has been subjected to the test of cross-examination. Without going through the test said statement cannot be taken into consideration for determining inconsistencies of statement of witnesses with their earlier statement.

392. We are to consider whether a witness testified to a fact here at trial that the witness omitted to state, at a prior time, when it would have been reasonable and logical for the witness to have stated the fact. In determining whether it would have been reasonable and logical for the witness to have stated the omitted fact, we may consider whether the witness’s attention was called to the matter and whether the witness was specifically asked about it. The contents of a prior alleged inconsistent statement are not proof of what happened.

393. Besides, Inaccuracies or inconsistencies between the content of testimony made under solemn declaration to the Tribunal and their earlier statement made to any person, non-judicial body or organisation alone is not a ground for believing that the witnesses have given false testimony. Additionally, false testimony requires the necessary *mens rea* and not a mere wrongful statement. We do not find any indication that the witnesses with *mens rea* have deposed before the Tribunal by making exaggeration.

394. For the reasons above, the Tribunal refrains from taking the account made to a non-judicial body into consideration for the purpose of determining credibility of testimony of witnesses made before the tribunal.”

Section 6(2A) of the Act, 1973 has clearly mandated that the Tribunal shall be independent in the exercise of its judicial functions and shall ensure fair trial. Fair trial implies giving the accused chance to avail all the avenues provided in the law (here the Act, 1973). Section 11(1)(c) of the Act, 1973 and rule 40 of the Rules of Procedure has clearly authorised the Tribunal to require the production of document and other evidentiary material and *Zallad Khana* being a part of *Muktijuddha Zadughar* a document maintained with it just could not be ignored. Sub-section (1) of section 19 of the Act, 1973 has clearly provided that the 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 newspapers, periodicals and magazines, films and tape-recordings and other materials as may be tendered before it, which it deems to have probative value. Sub-rule (2) of rule 54 has also provided that pursuant to section 19(1) of the Act, the Tribunal may admit any document or its photo copies in evidence if such documents initially appear to have probative value. If the Tribunal had reservations for the photostat copies of the statements of the witnesses recorded in *Zallad Khana* or as to their authencity filed by the accused, it could very much call for the records of *Zallad Khana* as was prayed for by the accused by a special messenger, it being located a Mirpur, and it could be done during the course of a day even, to see whether the photostat copies filed by the defence tallied or resembled with the original kept with *Zallad Khan* and whether the statements contained in the photostat copies were correct or not, but instead the Tribunal kept the application with

the record for consideration at the time of final disposal and then finally refused to consider the same. From the observations made by the Tribunal as quoted hereinbefore, it does not appear that it considered any of the provisions as mentioned hereinberfore, particularly, sub-rule (2) of rule 54 which has clearly authorized the Tribunal to admit the photostat copy of a document. It further appears that the Tribunal failed to consider that the trial of a case ends with the pronouncement of judgment and no time frame has been provided either in the Act or in the Rules of Procedure to conclude the trial. Simply the application was filed at the stage of summing up could not be a ground to reject that application. The statements of Momena (PW3) made to the *Zallad Khana* have been included at page 1735 of Part V of the paper book prepared by the convict-appellant which are as follows:

“সাক্ষাৎকার প্রদানকারী	ঃ	মোমেনা বেগম
শিক্ষাগত যোগ্যতা	ঃ	পঞ্চম শ্রেণী
পেশা	ঃ	গৃহিনী
বয়স	ঃ	৪৬ বছর
শহীদের সাথে সম্পর্ক	ঃ	কন্যা
ফোন	ঃ	০১৭১৪২৬০৮৫

ঘটনার বিবরণঃ

১৯৭১ সালে মিপুরের কালাপনি এলাকায় বিহারিদের সাথে কিছু বাঙ্গালি পরিবারও বাস করত। ৭মার্চ-এর পর থেকে দেশের অবস্থা আশঙ্কাজনক দেখে কিছু কিছু বাঙ্গালি পরিবার এলাকা ছেড়ে নিরাপদ আশ্রয়ে চলে যায়। অনেকের অন্যত্র যাওয়ার অবস্থা ছিল না ফলে এলাকায় রয়ে গেলেন। যে কয়েকটি পরিবার অন্যত্রে যেতে পারলেন না তাদের মধ্যে একটি হযরত আলী লস্করের পরিবার।

হযরত আলী লস্কর ছিলেন একজন দর্জি/খলিফা। মিরপুরেই তার দোকান ছিল। সকলে যখন এলাকা ছেড়ে চলে যাচ্ছিলেন তখন হযরত আলী রস্করকেও তারা চলে যেতে বলেছিলেন। কিন্তু তার যাওয়ার জায়গা ছিল না। ২৫ মার্চ রাতে গণহত্যা শুরু হয়ে গেলে ২৬ মার্চ সকাল ৭টার দিকে বিহারিরা হযরত আলী লস্করের বাড়ী ঘিরে ফেলে এবং তাকে ধরে নিয়ে যায়। কিছুক্ষণ পরই তারা তার স্ত্রী, দুই কন্যা ও শিশু ছেলেকে ধরে নিয়ে যায় এবং সবাইকে এক সঙ্গে নির্মমভাবে হত্যা করে পাশের বাড়ির কুয়োতে সব লাশ ফেলে যায়। বিহারিরা তার দ্বিতীয় মেয়ে আমেনা বেগমকে ঘরের ভেতর সারা দিন আটকে রেখে ধর্ষণ করে। পরে তাকেও হত্যা করে সেই কুয়োতে ফেলে। হযরত আলীর বড় মেয়ে মোমেনা বেগম মাত্র দুই দিন আগে

<u>শ্বশুরবাড়িতে চলে যাওয়ায় সে-ই প্রাণে বেচে যায়। এখানে উল্লেখ্য যে, হযরত আলী স্ত্রী সে সময় অন্তঃসত্ত্বা ছিল(emphasis supplied)</u>।

কয়েক দিন পরই এ খবর হযরত আলীর বড় মেয়ে মোমেনা বেগম জানতে পারেন। কিন্তু মিরপুরের অবস্থা আশঙ্কাজনক বলে তিনি বাড়ি আসতে পারলেন না। দেশ স্বাধীন হওয়ার পর নিজ বাড়িতে এসে তিনি আর কিছুই অবশিষ্ট পেলেন না। ভগ্নহৃদয়ে ফিরে গেলেন শ্বশুরবাড়িতে।

স্বাধীনতার পর মোমেনা বেগম বঙ্গবন্ধু শেখ মুজিবের কাছ থেকে দুই হাজার টাকার চেক পেয়েছিলেন। এছাড়া তিনি আর তেমন কোন সাহায্য সহযোগীতা পাননি।

বর্তমানে মোমেনা বেগমের শারীরিক অবস্তা ভাল নয়। নানা রকম রোগ ব্যাধিতে তিনি আক্রান্ত টাকার অভাবে তার ভাল চিকিৎসা পর্যন্ত করাতে পারছেন না তার সন্তানরা। সাক্ষৎকার গ্রহণের সময় তিনি হঠাৎ করেই অজ্ঞান হয়ে পড়েন। তার ছেলেমেয়েদের অর্থনৈতিক অবস্থা তেমন ভালো না। তারা অন্যের দোকানে দিনমজুর এর কাজ করে কোন রকমে জীবিকা নির্বাহ্ করেন।”

The statements made to the Zallad Khana by PW3 are quite in conformity with the statements made by her to the Investigation Officer. From the statements made to the Zallad Khana, it further appears that Momena (PW3) had gone to her father’s-in-law house (Hazrat Ali’s house) two days before of the occurrence for which she could survive. She did not implicate the accused with the killing of her father, Hazart Ali, her mother, sisters and brother and also the act of violating her sister, Amena in any manner whatsoever. It may be stated that in the charge, no allegation of commission of rape upon Amena by the accused was brought.

In the charge, it was specifically alleged that during the same transaction of the attack 12 accomplices of the accused committed the gang rape upon Amena aged about 11 years. From the testimony of PW3, it also appears that no allegation of violating Amena by the accused has been made. But fact remains that the attention of Momena was not drawn to her statements made to *Zallad Khana* as well during her cross examination. Momena was examined in Court and she having made positive assertions that she saw the horrific

occurrence which took place on 26.03.1971, her statements made to *Zallad Khana* that two days before the occurrence, she had gone to her father's-in-law house and thus she could be saved cannot be accepted in its intrinsic value without drawing her attention to the said statements although photostat copy of the statement of *Zallad Khana* was admissible in evidence in view of the provisions of rule 54(2).

In the above backdrop, the order of conviction and sentence passed by the Tribunal against the convict-appellant, Abdul Quader Molla in respect of charge No.6 is maintained.

Objection as to procedural flaws:

Mr. Razzaq pointed out some procedural flaws in submitting report by the Investigation Officer, such as, he submitted his further report to the Chief Prosecutor by examining more persons as additional witnesses by way of submitting supplementary case dairy, even after taking cognizance of the crimes by the Tribunal under the Act and framing of charge by it to the prejudice of the accused. Although from the records, it appears that it is a fact that the Investigation Officer continued with his investigation even after submission of his report to the Chief Prosecutor and in the process, examined some more persons and recorded their statements and submitted his further report to the Chief Prosecutor as stated hereinbefore and on the basis of such report Additional witnesses were examined in the case, in view of the provisions of section 9(4) of the Act, 1973. I find no illegality to take recourse to such procedure by the Investigation Officer. Further the accused had the full

opprotunity to cross examine the additional witnesses. Consequently, I find no merit in point made by Mr. Razzaq on procedural flaws.

Conclusion:

Criminal Appeal No.24 of 2013 is found maintainable, but the same is dismissed on merit. Criminal Appeal No.25 of 2013 is allowed in part. The order of conviction and sentence passed by the Tribunal against the convict-appellant, Abdul Quader Molla in respect of the charges listed in charge Nos.1, 2, 3 and 5 are set aside and he is acquitted of those charges. The order of acquittal passed by the Tribunal in respect of charge No.4 is maintained. The order of conviction and sentence passed against the appellant in respect of charge No.6 is also maintained.

J.

Syed Mahmud Hossain,J.: I have gone through the judgments to be delivered by my learned brothers, Surendra Kumar Sinha,J, my learned brother, Md. Abdul Wahhab Miah,J. and my learned brother, A.H.M Shamsuddin Choudhury,J. I agree with the judgment of my learned brother Surendra Kumar Sinha,J.

J.

A.H.M. Shamsuddin Choudhury J.:

I have had the advantage of going through the Judgment in draft of my learned brother Surendra Kumar Sinha J. While I wholly agree and concur with his Judgment, I am nevertheless, inclined to write an independent Judgment in following terms:

The two above noted appeals have, respectively been preferred by the Chief Prosecutor, International Crimes Tribunal-2 (henceforth the Tribunal) and one Abdul Quader Molla, invoking Section 21 of the International Crimes (Tribunal) Act 1973, as amended.

Since both the appeals concern the conviction and sentence passed against the same individual by the same Tribunal under no different legislative regime, and are intrinsically dependent on one another, I take up both the appeals for adjudication together, taking up, however, appeal No. 25 of 2013 first for the reason that the question of legality of conviction has to be resolved first before I can proceed to determine the virtues of the Chief Prosecutor's appeal (Criminal Appeal No. 24 of 2013) against the acquittal in respect to one single charge and the sentence the Tribunal concerned had handed down.

The appeals awaiting my determination emanate from the most dreadful part of our history which goes back to our Glorious War of Liberation against the Pakistani occupying forces that remained pervasive for nine blood stained months during which three (3) million Bengali people had to shed their sacred blood and three(3) hundred thousand women were subjected to ruthless and, often, incessant, carnal atrocities, exemplifying one of the worst kind of frenzied events of utter human miseries in the rememberable history of mankind.

To understand the contextuality of the trial following which the Appellant of Appeal No. 25 was convicted, it is indispensible to review briefly the historical anticedent, which preceeded our Triumphant War of Liberation, and the precise account of atrocities that pervaded during the War period and hence the same are figured below:

Prelude: History From Palasy to Liberation War

With the humiliating defeat of Nawab Sirajuddoula in the Mango Grove of Palasy, as an outcome of reprehensible treachery by Mir Zafor Ali Khan, Raj Bollov, Roy Durlov, Jogot Shet, Umi Chand, and Ghosheti Begum, on 23 June 1757, the sun of independent Bengal eclipsed. Subsequent attempts by Mir Kashim Ali Khan and then by the Sepoys led by the last Moghul Emperor Bahadur Shah Zafor, all ended in fiasco.

After the Sepoys were over powered in 1857 the British Monarch took over from East India Company, whereby India went under direct subjugation of the British Raj. Thier rule, however , was never tranquil anyway, particularly in the eastern part of the empire.

There were numerous attempts to weed out British Raj from Bengal, by such dauntless patriots as Titu Mir, Shurjo Sen, Bipin Bihari Pal, Khudiram, Nolini Roy, Pritilota Wadeddar, Captain Shah Newaz, Netaji Shubash Chondra Bose, Purnando Dostidar, Ashfaqulla Khan,Arobindo Ghosh, Bipin Ganguly, Bagha Jatin, Badsha Khan and many others through arms rebelion throughout the British period, abortively though.

New era in the history of India took shape with the commencement of world war II in 1939. In the wake of armed foray from Japan in the east and with the rise of political liberalism in the United Kingdom itself, which ignited demand for decolonization and the the Labour Party's rise to prominence, the imperial government in London decided to quit India, its first colony.

Two major political parties namely Indian Congress and Muslim League were already occupying the political domain in India at that time .

While Congress was campaigning for one united India, Muslim League, after some hickups, finally formulated what was known as two nation theory, contending that it was not possible for the Muslims and the Hindus to live in harmony in India and that is why dividing India on the basis of religion was imperative. Mr. Mohammad Ali Jinnah was the postulant of the 'two nations' theory.

Eminent Muslim personalities within Congress like Maulana Abul Kalam Azad, a Muslim cleric with immense endowment, who was elected President of Indian Congress in 1939, resolutely opposed the idea of divided India on sectarian basis.

He said, "I have considered from every possible point of view the scheme of Pakistan as formulated by Muslim League. As an Indian I have examined its implication for the future of India as a whole. As a Muslim I have exmamined its likely effects upon the fortunes of Muslims of India.

Considering the scheme in all its aspects I have come to the conclusion that it is harmful not only for India as a whole but for Muslims in particular. And in fact it creates more problems than it solves. I must confess that the very term Pakistan goes against my grain. It suggests that some portion of the world are pure while others are impure. Such a division of territories into pure and impure is un-Islamic and is more in keeping with orthodox Brahmanism which divides men and countries into holy and unholy-a division which is a repudiation of the very spirit of Islam. Islam recognizes no such division and the prophet says, 'God has made whole world a mosque for me'.

Further it seems that the scheme of Pakistan is a symbol of defeatism and has been built upon the analogy of the Jewish demand for a national home. As a Muslim, I for one, am not prepared for a moment to give up my right to treat the whole of India as my domain and to share in the shapping of its political and economic life. To me it seems a sure sign of cowardice to give up what is my patrimony and conent myself with a mere fragment of it. Mr. Jinnah replied that this is no way affected their separate nationality. Two nation according to Mr. Jinnah confront one another in every hamlet, village and town and he, therefore, desires that they should be separated in two states." (India Wins Freedom by Maulana Abul Kalam Azad, The Complete Version, Page 150).

Pandit Jawaharlal Nehru expressed, "Mr. Jinnah's demand was based on a new theory he had recently propounded-that Indian consisted of two nations, Hindu and Muslim. Why only two, I do not know, for if nationality is based on religion, then there were many nations in India. Of two brothers one may be a Hindu and another may be a Muslim-they would belong to two different nations. These two nations existed in varying proportions in most of the villages of India. They were nation which had no boundaries; they overlapped. A Bengalee Muslim and a Bengalee Hindu living together speaking the same language and having much the same tradition and customs, belong to different nations. All these was difficult to grasp; it seemed a reversion to some medieval theory. "(Nehru Discovery of India-2004 edition, page 431/42).

"From Mr. Jinnah's two-nation theory developed the conception of Pakistan, or splitting up of India. That, of course, did not solve the problem of the 'two nations' for they were all over the place. But that gave birth to a metaphysical conception. (Discovery of India) (Supra Page 432)."

Mr. Orest Martyshin, a Senior Registrar at the Institute of State and Law, USSR Academy of Sciences, wrote way back to 1940 that Muslim League had for the first time advanced a slogan of a "Muslim nation" in India. Thanks to the skilful propaganda of the League, which took advantage of the fact that the INC had almost completely stayed away from politics during the war, of connivance and direct incitement by the colonial authorities, the "two-nation theory" had, by the end of the war, gained currency among the Muslim and official British circles so that they began to regard the problem of creating Pakistan just as important as the granting of national independence to India. (JAWAHARLAL NEHRU, AND HIS POLITICAL VIEWS. Page-39.)

Surprisingly enough, as Maulana Azad reveals, Sardar Bollob Bhai Patel, who in Maulana's view was one of the staunch supporters of partition of India, was convinced that the new state of Pakistan was not viable and could not last, and that he thought that the acceptance of Pakistan would teach the Muslim League a bitter lesson, Pakistan would collapse in a short time and the provinces which had seceded from India would have to face untold difficulty and hardship.(India Wins Freedom Page -225)

LT General Kamal Motin Uddin, who was a Pakistani soilder, writes, "Pakistan has been described by many western and Indian writers as a geographical non-density and country disfigured of birth.

Maulana Abul Kalam Azad, the well known Muslim nationalist leader and President of all India Congress, predicted that Pakistan in its present shape would not last more than a quarter of a century. His prediction came true". (Tragedy of Error – East Pakistan Crisis 1968-71)

While the Muslim League leaders in Bengal went ahead hand in gloves with Mohammed Ali Jinnah to an extent and for a while, it is conceivable from their vision and

action that they were not thinking of one united Pakistan but of more than one independent homelands for the Muslims in India. This is quite obvious from the fact that Sher E Bangla A.K Fazlul Haque scripted the word “states” (in plural) rather than “state” (in singular) in Lahore Resolution in 1940.

But this theory of having more than one independent homeland for the Muslims in India was torpadoed by the Muslim League Leaders in the west and northern part of India, headed by Mr. Mohammed Ali Jinnah. It is also clear from the actions of the Muslim League Leaders in Bengal that it was not beyond their contemplation that the Muslims of Bengal were not only geographically separated from the Muslim in north west India, but they constituted an entirely different ethnic group, divided not only by language but also by culture, tradition, heritage and history. They are of totally distinct anthroplogical blend. Yet as Maulana Azad, who grew up in Bengal, opined that “Mr. Jinnah did not seem to had realised that geography was against him.” (India Wines Freedom, Bombay Edition – 1959 Page 227)

The percipient arch leaders of Bengli Muslims of that time namely Hussain Shahid Suhrawardy, AK Fazlul Hoque, Abul Hashem had no difficulty in visualizing that Muslims in Bengal would not be treated with respect dignity and equality. Sign of ignominious treatment became obvious even before the partition when Shere –E- Bangla A .K. Fazlul Haque who moved the Lahore resolution, was expelled from Muslim League and Shahid Suhrawardy, who singularly contributed to make possible Muslim League’s victory in Bengal in 1946 election, was pushed to a corner in preference to Undu Speaking man of Kashmiri descent, Khawaja Nazimuddin, even to the extent of being declared a persona non-grata in Pakistan.

Suhrawardy along with another Muslim League leader Abul Hashem in alliance with Sharat Chandra Bose, a younger brother of Netaji Subash Chandra Bose, a perennial fighter against communalism, put an alternative proposal for the creation of an united Independent Bengal.

Bangabondhu Sheikh Mujibur Rahman, who was a promising student leader at that time and was closely associated with H.S Suhrawardy, has elaborated this fact as follows, " At this time Mr. Hashim and Mr. Suharawardy on behalf of the Muslim League and Sharat Bose and Kiron Shankar Roy on behalf of the Congress party, met to discuss the situation.

The subject of their discussion was whether an alternative could be found to the splitting up of Bengal. Mr. Suhrawardy went to Delhi to meet Mr. Jinnah and with his permission began negotiation to find a way out.

The Bengal Congress and Muslim league Leaders came up with a Formula.

The Bengal Muslim League Working Committee accepted the formula unanimously. As far as I remember, it stated clearly that Bengal would be an independent and sovereign nation. The people would elect a Constituent Assembly. That Assembly would decide whether Bengal would join either Hindustan or Pakistan or stay independent.

If the majority of the assembly decided in favour of joining Pakistan, then Bengal would become part of that nation.

However, if most people wanted to be part of India, then Bengal would be allowed to join India, and if the people wanted independence they could have that option too. Mr. Suharawardy and Mr. Sharat Bose took this formula to Delhi where they intended to meet Jinna and Gandhi. Mr. Bose has left a written testimony to the effect that Jinnah had told him the Muslim League would have no objections if the Congress Party was willing to accept this formula. As for the British, they had let it be known that they would accept no new formula if that had not been agreed upon by both the Congress and the League. Mr Bose felt insulted when the leaders of the Congress refused him an audience and returned home. Apparently Sarder Vallabhai Patel had told him, "Mr. Bose, stop acting crazy; we want Calcutta." Gandhi and Nehru for their part had said nothing but had referred Mr. Bose to Patel. (The Unfinished Memories: by Sheikh Mujibur Rahman 1st edition 2012 Page-77)

Desh Bandhu Chitto Ranjon Das, as one time Presedent of Indian National Congress, a top to toe Bengali, who, like Netaji Shubash Chandra Bose attained metaphysical immortality for secular, non communal outlooks, proclaimed as early as 1917, that a Bengali, be he a Muslim, or a Hindu or a Christian, he is nevertheless a Bengali. (Bangladesher Mukti Judho, Prasangik Dalil Patro , Edited and Compiled by Rabindhranat Trebedi: Foreword).

Pakistan however came into being by frustrating the ideals nurtured by Sere-e-Bengla , Shahid Suhrawardi, Abul Hashim , Sharat Bose, and Desbadhu etc. as an artificial entity, based purely on theological consideration, to share the concept of theological statehood with two other countries in the World: Israel and Nepal.

It did not take too long for the Benagli population of the then East Pakistan to recognize the futility and the hoax of the so called two nation theory.

The first sign of the betrayal surfaced when Mr.Mohammad Ali Jinnah as the Governor General of Pakistan in addressing the convocation of the Dhaka University on the 24th March of 1948, bumptiously proclaimed that Urdu shall be the state language of Pakistan. Dr P C Chakroborti, the Vice Chancellor of the day, who sat next to Mr. Jinnah, expressed that Jinnah's feeble minded utterances provoked on the spot commotion from the students present, who instantaneously questioned the unity of Pakistan and challenged linguistic invasion by West Pakistan. This event was preceded by a resolution adopted in the East Bengal Legislative Assembly. West Pakistani attempt to sub due our linguo – cultural freedom remained at the bay for the time being but, at the cost of the loss of a few lives on Dhaka street on 21st February 1952.

It became obvious through the loss of lives and language movement that the Bengali people of the then East Bengal aspires to have political and economical independnce instead of being content having been a part of Pakistan, based on Two-Nation theory. The precedent of unconstitutional political culture of Pakistan was first set by the dismissal of Khwaja Nazim-uddin on 17th April 1953 while he was the sitting Prime Ministr commanding the majority in the Constituent Assembly. The United Front's win over Muslim League at

the 1954 general election and the massage of rejection to Muslim League, could not stop West Pakistani rulers taking undemocratic measures against Bengalis with the leading and active role of Maulan Bhashani, Hussain Shaid Suhrawardy, A K Fazlul Haque and Sheikh Mujib etc. Although the 1954 election gave the country its first constitution in 1956, the unconstitutional trend continued further with the blow of forcefull resignation of the Prime Minister Hussein Shaheed Suharwardy in October 1957. These attempts were finally completed by the coupe of General Ayub on 7TH October 1958 who thereafter suspended the Constitution, dismissed the Central and Provincial Governments, dissolved the Assemblies, banned all political parties and postponed election indefinitely. Lt. Gen (Retd) Kamal Matin Uddin,referring to Ayub Khan Stated, “To him unfettered democracy could prove dangerous because the people were uneducated and politicians unscrupulous.” (Ref page 56 & 57 Tragedy of Errors, East Pakistan Crisis 1968-1971 Lt Gen (Retd) Kamal Matin Uddin)

Leading Bengali politicians like Maulana Bhashani, Sheikh Mujibur Rahman and many other leaderes along with the general mass of the then East Pakistan reacted with anger through demonstration. Various political and cultural activists rejected Ayub’s basic democracy system in favour of a parliamentary system of government. Bengali Leaders, political and cultural activists throughout this period were tortured, rounded up. That, however, sparked a new dimension in our political horizon.

As a part of their programme to throttle Bengali culture, the Pakistani rulers put a ban on Tagore’s songs and Tagore’s literature. Abortive attempts were made to alienate us from our pride, poet laureate Rabindranath Tagore, while our rebel poet, Kazi Nazrul Islam, a life long crusader against communalism and fundamentalism and, an icon of profound secular idea, was masqueraded as a poet of parochial religious conduit: Many of his poems were distortedly reproduced to display him as a poet of communal disposition -- all with the only object of stripping ourselves of Bengalism, to compel us to be content to accept Pakistani over lordship, swallow their cultural thrust.

The struggle that began in the decades of 40s and 50s extended to that of 60s with greater vigor, and again it was none other than Sheikh Mujibur Rahman, upon whom the

responsibility to lead the people fell, who eventually Fathered our Nationhood, was, obviously the torch bearer.

"As the Bengalis became more and more convinced of their 'man – power' and the power of the majority, they began to assert their opinion in politics, though unpalatable to Ayub and his lackeys, they wanted nothing short of Equality, Liberty and Freedom. Agitation thus started. Repression on opposition continued and there appeared in 1966, Sheikh Mujibur Rahman, a young, energetic and brave man with lots of political experience and records of political imprisonments, who came forward with a new kind of leadership for the Bengalis as the head of the 'Awami League', one of the fractions of the United Front party in 1954, and soon his name began shining almost alone, a star, through the length and breadth of East Begnal for in Sheikh Mujib the Bengalis found a leader of their heart with firm conviction for people's liberation, confident in the strength of the people, who launched a concrete programme of salvation of the oppressed people, set out in his 'Six-Points of Regional Autonomy'. On this very issue Mujib was arrested in March, 1966, which only fanned the fuel; anti-Ayub sentiment spread all over East Bengal and by an large all political parties irrespective of their caste, creed and ideology came out in support of Sheikh Mujib's line of thinking. (Ref page 55 & 56 Emergence of Bangladesh by Barrister Md Omar Faruque).

"It is a revolution which discredited Ayub and his shaky regime could not quell. Thousands were arrested and many gems of Bengal were killed by the end of December 1968. But all in vain, people no longer were afraid of bullets which eventually brought back sense to "Ayub who ultimately withdrew the infamous and doleful Agratala Conspiracy case in March, 1969". (Ref page 57 & 61 Emergence of Bangladesh by Barrister Md Omar Faruque).

People of East Pakistan found in Six Points programmes an inviolable charter of emancipation, political, economic and cultural and resurrection of their Bengali identity.

Pakistan's authoritarian rulers tried to ditch it down. Sheikh Mujib along with some of his patriotic followers were rounded up for the trial in a case titled

Agartala Conspiracy Case, which could not proceed too far as an ocean of crowd succeeded to procure Sheikh Mujib's liberty, compelling all those who were involved with the trial to flee through the stage door: the curtain of the process dropped abruptly. Mujib was Coronated with the title Bangabandhu, was proclaimed as the symbol of hope, aspiration and glorification of Bengali people, and was taken as the Messiah for their manumission.

The fact that the rulers in West Pakistan looked at the people of East Bengal with contempt and ignominy kept emerging with the passage of time. Their refusal to proportionately induct Bengali people in the army, civil service or even in the sport, refusal to promote Bengali defence officers to superior ranks on the plea that they were incompetent and unworthy, reflected their affrontive mind set.

Branding Sher-e-Bangla as a traitor by Golam Mohammed portrays yet another example. The most glaring example can, however, be deduced from the comments, Field Marshal Ayub Khan, who ruled Pakistan as an autocrat for over a decade, put in black and white, which are as follows:

"East Bengalis, who constitute the bulk of population, probably belong to the very original Indian races. It would be no exaggeration to say that up to the creation of Pakistan, they had not known any real freedom or sovereignty. They have been in turn ruled either by the casts Hindus, Moghuls, Pathans or the British. In addition, they have been and still are under considerable Hindu cultural and linguistic influence. As such they have all the inhibitions of down trodden races and have not yet found it possible to adjust psychologically to the requirements of the new born freedom. Their popular complexes, exclusiveness, suspicion and a sort of defensive aggressiveness probably emerge from this historical background" (Friends Not Masters by Mohammad Ayub Khan, Page -187, First Bangladesh Edition . 2008).

"The Army Selection Board would visit East Pakistan every six months. In the beginning for the first one or two terms the Board found four or five boys who could be accepted for

the Army Military College. But they were mainly boys who had come from refugee families. When this material was exhausted they came to selection from amongst the local boys. The Selection Board would then be lucky to get even one or two borderline cases. I told an East Pakistan friend once, 'You have such sweet music. I wish to God you were half as sweet yourself'. Many used to be irritated by what they regarded as the general inefficiency of East Pakistan and never tried to make a secret of their unwillingness to serve there. (Friends Not Masters by Mohammad Ayub Khan, Page -26,27. First Bangladesh Edition . 2008).

Ayub used to describe the Bengali people as "Black and dwarf".

Lt Gen. Kamal Matinuddin of Pakistan army has been candid enough to assert that Field Marshal Ayub Khan, as President of Pakistan, also could not rise above parochial issues when he said 'it is quite clear to me that with two national languages we cannot become one nation." (page 43 Tragedy of Errors).

This Pakistani General has also been quite blunt to state, "None of the demographic dissimilarities would have altered the loyalty of the Bengalis towards Pakistan if they had not been treated as inferiors or if they had not been deprived of their legitimate rights" (Tragedy of Errors Supra, Page – 45).

HOLOCAUST DURING THE WAR OF LIBERATION

Bengali people's rebellion climaxed in March 71, the period when the whole of East Pakistan remained under the virtual command of Bangabandhu, who on 7th March, in addressing a mammoth gathering , proclaimed the struggle this time was for total independence and asked the people to resist Pak army with whatever weapon they had.

Bangabandhu formally declared independence at the early hours of 26th March 1971, which coincided with the beginning of fiendiest genocide unleashed by Pak army under the programme named, "operation search light". Hell was let loose. Bangabandhu was arrested. According to Mr. Simon Dring, an internationally acclaimed journalist of UK's prestigious Daily Telegraph, who superstitiously transmitted report from Dhaka, stated that several thousand Bengalis were massacred during first twenty four hours of ruthless and barbarous operation (Mr. Shariar Kabir, an acclaimed journalist, put the figure at a much

higher ladder) undertaken by Pakistan army (Daily Telegraph 30th March 1971), full text of which is reproduced below.

His report is reproduced below:

GENOCIDE IN BANGLADESH SOME EYE-WITNESS ACCOUNTS "HOW DACCA PAID FOR A "UNITED' PAKISTAN"

Report by Simon Dring.

Sheikh Mujibur Rahman , East Pakistan's popular political leader was seen being taken away by the army, and nearly all the top members of his Awami League Party have also been arrested.

Leading political activities have been arrested, others are dead, and the offices of two papers which supported Mujibur's movement have been destroyed.

But the first target as the tanks rolled into Dacca on the night of Thursday, March 25, seems to have been the students.

An estimated three battalions of troops were used in the attack on Dacca-one of armoured, 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, tree stumps, furniture, concrete piping-became early casualties.

Sheikh Mujibur was warned by telephone that something was happening, but he refused to leave his house. "If I go into hiding they will burn the whole of Dacca to find me," he told an aide who escaped arrest.

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 sped to Dacca University shortly after midnight. Troops took over the British Council Library and used it as a fire base from which to shell early dormitory areas.

Caught completely by surprise, some 200 students were killed in Iqbal Hall, headquarters of the militantly anti-government student's union, I was told. Two days later, bodies were still smoldering in burnt-out rooms, others were scattered outside, more floated in a nearby lake, an art student lay sprawled across his easel.

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

At another hall, reportedly, soldiers buried the dead in a hastily dug mass grave which was then bull-dozed over by tanks. People living near the university were caught in the fire too, and 200 yards of shanty houses running alongside a railway line were destroyed.

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

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

Mujib's arrest

As this was going on, other units had surrounded the Sheikh's house. When contacted shortly before I a.m. he said that he was expected an attack any minute and had sent everyone except his servants and bodyguard away to safety.

A neighbuor said that at 1-10 a.m., one tank, an armoured car, and trucks loaded with troops drove down the street firing over the house. "Sheikh you should come down", an officer called out in English as they stopped outside. Mujibur stepped out onto his balcony and said, "Yes, I am ready, but there is no need to fire. All you need to have done is call me on the telephone and I would have come."

The officer then walked into the yard and told Mujibur: “You are arrested”.

He was taken away along with three servants, an aide and his bodyguard, who was badly beaten up when he started to insult the officer. One man was killed- a night watchman hiding behind the fence of the house next door.

As the Sheikh was driven off- presumably to army headquarters-the soldiers moved into the house, took away all documents, smashed everything in sight locked the garden gate, shot down the green, red and yellow “Bangladesh” flag and drove away.

By 2 O’clock Friday

Fires were burring all over the city, ad troops and occupied the university and surrounding areas. There was still heavy shelling in some areas, but the fighting was beginning to slacken noticeably. Opposite the International 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 or two or three tanks rumbling by mopping up.

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

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

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

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

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

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

In the Hindu area of the old town, the soldiers reportedly made the people come out of their houses and shot them in-groups. This area too was eventually razed.

The troops stayed on in force in the old city until about 11 p.m. on the night of Friday, March 26, driving around with local Bengali informers. The soldiers would fire a flare and the informer would point out the houses of Awami League supporters. The house would then be destroyed-either with direct fire from tanks or recoilless rifles or with a can of gasoline, witness said.

Meanwhile troops of the East Bengal Regiment in the suburbs started moving out towards the industrial areas about 10 miles from the Sheikh's centers of support. Firing continued in these areas until early Sunday morning, but the main part of the operation in the city was completed by Friday night-almost exactly 24 hours after it began.

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.

Curfew lifted

As quickly as they had appeared, the troops disappeared from the streets. On Saturday morning the radio announced that the curfew would be lifted from 7 a.m. until 4 p.m. It then repeated the Martial Law Regulations banning all political activity, announced press censorship and ordering all government employees to report back to work. All privately owned weapons were ordered to be turned into the authorities.

Magically, the city returned to life, and panic set in. by 10 a.m. with palls of black smoke still hanging over large areas of the old town and out in the distance toward the industrial areas, the streets were packed with people leaving town. By car and in rickshaws, but mostly on foot, carrying their possessions, with them, the people of Dacca were fleeing. By noon the refugees numbered in the tens of thousands.

"Please give me lift, I am old man"- "In the name of Allah, help me"- "Take my children with you". Silent and unsmiling they passed and saw what the army has done. They looked the other way and kept on walking. Down near one of the markets a shot was heard. Within seconds, 2,000 people were running; but it had only been someone going to join the lines already forming to turn in weapons.

Government offices remained almost empty. Most employees were leaving for their villages ignoring the call to go back to work. Those who were not fleeing wandered aimlessly around, the smoking debris, lifting blackened and twisted sheets of corrugated iron (used in most shanty areas for roofing) to savage from the ashes what they could.

Nearly every other car was either taking people out into the countryside or flying a red cross and conveying dead and wounded to the hospitals.

In the middle of it all occasional convoys of troops would appear, the soldiers peering-equally unsmiling-down the muzzles of their guns at the silent crowds. On Friday night as they pulled back to their barracks they shouted "Narai Takbir", an old Persian war cry meaning "We have won the war". On Saturday when they spoke it was to shout "Pakistan Zindabad-Long live Pakistan."

Fast-selling Flags

Most people took the hint. Before the curfew was reimposed the two hottest-selling items on the market were gasoline and the national flag of Pakistan. As if to protect their property in their absence, the last thing a family would do before they locked up their house would be to raise the flag.

At 4 O'clock Saturday afternoon, the streets emptied again. The troops reappeared and silence fell once more over Dacca. But firing broke out again almost immediately. "Anybody out after four will be shot", the radio had announced earlier in the day.

A small boy running across the street outside the International Hotel two minutes after the curfew fell was stopped, slapped four times in the face by an officer and taken away in a jeep.

The night watchman at the Dacca Club, a bar left over from the colonial days, was shot when he went to shut the gate of the club. A group of Hindu Pakistanis living around a temple in the middle of the race course were all killed apparently because they were out in the open.

Refugees who came back into the city, after finding that roads leading out of it were blocked by army, told how many had been killed as they tried to walk across country to avoid the troops.

Beyond these roadblocks was more or less no-man's land, where the clearing operations were still going on. What is happening out there now is anybody's guess, except the army's.

Many people took to the river to escape the crowds on the roads, but they ran the risk of being stranded waiting for a boat when curfew fell. Where one such group was sitting on Sunday afternoon there were only bloodstains the next morning.

Hardly anywhere was there evidence of organized resistance. Even the West Pakistani officer scoffed at the idea of anybody putting a fight.

"These bugger men", said one Punjabi lieutenant "could not kill us if they tried."

"Things are much better now", said another officer. "nobody can speak out or come out. If they do we will kill them-they have spoken enough-they are traitors, and we are not. We are fighting in the name of God and a united Pakistan." (Despatch by Simon Dring of DailY Telegraph, London, in Washington post, March 30th 1971).

Peter Hazelhurst of The Times of London reported that Mr. Bhutto thanked God as "the tanks and guns rolled into Bengal" (The Times 29th March 1971).

Anthony Mascarenhas, the West Pakistan Journalist who was officially attached to the Pakistan Army's 9th Division and who later fled to Europe and published a detailed account of the army atrocities, stataes that he was later told by three separate army officers that the army had lists of people to be liquidated. (Reference Bangladesher Mukti Judho, Prashonggik Dalilpotra 1905-1971) First Part. Edited and Completed by by Robindranath Trivedi 1st Edition. Published by Hakkani Publishers. Page-674).

On hearing about the atrocities in Dhaka Mr. Justice Abu Sayeed Chowdury who was in Europe on an official tour, traveled to London from Geneva on 26th March 1971. There he met with Mr. Ian Sutherland at the Foreign Ministry, who was then the head of South East Asia Wing at the British Foreign and Commonwealth Office. Justice Abu Sayeed Chowdhury inquired about the conflagration in Dhaka. During that time, Mr. Sutherland received a telex message from the British High Commission in Dhaka. In his Book, Probashey Muktijuddher Dingali (The Days of Liberation War in Exile), Mr. Justice Abu Syed Chowdhury, wrote in Bengali, the English version of which would read like this; "After reading the telex (Mr. Sutherland) uttered that on the night of 25th March British Deputy High Commission in Dhaka passed through a horrific time. The following day, when he tried to enter the city area of Dhaka from Gulshun, he saw scores of dead bodies all over the Streets. One of his First Secretaries could manage to go to the Dhaka University for a while when curfew was relaxed in the evening. He found blood was spilling through the stairs at Iqbal Hall. He came to know that the dead bodies of many students were thrown into a mass grave dug in front of Jaganath Hall. Those students who were compelled to collect those dead bodies were shot to death and thrown into the same grave" (Ref: probashey Muktijuddher Dingali(The days of liberation was in exile), by Abu sayeed Chowdhury).

General Niazi who succeeded, Tikka Khan as the head of Pak army in occupied Bangladesh himself equated the frenzied horror that was unleashed against the Bengali people with the barbarism of Chengish Halaku and General Dyer, in following vocabulary;

"On the night between 25/26 March 1971, General Tikka struck. Peaceful night was turned into a time of wailing, crying, and burning. General Tikka let loose everything at his disposal as if raiding an enemy, not dealing with his own misguided and misled people. The military action was a display of strak cruelty, more merciless than the massacres at Bukhara and Beghdad by Changez Khan and Halaku Khan, or at Jallianwala Bagh by the British General Dyer.

General Tikka, instead of carrying out the tasks given to him, i.e., to disarm armed Bengali units and persons and to take into custody the Bengali leaders, resorted to the killing of civilians and a scorched-earth policy. His orders to his troops were: 'I want the land and not the people.' These orders were carried out in letter and spirit by Major-General Farman and Brigadier (later Lt. Gen.) Jahanzeb Arbab in Dhaka. Major-General Rao Farman had written in his table diary, 'Green land of East Pakistan will be painted red.' It was painted red by Bengali blood.

On the night between 25/26 March 1971 Yahya sneaked out of Dhaka before the start of military action. He told Tikka before leaving Dhaka, 'Sort them out.' Bhutto had remained behind to see what Tikka did. Bhutto saw Dhaka burning and heard the cries of the people, the crackle of burning material, the roar of tanks, the boom of guns and rockets, and the rattle of machine guns. In the morning, it is alleged, Bhutto patted Tikka. Farman, and Arbab on the back, congratulated them for doing exactly what was needed, and assured them that their future was secured. Bhutto kept his promise. Tikka secured the coveted post of COAS. Farman was made Chairman, Fauji Foundation, and Brigadier Arbab, despite the corruption charge proved against him, was promoted as Major-General and later Lieutenant-General. On reaching Karachi on 26 March, he told the people, 'Thank God Pakistan has been saved.' (Betrayal of East Pakistan, by General Tikka Khan. Page-45-46).

World media reported the events with unprecedented concern. The New Statesment on the 17th April 1971 wrotes, " if blood is the price of people's right to independance, Bangladesh has over paid."

Even Justice Hamoodur Rahman, the then Chief Justice of Pakistan, who headed the War Inquiry Commission, in his unpublished report , which report is generally deemed to have

been biased in Pakistan's favour, describing the attrocities as 'harrowing' , recorded the following observations;

'According to the allegations generally made, the excesses committed by the Pakistani army fall into the following categories:

a) Excessive use of force and fire power in Dacca during the night of the 25th and 26th of March 1971 when the military operation was launched.
b) Senseless and wanton arson and killings in the countryside during the course of the "sweeping operations" following the military action.
c) Killing of intellectuals and professionals like doctors, engineers, etc and burying them in mass graves not only during early phases of the military action but also during the critical days of the war in December 1971.
d) Killing of Bengali Officers and men of the units of the East Bengal Regiment, East Pakistan Rifles and the East Pakistan Police force in the process of disarming them, or on pretence of quelling their rebellion.
e) Killing of East Pakistani civillian officers, businessmen and industrialists, or their mysterious disappearance from their homes by or at the instance of Army Officers performing Martial law duites.
f) Raping of a large number of East Pakistani women by the officers and men of the Pakistan army as a deliberate act of evenge, retaliation and torture.
g) Deliberate killing of members of the Hindu minority.'

According to Hamoodur Rahman Report General Niazi tried to put forward excuses for mass raping.

Dr. Geoffrey Davies of Australia, who was Director of International Abortion Research and Training Centre in Sydney and earned international notoriety for performing late- term abortions following mass rapes of Bengali Women during Bangladesh's Liberation War, the Job he undertook at the request of the World Health Organisation and International Planned Parenthood Federation, estimated that upto 400000 women and children had been raped by the Pakistani soldiers and their Bengali collaborators, stating that commonly cited figures were probably very conservative, that he had heard of numerous suicide by victims and of infanticides and that around 5000 rape victims performed self induced abortions (Source: Wikipedia).

After Bangladesh emerged as an independent People's Republic under the intrepid, determined and inflexible leadership of the Founding Father of the Nation, Bangabandhu Sheikh Mujibur Rahman, the orchestrated voice of the entire populace that penetrated the sonic barrier, culminated in the demand for the trial of those who were blended with one of the bloodiest inferno human history has witnessed. Such a demand, however, did not arise out of

blue: similar trials took place to book those who were responsible for merciless torments and monstrosity during the 2nd World War and even subsequently.

The maiden Parliament of the newly emerged Peoples Republic, whose autochthonous Constitution has vested all powers on its people at large, wasted no time to respond to the peoples cogent and invincible demand and enacted a legislation titled "International Crimes (Tribunal) Act 1973,(henceforth the Act) which paved way for the trial of those responsible for the killing or being accessories to such offences as genocide, offences against humanity involving murder, rape etc.

Our history, however, did not sail as smoothly as was aspired by our liberation thirstily people, inspired by the ethos of Bengali Nationalism, Secularism and Democracy.

Following the passage of the Act, history again witnessed yet another gruesome event resulting in the dastardly and treacherous assassination of the Father of the Nation along with his spouse, three sons, one of whom was literally a toddler, and other close relatives.

It was not merely the killing of the Nation's Patriarch, with that diabolic event attempt was in fact made to annihilate the spirit of the Liberation War. In truth the clock was put backward. The sacrosanct slogan "Joy Bangla" which inspired the freedom starving Bengali people to wipe out Pakistani occupying forces and their local cronies-in-crimes, along with other Bengali words, attached to various state bodies, were effaced, the historic Suhrawardi Uddyan, which stands as the glorious relic of the Pakistani forces' surrender to the joint Forces, composed of our Freedom Fighters and the allied Indian forces, and Bangabandhu's 7th March Speech was turned into a children's park with the obvious motive of erasing the history of our Liberation War. That was, however, not the end of the anti liberation stances, ignited by those who succeeded to usurp state power through barrels of guns, as military autocrats, a few weeks after the killing of the Father of the Nation, a top Pakistani quizling, Shah Azizur Rahman was placed as the Prime Minister of the country he campaigned against while another well known Pakistani collaborator, Col. Mustafiz was inducted as the Home Minister. The Cabinet included many others who openly campaigned against Liberation War, home and abroad. They also placed at the top of state offices a number of such Bengali people who were conspicuously engaged in their endeavors to ward off our liberation in collaboration with Pakistani forces. The

idea of trying those who either committed Genocide or Offences against Humanity or aided and abetted in those pursuits under the Act, was thrown into oblivion for a few decades as successive military despots ruled the country as usurpers along with those who took conspicuous and public stand against Liberation War.

Demand for the trial of those alleged to have had been involved in the commission of the offences nevertheless, survived and as democratic order re-surfaced and conducive circumstances ripened, trial under the 1973 Act commenced.

Commencement of the Trial

The appellant of Criminal Appeal No. 25 of 2013 (henchforth the Appellant) was indicted under Section 3(2)(a)(g)(h) of the Act. The whole process took off with the preference of an application to the International Crime Tribunal-1, a progeny of the Act, whereby the Chief Prosecutor (henceforth the CP) sought apprehension of the Appellant for the purpose of effective and proper investigation. Incidentally, however, the Appellant was, on that date, already in custody in connection with some other cases.

The ICT-1 adhered to the CP's prayer and issued a Production Warrant, in compliance with which the Appellant was produced before ICT-1 by the prison authority on 2nd October 2010, whereupon, at the order of the ICT-1, the appellant was shown as arrested for the purpose of investigation as prayed.

The CP, eventually, lodged indictment on 18th December 2011 relying on the report compiled by the Investigating Agency, following which the ICT-1 assumed cognizance of the offence as had been leveled against the Appellant in the CP's indictment.

Having done that, however the ICT-1 passed an order to transfer the case record to the International Crimes Tribunal-2 (henceforth the Tribunal) under power conferred by Section 11A(1) of the Act.

On receipt of the case file, the Tribunal heard the parties from 7th may 2012 through 16th May 2012 and on 28th May 2012 framed six (6) charges against the Appellant and fixed 20th June 2012 for tabling opening statement by the prosecution and thus the trial commenced.

Charges.

The charges as framed are reproduced below verbatim;

Charge-01: that during the period of War of Liberation in 1971, one Pallab, a student of Bangla College was one of the organizers of War of Liberation. For such reason anti-liberation people, in order to execute their plan and to eliminate the freedom loving people, went to Nababpur from where they apprehended Pallab and forcibly brought him to you at Mirpur section 12 and then on your order, your accomplices dragged Pallab there from to Shah Ali Majar at section 1 and he was then dragged again to Idgah ground at section 12 where he was kept hanging with a tree and on 05 April 1971, on your order, your notorious accomplice Akhter, Al-Badar, killed him by gunshot and his dead body was buried, by the side of 'Kalapani Jheel' along with dead bodies of 07 others.

Therefore, you accused Abdul Quader Molla, in the capacity of one of prominent leaders of Islami Chatra Sangha as well as significant member of Al-Badar or member of group of individuals are being charged for participating and substantially facilitating and contributing to the commission of the above criminal acts, in concert with Al-Badar members, causing murder of Pallab, a non-combatant civilian which is an offence of murder as crime against humanity and for complicity to commit such crime as specified in section 3(2)(a)(h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20 (2) read with section 3 (1) of the Act.

Charge-02: that during the period of War of Liberation, on 27 March 1971, at any time, you, one of the leaders of Islami Chatra Sangha as well as a prominent member of Al-Badar and as a member of a group of individuals, being accompanied by your accomplices, with common intention, brutally murdered the pro-liberation poet Meherun Nesa, her mother and two brothers when they had been in their house located at Section 6, Mirpur, Dhaka. One of the survived inmates named Seraj became mentally imbalanced on witnessing the horrific incident of those murders. The allegation, as transpired, indicates that you actively participated and substantially facilitated and contributed to the attack upon unarmed poet Meherun Nesa, her mother and two brothers causing commission of their brutal murder.

Therefore, you, in the capacity of one of the leaders of Islami Chatra Sangha as well as a prominent member of Al-Badar or a member of a group of individuals, are being charged for participating and substantially facilitating and contributing to the commission of the above criminal acts causing murder of civilians which is an offence of 'murder as crime against humanity' and for 'complicity to commit such crime' as specified in section 3(2)(a)(h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge-03: that during the period of War of Liberation, on 29.03.1971 in between 04:00 to 04:30 evening, victim Khondoker Abu Taleb was coming from Arambag to see the condition of his house located at section-10, Block-B, Road-2, Plot-13, Mirpur, Dhaka but he found it burnt into ashes and then on the way of his return to Arambag he arrived at Mirpur-10 Bus Stoppage wherefrom you, one of the leaders of Islami Chatra Sangha as well as potential member of Al-Badar, being accompanied by other members of Al-Badars, Razakars, accomplices and non-Bengalees apprehended him, tied him up by a rope and brought him to the place known as 'Mirpur Jallad Khana Pump House' and slaughtered him to death. The allegation, as transpired, sufficiently indicates that you actively participated, facilitated and substantially contributed to the execution of the attack upon the victim, an unarmed civilian, causing commission of his horrific murder.

Therefore, you, in the capacity of one of the leaders of Islami Chatra Sangha as well as potential member of Al-Badar or member of a group of individuals are being charged for participating, facilitating and substantially contributing to the commission of the above criminal acts causing murder of a civilian which is an offence of 'murder as crime against humanity' or in the alternative 'complicity to commit such crime' as specified in section 3(2) (a) (h) of the International Crimes (Tribunals) Act, 1973 which are punishable under under section 20(2) read with section 3(1) of the Act.

Charge-04: that during the period of War of Liberation, on 25.11.1971 at about 07:30 am to 11:00 am you along with your 60-70 accomplices belonging to Rajaker Bahini went to village Khanbari and Ghatar Char (Shaheed Nagar) under police station Keraniganj, Dhaka and in concert with your accomplices, in execution of your plan, raided the house of Mozaffar Ahmed

Khan and apprehended two unarmed freedom fighters named Osman Gani and Golam Mostafa there from and thereafter, they were brutally murdered by charging bayonet in broad-day light.

Thereafter, you along with your accomplices attacking two villages known as Bhawal Khan Bari and Ghatar Chaar (Shaheed Nagar), as part of systematic attack, opened indiscriminate gun firing causing death of hundreds of unarmed villagers including (1) Mozammel Haque (2) Nabi Hossain Bulu (3) Nasir Uddin (4) Aswini Mondol (5) Brindabon Mondol (6) Hari Nanda Mondol (7) Rentosh Mondol Zuddin (8) Habibur Rahman (9) Abdur Rashid (10) Miaz Uddin (11) Dhoni Matbor (12) Brindabon Mridha (13) Sontosh Mondol (14) Bitambor Mondol (15) Nilambor Mondor (16) Laxzman Mistri (17) Surja Kamar (18) Amar Chand (19) Curu Das (20) Panchananon Nanda (21) Giribala (22) Maran Dasi (23) Darbesh Ali and (24) Aroj Ali. The allegation, as transpired, sufficiently indicates that you actively participated, facilitated, aided and substantially contributed to cause murder of two unarmed freedom fighters and the attack was directed upon the unarmed civilians, causing commission of their horrific murder.

Therefore, you, in the capacity of one of the leaders of Islami Chatra Sangha as well as a prominent member of Al-Badar or a member of group of individuals are being charged for accompanying the perpetrators to the crime scene and also aiding and substantially facilitating the co-perpetrators in launching the planned attack directing towards the non-combatant civilians that resulted to large scale killing of hundreds of civilians including 24 persons named above and also to cause brutal murder of two freedom fighters and as such you have committed the offence of 'murder as crime against humanity', 'aiding and abetting the commission of murder as crime against humanity' or in the alternative for 'complicity in committing such offence' as mentioned in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge-05: that during the period of War of Liberation, on 24.04.1971 at about 04:30 am, the members of Pakistan armed forces landing from helicopter moved to the western side of village Alubdi near Turag river and about 50 non-Banglaees, Rajakers and members of Pakistani armed force under your leadership and guidance also came forward from the eastern side of the village

and then you all, with common intention and in execution of a plan, collectively raided the village Alubdi (Pallobi, Mirpur) and suddenly launched the attack on civilians and unarmed village dwellers and opened indiscriminate gun firing that caused mass killing of 344 civilians including (1) Basu Mia son of late Jonab Ali (2) Zahirul Mollah (3) Jerat Ali (4) Fuad Ali (5) Sukur Mia (6) Awal Molla son of late Salim Mollah (7) Sole Molla son of late Digaj Mollah (8) Rustam Ali Bepari (9) Karim Bisu Molla (10) Joinal Molla (11) Kashem Molla (12) Badar Uddin (13) Bisu Molla (14) Ajal Haque (15) Fajal Haque (16) Rahman Bepari (17) Nabi Mollah (18) Almat Mia (19) Moklesur Rahman (20) Fulchan (21) Nawab Mia (22) Yasin Vanu (23) Lalu Chan Bepari (24) Sunu Mia constituting the offence of their murder. The allegation, as transpired, sufficiently indicates that you actively participated, facilitated,aided and substantially contributed to the attack directed upon the unarmed civilians, causing commission of the mass murder.

Therefore, you, in the capacity of one of the leaders of Islami Chatra Sangha as well as prominent member of Al-Badar or member of a group of individuals are being charged for accompanying the perpetrators to the crime scene and also aiding the Pak army and co-perpetrators in launching the attack that substantially contributed to the execution of the planned attack directing towards hundreds of non-combatant civilians that resulted to their death and as such you have committed the offence of 'murder as 'crime against humanity', 'aiding and abetting to the commission of such offences' or in the alternative, 'complicity in committing such offence as mentioned in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge-06: that during the period of War of Liberation, on 26.03.1971 at about 06:00 p.m you being accompanied by some biharis and Pakistani army went to the house being house number 21, Kalapani Lane No. 5 at Mirpur Section-12 belonging to one Hajrat Ali and entering inside the house forcibly, with intent to kill Bangalee civilians, your accomplices under your leadership and on your order killed Hazrat Ali by gun fire, his wife Amina was gunned down and then slaughtered to death, their two minor daughters named Khatija and Tahmina were also slaughtered to death, their son Babu aged 02 years was also killed by dashing him to the ground

violently. During the same transaction of the attack your 12 accomplices committed gang rape upon a minor, Amela aged 11 years, but another minor daughter Momena who somehow managed to hide herself in the crime room, on seeing of the atrocious acts, eventually escaped herself from the clutches of the perpetrators. The atrocious allegation, as transpired, sufficiently indicates that you actively participated, facilitated, aided and substantially contributed to the attack directed upon the unarmed civilians, causing commission of the horrific murders and rape.

Therefore, you, in the capacity of one of the leaders of Islami Chatra Sangha as well as a prominent member of Al-Badar or a member of group of individuals are being charged for accompanying the perpetrators to the crime scene and also aiding, abetting, ordering the accomplices in launching the planned attack directing againt the non-combatant civilians that substantially contributed to the commission of offence of 'murder as crime against humanity', 'rape as crime against humanity', 'aiding and abetting the commission of such crimes' and also for 'complicity to committing such offence' as mentioned in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Thus, the above charges sufficiently indicate that you have committed the offences under section 3(2)(a)(g) and (h) which are punishable under section 20(2) read with section 3(1) of the Act.

The aforesaid charges of crimes against humanity, abetting and aiding to commit such crimes and also complicity to the commission of such crimes described under section 3(2)(a)(g) and (h) of the Act are punishable under the provisions of section 20(2) read with section 3(1) of the Act which are within the cognizance and jurisdiction of this Tribunal. And we hereby direct you to be tried by this Tribunal on the said charges. You have heard and understood the aforesaid chages.

The Tribunal during arraignment intimated the Appellant of the charges by reading the same and the Appellant pleaded not guilty.

On 4th June 2012 the appellant submitted a prayer before the Tribunal seeking review of the charge framing order. After hearing both the sides the Tribunal allowed permeation of the

following passages into the charge as originally framed, "or in the alternative" in substitution of the originally inserted phrases "and also for", before the words "complicity to commit such offence". The Appellant submitted a big list of people who he proposed to call as D.Ws.

At the conclusion of the opening speech the prosecution examined some twelve witnesses, inclusive of the two investigating officers and adduced 4 exhibits.

As the Tribunal limited the number of defence witnesses to six (6), as almost all were to depose as alibi witnesses, the Appellant's side examined defence witnesses of that numerical.

As the trial process came to a close on 13th December 2012 with the conclusion of submissions of the respective parties, preceded by the examination and cross-examination of the prosecution and defence witnesses, the judgment was kept reserved and was, eventually, pronounced on 5th February 2013, proclaiming the Appellant guilty of charges no. 1, 2, 3, 5 and 6 for the offences of "Crimes against Humanity" as stipulated in various sub-sections of Section 3(2) of the Act. The Appellant was sentenced to suffer imprisonment for life for the offences under Charges nos. 5 and 6 and imprisonment for fifteen(15) years for the offences under charges 1, 2 and 3 by a comprehensive and "no stone untouched" Judgment.

On charge no 4, the Tribunal held that the prosecution failed to prove the allegations the said charge was structured on and acquitted the Appellant of that charge.

On this charge the Tribunals' findings on facts was actuated by its refusal to place reliance on the testimony of prosecution witnesses.

According to the Tribunal, they were devoid of credence.

Generally, the Tribunal dissected the prosecution as well as defence witnesses with such precision, astuteness and sedulousness as are expected of a tribunal capable of being equated with world class ones.

Save adverse findings on the veracity of the testimony of P.Ws 7 and 8 in charge no 4, the Tribunal came up with no derogatory observation on the demeanor of other prosecution witnesses, implying them to have been truthful.

On application of law, the Tribunal remained obstinate to the view that it is the principles of Customary International Law that were the applicable jurisprudence and hence relied on the ratio decidend pronounced by various international criminal courts/tribunals,

created at the behest of the United Nations Organisation. In fact the Tribunal below variously quoted parts of judgments passed by those tribunals.

The Tribunal summed up the prosecution and the defence cases in following terms.

(i) Summing up of the Prosecution Case

Mr. Mohammad Ali, the learned Prosecutor started summing up of its own case on 17 December 2012. At the outset, in his introductory submission, submitted that prosecution and trial of persons responsible for atrocities committed during the War of Liberation 1971 is the demand of nation to come out from the culture of impunity and also to provide redress the sufferings caused to the victims and their relatives. The learned Prosecutor paying tribute and homage to the Father of Nation Bangabandhu Sheikh Mujibur Rahman and millions of martyrs went on to place a brief portrayal of historical background that pushed the Bengali nation to the movement of self-determination which eventually got shape of War of Liberation. The then Pakistani government and the occupation troops' policy was to resist the War of Liberation in its embryo and as such 'operation search light' was executed in Dhaka causing thousands of killing and mass destruction, with the aid and organizational support mainly from Jamat-E-Islam (JEI), its student wing Islami Chatra Sangha (ICS) and pro-Pakistan political parties and individuals. Respecting the preamble of the International Crimes (Tribunals) Act 1973 (The Act XIX of 1073) the government has constituted this Tribunal for prosecution, trial and punishment of persons for genocide, crimes against humanity committed in the territory of Bangladesh in 1971.

Learned Prosecutor, further submitted that in furtherance of 'operation search light' atrocities had been committed in the locality of Mirpur and adjacent areas of Dhaka city as listed in the charges framed. In committing atrocities as have been charged were perpetrated by the armed gang led by accused Abdul QuaderMolla, in furtherance of common design.

The case concerns events of crimes against humanity that took place on six different places and on different dates. Of six charges three speak of his physical participation in committing crimes and in respect of remaining charges he had aided and substantially contributed to the commission of crimes. Prosecution, out of 40 witnesses as cited by the Investigation Officer and 09 additional witnesses, as permitted by the Tribunal under section

9(4) of the Act produced and examined in all 12 witnesses including the IO. It has been submitted that not the number but the quality of witnesses is to be considered and prosecution considered it sufficient to produce and examine such number of witnesses to prove the charges and it has been able to prove it beyond reasonable doubt.

As regards evidence made by the P.W.s, it has been submitted that charge nos. 1, 2 and 3 depend on hearsay witnesses. Testimony of P.W.2, and P.W.10 relates to charge no.1 (Pallab Killing); testimony of P.W.2, P.W.4 and P.W.10 relates to charge no.2 (Poet Meherunnesa & her inmates killing) and testimony of P.W.5 and P.W.10 relates to charge no.3 (Khondoker Abu Taleb Killing). Mirpur was chiefly Bihari populated locality and for the reason of horrific situation prevailing at that time it was not possible for a Bengali person to witness the events. It would reveal from evidence of P.W.9 Amir Hossain Molla that when they organized a volunteer force being inspired by the historic speech of Banga Bandhu on 07 March 1971 in Mirpur locality and had received training under supervision of 'Sadhin Bangla Chatra Sangram Parishad', the accused Abdul QuaderMolla being accompanied by 70/80 members belonging to ICS was engaged in providing training to Biharis at Mirpur locality for protecting Pakistan.

Thus, the accused formed a 'force' consisting of local Biharis on his own initiation and naturally he had effective control on its members. When in furtherance of 'operation search light' the local Biharis started committing atrocities in the area of Mirpur, for obvious reason, the accused had conscious knowledge of it and he too aided, abetted and substantially facilitated to the commission of those crime. On the wake of sudden atrocious activities targeting Bengali population in Mirpur most of the local Bengali people who were very few in number, being frightened, had left the locality and as such there was no practical chance
for them to remain present at the crime sites and to witness the events.

Therefore, it was natural to learn the incidents and involvement of perpetrators thereof. Rather learning the incidents and complicity of perpetrators from general people was natural. All these valid reasons lawfully justify to act on the hearsay evidence to determine complicity of accused Abdul QuaderMolla who had led local Biharis to the accomplishment of the crimes described in charge nos. 1, 2 and 3. The learned prosecutor further added that the Tribunal is

not bound by the technical rules of evidence and it shall accord in its discretion due consideration to hearsay evidence on weighing its probative value.[Rule 56(2) of the ROP].

Next, it has been argued that even evidence of a single witness is enough to prove a charge if it inspires credence. In relation to charge no.4 (Ghatarchar Killing) P.W.1, P.W.7 and P.W. 8 have testified and they are live witnesses who had described how the accused Abdul QuaderMolla acted and participated to the commission of crimes. P.W.1, prior to the incident, when one day he was coming to Dhaka city's Mohammadpur area he found Abdul QuaderMolla standing in front of Physical Training Institute which was known as 'torture cell' having a rifle in hand. It also strengthens the fact of his complicity with the incident of 'Gahtarchar mass killing'. Accused Abdul QuaderMolla accompanied Pakistani occupation army and local accomplices with intent to participate and carry out the operation causing killing of 67 Bengali unarmed civilians.

The learned Prosecutor continued to argue, on factual aspect that with intent to annihilate the pro-liberation Bengali civilians the Pakistani occupation army and their local accomplices including accused Abdul QuaderMolla launched attack to Alubdi village nearer to Mirpur locality and caused killing of about 400 Bengali unarmed civilians. It was 'genocide' as the perpetrators with intent to destroy the Bengali Population, in whole or in part, killed a significant number of members of Bengali Population of a particular village. The operation was destructive in nature and instantly after the massacre the remaining civilians were compelled to flee leaving their homes and property. They were internally displaced in consequence of destructive pattern of the organized attack. Thus, the incident truely falls within the definition of 'genocide' as specified in section 3(2)(c) (i) of the Act of 1973 instead of 'crimes against humanity'. P.W.6 and P.W.9, as live witnesses, have described how the incident took place and who the perpetrators were. They are quite natural and credible witnesses. Litigations might have been brought against P.W.9 out of political rivalry and land disputes. But merely for this reason his credibility cannot be questioned. Rather, it is to be weighed as to how far truth has been demonstrated from his evidence. P.W.3 Momena Begum is a live witness (eye witness) who has testified the event alleged in charge no. 6. Merely for the reason that she is a single witness in support of this charge his sworn testimony cannot be excluded.

(ii) Summing up of the Defence Case

It has been argued on this legal issue by the learned senior counsel for the defence Mr. Abdur Razzak that there has been no limitation in bringing criminal prosecution but inordinate delay of long 40 years must be explained. But the prosecution remained totally silent without offering any explanation on this issue in its formal charge submitted under section 9(1) of the Act which is the foundation of the case.

The Act of 1973 and first amendment of the constitution will go to show that intention of the framers of the legislation was to prosecute and try the 195 listed war criminals of Pakistan armed force and not the civilians as the phrase 'including any person' was replaced by the phrase 'any person' belonging to armed force or auxiliary force.

The phrase 'individual' or 'group of individuals' have been brought to the Act of 1973 by an amendment in 2009. It has been done with a malafide intention for bringing the local civilians within the jurisdiction of the Act of 1973. Such amendment itself indicates well that the Act of 1973 as enacted on 20.7.1973 was meant to prosecute 195 listed war criminals of Pakistani armed force and not 'any person' or 'individual'.

Pursuant to the 'tripartite agreement' dated 09.4.1974 195 listed war criminals have been given clemency. Thus, the matter of prosecuting and trying them under the Act of 1973 ended with this agreement.

The cumulative effect of intention of enacting the Act of 1973, unexplained delay in bringing instant prosecution and bringing amendment of the Act of 1973 in 2009 incorporating the phrase 'individual' or 'group of individuals' inevitably shows that bringing prosecution against the accused under the Act of 1973 is malafide and with political motive.

The learned senior counsel for the accused further submitted that the accused could have been prosecuted as aider and abettor only under the Collaborators Order 1972, if he actually had committed any offence of aiding and abetting the principals. But 40 years after without bringing the principal offender to justice the accused cannot be prosecuted and tried under the Act of 1973, particularly when the principals i.e. 195 listed war criminals belonging to the Pakistani armed force have been forgiven and immune.

The learned senior counsel Mr. Abdur Razzak has further submitted, apart from the above legal issue, that the testimony of witnesses in relation to charge nos. 1,2,3 is unattributable hearsay in nature and thus it cannot be relied upon. Prosecution has failed to establish the link of accused with the commission of crimes alleged in these charges. The telling evidence does not indicate anything as to the fact that the accused by his acts assisted or provided encouragement or moral support to the principal perpetrators of crimes alleged.

The learned counsel has advanced pertinent contention relating to elements of the offence of crimes against humanity. He has submitted that to characterize an offence as crimes against humanity it must have the elements ; (i) Attack for causing listed offences in the Act of 1973 (ii) victim must be civilian (iii) the attack must be part of systematic or widespread and (iv) *Mens rea* or knowledge. But prosecution has failed to establish that the presence of these elements in relation to the alleged killing of Pallab as listed in charge no.1. Evidence led by prosecution does not fit to description from which it can be inferred that the offence of killing Pallab was not an isolated crime but an offence of crimes against humanity. The learned counsel advanced similar argument so far it relates to legal points, in respect of charge no.2.

In relation to charge nos. 4,5 and 6, the learned senior counsel argued that the witnesses examined in support of these three charges are not credible. Prosecution has failed to show that they had reason to see the alleged event and know the accused since prior to the events alleged. Mere seeing the accused standing in front of Physical training center, Mohammadpur having a rifle in hand in the month of November, as narrated by P.W.1 Mozaffar Ahmed Khan does not link him with the commission of any of crimes alleged and that he was Al-Badar Commander. P.W.3 Momena Begum claims to have witnessed the event of killing of her father and atrocities as alleged in charge no.6 but according to her own version she heard about her father Hazrat Ali Laskar's killing. Besides, her statement made and archived in the museum of Mirpur Jallad Khana speaks something else. Defence has submitted photographed copy of her earlier statement made to the said museum before the Tribunal on 09.1.2013 which would show glaring inconsistencies between that and her testimony made before the Tribunal. Apart from this, Momena's version has not been corroborated by any other witnesses and as such relying on uncorroborated testimony of a single witness is not safe. The events alleged in four charges

took place during the early part of the war of liberation and during that time Al-Badar was not formed and thus it cannot be said that the accused allegedly participated or acted to the perpetration of crimes alleged in the capacity of a member of Al-Badar.

As regards standard of proof it has been submitted by the learned senior defence counsel that three facts have to be considered for evaluating the standard of proof. These are (i) elements to constitute the offence of crimes against humanity (ii) mode of liability of the person accused of offence alleged and (iii) fact indispensable for convictions. Prosecution's burden is not in any way reduced if it lacks unassailable standard of proof which may only lead to a conclusion as to guilt of accused beyond reasonable doubt.

Mr. Abdur Razzak the learned defence counsel concluded his argument by making submission that the defence is not disputing the commission of crimes alleged but the prosecution has failed by adducing materials and evidence that the accused either had complicity or aided or abetted to the accomplishment of such crimes. The telling evidence adduced does not suggest that any act on part of accused which assisted or provided encouragement or moral support and the same had substantial effect to the actual commission of crimes perpetrated by the principals.

The learned senior counsel went on to submit that the case of ***Akayesu*** so far it relates to corroboration of single sex victim testimony does not fit with the instant case and the observation made in paragraph 13-135 of this judgment does not help the prosecution at all. The learned counsel reiterated that the *mens rea* element is absent in this case as there has been no facts and circumstances that could validly lead to an inference that the accused acted knowing the consequence of the attack and context thereof.

Finally, the learned senior counsel, submitted that defence does not dispute the commission of crimes alleged but the accused who has been charged with was not in Dhaka during 1971 and he had been staying at her native village Amirabad, Faridpur where he was running business at 'Chowdda Rashi Bazar' and in support of this plea of *alibi* , defence has adduced and examined four witnesses including the accused himself. Merely for the reason that at the relevant time the accused belonged to Islami Chatra Sangha (ICS) he has been prosecuted with political motive and he deserves acquittal.

Having perused the Tribunal's summing up, I am convinced that it did cover all the aspects and issues relevant to a fair criminal trial.

The Tribunal also addressed and determined the legal issues and aspects, evalued and discussed the evidence and assigned reasons, explored the alibi evidence, scrutinised the documentary evidences as exhibited.

In determining the issues, the Tribunal below emphasized upon balancing the respective rights of the victims of 1971 atrocities to get justice as much that of the accused, stating that the right to get justice also belong to the victims of the Crime Against Humanity and that the state has an obligation to remedy serious human right violation as per Article 8 of the universal Declaration of Human rights.

To ensure that the trial proceeds fairly and in accordance with universally recognised fair trial procedure, the Tribunal explicitly stated in its Judgments that the provisions of the act and the rules framed there under are adequately compatible with the rights of the accused as granted by Article 14 of the ICC PR and that in trying the offences under the general law our Courts take into account regonised jurisprudence from around the world. In fact the Tribunal below has considered decisions of other courts on similar factual background. The Tribunal specifically refered to Rule 43 (2) to ensure that the accused before it is presumed to be innocent, to Rule 38(2) to ensure adequate time for preparing the defence, to section 10(I) (f) and Section 17(3) to ensure full opportunity of the accused to present his defence, including the right to call witnesses and produce evidence, by referring to Section 10(I) (c), to bestow upon the accused right to cross examine witnesses. It also specifically cited burden of proof in criminal cases, which is based on the theme that criminal case is to be proved beyond reasonable doubt.

The Tribunal, at the end, pronounced the verdict in terms expressed below;

VERDICT ON CONVICTION

For the reasons set out in this Judgement and having considered all evidence, materials on record and arguments advanced by the learned counsels in course of summing up of their respective cases , the Tribunal **unanimously** finds the accused **Abdul QuaderMolla**

Charge No.1: **GUILTY** of the offence of 'complicity' to commit murder as **'crimes against humanity'** as specified in section 3(2)(a)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.2: GUILTY of the offence of 'complicity' to commit murder as **'crimes against humanity'** as specified in section 3(2)(a)(h)
of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.3: GUILTY of the offence of 'complicity' to commit
murder as **'crimes against humanity'** as specified in section 3(2)(a)(h)
of the Act of 1973 and he be convicted and sentenced under section
20(2) of the said Act.

Charge No.4: NOT GUILTY of the offence of 'abetting' or in the
alternative 'complicity' to commit murders as **'crimes against
humanity'**as specified in section 3(2)(a)(g)(h) of the Act of 1973 and
he be acquitted thereof accordingly.

Charge No.5: GUILTY of the offence of murders as **'crimes against
humanity'** as specified in section 3(2)(a) of the Act of 1973 and he be
convicted and sentenced under section 20(2) of the said Act.

Charge No.6: GUILTY of the offences of murder and rape as **'crimes
against humanity'**as specified in section 3(2)(a) of the Act 1973 he be
convicted and sentenced under section 20(2) of the said Act.

VERDICT ON SENTENCE

We have taken due notice of the intrinsic magnitude of the offence of murders as 'crimes against humanity' being offences which are predominantly shocking to the conscience of mankind. We have carefully considered the mode of participation of the accused to the commission of crimes proved and the proportionate to the gravity of offences. The principle of proportionality implies that sentences must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender. In

assessing the gravity of the offence, we have taken the form and degree of the Accused's participation in the crimes into account.

We are of agreed view that justice be met if for the crimes as listed in **charge nos. 5 and 6** the accused Abdul QuaderMolla who has been found guilty beyond reasonable doubt is condemned to a single sentence of **'imprisonment for life' And** for the crimes as listed in **charge nos. 1, 2 and 3** to a single sentence of **'imprisonment for fifteen (15) years'** under section 20(2) of the Act of 1973.

The Tribunals order on conviction and sentence, is figured below:

ORDERED

That the accused **Abdul QuaderMolla** son of late Sanaullah Molla of village Amirabad Police Station Sadarpur District-Faridpur at present Flat No. 8/A, Green Valley Apartment, 493, Boro Moghbazar PS. Ramna, Dhaka is found guilty of the offences of **'crimes against humanity'** enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 as **listed in charge no.s 1, 2, 3, 5 and 6** and he be convicted and condemned to a single sentence of **' imprisonment for life'** for **charge nos. 5 and 6 And** also for the crimes as listed in **charge nos. 1, 2 and 3** to a single sentence of **'imprisonment for fifteen (15) years'** under section 20(2) of the Act of 1973. The accused Abdul QuaderMolla is however found not guilty of offence of crimes against humanity as listed in **charge no.4** and he be acquitted thereof. However, as the convict Abdul QuaderMolla is sentenced to 'imprisonment for life', the sentence of 'imprisonment for 15 years' will naturally get merged into the sentence of 'imprisonment for life'. This sentence shall be carried out under section 20(3) of the Act of 1973. The sentence so awarded shall commence forthwith from the date of this judgment as required under Rule 46(2) of the Rules of Procedure, 2012 (ROP) of the Tribunal-2(ICT-2) and the convict be sent to the prison

with a conviction warrant to serve out the sentence accordingly. Let copy of the judgment be sent to the District Magistrate, Dhaka for information and causing necessary action.

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

Salient features of the Tribunal's findings are as follows:

(I) The Tribunal followed principles of International Criminal Law and relied on decisions emanated from various UN created tribunals.

(2) The Appellant was instrumental to the killing of Pallab;

It is Pallab's pro-liberation stance that propelled the idea of anti liberation forces, inclusive of the Appellant, to annihilate the earlier which leads to the unambiguous presumption that killing him formed part of a systematic and widespread attack against civilian population, and hence commission of the said act brought the Appellant under the canopy of "Crime against Humanity" as specified in Section 3(2)(a)(h)of the Act.

(II) On analyses of evidence, oral as well as documentary, the Tribunal was swayed to the synthesis that during the period under consideration the Appellant acted as an atrocious member of a "group of individuals" that perpetrated Crimes against Humanity: his culpable conduct, association, antecedent-contemporaneous and subsequent, as found, pointed to his guilt and are consistent with his complicity and participation in the commission of the specified crimes.

(III)Attendant facts and circumstances lead to the inference that the Appellant was aware of the intention of the principals as he led the gang of perpetrators, and as such actus reas were conjugated by required mens rea, in killing Meherun Nessa and her close ones.

(IV) Evidence of PW- 5 confirms the factum as to forcing Taleb to be routed to Mirpur by a non-Bengali named Abdul Halim in the latter's car, who handed over Taleb to the Appellant, whereafter the earlier was brutally killed at the Mirpur Jallad Khana.

(V) Evidence of P.W.-4 confirms that the Appellant was conjointly instrumental to the dastardly killing of Meher, her mother and the sibling, that her mother was enceinte when she

was slayed: deposition of P.Ws 5 and 10 connect the Appellant with the homicide of Khandakar Abu Taleb.

(VI) Evidence of P.Ws 6 and 9 lend unequivocal support to the charge pertaining to the mass killing at Alubdi, while P.W 3 tip the scale to the bottom in substaintiating the charges of killing and rape at the dwelling of Hazrat Ali.

(VII) The Appellant accompanied the gang of perpetrators to the venue of the crime with a rifle in his hand

(VIII) Testimony of PW-3 persuaded the Tribunal to hold that the facts pertaining to the commission of the crimes of killings and rapes and the Appellant's liability thereto stand established on the standard of proof applicable to criminal cases.

(IX) The Tribunal found as fallacious the plea of Alibi as advanced by the Appellant.

(X) The Tribunal could not place any reliance on the testimony of PW-7 and 8 and thus found the charge No. 4 as flopped, emphasising that the mere fact that the Appellant was standing in front of the Physical Training Centre with a rifle in his hand a day preceding the date of the alleged event, does not connect him with the commission of the massacre as is figured in charge no. -4, although this fact leads to the inference as to the Appellant's complicity with the Pakistani occupying forces as an armed member of AI Badar.

(XI) The Tribunal found on fact, that the Appellant had himself participated in and accompanied the armed gang to accomplish the crimes as out lined in Charges nos. 5 and 6.

(XII) The Tribunal took into account facts of common knowledge, documentary evidence, reporting in news papers, books etc. having probative value, and circumstantial evidence. As to hearsay evidence, the tribunal held that it is not bound to apply the technical rules but must determine the probative value thereof and that such evidence must be considered with caution. In highlighting the principle that the onus lies on the prosecution the Tribunal held that it is incumbent upon the prosecution to prove commission of the crime alleged, mood of participation of the accused, element of aiding and abetting or providing encouragement or moral support to the commission

of any Crime, ingredient required to implicate him for complicity, element necessary to constitute the offence of Crimes Against Humanity.

The Tribunal concluded the attack was wide spared and systematic and was directed at civilian population.

In reminding itself of the standard of proof as applicable in criminal cases,the Tribunal observed ;

" On final evaluation of evidence and relevant facts and circumstances, we are convinced to arrive at the decision that the prosecution has been able to prove it beyond reasonable doubt by lawful and credible evidence of live witnesses"-

The aggrieved Appellant exercised his right of appeal as he is equipped with that right by Section 21 of the Act.

In support of his claim to the effect that the order of conviction and the sentence, as handed down by the Tribunal was erroneous, the Appellant relied an following grounds of appeal and reasons;

REASONS

I. Because, the Tribunal failed to define crimes against humanity to reflect customary international law in 1971, it erred in law by failing to direct itself that section 3(2)(a) of the ICTA must be reflective of crimes against humanity in customary international law in 1971, by failing to direct itself that an international armed conflict was an essential element of crimes against humanity in 1971 and implicit within Article 3(2)(a) of the ICTA.

II. Because, the Tribunal erred in law in failing to direct itself that a "widespread and systematic" attack was an essential element of crimes against humanity in 1971 and thus implicit within Article 3(2)(a) of the ICTA, by failing to direct itself as to the meaning of "widespread" and "systematic" in crimes against humanity, in finding that the context of the 1971 war is sufficient to prove the existence of a systematic attack.

III. Because, the Tribunal erred in law by failing to direct itself that the existence of a state plan or policy was an essential element of crimes against humanity in

customary international law in 1971 and implicit within Article 3(2)(a) of the ICTA.

IV. Because, the Tribunal further erred in law and in fact when it purported to take judicial notice of the nexus between underlying acts and a systematic attack, when it purported to find a nexus between the alleged underlying acts and the alleged systematic attack, by failing to direct itself as to the requirement of knowledge in crimes against humanity in customary international law in 1971 and the implicit requirement of knowledge in Article 3(2)(a) of the ICTA.

V. Because, the Tribunal erred in law in failing to direct itself that the underlying core crime of rape did not qualify as an underlying act of crimes against humanity in customary international law in 1971, and thus also in Article3(2)(a) of the ICTA.

VI. Because, the Tribunal erred in law by failing to direct itself as to the law of judicial notice, in failing to direct itself that the purpose of the law of judicial notice is to promote fair trial, by failing to notify the defence of the proposal to take judicial notice of certain facts and failing to hear legal submissions on the issue, by purporting to take judicial notice of contentious issues, by relying on sources which were not in evidence.

VII. Because, the Tribunal erred in law by failing to define ‘complicity’ in Article 3(2)(h) of the ICTA to reflect customary international law in 1971, by defining complicity as “culpable association”. The Tribunal erred in law and in fact in its application of the law of complicity to the facts in charges 1, 2and 3.

VIII. Because, the Tribunal erred in law and in fact by failing to direct itself on the proper articulation and application of aiding and abetting as a mode of liability, misapprehending the burden and standard of proof in the assessment of aiding and abetting, by failing to properly articulate and by misapplying the burden and standard of proof in the assessment of the mental element of aiding and abetting.

IX. Because, the Tribunal erred in law and in fact in its consideration of hearsay evidence, when it failed to define hearsay evidence, by failing to direct itself as to the inherent problems with hearsay evidence, by failing to direct itself as to the implications of Rule 57 of the Rules of Procedure, in failing to direct itself as to the tests for reliability and probative value to weigh hearsay evidence in accordance with Rule 56(2) of the Rules of procedure. The Tribunal erred in its assessment of the hearsay evidence for PW2, PW4, PW5 and PW10.

X. Because, the Tribunal erred in law and in fact by failing to direct itself on the proper application for the assessment of identification evidence, in failing to consider and apply the relevant approach to assessing identification evidence of P.W.-3,6and 9.

XI. Because, the Tribunal erred in law and in fact by failing to correctly articulate and apply the applicable burden and standard of proof to the assessment of alibi.

XII. Because, the Tribunal erred in law when holding that the degree of fairness as has been contemplated in the 1973 Act and Rules of Procedure formulated by the Tribunal are to be assessed with reference to the national wishes, in prioritizing the rights of victims above those of the Accused, in failing to respect the Constitutional rights of the accused under national law as well as failing to adhere to the fair trial provisions of the ICCPR to which it is bound, when holding that the 1973 Act and the rules framed thereunder offer adequate compatibility with the rights of the accused enshrined under Article 14 of the ICCPR and that the 1973 Act has the merit and mechanism of ensuring the standard of safeguards recognized universally to be provided to the person accused of crimes against humanity, when holding that the 1973 Act and the ROP met international standards.

XIII. Because, the Tribunal erred in fact and in law by failing to consider and apply the enhanced procedural safeguards required under the ICCPR and in customary international law in a case that could have carried the death penalty, in failing to

consider and apply the procedural guarantees required in death penalty cases, by unreasonably restricting in number of Defence Witnesses and/ or unjustly refusing to allow the attendance of defence witnesses, in failing to respect the presumption of innocence, in failing to ensure that the Prosecution proved the case beyond a reasonable doubt, in failing to grant adequate time to prepare a defence, in failing to allow adequate facilities (including disclosure) for the preparation of the Appellant's defence, in failing to direct to Prosecution to disclose exculpatory evidence, in failing to adequately respect the appellant's right to communicate with his legal counsel, in failing to ensure that it was a competent, independent and impartial tribunal, (or alternatively) in failing to ensure that it operated independently of third party of other interference, in breaching the principle of nullum crimen sine lege in the case of the Appellant by failing to direct itself and follow customary international law as it was in 1971.

XIV. Because, the Tribunal should have acquitted the Appellant on the ground that the Prosecution has failed to give any explanation whatsoever in the Formal Charge of the long delay of forty years, inasmuch as there are several decisions of the Superior Courts of the subcontinent that even a delay of one day in filing the First Information Report if not satisfactorily explained the Appellant is entitled to be acquitted because the unexplained delay makes the Prosecution case entirely doubtful.

XV. Because, the Tribunal has failed to come to a conclusion that the Appellant has been prosecuted for a collateral purpose namely because of his association with a party in opposition, which the party in power wants to suppress and oppress and by using 1973 Act as an instrument of suppression and oppression.

XVI. Because, the Tribunal, the facts and circumstances of the case, has failed to come to the conclusion that the proceedings against the appellant was a malafide one and he was entitled to be acquitted because malafide vitiates everything.

XVII. Because, the Tribunal erred in fact and in law in failing to respect the presumption in innocence.

XVIII. Because, the Tribunal failed to take into Consideration that the prosecution has miserably failed to prove case against the Appellant by adducing independent, neutral and disinterested witnesses and any eye witness, and for which Tribunal should have drawn adverse presumption against prosecution and in that view of the matter the order of conviction and sentence has caused a gross injustice and in view of the matter the alleged offences have not been proved beyond reasonable doubt at all and as such the order of conviction and sentence of the Appellant is beyond jurisdiction. For that the impugned Judgment and order of conviction and sentence has been passed on conjectures and surmises and misreading and misconception and without considering the material contradiction of the prosecution witnesses and hence the same is not sustainable in law and is liable to be set aside.

XIX. Because, the Tribunal failed to take into consideration that the sentence is too severe and made illegally and in any view of law, facts and circumstances the order of conviction and sentence can not be sustained and is liable to be set aside.

XX. Because defence was not given equal treatment as the prosecution and subjected to a strict limit in presenting its case, both in terms of duration and witnesses and other procedural matters as a result of which defence was precluded from adequately challenging the prosecution evidences causing serious miscarriage of justice and hence the impugned judgment and the order of conviction is liable to be set aside.

XXI. Because, in every criminal case complaint or first information report is the foundation and in the instant case the prosecution has not filed and proved the complaint before the Tribunal during the trial of the case and the copy of the said complaint of the instant case has not been given to the accused and as such the

appellant has no awareness about the allegation made against him in the said complaint of the case.

XXII. Because, it is evident that the investigation officer started investigation after registration of the complaint in the register as serial No. 1 and he has investigated the case from 21.07.2010 to 27.08.2012 but he has submitted investigation report to the chief prosecutor on 30.10.2011 and the chief prosecutor filed a petition of formal charge on 18.12.2011 on the basis of the investigation report and the learned Judges of the Tribunal-1 took cognizance against the appellant under section 3(2) of the International Crimes (Tribunals) Act, 1973 on 28.12.2011 before completion of investigation without allowing the appellant to go through the charges against him in the said investigation report which is illegal and without lawful authority and whereby the whole trial of the case is vitiated. The appellant applied for certified copies of the complaint and investigation report but the Tribunal refused to supply the same and the appellant faced the trial without those important document.

XXIII. Because, it is evident that the investigating officer recorded statements of P.W. 2-Syed Shahidul Hoque Mama on 17.03.2012, P.W.-4 Kazi Rozi on 15.04.2012, P.W-5-Khandakar Abul Ahsan on 08.01.2012, P.W-7-Abdul Majid Paluan on 27.06.2012, P.W-8-Nurjahan on 30.06.2012 and P.W-10-Syed Abdul Quaium on 12.05.2012 long after taking cognizance on 28.12.2011 and statements of P.W-7 Abdul Majid Paluan and P.W-8 Nurjahan have been recorded by the investigating officer after framing charge and on commencement of trial on 28.05.2012 and the learned Judges of the Tribunal committed error in law in not considering the aforesaid matter in the impugned judgment.

XXIV. Because, during trial of the case learned judges of the Tribunal most illegally framed defective charge-01 under section 3(2)(a)(h), charge-02 under section 3(2)(a)(h), charge-03 under section 3(2)(a)(h), charge-04 under section 3(2)(a)(g)(h), charge-05 under section 3(2)(a)(g)(h) and charge-06 under section

3(2)(a)(g)(h) of the International Crimes (Tribunals), Act 1973 against the appellant.

XXV. Because, the prosecution adduced in all 12 witnesses including two investigating officers namely P.W. 1Mujaffar Ahmed Khan, P.W. 2 Sayed Shahidul Hoque Mama, P.W. 3 Momena Begum, P.W. 4 Kazi Rozi, P.W. 5 Khandakar Abul Ahsan, P.W. 6 Shafi Uddin Molla, P.W. 7 Abdul Majid Paluan, P.W. 8 Nurjahan, P.W. 9 Amir Hosain Molla, P.W. 10 Sayad Abdul Quaium, P.W. 11 Monowara Begum and P.W. 12 Abdur Razzaq Khan and out of those 12 prosecution witnesses P.W. 11 & P.W. 12 are formal witnesses of the case.

XXVI. Because, the prosecution adduced only 2(two) hearsay witness namely P.W. 2 Shahidul Haque Mama & P.W. 10 Syed Abdul Qayum to prove the charge -01 and the learned Judges of the Tribunal committed serious illegality in convicting the appellant on charge No. 1 where it is evident that P.W. 2 has not stated anything regarding the involvement of the appellant in the occurrence of Charge-01 in his interview which was broadcasted on 20th April 2012 in TV under the heading **" Akattorer Ronaggoner din Guli"** which document has been exhibited as defence material exhibit No. 1 and this P.W. 2 for the first time appearing before the Tribunal stated that he heard that the appellant had killed Pollob a student of Bangla College.

P.W. 10 has only stated against the appellant that " বাংলা কলেজের পল্লব নামের একজন ছাত্রকে আব্দুল কাদের মোল্যা হত্যা করেছে বলে আমি শুনেছি" and the defence drawing attention to the above version suggested that he did not state it to the I.O., P.W. 10 denied it. But the I.O. (P.W. 12) contradicting P.W. 10's evidence made before the Tribunal has stated that " ইহা সত্য নয় যে, বাংলা কলেজের পল্লব নামের একজন ছাত্রকে আব্দুল কাদের মোল্যা হত্যা করেছে বলে আমি শুনেছি তা এই সাক্ষীর জবানবন্দীতে এই মর্মে উল্লেখ নাই।"

The learned Judges of the Tribunal failed to consider the above important material piece of contradictory evidences in record in convicting and sentencing the appellant in charge No. 4 causing serious miscarriage of justice which calls for interference by this Hon'ble Court.

XXVII. Because, the prosecution has adduced 3 (three) hearsay witnesses namely P.W. 2, P.W. 4 & P.W. 10 to prove the charge-02 against the appellant. There is nothing against the appellant in the exhibited document marked as defence material Exhibit No. 1 which has been made by P.W. 2 and there is also nothing against the appellant in the document marked as Defence Exhibit-B written by P.W. 4 and P.W. 10 he has stated nothing against the appellant and the learned Judges of the Tribunal committed gross illegality in not considering the above important material evidences in records in convicting the appellant by the impugned judgment and order of conviction and sentence. Hence it needs interference by this Hon'ble Court.

XXVIII. Because, the learned Judges of the Tribunal committed serious illegality in not considering the material contradictory evidence of 2 (two) hearsay prosecution witnesses namely P.W. 5 Khandakar Abul Ahsan and P.W. 10 Sayed Abdul Qayum in respect charge-03 in convicting the appellant by the impugned judgment and order of conviction and sentence. The contradictory evidence of P.W.5 is that he has stated against the appellant that, "আব্দুল হালিম তার গাড়ীতে করে আব্বাকে মিরপুর নিয়ে এসে আব্দুল কাদের মোল্লার নিকট হস্তান্তর করেন।" and the defence drew the attention of P.W.5 regarding the above version that he did not state it to I.O but P.W.5 denied it and the I.O (P.W.12) which contradicting P.W.5's evidence made before the Tribunal has stated that, "ইহা সত্য যে, আমার কাছে সাক্ষী খন্দকার আবুল আহসান (পিডবি-উ-৫) বলেনি যে, আব্দুল হালিম তার গাড়িতে করে আব্বাকে মিরপুর নি-য়ে এস আব্দুল কাদর মোল্লার নিকট হস্তান্তর করেন। তবে এই স্বাক্ষী আমার কাছে বলেছিল যে, তিনি খলিলের কাছে শুনছিলেন যে, হালিম তার গাড়ি নিয়ে এসে তার বাবাকে মিরপুর নিয়ে যায়"

The contradictory evidence of P.W. 10 is that, "...তখন আমি শুনলাম খন্দকার আবু তালেব সাহেবকে আবাঙ্গালীরা, স্থানীয় আক্তার গুন্ডা ও আব্দুল কাদের মোলারা মিরপুর ১০ নম্বরে জলাদখানায় নিয়ে হত্যা করেছিল।' drawing the attention to the above version defence suggested that he did not state it to the I.O, P.W. 10 denied it, but the I.O. (P.W. 12) contradicting P.W. 10's evidence made before the Tribunal has stated, " ইহা সত্য যে. এই স্বাক্ষী জবানবন্দীতে এই মর্মে উল্লেখ নাই যে, তখন আমি শুনলাম খন্দকার আবু তালেব সাহেবকে অবাঙ্গালীরা, স্থানীয় আক্তার গুন্ডা ও আব্দুল কাদের মোল্লারা মিরপুর ১০ নম্বরের জলাদখানায় নিয়ে হত্যা করেছিলো।"

The learned Judges of the Tribunal ought to have acquited the appellant considering the above gross contradictory evidence in records.

XXIX. Because, the learned Judges of the Tribunal committed serious illegality in convicting the appellant in charge-03 treating the material gross contradictory evidence as an Omission, normal discrepancies and errors of memory of the witnesses.

XXX. Because, the prosecution has adduced only 2(two) prosecution witnesses namely P.W. 6 Shafi Uddin Molla & P.W. 9 Amir Hossain Molla to prove the charge-05 demanding eye witnesses of the occurrence but the prosecution hopelessly failed to prove the charge against the appellant and the learned Judges of the ' Tribunal committed gross illegality in convicting the appellant in charge-05 without considering the gross material contradictory evidences of P.W. 6 & P.W. 9. The contradictory evidences of P.W. 6 & P.W. 9 are that the P.W. 6 stated in his examination in chief that " অপর পক্ষে দাড়িপালল্লার পক্ষে নির্বাচনী প্রচারনায় অংশ গ্রহণ করেন তৎকালিন ইসলামী ছাত্র সংঘের নেতা জনাব আব্দুল কাদের মোল্লা তার সহযোগী ও বিহারীরা। আমি আব্দুল কাদের মোল্লাকে চিনতাম।" and the defence drew the attention to P.W. 6 regarding the above version suggesting that he did not state it to the I.O. P.W. 6 denied it. But the I.O. (P.W. 12) contradicting P.W. 6's evidence made before the Tribunal has stated, " ইহা সত্য যে. ..... অপর পক্ষে দাড়িপাল্লার পক্ষে নির্বাচনী প্রচারনায় অংশ গ্রহণ করেন তৎকালিন ইসলামী ছাত্র সংঘের নেতা জনাব আব্দুল কাদের মোল্লা বা তিনি আব্দুল কাদের মোল্লাকে চিনিতেন.....এ কথাগুলো স্বাক্ষী শফিউদ্দিন মোল্লার (পিডবিউ-৬) আমার কাছে প্রদত্ত জবানবন্দীতে নাই। "

The prosecution witness No. 6 further stated that, “ পাকহানাদাররা আক্রমন করে আমাদের গ্রামে আশে পাশে নিচু জমি থাকায় আমরা গ্রামেই থাকি।...... তখন দেখতে পাই এদিক সেদিক দুই এক জন লোক মৃত অবস্থায় পড়ে আছে। আমি আমাদের গ্রামের উত্তর পাশে একটা ঝোপের নিচে গর্তে লুকাই।.... ঐ সকল ধান কাটার লোকজন এবং গ্রামের লোকজনদেরকে কাদের মোলা তার বাহিনী, পাক বাহিনী ও নন বেঙ্গলী বিহারীরা ধরে এনে একই জায়গায় জড়ো করছে। আব্দুল কাদের মোলাকে পাক বাহিনীর অফিসারদের সংগে উর্দুতে কথা বলতে দেখি দূর থেকে তা শুনতে পাইনি। .....সেখানে কাদের মোল্লার হাতেও রাইফেল ছিলো সেও গুলি করে।” and the defence drew the attention of P.W. 6 to the above version suggesting that he did not state it to the I.O. P.W. 6 denied it. But the I.O. (P.W. 12) which contradicting P.W.6’s evidence made before the Tribunal has stated that, “ ইহা সত্য যে, তদন্ত কালে আমার কাছে তদন্ত স্বাক্ষী শফিউদ্দিন মোলা (পি ডবিউ-৬) এর জবানবন্দীতে উল্লেখ নাই যে, পাকহানাদাররা আক্রমন করে ও তাদের গ্রামে আশে পাশে নিচু জমি থাকায় তারা গ্রামেই থাকে। বা তখন দেখতে পান এদিক সেদিক দুই এক জন লোক মৃত অবস্থায় পড়ে আছে বা তিনি তাদের গ্রামের উত্তর পাশে একটা ঝোপের নিচে গর্তে লুকান বা ঐ সকল ধান কাটার লোকজন এবং গ্রামের লোকজনদেরকে কাদের মোল্লা তার বাহিনী, পাক বাহিনী ও নন বেঙ্গলী বিহারীরা ধরে এনে একই জায়গায় জড়ো করছে বা আব্দুল কাদের মোল্লাকে পাক বাহিনীর অফিসারদের সংগে উর্দুতে কথা বলতে দেখি দূর থেকে তা শুনতে পাননি।” and “ ইহা সত্য যে, স্বাক্ষী শফিউদ্দিন মোল্লার (পি ডবিউ-৬) এইভাবে আমার কাছে বলেনি যে, উত্তর পাশে একটি ঝোপের নিচে গর্তে লুকাই এবং সেখান থেকে সে দেখতে পায় কাদের মোল্লার হাতে রাইফেল ছিলো এবং সেও গুলি করে। ”

P.W. 9 stated that “ আমি ১৯৭০ সালের নির্বাচনে আওয়ামীলীগ প্রার্থী এ্যাড়ভোকেট জহির উদ্দিন এর পক্ষে নৌকা মার্কায় প্রচার চালাই তখন আব্দুল কাদের মোল্লা গোলাম আযমের পক্ষে তার প্রতীক দাড়িপাল্লার পক্ষে প্রচারনা চালায়। তখন আব্দুল কাদের মোল্লা ইসলামী ছাত্র সংঘের নেতা ছিলেন।” defence drew attention about the above version to P.W. 9 suggesting that he did not state the same version to I.O. P.W. 9 denied it. But the I.O. (P.W. 12), contradicting P.W. 9’s evidence made before the Tribunal has stated, “ইহা সত্য যে, এই

সাক্ষী তদন্তকালে আমার কাছে বলেনি যে, তিনি ১৯৭০ সালের নির্বাচনে আওয়ামীলীগ প্রার্থী এ্যাডভোকেট জহির উদ্দিন এর পক্ষে নৌকা মার্কায় প্রচার চালায় তখন আব্দুল কাদের মোল্লা গোলাম আযমের পক্ষে তার প্রতীক দাড়িপাল্লার পক্ষে প্রচারনা চালায় বা তখন আব্দুল কাদের মোল্লা ইসলামী ছাত্র সংঘের নেতা ছিলেন।"

The prosecution witness No. 9 further stated that " তখন দেশের অবস্থা ভয়াবহ দেখে ২৩/২৪ মার্চের দিকে আমি আমার পিতা মাতা ও পরিবারের সদস্যরা সাভারে প্রথমে একটা স্কুলে পরে এক আত্মীয়ের বাড়ীতে আশ্রয় নেই। ২২/২৩ এপ্রিল আমি আমার বাবাকে নিয়ে আমাদের ধান কাটার জন্য আমাদের গ্রাম আলুবদির কাছে আসি। ধান কেটে রাত্রি যাপন করি আলুবদি গ্রামে আমার খালু রুস্তুম আলী ব্যাপারীর বাড়ীতে। কাদের মোলার হাতেও রাইফেল ছিল. আক্তার গুন্ডার হাতেও রাইফেল ছিলো, পাজাবীদের সাথে তারাও গুলি করে এবং সেখানে আনুমানিক ৪০০ জন লোক নিহত হয়।" and the defence drew attention about the above version to p.W. 9 suggesting that he did not state the same version to I.O. P.W. 9 denied it. But the I.O. (P.W. 12) contradicting P.W.9's evidence made before the Tribunal has stated, " ইহা সত্য যে, স্বাক্ষী আমির হোসেন মোল্লা (পি,ডবিউ-৯) আমার কাছে বলেননি যে. তখন দেশের অবস্থা ভয়াবহ দেখে ২৩/২৪ মার্চের দিকে তিনি তার পিতা মাতা ও পরিবারের সদস্যরা সাভারে প্রথম একটা স্কুলে পরে এক আত্মীয়ের বাড়ীতে আশ্রয় নেয় বা ২২/২৩ এপ্রিল তিনি তার বাবাকে নিয়ে তাদের ধান কাটার জন্য তাদের গ্রাম আলুবদির কাছে আসে বা ধান কেটে রাত্রি যাপন করে আলুবদি গ্রামে তার খালু রুস্তম আলী ব্যাপারীর বাড়ীতে আসেন। এই স্বাক্ষী এইভাবে তদন্তকালে আমার কাছে বলেনি যে, কাদেও মোলার হাতেও রাইফেল ছিলো, আক্তার গুন্ডার হাতেও রাইফেল ছিলো, পাজাবীদেও সাথে তারাও গুলি করে এবং সেখানে আনুমানিক ৪০০ জন লোক নিহত হয়।"

The learned Judges of the Tribunal also failed to consider the above contradictory evidences in favour of acquittal of the appellant and against the conviction and sentence.

XXXI. Because, the learned Judges of the Tribunal committed gross illegality in convicting the appellant in charge-06, not considering the evidence on records in its perspective where the P.W.3 Momena Begum early in point of time narrating

the occurrence of charge-06 to Ms. Jaheda Khatun 'Tamanna of Liberation War Museum, Mirpur-10, Dhaka, she has stated that 2 (two) days before the alleged occurrence of charge-06 she had left her father's house i.e. place of occurrence of charge -06 and she had been residing in her father –in-law's house in Gingira. It is also evident that this P.W. 3 has not been cited witness in support of charge-06 rather she has been cited witness in the investigation report in support of charge -03 i.e. killing of Khandakar Abu Taleb and in such a situation the question may arise that had she been actual Momena Begum, Daughter of Hazrat Ali Lashker why she is not cited witness in the investigation report against charge-06 and in this regard there is nothing in the impugned judgment and order of conviction and sentence.

The learned Judges of the Tribunal also committed illegality in not considering the circumstantial evidence and other material in record convicting and sentencing the appellant in lieu of acquitting the appellant.

XXXII. Because after closing the prosecution case the learned Judges of the Tribunal must illegally fix up only 6(six) defence witnesses on the application submitted by the prosecutor out of good number of material witnesses namely D.W. 1 Abdul Quader Molla, D.W. 2 Susil Chandro Mondol, D.W. 3 Muslem Uddin Ahmed, D.W. 4 Sahera, D.W. 5 Altab Uddin Molla, D.W. 6 A.I.M. Loqueman and the defence has been able to prove the defence case successfully but the learned Judges of the Tribunal committed illegality in not considering those evidences in its perspective.

XXXIII. Because, the prosecution witnesses are highly interested and the prosecution failed to adduce any disinterested witness and hence the impugned judgment and order of conviction and sentence is liable to be set aside.

XXXIV. Because, the defence has adduced in all five defence witnesses including the convict appellant, to prove the plea of Alibi to the effect that the Appellant was not living in Dhaka and he had been living in his own district at Faridpur during the date and time of the alleged occurrence of the instant case and the defence has been able to prove the same beyond any reasonable doubt and the Tribunal failed to appreciate the defence evidence in its perspective and as such the impugned judgment and order of conviction and sentence is liable to be set aside.

XXXV. Because, it is evident that the Investigating Officer during Investigation of the case has recorded statements of 87 witnesses in all and he has cited only 17 witnesses in his investigation report and during trial of the case prosecution has adduced only 4 witnesses out of those 17 witnesses and other material witnesses have been withheld without any just cause and as such the impugned judgment is liable to set aside.

XXXVI. Because, it is evident that the Investigating Officer (P.W. -12) concluded his investigation on 27.8.2012 and the Trial of the case has been commenced on 28.5.2012 and admittedly it appears that trial of the case and investigation proceeding were going on simultaneously which is not permissible on facts and law and as such the impugned judgment and order of conviction and sentence are liable to be set aside.

XXXVII. Because, the tribunal failed to assess the evidence on record in favour of the appellant and against the prosecution and as such the impugned judgment and order of conviction and sentence are liable to be set aside.

XXXVIII. Because the tribunal failed to consider the evidence adduced by the defence in its perspective and the benefit of doubt always lies in favour of the accused and against prosecution and as such the impugned judgment and order of conviction and sentence are liable to be set aside.

XXXIX. Because, the conviction and sentence are too severe and as such the impugned judgment and orders of conviction and sentence are liable to be set aside.

XL. Because, in the impugned judgment the Tribunal considered some evidence not on record and not even relied upon by the prosecution and did not allow the defence any opportunity to challenge or controvert the said evidences and hence the impugned judgment is bad in law and the conviction and sentence are liable to be set aside.

XLI. Because, the Tribunal did not apply the correct standard of proof in the impugned judgment and lowered the same from the required standard of 'beyond reasonable doubt' and hence the impugned judgment is bad in law and the same is liable to be set aside.

XLII. Because, the evidence on records is in favour of acquittal and against the conviction and sentence of the convict appellant and as such the impugned judgment and order of conviction and sentence is liable to be set aside.

Commencement of Proceeding Before Us.

Grounds furnished by the Appellants are of two categories viz (a) law based (b) fact based.

This is not an appeal from a judgment of the High Court Division which can be preferred by invoking the provisions in Article 103 of the Constitution, but an appeal filed engaging Section 21 of the Act, a special law, which has made this Division the only appellate forum against the judgment passed by an International Crimes Tribunal created by the Act. This Division is, therefore, the forum of first and, of course, the final appeal at the same time.

As the forum of first appeal we must explore and comb the evidence with absolute precision and meticulous consideration, bearing in mind the time tested dogma that an appeal is the continuation of the trial.

At the very inception of the appellate proceeding of the Criminal Appeal no. 25 of 2013, Mr. Abdur Razzak, the learned Senior Advocate, initiated his submission dividing the

same, in line with the grounds of appeal and the concise statement, into points of law and points of fact. From the factual forecourt of his argument, Mr Razzak launched his onslaught on what he termed as contradiction in the versions of the prosecution witnesses at various stages, insisting that such contradictions rendered the depositions placed by the prosecution witnesses, devoid of credibility. He took particular exception to the facts that the prosecution witnesses testified on such claimed facts which they did not mention to the Investigating Officer (I.O). He took us through the record of depositions to draw our attention to such claims, asserting that these, what he termed as contradictions, were pernicious for the prosecution case. He also asked us to discard hearsay evidence claiming that they were unattributed hearsay.

It is the legal aspect of his argument that carried heavier weight. Remaining centrifugal to the theme that although, no doubt, the Tribunal is a Municipal one, the law it is, in Mr. Razzak's thought, required to apply are the principles and the provisions of Customary International Law.

In his verbalizing, these Domestic Tribunals are destined to apply Customary International Law provisions for that had been the intent of Parliament as are manifested from the fact that the Tribunals themselves have been prefixed with the word "International" and the fact that the phrase "International Law" has been inserted at as many as four stages in the Act, namely, in the title to the Act, in its preamble, in the long title, as well as, in its body.

In his visualization, offences indexed in Section 3 of the Act have been left undefined with deliberate instinct because the legislators intended the Tribunals to borrow definitions of these offences from Customary International Law. He supplemented his submission on this aspect by adding that our municipal law has not defined such offences as Crimes against Humanity, Genocide, Extermination, Deportation, Torture or Persecution. He expanded by intimating us that Murder as an offence against Humanity as stipulated in Section 3 of the Act is not the same thing as Murder defined by Section 300 of the Penal Code punishable by section 302. According to Mr. Razzak the phrase "Complicity" also is not figured any where in the Penal code.

"The legislators, uttered Mr. Razzak, "excluded municipal procedural law as well as the municipal law of evidence, understandably with the sole intention that the trial forum would apply Customary International Law."

During his marathon submission for weeks together, which were often impregnated with multiple repetition, Mr. Razzak argued that the Preamble to an Act of Parliament is the key by which the mind of the legislators are to be unveiled.

Citing Article 38 of the Statute of the International Court of Justice, Mr. Razzak vocalized that Nuremberg Charter and judgment have assumed the status of Customary International Law.

The Rome Statute and the judgments handed down by the International Crimes Court as well as the Charters and judgments delivered by such localized and ad-hock tribunals, animated by the United Nations Organisation, as the International Crimes Tribunal Yugoslavia (ICT-Y), the International Crimes Tribunal-Rwanda Special Court for Sierra Leon (SCSL) are, in Mr. Razzak's **profferment** applicable.

He went on to submit that the Tribunal below was quite explicit in saying that the principles and the provisions of Customary International Law applied for the definition of offences, though did not, as a matter of fact, follow this expressed theme.

In Mr. Razzak's introspection the Liberation War in 1971 was an war between Bangladesh and Pakistan as otherwise there would be no war-crime.

"War Crime", voiced Mr. Razzak, "pre-supposes international armed conflict and the War of Liberation was devoid of that flavour."

Stating that "Crime against Humanity" as an international crime, has been in the vogue for decades together, Mr. Razzak insisted that to engage 'Crime against Humanity' under Customary International Law/ seven (7) elements must be established which are (1) an attack having nexus with the accused (2) attack resulting in any of the listed offences (3) civilian status of the victims (4) attack being on national, political, ethnic, racial or religious ground (5) of wide spread and systematic nature (6) attack being part of state policy (7) presence of mens-rea for those criteria. He submitted that while Nuremberg Tribunal looked for 'widespread' or

'systematic' attack in the alternative, in Rekunar ICT-4 looked for both the criteria in conjunction.

In his view the prosecution adduced no evidence to establish that the attack was wide spread or systematic.

As per Article 3 of Rwanda Charter, civilian population means un-armed people, which would necessarily exclude a Freedom Fighter, because a combatant can not be a civilian.

Means and Methods used, status of the victims, their number, resistance towards the assailants are all relevant factors including the question as to whether the laws pertaining to war was adhered to, prescribed Mr. Razzak. A pre-conceived state policy, in Mr. Razzak's articulation, is sine qua non.

To bring within the purview of 'wide spread and systematic attack', the same, in Mr. Razzak's eloquence, must embrace large scale action carried out collectively, in implementation of a pre-meditated formula.

In his view even ordinary murder has not been proved, let alone murder as a part of Crime against Humanity. He could not accede to the notion that the Tribunal was competent to take judicial notice of all the circumstances that prevailed during the Liberation War period for the purpose of addressing the question whether the attack had wide spread and systematic character.

Mr. Razzak aired his astronomical astoundment at the Tribunal's nugatory response to the Appellant's prayer to call for and examine "Jallad Khana" records. He also assailed the veracity of PW 4's testimony on the ground that the latter did not name the Appellant in her work, titled "শহীদ কবি মেহরুন্নসা" but rather castigated the Biharis for the events at Mirpur.

Mr. Razzak complained that the Tribunal below placed all the emphasis worldly available on the evidence of the P.Ws.

Mr. Mahbubey Alam, the learned Attorney General in his endeavour to bestow on the Tribunal's findings, impecability, said that the finding of guilt as registered by the Tribunal represents an astute and unforgettable judicial ingenuity. He hailed as commendable what he described as the lower Tribunal's acclaimable wisdom in analyzing the evidence in its appropriate threshold. He did, however, put on the slade his utter dismay at, what he termed as,

appallingly lenient sentence, stating that the same was incoherently disproportionate to the offences proved.

He termed as "insignificant" such omissions which are on record, which are inherently associated with normal human disposition. "In any event", said the learned AG, "those omissions have been explained away". In his inumeration evidence to incriminate the Appellant were overwhelming and irrefutable.

He asked us to fastidiously scan the striking consistency in the testimony of different prosecution witnesses, which, in his brooding, could not be possible had they not been telling the whole truth. The learned AG also reminded us of the rigorous cross examination the prosecution witnesses were subjected to, who still and yet remained unshaken and indomitable. "They had", uttered the leanred AG, no animosity, antipathy or incensuity toward the Appellant. They are all well meaning, widely revered members of the society with inbuilt credibility".

The learned Attorney General remained intransigent on the view that Customary International Law provisions were incongruous to the trials under the Act. To lend weight to his argument on this count the learned AG continued to say that nowhere does the Act say or even imply that provisions of International Laws would apply in this trial. He insisted that the Tribunals created by the Act are very much Domestic Tribunals created by our own legislation and they can not be looked at identically with Nuremberg Tribunal, Tokya Tribunal ICC, ICT-Y, ICT-R or any other similar tribunals that had been brought into animation by or at the behest of the World Body. He refused to give in to the contention that the Act has left the listed offences undefined.

As the learned AG brought his submission to an end, we got oscilated to the thought that we should explore experts' views on two pertinent questions, that sprang up during the proceedings before us, namely (1)whether provisions of Customary International Law apply to the trials under the Act and (2) whether amendment brought about to the Act on 13th February, 2013 could apply to the instant Appellant. (The second question is relevant to the proceeding of Criminal Appeal no. 24, which will be discussed later). With that in mind, we invited seven very

eminent members of our Bar, reckoning their indubitable notoriety, outstanding calibre and expertise, and of course their international exposure in legal arena.

Notwithstanding their understandably busy schedule, all seven of them obliged by responding to our call for assistance as amici curiae, by adducing exquisite research oriented written and verbal submissions on the questions raised, probono of course.

The second question, namely the one on the applicability of the 2013 amendment is apposite to the Chief Prosecutor's Appeal, i.e Criminal Appeal No. 24 of 2013, which I shall explore later. At this stage, I shall concentrate on the first question, i.e whether provisions of Customary International law are applicable at the trials under the Act.

Amici Curiae on International law.

Mr. T.H. Khan, the senior most of the learned advocates that we asked to assist was, because of his great age and frail health, unable to personally appear to place his views but submitted a written paper, which was read over to us by his junior Mr. Faisal Hussain Khan. Mr. T.H. Khan who carries the legacy of having been a judge of the then East Pakistan High Court during the late 60s and of course, acting as a judge of ICT –R in the fairly recent past, opined on the first question in the affirmative, while Mr Rafiqul Haque, the next senior most Advocate, whose decades of experience and expertise coupled with international exposure had put him on the platform of exceptionally acolade and gifted legal personalities, was quite blunt in expounding the diametrically opposite view, expressing that the provisions of Public International Law were totally out of place for the trials by the Tribunals created by the Act. In his view the parent Act is very much a municipal legislation despite its name and hence its status can not be in any manner different from that of any other court created by our own legislative authority. "There is" in his view, "nothing in the Act to require importation of any International Law element".

Glimpses from the written submission of Mr. T.H. Khan are as follows;

"This issue can't be answered by simply uttering two words 'Yes' or 'No'. It entirely depends on the factual context in which the provisions of International Crimes (Tribunals) Act, 1973 (hereinafter referred to as 'the 1973 Act') are being applied.

It is a settled principle that in case of conflict between national law and international law, national law will prevail. Generally domestic courts are under obligation to follow national law. But where the national law is incomplete, vague and undefined with regard to certain issues and jurisprudence has evolved in the international arena in relation to that issue, like the issue in question, national courts are under obligation to follow those principles to meet the omissions, if any.

The scheme of the 1973 Act is to try international crimes, namely war crimes, crimes against humanity, genocide etc. A rich body of jurisprudence has developed in relation to international crimes as a result of decisions of various international tribunals over the last couple of decades. Section 3(2)(f) of the 1973 Act specifically mentions that any other crimes under international law are triable by the International Crimes Tribunal. Therefore the 1973 itself contains provision enabling application of international law by the Tribunal in disposing of the cases before it.

Section 3(2)(a) of the 1973 Act does not contain any definition of 'Crimes against Humanity', rather it has listed ten crimes which may be tried and punished as Crimes against Humanity. Six of those ten listed crimes are not even defined in our Penal Code, nor in any other law currently applicable in our country. On the other hand the constituent elements of 'Crimes against Humanity', namely, (i) attack, (ii) nexus of the accused with the attack, (iii) attack against civilian population, (iv) widespread or systematic attack, (v) attack pursuant to a plan or policy, (vi) attack on the ground of ethnic or religious ground- have been developed in a number of cases by the international tribunals over the last few decades. Therefore, in the absence of any definition in the laws of Bangladesh, it is my considered opinion that the Tribunal and the Appellate Division are required to adopt the definitions and constituent elements of crimes against humanity, as have evolved as part of customary international law in the jurisprudence of the international tribunals.

Both the International Crimes Tribunals (ICT-1 & ICT-2) have accepted that the accused has been indicted for the internationally recognized crimes committed in violation of customary international law and hence the Tribunals are not precluded from taking guidance from the jurisprudence evolved in the international arena.

The 1973 Act has specifically enabled the Tribunal to apply international law and since international custom is recognized as one of the sources of international law, it is my opinion that the concept of customary international law is entrenched in the 1973 Act.

In conclusion, I would like to express my view to the effect that in the instant case, since the definition of crime against humanity is absent in the 1973 Act, it will be necessary to take guidance from customary international law in order to determine the constituent elements of crimes against humanity".

Main features from the submission of Mr. Rafique-Ul-Huq are as follows;

"When we use the word "Law" in domestic parlance, then the word "Law" connotes a positive assertion of the "sovereign", violation of which has particular consequence.

But when we use the word "Law" against the International background, then the word "Law" normally does not mean to have any coercive sanction for violation of any such so called "Law". In fact, with reference to the words "International Law", normally justice mean the International obligation/responsibility of states, violation of which does not entail any criminal liabilities upon the states.

Following Austin's definition, law is a sovereign command enforced by sanctions, International Law cannot qualify as law since it lacks anything by way of a sovereign legislature or of sanctions.

In the realm of the Republic of Bangladesh the sovereignty vests in the people of the Republic and the Constitution is the supreme law of the Republic, under the authority of which the authority is exercised and effected. Article 1 of the Constitution of Bangladesh provides that the Republic is sovereign.

Therefore, the sovereignty within this jurisdiction means "the will of the people of the Republic through constitutional supremacy". So 'law' means dictate of "the will of the people of the Republic through constitutional supremacy". In other words 'Law' means 'Law' as asserted under the Constitution of Bangladesh. Article 7 of the Constitution says the Constitution itself is supreme law and any other law inconsistent with the Constitution is void. Further, Article 152 of the Constitution defines law as follows:-

> "Law" means any Act, Ordinance, order, rule, regulation, by-law, notification or other legal instrument, and any custom or usage, having the force of law in Bangladesh;"

Article 80(5) of the Constitution reads as follows:-

> " 80(5) When the President has assented or is deemed to have assented to a Bill passed by Parliament it shall become law and shall be called an Act of Parliament"

Furthermore, under Article 93 of the Constitution the President of the Republic may make and promulgate Ordinance having the like force of law as an Act of Parliament.

Subject to above constitutional limitations, the Supreme Court of Bangladesh can also declare what laws are within the jurisdiction of Bangladesh under Article 111 of the Constitution.

Nothing but the provision falling within the above constitutional periphery can be law and provision having force of law within the jurisdiction of Bangladesh. Therefore, even any international obligation or responsibility undertaek by the Government of Bangladesh cannot have any force of law within the jurisdiction of Bangladesh. In this respect the Appellate Division of the Supreme Court of Bangladesh in the case of M/s. Supermax International Private Ltd. Vs. Samah Razor Blades Industries reported in 2 ADC 593 held as follows;

> "29. The applicability of the convention in any domestic Court has been aptly discussed by O. Hood, Philips and Jackson, in Constitutional law and Administrative law, 8th Edition pages 470/471 and we feel tempted to quote the passage as under.
>
> > The European Convention before the Human Rights Act. 1998 increasingly as litigants obtained judgments at Strasbourg against the United Kingdom the Convention began to be cited in our domestic courts. This was despite the fundamental constitutional principle that treaties cannot affect rights and duties of persons in the United Kingdom unless their provisions have been incorporated into domestic law by legislation. The fundamental principle was illustrated in the G.C.H.O.Q. Case (Council of Civil Service Unions V. Minister for the Civil Service 1985 A.C. 374) when Lords Fraser in the part of his speech headed "Minor matters" declined to consider the interpretation of certain international labour conventions because they were "not part of the law in this country". In British Airways Board v. Laker Airways Ltd. (1985)A.C. 58). Lord Diplock said "The interpretation of treaties to which the United Kingdom is a party but the terms of which have not either expressly or by reference been incorporated in English domestic law by legislation is not a matter that falls within the interpretative jurisdiction of an English court of law". Nonetheless the Convention was frequently cited in the Courts and judges on various occasions referred to its provisions although no decision can be said to have been based on the Convention. In Kynaston V. Secretary of State for the Home Department (1981) 73 Cr. App. R. 281) the Court of Appeal held that the clear words of the United Kingdom mental health legislation prevailed over the provisions of Article 5 (right to liberty of the person). Article 6(right to a hearing) was involved in Trawnik v. lennox (1985) 1 WLR 532). Sir Robert Megarry V.C., said "The European Convention of Human rights is not, of course, law though it is legitimate to consider its provisions in interpreting the law; and naturally I give it full weight for this purpose." Nonetheless, he (and

subsequently the Court of Appeal) applied the letter of the Crown Proceedings Act 1947. Article 8(respect for private and family life) was similarly invoked in vain in an attempt to challenge the legality of telephone tapping. Malone v. Commissioner of Police of the metropolis (1979) Ch 344; post Para 22-012 and Para. 260014). Article 8 and Article 14 (enjoyment of rights without discrimination) have failed to aid immigrants in the light of the provisions of the Immigration Act 1971 and the Immigration Rules;" The Convention is not part of the law off this country. If it happens to be in accord with the law……then it is a matter of which we cannot take account; R.v. Immigration Appeal Tribunal ex.p. Ali Ajmal, (1982) Imm. A.R. 102, C.A.) per Lord Lane C.J. In R.v. Ministry of Defence ex.p. smith (1996) Q.B. 517) the Divisional court and Court of Appeal felt bound to disregard Article 8 when considering the dismissal from the armed forces of the applicants because of their sexual orientation-although they have little doubt of the applicants' ultimate success at Strasbourg".

"The House of Lords in R.v. Home Secretary ex.p. brand (1991) 1 A.C 696) while recognizing that the Courts could have recourse to the Convention when faced with an ambiguous statute refused to go a step further and hold that where wide powers of decision making were given to a minister by an unambiguous statutory provision, the minister in exercising those powers should conform to the provisions of the Convention. To do so, in the words of Lord Ackner, would be to incorporate the convention into English law by the back door".

"No decision of the British courts before the coming into effect of the Human Rights Act was actually based on the European Convention. The dicta on the construction of statutes not purporting to implement a treaty do not flow from precedents concerned with construing statutes consistently with the general principles of international law or statutes designed to implement particular treaties on such matters as diplomatic privilege. It is submitted, further, that their approach is potentially dangerous. The Judges wish to keep government officers of their international obligations, but in fact they are challenging the cardinal principle laid down in the Case of Proclamations and our own Bill of Rights of 1688, that the Executive by itself cannot make law for this realm. Indeed, one might argue that the fact that Parliament had refrained from incorporating the European Convention into our law indicated an intention that its provisions should not be taken into account by the courts, so that Convention ought not to be cited by counsel or looked at by judges".

Therefore, any international obligations/ responsibilities of the Republic or any undertaking of the Republic taken at the international level or any norms/practices, howsoever

regularly honoured by the states at international interactions, cannot be applicable in the domestic jurisdiction of the Republic unless the same is incorporated in the domestic law by way of a legislative action.

The relation between "international Law" and "Domestic Law" is clearly narrated in paragraph No. 12 of Vol. 61 of Halsbury's Laws of England (5th Edition 2010), as follows:

> "International law is a legal system distinct from the legal systems of the national states. The relationship between any particular national legal system and international law is a matter regulated by the national law in question, often by the constitutional law of the state concerned. International law requires that a state must comply with its international obligations in good faith, which means, among other things, that each state must have the legal means to implement such of its international obligations as required action in national law. In some cases undertaking an international obligation will require a state to modify its domestic law, although, initially, it is for each state to judge what action is required. Where a state accepts that international obligations may be created for it from time to time by organs of international organizations of which it is a member, it must be able to give effect to each decision in its domestic law when such action is necessary. A state may not rely on an insufficiency in its domestic law as a justification for failing to comply with an international obligation. However, international law does not, of its own effect, have an impact directly in national law so that, for instance, rules of national law which are incompatible with a state's international obligations will remain valid instruments in national law".

Against the backdrop of above legal position, the words "International Law" is a misnomer unless the said international obligations/responsibilities/norms/practices/undertakings area incorporated within the framework of domestic law. In absence of such legislative action, the said so-called international laws are mere international obligations/responsibilities. Further, even states cannot be compelled to honour such international obligations/responsibilities, because at international level there is no mechanism to enforce such international obligations/responsibilities. Therefore, when states cannot be compelled to honour such international obligations/responsibilities, a citizen of the state can not, in any event, be subjected to the said international obligations/responsibilities of the state. But the world community having experienced two great wars felt the necessity to keep harmony amongst the international communities, which led the international communities to harmonize their interactions by elapse

of time formulated various practices and norms, which are often termed as "Customary International Law".

Though, some obligations are treated as peremptory norms (Jus Cogens), but breach of such peremptory norms does not entail any penal sanction upon the state.

Customary International Law has certainly developed a body of "International Crimes". But this Customary International Law developing international crimes does not impose penal sanction upon an individual unless the domestic law assimilates the said concepts of international crimes into the body of domestic law.

But these international crimes recognized by "Customary International Law" do not ipso facto apply within the domestic jurisdiction. "Customary International Law" does not create any offence in the domestic jurisdiction, neither does establish any criminal liability in domestic law.

Therefore, "International Crimes" cannot be deemed to be crimes under the domestic law of the Republic of Bangladesh automatically unless the same are made as crimes under the domestic law of Bangladesh by legislative action.

The house of Lords of the UK in the case of R v. Jones reported in [206]2 All ER 741 also held that a crime recognized in Customary International Law is not automatically incorporated in the domestic criminal law and a particular crime even if idealized from Customary International Law must be created by legislation.

In the context of genocide, an argument based on automatic assimilation was rejected by a majority of the Federal Court of Australia in Nulyarimma v. Thompson, Buzzacott v. Hill (1999) 8 BHRC 135. In the context of abduction it was rejected by the Supreme Court of the United State in Sosa V. Alvarez- Machain (2004) 542 US 692. It is, I think, true that customary international law is applicable in the English courts only where the constitution permits: (O' Keefe Customary International Crimes in English Courts (2001) 72 BYIL 293 p 335). I respectfully agree with the observations of Sir Franklin Berman (asserting Jurisdiction: International and European Legal Perspectives (2003) (eds P Capps. M. Evans and S Konstadinidis) p 11) answering the question whether customary international law is capable of creating a crime directly triable in a national court;

> "The first question is open to a myriad of answers, depending on the characteristic features of the particular national legal system in view. Looking at it simply from the point of view of English law, the answer would seem to be no; international law could not create a crime trible directly, without the intervention of Parliament, in an English court.

In view of the above 'Customary International Law' does not have any applicability to Bangladesh jurisdiction and the International Crimes (Tribunals) Act, 1973. The accused under the International Crimes (Tribunals) Act, 1973 shall be tried under and within the sanction and four corner of the said International Crimes (Tribunals) Act, 1973 (the said Act of 1973).

Section 3(2) of the International Crimes (Tribunals) Act, 1973 defines the offence, for violation of which an accused can be tried under the said Act of 1973. Article 47(3) of the Constitution saves any law and/ or any provision of law providing detention, prosecution or punishment of any person, who is prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under International Law from being void or unlawful due to inconsistency with any provision of the Constitution.

Mr. M. Amir-Ul Islam, the Senior Advocate, who is indeed one of the framers of our constitution and the author of our Declaration of Independence and was a member of the Constituent Assembly, opined that provisions of the Law of the Nations are applicable because the legislators had so intended while enacting the statute concerned. He did, nevertheless, emphasise that the Tribunal below has not acted in derogation of the Customary International Law Provisions and had rather followed them. He expressed that legislative intention to incorporate International law Provision is not difficult to detect.

Core areas of his written submission are recorded below:-

"Article 6(c) of the Nuremberg Charter defines crimes against humanity: "namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated".

In 1946, the United Nations General Assembly adopted a resolution that affirmed "the principles of international law" recognized by the Nuremburg Charter and judgment. In addition, in 1945, the Allied Control Council, the legislative authority of the Allies that governed occupied Germany after World War II starting place for delineating the boundaries of crimes against humanity in customary international law in 1971.

After liberation of the country from Pakistan's occupation army, there was cry or the perpetrators Father of the nation Bangabandhu Sheikh Mujibur Rahman asked at the very early stage in 1972 in his speeches that an international tribunal should be sent to Bangladesh to try "war criminals". Unfortunately, there was no mechanism internationally available to set up such a tribunal. Due to a void in the then world in absence of international machinery to prosecute the perpetrators of international crimes Bangladesh in consultation with international jurists and experts (i.e., Ian Macdormatt, at that time the Chairperson of the International Commission of Jurists, Professor Jescheck of the MaxPlank Institute of International Criminal Law in Freibourg, Baden Baden from Germany and others) enacted a special law i.e., The International Crimes (Tribunals) Act 1973.

The abovementioned Act was considered at the relevant time by international jurists "as a mode of international due process". This Act assured that trial of the perpetrators in accordance with international legal and human rights standards. Some amendments were also made to the said Act in order to achieve the desired standard and transparency and due process. An independent Tribunal was set up under this Act to conduct the trial of the perpetrators.

In regard to the enactment of the International Crimes (Tribunals) Act 1973, it would be relevant to the quote from an article named "bringing the Perpetrators of Genocide to Justice" which was presented and published in the "Second International Conference on Genocide, Truth and Justice" held on 30-31 July, 2009, Organized by Liberation War Museum, Dhaka, Bangladesh that,

"When we drafted Act XIX of 1973, known as the International Crimes Tribunal Act, the question arose as to whether one could be punished under a law not an existence while the alleged offence was committed. As I held on that day when drafting this statute in the small conference room of the Bangladesh Institute of Law and International Affairs (BILIA), I hold it today relying upon the precedent as uttered in a negotiation meeting held in the city of London by Justice Robert Jackson in 1944 appointed by the allied forces as the Chief prosecutor in the first Nuremberg Trial who said "What we propose is to punish acts which have been regarded as criminal since the time of Cain and had been so written in every civilized code". What in fact Justice Robert Jackson said that day is that crimes against peace and humanity have always been a crime recognized by civilized society".

The International Crimes (Tribunals) Act 1973 was deliberately structured in conformity with international standards in consultation with respected international experts where the legislators made a conscious effort to ensure that its terms reflected then-current international law. Otto Triffterer, the professor for Austrian and International Criminal Law and Procedure, University of Salzburg while analyzing the ICT Act 1973, referred Professor Suzannah Linto, claiming that "one is repeatedly told that this 37 year old law was, at its time of adoption, the world's only such legislation and that it was progressive and cutting-edge", and it was also told that the law is unassailable and as some kind of golden international standard and link to a glorious past that needs to be preserved. She also acknowledges that "the Nuremberg process, the Principles that emerged and customary international law were enough to guarantee the legitimacy of the legislation in 1973".

The ICT Act 1973 included important fair-trial and due-process rights enshrined in the International Covenant for Civil and Political Rights, which was not yet in force when the ICT Act 1973 was enacted. Bangladesh has an obligation under the ICCPR to protect and preserve the accused person's right to fair trial and the Constitution of Bangladesh itself contains the right to fair trial.

The ICT Act 1973 drew on foundational international law instruments for the definitions of the crimes included in Article 3. In particular, the Act's definition of crimes against humanity built on the definition used at the Nuremberg trials. Article 3 describes the crime as "Murder, extermination, enslavement, deportation, imprisonment, abduction, confinement, torture, rape or other inhumane acts committed against any civilian population or persecutions on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated". This definition varies from the definition used at Nuremberg only in several minor respects; the framers of this Act added imprisonment, abduction, confinement, torture, and rape to the list of enumerated acts; added ethnicity as a basis for persecution. This reliance on Nuremberg principles demonstrates the framers of this Act had conscious intention to secure the ICT Act in conformity with international law.

Crimes against humanity have developed in international criminal law since 1971, and anyone can rely on these later developments to the extent that the International Crimes Tribunals are within the limits of customary international law in 1971. One scholar has noted that although "the core norms and framing of crimes against humanity were set down at Nuremburg", subsequent codifications "have entrenched a number of other important aspects" of the crime.

In the case of Prosecutor v. Dusko Tadic, relying on Nuremberg Tribunal jurisprudence to establish customary international law with respect to individual responsibility and participation in crimes against humanity observed that, "The same conclusion is reached if Article 5 [defining crimes against humanity] is construed in the light of the principle whereby, in case of doubt and whenever the contrary is not apparent from the text of a statutory or treaty provision, such a provision must be interpreted in the light of and in conformity with customary international law. Therefore, the customary international law can provide a more precise definition of international crimes, especially when the statute defining the crimes "is silent on a particular matter".

Thus, most of the ICTY and ICTR crimes-against-humanity jurisprudence relied upon customary international law as it had remained unchanged since well before 1971.

In international criminal law, customary international law is deemed to have primacy over national law and defines certain conduct as criminal, punishable or prosecutable, or violative of international law.

Therefore, it is apparent in the light of the authorities cited earlier, Customary International Law is applicable to International Crimes Tribunals constituted under the International Crimes (Tribunal) Act, 1973.

Mr. Mahmudul Islam, a former Attorney General and a Senior Advocate, with considerable international exposure, who had secured a cosy place among few such legal eagles who shall remain indelible for generations to come, for having authored a book on our constitutional law, which can, without exaggeration, be termed as unavoidable by those who engage themselves in judicial review cases, posited, in no ambiguous terms that the Act being an offspring of our national legislature, it forms no part of International Law but stands at per with all other municipal statutes of the land, and the progeny Tribunals have the same standing as all other tribunals and courts created by our statutes. In his expoundment provisions of Public International law can only be imported if the Act so dictates or there exists a vacuity in the Act and to the extent of such dictation and vacuity, elaborating that those area, aspect or provision which are covered by the Act shall remain under the exclusive domain of the Act without accommodating any alien element. In his view it all depends on the construction of the statute, the intent of the legislators.

Mr. Mahmudul Islam further expressed that, name of the offence may be different, but the question is whether the offences existed in substance.

He went on to state that in the UK a treaty is not auto-applicable. According to Mr. Mahmudul Islam the question is how much has been incorporated by the statute. He referred to the English decision in GC Rayner –v- Dept. of Trade and Industries, (1990 2 AC).

He also cited the case of Bangladesh Jattiyo Mahila Ainjibi Samity v Ministry of Home Affairs and others, 61 DLR (HC) 371, where the High Court Division held that, "our courts will not enforce (those) covenants as treaties and conventions, even if ratified by the state, being not part of the corpus juris of the state unless these are incorporated in the Municipal Legislation. However, the court can look into these conventions as an aid for interpretation."

He also referred to the Indian decision in Apparel Export Promotion Counil v Chopra, AIR 1999 SC 625, in which that country's Supreme Court observed that in a case involving violation of human rights, the courts must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field, and expressed that in case inconsistency , international law can not gain any entry.

He opined that the offences under which the Appellant had been convicted has been defined by our national law and hence International Law can not intrude upon this domain. He reminded us of the doctrine of primacy of Municipal Law and iterated that International Law can not gain entry into Municipal domain by being in conflict with the latter. He insisted that

the Tribunal below can not be looked at with the same vision as Tribunals created by the UN Organisation are viewed. They do not assume jurisdiction from domestic law but are themselves progenies of the International Law. He reminded us that this Division also followed the principle of primacy of national law.

Mr. Rokanuddin Mahmud, a Senior Advocate having behind him trails of international exposure and expertise also iterated the theme that International Law provision can not permeate into such an area of our law which is covered by our own legislation.

By citing a number of English authorities, Mr. Mahmud enunciated that prescriptions of International Law can pierce into our Municipal Law domain only so far as a particular legal area is left blank by municipal law provision. In case of any conflict, explicit or implied, no doubt our own law shall prevail.

In his view since the instant Appellant had been tried for offence against Humanity such as murder, rape, abetment, provisions of International Law can not gain any access because these offences stand defined by the Act and provisions in the Penal Code, which have not been excluded.

Parts of his written submissions are reproduced below:

'International Crimes (Tribunals) Act, 1973 is a domestic legislation providing for creation of a Tribunal for trial of offences enumerated in Section 3(2) namely crimes against humanity, crimes against peace and genocide. The procedures for the trial and the powers of the Tribunal have been set forth in the legislation. Thus, the Tribunal created is a domestic tribunal. The rules of procedure were framed by the Tribunal itself to regulate its procedure in exercise of its powers under Section 22 of the Act. There is a conformity between the provisions of the Act and the provisions of customary international law; in other words, the Act and the provisions of customary international law in this regard. At the same time, there is no prohibition in the

customary international law for the Tribunal created under the Act to try the offenders for the offences under the Act.

The trial held in Dhaka by the Tribunal under the Act is a domestic trial and not a trial under international law or under any international convention. The offences which are being tried by this Tribunal are also offences under the international law. But this common denominator does not make this trial a trial under international law.

The municipal courts/domestic tribunals must pay primary regard to municipal/domestic law in the event of a conflict with the international law, and may breach the international customary law, which does not however affect the obligations of the State to perform its international obligations. A domestic tribunal defers to municipal law. When the Act of 1973 was enacted there was no international law in the field of trial of offences against humanity except the example of the Nuremburg Trial, which is discussed later.

English courts take judicial notice of international law: once a court has ascertained that there are no bars within the internal system of law in applying the rules of international law or provisions of a treaty, the rules are accepted as rules of law and are not required to be established by formal proof.

The rules of customary international law are deemed by the British courts as part of the law of the land and will be applied by the municipal courts subject to two important qualifications; (a) that such rules area not inconsistent with the British statutes, whether the statute is earlier or later in date than the particular rule of customary international law (b) that once the scope of such customary international law has been determined by the British courts of final authority, all British courts are thereafter bound by that determination, even though a divergent rule of customary international law later develops.

These qualifications are respected by the British municipal courts, notwithstanding that the result may be to override a rule of international law. The breach of such a rule is not a matter for the court but concerns the executive in the domain of its relations with foreign states. In short, domestic/ municipal courts would not enforce international law if it conflicts with an English judicial statute or decision.

The customary international law cannot be applied by a domestic tribunal if those are inconsistent with Acts of Parliament or prior judicial decisions of final authority. The domestic courts have to make sure that what they are doing is consonant with the conditions of internal competence under which they must work. Thus the rule of international law shall not be applied if it is contrary to a statute, i.e. in this case, this Hon'ble Court will not apply customary international law (whatever if may be) if it is contrary to the International Crimes (Tribunals) Act, 1973 as amended (ref: Mortensen v. Peters 1906) 8F(J)93 (Scotland Court of Justiciary), and the courts will observe the principle of stare decisis: (ref: Chung Chi Cheung v. The King (1939) AC 160).

The question of ascertaining the rules of international law is not applicable at this stage. The question was either not raised at the trial or evidence was not adduced to establish the rules of international law. Therefore, at the Appellate stage the rules of international law cannot be pleaded without first having established what the rules of international law are by adducing evidence at the trial.

There is nothing repugnant to customary international law in the International Crimes (Tribunals) Act, 1973, which is consonant with the provisions of customary international law. Since our law was passed in 1973, there has been a codification of international law i.e. the Rome Statute which reflects our domestic law.

Under the Rome Statute, the ICC can only investigate and prosecute the four core international crimes in situations where states are "unable" or "unwilling" to do so themselves. Since Bangladesh has its own domestic law for trial of crimes against humanity under the provisions of International Crimes (Tribunals) Act, 1973, and it has embarked on a process of prosecuting and trying the offenders by establishing Tribunals under the Act of 1973, it cannot be said the Bangladesh is "unable" or "unwilling" to investigate and prosecute the offender. Hence, the jurisdiction of the ICC is ousted in terms of the Rome Statute, which is the international law in this regard. Therefore, the rules of international law permit the trial of the offenders by the Tribunals under the Act.

Article 1 of the Rome Statute, while establishing the ICC, expressly provides that it shall be complimentary to national criminal jurisdiction.

Article 17. 1(a) of the Rome Statute stipulates that a case is inadmissible for determination by the ICC if the case is being investigated or prosecuted by a State which has jurisdiction over it unless the State is "unwilling or unable genuinely" to carry out the investigation or prosecution.

The trial of offences of crimes against humanity by the Tribunal under the International Crimes (Tribunals) Act, 1973 held in Dhaka cannot be compared or confused with the trial of leading Nazi war criminals by the International Military Tribunals at Nuremberg, which was a Tribunal constituted by the victors for the trial of the vanquished pursuant to an agreement signed on 8 August 1945 by the Governments of USA, France, UK and USSR. The Tribunal was constituted under a charter called the Charter of the International Military Tribunal (usually referred to as the Nuremberg or London Charter) for trial of offences of crimes against peace, war crimes and crimes against humanity as committed by 24 Nazi defendants.

The aforesaid trial cannot be called a trial under customary international law. The Charter of the International Military Tribunal constituted the Court and provided the legal framework for the trial. The Nuremberg Charter was the creation of the four signatories to the Agreement of 8 August 1945.'

Mr. Ajmalul Hussain Q.C., a silk robed Barrister who had been appointed a Queen's Counsel by Her Majesty the Queen of the United Kingdom for his distinguished advocacy career in the UK for a number of years, and is a Bencher of the Honourable Society of Lincoln's Inn, ventilated the contention that while our Constitution recognises application of International law, provisions of the Law of Nations can not intrude into an area where our Municipal Law dwels exclusively. Customary International Law can only step into a vacant space, space left unoccupied by Municipal Law because of primacy of municipal law. In his introversion the scenario could be different if the Appellant was booked for other offences indexed in Section 3(2)(f) of the Act because this is the sub-section which explicit refers to "any offence under International Law". That would be the case also if the Appellant was prosecuted for genocide, extermination, enslavement, war crime persecution deportation etc., which are not domestically defined.

I am recording below, some extracts from his written submissions:

The ICTA is protected under article 47(3) of the Constitution of the People's Republic of Bangladesh ("Constitution"). Articles 47(3) of the Constitution states that "notwithstanding anything contained in this Constitution, no law nor any provision thereof providing for detention, prosecution or punishment of any person, who is a member of any armed or defence or auxiliary forces or any individual, group of individuals or organization or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law shall be deemed void or unlawful, or ever to have become void or unlawful, on the ground that such law or provision of any such law is inconsistent with, or repugnant to, any of the provisions of this Constitution" [Italics are mine]. Therefore, it is apparent that the Constitution contains the word "international law" and therefore recognizes the application of international law. According to article 7(2) of the Constitution, the Constitution is the solemn expression of the will of the people and the supreme law of Bangladesh. Therefore, the application of international law and more specifically, customary international law is recognized by the supreme law of Bangladesh.

Bangladesh has been parties to the International Covenant on Civil and Political Rights 1966 ("ICCPR") and its First Optional Protocol, the Convention on prevention and Punishment of the Crime of Genocide 1948, the Convention against torture 1948 and many other major international legal instruments. On top of that, Bangladesh ratified the Rome Statute of the International Criminal Court 1998 ("Rome Statute") on 24 March 2010. It is to be mentioned that the Rome Statute never denied the primacy of national law (paragraph 10 of the Preamble of the Rome State). Article 10 of the Rome Statute explicitly recognizes the existing rules of international law as well as evolving rules. The ICTA represents the embodiment of existing rules of international criminal law in this regard but at the same time recognizes evolution of laws in this area.

The Statute of the International Court of Justice 1945 ("ICJ") describes customary international law as "a general practice accepted as law". It is widely agreed that the existence of a rule of customary international law requires the presence of two elements, namely State practice (usus) and a belief that such practice is required, prohibited or allowed, depending on the nature of the rule, as a matter of law (opinio juris sive necessitates). The ICJ stated in the Continental Shelf case that it is of course axiomatic that the material of customary international law is to be looked for primarily in the actual practice and opinio juris of States.

Customary international law was accepted and applied by the International Military Tribunal at Nuremberg ("Nuremberg Tribunal".) It was held by the Nuremberg Tribunal that the Hague Conventions 1907 on Land Warfare ("Hague Convention 1907") had hardened into customary international law. The Nuremberg Tribunal made the findings that the Hague Convention 1907 undoubtedly represented an advance over existing international law at the time of their adoption but by 1939 these rules laid down in the Hague Convention 1907 were recognized by all civilized nations, and were regarded as being declaratory of the laws and

customs of war that the Charter of the International Military Tribunal at Nuremberg ("Nuremberg Charter") codified pre-existing norms, either those under international custom or general principles of law.

The International Criminal Tribunal for Rwanda ("ICTR") was created by the United Nations Security Council Resolution 955 (1994). In certain cases, the ICTR also recognized and accepted customary international law. For instance, in discussing the meaning of a "group" as a target of genocide, in the case Akayesu (1998) the ICTR confirmed the principles put forth in preceding of international law instruments such as the UN General Assembly resolution 96 (1946), the statement of the UN Secretariat (1948) and the ICJ judgment in the case in Reservations to the Convention on the prevention and Punishment of Genocide (1951).

States are under a general obligation to act in conformity with the rules of international Law and will bear the responsibility for breaches of it, whether committed by the legislative, executive or judicial organs. It is part of the public policy of the United Kingdom ("UK") that the courts should in principle give effect to clearly established international law. The doctrine of "incorporation" implies that international law is part of the municipal law automatically without necessity for the interposition of a constitutional ratification procedure. The best-known exponent of this theory is the eighteenth-century lawyer Blackstone who stated in his commentaries that "the law of nations, wherever any question arises which is properly the object of its jurisdiction, is here adopted in its full extent by the common law, and it is held to be part of the law of the land".

In the case of Buvot Vs. Barbuit, Lord Talbot declared unanimously that 'the law of nations in its full extent was part of the law of England. Therefore, it has been accepted in UK that customary international law rules are part and parcel of the common law of England. However, it has further been held that a rule of international law would not be implemented if it ran counter to a statute or decision by a higher court. In Chung Chi Cheung Vs. R, Lord Atkin observed that the courts acknowledge the existence of a body of rules which nations accept among themselves.

In respect of the issue of stare decisis or precedent and customary international law, it has been accepted that the doctrine of stare decisis would apply in cases involving customary international law principles as in all other cases before the courts, irrespective of any changes in the meantime in such law. This approach was reaffirmed in Thai-Europe Tapioca Service Ltd. Vs. Government of Pakistan. However, in Trendtex, Lord Denning and Shaw LJ emphasized that international law did not know a rule of stare decisis. Where international law had changed, the court implements that change 'without waiting for the House of Lords to do it'. Therefore, it is obvious that customary international law has long been regarded as part of the law of England and of Scotland without any need for specific incorporation.

1737 Cases t. Talbot 281.

Trendtex Trading Corporation Vs. Central Bank of Nigeria [1977] 2 WLR 356

[1939] AC 160

[1977]2 WLR 356

It is generally accepted principle in Bangladesh that customary international law is applicable to the domestic courts in Bangladesh if it is not contrary to the domestic law. In the case of Bangladesh Vs. Unamarayen S.A. Panama, the first case before the Supreme Court of Bangladesh on the application of customary international law, the Honourable High Court Division expressed the view that customary international law is binding on states and states generally give effect to the rules and norms of the customary international law".

29 DLR 252.

Article 25 in part II (fundamental principles of State Policy) of the Constitution of the People's Republic of Bangladesh has been interpreted as containing certain basic principles of customary international law which are considered to be jus cogens. In the case of Saiful Islam Dilder Vs. Government of Bangladesh and others, the Honourable High Court of Bangladesh held that in the absence of any extradition treaty with India, the Government of Bangladesh may take help of Article 25 of the Constitution for the extradition of Anup Chetia to the Indian authority in order to base its international relations on the principle of respect for national sovereignty and equality, non-interference in the internal affairs of other countries. The Honourable High Court Division further held that it is true that the fundamental principle of state policy, here article 25, cannot be enforced by the court, nevertheless the fundamental principles of state policy is fundamental to the governance of Bangladesh, and serve as a tool in interpreting the Constitution and other laws of Bangladesh on the strength of article 8(2) of the Constitution by the superior court.

In the case of Professor Nurul Islam Vs. Bangladesh, the Honourable High Court Division of the Supreme Court of Bangladesh affirms that "article 25 (1) of the constitution casts an obligation upon the State to have respect for international law". It is the mandate of Article 25 of the Constitution that Bangladesh, as a state, shows respect for international law and the judiciary in Bangladesh, as one of the principle 3 organs of the state, cannot escape its obligation in this respect.

The answer to the First Question raised by the Honourable Appellate Division of the Supreme Court of Bangladesh is in the affirmative. The ICTs in Bangladesh has been established under the ICTA. Article 3(2)(e) of the ICTA states that, apart from crime against humanity, crime against peace, genocide and war crimes, the ITCs shall have the power to try and punish violations of any humanitarian rules applicable in armed conflicts laid down in the Geneva Conventions of 1949. Article 3(2) (f) of the ICTA further states that the ICTs shall have the power to try and punish any other crimes under international law. These 2 (two) provisions clearly manifest the applicablility of customary international law to the ICTs. Moreover, Article 3(2)(d) of the ICTA generally defines war crimes as violations of the laws or customs of war. Therefore, the ICTA accepts the application of customary

international law, more specifically customary international criminal law. As tribunals for prosecuting international crimes committed during armed conflict situations in 1971, the ICTs are also obliged to apply customary international law as done by the Nuremberg Tribunal, ICTY and ICTR as discussed above. Customary international law can even be applicable to the ICTs if the ICTs are considered purely domestic courts as the Supreme Court of Bangladesh, in several cases, has affirmed the applicability of customary international law in the courts in Bangladesh. Therefore, my answer to the First Question is in the affirmative that customary international law is applicable to the ICTs constituted under ICTA, subject to the provisions of domestic law because International Law does not have any overriding effect.

Mr. F. Hassan Arif, the learned Senior Advocate who carries with him the legacy of not only being a former Attorney General but also of being the Advisor on Law, Justice and Parliamentary Affairs to the immediate past Care-Taker Government, expressed in writing and verbalation that domestic Tribunals are free to consider provisions of International Law, as much as they are free to evolve their domestic jurisprudence and that prescriptions of International Law are not binding upon them. In his reckoning the Act is complete in itself and is quite comprehensive. He went on saying that the forum is domestic, procedure rules and evidence are all domestic, only the crimes are of international in nature. He emphasized that domestic Tribunals are absolutely free to define the terms and that definitions generated by overseas tribunals are not binding on our Tribunals.

Mr. Arif submitted his written opinion, salient parts of which are, as below:

The liberation war of Bangladesh and its ultimate victory came at the cost of untold human suffering and staggering loss of life. Grave and heinous crimes were committed during the period of liberation war in 1971. Taking into account the gravity of the of crimes committed during that period and the state's responsibility to bring perpetrators to justice, the International Crimes (Tribunals) Act was enacted on 20th July 1973 to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law, and for matters connected therewith.

In the UK, the classical English concept of "parliamentary sovereignty" traditionally excludes the concept of 'international law' and the idea of 'international obligations' from the domain of domestic legal order. But in the reality of the 21st Century, the idea of 'sovereignty' is evolving. England now is part of the European Union and as such has certain international obligations. The English judges are influenced by the "international jurisprudence" taking into account the decisions of the European Court of Justice and the European Court of Human Rights. In some instances, international law in the form of judgments of the European Courts is considered binding upon the domestic courts.

R v Secretary of State for Transport, ex p Factortame (No 2) [1991] 1 All ER 106.

Following Human Rights Act 1998, the English Courts are increasingly influenced by the European Jurisprudence on Human Rights, resulting in a fresh impetus of judicial activism in the English superior courts.

Bangladesh Context.

So far as the framework of our legal system is concerned, it is articulated in our constitution that respect for international law and the principles enunciated in the United Nations Charter shall be one of the fundamental state policies of this nation (Article 25 of the constitution).

The application of international law can take place between one State vis a vis another in an international forum under mutually accepted rules of procedure. Within the state however, application of international law is generally introduced and enforced by enacting a domestic legislation.

Customary international humanitarian law is a set of rules that come from a general practice accepted as law. A state does not have to formally accept customary rule in order to be bound by it or adopt it on own violation. If the practice on which the rule is based is widespread, representative and virtually uniform then that rule is enforceable/adoptable by the states.

From the preamble to the ICTA, it is apparent that the purpose behind enactment of the said was to provide jurisdiction for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law (The Preamble and Section 3 of ICTA). The short title of the 1973 act reads "The International crimes (Tribunals Act 1973. Emphasis should be placed on the word 'international crimes'. The then legislators intentionally decided not to prosecute the perpetrators of heinous crimes within the frame work of the penal code but instead resorted to "international crimes" as the jurisdiction for trial. The reason was for obvious historical context of 1971.

The ICTA is comprehensive legislation that categories the offences that are amenable to its jurisdiction i.e. 'International Crimes', law applicable to the tribunals and the governing procedure of the tribunals. The ICTA is a code of both substantive and procedural law. In regard to procedure, it excludes the statutory framework of the Code of Criminal Procedure and Evidence Act and instead provides for the scope to create its own set of procedures. The ICTA is a complete code in itself.

The offences listed above are not novel creations of the legislature. These offences were established crimes under the domain of international law at the time the ICTA was drafted. The first reference to 'crimes against humanity' is evidenced in the joint declaration by the Allied Powers on May 24, 1915, during World War I.

Three decades later the Nuremberg Charter of 1945 first codified a number of offences including 'Crimes against humanity' for trial of Nazi war criminals.

The United Nations General Assembly in 1946 adopted a resolution that affirmed 'the principles of international law" by the Nuremburg Charter and Judgment. Moreover, the Allied Control Council being the legislative authority of the Allies that governed occupied Germany after World War promulgated Control Council Law No. 10, which also included the offences crimes against humanity, war crimes and crimes against peace.

The ICT tribunal No. 2, in its judgment in the said case, accepted that the crimes listed in Section 3 of ICTA are crimes of customary international law. In paragraph 96 of the said judgment reads "The history says; for the reason of state obligation to bring the perpetrators responsible for war the crimes committed in violation of customary international law to justice and in the wake of nation's demand, the Act of 1973 has been amended for extending jurisdiction of the Tribunal for bringing perpetrator to book if he is found involved with the commission of the criminal acts constituting offences enumerated in the Act of 1973 even in the capacity of an "individual' or member of 'group of individuals" (emphasis added is mine).

So far as the fundamental principles of the state policy is concerned, it is enunciated in our Constitution that Respect for international law and the principles enunciated in the United Nations Charter shall be one of the fundamental state policies. (Article 25 (1) of the Constitution). The term 'international law' is again mentioned in Article 47 (3).

> Therefore it is submitted that the ICTA was based on the foundation of international legal instruments so far as the definition of crimes provided in Section 3 is concerned. Moreover, the jurisprudence that has developed over time since 1973 is in consonance with the ICTA. There is no significant divergence from the traditional roots of international criminal law, that would necessarily make the existing international jurisprudence incompatible with ICTA. Therefore , the body of law that have developed in relation to the international crimes listed above over the years forms the corpus of 'international customary law'.

The tribunal formed under the ICTA are established under the frame work of our constitution. It is a domestic tribunal and does not possess any international character whatsoever, so far as the legal status of the tribunal is concerned. However, the offences that this tribunal has jurisdiction to try are 'international crimes'. The offences and its elements do not correspond to the penal provisions of Bangladesh in force. The framers of the ICTA deliberately used the word 'international crimes' in the preamble of the Act obviated by the historical context. Moreover, Section 3(2) (f) lists "any other crime under international law" as a separate offence on which the tribunal shall have jurisdiction to try an accused person. Therefore, it is apparent upon a reading of the ICTA and Article 47(3) of the Constitution that the object of the ICT tribunals is not to try municipal offence under our Penal Code, but

to try 'international offences'. On the same vein the municipal procedures are not made mandatory for trial of cases in the tribunal, rather the tribunal is free to decide its procedure in light of best practices. It is submitted that the tribunal or any appellate court ought to take into account the international jurisprudence that has developed and is evolving in order to appreciate how courts and tribunals around the world deal with these specified offences in light of the international standards and best practices.

Issues To Be Addressed.

Bundles of documents before us, submissions of the respective parties and the opinion advanced pro-bono by the **amici** curiae require us to address the following questions i.e

whether (1) the provisions of Customary International Law are to be applied in trying an accused indicted for the commission of the offences under Section 3(2) of the Act,

(2) the Tribunal was sagacious enough in interpreting the relevant law

(3) the Tribunal's finding of guilt commensurate with the evidence adduced

(4) the Tribunal applied the correct standard of proof

(5) the Tribunal committed any miscarriage of justice in finding the Appellant guilty of the offences leveled.

On the questions no 1, listed above assistance provided by the amici curiae have been of spectacular stimulus.

All of them were in concord on the doctrine of 'primacy of Municipal Law' although Mr. Amirul Islam views that in the field of International Criminal Law, Customary International Law is deemed to have primacy over domestic law.

According to them provisions of International Law can not gain access if that be in conflict with domestic law. In other word, permeation can only be possible if a vacancy exists.

So, their view favours the idea of what may aptly be termed as a musical chair situation, which is that Customary International Law will sit on a chair found unoccupied, but can not force its way through to an occupied one.

Through their disquisition these seminal legal luminaries shed such flood of light on the question which deserve to be hailed as splendid.

They have, nevertheless, been at divergence on the question whether the Act itself has incorporated International Law provisions.

Of the seven maestro, only M/s. T. H. Khan and Amirul Islam, expressed that International Law provisions have been incotporated in totality while M/s Arif and Hussain favoured the thought that those provisions are to be imported in respect to those offences which have specifically been described as crimes under International Law as well in respect to those offences which have not been domestically defined, such as genocide, war crsimes, crimes against peace, extermination, deportation, persecution, deportation, enslavement.

M/s Haque, Mahmudul Islam and Mahmud, on the contrary opined that the crimes the Appellant has been convited of, have been well defined by the Act, wherefor under the doctrine of 'primacy of municipal law' entry door for International Law provisions has been blocked.

Mr. Amirul Islam voiced that the Tribunal below has nevertheless, quite cogently and infallibly applied International Law provisions in their true context.

Customary International Law.

I am now poised to first address the issue that orbits round the question as to the applicability of Customary International Law, before embarking upon other areas of law and the factual inquisitorials that the submissions of the learned Advocates begot.

Mr. Razzak was quite obstinate to the claim that International Law applies to the subject proceedings. In his understanding the applicable Laws are the provisions of the Customary International law because that is what the Act explicitly warrants and yet the Tribunal below, had failed to engage provisions of the Law of the Nations, in its proper context while accepting this as the applicable Law, adding that to bring in line with Customary International Law prescription, proving murder or rape was not enough, in addition it is incumbent upon the prosecution to prove that said acts were widespread and systematic and that mens rea for the same were present, there existed international armed conflict, victims formed part of civilian population.

It is this area of Mr. Razzak's submission that propelled us to invite seven iconic lawyers within our jurisdiction to express their views, which have, succinctly been scripted above.

I have analysed their opinion with microgenic vision alongside **unjettisonable** authorities on the subject.

From the very inception of the science of the Law of Nations the question that had remained a riddle among the jurist was whether the rules of International Law are legally binding (International Law, a Treatise by L. Oppenheim, Volume one, page 7). Hobbes (De Cive XIV 4) and the nineteenth Century Jurist Austin (Lectures on Jurisprudence VI). Positivists had answered the question in the negative, as according to them law meant a body of rules of human conduct which are enforced by sovereign political authority.

The fore runners of Public International Law like Hugo Grotius were a bit **cynical** as to the force Public International Law would be fortified with. They were prepared to confine this legal regime as between the states, rather than between the states and the citizenry. The idea of International Penal Law was out of their comprehension so much so that George Schwarzenbarger had to write, "On the present level of world organisation, occasional attempts to create substantive International Crimes by way of treaty have necessarily remained of a somewhat freakish character". (A Manual of International Law, 4th Edition, Page-108). League of Nations' attempt in 1936 to prepare a draft convention to establish International Criminal Court went into oblivion with the League itself (Oppenheim, Vol-1, supra, Page 293). Christine Vanden Wyngaert writes "Until a short while ago, many scholars were sceptical about the question whether such a thing as International Criminal Law existed (International Criminal Law: **Foreward**.")

That scenario of pessimism has, thankfully, waned through the passage of time as identifiable progress in international penal jurisprudence has made its mark after the ice melted years after the drafting of Nuremberg Charter, following Kellog Brian Pact in 1928.

While International Law is keen to, and has over the intervening period, succeeded to spread its wings as farther as it can stretch, it remains incessantly loyal to the concept of national sovereignty, which is also a recognised attribute of Public International Law.

Power of an independent state to make laws and to bring everyone within its boundary amenable thereto as well as to ward off any incursion by any external legal regime, is but one of the most significant adjunct of national sovereignty which has found a pivotal place in the United Nations Charter.

Hugo Grotius, the 17th Century Dutch Jurist, who is quite aptly deemed to be the progenitor of the Law of the Nations as a separate branch of Jurisprudence, himself described International Law as a subject between the States, but he called it Jus Gentium (De Jure Belli ac Pacis – 1625). He believed natural law to be the basis. The Law of Nations and National Law is founded on universal reason common to all men. He described international customs as voluntary law.

Post Grotius authors expressed that Law of Nations is a body of rules to which plurality of free states are subjected, which comes into existence through tacit or express consent of the States. Rachel was the pioneer of this thought in the seventeenth Century (De Jure Naturate et Gontium-1676). Textor, another Seventeenth Century philosopher, opined that Law of Nation is founded on custom and express agreement (Synopsis Juris Gentium 1680).

By the eighteenth Century the theory that developed was that common consent of the nations find its existence either in international customs or in international treaties. Positivist thinker like Cornelius Van Bynkershoek was a pivotal figure to advance this theory (De Dominio Moris 1702, De Foro Legatorum 1721, Omaestionum Juris Publice, Li bri ii 1737).

Since Grotius, this jurisprudence passed through numerous stages of development during different periods.

As it stands today, this law (Droit des gen's) has been defined by **Oppenheim** as the body of customary and treaty rules which are considered legally binding by states in their intercourse with each others (International Law, A Treatise, Volume 1, Page 4).

Similarly, Georg Schwarzenberger defines International Law as the body of legal rules which apply between sovereign states and such other entities as have been granted international personality (A Manual of International Law, Forth Edition Vol-1, Page 2).

In fact International trade was the prime factor that appetised the catalyst for the development of International Law, because without a code of conduct there was no guarantee to trade or to protect the merchants of one State from another.

As there exists no global sovereign and as every state and international personality is sovereign, which, in the context of International Law, connotes a country's right to govern its own affairs without external interference, which is an essential ascription of the U.N. Charter,

International Law is essentially based on consensus. Save the Security Council's well restricted power to intervene at given circumstances, only when no permanent member impedes, there exists no compelling or enforcing power internationally.

Judge (Sir) Hersch Lauterpacht, however observed, "the body of rules of conduct (is) enforceable by external sanction, which impose obligations primarily, though not exclusively, upon sovereign States and which owe their validity both to the consent of States as expressed in custom and treaties and to the fact of the existence of an international community of States and individuals. "(International Law, being the collected papers Hersch Lauterpacht, Edited by E Lauterpacht Q.C. Volume 1, 1970, Page- 9).

Having so stated, however, Sir Lauterpacht, a former Judge of the International Court of Justice, had no hesitation in conceding, "It is a matter of dispute whether it may properly, be described as law in the sense generally accepted in jurisprudence, whether its rules extend to bodies as persons other than States; whether there exists an international community; and whether there is a source of International Law other than the consent of sovereign States. Although it is generally agreed that International Law is enforceable by physical compulsion, the precariousness and uncertainty of its enforcement have caused many to question on that account, its claim to be considered as law in the proper sense of that term. There is substance in the doubts thus expressed as to the legal nature of the body of rules and principles currently described as International Law, while as will be shown, these doubts do not, upon examination, prove to be decisive, no useful purpose can be served by claiming for International Law as is now existing a degree of legal reality which it does not posses. It is more accurate to admit its imperfection when ganged by the notion of law as it is known in civilised societies than, as is often done, to assert its legal nature by reference to a tenuous conception of law, derived from a contemplation of conditions said to prevail or to have prevailed, in primitive communities" (Lauterpacht, ibid, page 9).

The second part of Lauterpacht's treaties, as reproduced above, is clearly in conformity with what positivist thinker, like Hobbs in the Seventeenth and John Austin in the nineteenth Century, expressed.

Austinian theory is obviously floated on the theme that no world authority exists, whether judicial or executive, to enforce this body of rules. Save the residual power of the Security Council to intervene, even with force, in extreme cases and then again when none of the permanent members take a stand against such a move, there exists no authority to compel a state, sovereignty against external compulsion being one of the essentialities of Statehood, to adhere to those bodies of rules. Even the International Court of Justices' jurisdiction is dependent on consent of the State parties.

So far as the international criminal jurisprudence is concerned, it was not too far ago, conceived that there would never emerge a body of international criminal law, although the reality has proved otherwise and the international criminal jurisprudence today stands with greater perfection and stronger teeth, as are reflected in the Rome Statute and other ad-hoc localised war crime tribunals, yet again there exists no effective device by which the International Criminal Court can enforce its warrant of arrest or compel appearance from a country that refuses to abide as has been done by Sudan in refusing to hand over Bashir al Asad. Prof Christine Vanden League of Nations' attempt in 1936 to draft a convention for establishing a Criminal Court died a natural death as the proposed international criminal court did not secure general acceptance (**Oppenheim**: International Law: A Treatise, Vol.-1 Page 293).

These said, however, it would be a travesty of the truth to say that the principles of International Law are not worth the title.

From Grotius till date, it is recognised that the Law of Nations owe its existence to two aspects i.e (I) treaties (II) customs.

If a nation breaches an international treaty to which it is a party, it will no doubt face international castigation with serious repercussion and possible isolation, and possibly an ICJ decree. Similarly, if it acts in repugnance to an established Customary Internal Law provision, it may face same admonition or, who knows, even more then that which may entail fury or even, in an extreme situation, Security Council's police action. The emergence of the United Nations Organisation, of which almost all independent States and international personalities are members, can not risk international scourge or reprimand. In today's world, hence it is

inconceivable that a state in exercise of its external sovereignty would flout treaty provisions or generally recognised rules of International Customary Law. Indeed in such an event even the municipal courts may, in appropriate cases, compel the executive to follow principles of the Law of the Nations.

While the state remains bound to honour a treaty it is party to and an undisputed provisions of International Customs that applies to it, a question that remains topical is whether the Judicial functionaries of a given State would follow and act in accordance with (I) treaty stipulations (II) Customary International Law, in the absence of statutory command to that effect in the State concerned.

Monoism and Dualism

In general, two principal theories persist, namely Monoism and Dualism on this point. Judiciary of the countries that follow Monoism subscribe to the view that International law and Municipal Law are concomitant aspects of the one (mono) system of law in general, while the judiciary in those countries that adhere to the Dualism, stick to the norm that international and municipal laws represent two diametrically distinct legal (dual) systems, international law having an intrinsically different character from that of municipal law. (J G Starke, Introduction to International law, page 72). Hans Kelsen termed Dualism as pluralist theory.

Dualists expound the view that rules of international law can not directly and ex-proprio vigore be applied within the municipal sphere by State courts, i.e in order to be so applied such rules must undergo a process of "specific adoption" by or "specific incorporation" into, Municipal Law, while Monoist believe such rules are auto-incorporated into the municipal system. George Schwarzenberger (A Mannual of International Law, Fourth Edition, Vol-1. Page 40), insists that the two schools hold antithetically opposing views.

Dualist believe International and Municipal Laws are separate and self-contained legal systems-contacts between them are possible but require express or tacit recognition of the rules of the one legal system by the other. (Page 41, Schwargenberger).

Dualism grew in strength in the nineteenth century with the development of the pluralist doctrines of the sovereignty of state will, as propounded by Hegel and those who followed him, with the emergence of the concept of internal legal sovereignty.

Triepel, one of the pivotal advocates of Dualism expressed in his book "Volkerrecht and Laudesrecht" 1899, that there are two fundamental differences between the two systems;

(1) The subject of state law are individuals, while the subjects of International Law are states solely and exclusively.

(2) Their judicial origins are different; the source of state law is the will of the state itself, the source of International Law is the common will of the states (Gemeinville).

Anzilati, another arch exponent of Dualism, however, held that the difference lies in that Municipal law is conditioned by the fundamental norm that state legislation is to be obeyed, while International Law is conditioned by the doctrine of "pacta sunt servanda", ie agreements between the states are to be respected, and hence two systems are so distinct that no conflict between the two are possible; there may be references from the one to the other, but nothing more (di Diritto Internazionale, 3rd edn 1928, Vol 1 page 43).

Dualists hold high primacy of state law basing the same on the theory of the sovereignty of the state will, while the Monoists assert that all laws belong to a single unity, composed of binding legal rules, whether those rules are obligatory on states, on individuals, or on entities other than states. They believe that there can be no escape from the position that the two systems, because they are both systems of legal rules, are interwoven parts of one legal structure. Dualists' argument on the Primacy of Municipal Law lies on the claim that states enjoy the very widest liberties and exercise complete sovereignty, while Monoists say States sovereignty is conditioned by the limits International Law imposes.

Since, according to positivists theory, International Law and Municipal Law constitute two strictly separate and structurally different systems, the former can not impinge upon state law unless the latter, a logically different system, allows its constitutional machinery to be used for that purpose. (J G Strake supra, page 76).

In the cases of treaties, rules regarding transformation of treaty into state law, i.e. by legislative approval of the treaty, which is not merely a formal but a substantive requirement, alone vindicates the extension to individuals of the rules laid down in treaties.

While the US courts generally follow Monoist School, British courts draw a distinction between. i) Customary rules of International Law on the one hand and ii) the rules laid down by treaties, on the other.

So far as the treaties are concerned, British courts consistently and without ambiguity follow Dualism i.e, adoption theory, stubbornly in that they do not give effect to any treaty provision which has not been specifically adopted domestically by legislation. So far as rules of Customary International law are concerned, however, the scenario is inflicted with some obscurity engendered by divergent judicial views, finally suggesting that in case of conflict domestic law must prevail.

British Stand on Customary International Law.

Early 18th century witnessed the rigid prevalence of what was known as Blackstonian theory, a theory that advocated for unequivocal application of auto-incorporation, an extreme reflection of Monoism.

Sir William Blackstone enunciated this auto-incorporation theory on the ratio expressed in the cases of Re Barbuit, (1737, case temp Talb (281), Triquet-v-Bath (1764 3 Burr 1478), and Heathfield-v-Chilton (1767 4 Burr 2015). Lord Mansfreld also sanctatised this inflexible auto incorporation theory in the 18th century:

19th century judges enforced Blackstonian doctrine or auto incorporation dogma, which denoted auto incorporation of Customary International Law into English Common Law, with a significant qualification. In the cases of Wolff -vs- Oxholm (1817 per Lord Ellenborough), Dolder –V- Huntingfield (1805 per Lord Eldon), Novello V Toogood (1823 per Abbott CJ) De Wutz –Vs- Hendricks (1824 per Best CJ), Emperor of Austria –V- Day & Kossith (1861 per Stuart VC), rules of Customary International Law were held to be applicable so long as they are not in conflict with English statutes or judicial decisions.

Mortensen –Vs- Peters (1906, 8F 93,) **Polites** –Vs- The Commonwealth, (70 CLR 60 Australia,) English courts re-iterated the doctrine of qualified incorporation. It was further emphasised that once the scope of such customary rules have been determined by the British court of final authority, all British courts are thereafter bound by that determination even though a divergent customary rule of International Law later develops.

In 1876 however the Court for Crown Cases Reserved in the Case of R- Vs- Keyn (two Ex D63 at 202) came up with a different view and thereby threw doubts on the scope of the auto-incorporation doctrine. The majority of the judges in that case held that an English court could not give any effect to the rules of International Law unless such rules were proved to have been adopted by Great Britain in common with other nation in a positive manner. Moreover, if such rules conflicted with established principles of the English Common Law, an English court was bound not to apply them.

In 1905, however the court of appeal, in the case of West Rand Central Gold Mining Company. –Vs- R (1905, 2KB 391) partially returned to the traditional auto incorporation doctrine although the court did not specifically express so.

In 1925 the Court resorted to strict Dualism in the case of Commercial and Estate Co of Egypt –v- Board of Trade (1925 1 KB 271). In 1935 the House of Lords resorted to qualified in-corporation by its decision in Chung Chi-Vs R Cheung (1939 AC 160), with Lord Atkin's following observation; – "It must always be remembered that, so far, at any rate, as the courts of this country are concerned, international law has no validity save in so far as its principles are accepted and adopted by our own domestic law. There is no external power that imposes its rule upon our own court of substantive law or procedure. The Court acknowledged the existence of a body of rules which nations accept amongst themselves. On any judicial issue they seek to ascertain what relevance the rule has and having found it, they will treat it as incorporated into the domestic law, so far as it is not inconsistent with rules enacted by statutes or finally declared by their tribunals."

Contradiction in Lord Atkin's pronouncement can be detected if his expression at Page 167 of the judgment is read.

Lord Denning in Thakrar Vs Home Secretary 1974 QB 684, stated, “In my opinion, the rules of international law only become part of our law in so far as they are accepted and adopted by us.”

These two decisions reflect superior English Court’s tilting towards qualified incorporation based on the “so far no conflict” theme. Three years later, Lord Denning, in the case of Trendtex Trading Corporation Vs Central Bank of Nigeria (1977 QB 529) in considering the two schools, auto incorporation or transformation, expressed that the doctrine of in-corporation is correct. The real question in that case was whether the rules of precedent applying to rules of English law, incorporating Customary International Law, meant that any change in International Law could only be recognized by the English court, in the absence of legislation within the scope of the doctrine of stare decisis.

Inaddition to the qualification forayed by Lord Atkin and then by Lord Denning that a customary rule must not be inconsistent with statutes or prior judicial decision of final authority, it is also a condition precedent that the rule is generally accepted by the international community.

To draw a fence of moderation between to two extreme views, namely the Blackstonian one, on the one hand and the ratio expressed in R –V- Keyn, supra, on the other, coupled with the view as was expressed by Lord Denning in Thakar, supra, recent authorities emerged to suggest that though International Law is not a part of British domestic law, it may nevertheless be a source of rules of construction applied by a British court and that if, a British judge takes it that he is free to reject a generally recognized customary rule of International Law in any event it would be contrary to authority. Additionally, to allay doubts which sprang out of previous divergent decisions, superior judicial authorities proclaim that British Courts, would (I) interpret a statutory instrument in a way so not to indulge upon any conflict with International Law for there is a presumption that Parliament does not intend to commit a breach of international law (Thule Lovis 1817, two 210), Crocraft Ltd. Vs Pan- American Airways Inc (1969, IQB 616), R Vs Chief Immigration officer Heathrow Airport, ex parte Bibi, (1976 All ER), Fothergill Vs Monarch

Airlines Ltd. (1981, 1 ALLER 55). (II) This rule of construction however, would not apply if the statute is otherwise clear and unambiguous in which case statutory sermons must prevail, although there is nothing to debar the court from expressly ruling that the statute is in breach of Customary rules of International Law.

Ian Brownlie, by analysing relevant English decisions from the older to the modern days, projected the ambiguities and uncertainties apparent in those cases on the question as to whether incorporation or transformation rule applies. He expressed, "cases decided since 1786 are interpreted by some authorities in such a way as to displace the doctrine of incorporation by that of transformation viz customary rule of international law is part of English law only in so for the rules have been clearly adopted and made part of the law of England by established usages and it is the decision of the Court for Crown Cases Reserve in the case of R-v-Keyn that is held as the initial authority for this view, as has been figured in Halsbury's Laws of England and has been expressed by Holdsworth in his "Essays in Law and History, 1945."

Stating, "Keyn remains a somewhat ambiguous precedent", Brownlie goes on to state that the judgment of Lord Alverstone CJ in West Rand Central Gold Mining Co.-V-R. also appears to contain elements of the principle of transformation. (Brownlie, 5th Edition, Page 45).

By citing that observation of Lord Bunedin in Mortensen-v-Peters, Supra which reads, "International Law, so far as this Court is concerned, is a body of doctrine............which has been adopted and made part of the law of Scotland", Brownlie opined that although the observation is equivocal but it is commonly understood to be in fovour of transformation doctrine.

Lord Justice Atkin's (as he then was) dictum in Commercial and Estate Co of Egypt-v-Board of Trade (1925 1 KB 271) which runs, "International law as such can confer no rights cognisable in the municipal courts. It is only in so far as the rules of international law are recognised in the rules of municipal law that they are allowed in municipal courts to give

rise to rights and obligations", has led Browlie to hold that this observation supports transformation doctrine.

Brownlie, however, was of the view that Lord Atkin's (as he then became) observation, supra, in Chung Chi Cheung-v-King, was not incompitable with the principle of incorporation.

Having expressed as above, and having analysed the conflicting decisions, Brownlie, concluded in favour of incorporation doctrine, stating, "The authorities, taken as a whole, support the doctrine of incorporation, and the less favourable dicta are equivocal to say the least".

Oppenheim (vol-one, page 39), advanced similar opinion expressing, "As regards Great Britain, the following points must be noted; "all such rules of Customary International Law as are either universally recognised or have at any rate received the assent of this country are per se part of the law of the land. To that extent there is still valid in England the Common Law doctrine that the Law of Nations is part of the Law of the land. It has been repeatedly acted upon by courts. Apart from isolated obitar dicta it has never been denied by judges. The unshaken continuity of its observance suffered a reversal as the result of dicta of some judges in the Franconia case in 1876 but West and Central Gold Mining Co –v- The King, supra, decided in 1905, must be regarded as a reaffirmation of the classical doctrine".

Oppenheim interpreted the decisions in Mortenesen-v-Peters, Commercial Estate Co of Egypt-v-Board of Trade and Chung Chi Cheung as authority to support incorporation doctrine.

In the backdrop of somewhat hazy state, the principles as to the applicability of Customary International Law in the British system, can by analyzing high preponderant authorities, be summed up in following terms;

(a) Unbrittled Monoist doctrine as such is alien to British system

(b) It is also correct to say that unadulterated Dualism is also not the doctrine that the British Courts follow. An ad-mixture of both the schools may aptly be said to be the British judicial practice.

(c) British Courts would certainly not apply a provision of International Law if the same is explicitly or implicitly at odd with any UK statute, Common Law provision or prior judicial pronouncement or, if the area is covered by its own municipal law, whether statutory, common law or judicial decision based, but would, as Brownlie states (Page 41, Fifth Edition), "take judicial notice of international law: once a court has ascertained that there are no bars within the internal system of law to applying the rules of international law". In this sense the traditional untrammeled Blackstonian theory or the theory of inflexible auto-incorporation would not apply ipso facto, but subject to the above stated riders.

(d) As Prof JG Starke QC enumerates, "Notwithstanding judicial doubts as to its scope, the incorporation doctrine has left its definite mark in two established rules recognised by British Courts," which are (i) Acts of Parliament and statutory instrument are to be interpreted so as not to conflict with international law, following the presumption that Parliament did not intend to commit a breach of international law (ii) international law need not, like foreign law, be proved by evidence. (JG Starke Introduction to international law Page 81).

The following principles are also to be reckoned; (a) provisions of international law can be taken in aid for interpretation only where domestic authorities are absent; (b) the principles as propounded by Hans Kelsen that National Law regulates the behaviour of individuals and International Law is concerned with the behaviours of states, the National Law is concerned with the internal relations, the so called domestic affairs, while International Law is concerned with external relations of the states, the Municipal Law is the law of the sovereign over individuals while International Law is not above, but between states and, is hence weaker than Municipal Law. (Hans Kelsen, Principles of International Law); (c) Zamora principle, propounded by Lord Parker (1916, 2 AC), stating that the Prize Court in England would certainly be bound by the Acts of Imperial Legislature, and it was nonetheless true that if the Imperial Legislature passed an Act, the provisions of which were

inconsistent with the law of nations, the Prize Court, in giving effect to such provisions, would no longer be administering International Law, still holds good.

British Practice-Treaties

Scenario as to treaty based International Law, however, stands on a different and unambiguous footing. British Courts have remained static, consistent and unambivalent in proclaiming that they would not give effect to a treaty provision unless the same has been transformed into Municipal English Law, that treaties entered into under the Royal Prerogative can not alter the law of the land.

The earliest case to say so is the case of Parlement Belge (1879 4 PD 129). Subsequent authorities are to be found in the cases of AG for Canada-v-AG Anatoria (1937 AC 326), while modern authorities are manifested in Blackburn-v-AG (Per Lord Denning 1971 A ALL E R 1380), R-v-Home Secretary, ex-parte Mc Whirter (1969, Times Law Report), Laker Airways-v- Dept of Trade (1977 QB 643), Walker-v-Baird 1982 AC 491), Rayner (Minicing Lane) Ltd-v-Dept. of Trade and Industry (1990 2 AC 418) and, ofcourse the case of Council of Civil Service Unions-v-Minister for Civil Service, (the GCHQ case 1985 AC 374).

In Blackburn-v-Attorney General, supra, Lord Denning expressed; “Even if a treaty is signed, it is elementary that this Courts take no notice of treaties as such. We take no notice of treaties until they are embodied in Laws enacted by Parliament and only to the extent the Parliament tells us.”

Our Practice

We follow the British school which have been reflected in a number of decisions that stemmed not only from our Apex Court but also from the superior Courts in India. (H.M Ershad-v-Bangladesh 7BLC AD, /Civil Rights Vigilence Committee SLSRC College of Law bengalore-v-Uni of India and others, AIR 1983 Karnataka 85,

Under the doctrine of the Primacy of Municipal Law, which we and the British Courts, Supra, follow, municipal law reigns in case of a conflict with the Law of Nations: provision of an Act must prevail over anything else. This view is fully consistent with what

all but one amici curiae insisted upon and what the Appellate Division ordained in H.M. Ershed-v-Bangladesh supra, Page 69) unequivocally stating; “But in the cases where the domestic laws are clear and inconsistent with the international obligations of the State concerned, the national courts will be obliged to respect the national laws, but shall draw the attention of the law makers to such inconsistencies.” (Per Bimalendu Bikash Roy Chowdhury J). Bimalendu Bikash Roy Chowdhury J, with whom Latifur Rahman CJ concurred, recognised that Human Rights norms, whether given in the Universal Declaration or in the Covenants” are not directly enforceable in national courts, but if these provisions are incorporated into the domestic law, they are enforceable in national Courts.

In the same case A.M Mahmudur Rahman J, the author Judge, expressed, “with regard to submission resting on Article 13 of the Universal Declaration of Human Rights we are of the opinion that such right is in the International covenant and not a part of municipal law. Therefore, it has no binding force, for Article 36 provides complete answer” (Paragraph 13)

In Civil rights Vigilance Committee SLSRC College of Law Bengalore-v-Union of India and others, (AIR 1983, Karnataka, 85) the Karnataka High Court expressed. “We are therefore of the opinion that the government of India’s obligation under the Gleneagles Accord and obligation attached to its membership of United Nation, can not be enforced at the instance of the citizens of this country or associations of such citizens by Courts in India, unless such obligations are made part of the law of this country by means of appropriate legislation.” (Supra- Para18).

I am of the view that provisions of the Act under which the Appellant has been indicted, as most of the amici curiae expressed, are quite fullsome comprehensive and unambiguous and hence question of infusion of provisions of International Law does not arise at all. It is not correct to say, as I would elaborate below, the offences invoked, have not been defined by our domestic law.

Instances of trials for crimes against humanity by domestic courts under municipal law are by no means deartful. Most glaring recent examples are to be found in the trial of

Klaus Berbie under the French domestic law, Erich Priebke under the Italian domestic law and that of Adolf Eichman and so on. Even the Rome statutes by its Article 17 expressly endorses state parties domestic Jurisdiction to try offence, having semblances of international crimes.

Pursuasive Authority.

That shall not, however, prevent me from taking in aid ratio or observation made by the tribunals that were or have been created by the U.N.O, treating them as persuasive, rather than binding authorities in the same way we often take in aid decisions of the superior courts of the U.K. India, Pakistan etc, treating them as persuasive authorities, where appropriate.

Applying this principle our approach in respect to the Act. should be as below; the Act is of course a Municipal Legislation of Bangladesh with local jurisdiction only, notwithstanding its title. Tribunals created pursuant to the Act are also, despite their names, very much domestic Tribunals. They do not stand on the same footing with other overseas war crimes tribunals like the Nuremberg Tribunal, ICTR, ICTY etc, which were engendered by the United Nations with jurisdiction bestowed upon them by the same body and our Tribunals shall not apply International Law so far as the provisions of the Act cover the area, but decisions of UN created tribunals, can be, where appropriate and there is no conflict, taken in aid.

Section 3(1) of the Act Stipulates, "A Tribunal shall have power to try and punish any person who commits or has committed.........................any of the following crimes (2)...........namely.

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

(g) attempt, abetment or conspiracy to commit any such crimes;

(h) complicity in or failure to prevent commission of any such crimes

Section 3(2) (f) says; “any other crimes under international law.”

The present Appellant was prosecuted and convicted under Section 3(2) (a) (g) and (h) only for the Crime against Humanity, namely murder, rape, abetement and complicity not under 3(2) (f) or under those crimes against Humanity which are not defined by our law. Contrary to what Mr. Razzak contented, the offences the Appellant is convicted do not import, whether expressly or by implication, any International Law provision. We are unable to accede to Mr. Razzak’s contention that the Act has not defined ‘Crimes against Humanity’ and hence provisions of International Law had to be imported, or that the Act, because of its name, or the use of the phrase “International” should be deemed to have incorporated Customary International Law provisions.

Although one single offence, namely, ‘Crime against Humanity’ found a place in Section 3(2)(a), in fact two categories of ‘Crimes against Humanity’ have been envisaged by this sub-section, such as (1) Crime against Humanity namely murder, rape, abduction, enslavement, confinement, and (2) Crime against Humanity namely, extermination, imprisonment, deportation, torture, or other inhumane acts. Such crimes which are component parts of ‘Crime against Humanity’ under the first category are well defined because it invokes the offences of murder, rape, abduction etc. which stand defined by a sister legislations namely, the Penal Code, which has not been excluded by the Act, whereas the Crime against Humanity under the second category have not been defined by our laws.

It should not slip from our thought that ‘Crime against Humanity’ is by itself not an offence, but is an umbrella which packs includes under it a number of pre-existing, predefined crimes, as stated above and those crimes which have been leveled against appellant have remained long defined . It is however, true that commission of the individual offences which are gathered under the umbrella, namely, crime against Humanity, itself will not attract section 3(2) unless the

victims are part of civilian population. The word “namely” is all the more decisive.

If I am to accept that this crime has not been defined by the Act, that will invariably lead me to the conclusion that the same has not been defined by the Nurmberg Charter either, because the language applid in Article 6 (c) of the Nuremberg Charter is identical to the language used in Section 3 of the Act in most respect. That Article has also not defined murder or rape or other invividual offences marshaled under the umbrella of crimes against Humanity. In fact there was no necessity to define these universally pre-defined individual offences.

The court that convicted Eichman also rejected the same contention on the same ground that murder, rape etc. are all defined by domestic law. As Mr. Mahmudul Islam propounded names of the offences do not matter- the moot question being whether those offences are there in our law in substance and defined. I also note with approval Mr. Arif's view that our Tribunals are not obliged to borrow any definition on the crimes provided by overseas courts/ tribunals and are at liberty define the offences themselves.

Nullum crimen lege

Among the law points Mr. Razzak invoked, the doctrine *nullum crimen sine lege* found an important place. According to him it is an universally recognized principle of law that an action if did not amount to a crime when committed, the actor cannot be subsequently punished for that action through subsequent legislation. He also engaged Article 35(1) of our constitution.

Again we find Mr. Razzak's submission on this point totally incongruous and inconsistent with the legal position.

Our constitution is obviously the supreme law of the country and any law which is repugnant to any provision of the constitution is void.

Article 47A (1) of the constitution stipulate, "The rights guaranteed under article 31, clauses (1) and (3) of article 35 and article 44 shall not apply to any person to whom a law specified in clause (3) of article 47 applies.

(2) Notwithstanding anything contained in this Constitution, no person to whom a law specified in clause (3) of article 47 applies shall have the right to move the Supreme Court for any of the remedies under this Constitution."

According to Geoffry Robertson Q.C. author of Crimes against Humanity, International Criminal Law came into existence as recently as Nuremberg (Crime Against Humanity, New addition Page-101).

From that point of view when the Nuremberg trial commenced there was no such offence under the International Law as Crime Against Humanity. Although, Nuremberg trial is said to have its root in Kellog- Brian Pact of 1928, that pact was concerned with the rules of war not with International Criminal Law. The following passages from Nuremberg Judgment is pertinent. Although it relates to situation of war, the principle enunciated on nullum crimen sine lege is applicable to crime against humanity, barren of war, equally well;

"To assert that it is unjust to punish those who in defiance of treaties and assurances have attacked neihbouring states without warning is obviously untrue, for in such circumstances the attacker must know that what he is doing is wrong, and so far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished…[The Nazi leaders] must have known that they were acting in defiance of all international law when in complete deliberation they carried out their designs of invasion and aggression."

Professor Willium Schabas of Middlesex University writes with reference to the above passage. "In other words the Tribunal admitted that there was a retroactive dimension to prosecution for crimes against peace, but leaving such wrong unpunished would be unjust. <u>(Unimaginable Atrocities by Willium Schabas, Oxford Page-49.</u>

On Nullum Crimen Sine Lege, the Dutch Judge, BVA Roling, of the International Military Tribunal for the Far East (Tokyo Tribunal) said, "This maxim is not a principle of Justice but a rule of policy, valid only if expressly adopted." He went on to say,"… the accused knew or ought to have known that in matters of international concern he was guilty of participation in a nationally organised system of injustice and persecution shocking to the moral sense of mankind. That fundamental rights are breached where a state fails to investigate, prosecute and punish." (page 183).

International Armed Conflict

We are a bit surprised at the contention advanced on behalf of the Appellant that international armd conflict is an essential element of Crimes against Humanity as defined by Section 3(2) of the Act.

Firstly, there is nothing in the Act to say that international armed conflict or even internal armed conflict is a sine qua non.

This is not even a requirement under the Customary International Law. ICC Statute does not require any nexus with armed conflict.

The Appeals chamber of ICTY in Prosecutor-v-Tadic observed, "It is by now a settled rule of Customary International Law that Crimes against Humanity do not require a connection to international armed conflicts. (Prosecutor vs. Tadic Supra).

True it is that, the requirement of a link to armed conflict was contained in the Nuremberg and Tokyo Charters, which provided in Articles 6 (c) and 5 (c) respectively, that the acts must be carried out "in execution of or in connection with any crime within the jurisdiction of the Tribunal," namely "crimes against peace" and "war crimes," which are premised on the existence of armed conflict. Allied Control Council Law no. 10 of December 20,1945 in Article II(I) (c) eliminated this nexus for the national trials that followed the Nuremberg Trial. (Archbold 3rd Edition, Page-1041.779).

After investigating Article 6 (c), Prosecutor –vs- Tadic and other relevant cases, Geofffrey Robertson QC summarized the legal position in following words:

"Crimes against humanity may therefore be committed in peacetime, and irrespective of any internal conflict although the requirement for wide spread and systematic oppression will normally mean that such crimes will be committed at times of civil unrest." (New Edition "Crimes Against Humanity" by Geoffrey Robertson QC).

<u>Standard of Proof</u>

As a point of law, Mr. Razzak also argued that proper standard of proof has not been applied in this case.

I find this argument legally and factually unfounded. It is not correct to say the tribunal did not mention the applicable standard of proof or apply it. As we all know a criminal case has to be proved beyond reasonable doubt. But what does it mean? There is a difference between the standards of proof in criminal and civil proceedings. The distinction

was stated as clearly as it can be by Denning J, (as he then was), in Miller v Minister of Pensions. Speaking on the degree of cogency, which the evidence on a criminal charge must reach, before the accused can be convicted, he said, "That degree is well settled. It need not reach certainly, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice." (1947 2ALL ER 372).

In my view, evidences have been overwhelming to prove the case beyond reasonable doubt.

Fair Trial

Describing right to fair trial as a cardinal principle, Lord Bingham emphasised,

"First, it must be recognised that fairness means fairness to both sides, not just one. The procedure followed must give a fair opportunity for the prosecutor or claimant to prove his case as also to the defendant to rebut it." (Tom Bingham: The Rule of Law, Penguin, page 90).

We detected no procedural flaws in the trial, rather the Appellant before us enjoyed much greater procedural privileges than other persons accused of murder or rape enjoy in Bangladesh. He was allowed to be represented by the lawyers of his choice, indeed a Lawyer of the caliber of Mr. Razzak who is not only beyond any qualm one of most illustrious lawyers of this bar, but has had the opportunity to practice before the English Courts with an outstanting Barrister, represented him with a number of assistants. Law and the Tribunal required the prosecution to prove the allegations beyond reasonable doubt, applied presumption of innocence, the trial was in the open, the Appellant was not only free to cross examine prosecution witnesses, but did cross examine them very skillfully and extensively for days together, was allowed to call defence witnesses, the Tribunal was

composed of three Judges of the standing of High Court Judges, whereas a murder case or a rape case is tried by a single Sessions Judge, unlike the persons convicted by the Nuremburg or Tokyo Tribunal, the appellant is fortified with an automatic right of appeal against conviction and sentence not only on point of law but on facts and evidence too, not to an appeal Chamber of the same tribunal but to the Apex Court of the land.

Over and above the Tribunal adjudicated upon the matter by applying International Law provisions although extending the wing such far was not necessary because the applicable law, as I hold, is our domestic law. By applying International Law provisions the Tribunal below put some additional burden on the prosecution to the benefit of the accused.

We have found no merit Mr. Razzak's submission that the I.O. committed serious illegality by continuing investigation even after the charges were framed. Section 9(4) of the Act provides that submission of a list of witness and documents under Section 9(3), shall not preclude the prosecution from calling, with the permission of the Tribunal, additional witnesses or tendering any further evidence at any stage of the trial.

The allegation that he was not made aware at the charges against him is simply not true. In compliance of section 9(2) of the Act, the Appellant received formal charge submitted under section 9(1) of the Act by the Chief Prosecutor, or by a prosecutor authorized by Chief Prosecutor in his behalf. List of the witnesses, statement of the witness, recorded statement, copies of the statement and copies of the documents on which prosecution intended to rely upon, in support of such charges as levelled against the accused were given to him 3 weeks ahead of the commencement of the trial.

Prof. William Schabas of Middlesex University in his book 'Unimaginable Atrocities', states "In recent decades, human rights law has added new dimension to the debate about the definition of crime. For example, there is now much authority for the proposition that victims of certain serious crimes have a fundamental rights to see perpetrators brought to justice. It is sometimes said that a distinguishing feature of international crimes is the duty imposed upon states to ensure their prosecution". (Page 40)

I wish to put on record with all emphasis that two of the judges of the Tribunal are High Court Division Judges, who are not servant of the government but hold constitutional office and can not be removed even by the Parliament. They are not accountable to anybody under our constitutional scheme. The independence of our Supreme Court and its judges are recognized all over the world.

On the oft quoted allegation that international standard has not been followed, suffice it will to reproduce what Prof. Rafiqul Islam of Macquaric University of Sydney, Australia, stated, which run as follows:

"In international criminal trials, there is no common but a minimum international standard to be followed procedurally in procuring and presenting evidence. Every war crime trial is unique and different from the next. A procedural standard followed in one may or may not be worthy of adoption in another. Lessons from contemporary war crime trials suggest that procedural aspects are usually tailored to suit the specific circumstances of a given trial and it is an evolving process. Commencing in 1993-94, the Bosnia and Rwandan Tribunals are still developing and improving their trial procedures. So is the situation with the ICC. Nothing prevents the Bangladesh Tribunal to follow these precedents to develop its own procedural standard as the need arises in the course of conducting the trials. Minimum procedural standards and due process are important means of ensuring fair trials. But these procedural standards should not be stretched too high to make it undeliverable. The procedural means of the trial, however rigidly and immutably stressed, cannot frustrate but promote the very end the peremptory obligation to end the impunity of perpetrators."

"I can go on with all eight special tribunal charters since the Nuremberg to reveal their uniqueness, which defies the development of any common standard. It is this lack of common standard in ad hoc international crimes trials that led the international community to establish the permanent ICC. Therefore, the claim of an international standard, which the Bangladesh ICT is failing as alleged by Economist, is a myth and misnomer. Such a fictional standard does not exist in reality." (Daily Star 30th March, 2013).

Mens rea

Another Law point agitated by Mr. Razzak is on mens rea.

The following observation of Smith & Hogan negatives Mr. Razzak's complaint that the principle of mens rea was not applied by the Tribunal,

"Everyone agrees that a person intends to cause a result if he acts with the purpose of doing so. If D has resolved to kill P and fires a loaded gun at him with an object of doing so, he intends to kill. It is immaterial that he is aware that he is a poor shot, that P is nearly out of range, and that his chances of success are small. It is sufficient that killing is his object or purpose, that he wants to kill, that he acts in order to kill". (Page 70, Tenth Edition Criminal Law: Smith & Hogan). In Moloney (1985, AC, 905) the House of Lords held that the *mens rea* of murder is intention to cause death or serious bodily harm. So, it was essential to determine the meaning of intention. Moloney must be read in the light of the explanation of it by the House in Hancock and Shankland 1986, AC, 455, the Court of Appeal in Nedrick and by the House in Woollin. When it is so read it appears that (1) a result is intended when it is the actor's purpose to cause it, (2) a court or jury may also find that a result is intended, though it is not the actor's purpose to cause it, when- (a) the result is virtually certain consequence of that act, and (b) the actor knows that it is a virtually certain consequence".

In order to establish that an accused possesses the requisite mens rea for instigating a crime, it must be shown that the accused directly or indirectly intended that the crime in question be committed and that the accused intended to provoke or induce the commission of the Crime, or was aware of the substantial likelihood that the Commission of the Crime would be a probable consequence of his acts (Prosecutor –vs-Muvunyi, Prosecutor –vs- linaj etal) Archbold Page-855.

Mind of a person cannot be read and hence mens rea is only to be assessed from the attending facts and circumstances and also from the nature of the actus reas. In this case there are ample evidence to substantiate the allegation that the Appellant had mens rea of aiding and abetting as well for committing the offences by himself.

On the Appellant's participation in the offences at the dwelling of Hazrat Ali, the Privy Council's decision in Barendra Kumar Ghosh –v- Emperor, the infamous

Post Office Case, is relevant. In that case, a gang went to rob a post office and all except the appellant went inside the Post Office, killed the Post Master, but the appellant stayed out with a gun to look around. The Privy Council opined that he also would be liable of murder, though he was outside and did not shoot. Lord Sumner, in his part of the Councils opinion expressed, " Even noting, as he stood outside the door, it is to be remembered that in crimes as in other things they also serve who only stand and wait." (AIR 1925 1PC)

Residual Consideration Crime Against Humanity and our Domestic Law.

True it is that by encompassing the offences of murder, rape, etc within the concept of "Crime against Humanity," the legislators had put an added dimension as to the actus reas in the sense that bare murder or rape will not do, they must be espoused by one additional requirements, namely the victims must form part of civilian population.

Other offences, which are inchoate offences, as are in subsection (g) and (h) also stand defined by our Penal Code and have been widely interpreted by our as well as neighboring superior courts, as such, no question of bringing in International Law arises. This is in line with the principle we follow which is that principles of International Law can not encroach upon such of our legal realm which are covered by our own laws, whether statutory or precedent based and which are in conflict with our domestic law, this is what the majority of the amici curiae proffered. This is what the British and common law countries also toe.

It is true that the Act borrowed words from the UN created tribunals, but because of that, it can not be said that the Tribunals created by the Act stand on the same footing with those U.N. tribunals, or are bound to follow the laws those tribunals did or do.

Some of our post 1947 statutes contain phrases similar to Indian statutes, but that does not mean they are Indian Laws. They are, nevertheless, very much our laws passed by our legislators. Similarly, many of our pre 1947 statutes are replica of English Common Law, but that does not mean they are British Laws. We do, however, not too infrequently, take in aid, Indian, Pakistani and UK decisions as well as decisions emanating from other Common Law following countries as persuasive authority, because of similarity of provisions. In the same way we can take in aid decisions of the UN created tribunal as persuasive authority, as I have done in determining this appeal. The Tribunal below also followed them but reckoning them to be binding, rather than pursuasive.

Discussions and analyses recorded above lead me to the irrestible and invariable conclusion that Mr. Razzak's claim that Customary International definition are to be adopted, holds no water whatsoever.

It is not a requirement under the Act for the attack to be wide spread or systematic. This requirement of the international law being in conflict with our law, this can not have a footing at our Tribunals trials. Yet, as discussed more comprehensively, there are ample evidence, supported by judicial notice, that the attack was, none-theless, widespread and systematic, and the Tribunal also so held and thereby fortified its judgment.

State Duty to prosecute

UN Doc E/CN 4/RES/2005/35 para-4 states, "In case of gross violation of international human rights law and violation of international humanitarian law, constituting crimes under international law, states have the duty to investigate, and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violation and, if found guilty, duty to punish her or him".

Prof Schabas, states "There is much authority in the case law of the European Court of Human Rights, the United Nations Human Rights Committee and the Inter-American Court of Human Rights for the proposition".

Having analysed the legal issues above I would now proceed to address the factual issues, which necessitates verbitam reproduction of all the evidence on record and analyse them with the eyes of a surgeon. They run as follow;

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor -Versus- Abdul Kader Molla.

Deposition of witness No. 01 for the Prosecution aged about 58 years, taken on oath on Tuesday the 03rd July 2012.

My name is Mozaffar Ahmed Khan.

My father's name is Late. Nur Mohammed Khan.

My mother's name is ------------- age-------- I am by religion ------- My home is at village--------- Police Station ----------, District ----------, I at present reside in --------, Police Station----------, District ------------, my occupation is ----------------

আমার নাম মোজাফফর আহমেদ খান, পিতার নাম মৃত নর মোহম্মদ খান, মুক্তিযুদ্ধ চলাকালীন সময় আমি এস.এস.সি পরীক্ষার্থী ছিলাম। আটি বাউল হাইস্কুলের ছাত্র ছিলাম। ১৯৬৯ সালে পূর্ব পাকিস্তান ছাত্র লীগের কেরানিগঞ্জ থানা শাখার সভাপতি ছিলাম। ১৯৬৯ এর গণ-আন্দোলনে সময়ে ঢাকা বিশ্ববিদ্যালয়ে ছাত্রনেতাদের সংগে বিভিন্ন আন্দোলনে অংশগ্রহন করি। ১৯৭০ এর নির্বাচনে প্রচরনায় অংশ গ্রহন করি। আশরাফ আলী চৌধুরী আওয়ামীলীগের প্রার্থী ছিলেন। ঢাকা মহানগরে মিরপুর মোহম্মদপুর আসনে আওয়ামীলীগ প্রার্থীর পক্ষে কাজ করেছি। মিরপুর-মোহাম্মদপুর আসনে জামাতে ইসলামীর প্রার্থী ছিলেন অধ্যাপক গোলাম আযম। গোলাম আযমের পক্ষে আবদুল কাদের মোল্লা কাজ করেন। নির্বাচনের পরবর্তী পর্যায়ে আওয়ামীলীগ মেজরিটি আসন পাওয়ার পরও তাদেরকে এ্যাসেম্বলিতে বসতে দেওয়া হয় নাই। পাকিস্থানর প্রেসিডেন্ট ইয়াহিয়া খানের সাথে বঙ্গ বন্ধুর আলোচনা ফলপ্রসু না হওয়ায় আমরা বুঝতে পারি একটা কিছু হতে চলেছে।

এর পর ২৫ শে মার্চ পাক বাহিনী নিরীহ বাঙ্গালী জাতির উপর ঝাপিয়ে পড়ে । বঙ্গ বন্ধুর ৭ই মার্চের ভাষনের সময় থেকে আমরা মুক্তিযুদ্ধের প্রস্তুতি নেই। এরপর আমরা ২৬শে মার্চ পর আমি আমার বন্ধুদের নিয়ে মুক্তিযুদ্ধ সংগঠিত করার জন্য ভারতে যাওয়ার প্রস্তুতি নেই। ১৯৭১ সালের মে মাসে আমি আমার ১৫ জন বন্ধু-বান্ধব নিয়ে ভারতের উদ্দেশ্যে রওনা হই। প্রথমে আমরা ভারতের আগরতলার পৌছি। সেখানে কংগ্রেস ভবনে আমাদের নাম এন্ট্রি করি। জুলাই মাসের শেষের দিকে আমাদেরকে অস্ত্র প্রশিক্ষন নেওয়ার জন্য আসামে লাইলাপুর ক্যান্টনমেন্টে পাঠিয়ে দেয়। সেখানে আমরা যুদ্ধের জন্য অস্ত্রের প্রশিক্ষন নেই। প্রশিক্ষন শেষে আগরতলার মেলাগড়ে ফিরে আসি। এখানে মেজর হায়দার ও ক্যাপ্টেন হালিম

চৌধুরীর নেতৃত্বে আমাদের অস্ত্র দেয়। ২৫ জন মুক্তিযোদ্ধার নেতৃত্বে আমি বাংলাদেশে প্রবেশ করি। কেরানীগঞ্জ থানার কলাতিয়ায় মুক্তিযুদ্ধের ক্যাম্প স্থাপন করি।

যুদ্ধ চলাকালীন সময় ২৫শে নভেম্বর ১৯৭১ আমরা সর্বপ্রথম ভোর রাতে গুলির আওয়াজ পাই। তারপর আমি আমার ট্রুপস নিয়ে কলাতিয়া নাজিরপুর থেকে ঘাটারচর এলাকার দিকে মুভ করি। ইতিমধ্যে আমার বাবার সংগে দেখা হয়। বাবা বললেন যে, তুমি কোন দিকে যাচছ। আমি বললাম ঘাটার চরের দিকে যাচিছ। উনি বললেন ঐদিকে যেও না। আমাদের বাড়ী আক্রমন হয়েছে এবং সেখানে অগ্নি সংযোগ করেছে। বললেন মুক্তিযোদ্ধা ওসমান গনি ও গোলাম মোস্তফাকে ওরা হত্যা করেছে স্থানীয় রাজাকাররা। তোমার কাছে যে অস্ত্র আছে তা দিয়ে তুমি ফায়ার ওপেন করোনা। আমি আমার ট্রুপস নিয়ে সেখানেই একটু নিচু জায়গায় বসে পড়লাম। বাবাকে বললাম আপনি আমার ক্যাম্পে যান, আমি দেখছি। আক্রমনটা ছিল ভোরে ফজরের আজানের সময়। ফজরের আজান থেকে সকাল ১১ টা পর্যন্ত এই আক্রমনটা চলে। ওখানে ঘাটার চরে হিন্দু ও মুসলিম ৫৭ জনকে ওরা হত্যা করে। ঘাটার চর থেকে খান বাড়ী, খান বাড়ী থেকে বড় ভাওয়াল এখানে আক্রমন করে ২৫ জনকে হত্যা করে। বেলা ১১টার দিকে খবর পাই রাজাকার এবং পাক-বাহিনী ঐ স্থান ত্যাগ করে চলে গেছে। আমি প্রধান সড়ক দিয়ে না এসে পিছন দিক দিয়ে ভাওয়াল খান বাড়ীতে আসি আমার ট্রুপস নিয়ে। ঐখনে এসে দেখলাম আমার বাড়ী আগুনে জলছে ওসমান গনি এবং গোলাম মোস্তফার লাশ সেখানে পড়ে আছে। খান বাড়ী থেকে ওসমান গনি ও গোলাম মোস্তফার লাশের দাফন-কাফনের ব্যবস্থা করে আমি পিছনের রাস্তা দিয়ে ঘাটার চরে চলে যাই। ঘাটার চরে গিয়ে দেখি বিভৎস অবস্থা চারিদিকে শুধু রক্ত আর লাশ আর লাশ। ঐ স্থানীয় তৈয়ব আলী এবং আবদুল মজিদের সাথে আমার দেখা হয়। তৈয়ব আলী, আবদুল মজিদ ও আরো অনেকে ওরা লাশ সনাক্ত করতে থাকে হিন্দু এবং মুসলিম। তখন তাদেরকে ঘটনা জিজ্ঞাসা করলাম কারা এই ঘটনা ঘটিয়েছে। আবদুল মজিদ বললেন যে, ২৩/২৪ নভেম্বর, ১৯৭১ ঘাটার চরে একটা মিটিং হয়েছিল। ঐ মিটিংয়ে উপস্থিত ছিলেন মুসলিম লীগের ডাঃ জয়নাল, কে.জি. করিম বাবলা, মুক্তার হোসেন, ফয়জুর রহমান, এরা ইসলামী ছাত্র সংঘের নেতা আবদুল কাদের মোললার সংগে যোগাযোগ করে ঐ মিটিংয়ের ব্যবস্থা করেন এবং ঐ সভায় আবদুর কাদের মোললা ঐ সময় উপস্থিত ছিলেন। ঐখানে নিরস্ত্র মানুষকে গণহত্যার জন্য ঐসভায় সিদ্ধান্ত হয়। ঐ সিদ্ধান্তে তারা বাস্তবায় করে ২৫শে নভেম্বর, ১৯৭১ । আমি মুক্তিযুদ্ধ চলাকালীন সময়ে ছদ্ধবেশে মোহাম্মদপুর এলাকায় আমার মামার বাসা থাকায় একবার গিয়েছি। মামার বাসা থেকে যখন গ্রামের বাড়ীতে ফিরি মোহাম্মাদপুরে ফিজিক্যাল ট্রেনিং সেন্টারে রাজাকার আল-বদরদের একটা টর্চার সেল ছিল। ঐখানে ফেরার পথে দেখি টর্চার সেলের গেটের সামনে অস্ত্র হাতে কাদের মোললা সহযোগীদের সংগে দাড়িয়ে আছে। ২৫ মার্চের (পরে বলেন) ২৫ শে নভেম্বর ঘাটার চরে যে গণহত্যা, অগ্নি সংযোগ, লুটপাট যা হয় তা স্থানীয় রাজাকাররা কাদের মোললার সংগে যোগাযোগ করে তার নেতৃত্বে সংগঠিত করে। আমি দীর্ঘ দিন থেকে মানবতা বিরোধী যুদ্ধ অপরাধের বিচারের দাবী জানিয়ে আসছি । শহীদ জননী জাহানারা ইমাম এবং কর্ণেল নুরজ্জামানের নেতৃত্বে ঘাতক-দালাল নির্মূল কমিটির সাথে এই বিচারের দাবী করেছি। ২০০৭ সালে আমি ঢাকার চীফ জুডিসিয়াল ম্যাজিষ্টেটের কাছে এই বিচারের দাবীতে একটি সি.আর মামলা করি, মামলা নং-১৭/২০০৭। পরবর্তী পর্যায়ে ইহা

একটি জি.আর মামলায় রূপান্তরিত হয় যাহার নং- কেরানীগঞ্জ থানার মামলা নং- ৩৪(১২) ২০০৭। যুদ্ধঅপরাধীদের শাস্তি দাবী করছি। আসামী কাদের মোললা ডকে উপস্থিত আছেন।

XXXX জেরা ঃ

আমার কাছে ভোটার আই.ডি কার্ড আছে আমি দেখাতে পারব । এই সেই ভোটার আই.ডি কার্ড। এখানে আমার জন্ম তারিখ দেওয়া আছে ০৩শরা মার্চ, ১৯৫৩ । ১৯৭০ সালে আমি ভোটার ছিলাম কি-না মনে করতে পারছিনা । (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট

স্বা/-মোজাফফর আহমেদ খান ০৩/০৭/১২

০৩/০৭/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

পুরাতন হাইকোর্ট ভবন, ঢাকা।

তারিখ ঃ ০৮/০৭/২০১২ খ্রিঃ (জেরা)

আটিবাউল হাইস্কুল কেরানীগঞ্জ থানার অধিনে। আমি ১৯৭২ সালে এস.এস.সি পাশ করি আটিবাউল হাইস্কুল থেকে, ১৯৭৪ সালেএইচ.এস.সি হাফেজ মুছা কলেজ থেকে পাশ করেছি, কলেজটি তখন লালবাগ থানার অধিনে ছিল বর্তমান হাজারীবাগ থানা, ১৯৭৪ সালে বি.এস.সিতে শেখ বোরহান উদ্দিন কলেজে ভর্তি হয়েছিলাম কিন্তু পরীক্ষা দেয়নি। এর পর আমি আর কোন প্রাতিষ্ঠানিক শিক্ষা গ্রহন করিনি। আমি কোন সরকারী বা বেসরকারী প্রতিষ্ঠানে চাকুরী করিনি। ১৯৭৪ সালে ঢাকা বিশ্ববিদ্যালয়ের বিভিন্ন হলের ছাত্রলীগের কারা ভি.পি বা জি.এস ছিলেন তা বলতে পারবো না। ১৯৬৯ সালে আমাকে কেরানীগঞ্জ থানা ছাত্রলীগের সভাপতি হিসেবে তৎকালীন ছাত্র নেতা নুরে আলম সিদ্দিকী স্বীকৃতি দেন। উনি এখনো বেঁচে আছেন। উনি আওয়ামীলীগের একজন সাবেক সংসদ সদস্য। ১৯৬৯ কেরানীগঞ্জে ছাত্রলীগের কোন অফিস ছিল না। ২১ সদস্য বিশিষ্ট থানা ছাত্রলীগের কমিটি ছিল। ঐ সময় সেক্রেটারী ছিলেন জাফর উল্লাহ তিনি এখন জীবিত নাই। ২০ জনের মধ্যে মনে হয় ১৫ জনের মত জীবীত আছে। যে পনের জন জীবীত আছেন তাদের মধ্যে একজন বর্তমানে বাংলাদেশ সরকারের সচিব, অন্যরা হলেন মোঃ শাহাবুদ্দিন, মোঃ খলিলুর রহমান, আনোয়ার হোসেন ফার□কী, শাজাহান ফার□কী, শাহনেওয়াজ, আজিজুর রহমান খান, মফিজুদ্দিন, আবদুল জলিল, মাহমুদুল হক, ফজলুর রহমান, শামসুল হক, নজর□ল ইসলাম, আবদুল আজিজ বাকী দুই জনের নাম এ মুহুর্তে মনে নাই। এদের মধ্যে মুক্তিযোদ্ধা ছিলেন মোঃ শাহাবুদ্দিন, আনোয়ার হোসেন ফার□কী, শাজাহান ফার□কী, নজর□ল ইসলাম, মফিজউদ্দিন। এরা আমার কাছাকাছি বয়সের লোক। এরা সবাই কেরানীগঞ্জে বসবাস করে। আমি আমার জবানবন্দীতে বলা ১৫ জনের মধ্যে আমার সংগে মুক্তিযুদ্ধে গিয়েছিলেন মোঃ শাহাবুদ্দিন, গোলাম মোস্তফা, মোঃ আবদুল হাকিম, মোঃ মুজিবুর রহমান, মোঃ বাবুল মিয়া, মোঃ এরশাদ আলী, মোঃ হাসান, শ্রী হিরালাল ঘোষ, সিরাজুল হক, শহীদুল্লাহ, মোঃ আলাউদ্দিন, মোঃ আবদুল আওয়াল, আবদুস সোবহান, মোঃ শাহ

আলম এবং আবদুল মান্নান। উল্লখিত ১৫ জনের মধ্যে সোবহান, হাসান, বাবুল মিয়া, হিরালাল ঘোষ, মোঃ এরশাদ এরা মৃত । গোলাম মোস্তফা যিনি জীবীত আছেন তার পিতার নাম সাদেক আলী। যারা জীবীত আছেন তারা কেরানীগঞ্জের বাড়ীতেই আছেন। আমরা ১৯৭১ সালের মে মাসে আমরা ১৫ জন বন্ধু আগরতলা কংগ্রেস ভবনে গিয়ে আমাদের নাম এন্ট্রি করেছিলাম। ১৫ জন সহ আরো অন্যান্যদেরকে বিভিন্ন ইয়ুথ ক্যাম্পে রাখা হয়। ১৫ জনের কেহ আমার সাথে ছিল না। ঐখান থেকে আমি হাফানিয়া ক্যাম্□ গেলাম। হাফানিয়া ক্যাম্□ আমি ২০ দিন ছিলাম। ঐখান থেকে আমাকে মোহনপুর ক্যাম্□ পাঠান হয়। সেখানে ৭দিন ছিলাম। ঐ সমস্ত ক্যাম্পে কত তারিখ পর্যন্ত ছিলাম তাহা নিশ্চিত করে বলতে পারবো না। মোহনপুর থেকে আমি দুর্গা চৌধুরী পাড়া ক্যাম্□ যাই। সেখানে ১৫ দিন ছিলাম। ঐখান থেকে গোকুল নগর ক্যাম্□ যাই এটাও আগরতলাতেই অবস্থিত। সেখানে ১৫ দিন ছিলাম ভারতীয় ক্যাপ্টেন রাওতের অধীনে। ঐখান থেকে আমাকে ট্রেনিংয়ের জন্য আসামের লাইলাপুর ক্যাম্□ পাঠায়। সেখানে প্রথমে ২১ দিন ট্রেনিং নেই । এখানে ট্রেনিংটা দুইভাগে হয় প্রথমে ২১ দিন দ্বিতীয়ভাগে ৭দিনের জন্য একটি বিশেষ ট্রেনিং গ্রহন করি। আমাদের ইনচার্জ ছিলেন মেজর রবীন্দ্র সিং। আবার যখন আগরতলা মেলাগড় ট্রানজিট ক্যাম্□ আসি তখন আমাকে অস্ত্র দেয় । ১৯৭১ সালের জুলাই মাসের ৩ তারিখে লাইলাপুর ক্যাম্□ যাই। সম্ভবত ঐ ক্যাম্□ থেকে ৩০ জুলাই ডিপার্চার ছিল।মেলাগড় ফেরার সময় ১০টি ট্রাকের প্রতিটিতে ২০-২৫ জন করে ছিল। এরা সবাই বাংলাদেশী । ঐ ১৫ জনের সংগে আবার সাক্ষাত হলো মেলাগড়ে ট্রানজিট ক্যাম্□ এসে।প্রতিটি ট্রাকে ভারতীয় একজন করে অফিসার ছিল। মেলাগড়ে ৭দিন বিশ্রামে ছিলাম। যে টিমে আমি ছিলাম সেখানে মোট ২৫ জন সদস্য ছিল। সেখান থেকে আমাদেরকে বাংলাদেশের ভিতরে কুমিল্লা সিএন্ডবি রোড পর্যন্ত অস্ত্রসহ পৌছে দেয়। ২৫ জনের মধ্যে ১৫ জন কেরানীগঞ্জের বাকী ১০জন পার্শ্ববর্তী থানার। বাকী ১০ জন হলোঃ ফরিদ আহমেদ, আক্তার উদ্দিন, নাসিরউল-হ, জসিম মিয়া, আইনউদ্দিন, আবদুর রহমান, আবদুল হালিম, মোঃ আবদুল মোতালেব, মোঃ রমিজ উদ্দিন, মোঃ হার□ন অর রশিদ। ঐখান থেকে আসার পর কেরানীগঞ্জ থানার কলাতিয়া নামক স্থানে আমরা ক্যাম্□ স্থাপন করি। একটা প্রাইভেট বাড়ীতে আমরা ক্যাম্□ স্থাপন করি। ঐ বাড়ীর মালিকের নাম মতিউর রহমান সরকার । তিনি এখনও জীবীত আছেন । তিনি বয়স্ক মানুষ তবে চলাফেরা করতে পারেন। ১৯৭১ সালের ২৮ আগষ্ট ঐ বাড়িতে ক্যাম্□ করি।

আমরা মুক্তিযোদ্ধা হিসেবে প্রথম অপারেশন করি ০৫/৯/১৯৭১ ইং তারিখে সৈয়দপুর তুলসীখালীতে । জায়গাটি তিন থানার সংযোগস্থল। অপারেশনটি দিনের বেলা সকাল ১০টায় আরম্ভ করি। অপারেশনটি পাকিস্তান আর্মির বির□দ্ধে পরিচালিত হয়। এটা একটা সম্মুখ যুদ্ধছিল। পাকিস্তান সেনা বাহিনী ধলেশ্বরী নদী পথে গানবোটে করে এসেছিল। প্রথমে পাকিস্তনী সেনারা পাড়াগ্রাম মুক্তিযোদ্ধাদের ক্যাম্□ আক্রমন করে। ঐ ক্যাম্□ প্রায় ২০০ জনের মত মুক্তিযোদ্ধা ছিল। গানবোটে এবং স্□ড বোটে আনুমানিক ৩০০ পাক সেনা ছিল। পাড়াগ্রাম ক্যাম্□র কমান্ডে দায়িত্বে ছিলেন ইয়াহিয়া খান চৌধুরী পিন্টু । আমরা নাজিরপুর থেকে সংবাদ পেয়ে ঘটনা স্থলের দিকে এগোতে থাকি, অন্যান্য মুক্তিযোদ্ধারা বিভিন্ন ক্যাম্□ থেকে ঘটনা স্থলের দিকে আসতে থাকে। কলাতিয়াতে মুক্তিযোদ্ধাদের ৫টি ক্যাম্□ ছিল। ঐদিন পাক বাহিনীর সংগে মুক্তিযোদ্ধাদের সংগে বিকাল ৪টা পর্যন্ত গুলিবিনিময় চলতে থাকে। ঐখানে মুক্তিযোদ্ধা ওমর আলী শহীদ হন আমি সহ

আরো ১০ জন আহত হই। ওমর আলী পিন্টু সাহেবের কমান্ডে মুক্তিযোদ্ধা ছিলেন। আমার গ্র□পে আমি ছাড়া আর কেহ আহত হয় নাই। বাকী ৯ জন ক্যাপ্টেন হালিম চৌধুরীর কমান্ডে ছিলেন। সেদিন ৫৩ জন পাকিস্তনী আর্মি যুদ্ধে নিহত হয়। ঐ দিন বিভিন্ন ক্যাম্□ থেকে আগত মুক্তিযোদ্ধার সংখ্যা প্রায় ৫,০০০ ছিল। ঐদিন আহত অবস্থায় আমাকে কলাতিয়াস্থ ডাক্তার আবদুস সালামের বাসায় নিয়ে আসে। আমার ডান দিকের কিডনীর পাশে আমি আহত হই। ডাক্তার সাহেবের বাসাতে আমি ৭ দিন চিকিসাধীন ছিলাম। ঐ সময়ে কলাতিয়াতে আমাদের সমবয়সী কিছু রাজাকার ও আলবদরও ছিল । ডাক্তার সালাম সাহেবের বাসায় তার পরিবারের সদস্যরা ছিল। সালাম সাহেবের বাসা পাড়ার ভিতরে। উনার ভাই আমাদের সহযোদ্ধা, তিনি যুদ্ধে মারা গেছে নামটা এমুহুর্তে মনে করতে পারছিনা। আমি যে ডাঃ সাহেবের বাসায় চিকিৎসাধীন আছি বিষয়টি গোপন ছিল। ৭দিন পর আমি নাজিরপুরে ফিরে যাই। ডাঃ সালাম সাহেব মিডফোর্ড হাসপাতাল থেকে ডাঃ আকতার□জ্জামান সাহেবকে আমার ষ্টিচ কাটার জন্য নাজিরপুর নিয়ে যান। নাজিরপুর ক্যাম্পে□ আমি ১৫ দিন বিশ্রামে ছিলাম। সেপ্টেম্বর মাসের ৫ তারিখের পর হইতে আমি প্রায় ৩ সপ্তাহ বিশ্রামে ছিলাম। রাজাকারদের প্রতিহত করার জন্য উক্ত সময়ের মধ্যে আমার ক্যাম্পে□র অন্যান্য মুক্তিযোদ্ধারা অপারেশনে গিয়েছে। স্থানীয় রাজাকার আলবদররা জানতো নাজিরপুরে একটি মুক্তিযোদ্ধাদের ক্যাম্□ আছে। ঐ সময়ে আমাদের ক্যাম্পে□র উপর পাক আর্মি অথবা রাজাকাররা কোন আক্রমন করেনি। নাজিরপুর ক্যাম্□ ১৬ ই ডিসেম্বর পর্যন্ত চালু ছিল। আমি চিকিৎসার জন্য অক্টোবর মাসের প্রথম সপ্তাহে ভারত গিয়েছিলাম এবং সেখানে বিশালগড়ের মুক্তিযোদ্ধা হাসপাতালে ১৫ দিন চিকিৎসার জন্য ছিলাম। হাসপাতাল থেকে রিলিজ হয়ে আবার মেলাগড়ে আমার সেক্টর কমান্ডার মেজর হায়দার এর সাথে দেখা করতে গেলাম । ঐখানে আমি ২ দিন অবস্থান করি। অক্টোবরের শেষে নাজিরপুরে ফিরে আসি নতুন দায়িত্ব নিয়ে সংগে কিছু আগ্নয়াস্ত্র ও বিস্ফোরক দ্রব্য নিয়ে আসি। আমি নাজিরপুর ক্যাম্পে□ ফিরে এসে পুর্বের সহযোদ্ধাদের সবাইকে পাই।

সেক্টর কমান্ডার আমাকে একটি বিশেষ দায়িত্ব দেন। আমাকে মোহাম্মদপুর রাজাকার ক্যাম্□টি উড়িয়ে দিতে তিনি নির্দেশ দিয়েছিলেন। নাজিরপুর থেকে মোহাম্মদপুর রাজাকার ক্যাম্পে□র দুরত্ব প্রায় ১০ মাইল। ঐখান থেকে ০১/১১/১৯৭১ ইং তারিখে আটিবাজার থেকে নৌকা যোগে মোহাম্মদপুর এসে নামি । সেই সময়ে মোহাম্মদপুরে একটি পুরোনো মসজিদ সম্ভবত সাত মসজিদ এর ঘাটে আমি নৌকা থেকে সকাল ১০ টায় নামি। নৌকার ঘাট থেকে মোহাম্মদপুর রাজাকার ক্যাম্পে□র দুরত্ব প্রায় কোয়াটার মাইল। সেদিন আমি একাই ছিলাম। আমার সংগে নিরাপত্তার জন্য একটি ছোট অস্ত্র ছিল। আমি রেকি করার জন্য এসেছিলাম সংগে কিছু শাক এবং কদু ছিল। ক্যাম্□টাকে ভাল করে দেখার উদ্দেশ্যে পায়ে হেটে ক্যাম্পে□র সামনে দিয়ে আমি আমার মামার বাসায় আসি। আমার মামার নাম মোঃ গিয়াসউদ্দিন। উনি মারা গেছেন। রাজাকার ক্যাম্□টি ছিল ফিজিক্যাল ট্রেনিং ইন্সষ্টিটিউট, মোহাম্মদপুর। ঐ ইন্সষ্টিটিউটের সামনে রাজাকার ক্যাম্পে□র কোন সাইন বোর্ড ছিলনা। আমি আমার মামার বাসায় সেদিন ১০ মিনিট ছিলাম। মামার বাসায় সেদিনই আমার প্রথম আসা হয়। মামার বাসার নম্বর আমি জানি কিন্তু আমি বলবো না তাদের নিরাপত্তার কারণে। আমার মামি জীবিত নাই । মামাতো বোন ৩ জন ও মামাত ভাই ২ জন জীবিত আছে । ১৯৭১ সালে মামার বড় ছেলে সাবালক ছিল তার নাম নিরাপত্তার স্বার্থে বলবো না। আমি মামার

বাসায় যে পথে এসেছিলাম ১০ মিনিট পরে সেই পথেই ফিরে গিয়েছি। আমার আসা-যাওয়ার পথে কোন সাধারণ লোকের সাথে আমার কোন কথা হয়নি। মামার বাসার থেকে বের হয়ে আমি ভাওয়াল খান বাড়ীতে আমার মায়ের সংগে দুপুরের খাবার খাই। মোহাম্মদপুর মামার বাড়ী থেকে আমার মায়ের বাড়ী ভাওয়াল খান বাড়ীর দুরত্ব আনুমানিক ৫ মাইল। আমি ভারতে যাওয়ার পর থেকে মামার বাড়ী আসা এবং মায়ের সংগে সাক্ষাত ও কুশল বিনিময় করা কালীন সময় পর্যন্ত আমার মায়ের কোন ক্ষতি হয়নি। আমার মায়ের সংগে আমার বাবা এবং পরিবারের অন্যান্য সদস্যরা থাকতেন। মোহাম্মদপুর থেকে কলাতিয়া পর্যন্ত মুক্তিযোদ্ধাদের কোন ক্যাম্□ ছিলনা। রাজাকারদের দুইটা ক্যাম্□ ছিল। একটা ঘাটারচরে আরেকটি ছিল কুলচরে (আটিবাজার)। নাজিরপুরে আমি সন্ধ্যা নাগাদ ফিরে যাই।

আমি রেকি করাকালীন জানতে পারি মোহাম্মদপুর এবং মিরপুর বিহারী অধ্যুষিত এলাকা। রেকি করার পরে মোহাম্মদপুরে কোন অপারেশন করা সম্ভব হয়নি। আমি ১০ই নভেম্বর, ১৯৭১ তারিখে ভারতে যাই এবং রিপোর্ট করি এবং সেখানে ২ দিন থেকে আবার নাজিরপুরে ফিরে আসি।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-

অস্□ষ্ট

স্বা/-মোজাফফর আহমেদ খান ০৮/০৭/১২

০৮/০৭/১২ চেয়ারম্যান

আন্©র্জাতিক অপরাধ ট্রাইব্যুনাল-২

অপরাহ্ন ২.০০ ঘটিকা ঃ

২০০৮ সালে আমার নির্বাচনী এলাকা ছিল লালবাগ। ডাঃ মোস্তফা জালাল মহিউদ্দিন আওয়ামীলীগের প্রার্থী ছিলেন এবং আমি তার পক্ষে কাজ করেছি। আমি লালবাগে থাকি কিন্তু আমার ব্যবসা বাণিজ্য কেরানীগঞ্জে। শহীদ ওসমান গণি ও গোলাম মোস্তফা দুইজনই মুক্তিযোদ্ধা ছিলেন, তাদের সনদ পত্র তাদের পরিবারের নিকট আছে। ওসমান গণির মাতা, দুই ভাই ও ৫ বোন জীবিত আছেন । গোলাম মোস্তফার পিতার নাম আহমেদ হোসেন ওরফে টুকুব আলী। ওসমান গণির পিতার নাম মৃত মোহাম্মদ হোসেন। মাস্তফার স্ত্রী এক ছেলে ও এক মেয়ে জীবিত আছে। মেয়ের বিয়ে হয়েছে, ছেলেও মনে হয় বিয়ে করেছে। ১৯৭১ সালের ২৫ শে নভেম্বর তারিখের যে ঘটনা আমি জবাবন্দীতে বলেছি সেই ঘটনায় উলে-খিত ২ জন মুক্তিযোদ্ধা ছাড়া অন্য কোন মুক্তিযোদ্ধা মারা যায়নি। ১৯৭১ সালের ২৫ শে নভেম্বরের পরে আমরা আর কোন অপারেশনে যাইনি। আমরা আমাদের অস্ত্র ১৬ই ডিসেম্বরের পরে মুজিব বাহিনীর কমান্ডার মোস্তফা মোহসিন মন্টুর কাছে জমা দেই। তিনি জানুয়ারী মাসে সেগুলো ঢাকা ষ্টেডিয়ামে বঙ্গবন্ধুর কাছে জমা দেন। জেনারেল ওসমানী তখন মুক্তিবাহিনীর প্রধান ছিলেন ।

আমার জবানবন্দীতে উলে-খিত তৈয়ব আলীর বাড়ী ঘাটার চর টানপাড়া এবং আবদুল মজিদের বাড়ী ঘাটার চর খালপাড়া। আবদুল মজিদ আমাকে বলেছিল যে, ২৩/২৪ শে নভেম্বর ঘাটার চর খালপাড়া ডাঃ জয়নাল আবেদিনের বাড়ীতে মিটিং হয়েছিল। আবদুল মজিদ বেঁচে আছেন। উনি বর্তমানে ঘাটার চরে আছেন। ১৯৯৬ সালের নির্বাচনে আমি আওয়ামীলীগের প্রার্থী মোস্তফা মোহসিন মন্টুর পক্ষে কাজ করেছি। আমি শুনেছি আমার ২০০৭ সালে চীফ জুডিসিয়াল ম্যাজিস্ট্রেট আদালতে দাখিলকৃত সি.আর মামলা নং-১৭/২০০৭ যা পরবর্তীতে কেরানীগঞ্জ থানার মামলা নং-৩৪(১২)২০০৭ মামলাটি অত্র ট্রাইব্যুনালে প্রেরন করা হয়েছে। ইহা সত্য নয় যে, ১৯৯৬ এবং ২০০৮ সালে আমি কেরানীগঞ্জ এলাকার ভোটার ছিলাম। তবে আমি ১৯৯৬ সালে কেরানীগঞ্জের ভোটার ছিলাম। ১৯৭০ সালে ডাকসু জি.এস সম্ভবত তোফায়েল আহমেদ ছিলেন । পরে বলেন, আমি সঠিক মনে করতে পারছিনা। ১৯৭০ সালে নির্বাচনের পুর্বে আ.স.ম. আবদুর রব আমাদের এলাকায় প্রচারনায় গিয়েছিলেন। ১৯৬৯-৭০ সালে বঙ্গবন্ধুর স্বপ্ন বাস্তবায়নর জন্য আমরা এলাকায় কর্মী হিসেবে কাজ করেছি। ১৯৭০ সালে শহীদুল্লা হলের জি.এস সম্ভবত ইসলামী ছাত্র সংঘের কাদের মোল-া ছিলেন। কাদের মোল-ার সংগে আমার কোন ব্যক্তিগত দ্বন্দ্ব ছিলনা । কিন্তু রাজনৈতিক দ্বন্দ্ব ছিল। ১৯৬৯ সালের গণআন্দোলনের সময় আমি যখন ঢাকা বিশ্ববিদ্যালয়ের মধুর ক্যান্টিনে এবং বটতলায় মিছিল নিয়ে আসতাম তখন থেকে আমি কাদের মোল-াকে ইসলামী ছাত্র সংঘের কেন্দ্রীয় কমিটির নেতা হিসেবে চিনতাম। ১৯৭১ সালে চলাফেরা করার সময় পাক বাহিনীর সদস্যদের সামনে মুখোমুখি কখনও হইনি। ১৭/২০০৭ নং মামলায় আমি ঢাকা সি.জে.এম কোর্টে জবানবন্দী দিয়েছিলাম আর আজ এ কোর্টে জবানবন্দী দিতেছি। মাঝে অন্য কোথাও জবানবন্দী দেই নাই। মুক্তিযোদ্ধার সনদ পত্র এখন পর্যন্ত আমার কাছে কেউ চায়নি, কাজেই আমি তাই কাউকে দেইনি। ভারত থেকে আসার সময় পাক আর্মি দেখে নদীতে ঝাপ দেওয়ায় আমার সংগে থাকা আমার কমান্ড সার্টিফিকেটের মুল কপিটি নষ্ট হয়ে যায়। এটা কোন সার্টিফিকেট ছিলনা এটা ছিল এপয়েন্টমেন্ট লেটার। পরবর্তীতে আমি ভারতে গিয়ে মেজর হায়দারের নিকট এপয়েন্টমেন্ট লেটার চেয়েছিলাম কিন্তু তখন ফটোকপি মেসিন না থাকায় মুল সার্টিফিকেটের কপি আমাকে দেয়নি। ১৯৭২ সালের জানুয়ারী থেকে ২০০৭ সাল পর্যন্ত আমি বর্তমান জবানবন্দীর অনুর□প কোন বক্তব্য আর কোন আদালত বা কর্তৃপক্ষের কাছে দেইনি।

প্রশ্ন ঃ ১৯৭১ সালের   স্বাধীনতা যুদ্ধচলাকালীন সময়ে আবদুল কাদের মোল-াকে কোন অপরাধ করতে স্বচক্ষে দেখেছেন কি-না ?

উত্তর ঃ হ্যাঁ আমি দেখেছি।

প্রশ্ন ঃ তাকে কি অপরাধ করতে আপনি দেখেছেন ?

উত্তর ঃ আমি তাকে চাইনিজ রাইফেল হাতে সহ ফিজিক্যাল ট্রেনিং সেন্টারের গেটের সামনে দেখেছি।

প্রশ্ন ঃ আপনি তাকে আর কিছু করতে কি দেখেছিলেন ?

উত্তর ঃ আমি স্বচক্ষে আর কিছু করতে দেখি নাই।

ইহা সত্য নহে আমি প্রসিকিউসন পক্ষের শিখানো মতে অত্র আদালতে আবদুল কাদের মাল্লার বির□দ্ধে মিথ্যা সাক্ষ্য দিলাম। ইহা সত্য নহে আমি আসামী আবদুল কাদের মাল্লাক এই মামলা দাখিলের পুর্ব হইতে চিনতাম না। ইহা সত্য নহে ১৯৭১ সালের ৭ ই মার্চ রেসকোর্স ময়দানে বঙ্গবন্ধুর ভাষন শোনার পর আবদুল কাদের মোল-া ঢাকা থেকে ফরিদপুর নিজ বাড়ী চলে যান এবং ১৯৭২ সালের ফেব্র□য়ারীর পুর্ব পর্যন্ত নিজ বাড়ীতে অবস্থান করছিলেন এবং তিনি ঐ সময়ের মধ্যে ঢাকা আসেননি। ইহা সত্য নহে আসামী জামায়াতে ইসলামী রাজনীতির সহিত জড়িত এবং ছাত্র জীবনে ইসলামী ছাত্র সংঘের সহিত জড়িত ছিলেন শুধুমাত্র এই রাজনৈতিক কারণে হয়রানী করার লক্ষ্যে তাকে এই মামলায় মিথ্যাভাবে জড়ানো হয়েছে। ইহা সত্য নহে যে, আমি মনগড়া জবানবন্দী দিলাম।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-
অস্□ষ্ট
স্বা/-মোজাফফর আহমেদ খান ০৮/০৭/১২
০৮/০৭/১২ চেয়ারম্যান
আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

তারিখ ঃ ০৯/০৭/২০১২ খ্রিঃ(জেরা)

ঘাটার চর এবং খান বাড়ী কেরানীগঞ্জ থানার মধ্যে । ঘাটার চর থেকে খান বাড়ীর দুরত্ব কোয়াটার মাইল। খান বাড়ী আটি বাজারের কাছে। মুক্তিযোদ্ধাদের সেকেন্ড ক্যাম□ ছিল হাজী ইউসুফ আলী মাষ্টারের বাড়ীতে। ঐ গ্রামের নাম বড় মনোহারিয়া। আমাদের ক্যাম□ থেকে উত্তর-পুর্ব দিকে বড় মনোহারিয়ার ক্যাম□ এর দুরত্ব আনুমানিক ৪ কি.মি.। ৩ নং ক্যাম□ ছিল নাজিরপুর গ্রামের জনাব মোবারক আলীর বাড়ীতে। মোবারক আলীর ছেলে-মেয়ে জীবিত আছে। আমার ক্যাম□ থেকে ৩নং ক্যাম্□র দুরত্ব প্রায় দেড় কি.মি.। ৪নং ক্যাম□টি ছিল নিমতলী গ্রামের ডাঃ করিম সাহেবের বাড়ীতে। আমার ক্যাম□ থেকে ৪নং ক্যাম□টি উত্তর-পুর্ব দিকে প্রায় ৫ কি.মি. দুরে। এ সব গুলো ক্যাম্□র দায়িত্বে ছিলেন জনাব মোস্তফা মোহসিন মন্টু। ডাঃ করিম সাহেব জীবিত নেই তবে তার ছেলে-মেয়েরা জীবিত আছে। মোস্তফা মোহসিন মন্টু জীবিত আছেন।মতিউর রহমান সরকার এর বাড়ীতে আমাদের ক্যাম□ ছিল উনি জীবিত আছেন। মতিউর রহমান সাহেব এর ছেলে হাবিবুর রহমান তিনি জামাত নেতা ছিলেন সম্□তি ইন্তকাল করেছেন। এই মতিউর রহমানের নাম মতিউর রহমান ভুইয়া। ১৭/১২/২০০৭ তারিখে আমি জবানবন্দীতে বর্ণিত সি.আর মামলা দাখিল করি। সি.আর মামলায় ২৫শে নভেম্বরের ঘটনা বলা আছে কিন্তু ২৩/২৪ নভেম্বর তারিখে মিটিং হওয়ার কথা এবং সেই মিটিং এ কাদের মোল-ার উপস্থিত থাকার কথা বা তার সংগে সলা-পরামর্শ করে মিটিং ডাকার কথা বলা নাই। ২৫ নভেম্বর ঘাটার চরে যে গণহত্যা, অগ্নি সংযোগ, লুটপাট যা হয় তা স্থানীয় রাজাকাররা কাদের মোল-ার সংগে যোগাযোগ করে তার নেতৃত্বে সংঘটিত করে এই কথা গুলো সি.আর মামলায় বলি নাই। সি.আর মামলার আরজিতে প্যারা নং-৫ এ ১৯৭৫ সাল পর্যন্ত সকল আসামীরা জেলে ছিল একথা বলেছি কিনা মনে নাই।

এখন পর্যন্ত আমি ১৯৭১ সালে মুক্তিযুদ্ধ চলাকালে আমার ভারতে গিয়ে মুক্তিযুদ্ধের ট্রেনিং নেওয়া এবং ট্রেনিং শেষে বাংলাদেশে ফিরে এসে মুক্তিযুদ্ধে অংশগ্রহন করে মুক্তিযুদ্ধের সার্টিফিকেট গ্রহন করা সংক্রান্ত কোন কাগজ পত্র আমি অত্র ট্রাইব্যুনালে দাখিল করি নাই তবে, ট্রাইব্যুনাল চাইলে আমি আমার মুক্তিযুদ্ধের সার্টিফিকেট ট্রাইব্যুনালে দাখিল করতে পারব।

ইহা সত্য নহে যে, আমি মামার বাসা থেকে ফেরার পথে মোহাম্মদপুর ফিজিক্যাল ট্রেনিং সেন্টারের গেটের সামনে কাদের মাল্লাক অস্ত্র হাতে সহযোগীদের সংগে দাড়িয়ে থাকতে দেখিনি। ইহা সত্য নহে আমি আওয়ামীলীগ করি এবং আসামী কাদের মাল্লা একজন জামাতে ইসলামী নেতা হেতু রাজনৈতিক কারণে তাকে ক্ষতিগ্রস্ত করার জন্য মিথ্যাভাবে তার বির□দ্ধে সাক্ষ্য দিলাম। (সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট

স্বা/-মোজাফফর আহমেদ খান
০৯/০৭/১২

০৯/০৭/১২
চেয়ারম্যান
আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২
পুরাতন হাইকোর্ট ভবন, ঢাকা।

In the International Crimes Tribunal-2, Dhaka, Bangladesh ICT-BD Case No. 02 of 2012.

Chief Prosecutor – versus- Abdul Kader Molla.

Deposition of witness No. 02 for the Prosecution aged about 59 years, taken on oath on Tuesday the 10th July 2012.

My name is Syed Shahidul Huq Mama.

My father's name is Late. Syed Athaharul Huq

My mother's name is ------------- age-------- I am by religion ------- My home is at village--------- Police Station ----------, District ----------, I at present reside in --------, Police Station----------, District ------------, my occupation is ----------------

আমার নাম সৈয়দ শহীদুল হক মামা, আমার পিতা-মাতা জীবিত নাই। আমার আব্বা সৈয়দ আথাহার□ল হক একজন বিশিষ্ট আইনজীবী ছিলেন। আমার দাদা মরহুম কাজী আবদুল হক উনি একজন বিচারক ছিলেন বৃটিশ সরকারের সময়। আমার মাতা মরহুমা সৈয়দা কাশ্মিরী বেগম। আমার দাদার ইমিডিয়েট ছোট ভাই খান বাহাদুর আজিজুল হক বৃটিশ আমলে পুলিশ সুপার ছিলেন। তিনিই ফিংগার প্রিন্ট্রের আবিস্কারক ছিলেন। সেই কারণেই বৃটিশ সরকার তাকে খান বাহাদুর উপাধি দিয়েছিলেন। আমার শ্বশুর একজন বিশিষ্ট আইনজীবী ছিলেন তার নাম মরহুম মীর মোহাম্মদ খিজির আলী, এ্যাডভোকেট। ১৯৬০ সালের আগে আওলাদ হোসেন লেনে আমার পুরোনো পৈত্রিক বাড়ী ছিল। ৬০এর দশকে আমার পিতা ঢাকা মিরপুরের বাসিন্দা হন। আমার স্কুল জীবন শুর□ হয় লক্ষী বাজারের সানফ্রান্সিস স্কুল থেকে। মিরপুর এসে বেঙ্গলী মিডিয়াম জুনিয়ার

হাইস্কুলে ভর্তি হই। এই স্কুলটি পরবর্তীতে বেঙ্গলী মিডিয়াম হাইস্কুল হিসেবে পরিচিতি লাভ করে। এই স্কুলটি একটি আন্দোলনের কেন্দ্রবিন্দু। ১৯৬২ সালে কুখ্যাত হামিদুর রহমান শিক্ষা কমিশন রিপোর্টের বির□দ্ধে আন্দোলন করি। ১৯৬৬ সালে ছয় দফার দাবীতে আন্দোলন হয় ঐ আন্দোলনে আমি অংশ গ্রহন করি। ছয় দফা ও এগার দফা আন্দোলন ছিল দেশব্যাপি মুক্তির আন্দোলন। আগড়তলা ষড়যন্ত্র মামলার এক নম্বর আসামী ছিলেন বঙ্গবন্ধু শেখ মুজিবুর রহমান। ছয় দফা, এগার দফা আন্দোলনের সময় আমরা যখন মিছিল নিয়ে মিরপুরের বিউটি সিনেমা হলের নিকট যাই তখন কনভেনশন মুসলিমলীগের নেতা এস.এ খালেক ও গভর্নর মোনায়েম খানের ছেলে খসর□ তাদের দলবল নিয়ে আমাদের মিছিলে আক্রমন করে এবং গুলি চালায়। তখন জামাতে ইসলামীর কাদের মাল্লা, ডাঃ টি. আলী, হাক্কা গুন্ডা, আক্তার গুন্ডা, নেহাল, হাসিব হাসমি, আব্বাস চেয়ারম্যান, কানা হাফিজ, বিডি মেম্বার সহ আরো অনেকে তারা সিমান্তর বাঘ বলে পরিচিত খান আবদুল কাইয়ুম খানকে মিরপুরে এসে ছয়দফা ও এগার দফার বির□দ্ধে মিটিং করার জন্য আহবান জানান। এই মিটিংয়ের উদ্যোক্তা ছিল আঞ্জুমানে মহাজেরিন এবং ইন্ধন যুগিয়েছিল জামাতে ইসলামী। বর্তমান মিরপুর ষ্টেডিয়ামটি সেই সময় খালি মাঠ ছিল। সেখানে খান আবদুল কাইয়ুম খানকে প্রধান অতিথি করে বিরাট মিটিং হয়। সেই মিটিং এ খান আবদুল কাইয়ুম খান বলেন যে, '' শেখ মুজিব পাকিস্তানকা গাদ্দার হ্যায়, দুশমন হ্যায় ।'' এই উক্তি করার সাথে সাথে আমরা বঙ্গবন্ধুর প্রতি অবমাননা সহ্য করতে না পেরে মঞ্চে ঝাপিয়ে পড়ি এবং কাইয়ুম খানের হাত থেকে মাইক্রোফোন কেড়ে নেই। মাইক্রোফোন কেড়ে নেওয়ার পর আমাকে এবং আমার এবং সংগীদেরকে প্রচন্ড গণধোলাই ও মারধোর করে। আমার সহকর্মী আমিনকে চ্যাংদোলা করে মেরে পাশে ডাষ্টবিনে ফেলে দেয়। আমাকে মারতে মারতে মিরপুর থানায় নিয়ে যায় এবং পুলিশ আমাকে এক একটা বাড়ি মারে আর বলে- বল জয় বাংলা। আমি বলি '' জয় বাংলা '' । এ অবস্থায় মারের তীব্রতা বেড়ে যায় এবং বলে যে, ''বলবি জয় বাংলা ? '' তারপরও আমি বলি ''জয় বাংলা ''। বাংলাদেশে আন্দোলন তীব্র হল আইয়ুব খানের পতন হল। আইয়ুব খানের পতনের পর ইয়াহিয়া খান ক্ষমতায় এলেন এবং সামরিক শাসন জারী করেন। সামরিক শাসন আসার পর আমার বির□দ্ধে একটি মিথ্যা মামলা দায়ের করা হয়। বিচারে এ মামলায় আমি বেকসুর খালাস পাই। যারা সেদিন আমার মামলায় আমার পক্ষে সাফাই সাক্ষী দিতে এসেছিলেন ২৫ মার্চ, ১৯৭১ এ সেই সব সাক্ষীদেরকে কাদের মোল-া, আক্তার গুন্ডা, নেহাল, হাসিব হাসমি, হাশেম চেয়ারম্যান, বিহারী ও জামাতে ইসলামী যারা এক মায়েরই সন্তান তারা, তাদেরকে পাকড়াও করে হত্যা করে।

এরপর এলো ১৯৭০ সালের নির্বাচনে বঙ্গবন্ধু এ্যাডভোকেট জহির উদ্দিনকে জাতীয় পরিষদে এবং ডাঃ মোশারফ হোসেনকে প্রাদেশিক পরিষদে প্রার্থী হিসেবে মনোনয়ন দেন। আমরা বঙ্গবন্ধুর প্রার্থীদের জন্য মানুষের দুয়ারে দুয়ারে গিয়ে ভোট ভিক্ষা করি। ঐ নির্বাচনে জামাতে ইসলামের আমির কুখ্যাত গোলাম আযম দাঁড়ি পাল্লা প্রতীক নিয়ে প্রার্থী ছিলেন। মিরপুর-মোহাম্দপুর এলাকার বিহারীদের সংগঠন আঞ্জুমান মহাজেরিন এর প্রার্থী ছিলেন এ্যাডভোকেট দেওয়ান বারাসাত, তার নির্বাচনী প্রতীক ছিল হাতি। এক পর্যায়ে গোলাম আযম এর পক্ষে তার প্রার্থীতা প্রত্যাহার করেন। গোলাম আযমের পক্ষে বিহারীরা, আবদুল কাদের মোল-া গং, আক্তার গুন্ডা, হাক্কা গুন্ডা, আব্বাস চেয়ারম্যান, হাসিব হাসমি, নেহাল এরা নির্বাচনী

প্রচরনা চালায়। নির্বাচনী প্রচারনায় তারা শ্লোগান দিত '' নারায়ে তকবির আলাহু আকবার, পাকিস্তান জিন্দাবাদ, পাকিস্তান হ্যায় হামারা মুলুক হ্যায়, জয় বাংলা জয় হিন্দ লুঙ্গি ছোড়কা ধুতি পিন্দ।'' তখন কাদের মোল-ার আনন্দে আত্মহারা হয়ে বিহারীদের নিয়ে শ্লোগান দিত, ''গালি গালি মে শোর হ্যায়, শেখ মুজিব পাকিস্তানক্যা দুশমন, গাদ্দার হ্যায়।'' আমাদের প্রচারনায় একটাই শ্লোগান ছিল জয় বাংলা জয় বঙ্গবন্ধু । আরেকটা শ্লোগান কাদের মাল্লারা দিতেন, '' কাহা তেরা বাংলাদেশ, দেখ এবার তামাশা দেখ, ধামাকা দেখ।''

অসহোযোগ আন্দলনের পথ ধরে ঐতিহাসিক ৭ মার্চ এর জন্ম হয়। সেই মিটিংয়ে লক্ষ লক্ষ মানুষের সমাবেশে বঙ্গবন্ধু শেখ মুজিবুর রহমান দিক নির্দেশনা দিয়েছিলেন যে, '' এবারের সংগ্রাম মুক্তির সংগ্রাম, এবারের সংগ্রাম স্বাধীনতার সংগ্রাম, তোমাদের যার যা কিছু আছে তাই নিয়ে শত্রুর মোকাবেলা কর। অর্থাৎ শত্রু বলতে সেদিন জামাত ও পাকিস্তানীরা নির্ধারিত হয়ে গিয়েছিল। বঙ্গবন্ধুর ডাকে সাড়া দিয়ে মুক্তিযুদ্ধের জন্য অস্ত্র সংগ্রহের প্রস্তুতি নিতে আরম্ভ করি। আওয়ামী যুবলীগের সিনিয়র ভাইস চেয়যারম্যান ডাঃ শেখ হায়দার আলীর অভিযাত্রী ড্রাগ হাউসে আমরা মিটিং করতাম। এরপর পাকিস্তানর প্রজাতন্ত্র দিবস ২৩ মার্চ তারিখে পাকিস্তানীদর ঘরে ঘরে চাঁন-তারা পতাকা তুলে আনন্দ পাকিস্তান করে এবং কাদের মাল্লা স্বশরীরে উপস্থিত ছিল। আর আমরা বাঙ্গালীরা মানচিত্র অংকিত বাংলাদেশের পতাকা সাধ্যমত উড়াতে চেষ্টা করেছি। মিরপুর-১ নম্বরের সুউ□চ পানির ট্যাংকের উপরে আমি উঠে গিয়ে পাকিস্তানী পতাকা নামিয়ে বাংলাদেশের মানচিত্র খচিত পতাকা শত শত বিহারীদের সম্মুখে উত্তোলন করি।

পতাকা উড়ানোর পর প্রতিশোধ নেওয়ার জন্য জামাতী ও বিহারীরা প্রতিক্ষায় ছিল। ১৯৭১ সালের ২৫ মার্চ রাতে পাকিস্তান সেনা-বাহিনীরা অপারেশন সার্চ লাইট নামে যে জেনোসাইড অভিযান চালিয়েছিল মিরপুর তার থেকে আলদা ছিলনা। সেই রাতে আমি মিরপুর শাহ্ আলী মাজারের পাশে বাঙ্গালীদের একটি ক্লাব ঘরে আমি এবং মাজাহার হোসেন মন্টু আশ্রয় নিয়েছিলাম। ১৯৭১ সালের ২৬ মার্চ সকাল ৮ টার দিকে বের হয়ে দেখি মিরপুরস্থ বাঙ্গালীদের ঘরে ঘরে আগুন জ্বলছে। সকালে আমি মিরপুর-১ নম্বরের বাসায় যাওয়ার জন্য রাস্○ায় জায়গায় জায়গায় দেখি বিহারীরা আনন্দ পাকিস্তান করছে। আমি আর মন্টু যখন কাছে আসলাম তখন কাদের মাল্লা সহ যারা তান্ডব লিলায় অংশ গ্রহন করেছিল (যাদের নাম আমি পুর্বে বলেছি) তারা বলছিল, '' শহীদ আগিয়া, শহীদ আগিয়া, পাকড়াও পাকড়াও।'' তখন আমি দৌড়াতে আরম্ভ করলে তারা আমাকে পিছু পিছু ধাওয়া করে। আমার বাড়ীর পাশে তুরাগ নদী সাঁতরিয়ে উপারে বনগাঁ, চাকুলিয়া হয়ে সাদুল-াপুর চলে যাই। সাদুল-াপুরে গিয়ে জানতে পারি আমার বাবা, আমার নানী ও আমার ফুপাত ভাই একটি গাছের নিচে বসে আছে। তখন মানুষের কাফেলা নদী পার হওয়ার সময় নদীতে দেখতে পাই মানুষের লাশ আর লাশ ভেসে যা□ছ। তখন আমি সেখান থেকে আমি চলে গেলাম বনগাঁ। আমি তখন ছাত্র নেতা ছিলাম । সেই কারণে আমার পিতাকে একটি ঘুন্টি ঘরে স্থানীয়রা আশ্রয় দিয়েছিল। আমার সাথে ছিল পুরানো দিনের বন্ধু জাকারিয়া,রতন এবং টি.ভি ও চল□িত্র অভিনেত্রী সাহেরা বানু।

দুটি ঘটনা খুব উল্লখযাগ্য, একটা হ□ছ ২৭ মার্চ কবি মেহের□ন্নেছা, তার ভাই ও মাকে টুকরা টুকরা করে হত্যা করে কাদের মাল্লা, হাসিব হাসমি, আব্বাস চেয়ারম্যান, আক্তার গুন্ডা, হাক্কা গুন্ডা ও নেহাল ও আরো অনেকে। হাক্কা গুন্ডার

আখড়া ছিল ঠাটারি বাজারে। এখান থেকে পল-ব ওরফে টুনটুনিকে গ্রেফতার করে আক্তার গুন্ডা ও তার চেলা-চামুন্ডারা মিরপুরে মুসলিম বাজার নামক স্থানে নিয়ে যায়।তারপর সেখানে তার হাতের আঙুল গুলো কেটে ফেলে। তারপর তাকে গাছে ঝুলায়। নির্মমতা ও পৈশাচিকতার সীমা লংঘন করে তাকে হত্যা করা হয়। সেই দিনটা সম্ভবত ছিল ৫ এপ্রিল। এই ঘটনার মুল নায়ক ছিল কাদের মাল্লা, আক্তার গুন্ডা ও বিহারীরা যাদের নাম আগে বলেছি।

সাভার থানাধীন বনগাঁয় আমার বড়ভাই আমার সন্ধানে আসেন এবং আমাকে ও বাবাকে ঢাকা শহরে নিয়ে যাওয়ার জন্য লাকড়ি ভরা নৌকায় করে নিয়ে যায়, পথে আমি রায়ের বাজারে নেমে যাই বড়ভাইয়ের সাথে। ঐ খান থেকে নাজিরা বাজারস্থ সাবেক মেয়র হানিফ সাহেবের বাড়ীর পাশে আমার খালার বাসায় যাই এবং সেখানে অবস্থান করি। ঐখানে নিরাপদ নয় ভেবে আমার নানী আমাকে গোপীবাগে বজলুর রহমানের বাসায় নিয়ে যায়। সেখানে কিছুদিন অবস্থান করার পর মুল্লুক চান বদি ও আরো কয়েক জনকে নিয়ে ভারতের উদ্দেশ্যে রওয়ানা দেই। এরপর রামচন্দ্রপুর হয়ে আমরা আগরতলা চলে যাই। সেখানে কিছুদিন থাকার পর মুক্তিযুদ্ধের প্রশিক্ষন নেওয়ার জন্য ২নং সেক্টরের হেড অফিস মেলাঘরে যাই। এখানে ট্রেনিং দিয়েছেন মেজর জেনারেল খালেদ মোশারফ ও মেজর হায়দার এরা উভয়েই ' বীরউত্তম ' ছিলেন। ঐখানে আমি স্ে□শাল গেরিলা ট্রেনিং নেই। তখন মেজর হায়দার পাকিস্তানর কমান্ডো ব্যাটালিয়ানের সেকেন্ড ম্যান ছিলেন। তিনি খুব পরিচিত ছিলেন। সেখানে আমাদের প্রশিক্ষন দেওয়া হয় 'হিট এন্ড রান' পদ্ধতিতে আক্রমন করতে হবে। শত্রু ছাউনিতে আঘাত করার জন্য আমাদেরকে নির্দেশ দেওয়া হয়। ঢাকা এসে আমরা অপারেশন করলাম। আমার পিঠাপিঠি ভাইকে গ্রেফতার করার খবর পেলাম। খানসেনারা শর্ত জুড়ে দিল শহীদকে (আমাকে) হাজির করতে হবে। তাহলে আমার ভাই মুক্তি পাবে। আমার বড় ভাইকেও ঢাকা ক্যান্টনমেন্টে ধরে নিয়ে যায়।আমার বাবার বিশিষ্ট বন্ধু এ্যাডভোকেট জহির উদ্দিন ক্যান্টনমেন্টে গিয়ে আমার বড় ভাইকে ছাড়িয়ে আনলেন।

সম্ভবত অক্টোবর মাসের শেষের দিকে আমার পুরো গ্র□প নিয়ে যার নাম ছিল মামা বাহিনী, সেই বাহিনীর প্রধান হিসেবে মোহাম্মদপুর-মিরপুর এলাকায় গেরিলা অপারেশন চালানোর জন্য এ্যাসাইনমেন্ট নিয়ে আসি মেজর হায়দারের নির্দেশে। আমরা সুযোগে থাকতাম কখন পাকিস্তান সেনা-বাহিনী আসে । আমরা বসিলা, আটি এলাকায় আশ্রয়স্থল পরিবর্তন করে করে আত্মগোপন করে থাকতাম।

১৬ ডিসেম্বর খান সেনারা আনুমানিক ৯৯ হাজার আত্মসমর্পন করে। ঐদিনই তৎকালীন পাকিস্তান সেনা-বাহিনীর হেড কোয়ার্টার, টর্চার সেন্টার গ্রাফিক আর্ট ইন্সষ্টিটিউট ও ফিজিক্যাল ট্রেনিং সেন্টারে আমরা আক্রমন করি। ঐদিন সন্ধ্যার দিকে আমরা গ্রাফিক আর্ট ইন্সষ্টিটিউট আক্রমন করি। এক পর্যায়ে খান সেনারা ঐস্থান ত্যাগ করে মোহাম্মদপুর ও মিরপুরে বিহারীদের সংগে মিশে যায়। বিহারীরা, খান সেনারা ও জামাতীরা এবং ঐ সময়ে যারা ইসলামী ছাত্র সংঘ করতো তারা এদের সাথে প্রতিরোধের প্রাচীর গড়ে তোলে, ঐ এলাকাতে পাকিস্হানের পতাকা উড়তে থাকে এবং তারা বলতে থাকে, " নও মাহিনা মে তুমলোক বাংলাদেশ বানায়া, ইসকো হামলোক দোবারা পাকিস্তান বানায়েগা।"

খান সেনারা যখন গ্রাফিক আর্ট ইন্সষ্টিটিউট থেকে চলে যায় তখন সেখানে ভিতরে গিয়ে দেখি ফ্লোরে এবং দেওয়ালে জমাট বাধা অনেক রক্ত। ১৭ ডিসেম্বরে আমি নিজ হাতে বুদ্ধিজীবীদের ক্ষত-বিক্ষত লাশ রায়ের বাজার বধ্যভুমি থেকে তুলি পাশেই ছিল ছোট বস্্তা ভর্তি মানুষের চোখ। বাস্তর চোখগুলো মাটি চাপা দেই। এক পর্যায়ে এদেরকে এইযে ঘাতকরা যারা মোহম্মদপুরে লুকিয়ে ছিল তাদের মধ্যে অনেককে গ্রেফতার করি। যাদের গ্রেফতার করি তাদের স্বীকারোক্তি অনুযায়ী রায়ের বাজারের ইটের ভাটা যা বধ্যভুমি নামে পরিচিত সেখান থেকে ক্ষতবিক্ষত বুদ্ধিজীবীদের লাশ উদ্ধার করি। যারা ছিল এদেশের শ্রেষ্ট সন্তান। এটা ছিল আলবদর ও রাজাকারদের নৃশংসতা। পরবর্তীতে যখন স্বজন হারাদের সাথে আলাপ হলে আমি জানতে পারি বুদ্ধিজীবীদের রাজাকার আলবদররা ধরে নিয়ে গিয়েছিল। তারপর মিরপুরের বাঙলা কলেজে ঢুকে দেখতে পাই অসংখ্য লাশ পড়ে আছে। তারপর আমি মিরপুরের নিজ বাড়ীতে যাই সেখানে পাশের লেকে অসংখ্য লাশ ভাসতে দেখতে পাই। আমার নিজ বাড়ীও লুন্ঠিত ও ধ্বংশ প্রাপ্ত অবস্থায় পাই।

৩১ জানুয়ারী মিরপুর এলাকা শত্রু মুক্ত হয় যার নেতৃত্বে ছিলাম আমি । এই শত্রুরা হলো খান সেনারা, জামাতীরা, বিহারীরা, আলবদর, রাজাকার, আলসামসরা। কাদের মাল্লা কোন ঘটনা থেকে বি□ছন্ন ছিলনা। (জবানবন্দী সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বা/- অস্□ষ্ট

১০/০৭/১২

XXX জেরা ঃ

সময় অপরাহ্ন ঃ ৩ ঘটিকা ।

আমার মিরপুরের বাসার ঠিকানাঃ ১/বি এভিনিউ, ১/১৬। আমার জন্ম তারিখঃ ০১/১০/১৯৫৩ সাল। আমার বাবার মৃত্যুর পর আমাদের বাড়ীতে আমার ছোট ভাই শাহীন থাকে। ১৯৮৬ সাল থেকে আমি এবং আমার পরিবারের কেউ ঐ বাড়ীতে থাকি না। আমি তখন থেকে পরিবার সহ প্রবাসী। মিরপুর এলাকায় আমাকে সবাই শহীদুল হক মামা নামে একবাক্যে সবাই চেনে। আমি ১৯৬৯ সালে এস.এস.সি পরীক্ষার্থী ছিলাম কিন্তু পরীক্ষা দেওয়া হয়নি। ১৯৭০ সালে আমি বেঙ্গলী মিডিয়াম হাইস্কুল থেকে এস.এস.সি পাশ করি এবং আমি ঐ স্কুলের অন্যতম প্রতিষ্ঠাতা। পরবর্তীকালে আমি টি.এন্ড টি কলেজ থেকে সম্ভবত ১৯৭২ সালে এইচ.এস.সি পাশ করি । তারপরে ঢাকা বিশ্ববিদ্যালয়ে শিক্ষা জীবন শুর□ করি ১৯৭৩ সালের ব্যাচে, ইতিহাস বিভাগে অনার্সে। ১৯৭৩ সালে আমি মহসিন হলের ছাত্র ছিলাম। সেই সময় সম্ভবত মিয়া মাস্তাক ঐ হলের ভি.পি ছিলেন। আমি অনার্স কোর্স সমাপ্ত করতে পারিনি রাজনৈতিক কারণে। ঐ সময় অনার্স কোর্স তিন বছরের ছিল। সম্ভবত ১৯৭৬ সালে আমি বাংলাদেশ বিমানে চাকরীতে যোগ দেই এবং ১৯৮৬ সাল পর্যন্ত চাকরী করি। ১৯৮৬ সালের পর থেকে অদ্যাবধি পরিবার পরিজন সহ বিদেশে বাস করি। বর্তমানে আমি সুইডেনের নাগরিক সেই দেশের পাসপোর্ট নিয়ে (ই.ই.সি পাসপোর্ট) দেশে এসেছি। সম্ভবত এইবার ২০১২ সালের ২৬ জানুয়ারী বাংলাদেশে আসি। আমি একাই এসেছি।

ঢাকায় এবার আমি আপাতত রূপনগরের নিজ ফ্লাটে উঠেছি। এবার দেশে এসে আত্মীয় স্বজন বন্ধু-বান্ধব সবার সংগে দেখা হয়েছে।

১৯৬৯-৭০ সালে মিরপুর এলাকায় অধিবাসীদের মধ্যে বিহারী ছিল শতকরা ৯০ ভাগ অবশিষ্ট ১০ ভাগ বাঙ্গালী ছিল। ১৯৬৯-৭০ সালে যে সমস্ত রাজনৈতিক দল ছিল সেগুলো হলোঃ আওয়ামীলীগ, জামাতে ইসলামী, কনভেনশন মুসলিমলীগ, কাউন্সিল মুসলিমলীগ, নেজামে ইসলাম, ন্যাপ(ভাসানী), ন্যাপ (মোজাফফর), কমিউনিষ্ট পার্টি (মনি সিং) এ সমস্ত দলের মধ্যে সবচেয়ে বড় রাজনৈতিক দল ছিল আওয়ামীলীগ। আঞ্জুমানে মহাজেরিন দলের জন্ম কবে হয় তা আমার জানা নাই। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বা/- অস্□ষ্ট
১০/০৭/১২

১০/০৭/১২
চেয়ারম্যান
আন্⊙র্জাতিক অপরাধ ট্রাইব্যুনাল-২
পুরাতন হাইকোর্ট ভবন, ঢাকা।

তারিখ ঃ ১১/০৭/২০১২ খ্রিঃ সকাল ১০.৪৫ মিঃ (জেরা)

ঢাকা বিশ্ববিদ্যালয়ের মহসিন হল কলা ভবনের পশ্চিমে। কলা অনুষদের ক্লাস হতো কলা ভবনে। বিজ্ঞান অনুষদের ক্লাস হতো কার্জন হলের বিল্ডিংয়ে। মহসিন হল থেকে কার্জন হলের দুরত্ব আমি হেটে গেলে আনুমানিক আধা ঘন্টা সময় লাগবে। আমার এ মুহুর্তে মনে পড়ছে না কার্জন হলের দক্ষিনে শহীদুল্লা হল কিনা।

হামিদুর রহমান শিক্ষা কমিশনের রিপোর্ট বাঙ্গালীদের শিক্ষা-সংস্কৃতির বির□দ্ধে ছিল বলেই আন্দোলন শুর□ হয়েছিল। এটা সঠিক যে, হোসেন শহীদ সোহরাওয়ার্দি, বঙ্গবন্ধু শেখ মুজিব ও মওলানা আবদুল হামিদ খান ভাষানী এই তিন জন মহান নেতাই শিক্ষা কমিশন রিপোর্টের বির□দ্ধে আন্দোলন শুর□ করেছিলেন । ১৯৬২ সালের শিক্ষা কমিশন রিপোর্টের বিরুদ্ধে আন্দোলনের জন্য নয়, সার্জেন্ট জহুর□ল হককে আগড়তলা ষড়যন্ত্র মামলার অন্যতম আসামী হিসেবে ক্যান্টনমেন্টে বন্দী দশায় গুলি করে হত্যা করা হয়। ইহা সত্য নহে ১৯৬৮ সালে সার্জেন্ট জহুর□ল হককে হত্যা করা হয়। ১৯৬৯ সালের আন্দোলনের ফলেই বাঙ্গালী জাতি গোষ্ঠির মধ্যে জাগরণ সৃষ্টি হয় তারফলে আওয়ামীলীগ তদানিন্তন পূর্ব পাকিস্তান ১৬৯টি জাতীয় পরিষদ আসনের মধ্যে ১৬৭টি আসন লাভ করে এবং নিরংকুশ সংখ্যা গরিষ্ঠতা লাভ করে। ইয়াহিয়া খান এর সংগে বঙ্গবন্ধু ছয় দফার প্রশ্নে কোন আপোষ করেন নাই। ৭ ই মার্চের বঙ্গবন্ধুর ঐতিহাসিক ভাষনের পর ২৫ মার্চ রাতে অপারেশন সার্চ লাইট (জেনোসাইড) শুর□ হয়।

বিউটি সিনেমা হলের দিকে যখন আমরা মিছিল নিয়ে যাই সেখানে মুসলিম লীগ নেতা এস.এ খালেক ও কুখ্যাত মোনায়েম খানের ছেলে খসর□ আমাদের মিছিলে গুলি চালায়, সেই গুলিতে কেহ আহত বা নিহত হয়েছে কিনা জানিনা, আমারা পালিয়ে গিয়েছিলাম। এটা ১৯৬৯ সালের ঘটনা সময় ও তারিখ মনে নাই। খান আবদুল কাইয়ুম খানের মিটিং মিরপুরে ১৯৬৯ সালে, অনুষ্ঠিত হয়, তারিখ ও সময় মনে নাই।

আমার বির□দ্ধে কাইয়ুম খানের মিটিংয়ে আক্রমন করার জন্য যে মামলা হয়েছিল তার নম্বর মনে নেই। এ্যাডভোকেট বারাসাত বেঁচে আছেন কিনা আমি জানিনা।

৭ মার্চের ভাষনে বঙ্গবন্ধু যে শত্রুর মোকাবেলা করতে বলেছিলেন তারা হলো পাকিস্তানী খান সেনারা এবং তাদের এদেশীয় দোসর ও দালালরা যারা ত্রিশ লক্ষ লোককে হত্যা করেছিল । ১৯৭১ সালে নয় ১৯৬৯ সালে আমরা ডাঃ শেখ হায়দার আলী সাহেবের অভিযাত্রী ড্রাগ হাউজে মিটিং করতাম। সর্বশেষ মিটিং কবে করি তা আমার মনে নেই। ১৯৭১ সালের ২৬ মার্চ সকাল বেলা শাহআলী মাজারের পাশে ক্লাব ঘর হতে বাহির হয়ে দেখি মিরপুরস্থ বাঙ্গালীদের ঘরে ঘরে আগুন জ্বলছে, পাকসেনা, বিহারী এবং জামাতী ইসলাম ও এই মামলার আসামী কাদের মোল-া ঐ সমস্ত ধ্বংশ-যজ্ঞের সময় উপস্থিত ছিলেন। ঐ দিন ক্লাব ঘর থেকে বেরিয়ে আমি আমার বাড়ী যেতে পারিনি। কস্নাব ঘর থেকে বাড়ী যেতে না পেরে নবাবের বাগের দিকে যাই। ক্লাব ঘর থেকে নবাবের বাগ ১৫ মিনিটের হাঁটা দুরত্ব। নবাবের বাগ থেকে তুরাগ নদী ১০মিনিটের হাঁটা দুরত্ব। তুরাগ নদী আমি সাঁতরিয়ে পার হয়েছিলাম। নদী পার হয়ে বনগাঁ ও চাকুলিয়া হয়ে সাদুল্লাপুর যাই। নদী তীর থেকে বনগাঁ যেতে প্রায় ১ ঘন্টা সময় লেগেছে। বনগাঁ-চাকুলিয়া থেকে সাদুল্লাপুর যেতে আনুমানিক ২০-২৫ মিনিট লেগেছিল। বনগাঁ-চাকুলিয়া থেকে সাদুল্লাপুর বিকালের দিকে গিয়েছিলাম। কার কাছে শুনেছিলাম মনে নাই । জনতার কাফেলা থেকে কেউ বলেছিল আমার বাবা, নানী এবং ফুফাত ভাই একটি গাছের নিচে বসে আছে। গাছের কাছে পৌছাতে আমার আনুমানিক ১৫-২০ মিনিট লাগে। ঘুনটি ঘরটি সাদুল্লাপুর বাজারে ছিল, যেখানে আমার বাবাকে স্থানীয়রা আশ্রয় দিয়েছিল । আমি আমার পিতা ও নানীর সংগে সাক্ষাত করার পর সেখান থেকে চলে যাই তাদের সাথে রাত্রি যাপন করি নাই। আমি আমার বন্ধু জাকারিয়া রতন, ও তার আম্মা অভিনেত্রী সায়রা বানু বনগাঁর একটি বাড়ীতে আশ্রয় নেই। বনগাঁর ঐ বাড়ীতে আমি সপ্তাহ খানেক ছিলাম। যে বাড়ীতে আশ্রয় নিয়েছিলাম সে বাড়ীর গৃহকর্তার নাম এই মুহুর্তে মনে নাই। আমার বড় ভাই যখন আমাকে বনগাঁ থেকে ঢাকা নিয়ে আসেন তখন সেই নৌকায় আমার বাবা, নানী ও ফুফাত ভাই ছিলেন। বনগাঁ থেকে দুপুরের দিকে রওনা হয়ে আনুমানিক সন্ধ্যার সময় আমি রায়ের বাজার পৌছি। নাজিরা বাজারস্থ আমার খালার বাসায় আমি আনুমানিক দুই সপ্তাহ অবস্থান করেছিলাম। নাজিরা বাজার থেকে গোপিবাগে বজলুর রহমানের বাসায় যাই সেখানে কিছুদিন অবস্থান করি। সেখান থেকে আমি মুলুক চান, বদি ও আরো ১০/১২ জন সহ ভারতে রওনা করি। ভারতে কত তারিখে প্রবেশ করেছিলাম তারিখ মনে নাই। আমরা পায়ে হেটে ভারতে গিয়েছিলাম। ঢাকা থেকে আগরতলা পথে পথে বিশ্রাম নিয়ে যেতে আনুমানিক তিন দিন সময় লেগেছে। আগরতলা ট্রানজিট ক্যাম্পে□ প্রথম রিপোর্ট করি। ট্রানজিট ক্যাম্পে□ আনুমানকি ৮/১০ দিন ছিলাম। ট্রানজিট ক্যাম্পে□ থাকা কালীন সংবাদ পাই বেশ কিছু বন্ধু-বান্ধব মেলাঘরে অবস্থান করছে তখন আমরা নিজ উদ্যোগে মেলাঘরে যাই। মেলাঘরে যাওয়ার পর মেজর খালেদ মোশারফ ও মেজর হায়দার আমাদের থাকা ও ট্রেনিংয়ের ব্যবস্থা নেন। মেলাঘরটা ত্রিপুরা রাজ্যে অবস্থিত। মেলাঘরে আনুমানিক আমরা এক মাস প্রশিক্ষন নিয়েছিলাম । প্রশিক্ষনের পরে আমি ১২,১৩ এবং ১৪ নম্বর পস্নাটুনের কমান্ডার নিযুক্ত হই। আমাদেরকে অবস্থা বুঝে ব্যবস্থা নিতে উর্ধতন কর্তৃপক্ষ নির্দেশ দিয়েছিল। ট্রেনিং শেষে অক্টোবরের শেষের দিকে বাংলাদেশে প্রবেশ করি। আমরা ভারতে ট্রেনিং প্রাপ্ত ৩৯-৪০ জন এবং

স্থানীয় ট্রেনিং প্রাপ্ত অসংখ্য মুক্তিযোদ্ধা আমাদের সাথে ছিল। আমার এক ভাগ্নে আমাকে মামা ডাকতো সেই সুত্রে ক্যাম্পের সবাই আমাকে মামা বলে ডাকতো এবং সেই কারণেই আমার নেতৃত্বাধিন মুক্তি বাহিনীকে মামা বাহিনী বলে ডাকতো।

আমরা প্রথম অপারেশনের জন্য মোহাম্মদপুরের আশে-পাশে আশ্রয় নিয়েছিলাম। সেখান থেকে আমরা আমাদের অপারেশন চালাই। ১৬ ডিসেম্বর পর্যন্ত আমরা মোহাম্মদপুরের বসিলা, আটি ও তার আশে-পাশে বিভিন্ন জায়গায় অবস্থান করেছিলাম। ১৬ ডিসেম্বর যখন পাক আর্মি আত্মসমর্পন করে তখন আমরা দেড়-দু'শো সহযোদ্ধা সহ বসিলা এলাকায় ছিলাম। ১৬ ডিসেম্বর সন্ধ্যার দিকে মেজর হায়দার সাহেবের সংগে দেখা হয়েছিল, খালেদ মোশারফ আহত থাকায় সেদিন উনার সংগে দেখা হয়নি। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।
অস্পষ্ট
স্বা/- অস্পষ্ট
১১/০৭/১২

স্বা/-
১১/০৭/১২
চেয়ারম্যান
আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২
পুরাতন হাইকোর্ট ভবন, ঢাকা।

দুপুর ০২.১০ ঘটিকা ঃ

মোহাম্মদপুর গ্রাফিক আর্ট ইন্সটিটিউটের পিছনে ফিজিক্যাল ট্রেনিং সেন্টার অবস্থিত। ১৬ ডিসেম্বর আনুমানিক বিকাল ৫ টায় আমরা খান সেনাদের দুর্গ গ্রাফিক আর্ট ইন্সটিটিউট আক্রমন করেছিলাম। আমাদের সাথে খান সেনাদের প্রায় এক ঘন্টা প্রচন্ড যুদ্ধ হয়। যুদ্ধে পাকসেনারা এক গ্রুপ বিহারীদের সংগে মিশে যায়। অন্য গ্রুপ মিরপুর চলে যায়। গ্রাফিক আর্ট ইন্সটিটিউট থেকে মিরপুরে কারযোগে যেতে আধা ঘন্টা সময় লাগতো তখনকার সময়। পাক সেনারা যুদ্ধ শেষে মিরপুর পালিয়ে যাওয়ার সময় ছদ্মবেশে গেল কিনা আমার জানা নাই। তবে গ্রাফিক আর্টসের ভিতরে পাক সেনাদের ফেলে যাওয়া পরিত্যক্ত অস্ত্র ও পোষাক দেখতে পাই। এ সময় মিরপুর সহ ঢাকার বিভিন্ন স্থানে মুক্তিযোদ্ধারা সশস্ত্র অবস্থায় ছিল। আমরা ৭০/৮০ জন সহযোদ্ধাসহ গ্রাফিক আর্টস ইন্সটিটিউটে প্রবেশ করেছিলাম। আমরা সেখানে ঢুকে কোন পাক সেনাদের লাশ পাইনি তবে বিভিন্ন কক্ষে রক্ত জমাট বাধা অবস্থায় দেখতে পাই। গ্রাফিক আর্ট ইন্সটিটিউট দখল করার পর সেখানেই আমরা মুক্তিযোদ্ধারা ঘাটি গাড়লাম এবং রাত্রি যাপন করেছিলাম। গ্রাফিক আর্ট ইন্সটিটিউট দখল করার পর ঐখানে গিয়ে আমরা জমাট বাধা রক্ত দেখলাম, বিক্ষিপ্তভাবে অস্ত্র পোষাক পড়ে থাকতে দেখি এবং স্বজন হারা লোকদের আহাজারী শুনি যে তাদের কারো ভাইকে কারো বাবাকে আলবদরা ধরে নিয়ে হত্যা করেছে এসব কথা আমি মেজর হায়দার সাহেবকে জানিয়েছিলাম। ১৬ ডিসেম্বর, ১৯৭১ থেকে ৩১ শে জানুয়ারী, ১৯৭২ পর্যন্ত গ্রাফিক আর্ট ইন্সটিটিউটসহ মোহাম্মদপুর-মিরপুর সহ বিভিন্ন এলাকায় আমাদের ক্যাম্প ছিল। সম্ভবত ১৭ ডিসেম্বর আমরা মিরপুরের বাঙলা কলেজে প্রবেশ করে অসংখ্য লাশ বিক্ষিপ্তভাবে পড়ে থাকতে দেখি। ঠাটারি বাজারটা মহামান্য রাষ্ট্রপতির বাস ভবন বঙ্গভবনের পিছনের অংশ টুকু। ঠাটারী বাজার থেকে মিরপুরের মুসলিম বাজার ট্যাক্সি যোগে যেতে এক ঘন্টা সময় লাগে। মুসলিম বাজারের পাশে একটি মসজিদ আছে যা ঈদগাহ নামে পরিচিত। মুসলিম বাজারের এলাকাটি বিহারী অধ্যুসিত এলাকা ছিল। ২৭ মার্চ মেহেরুন্নেসা তার ভাই ও মাকে হত্যার বিষয়টি আমি কাফেলার জনতার কাছ থেকে শুনেছি। পল-বকে ঠাটারি বাজার হতে ধরে নিয়ে এসে

মিরপুর মুসলিম বাজারে নির্যাতন ও হত্যা করার বিষয়টি আমি জনতার কাছ থেকে শুনেছি। মেহের□ন্নেসা ও পল্লবক হত্যা কান্ডের ঘটনা দুটি আমি পরিচিত মানুষের কাছ থেকে এবং মিরপুরের জনতার কাফেলার মানুষের কাছ থেকে শুনেছি। ১৬ ডিসেম্বর, ১৯৭১ থেকে ৩১ শে জানুয়ারী, ১৯৭২ পর্যন্ত মিরপুর এলাকায় অনেকবার গিয়েছি। অপরাহ্ন ৩.০০ ঘটিকা (চলবে)।

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বা/- অস্□ষ্ট
১১/০৭/১২

১১/০৭/১২
চেয়ারম্যান
আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২
পুরাতন হাইকোর্ট ভবন, ঢাকা।

তারিখঃ ১২/০৭/২০১২ খ্রিঃ সকাল ১০.৫৫মিঃ (জেরা)ঃ

আমি ১৯৭০ সালে আসামী কাদের মোল্লাক প্রতিদিন গোলাম আযম সাহেবের পক্ষে নির্বাচনী প্রচারনা মিরপুর এলাকায় করতে দেখেছি। নির্বাচনী প্রচারনা কালে কাদের মোল্লার সাথে আমার কোন দিন কুশল বিনিময় হয়নি। আমি জানতাম কাদের মোল্লার বাড়ী ফরিদপুর তবে মিরপুর এলাকায় দুয়ারী পাড়া, ১২ নম্বর, মুসলিম বাজার, ১ নম্বর পাইকপাড়া এলাকায় দাঁড়ি পাল্লা প্রতীকের পক্ষে প্রচারনা করতে দেখেছি। আমি জানিনা যে কাদের মোল্লা মিরপুর বা মোহাম্মদপুর এলাকায় নিজ বাড়ী বা ভাড়া বাসায় বসবাস করতেন কিনা।

মিরপুর এলাকার এস.এ খালেক সম্ভবত জীবিত আছেন। এ বছর জানুয়ারী মাসে দেশে আসার পর আমি বিভিন্ন মিডিয়ার কাছে সাক্ষাতকার দিয়েছি। আমি এ বছর ২০ এপ্রিল তারিখে বিটিভি'তে 'একাত্তরে রনাঙ্গনের দিনগুলি' অনুষ্ঠানে সাক্ষাতকার দিয়েছি। এই সাক্ষাতকার অনুষ্ঠানে ২৫ মার্চ, ১৯৭১ থেকে ৩১ শে জানুয়ারী, ১৯৭২ পর্যন্ত মিরপুর-মোহাম্মদপুর এলাকায় মুক্তিযুদ্ধে যে সকল ঘটনা ঘটেছে তার বিশদ বর্ণনা দিয়েছি। আমি ঐ সাক্ষাতকারে সত্য কথাই বলেছি। ১৯৭২ সালের ৩১ জানুয়ারী থেকে ২০/৪/২০১২ তারিখ পর্যন্ত পত্র পত্রিকায় ও ইলেক্ট্রনিক মিডিয়ায় যে সকল বক্তব্য দিয়েছি তা সঠিক বলার চেষ্টা করেছি। তবে সাংবাদিক সাহেবেরা অনেক সময় বক্তব্যের কোন অংশ বাদ ফেলে দেন আবার নতুন শব্দ জুড়ে দেন এর দায়-দায়িত্ব আমার নয়।

আমি এই মামলার তদন্তকারী কর্মকর্তার কাছে ১৭ মার্চ, ২০১২ তারিখে জবানবন্দী দিয়েছি আমার রূপনগরের বাসায়। ২৫/৩/১৯৭১ থেকে ৩১ জানুয়ারী ১৯৭২ পর্যন্ত মুক্তিযুদ্ধে আমার অংশ গ্রহনের কোন ছবি পত্রিকায় উঠেছে কিনা এবং তা তদন্তকারী কর্মকর্তা জমা দিয়েছে কিনা আমার জানা নেই।

ইহা সত্য নয় আমি মিরপুর-মোহাম্মদপুর এলাকায় কখনই আসামী কাদের মাল্লাক দেখি নাই।

ইহা সত্য নয় কাদের মোল্লার নির্দেশে মোহাম্মদপুর-মিরপুর এলাকায় ১৯৭১ সালে অগ্নিসংযোগ, হত্যা, লুন্ঠন ইত্যাদি অপরাধ সংগঠিত হয়নি।

ইহা সত্য নয় কাদের মোল-া ইসলামী ছাত্র সংঘের নেতা হিসেবে নির্দেশ প্রদান করে কবি মেহের□ন্নেসা ও তার পরিবার পরিজনকে হত্যা করা হয় তা সঠিক নয়।

বঙ্গবন্ধুর নির্দেশে তার কাছেই স্বাধীনতার পর অস্ত্র জমা দিয়েছি তবে, তারিখ মনে নেই।

ইহা সত্য নয় তদন্তকারী কর্মকতার কাছে আসামী কাদের মোল-ার নাম উল্লখ করে বিবৃতি দেওয়ার আগে অন্য কোথাও আসামী কাদের মালার বির□দ্ধে কোন বিবৃতি দেইনি।

ইহা সত্য নহে আসামী কাদের মাল্লা ৭ মার্চ, ১৯৭১ থেকে ৩১ জানুয়ারী, ১৯৭২ পর্যন্ত তিনি ঢাকায় ছিলেন না বা তিনি গোলাম আযমের পক্ষে কথিত নির্বাচনী প্রচারনা করেননি।

ইহা সত্য নয় যে, আসামী আবদুল কাদের মোল্লা আওয়ামীলীগ করেন না বলেই তার বির□দ্ধে এই মামলা করা হয়েছে এবং আসামী কাদের মোল্লা সম্□র্কে যে বক্তব্য দিয়েছি তা সঠিক নয়।

জনৈক সগির মাস্তফা কর্তৃক প্রস্তুতকৃত প্রামাণ্যচিত্র 'মিরপুর দি লাষ্ট ফ্রন্টিয়ার-১' এবং 'মিরপুর দি লাষ্ট ফ্রন্টিয়ার-২' সম্□র্কে এই মুহূর্তে আমার কিছু মনে পড়ছে না। ঐ প্রামাণ্য চিত্র দেখলে বলতে পারব ইতিপূর্বে ঐ প্রামাণ্য চিত্র দেখেছি কিনা। (জেরা সমাপ্ত)।

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বা/- অস্□ষ্ট
১২/০৭/১২

১২/০৭/১২
চেয়ারম্যান
আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor – Versus- Abdul Kader Molla.

Deposition of witness No. 03 for the Prosecution aged about 54 years, taken on oath on Tuesday the 17th July 2012.

My name is Momena Begum.

My father's name is Late. Hazrat Ali Laskar.
My mother's name is ------------- age-------- I am by religion ------- My home is at village--------- Police Station ----------, District ----------, I at present reside in --------, Police Station----------, District ------------, my occupation is ----------------

আমার নাম মোমেনা বেগম। স্বামীর নাম হাবিবুর রহমান। মুক্তিযুদ্ধের সময় আমার বয়স ছিল ১২/১৩ বছর। আমরা ৪ বোন ১ ভাই । ভাই-বোনদের মধ্যে আমি সবার বড়। আমার বাবার নাম হজরত আলী লস্কর। আমার বাবা দরজির কাজ করতেন। তিনি আওয়ামীলীগ করতেন এবং বঙ্গবন্ধুর ভক্ত ছিলেন। আমার বাবা মিছিলে যেতেন, নৌকা মার্কার পোষ্টার লাগাতেন। মিছিলে গিয়ে জয় বাংলা, জয় বাংলা শেস্নাগান দিতেন। আমার আম্মার নাম আমিনা বেগম। তিনি গৃহিনী ছিলেন। আমার মা ২৬ মার্চ, ১৯৭১ সালে গর্ভবতী ছিলেন। আমরা তখন মিরপুরে ১২ নম্বর সেকসনে কালাপানি ৫ নম্বর লেনের ২১ নম্বর বাসায় থাকতাম।

২৬ মার্চ, ১৯৭১ সন্ধ্যায় বেলা ডুবার আগেই ঘটনাটা ঘটে। সেই সময় আমার আব্বা দৌড়াইয়া দৌড়াইয়া আসে এবং বলতে থাকে কাদের মোল্লা মেরে ফেলবে। আক্তার গুন্ডা বিহারীরা তারা ও পাক বাহিনীরা দৌড়াইয়া আসছিল আমার বাবাকে মেরে ফেলার জন্য। তখন আমার আব্বা ঘরে এসে দরজার খিল লাগায়ে দেয়। তখন ঘরের মধ্যে আমার মা-বাবা, ভাই-বোনেরা সবাই ছিলেন। আব্বা বললেন তোমরা খাটের নিচে লুকাও তখন আমরা দুই বোন আমেনা ও আমি খাটের নিচে লুকাই। কাদের মোল্লা ও বিহারীরা দরজার সামনে এসে বলে যে, " এই হারামীকা বা□চা দরজা খোল, বোম মারদেঙ্গা ।" দরজা না খোলায় তারা একটি বোম মারে। আমার আম্মা হাতে একটা দা নিয়ে দরজাটা খোলে, দরজা খোলার সাথে সাথে আমার আম্মাকে তারা গুলি করে। আমার আব্বা আমার আম্মাকে ধরতে গেলে অভিযুক্ত কাদের মোল্লা পিছন থেকে শার্টের কলার টেনে ধরে বলে এই শুয়ারের বা□চা, এখন আর আওয়ামীলীগ করবিনা ? বঙ্গবন্ধুর সাথে যাবিনা ? মিছিল করবিনা জয় বাংলা বলবি না ?" তখন আমার বাবা হাত জোড় করে কাদের মোল্লাকে বললো, "কাদের ভাই আমাকে ছেড়ে দাও।" আক্তার গুন্ডাকে বললো, "আক্তার ভাই আমাকে ছেড়ে দাও"। তখন তারা আমার বাবাকে টেনে হেছড়ে ঘরের বাইরে নিয়ে যায়। দাও দিয়ে আমার মাকে তখন তারা জবাই করে (সাক্ষী তখন অঝোরে কাঁদছিল)। তখন চাপাতি দিয়ে খোদেজাকে জবাই করে, তাসলিমাকেও জবাই করে। আমার একটি ভাই ছিল বাবু বয়স ছিল ২ বছর তাকে আছড়িয়ে মারে। বাবু মা মা করে চিৎকার করছিল। ঐ চিৎকার শুনে আমেনা চিৎকার দেয়। চিৎকার দেওয়ার সাথে সাথে আমেনাকে তারা টেনে বের করে। টেনে বের করে তারা আমেনার সব কাপড়-চোপর ছিড়ে ফেলে। ছিড়ে ফেলে তারা তখন আমার বোনকে নারী নির্যাতন করতে থাকে। তখন আমেনা অনেক চিৎকার করে, এক পর্যায়ে চিৎকার বন্ধ হয়ে যায়। (এ পর্যায়ে সাক্ষী কিছু সময়ের জন্য কাঁদতে কাঁদতে অজ্ঞান হয়ে পড়ে)। তারপর প্রায় সন্ধ্যা হয়ে আসে, অন্ধকার হয়ে আসে তখন তারা কি দিয়ে যেন খুচা□ছল দেখছে ঘরে আর কেহ আছে কিনা এই পর্যায়ে একটি খোচা আমার বাম পায়ে গেঁথে যায় । আমি খুব আঘাত প্রাপ্ত হই। খোচা লাগার পরে আমাকে যখন টেনে বের করে আমি আর কিছু বলতে পারিনা আমি অজ্ঞান হয়ে যায়। আঘাত পাবার পর আমি চিৎকার করি এবং অজ্ঞান হয়ে যাই। আমার যখন জ্ঞান ফিরে তখন অনেক রাত। আমার পেটে তখন প্রচন্ড ব্যাথা এবং ভেজা আমি হাটতে পারিনা। আমার পেটে অনেক ব্যাথা। আমি প্যান্ট পরা ছিলাম, প্যান্টটা ফাড়া। তখন আমি আস্েে আস্েে অনেক কষ্টে ফকির বাড়ী যাই। ফকির বাড়ী যাওয়ার পরে ঐ বাড়ীতে আমি বলি, মা দরজাটা খোল, বাবা দরজাটা খোল তখন তারা দরজাটা খোলে। তখন তারা আমার শরীরের কাপড়-চোপড় রক্তে ভেজা দেখে আমার প্যান্টটা ফাড়া দেখে। তারা একটি কাপড় দিয়ে আমার পায়ের ক্ষতস্থান বেধে দেয় এবং তাদের বড় ছালোয়ার আমাকে পরতে দেয়। এবং পরের দিন ডাক্তার এনে আমাকে চিকিৎসা করায় এবং ঔষধ-পত্র দেয়। খুব ছোট বেলায় আমার বিয়ে হয়েছিল কিন্ে তখনও স্বামীর ঘরে যাইনি। ফকির বাড়ীর লোকজন আমাকে জিজ্ঞেস করে আমার বাড়ী কোথায়, আমার স্বামী কোথায়। তখন তারাই আমার শ্বশুর বাড়ীতে খবর দেয়, তখন আমার শ্বশুর এসে আমাকে নিয়ে যায়। নিয়ে গিয়ে তারা আমাকে চিকিৎসা করায় আমার শ্বাশুড়ি আমাকে রাতে বুকের মধ্যে রাখতেন। আমি পাগলের মত এদিক-সেদিক দৌড়াদৌড়ি করতাম আমার শ্বশুর-শ্বাশুড়ি আমাকে ধরে ধরে নিয়ে এসে বুকে জড়ায়ে রাখতো। বাংলাদেশ স্বাধীন হলেও মিরপুর তখনও স্বাধীন হয়নি। টেকনিক্যাল থেকে একটি

কাগজে তিন ঘন্টার টাইম লিখে নিয়ে আমার মা-বাবার লাশ খুঁজতে যেতাম। আমাদের বাড়ীতে আমি কাউকে পাইনি শুধু দুর্গন্ধ আর দুর্গন্ধ, সেখানে অনেক লোক মেরেছে। কামাল খান নামে একটা লোক ছিল সে মুক্তিযোদ্ধাদের চা-বানিয়ে খাওয়াত। তিনি আমাকে বলতো কাদের মোল্লা তোর বাবা-মাকে মেরে ফেলছে। আক্কাছ মোল্লা আমার উকিল বাবা ছিলেন তিনিও একই কথা বলতেন। তিনি বলতেন আল-ার কাছে বিচার দাও আল-া কাদের মোল্লার বিচার করবে। দেশ স্বাধীন হওয়ার পরে প্রায় তিন বছর আমি পাগল ছিলাম, আমাকে ছিকল দিয়ে বেঁধে রাখতো। ১৯৭১ সালে আমার চোখের সামনে বাবা-মা, ভাই-বোনদের হত্যা করায় সেই দৃশ্য আজও ভুলতে পারিনা। সেই জন্যই আমি পাগল প্রায় ছিলাম। আমি বেঁচে থেকেও মরে আছি। আমি বিচার চাই। অভিযুক্ত কাদের মোল-া ডকে সনাক্ত।তখন তিনি আরো জোয়ান ছিলেন, অল্প বয়সি ছিলেন, পাঞ্জাবি পরেছিলেন। আমি তাকে জিজ্ঞাসা করতে চাই, " আমার বাবা কোথায়?" এই মামলার তদন্তকারী অফিসার আমাকে জিজ্ঞাসাবাদ করেছিল।

XXXX (জেরা) ঃ

আমার বাবা এই দেশী। তিনি একবার আসাম গিয়েছিলেন পরে আবার এদেশে আসেন। আমার বাবা যখন আসাম থেকে আসেন তখন আমি ছোট ছিলাম। আমার বাবা আমাকে বলেছে তিনি আসামে গিয়েছিলেন। তখনও আমি ছোট ছিলাম। তখন আমার বয়স কত ছিল আমি বলতে পারবোনা। আমার আব্বা আসাম থেকে ফিরে আসার অনেক পরে যুদ্ধের ১৫/২০ দিন আগে আমার বিয়ে হয়। আমার শ্বশুরের নাম ছিল ফেলু তালুকদার। তিনি মারা গেছেন। আমার শ্বশুরের বাড়ী জিঞ্জিরা। আমার শ্বাশুড়ির নাম সরলা বিবি। আমার স্বামীর আরেক ভাই ছিল তার নাম সিরাজ। আমার স্বামীর দুই বোন ছিল হুসনে আরা, রোশন আরা। সিরাজ ছিলেন আমার স্বামীর বড় ভাই তিনি বিবাহিত ছিলেন। স্বামীর বোনদের তখন বিয়ে হয়নি। আমার শ্বশুর বাড়ী একান্নভুক্ত পরিবার ছিল। সিরাজ তার স্ত্রীক বিবি বলে ডাকতো। সিরাজের তখন কোন সন্তান ছিলনা। আমি কত তারিখে আমার শ্বশুরের বাসায় গেলাম সেটা আমার মনে নেই। যতদিন দেশ স্বাধীন হয়নি ততদিন আমি আমার শ্বশুর বাড়ীতেই ছিলাম। আমার শ্বশুর ও স্বামী মিরপুর থেকে আমাকে কোলে করে তাদের জিঞ্জিরার বাসায় নিয়ে যায়। মিরপুর থেকে জিঞ্জিরার দুরত্ব কত মাইল আমি বলতে পারবোনা। মিরপুরে আমাদের বাড়ীটা আমার আব্বার নামে ছিল। সেই বাড়ীটা এখনও আছে তবে, সেই বাড়ীটা আমার চিকিৎসার জন্য বিক্রি করে দিয়েছি। কার কাছে বিক্রি করেছি তার নাম বলতে পারবো সে ঐ বাড়ীতেই আছে। কোন সালে বাড়ী বিক্রি করেছি তা বলতে পারবোনা। বর্তমানে আমি মিরপুরে আমার পুর্বের বাসার কাছাকাছি বসবাস করতেছি। যে বাসায় আমি বসবাস করছি সেই বাসাটা আমার নিজেরও না, আমি ভাড়াটিয়াও না এটা সরকারী জায়গা। আমার পিতার বাসাটা সরকার আমার পিতার নামে বরাদ্দ দিয়েছিল রিফিউজি হিসেবে। আমার স্বামী এখনও জীবিত উনি হার্টের র□গি তার হার্টে রিং পরানো হয়েছে। তিনি কাজ করতে পারেন না । একটু কাজ করলে হাপিয়ে যায়, ছেলেদেরকে দিয়ে কাজ করান। আমার তিন ছেলে এক মেয়ে। আমার বড় দুই ছেলে বিবাহিত। আমার এক ছেলে আমার সংগে থাকে অপর ছেলেটি জায়গার অভাবে ভাড়া বাসায় থাকে। আমার বাবার বাড়ী থেকে ফকির বাড়ী একটু দুরে আছে তবে কত মাইল দুরে তা বলতে পারবোনা। আমার বাবার বাসা থেকে ফকির বাড়ী যেতে আধাঘন্টা সময় লাগে। ফকির বাড়ীটি

মিরপুর ১০ নম্বরে তবে বত্মক নম্বর বলতে পারবোনা। ফকির বাড়ীতে আমি ৪ দিন ছিলাম। ফকির বাড়ীর যে বাড়ীতে আশ্রয় ছিলাম সেই বাড়ীর বাড়ী ওয়ালা বা তার স্ত্রীর নাম বলতে পারবোনা। দেশ স্বাধীন হলে আমি সেই বাড়ীতে গিয়েছিলাম কিন্তু সেই বাড়ীতে কারো দেখা বা সাক্ষাৎ পাইনি। আমার পিতার বাড়ীর আশে-পাশে বিহারী অধ্যুসিত ছিল কিন্তু বাঙ্গালীও ছিল। আমার বাবার বাড়ীটি মেইন রাস্তার ধারে ছিল। আমার জন্ম ঐ বাড়ীতে না। আমাকে কোলে নিয়ে আমার পিতা-মাতা আসাম থেকে এসেছে। আমার জন্ম আসামে। আমার বাবার বাড়ীর পশ্চিম পাশে মোরতুজা আলী বা কি নাম যেন থাকতেন তাকেও মেরে ফেলেছে। তার মেয়ের নাম মমতাজ। উত্তর, দক্ষিন ও পুর্ব পাশে যাদের বাড়ী তারা সে সময় ছিলনা বিহারী ছিল। বাঙ্গালীরা সব পালিয়েছিল। আমরা পালাবার সুযোগ পাইনি। আমার বাবার বাড়ী থেকে মুসলিম বাজারের নুরী মসজিদ ৫ মিনিটের দুরত্ব। স্বাধীনতা যুদ্ধের আগে মুসলিম বাজার এলাকায় বাঙ্গলী-বিহারীদের মধ্যে কোন দাঙ্গা হতো কিনা আমার জানা নেই। আমি জানিনা যে, আক্তার গুন্ডার বোন নুরীর নামেই এই নুরী মসজিদ আক্তার গুন্ডা তৈরী করেছিল কিনা। আমার বিয়ের পরে আমার তুলাতুলি হয় নাই। আমার স্বামীর সংগে আমার পুর্ব সম্□র্ক ছিলনা। (চলবে)

সময় দুপর ঃ ২.০০ ঘটিকা (জেরা)

আমার ছোট আমেনা ও আমার একই সংগে বিয়ে হয়েছিল। কিন্তু আমাদের তুলে দেওয়া হয়নি। আমার বোন গ্রামে বিয়ে হয়েছিল সেই গ্রামের নাম এখন বলতে পারবোনা। আমার স্বামী কিছুদিন আগে বিদেশে গিয়েছিলেন ছেলে-মেয়ে হওয়ার পরে। তিনি সেখানে ১০/১২ বছর ছিলেন। আমার স্বামী বিদেশ থেকে দেশে এসেছেন এক বছরও হয়নি। উনি সৌদিআরবে ছিলেন। সেখানে আমার স্বামীর হার্ট এ্যার্টাক ছিলেন এবং তাকে সেখানই হার্টে রিং পরানো হয়েছিল। ঘটনার সময় মিরপুর আমার বাবার বাড়ীতে তিনটি র□ম ছিল, একটি পাকের ঘর টিনের ছিল ও অন্য দুইটি র□ম ছিল। আমার বাবা-মা এক র□মে থাকতো ও অন্য র□মে আমরা ভাই-বোনেরা থাকতাম। কিন্তু ঘটনার সময় আমরা এক ঘরেই ছিলাম। ঐ ঘরটার চাল ও বেড়া টিনের ছিল। বাংলাদেশ স্বাধীনতার পরে ঐ বাড়ী-ঘরের কোন টিন ও মালামাল কিছুই ছিলনা সব লুট হয়ে গিয়েছিল। বাড়ীতে শুধুই রক্ত ছিল।

ঘটনার দিন ঘরের দরজা লাথি দিয়ে খুলতে বলেছিল। এই ঘরে একটা উচু খাট ছিল, তার নিচে একটা ট্রাংক ছিল। ট্রাংকের একপাশে আমার বোন ও অপর পাশে আমি ছিলাম। ঘরের দরজা থেকে খাটের দুরত্ব ৩/৪ হাত ছিল। ঘটনার রাত্রে আমাদের বাড়ী থেকে ফকির বাড়ী যাওয়ার সময় পথে আমার সাথে কারো দেখা হয়নি। আমার বাড়ী থেকে ফকির বাড়ী যাওয়ার রাস্তায় অনেক দুরে দুরে টিলা টিলা বাড়ী ছিল। আমি ফকির বাড়ী স্কুলে ক্লাস টু থেকে থ্রিতে উঠেছিলাম। আমি ফকির বাড়ী যাওয়ার পরে আমার পরনের কাপড়-চোপড় খুলে আমার শরীর পরিস্কার করে তাদের দেওয়া কাপড়-চোপড় পরেছিলাম। সেখান থেকে আমার শ্বশুর বাড়ী যাওয়ার সময় ঐ সমস্ত কাপড়-চোপড় সংগে নিয়ে যাইনি। বাংলাদেশ স্বাধীন হওয়ার পর এবং মিরপুর স্বাধীন হওয়ার আগে টেকনিক্যাল থেকে পুলিশের দেওয়া পাশ নিয়ে তিন ঘন্টার জন্য আমার বাবার বাড়ী বাবা-মার লাশ খুঁজতে গিয়েছিলাম। আমার বাবাকে কে মেরেছে আমি দেখি নাই তবে ঐ সময় কাদের মোল্লা আমার বাবার কলার ধরে টেনে-হিচড়ে নিয়ে যায় আমি খাটের নিচ থেকে তা দেখেছি। আমি মিরপুরে বাবা-মার লাশ খুজতে এসে না

পেয়ে শ্বশুর বাড়ী যখন ফিরে যাওয়ার পর তিন বছর প্রায় পাগলের মত ছিলাম এবং আমাকে শিকল দিয়ে বেধে রাখতো। বাংলাদেশ স্বাধীন হওয়ার পরে কিন্তু মিরপুর স্বাধীন হওয়ার কত দিন পুর্বে মিরপুর গিয়েছিলাম তা বলতে পারবোনা। মিরপুর মুক্ত হওয়ার আগ পর্যন্ত দেশ স্বাধীন হওয়ার পর আমি দুইবার মিরপুর গেছিলাম। যে দুইবার আমি মিরপুর আসি তখন আমি পাগল ছিলামনা তবে, মানসিকভাবে অসুস্থ ছিলাম। আমি সুস্থ হওয়ার পর আমার কথিত ঘটনা সম্□র্কে আমি কোথাও লিখিতভাবে অভিযোগ করিনি। মিরপুর ১২ নম্বরের আক্কাস মেম্বার বর্তমানে বেঁচে নেই তার ছেলে-মেয়ে, স্ত্রী বেঁচে আছে। আমার বাবার বাড়ীর কাছাকাছি আক্কাস মেম্বারের বাড়ী। আমি আমার বিয়ের আগে কোন রাজনৈতিক দলের সভা বা মিছিলে যাইনি। ইহা সত্য নয় যে, আমরা মা-বোনেরা পর্দানশীল ছিলাম বলে মিছিল মিটিংয়ে যাইনি, আমরা ছোট ছিলাম তাই মিটিংয়ে যাইনি। আমার শ্বশুর বাড়ীর মহিলারাও খুব একটা পর্দানশীল নয়। আওয়ামীলীগের কোন নেতা আমাদের মিরপুরের বাসায় ঘটনার পুর্বে কখনও যায় নাই। আমার বাবার বাড়ীর এলাকায় ঘটনার সময় কে কে আওয়ামীলীগ নেতা ছিলেন বলতে পারবোনা তবে, আমি কামাল খান ও আক্কাস মেম্বারের নাম জানি তারা আওয়ামীলীগ করতেন। ১৯৭০ সালে একটা নির্বাচন হয় কিনা আমি জানিনা, তবে বঙ্গবন্ধুর একটা নির্বাচন হয়। ঐ নির্বাচনে আমাদের এলাকায় কে পাশ করেছিল তার নাম বলতে পারবোনা। (চলবে)

তারিখ ঃ ১৮/০৭/২০১২ খ্রিঃ সকাল ১০.৩০ ঘটিকা(জেরা)

আমাদের ওয়ার্ড কমিশনার ইসমাইল চেয়ারম্যান। আমি ঐ চেয়ারম্যান সাহেবের বাসা চিনিনা। তার অফিস থানার সামনে। আজকে আমি আমার ভোটার আই.ডি কার্ড আদালতে আনিনি । আমার ভোটার আই.ডি কার্ড আছে তাতে আমার ছবি আছে এবং সেখানে আমার জন্ম তারিখও লেখা আছে। এরআগে আমার কাছে অনেক লোক এসেছে তারা আমার ছবি তুলেছে কিন্তু আমি ভয়ে কাদের মোল-া ও আক্তার গুন্ডার নাম নিইনি। আমার শ্বশুর বাড়ী জিঞ্জিরায় আমি ভোটার নই, আমি মিরপুরের ভোটার। আমার কোন পাসপোর্ট নেই। আমার ছবি সম্বলিত কোন পরিচয়পত্র যাতে আমার বাবা ও স্বামীর নাম লিখিত আছে যা ওয়ার্ড কমিশনার কর্তৃক সত্যায়িত এমন কোন কাগজ আমি আদালতে আনিনি। আমি এবং আমার স্বামী কখনও আসাম যাইনি। আমার পিতাকে বরাদ্দ দেওয়া বাড়ীর কোন কাগজ আমি আজকে আদালতে আনিনি বা কোন তদন্ত◌কারী কর্মকতার নিকট উপস্থাপন করিনি কারণ মুক্তি যুদ্ধের সময় আমার বাবা-মা, ভাই-বোনকে মেরে ফেলেছে। জখমি অবস্থায় ৪ দিন ফকির বাড়ীতে থাকার পরে আমার শ্বশুর এসে আমাকে নিয়ে যায়। জিঞ্জিরায় নিয়ে গিয়ে আমার শ্বশুর আমাকে চিকিৎসা করান। বাড়ীতে ডাক্তার ডেকে আমাকে চিকিৎসা করান। আমার মনে নাই আমাকে কতদিন চিকিৎসা করিয়েছিল, যতদিন ভাল হই নাই ততদিন চিকিৎসা করিয়েছিল। শ্বশুর বাড়ীতে চিকিৎসাধিন থাকার পরেও সেখানে আমি অবস্থান করেছিলাম, দেশ স্বাধীন হওয়ার পরে আমি প্রথম মিরপুরের বাসায় আসি। মিরপুর স্বাধীন হওয়ার কয়েকমাস পরে মিরপুরে স্থায়ীভাবে বসবাসের জন্য আমি ফিরে আসি। (তারপরে স্বই□ছায় বলেন) আমি শ্বশুর বাড়ীতে তিন বছর পাগল অবস্থায় ছিলাম এবং ভাল হয়ে যাওয়ার পরে আমি মিরপুরে স্থায়ীভাবে বসবাসের জন্য এসেছিলাম। ঐ তিন বছর আমি পাগল ছিলাম, কি শাস্তত আমাকে চিকিৎসা করা হয়েছিল আমি বলতে পারবোনা। আমার ঐ পাগল থাকা সংক্রান্ত কোন কাগজ

আমি আদালতে দাখিল করিনি। আমার বর্ণিত ঘটনা সম্□র্কে আমি সুস্থ হওয়ার পর কোন থানা বা কোন কোর্টে কারো বির□দ্ধে কোন লিখিত অভিযোগ দাখিল করিনি। আমার সাথে আমার স্বামী বা ছেলে আদালতে আসে নাই। ঘটনার সময় আমাদের দরজার সামনে দরজা খোলার আগে একটা বোম ফুটেছিল সেই কারণে ঘরের ভিতর ধোয়ায় অন্ধকার হয়নি। স্বাধীনতার অনেক দিন পরে আমার বড় সন্তান হয়, তবে তারিখ ও সাল আমি বলতে পারবোনা। ইহা সত্য নহে যে, যেহেতু আমার বড় সন্্তানের জন্ম তারিখ বলতে পারছিনা সেহেতু ঐ সন্তান আমার নয়। (এই বাক্যটি প্রসিকিউসনের প্রবল আপত্তিসহকারে গৃহীত হইল)। আমি আমার সন্তানদের জন্মের তারিখ ও সাল বলতে পারবোনা তবে আমার ঘরে লিখিত আছে তা আনলে বলতে পারতাম। প্রয়োজন আছে জানলে ছেলেদের জন্ম সনদ কাউন্সিলরের কাছ থেকে আমি নিয়ে আসতাম। স্বাধীনতার পর আমি মুক্তিযুদ্ধে ক্ষতিগ্রস্ত হয়েছিলাম কিনা তা জানার জন্য সরকারী কত লোকই না গিয়েছিল আমার কাছে। আমাকে ঐ সমস্ত সরকারী লোক কোন কাগজ-পত্র দেয়নি। বঙ্গবন্ধু শেখ মুজিব আমাকে দুই হাজার টাকার চেক দিয়েছিলেন তারপরে আজ পর্যন্ত আমাকে কেহ কোনরূপ সাহায্য করে নাই। কোন ব্যাংক থেকে আমি ঐ দুই হাজার টাকার চেক ভাঙ্গিয়েছিলাম তা আমার মনে নাই। ইহা সত্য নয় যে, বঙ্গবন্ধু আমাকে দুই হাজার টাকার চেক দেননি। আমার বাবার বাড়ীর আশে-পাশে যারা ছিলেন সেই বাড়ীর বাসিন্দাদের ছেলে-মেয়ে ও নাতিরা এখন ঐখানে বাস করে। এখন যারা আছে তাদের মধ্যে জাহাঙ্গীর, মমতাজ আছে। বিহারীদের যে সকল বাড়ী ছিল তারা বাড়ী বিক্রি করে চলে গেলে । ঐ বাড়ীর বাসিন্দাদের নাম আমি জানিনা। আমার আব্বার দরজির দোকান ছিল মিরপুর এক নম্বরে মাজারের সামনে। আমার বিয়ের আগে আমি আমার বাবার দরজির দোকানেও যেতাম। ১৯৬৯, ১৯৭০ ও ১৯৭১ সালে অন্যান্য দলের কোন লোকজন আমাদের বাড়ীতে আসেনি। ঐ সময় দাঁড়িপাল্লাও জয় বাংলার লোকেরা নির্বাচন করে। আমাদের বাড়ীর আশে-পাশে বিহারীরা দাঁড়িপাল্লার পক্ষে কাজ করতো। আমাদের বাড়ীর আশে-পাশে সবাই নৌকার সমর্থক ছিল কিনা আমি বলতে পারবোনা। কাদের মাল্লাক ঘটনার আগে দেখিনি তবে ঘটনার দিন যেদিন আমার আব্বা চিৎকার করতে করতে বাড়ীতে আসেন এর পর পর যে বিহারীরা পাক বাহিনীসহ আমাদের বাড়ীতে আসে তাদের সাথে বাংলায় কথা বলা যে ছিলেন তাকে দেখেছি, তিনি আমার আব্বার কলার ধরে ঘরের বাইরে নিয়ে যায় সেই ব্যক্তির নাম কাদের মোল-া। আমার আব্বার কলার ধরে যখন কাদের মাল্লা ঘরের বাহিরে নিয়ে যায় তখন আমি খাটের তলা থেকে তাকে দেখেছিলাম। খাটের তলায় ঢুকার সময় পশ্চিম দিকে মুখ করে ঢুকেছিলাম। ঘরের দরজাটা কোন দিকে ছিল বলতে পারবো না, ঘরের সামনের দিকে ছিল। ঘটনার সময় আমরা সবাই ঘরের মধ্যেই ছিলাম তখন আমার বাবা বাহির থেকে দৌড়াইয়া এসে ভিতরে ঢুকেন। ঐ সময় আমরা ঘরের ভিতরে আমার গর্ভবতী মা, আমরা চারবোন ও দুই বছরের ছোট ভাই ছিল। ঘরে একটি বড় জানালা ছিল, দিক বলতে পারবোনা। ঘটনার সময় জানালাটির একপার্ট খোলা ছিল অপর পার্টটি বন্ধ ছিল। আমার বাবা তখন ঘরের ভিতরে ঢুকে দরজার খিল লাগিয়ে দিয়েছিলেন এবং আমাদের খাটের তলে লুকাতে বলেন। ঘরের জানালাটি রাস্তার দিকে। আমার মা খাটের নিচে লুকাননি। আমরা দুইবোন শুধু খাটের নিচে লুকিয়ে ছিলাম। বোমের আঘাতে দরজা খোলেনি আমার মা দাও হাতে নিয়ে দরজা খুলেছিলেন। দরজা খোলার সাথে সাথে মাকে গুলি করার পরে ঘরের ভিতরেই জবাই করে এবং বাবাকে

টেনে হিছড়ে বাইরে নিয়ে যায়। আমার বাবাকে আমি মারতে সাথে সাথে আমার মাকে গুলি করে। গুলি খাওয়ার সাথে সাথে আমার বাবা ধরতে গেলে আমার বাবাকে কলারে ধরে বাইরে টেনে নিয়ে যায় তখন আমার মা পড়ে যায়। ঘটনার সময় আমার মা শাড়ি পরা ছিলেন এবং আমার বাবার গায়ে হাফ শার্ট ও পরনে লুঙ্গি ছিল। আমার দেখিনি। আমার মাকে দরজার থেকে একটু ভিতরে হত্যা করে। তারপর আমার বোন খোদেজাকে ঘরের ভিতর বিহারীরা জবাই করে আমার ভাইকে পাকবাহিনী ও বিহারীরা আছড়াইয়া হত্যা করে। আমাকে কি দিয়ে আমি খাটের নিচে লুকানো অবস্থায় কি দিয়ে খুচিয়েছিল আমি বলতে পারবোনা। খুচানোতে আমি জ্ঞান হারাইনি আমি চিৎকার দেওয়াতে আমাকে টেনে বের করাতে আমি জ্ঞান হারাই। আমাকে বিহারীরা ও পাক বাহিনীর লোকেরা টেনে বের করে। আমার মায়ের মৃত দেহের উপর দিয়ে আমার বোনকে টেনে বের করেনি। খোদেজা ও তাসলিমাকে ঘরের ভিতরে জবাই করে। আমার ছোট ভাইকে আছড়ায়ে মারার সময় আমার বোন আমেনা চিৎকার দেয় তখন তাকেও টেনে বের করে তার উপর পাকবাহিনী ও বিহারীরা একের পর নির্যাতন চালায়। আমার বাবাকে নিয়ে যাওয়ার পর তিনি কোথায় আছেন কার কাছে আছেন বা কিভাবে আছেন তা আমি জানতে পারিনি। স্বাধীনের পরে আক্কাস মেম্বার আমাকে বলে কাদের মাল্লা তোমার বাবাকে মেরে ফেলেছে। সেই আক্কাস মেম্বার এখন আর জীবিত নেই, তার ছেলেরা আছে। ইহা সত্য নয় যে, ঘটনার সময় ঘরের ভিতর দিনের আলো ছিলনা। ঘর ফর্সা ছিল। ইহা সত্য নহে যে, আক্কাস মেম্বার বলে নাই যে আমার বাবাকে কাদের মোল-া মেরে ফেলেছে। স্বাধীনতার পর আক্কাস মেম্বার আমাকে আমার বাবার হত্যার কথা বলেছে। আক্কাস মেম্বার তার নিজ বাড়ীর উঠানে দাড়িয়ে আমাকে এই কথা বলেছিল তবে তারিখ বলতে পারবোনা। আমাকে যখন আমার বাবার হত্যার কথা বলেছিল সেখানে আর কেহ ছিলনা। ইহা সত্য নয় যে,আমি আক্কাস মেম্বারের বাড়ীতে যাইনি।

ইহা সত্য নহে ঘটনার সময় আমার বাবা দৌড়ে ঘরে ঢুকার সময় চিৎকার করে কাদের মাল্লা ও আক্তার গুন্ডার নাম বলেছে একথা শেখানো মতে বলেছি।

ইহা সত্য নহে ঘটনার সময় কাদের মোল-াকে দেখেছি সে তখন জোয়ান ছিল এবং গায়ে পাঞ্জাবি পরা ছিল তা সঠিক নয়।

এই মামলার পরে আমাকে দেখানো মতে আমি আদালতে কাদের মাল্লাক সনাক্ত করেছি-ইহা সত্য নয়। আট দশ মাস আগে নাসিরউদ্দিন আমাকে জল্লাদ খানায় খবর দিয়ে এনে জিজ্ঞাসাবাদকালে আমি মনোয়ারার কাছে সব বলেছি, তিনি একজন অফিসার। নাসির উদ্দিন ওয়ার্ড আওয়ামীলীগের সভাপতি কিনা আমি জানিনা। ঘটনার সময় আমাদের বাড়ীতে ১০/১২ জনলোক ঢুকেছিল তার মধ্যে এক জনই বাংলায় কথা বলেছে তিনি পাঞ্জাবি পরা ছিল তিনি কাদের মাল্লা। আমার আব্বা বলেছে আমিও দেখেছি। ইহা সত্য নয় যে, আমি হজরত আলী লস্করের কন্যা নই এবং হাবিবুর রহমানের স্ত্রী নই। ইহা সত্য নয় যে, কাদের মাল্লা তখন মিরপুরে বসবাস করতো না। ইহা সত্য নহে যে, কামাল খান এবং আক্কাস মেম্বার তারাও বলেনি যে, কাদের মাল্লা নামে কোন লোক তখন মিরপুর বসবাস করতোনা। ইহা সত্য নয় যে, মিরপুর ১২ নম্বর সেকসনে, কালাপানি ৫ নম্বর সেকসনে ঘটনার সময় আমার বাবার কোন বাড়ী ছিলনা। ইহা সত্য নয় যে, ঐ বাড়ীতে কথিত

মতে কোন ঘটনা ঘটেনি বা আমি পরবর্তীতে ঐ বাড়ী বিক্রি করিনি। ইহা সত্য নয় যে, ক্ষতিগ্রস্ত হওয়ার পর আমি ফকির বাড়ী যাইনি বা সেখানে আমার কোন চিকিৎসা হয়নি বা সেখান থেকে আমার শ্বশুর আমাকে জিঞ্জিরায় নিয়ে গিয়ে চিকিৎসা করায়নি। ইহা সত্য নয় যে, দেশ স্বাধীনতার পরে মিরপুর টেকনিক্যাল থেকে দুই বার পাশ নিয়ে আমি আমার বাবার বাসায় যাইনি। সত্য নহে যে, ঘটনাস্থলের বাড়ী আমি তদন্ত কর্মকর্তাক দেখাইনি। ইহা সত্য নয় যে, আমার প্রদত্ত সমস্ত জবানবন্দী দিয়েছি তা মিথ্যা ও বানোয়াট। (সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বা/- অস্□ষ্ট
১৮/০৭/১২

১৮/০৭/১২
চেয়ারম্যান
আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor -Versus- Abdul Kader Molla.

Deposition of witness No. 04 for the Prosecution aged about 63 years, taken on oath on Tuesday the 24th July 2012.

My name is Kazi Rosy.

My father's/Husband's name is Late Sekander Abu Zafar.

My mother's name is ------------- age-------- I am by religion ------- My home is at village--------- Police Station ----------, District ----------, I at present reside in -----, Police Station----------, District ------------, my occupation is ------------------------

আমার নাম কাজী রোজী। আমি কবিতা লিখি। আমি ঢাকা বিশ্ববিদ্যালয় থেকে বাংলা সাহিত্যে সম্মান সহ এম.এ করেছি। আমি ১৯৭০ সালে মিরপুর ৬ নম্বর সেকসনের সি ব-কে ৪ নম্বর এভিনিউ এর ৮ নম্বর বাড়িতে থাকতাম। আমি কবি মেহের□ন্নেসাকে চিনতাম। উনি আমার বন্ধু ছিলেন। উনি থাকতেন মিরপুর ৬ নম্বর সেকসনের ডি ব্লক বাসা নম্বর এই মুহূর্তে মনে পড়ছে না। তিনি আমার প্রতিবেশী ছিলেন। ১৯৭০ সালের নির্বাচনে মিরপুরে দাঁড়িপাল-া প্রতীকের প্রার্থী ছিলেন অধ্যাপক গোলাম আযম। তখন ইসলামী ছাত্র সংঘ নামে একটি সংগঠন ছিল। কাদের মোল-া তখন এই সংগঠনের নেতৃত্বে ছিলেন, বলতে গেলে প্রধানই বলা যায়। তখন তার নেতৃত্বে স্থানীয় অবাঙ্গালীরা তার সংগে যারা কাজ করতেন তারা দাঁড়িপাল-ার পক্ষেই কাজ করতেন। তখন নৌকা প্রতীকের প্রার্থী ছিলেন এ্যাডভোকেট জহির□ল। তখন আমার সংগে কবি মেহের□ন্নেসা সব সময় থাকতেন । কারণ আমরা একটা এ্যাকশন কমিটি করেছিলাম। সেই কমিটির প্রেসিডেন্ট ছিলাম আমি আর সদস্য ছিলেন কবি মেহের□ন্নেসা, তার সংগে আরো অনেকে সদস্য ছিলেন। মিরপুরের বাঙ্গলীরা ভীষনভাবে লাঞ্চিত ও অপমানিত

হতো। এগুলোর বির□দ্ধে আমরা এ্যাকশন কমিটি গঠন করেছিলাম। মিরপুরের বিভিন্ন এলাকায় বিভিন্ন সময় আমরা এই কমিটির পক্ষ থেকে মিটিং করতাম, যেন মিরপুরের বাঙ্গলীরা এক সংগে ভালভাবে থাকতে পারি।

১৯৭১ সালের ৭ মার্চ বঙ্গবন্ধুর ভাষন শুনার জন্য আমি, কবি মেহের□ন্নেসা ও আরো অনেকে রেসকোর্স ময়দানে গিয়েছিলাম। এই ভাষনটাই ছিল আমাদের জন্য স্বাধীনতার ডাক। মিরপুরের বাঙ্গলীরা এটা মানতেন কিন্তু মিরপুরে যারা অবাঙ্গালী ছিলেন তারা আমাদের প্রতি আরো বৈরী মনোভাব পোষন করতেন। আমরা এই অবস্থা বুঝতে পেরে প্রতিদিন সমাবেশ করতে থাকি। এভাবেই চলে আসে ২৫ মার্চ। সেই ২৫ মার্চ সকালে আমরা একটা মিটিং করলাম। সেই মিটিংয়েই আমি বুঝতে পারি কিছু যেন একটা ঘটতে যা□ছ। মিটিংটা শেষ করে বাসায় আসার কিছুক্ষণ পর খবর পেলাম আমার বাসা রেইড হবে আর কবি মেহের□ন্নেসার বাসায়ও হাঙ্গামা হবে। কারণ এই এ্যাকশন কমিটির আমরা দুজনই ছিলাম নারী সদস্য। আমি যখন খবর পেলাম যে আমার বাসা রেইড হবে তখন মেহেরের বাসায় খবর পাঠালাম আমি আজকেই চলে যাব বাসা থেকে তোমরাও চলে যাও। এই খবর পাওয়ার পর মেহের আমার বাসায় তার ছোট ভাইকে দিয়ে খবর পাঠালেন তিনি,তার মা, তার দুটি ভাই এদের নিয়ে তিনি কোথায় যাবেন ? তখন আমি তার ভাইকে বলে দিলাম তুমি বাড়ীতে গিয়ে মেহেরকে এবং তোমার মাকে বুঝাও বাড়ী থেকে চলে যাওয়া প্রয়োজন। এরপর আমি মিরপুর থেকে চলে গেলাম কিন্তু মেহেররা গেলনা।

এরপরের ঘটনা ২৫ মার্চের কাল রাত্রির ভয়াল ঘটনা সবার জানা। এরপরে দিন চলে গেল আমি ২৭ মার্চ বিকেলে খবর পেলাম যে, মেহের□ন্নেসা ও তার দুটি ভাই ও মাকে কাদের মাল্লাও তার সহযোগী যারা ছিলেন তাদের অনেকে মাথায় সাদা পট্টি অথবা লাল পট্টি বেঁধে মেহেরদের বাসায় সকাল ১১টায় ঢুকে যায় বলে শুনেছি। মেহের যখন দেখলো ওরা তাদেরকে মারতে এসেছে তখন সে কুরান শরীফ বুকে চেপে বাঁচতে চেয়েছিল। কিন্তু এই চারজনকেই জবাই করেছিল। এ ঘটনা শুনে যত কষ্ট পাই মেহেরের জন্য আজ অব্দি তার অতৃপ্ত আত্মার কষ্টটা আমি পাই। আমার বন্ধু ছিল আমি তার জন্য কিছুই করতে পারিনি। কাদের মোল-ার নেতৃত্বে সেদিন মেহের□নের বাসায় ওরা ঢুকেছিল কিন্তু কাদের মাল্লা নিজে ঐ বাসায় ঢুকেছিল কিনা তা বলতে পারবোনা। বাংলাদেশ স্বাধীনতার পরে আমি মেহের□ন্নেসার বাসায় যেতে চেয়েছিলাম কিন্তু আমি জানতাম ঐ বাসায় অন্য কেউ বসবাস করছে। দুয়েক দিন পর আমি জানতে পারি গুলজার নামে একজন অবাঙ্গালী এবং আরো একজন বিহারী আমাকে বলেছিল এই ধরণের একটি কথা যে, মেহেরকে মেরে গলাটা কেটে ফ্যানের সংগে মাথার চুল বেধে কাল্লাটা ঝুলিয়ে দিয়েছিল। মেহের তখন কাটা মুরগির মত ছটফট করেছিল। আমি যাদের কথা পূর্ব বলেছি কাদের মোল-ার সহযোগিরা, অবাঙ্গালী ও বিহারীরা ঐ ঘটনা ঘটিয়েছিল। গুলজার এবং অন্য একজন অবাঙ্গলী যার মুখে ঘটনা শুনেছিলাম তারা এখন এদেশে নেই।আমি যুদ্ধাপরাধিদের বিচার চাই। ডকে যিনি আছে তাকে আগে দেখেছি তিনি কাদের – মাল্লা। (সমাপ্ত)

XXXX (জেরা) ঃ

আমি ঢাকা শহরের দিক বাজার থাকতাম। বাংলা বাজারের দিদিমনির কিশলয় নামক স্কুলে আমার শিক্ষা জীবন শুর□। বাংলা বাজারটি কোন থানার অধীন আমি বলতে পারবোনা। ঐ স্কুলে আমি তৃতীয় শ্রেণী পর্যন্ত লেখা পড়া করেছি।

দিক বাজারে আমরা ভাড়া বাসায় থাকতাম। আমাদের বাসায় মা,বাবা, ভাই-বোনসহ মোট ৮ জন বাস করতাম। আমার ছোট ভাই ডাক্তার কাজী সুপ্রিয় **হিল্লোলর** জন্ম ঐ বাড়ীতে থাকাকালীন সময়ে। আমি ভাই-বোনদের মধ্যে সবার বড়। আমার পিতা সাংবাদিকতা করতেন। প্রথমে ছিলেন সংবাদে তার পরে ইত্তেফাকে চলে যান। আমার মাতা গৃহিনী ছিলেন। আমরা দিক বাজার থেকে পরে কমলাপুরের একটি বাসায় চলে আসি। কমলাপুরে আসার পরে আমি মতিঝিল ফ্রি প্রাইমারী স্কুলে পঞ্চম শ্রেণীতে পড়তাম। আমি যখন ক্লাস সিক্সে পড়ি তখন আমরা নয়া পল্টনে থাকতাম এবং সিদ্ধেশ্বরী গার্লস হাইস্কুলের ছাত্রী ছিলাম। ক্লাস সেভেনে এসে আমি সেন্ট্রাল গভমেন্ট হাইস্কুলে ভর্তি হই। আমি ১৯৬৪ সালে এস এস সি ঐ স্কুল থেকেই পাশ করি। নয়াপল্টন থেকে বাসা পরিবর্তন করে আরামবাগে গেলাম । তখন বক্সি বাজার গভঃ ইন্টারমিডিয়েট গার্লস কলেজে ভর্তি হই যার বর্তমান নাম বদর□ন্নেসা মহিলা মহাবিদ্যালয়। আমি ১৯৬৭ সালে ইন্টারমিডিয়েট পাশ করে ঢাকা বিশ্ববিদ্যালয়ে বাংলা বিভাগে অনার্স কোর্সে ভর্তি হই। আমি অনার্স এবং এম.এ করে ১৯৭৩ এ বিশ্ববিদ্যালয় থেকে বের হই। ১৯৬৭-৬৮ সালে কবি মেহের□ন্নেসার সংগে মিরপুরে আমার পরিচয় হয়। ১৯৭০ সালের নির্বাচনে এ্যাডভোকেট জহির উদ্দিন জাতীয় পরিষদে আওয়ামীলীগের প্রার্থী ছিলেন এবং তিনি অবাঙ্গালী ছিলেন। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-

অস্□ষ্ট

স্বা/- অস্□ষ্ট

২৪/০৭/১২

২৪/০৭/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

তারিখঃ ২৬/০৭/২০১২ খ্রিঃ সময়ঃ১০.৫০ মিঃ (পুনরায় জেরা শুর□)

১৯৭১ সালের ২৫ মার্চ মিরপুরের যে বাসা ছেড়ে আমি চলে গিয়েছিলাম সেই বাড়ীতে আমি ১৯৭২ সালে মার্চের পরে বাংলাদেশ স্বাধীন হওয়ার পর ফিরে আসি। মিরপুরের বাসাটি আমার বাবার নামে সাংবাদিক হিসেবে সরকার কর্তৃক বরাদ্দকৃত বাসা। আমার বাবা মারা গেছেন ১৯৯৬ সালে মিরপুরে। আমার বাবার লাশ আমাদের গ্রামের বাড়ী সাতক্ষীরায় নিয়ে যাই, সেখানে তার দাফন হয়। মোহাম্মদপুরের যে বাসায় আমি বর্তমানে আছি এই বাসায় কবে আসি তার দিন-ক্ষন বলতে পারবোনা, তবে ৭/৮ বছর আগে আসছি। আমি এখনও সেখানে বসবাস করছি। আমার বাসা থেকে কবি মেহের□ন্নেসার বাসায় যেতে তখন প্রায় দশ মিনিট লাগতো। মেহের□ন্নেসা আমাদের আগে থেকে মিরপুরে বসবাস শুর□ করেছিলেন। আমি জাতীয় কবিতা পরিষদের সদস্য। আমি স্কুল জীবন থেকেই কবিতা আবৃত্তি এবং বিতর্কে অংশ গ্রহন করতাম। আমার স্কুল জীবন থেকেই আমার কবিতা এবং লেখালেখির প্রবনতা শুর□ হয়। আমি বিশ্ববিদ্যালয়ের ছাত্রী থাকাকালীন সময় থেকেই আমার লেখালেখি পত্র-পত্রিকা এবং বিভিন্ন ম্যাগাজিনে প্রকাশ হতে থাকে। আমার লেখা বেশকিছু বই প্রকাশিত হয়েছে এবং বাজারে পাওয়া যায়। আমার সমস্ত লেখাই, বাঙ্গালী জাতীয়তাবাদের চেতনায় উদ্বুদ্ধ। আমার লেখালেখির সুত্র ধরেই কবি

সুফিয়া কামাল, জাহানারা ইমাম প্রমুখদের সাথে আমার যোগাযোগ স্থাপিত হয়। আমি সব সময় কবি সুফিয়া কামাল ও জাহানারা ইমামদের স্নেহ-ভাজন ছিলাম। উনাদের লেখালেখিও বাঙ্গালীদের জন্য উৎসর্গকৃত। জাহানারা ইমাম লিখিত "একাত্তরের দিনগুলি" বইটি সম্পর্কে আমার জানা আছে। ঐ বইতে ১৯৭১ সালে বাঙ্গালীদের চিত্র ফুটে উঠেছে।

আমার মিরপুরের বাড়ীর চারপাশেই বিহারীদের বসবাস ছিল। আমার নিকট প্রতিবেশী ছিল অবাঙ্গালী আক্তার, গুলজার, নিয়াজ, খলিল, জসিম, আফজাল, মফিজ, মুক্তার এবং আরো অনেকে। বর্তমানে এরা কেউ মিরপুরে নেই তবে স্বাধীনতার পরে একমাত্র গুলজার এবং আরো একজন নাম না জানা বিহারীর সংগে আমার দেখা হয়। ইহা সত্য যে, কবি মেহেরুন্নেসা জন্মগতভাবে কবি ছিলেন। কবি মেহেরুন্নেসার কোন প্রাতিষ্ঠানিক শিক্ষাগত যোগ্যতা ছিলনা তবে তিনি পরে বড় বোনের কাছ থেকে কিছু লেখা পড়া শিখেছিলেন। কবি মেহেরুন্নেসার অনেক কবিতা সংকলন আছে এবং তা প্রকাশিত হয়েছে। তৎকালীন "সাপ্তাহিক বেগম" পত্রিকায় তাঁর অনেক লেখা ছাপা হয়েছে। তিনি অর্থনৈতিক কারণে তাঁর কোন বই প্রকাশ করে যেতে পারেননি। আমি বিশ্ববিদ্যালয় থেকে বের হওয়ার বেশ কিছু পরে একটি সরকারী চাকুরী পাই। আমি তখন তথ্য মন্ত্রণালয়র অধীনে সহকারী গবেষণা কর্মকর্তা হিসেবে চাকুরী করি। আমি ২০০৬ এর ডিসেম্বরের শেষ দিকে চাকুরী থেকে অবসর গ্রহন করি। আমি বিশ্ব কবিতা কণ্ঠের সদস্য নই তবে তাদের অনুষ্ঠানে আমি যাই। শেখ রাসেলের ৪৭তম জন্ম বার্ষিকীর সেমিনারে আমি উপস্থিত ছিলাম। ওয়ার ক্রাইম ভিকটিম শিরোনামে মুক্তিযুদ্ধ জাদুঘরে ২৭/৫/২০০৯ তারিখে যে সেমিনার হয়েছিল তাতে আমি উপস্থিত ছিলাম এবং বক্তব্য রেখেছিলাম।

কোর্টের বাইরে আমি কারো কাছে কোন বিবৃতি দেইনি। পরে বলেন যে, আমি তদন্তকারী অফিসারের কাছে বিবৃতি দিয়েছি। আমি মাস খানেক আগে তদন্তকারী কর্মকর্তার নিকট বক্তব্য দিয়েছি। তদন্তকারী কর্মকর্তা আমাকে এক বারই জিজ্ঞাসাবাদ করেছে। মিরপুরে আমরা যে এ্যাকশন কমিটি গঠন করেছিলাম তার সদস্য সংখ্যা পনের জন হবে। সাধারণভাবে আমাদের মিটিংয়ে প্রায় সবাই উপস্থিত থাকতো। আমাদের এই মিটিংগুলোর অগ্রগতি তদারক করার জন্য মাঝে-মধ্যে খন্দকার আবুতালেব, ডাক্তার মোশাররফ হোসেন, সাইফুদ্দিন মানিক, আ স ম আবদুর রব ও পঙ্কজ ভট্টাচার্য খবরা-খবর নিতেন। স্বাধীনতার পরে এই এ্যাকশন কমিটির আর কোন প্রয়োজন ছিলনা। আমি স্বাধীন বাংলা বেতার কেন্দ্রের সংগে জড়িত ছিলাম এবং সেখানে নিয়মিত কবিতা পাঠ করতাম। আমি বাসা থেকে বিশ্ববিদ্যালয়ে যেতাম তবে রোকেয়া হলে এটাষ্ট ছিলাম। আমি এই মুহূর্তে মনে করতে পারছিনা রোকেয়া হলের ভি পি বা জি এস কে ছিলেন। ১৯৭০ সালে মিরপুর এলাকায় যারা নির্বাচন করেছিলেন আমি তাদের মধ্যে দাঁড়িপাল্লা ও নৌকা মার্কার প্রার্থীর কথা জানি। ঐ নির্বাচনে আমি মিরপুর এক নম্বরের পোলিং সেন্টারে ভোট দেই। মিরপুরে এলাকায় তখন মোট কয়টি ভোট কেন্দ্র ছিল তা বলতে পারবোনা। আমি কোন ভোট কেন্দ্রে পোলিং এজেন্ট ছিলাম না। আমি যে কেন্দ্রে ভোট দিয়েছিলাম সেই ভোট কেন্দ্রে দাঁড়িপাল্লা ও নৌকার মার্কার পক্ষে কে কে পোলিং এজেন্ট ছিলেন তা বলতে পারবোনা। আমি স্বাধীন বাংলা বেতার কেন্দ্র থেকে ১৯৭২ সালের জানুয়ারী মাসের শেষের দিকে বাংলাদেশে আসি। স্বাধীন বাংলা বেতার কেন্দ্র কলিকাতা থেকে প্রচারিত হত। হোসেন আলী ছিলেন তখন বাংলাদেশের হাই কমিশনার। স্বাধীনতার পরে দেশে ফিরে আমি ঢাকার গোপীবাগে আমার মামার বাসায় উঠি। আমি

লোকমুখে মেহের□ন্নেসার মৃত্যু সংবাদ শুনি। আমি ১৯৭১ সালের ২৭ মার্চেই মেহের□ন্নেসার মৃত্যু সংবাদ শুনি তবে কলকাতা থেকে এসে প্রথম কার মুখে ঐ সংবাদটি শুনি এই মুহুর্তে মনে নেই। আমি ঢাকার কলাবাগানে খালার বাড়ীতে থাকাকালীন সময় প্রথম মেহের□ন্নেসাকে হত্যা করার খবর শুনেছিলাম। মিরপুর থেকে আসা লোকের মুখে ঐ হত্যাকান্ডের কথা শুনেছিলাম তাদের নাম বলতে পারবোনা। যাদের কাছ থেকে আমি মেহের□ন্নেসার হত্যার সংবাদ পেয়েছিলাম তাদের সংগে আমার কোন সংযোগ নেই।তারা জীবিত আছেন কিনা বলতে পারবোনা। তাদের সংগে আর দেখা হয়নি।

৭ মার্চ বঙ্গবন্ধুর ভাষণ শুনতে মিরপুর থেকে মেহের সহ এ্যাকশন কমিটির আমরা জনা দশেক গিয়েছিলাম। এই দশ জনের মধ্যে কেউ কেউ বেঁচে থাকতেও পারে তাদের সংগে আমার দেখা সাক্ষাৎ হয়না।

মেহের□ন্নেসা ও তার পরিবারের হত্যাকান্ডের বিষয়ে কলকাতা থেকে ফিরে আসার পরে থানা, কোর্ট বা অন্য কোথাও কোন অভিযোগ দায়ের করিনি। লেখনির মাধ্যমে মেহের সমন্ধে আমরা অনেক কিছু প্রকাশ করেছি। গণতদন্ত কমিশন হয়েছিল, তবে আমি গণতদন্ত কমিশনের সদস্য ছিলামনা। গণতদন্ত কমিশনের চেয়ারম্যান ছিলেন কবি বেগম সুফিয়া কামাল। আমার তারিখ মনে নেই তবে সম্ভবত ১৯৯২ সালের ২৬ মার্চ এই কমিশন গঠন হয়। এই কমিশনের রিপোর্টে ১৯৭১ সালে ঢাকা শহরে প্রতিদিনের ঘটে যাওয়া ঘটনার বর্ণনা আছে। এখানে বাঙ্গালীদের উপর বিহারীদের অত্যাচারের বর্ণনা দেওয়া আছে।

টু কোর্ট প্রশ্ন ঃ আপনি কি ঐ তদন্ত কমিশনের রিপোর্ট নিজে পড়েছেন?

উত্তরঃ আমি নিজে এই তদন্ত কমিশনের রিপোর্ট পড়িনি তবে রিপোর্টে ঐভাবে বর্ণনা থাকাটাই স্বাভাবিক।

"খানিকটা গল্প তোমার" এটা আমার লেখা কবিতার বই এখানে একাত্তরের ঘটনার বর্ণনায় কিছু কবিতা আছে। "লড়াই" এটাও আমার লেখা কবিতার বই প্রতিবন্ধীদের নিয়ে। "শহীদ কবি মেহের□ন্নেসা" বইটি আমার লেখা একটি গদ্যের বই। এই বইতে মেহের□ন্নেসা সম□র্কে তার জীবনের শুর□ থেকে শেষ পর্যন্ত লিখতে চেষ্টা করেছি । "আমার পিরানের কোন মাপ নেই" , "কাজী রোজীর কবিতা" এদুটোও আমার লেখা কবিতার বই। আমার লেখা আরো কিছু বই আছে। 'লড়াই' বইটি বাদে অন্যান্য বইগুলোতে বাঙ্গালী জাতীয়তাবাদের চেতনার কিছু বহিঃপ্রকাশ আছে।

তদন্তকারী কর্মকর্তা আমার নিকট থেকে আমার লেখা "শহীদ কবি মেহের□ন্নেসা" বইটির একটি কপি নিয়ে যান। কলা ভবনে বিজ্ঞান বিভাগের ছাত্রদের কোন ক্লাস হতোনা তবে তারা মাঝে-মধ্যে আসতো। বিশ্ববিদ্যালয়ে পড়াকালীন সময়ে বিভিন্ন ছাত্র সংগঠনের নেতৃবৃন্দের সংগে দেখা হয়েছে কিন্তু কথা হয়নি। বাঙ্গালীদের উপর নিপিড়ন, নির্যাতনের প্রতিবাদ প্রথম ঢাকা বিশ্ববিদ্যালয় থেকে আসে। ১৯৬৮-৬৯-৭০ সালে ঢাকা বিশ্ববিদ্যালয়ে আন্দোলন তীব্রতর হয়। আমি যখন ঢাকা বিশ্ববিদ্যালয়ের ছাত্রী ছিলাম তখন কতগুলো ছাত্র সংগঠন ছিল বলতে পারবোনা তবে ছাত্রলীগ, ছাত্র ইউনিয়ন এসব সংগঠনই ছিল। ঢাকা বিশ্ববিদ্যালয়ের ছাত্ররাা সম্স্বরে পাকিস্তানীদর বির□দ্ধে রাজপথে নেমে আসে। ছয় দফার মধ্যে কি ছিল আমার এই মুহুর্তে জানা নেই। আমি ফিল্ম সেন্সর বোর্ডের সদস্য এখনও আছি।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-

অস্□ষ্ট

২৬/০৭/১২

স্বা/- অস্□ষ্ট
২৬/০৭/১২

চেয়ারম্যান
আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

সময় দুপুর ২.০০ ঘটিকা (জেরা)ঃ

আমি আমার আই.ডি কার্ড, পাসপোর্ট আদালতে আনিনি এবং উহা তদন্তকারী কর্মকতার নিকট দেইনি। সাগর সগির নামে কেউ আমার কোন সাক্ষাতকার নিয়েছিল কিনা আমার এই মুহুর্তে মনে পড়ছেনা। আমি সাক্ষাতকার দিয়েছিলাম কিনা মনে পড়ছেনা। একজন ছেলে নাম মনে নেই এসে আমাকে খবর দিয়েছিল যে আমার বাসা রেইড হবে। সেই ছেলেটি আমার পরিচিত ছিল। আমি অন্য আরেকজন ছেলেকে দিয়ে মেহেরের বাসায় খবর পাঠিয়েছিলাম বাসা থেকে চলে যেতে। সেই ছেলেটির নাম বলতে পারছিনা।

২৭ মার্চ আমি কলাবাগানে আমার খালার বাসায় ছিলাম। মিরপুর থেকে আগত একজনের কাছ থেকে আমি মেহের ও তার পরিবারের লোকজনের হত্যাকান্ডের খবর শুনতে পাই। যে আমাকে সন্ধ্যার একটু আগে মেহেরের হত্যার খবর দেয় সেই লোকের নামও বলতে পারবোনা।

ইহা সত্য নয় যে, তদন্তকারী কর্মকর্তার কাছে বলিনি যে, কাদের মাল্লাও তার সহযোগী যারা ছিলেন তাদের অনেকে মাথায় সাদা পট্টি অথবা লাল পট্টি বেঁধে মেহেরদের বাসায় সকাল ১১টায় ঢুকে যায়।

ইহা সত্য নয় যে, তদন্তকারী কর্মকর্তার কাছে বলিনি যে, মেহের যখন দেখলো ওরা তাদেরকে মারতে এসেছে তখন সে কুরান শরীফ বুকে চেপে বাঁচতে চেয়েছিল। কিন্তু এই চারজনকেই জবাই করেছিল।

ইহা সত্য নয় যে, তদন্তকারী কর্মকর্তার কাছে বলিনি যে, বাংলাদেশ স্বাধীনতার পরে আমি মেহের□ন্নেসার বাসায় যেতে চেয়েছিলাম কিন্তু আমি জানতাম ঐ বাসায় অন্য কেউ বসবাস করছে।

ইহা সত্য নয় যে, তদন্তকারী কর্মকর্তার কাছে বলিনি যে, মেহেরকে মেরে গলাটা কেটে ফ্যানের সংগে মাথার চুল বেধে কল্লাটা ঝুলিয়ে দিয়েছিল। মেহের তখন কাটা মুরগির মত ছটফট করেছিল।

ইহা সত্য নয় যে, তদন্তকারী কর্মকর্তার কাছে বলিনি যে, গুলজার এবং অন্য একজন অবাঙ্গালীর কাছে মেহেরের হত্যার কথা শুনেছি ইহা ঠিক নয়। আমি ঘটনাস্থলে ছিলামনা এবং ঘটনাটা দেখিনি। আমার সংগে কাদের মাল্লার কখনও কোন কথা হয়নি, সরাসরি সাক্ষাত হয়নি। কাদের মোল্লার সংগে আমার কোন মিটিং মিছিল বা সমাবেশে বা বিশ্ববিদ্যালয়ে তার সংগে আমার কোন সাক্ষাত হয়নি। আমি তার সাথে কথা বলিনি চিনতে হলে তো কথা বলতে হবে। ভোট কেন্দ্রে আমি কাদের মাল্লাক দেখিনি। আমি ১৯৭০ সালের নির্বাচনের সময় থেকে কাদের মোল্লার নাম আমি অনেকবার শুনেছি। ইহা

সত্য নয় যে, জবানবন্দীতে আমি কাদের মাল্লাক ডকে সনাক্ত করে আগে দেখার কথা বলেছি তা মিথ্যা। ১৯৭১ সালের পরে ডকে তাকে অস্পষ্টভাবে দেখে বলেছি যে ইনিই কাদের মোলা।

ইহা সত্য নয় যে, কাদের মাল্লা কখনও মিরপুরে বসবাস করেনি, থাকেনি বা যায়নি। ১৯৭০ সালে নির্বাচনের সময় কাদের মাল্লা গোলাম আযমের পক্ষ হয়ে কাজ করেছে শুনেছি তবে আমার বাসায় আসেনি। কার কাছে শুনেছি তা বলতে পারবোনা তবে জনতা যখন কথা বলে তাদের থেকে শুনেছি।

ইহা সত্য নয় ১৯৭১ সালের প্রথম থেকে ১৯৭২ সালের মার্চ মাস পর্যন্ত কাদের মাল্লা ঢাকা শহরেই ছিলেননা। ইহা সত্য নয় যে, ১৯৭১ সালে মিরপুরে কাদের মাল্লা নামে একজন বিহারী কসাই ছিল এবং অপকর্মগুলো সেই করতো, অভিযুক্ত আবদুল কাদের মোল্লা সেই কাদের মাল্লা নয়। যুদ্ধাপরাধীদের বিচারের ব্যবস্থা না থাকায় আমার লেখা বই 'শহীদ কবি মেহেরুন্নেসা'তে আমি কারো নামই উল্লেখ করি নাই। বর্তমানে বিচারের ব্যবস্থা হওয়ায় আমি আবদুল কাদের মোল্লার নাম উল্লেখ করে সাক্ষ্য দিলাম, এই দিনটার জন্যই আমি অপেক্ষা করছিলাম। এই বইতে কবি মেহেরুন্নেসার পরিবারকে অবাঙ্গালীরা মেরেছে বলে উল্লেখ করেছি, তবে আমার পূর্বভীতি থাকার কারণে অন্যকারো নাম উল্লেখ করিনি। এই বইটি জুন, ২০১১ সালে প্রকাশিত হয়। ইহা সত্য নয় যে, গ্রেফতারের পর আবদুল কাদের মাল্লা আমাকে বার বার দেখানো ও চেনানো হয়েছে বা সেজন্য আমি তাকে আদালতে সনাক্ত করতে পেরেছি। আমি আওয়ামীলীগ সমর্থন করি। ইহা সত্য নয় যে, আবদুল কাদের মাল্লা জামায়াতের একজন নেতা বলে তাকে রাজনৈতিকভাবে দাবিয়ে রাখার জন্য এই মামলায় সাক্ষ্য দিলাম। ইহা সত্য নয় যে, আমি সম্পূর্ণ শেখানো মতে মিথ্যা সাক্ষ্য দিলাম। ইহা সত্য নয় আজকে আমি মিথ্যা সাক্ষ্য দিলাম।(জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-

অস্পষ্ট

স্বা/- অস্পষ্ট ২৬/০৭/১২

২৬/০৭/১২ চেয়ারম্যান
আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor – Versus- Abdul Kader Molla.

Deposition of witness No. 05 for the Prosecution aged about 55 years, taken on oath on Sunday the 29th July 2012.
My name is Khandaker Abul Ahsan.
My father's name is Shohid Khandaker Abu Taleb.
My mother's name is ------------- age-------- I am by religion ------- My home is at village--------- Police Station ----------, District ----------, I at present reside in -----, Police Station----------, District ------------, my occupation is ----------------

আমার নাম খন্দকার আবুল আহসান। আমার পিতার নাম শহীদ খন্দকার আবু তালেব। আমি একজন সরকারী কর্মকর্তা। ১৯৭১ সালে মিরপুর শাহআলী একাডেমী উ□চ বিদ্যালয়ে নবম শ্রেণীর ছাত্র ছিলাম। আমি আমার পিতা-মাতার সংগে মিরপুরস্থ প-ট-১৩, রোড নং-২, ব-ক-বি, সেকশন-১০, মিরপুর হাউজিং এষ্টেট, ঢাকায় বসবাস করতাম। আমার পিতা সাংবাদিক, সাহিত্যিক এবং আইনজীবী ছিলেন। আমার পিতা সাপ্তাহিক ইত্তেহাদ, দৈনিক আজাদ, দৈনিক ইত্তেফাক, দৈনিক সংবাদ, দি মর্নিং নিউজ ও অবজারভার পত্রিকায় বিভিন্ন সময়ে কাজ করেছেন, এবং পয়গাম পত্রিকায় খন্ডকালীন চাকরী করেছেন। তিনি ১৯৬১-৬২ সালে তদান্তিন পূর্ব পাকিস্তান সাংবাদিক ইউনিয়নের সেক্রেটারী জেনারেল ছিলেন। তিনি বাঙ্গালী জাতীয়াতাবাদে বিশ্বাসী ছিলেন। বাংলাদেশের স্বাধীনতায় বিশ্বাসী ছিলেন। ১৯৭০ সালে মিরপুর থেকে এ্যাডভোকেট জহিরউদ্দিন নৌকা মার্কা নিয়ে নির্বাচন করেন। তাঁর বিপরীতে জামায়াতে ইসলামীর গোলাম আযম দাঁড়িপাল্লা মার্কা নিয়ে নির্বাচন করেন। এই নির্বাচন কালীন সময়ে আবদুল কাদের মাল্লা গোলাম আযমের পক্ষে নির্বাচনী প্রচারে অংশ গ্রহন করেন। নির্বাচনের সময় আমার আব্বা নৌকা মার্কার পক্ষে কাজ করেছিলেন। নির্বাচনে আওয়ামীলীগের ব্যাপক জয়ের ফলে পরাজিত পক্ষ মিরপুরে আবদুল কাদের মোল-ার নেতৃত্বে ২৫ মার্চ, ১৯৭১ এর পরে বিভিন্ন ধরণের নৃশংস হত্যা কান্ড সংঘটিত করে। ২৩ মার্চ, ১৯৭১ পাকিস্তান দিবস ছিল কিন্তু বাঙ্গালীরা ২৩ মার্চ, ১৯৭১ বাংলাদেশ দিবস পালন করে। ১ মার্চ থেকে ২৩ মার্চ, ১৯৭১ পর্যন্ত দেশের বিভিন্ন স্থানে পাকিস্তান সেনা বাহিনী কর্তৃক সাধারণ জনগণকে হত্যার প্রতিবাদে ২৩ মার্চ সর্বত্র ছাত্ররা কালো পতাকা এবং বাংলাদেশের মানচিত্র খচিত পতাকা উত্তোলন করে। আমরা সেদিন মিরপুর দশ নম্বরের বাংলা স্কুলে পাকিস্তানের পতাকা নামিয়ে তদস্থলে একটি কালো পতাকা উত্তোলন ও স্বাধীন বাংলার মানচিত্র খচিত পতাকা অর্ধনমিত রাখা হয়। তখন ঐ স্কুলের প্রধান শিক্ষক ছিলেন সৈয়দ কাইয়ুম সাহেব। সেই দিন রাত ১২.০১ মিনিটে পাকিস্তান টেলিভিশনে আমার সোনার বাংলা আমি তোমায় ভালোবাসি গান গেয়ে সেদিনকার অনুষ্ঠান সমাপ্ত করা হয়। সেই সময় কাইয়ুম সাহেব আমাদের বাসায় ছিলেন। তিনি মিরপুর দশ নম্বর সি বকে থাকতেন। ঐ দিন দিবাগত রাত ২.৩০ / ৩.০০ টার দিকে কাইয়ুম সাহেবের বাসায় ৩/৪ জন লোক গিয়ে দরজা ভেঙ্গে ঢুকে জিজ্ঞাসা করে স্বাধীন বাংলার পতাকা কেন তুলেছিস বলে অকথ্য ভাষায় গালিগালাজ করে এবং তাকে আক্রমন করে উপযুপরি শরীরে ছুরিকাঘাত করে রক্তাক্ত করে জখম করে। তখন তিনি প্রান ভয়ে পালানোর চেষ্টা করলে রাস্তায় পড়ে যান। একজন বাঙ্গালী বেরিয়ে তাকে নিয়ে কোনমতে আমাদের বাসায় নিয়ে আসে। তখন মিরপুর রাড্ডা বার্ণেন হসপিটাল যাহা পূর্ব সরকারী আউট ডোর ক্লিনিক ছিল, সেখান থেকে একজন বাঙ্গালী ডাক্তার এনে তার প্রাথমিক চিকিৎসা করাই। ডাক্তার তার সমস্ত শরীর নেকড়া দিয়ে পেচিয়ে দেন এবং বলেন সকাল বেলা ঢাকা মেডিকেল কলেজে নিয়ে যেতে। পরদিন সকাল বেলা আমার বাবা কাইয়ুম স্যারকে যথারীতি ঢাকা মেডিকেল কলেজ হাসপাতালে ভর্তি করান। অতপর আমার বাবা সেখান থেকে সরাসরি বঙ্গবন্ধুর বাসভবনে যান এবং মিরপুরের ঘটনা সম্□র্কে তাকে অবহিত করেন। বঙ্গবন্ধু তাৎক্ষনিক ই.পি.আর এ ফোন করে মিরপুরে ই.পি.আর মোতায়েন করতে বলেন এবং আমার আব্বাকে মিরপুরেই অবস্থান করতে বলেন। কাইয়ুম স্যারের অবস্থা দেখে আমার মা মানসিকভাবে ভেঙ্গে পড়েন এবং আমরা

২৪ মার্চ মিরপুরের বাসায় আব্বাকে রেখে শান্তি নগরে আমার ফুপুর বাসায় চলে আসি। আমাদের প্রতিবেশী সহ ৭/৮ জন আমার বাবা সহ আমদের বাসায় অবস্থান করছিলেন। আব্বা এসে আমাদেরকে জানায় মিরপুরে খুব টেনসন চলছে, বিহারীদের মধ্যে খুবই উত্তেজনা দেখা যা□ছ।

২৫ মার্চ, ১৯৭১ রাত্রে ক্রাকডাউন হয়, ২৭ তারিখে অল্প সময়ের জন্য কারফিউ রহিত করা হয়। উনি তখন পয়গামে খন্ডকালীন ফিচার এডিটর ছিলেন। বি এন আর নামক একটি এ্যাডভোকেটস ফার্মে কাজ করতেন। ওখানে তিনি সংবাদ পান যে ইত্তেফাক অফিস গুড়িয়ে দেওয়া হয়েছে তখন সহকর্মীদের অবস্থা দেখার জন্য সেখানে যান এবং সেখানে বেশকিছু মৃত দেহ দেখতে পান। ২৯ মার্চ, ১৯৭১ তারিখে আমার বাবা বলেছিলেন তিনি মিরপুর যাবেন, তাঁর গাড়ি ও টাকা পয়সা আনার জন্য। পরে শুনি এরপর তিনি যখন এ্যাডভোকেটস ফার্মে যা□ছলেন তার সংগে পথিমধ্যে ইত্তেফাকের তৎকালীন অবাঙ্গালী চীফ একাউন্ট্যান্ট আবদুল হালিমের সংগে দেখা হয়। আবদুল হালিম তার গাড়ীতে করে আব্বাকে মিরপুরে নিয়ে এসে আবদুল কাদের মোল্লার নিকট হস্তান্তর করেন। তখন আমার বাবাকে মিরপুর দশ নম্বর জল্লাদ খানায় নিয়ে উপর্যুপরি ছুরিকাঘাত করে হত্যা করে। তখন আবদুল কাদের মাল্লার সংগে আক্তার গুন্ডা সহ কিছু অবাঙ্গালী ছিল। ২৯ মার্চ, ১৯৭১ আমার বাবার হত্যাকান্ডের পর আমার বড় ভাই মানসিক ভারসাম্য হারিয়ে ফেলার মত অবস্থায় ছিল মাও পাগলপ্রায় এই অবস্থায় আমরা পুবাইলস্থ বেউড়া গ্রামে পরিচিত একজনের বাসায় চলে যাই।

আব্বার মৃত্যুর পর আমাদের থাকার জায়গাও ছিলনা কোন আয় উপার্জনও ছিলনা। আমার মা পুরোপুরি উন্মাদ হয়ে যায়। এরপর আমি ঢাকায় এসে চক বাজার থেকে চায়ের পাতা কিনে ফেরী করে চা বিক্রি করতাম। এই সময় আমি যখন একদিন চক বাজারের দিকে যা□ছলাম তখন আমাদের গাড়ীর অবাঙ্গালী ড্রাইভার নিজামের সংগে দেখা হয়, নিজামের বাসা মিরপুর দশ নম্বরে ছিল। আমি তার মাধ্যমে জানতে পারি জাতীয় নির্বাচনে পরাজিত লোকজন অর্থাৎ মিরপুরের আবদুল কাদের মাল্লা , আক্তার গুন্ডা, আব্দুল্লাহসহ বেশকিছু বিহারী আবদুল কাদের মোল্লার নির্দেশে ব্যাপক হত্যাযজ্ঞ চালায়। গাবতলী বাসষ্টান্ড ও টেকনিক্যাল এলাকা থেকে বাঙ্গালীদেরকে ধরে এনে শিয়ালবাড়ী, মুসলিম বাজার বধ্যভূমি ও জল্লাদ খানায় ব্যাপক হত্যাযজ্ঞ চালায়। ঐ সময় ঐখানে হাজার হাজার বাঙ্গলীকে হত্যা করা হয়েছে।

আমি আবদুল কাদের মাল্লাক সরাসরি কখনও দেখিনি তবে টি.ভি ও পত্র-পত্রিকায় তার ছবি দেখেছি। শহীদ বুদ্ধিজীবী পরিবারের একজন সদস্য হিসেবে এই ব্যাপক হত্যাকান্ডের বিচার চাই। (সমাপ্ত)

XXX(জেরা)ঃ

১৯৭১ সালে আমি যখন শাহআলী একাডেমীর ছাত্র আমার বয়স তখন ছিল ১৩/১৪ বছর। আমার জন্ম তারিখ ১৫ ফেব্র□য়ারী, ১৯৫৭ সাল। আমি আমার আই.ডি কার্ড সংগে নিয়ে এসেছি যা আদালতে দেখালাম। এটা আমার অফিসিয়াল আই ডি কার্ড। এটা প্রতিরক্ষা মন্ত্রনালয থেকে ইস্যু করা হয়েছে। আমি ক্যান্টনমেন্ট এক্সিকিউটিভ অফিসের একজন সহকারী পরিচালক। আমি ১৯৭৭ সালে চাকুরীতে যোগ দেই।

আমরা এখনও মিরপুরের সেই বাসাতেই আছি। ইহা আমার বাবার নামে এলোটমেন্ট দেওয়া হয়েছিল। ঐ বাসাতে আমার পরিবার এবং আমার বোন বসবাস করি। আমার বড় ভাই মারা গেছেন। আমরা ঐ বাড়ীতে মোট ৭ জন বসবাস করি। আমার বড় ভাইয়ের কন্যা তার স্বামী সংসার নিয়ে আমাদের বাড়ীর সামনে অন্য একটি বাড়ীতে বসবাস করে। আমার ভাবী আমাদের সংগেও থাকেন তার মেয়ের সংগেও থাকেন।

আমার বাবা সাংবাদিক, সাহিত্যিক ও আইনজীবী ছিলেন সেইমর্মে কোন কাগজ এই মুহূর্তে আমার সংগে নাই। আমি কাগজ এনেছি তা প্রসিকিউটর অফিসে রেখে এসেছি। আমার পিতা যে মুক্তিযুদ্ধে শহীদ হয়েছেন তাঁর স্মারক হিসেবে আমার আব্বার নামে মিরপুরে শহীদ আবু তালেব উ□চ বিদ্যালয় স্থাপিত হয়েছে, প্রেস ক্লাবে শহীদ সাংবাদিকদের নাম ফলকে আমার বাবার নাম অন্তর্ভুক্ত আছে, ঢাকা আইনজীবী সমিতিতে শহীদ হিসেবে নাম ফলক আছে, জাতীয় জাদুঘরে একটা গ্যালারী আছে এবং অন্যান্য শহীদদের মত তাঁর নামে স্মারক ডাক টিকেট প্রকাশিত হয়েছে।

তদন্তকারী অফিসারের নিকট তদন্তকাল আমার বাবা যে একজন শহীদ সাংবাদিক ছিলেন এবং শহীদ আইনজীবী হিসেবে ঢাকা আইনজীবী সমিতিতে তাঁর নাম ফলক অন্তর্ভুক্ত আছে এবং অন্যান্য শহীদদের মত তাঁর নামেও স্মারক ডাক টিকেট প্রকাশিত হয়েছে তার প্রমাণ সর□প কাগজ-পত্র দেখিয়েছিলাম, কিন্তু তিনি জব্দ করেননি। আমার পিতা যে বিভিন্ন পত্র-পত্রিকায় সাংবাদিক হিসেবে কাজ করেছেন এ ধরণের কোন কগজ-পত্র আমার কাছে নাই
আমাদের বাসা পুড়িয়ে দেয়া হয়েছে তাই আমার কাছে কোন কাগজ-পত্র নেই। জবানবন্দীতে আমার বক্তব্য সংশিষ্ট প্রাসংগিক কাগজ-পত্র আমার কাছে এই মুহূর্তে নাই।

১৯৭০ সালের নির্বাচনে আওয়ামীলীগের প্রার্থী এ্যাডভোকেট জহিরউদ্দিন অবাঙ্গালী ছিলেন এবং নির্বাচনে জয়লাভ করেছিলেন। ১৯৭০ সালের নির্বাচনে মিরপুরে কয়টি ভোট কেন্দ্র ছিল আমার জানা নেই। আমরা বঙ্গবন্ধুর সমর্থক ছিলাম এবং নৌকা মার্কার সমর্থক ছিলাম। আমার বাড়ীর আশে-পাশে কোন মার্কার কয়টি নির্বাচনী প্রচারনার অফিস ছিল আমার জানা নাই, আমি তখন ভোটারও ছিলামনা।

২৫ মার্চ, ১৯৭১ দিবাগত রাত্রে যখন হত্যাকান্ড সংগঠিত হয় তখন আমরা শান্তিনগর ফুপুর বাসায় ছিলাম। ২৪ মার্চ বিকাল বেলা আমি আমার মা সহ পরিবারের অন্যান্য সদস্যরা আমার ফুপুর বাসায় চলে আসি এবং ২৯ মার্চ পর্যন্ত সেখানে অবস্থান করি। আমার ফুপার নাম মরহুম শেখ হাবিবুল হক আমার ফুপুর নাম হোসনেআরা হক তিনি এখনও জীবিত আছেন। আমার আব্বার সংগে মিরপুরের বাসায় ২৪ মার্চ রাতে যে ৭/৮ জন লোক ছিলেন তাদের মধ্যে প্রতিবেশী শাহজাহান ও তাজুলকে চিনতাম যাদেরকে আমাদের বাসায় পুড়িয়ে হত্যা করা হয়। অবশিষ্টদের আমি চিনতামনা। আমি স্বাধীনতার পরে টন্টু মিয়ার কাছ থেকে শুনতে পেরেছিলাম যে, শাহজাহান ও তাজুলকে আমাদের বাড়ীতে পুড়িয়ে মেরেছে, তারিখ ও জায়গা বলতে পারবোনা। এই ঘটনাটি ২৬ মার্চ বেলা ১০/১১টার দিকে ঘটেছিল। টন্টু মিয়া জীবিত আছেন তিনি সম্ভবত তার ফরিদপুরের গ্রামের বাড়ীতে আছেন, তার বয়স আনুমানিক ষাটোর্দ্ধ হবে, তার পিতার নাম আমি জানিনা। টন্টু মিয়া তার

আত্মীয় মিরপুরের হান্নান হাজী যিনি আমাদের প্রতিবেশী ছিলেন তার বাসায় থাকতেন। হান্নান সাহেবের ঠিকাদারী কাজ দেখাশুনার জন্য টন্টু মিয়া ঐ বাসায় থাকতেন।

বাংলাদেশের স্বাধীনতার পরে ১৯৭৩ সালের দিকে আমি আমার মিরপুরের বাসায় যাই। আমার দিন তারিখ মনে নেই। বাসায় গিয়ে দেখলাম কিছুই নাই, ফ্লোর গুলো খুড়ানো। ঐখানে বিহারীরা তাঁত বসিয়েছিল, কোন বিহারী তাঁত বসিয়েছিল তা জানা যায়নি। আমি এবং আমার ভাই খন্দকার আবুল হাসান ঐ বাসায় প্রথম যাই। আমি যখন আমাদের মিরপুরের বাসায় যায় তখন আশে-পাশে দুই তিনটা বাসায় লোক ছিল। তাদের মধ্যে হান্নান হাজি সাহেবের বাসা ছিল, সাফা মাতবরের বাসা ছিল। সাফা মাতবর মারা গেছে ওনার ছেলেরা জীবিত আছেন। আমার বাড়ীতে সরাসরি ঢুকেছিলাম। বাসায় ২/৩ ঘন্টা ছিলাম সন্ধ্যার পূর্বেই ফিরে আসি কারণ মিরপুর তখনও নিরাপদ ছিলনা। বাসাটিকে বাসউপযোগী করার জন্য পরবর্তীতে ২/৩ সপ্তাহ পর পর গিয়েছি। সম্ভবত ১৯৭৩ সালের শেষ দিকে বাসাটিকে বাসউপযোগী করে ঐ বাসায় উঠেছিলাম। আমি ২৩ মার্চ, ১৯৭১ আমার বাড়ীতে নিজে কালো পতাকা বা মানচিত্র খচিত বাংলাদেশের পতাকা উত্তোলন করিনি। কাইয়ুম স্যারের বাসা সি ব-কে এবং আমাদের বাসা ছিল বি ব-কে। দুই বাসার দুরত্ব হেটে যেতে ১০ মিনিটের রাস্তা। কাউয়ুম স্যার ঐ বাসায় ভাড়া থাকতেন তার চারপাশে কারা থাকতো জানিনা। কতদিন পূর্বে কাইয়ুম স্যার ঐ বাসায় এসছেন তা আমার জানা নেই। যে তিন চার জন লোক কাইয়ুম স্যারকে আক্রমন করে তাদের মধ্যে বাঙ্গালীও ছিল অবাঙ্গালীও ছিল। কাইয়ুম স্যার আঘাত প্রাপ্ত হয়ে আমার বাসার পূর্ব দিকে ৩০০ গজ দুরে পড়ে যান। মাল্লা নামক এক বাঙ্গালী ভদ্রলোক কোদাল হাতে চিৎকার শুনে বেরিয়ে আসলে আক্রমনকারীরা পালিয়ে যায়। ঐ মাল্লা সাহেবই স্যারকে আমাদের বাসায় তুলে নিয়ে আসেন। ঐ ঘটনাটি রাত আনুমানিক ৩ টায় ঘটে। বর্তমানের রাড্ডা বার্নেন হসপিটাল আমার বাসা থেকে ৫/৭ শত গজ দুরে অবস্থিত। আমি নিজে ডাক্তার ডাকতে গিয়েছিলাম।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-
অস্পষ্ট
স্বা/- অস্পষ্ট ২৯/০৭/১২
২৯/০৭/১২ চেয়ারম্যান
আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

সময় দুপর ২.০০ ঘটিকা (জেরা)ঃ

স্বাধীনতার পর আমার সংগে ঐ ডাক্তার সাহেবের আর সাক্ষাৎ হয়নি। ঐ ডাক্তার সাহেবের নামও মনে নাই। কাইয়ুম স্যারকে আমাদের গাড়ীতে নিয়ে আমার বাবা ঢাকা মেডিকেল কলেজ হাসপাতালে নিয়ে ভর্তি করেছিলেন। কাইয়ুম স্যার হসপিটালে কতদিন চিকিৎসাধিন ছিলেন আমি বলতে পারবোনা। সঠিক মনে নেই তবে সম্ভবত ১৯৭৩-৭৪ সালে কাইয়ুম স্যারের সাথে আমার সাক্ষাৎ হয়েছিল তবে কোথায় তা মনে নেই। কাইয়ুম স্যার এখনও জীবিত আছেন, মিরপুরে ছয় নম্বরে নিজ বাড়ী তৈরী করে সেখানে তিনি অবস্থান করছেন। প্রায়ই ওনার সাথে আমার সাক্ষাৎ হয় তবে সর্বশেষ বছর খানেক আগে ওনার সংগে আমার সাক্ষাৎ হয়েছে। বর্তমানে তিনি সুস্থ আছেন তবে হাতে,শরীরে ও মুখে কাটার চিহ্ন আছে। কাইয়ুম স্যারের অবস্থা দেখে আমার মা মানসিকভাবে ভেঙ্গে পড়েন কিন্তু মানসিক ভারসাম্য তখন হারাননি। ঢাকা থেকে পুবাইলস্থ বেউড়া গ্রামে যেতে নদী পথে নৌকাযোগে যেতে দুই দিন সময় লেগেছিল। পুবাইল থেকে সম্ভবত জুলাই মাসে আমি ঢাকা চলে আসি,

মা, ভাই-বোন সাতক্ষীরায় গ্রামের বাড়ী চলে যায়। মা, ভাই-বোন ঢাকায় এসে বাসে করে গ্রামের বাড়ী চলে যান। ১৯৭১ সালে আমি ঢাকায় যখন চা বিক্রি করতাম তখন মুক্তিযুদ্ধে শহীদ সাংবাদিক সিরাজ উদ্দিন হোসেন সাহেবের ৫ নং চামেলী বাগের বাসায় থাকতাম, সম্ভবত জুলাই থেকে ১ ডিসেম্বর, ১৯৭১ পর্যন্ত। সিরাজ উদ্দিন সাহেবের বাসায় আমি তাঁর পরিবারের সদস্যদের সংগেই ছিলাম। ওনার ৮ ছেলে ছিল। তাদের মধ্যে এক জন মুক্তিযুদ্ধে গিয়েছিলেন। জুলাই থেকে ১ ডিসেম্বর, ১৯৭১ এই সময়ের মধ্যে আমি কখনও মিরপুর যাইনি। আমি ১৯৭৩ সালে সাতক্ষীরা প্রাণনাথ হাইস্কুল থেকে এস এস সি পাশ করি। আমি আর পড়াশুনা করিনি। এরপর আমি কখনও কোন রাজনৈতিক দলের সংগে সম্□ৃক্ত ছিলাম না। এস এস সি পাশ করার পর আমি নিয়মিত ঢাকায় থাকি গ্রামে খুব একটা যাওয়া হয়নি। এস এস সি পাশ করার পর আমি মিরপুর নিজ বাসায় উঠেছিলাম তবে মাস খেয়াল নেই। যতদুর মনে পড়ে প্রথমে আমরা দুই ভাই আমাদের মিরপুরের নিজ বাসায় আসি, পরে মা সহ অন্যরা আসে। তখন আমার বড় ভাই ছাড়া অন্য কোন উপার্জনক্ষম ব্যক্তি আমাদের বাড়ীতে ছিলনা। মিরপুরে যেসমস্ত ঘটনা ১৯৭১ সালে ঘটেছে তা আমি চাক্ষুসভাবে দেখিনি, কোন বাঙ্গলীর পক্ষেই তা সম্ভব ছিলনা কতিপয় লোক ছাড়া। নিজাম ড্রাইভার আমাদের ফিয়াট গাড়ী আনুমানিক দুই বছর চালিয়েছে। সেই ড্রাইভার বেঁচে আছে এবং পাকিস্তানে আছে।

নির্বাচনে আওয়ামীলীগের ব্যাপক জয়ের ফলে পরাজিত পক্ষ মিরপুরে আবদুল কাদের মোল-ার নেতৃত্বে ২৫ মার্চ, ১৯৭১ এর পরে বিভিন্ন ধরণের নৃশংস হত্যাকান্ড সংঘটিত করেছে একথাটি আমি ড্রাইভার নিজামের কাছে শুনেছি, আমি নিজে চোখে দেখিনি। আবদুল কাদের মোল-ার নেতৃত্বে মিরপুর যে সমস্ত হত্যাকান্ড ঘটেছে বলে যে সাক্ষ্য দিয়েছি তা কোন পত্র-পত্রিকায় উঠেছে কিনা বলতে পারবোনা।

বাংলাদেশ স্বাধীনতার পরে মিরপুরের বাড়ী-ঘর লুঠপাট, অগ্নি সংযোগ সম্□র্কে মিরপুর থানায় জি ডি করেছিলাম তবে আব্বার হত্যাকান্ড সম্□র্কে থানা বা অন্য কোথাও কোন অভিযোগ দায়ের করিনি। আমি ১৯৭১ সালে বি এন আর (ল' ফার্ম) গিয়েছিলাম আব্বাকে খোজ করতে বি এন আর গিয়ে জানতে পারলাম যে, এ্যাডভোকেট খলিল সাহেব দেখেছেন যে ইত্তেফাকের অবাঙ্গালী চীফ একাউন্ট্যান্ট আবদুল হালিম আমার বাবাকে তার গাড়ীতে করে নিয়ে গিয়েছিলেন। সেই খলিল সাহেব মারা গেছেন। আব্বার সংগে চীফ একাউন্ট্যান্ট আবদুল হালিম এর কোন জায়গায় দেখা হয় এটা জিজ্ঞাসা করার মত মানসিকতা তখন আমার ছিলনা। আবদুল হালিম আমার আব্বাকে মিরপুর আবদুল কাদের মাল্লাগং দের কাছে হস্তান্তর করে। আমাদের ড্রাইভার নিজামের মুখে একথা শুনেছি আবদুল হালিম সাহেব আমার বাবাকে আবদুল কাদের মাল্লাগংদের হাতে হস্তান্তর করেছিল। কোন জায়গায় আমার আব্বাকে কাদেও মোল্লার কাছে হস্তান্তর করা হয় তা শুনিনি বা জিজ্ঞাসাও করিনি। তবে জল্লাদ খানায় হত্যা করা হয় বলে নিজাম আমাকে বলেছিল। আবদুল কাদের মোল্লা সাহেব মিরপুরের দোয়ারী পাড়ায় থাকতেন তা অধিকাংশ লোকই জানে তবে নির্দিষ্ট করে কারো নাম বলতে পারবোনা কার কাছ থেকে শুনেছি। ইহা সত্য নয় যে, আবদুল কাদের মোল্লানাম আমি শেখানো মতে আদালতে বলছি। আবদুল কাদের মাল্লা ১৯৭১ সালে এবং ১৯৭২ সালের প্রথম দিকে ঢাকা শহরে ছিলেন না - একথা আমি জানিনা। (পরে বলেন) ঢাকায় ছিলনা একথা অবিশ্বাস্য। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-
অস্□ষ্ট
স্বা/- অস্□ষ্ট ২৯/০৭/১২
২৯/০৭/১২ চেয়ারম্যান
আন্ৎর্জাতিক অপরাধ ট্রাইব্যুনাল-২ঃ

তারিখঃ ৩০/০৭/২০১২ খ্রিঃ (পুনরায় জেরা শুর□)ঃ

বি এন আর এর পূর্ণর□প কি হয় তা আমার জানা নেই। ১৯৭০-৭১ সালে মিরপুর প্রায় ৯০% বিহারী অধ্যুষিত এলাকা ছিল। আওয়ামীলীগ মনোনিত এ্যাডভোকেট জহির উদ্দিন ১৯৭০ সালে নির্বাচিত জাতীয় পরিষদ সদস্য এর বাড়ী মিরপুরের কোন এলাকায় ছিল বলতে পারবোনা। ইহা সত্য নহে যে, ২৫ মার্চ, ১৯৭১ আবদুল কাদের মোল-ার নামে কোন ব্যক্তি মিরপুর এলাকায় ছিলনা। ইহা সত্য নয় যে, ২৩ মার্চ দিবাগত রাত ১২.০১ মিনিটে কাইয়ুম স্যার আমাদের বাড়ীতে ছিলেন না বা ঐ রাতে ২.৩০/৩.০০ টার সময় কাইয়ুম স্যারের বাসায় ৩/4 জন লোক দরজা ভেঙ্গে ঢুকে নাই বা তাঁকে উপর্যুপরি ছুরিকাঘাত করে রক্তাক্ত জখম করে নাই বা তিনি প্রাণভয়ে পালানোর চেষ্টা করলে রাস্তায় পড়ে যান নাই।

আমি তদন্তকারী কর্মকর্তার নিকট জবানবন্দী দিয়েছি তবে তারিখ ও স্থান মনে নেই। আনুমানিক কতদিন আগে তাও মনে নাই। ইহা সত্য নহে যে, আমি তদন্তকারী কর্মকর্তার নিকট বলি নাই যে রাড্ডা বার্ণেন হসপিটাল যাহা পূর্বে সরকারী আউট ডোর ক্লিনিক ছিল, সেখান থেকে একজন বাঙ্গালী ডাক্তার এনে কাইয়ুম স্যারের প্রাথমিক চিকিৎসা করাই। ইহা সত্য নহে যে, আমি তদন্তকারী কর্মকর্তার নিকট বলি নাই যে তখন তিনি প্রান ভয়ে পালানোর চেষ্টা করলে রাস্তায় পড়ে যান। একজন বাঙ্গালী বেরিয়ে তাকে নিয়ে কোনমতে আমাদের বাসায় নিয়ে আসে বা এটাও বলিনি যে পরদিন সকাল বেলা কাইয়ুম স্যারকে যথারীতি ঢাকা মেডিকেল কলেজ হাসপাতালে ভর্তি করান। বঙ্গবন্ধুর সংগে আমার পিতার পরিচয় ছিল। বাবার কাছ থেকে শুনেছি বঙ্গবন্ধুর নির্দেশ মোতাবেক ২৪ মার্চ রাতে মিরপুরে ই পি আর মোতায়েন হয়েছিল।

এ্যাডভোকেট জহির উদ্দিনকে অবগত না করিয়া বঙ্গবন্ধু মিরপুরে ই পি আর মোতায়েন করার নির্দেশ দেওয়ার কারণে এ্যাডভোকেট জহির সাহেব মনক্ষুন্ন হয়ে স্থানীয় বিহারীদের যা খুশি তাই করার নির্দেশ দিয়েছিলেন কিনা তা আমার জানা নেই। ইহা সত্য নয় যে, নিজাম নামে কোন বিহারী মিরপুরে ছিলনা এবং সে আমাদের ড্রাইভার ছিলনা। ইহা সত্য নহে যে, আমি তদন্তকারী কর্মকর্তার নিকট বলি নাই যে, আবদুল হালিম তার গাড়ীতে করে আব্বাকে মিরপুরে নিয়ে এসে আবদুল কাদের মাল্লার নিকট হস্তান্তর করেন। ইহা সত্য নহে যে, আমি তদন্তকারী কর্মকর্তার নিকট বলি নাই যে, আমি নিজাম ড্রাইভারের মাধ্যমে জানতে পারি জাতীয় নির্বাচনে পরাজিত লোকজন অর্থাৎ মিরপুরের আবদুল কাদের মাল্লা, আক্তার গুন্ডা, আবদুল্লাহ সহ বেশকিছু বিহারী আবদুল কাদের মো ল্লার নির্দেশে ব্যাপক হত্যাযজ্ঞ চালায়। শিয়ালবাড়ী বধ্যভূমির ঘটনাটি সর্বজন বিদিত। ইহা সত্য নয় যে, আমি আবদুল কাদের মোল্লাকে বিভিন্ন ঘটনায় জড়িত করে যে সাক্ষ্য দিলাম তাহা মিথ্যা, বানোয়াট এবং শেখানো মতে। ইহা সত্য নয় যে, রাজনৈতিক চক্রের তৈরী করা জবানবন্দী আমি আদালতে দিয়েছি। (জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম স্বাক্ষর

অস্পষ্ট

স্বা/- অস্পষ্ট ৩০/০৭/১২

৩০/০৭/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor – Versus- Abdul Kader Molla.

Deposition of witness No. 06 for the Prosecution aged about 60 years, taken on oath on Wednesday the 01st August 2012.

My name is Shafiuddin Mulla.

My father's name is Late Md. Habiullah Mulla.

My mother's name is ------------- age-------- I am by religion ------- My home is at village--------- Police Station ----------, District ----------, I at present reside in --------, Police Station----------, District ------------, my occupation is ----------------

আমার নাম মোঃ শাফিউদ্দিন মোল্লা। আমার পিতার নাম মৃত মোঃ হাবিউল্লাহ মোল্লা। আমার গ্রামের নাম আলুবদী, থানাঃ পল-বী, ঢাকা। ১৯৭০ সালে আমার বয়স আনুমানিক ১৯ বছর । আমি তখন ভোটার ছিলাম। আমি তখন ছাত্রলীগের সংগে জড়িত ছিলাম, আমার পরিবার ও গ্রামবাসী সবাই আওয়ামীলীগ সমর্থক ছিলাম। ১৯৭০ সালে জাতীয় পরিষদে মিরপুর আসনে আওয়ামীলীগ মনোনিত প্রার্থী ছিলেন এ্যাডভোকেট জহিরউদ্দিন। তার নির্বাচনী প্রতীক ছিল নৌকা। ওনার বিপরীতে একজন প্রার্থী ছিলেন দাঁড়িপাল্লা মার্কার অধ্যাপক গোলাম আযম সাহেব। আমরা এ্যাডভোকেট জহিরউদ্দিন সাহেবের পক্ষে নির্বাচনী প্রচারনা করেছিলাম। অপর পক্ষে দাঁড়িপাল্লার পক্ষে নির্বাচনী প্রচারনায় অংশ গ্রহন করেন তৎকালীন ইসলামী ছাত্র সংঘের নেতা জনাব আবদুল কাদের মোল্লা তার সহযোগী ও বিহারীরা। আমি আবদুল কাদের মোল্লাকে চিনতাম। ১৯৭০ এর নির্বাচনে আওয়ামীলীগ পাকিস্তান জাতীয় পরিষদে সংখ্যাগরিষ্ঠতা পায় কিন্তু পাকিস্তানীরা ক্ষমতা হস্তান্তর করেনি। ক্ষমতা হস্তান্তর না করায় আমরা বাঙ্গালীরা আন্দোলন সংগ্রাম চালিয়ে যাই, এতে ধীরে ধীরে পরিস্থিতি খারাপের দিকে যেতে থাকে। ৭ই মার্চ একাত্তরে রেসকোর্স ময়দানে বঙ্গবন্ধু সভা ডাকেন আমরা সেই সভায় যাই। সেই সভায়

বঙ্গবন্ধু ভাষণ দেন এবং আমাদেরকে স্বাধীনতার প্রস্তুতি নেওয়ার জন্য আহবান করেন। এরপর আমরা আমাদের গ্রামে মুক্তিযুদ্ধের প্রস্তুতির জন্য ট্রেনিং আরম্ভ করি। এরপর ২৫ মার্চ অনেক ঘটনাই ঘটে, পাকহানাদাররা আক্রমন করে আমাদের গ্রামে আশে-পাশে নিচু জমি থাকায় আমরা গ্রামেই থাকি।

এরপর ২৪ এপ্রিল, ১৯৭১ ফজরের নামাজের আযানের সময় তখন আমরা একটা হেলিক্যাপ্টারের শব্দ পাই। বাহিরে বের হয়ে দেখি হেলিক্যাপ্টারটি গ্রামের পশ্চিম পাশে নদীর ধারে একটু উচু জায়গা আছে সেখানে নামে। এর কিছুক্ষণ পরেই পশ্চিম দিক থেকে গুলির শব্দ পাই। সাথে সাথে পূর্ব, দক্ষিন ও উত্তর দিক থেকে গুলির আওয়াজ পাই। এরপর আমরা এই গুলির শব্দে গ্রামের ভিতর দৌড়াদৌড়ি ছুটাছুটি করতে থাকি। আস্তে আস্তে ফর্সা হতে থাকে তখন দেখতে পাই এদিক সেদিক দুই এক জন লোক মৃত অবস্থায় পড়ে আছে। আমি আমাদের গ্রামের উত্তর পাশে একটা ঝোপের নিচে গর্তে লুকাই। তখন ধান কাটার মৌসুম বাহির থেকে অনেক লোক আমাদের গ্রামে আসে ধান কাটতে। তারপর দেখতে পাই পশ্চিম দিক থেকে পাক সেনারা ঐ সকল ধান কাটার লোকজন এবং গ্রামের লোকজনকে ধরে এনে একত্রে জড়ো করছে। এরপর দেখি পূর্ব দিক থেকে ঐ সকল ধান কাটার লোকজন এবং গ্রামের লোকজনদেরকে কাদের মাল্লাতার বাহিনী, পাক বাহিনী ও নন বেঙ্গলী বিহারীরা ধরে এনে একই জায়গায় জড়ো করছে। এর সামান্য কিছুক্ষণ পর আবদুল কাদের মাল্লাকে পাক-বাহিনীর অফিসারদের সংগে উর্দুতে কথা বলতে দেখি দুর থেকে তা শুনতে পাইনি। এর কিছুক্ষণ পর দেখি সমস্ত লোকদেরকে এক সাইড করে এরা গুলি আরম্ভ করে। সেখানে কাদের মোল-ার হাতেও রাইফেল ছিল সেও গুলি করে। সেখানে আমার আপন চাচা নবীউল্লাহ মাল্লাসহ আমাদের গ্রামের ৭০/৮০ জন সহ ধান কাটার শ্রমিক সহ সর্বমোট প্রায় ৩৬০/৩৭০ জন লোক মারা যায়। মৃত ব্যক্তিরা সবাই বাঙ্গালী ছিল। ফজরের আযানের পর থেকে আনুমানিক বেলা ১১.০০ টা পর্যন্ত এই হত্যাযজ্ঞ চলে। এরপর তারা বিভিন্ন বাড়ী-ঘরে ঢুকে লুটপাট ও অগ্নিসংযোগ করে। আবদুল কাদের মাল্লা ডকে সনাক্ত। ১৬ আগষ্ট, ২০১০ তারিখ আমাকে পল্লবী থানায় ডেকে এনে তদন্তকারী কর্মকর্তা জিজ্ঞাসাবাদ করে। (সমাপ্ত)

XXX (জেরা)ঃ

আজ আমি আমার ভোটার আই ডি কার্ড আনিনি বা তদন্তকারী কর্মকর্তার কাছেও দেইনি। আমি মিরপুর আদর্শ উ□চ বিদ্যালয়ে পড়তাম। ১৯৭২ সালে আমি দ্বিতীয় ব্যাচে এস এস সি পাশ করি।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট

স্বাক্ষর/-অস্□ষ্ট ০১/৮/১২

০১/৮/১২ চেয়ারম্যান

আন্@র্জাতিক অপরাধ ট্রাইব্যুনাল-২

তারিখঃ ০৫/০৮/২০১২খ্রিঃ(জেরা)ঃ

বর্তমানেও আমি একজন ভোটার। গত সংসদ নির্বাচনে আমি ভোট দিয়েছি। ভোটার লিষ্টে আমার তথ্যাদি সঠিক ছিল। সংশি-ষ্ট ভোটার লিষ্টের ক্রমিক নং ২২২০ এ আমার নাম ও ঠিকানা সঠিকভাবে দেওয়া আছে। এখানে আমার জন্ম

তারিখ ভুল আছে। আমার জন্ম তারিখ সম্পর্কিত কোন কাগজ-পত্র আদালতে দাখিল করিনি। ইহা সত্য নহে ১৯৭০ সালের নির্বাচনে আমি ভোট দেইনি।

১৯৭১ সালে আলুবদি গ্রামের উত্তরে ছিল ধানক্ষেত, এর ৫ কিঃমিঃ উত্তরে একটা গ্রাম ছিল সে গ্রামের নাম বলতে পারবোনা। আলুবদি গ্রামের দক্ষিণে দোয়ারী পাড়া এবং বোটানীক্যাল গার্ডেন,পূর্ব দিকে ৫০০গজ দুরে দ্বিগুন গ্রাম, পশ্চিমে ধানক্ষেত, ধানক্ষেতের পরে সাভার থানা এলাকা ছিল। আলুবদি গ্রাম উত্তর-দক্ষিণে পোয়া মাইল লম্বালম্বি ছিল। আমাদের বাড়ী গ্রামের মাঝামাঝি পশ্চিম পাশে ছিল। আমাদের বাড়ীর উত্তর পাশে অনেক বাড়ী-ঘর ছিল। ঐ সময় ধানক্ষেত গ্রামের চর্তুদিকে ছিল। বাড়ীর সীমানার বাইরে আমাদের নিচু জায়গাতে অনেক ধানের আটি স্তুপ করা ছিল।

১৯৭১ সালে আমরা ৪ ভাই ৩ বোন ছিলাম, আমরা সবাই এখনও জীবিত আছি। আমার ভাই-বোনের মধ্যে আমি সবার বড়। অন্যান্য ভাইদের নাম যথাক্রমেঃ আলতাব উদ্দিন মাল্লা, নাসিরউদ্দিন মাল্লা, শরীফউদ্দিন মোল-া। আমরা চারভাই'ই লেখা পড়া জানি। আমার পরবর্তী ভাই আমার চেয়ে ১২/১৩ বছরের ছোট। আলতাব উদ্দিন মাল্লা দশম শ্রেণী পর্যন্ত পড়েছেন। আমার ছোট ভাই আলতাব উদ্দিন মাল্লা আলুবদি গ্রামের হত্যাকান্ড সম্পর্কে কোন বই লিখেছে কিনা আমার জানা নেই। মিরপুর ১০ নম্বরে আদর্শ উচ্চ বিদ্যালয়ে লেখাপড়া করেছি। স্কুলের লেখা পড়া শেষ করেছি ১৯৭২ সালে। আসামী আবদুল কাদের মাল্লা সাহেব কোন স্কুলে বা কলেজে লেখা-পড়া করেছে আমি জানিনা।

ঢাকা থেকে আমাদের গ্রামে যেতে হলে পূর্বদিক দিয়ে গ্রামে ঢুকতে হতো। গ্রামের পশ্চিম দিক ছিল নদী পথ। গ্রামের পূর্বদিক থেকে যে রাস্তাটি ছিল সেটি ছিল পায়ে হাটা কাঁচা রাস্তা। গ্রাম পর্যন্ত কোন গাড়ী-ঘোড়া চলতোনা। ইহা সত্য নহে যে, আমি ১৯৭০ সালে কোন রাজনৈতিক দলের সাথে সংযুক্ত ছিলামনা। ইহা সত্য নহে যে, ১৯৭০ সালে আমি একজন মুদি দোকানদার ছিলাম। আমার বাপ-চাচারা ৫ ভাই ছিলেন। জ্যেষ্ঠতা অনুসারে তাদের নামঃ আমার পিতা হাবিবুল্লাহ মোল্লা, নবীউল-াহ মোল-া, আবদুস সোবহান মোল্লা,, ফজল হক মোল্লা ও সিরাজুল হক মোল্লা। আমার পিতা ও চাচারা সকলেই কৃষি কাজ করতেন। ঐ সময় আমাদের বাড়ী থেকে উত্তর পাশের ধানের জমি ৩০০/৪০০ গজ দুরে থেকে শুরু হয়ে ৫ মাইল ব্যাপি উত্তর দিকে বিস্তৃত ছিল। আমাদের গ্রামের উত্তর পাশে বাড়ী যেখানে শেষ হয়েছে তার একটু দুরে ঝোপ ছিল, যেখানে আমি লুকিয়ে ছিলাম। ঐ সময় যেখানে আমি লুকিয়ে ছিলাম লাগ দক্ষিণের বাড়ীর পরে কিছু দেখা যেতনা। মাটির লেভেল থেকে ঝোপের নিচের গর্তটি আনুমানিক ৪ফিট গভীর ছিল। বর্তমানে আমার যে উচ্চতা ঘটনার সময়ও তাই ছিল সামান্য কম-বেশী হতে পারে। এই গর্তটি সে সময় মানুষই তৈরী করেছিল। উত্তর দিকে ধান ক্ষেতে ধানকাটা লোকজন ছিল তবে, কতজন ছিল তা বলতে পারবোনা। (আদালতের জিজ্ঞাসায় পরে বলেন) "ফজরের সময় ঘটনা শুরু সেজন্য ঐ সময় মাঠে কোন লোক ধান কাটছিলনা।" ঐ সময় চর্তুদিকেই ধান কাটা বাকিছিল। ধানক্ষেতে তখন একটা মানুষ দাঁড়িয়েও লুকিয়ে থাকতে পারত। পশ্চিম দিকেও উচু ধানক্ষেত ছিল। ইহা সত্য নয় যে, চারিদিকে উচু ধানক্ষেত থাকার কারণে আমি ঝোপের নিচে গর্ত থেকে কিছুই দেখতে পাইনি। ইহা সত্য নহে যে, আমার চাচাকে হত্যা করার পর পাক বাহিনী তার মৃত দেহ খড়ের পালায় রেখে আগুন দিয়ে জ্বালিয়ে দেয়। ঐ সময় পাক বাহিনীর সদস্যরা আমার পরিবারে শুধু আমার

চাচাকে হত্যা করেছিল। ঐ সময় আমাদের বাড়ীর উত্তর পাশে লাল মিয়া মোল-ার বাড়ী ছিল, দক্ষিণ পাশে রাজ্জাক মাষ্টারের বাড়ী, পূর্ব পাশে জিন্নাত আলীদের বাড়ী এবং পশ্চিম পাশে গ্রামে চলাচলের রাস্তাছিল।

আমরা তখন ছাত্র ছিলাম, এ্যাডভোকেট জহিরউদ্দিন সাহেবের বাড়ীটা কোথায় ছিল বলতে পারবোনা। এ্যাডভোকেট জহিরউদ্দিন বাঙ্গালী না অবাঙ্গালী ছিলেন বলতে পারবোনা। এ্যাডভোকেট জহিরউদ্দিন সাহেব তাঁর নির্বাচনী প্রচারনার কাজে আমাদের এলাকায় গিয়েছিলেন তবে আমাদের গ্রামে যাননি। তাঁর সাথে তখন আমার কোন কথাবার্তা হয়নি। আমরা যেহেতু ছোট ছিলাম সেহেতু আমরা তাঁর কাছে যেতামনা।

সাজেসানঃ এ্যাডভোকেট জহিরউদ্দিন সাহেব অবাঙ্গালী ছিলেন ।

উত্তরঃ আমি বলতে পারবোনা।

ইহা সত্য নয় যে, মিরপুরের অবাঙ্গালীরাও তাঁর নির্বাচনী প্রচার কার্য্যে অংশ গ্রহন করেছিলেন। এ্যাডভোকেট জহির উদ্দিন সাহেব ১৯৭০ এর নির্বাচনে বিপুল ভোটে জয়লাভ করেছিলেন। ১৯৭০-৭১
সালে বর্তমান মিরপুর এলাকা এত জনবসতী পূর্ণ ছিলনা। ঐ সময় মিরপুরের পশ্চিম দিকটায় ঝোপ-ঝাড় ছিল এবং অনেক দুরে দুরে বাড়ীঘর ছিল। শহর থেকে মিরপুর এলাকায় লোকজন প্রয়োজন মাফিক চলাচল করতো। প্রয়োজনে আমরা শহরে আসতাম এবং শহরের লোকেরাও আমাদের এলাকায় যেতো। তখন গ্রামের আশে-পাশের জমি আমাদের গ্রাম থেকে নিচু ছিল, কতটুকু নিচু ছিল বলতে পারবোনা। তখন বর্ষার সময় নৌকা ছাড়া আমাদের গ্রামে চলাচল করা যেতনা। পানির সময় কোন ধান হতো না শুকনার সময় শুধু বোরো ধান হতো। এ্যাডভোকেট জহির উদ্দিন সাহেবের নির্বাচনী প্রচারনা কালে তাঁর কোন ভাষণ শুনিনি। আমার সঠিক মনে নাই এ্যাডভোকেট জহির উদ্দিন সাহেব আমাদের এলাকায় বা গ্রামের আশে-পাশে কোন সভা করেছিলেন কিনা। ২৪ এপ্রিল,১৯৭১ সালে আমরা বাপ-চাচারা বাড়ীতেই ছিলাম। বর্তমানে আমি রাজনীতির সংগে জড়িতনা। বাপ-চাচাদের মধ্যে দুই চাচা জীবিত আছেন তারা রাজনীতি করেননা। আমার ভাইদের মধ্যে একভাই আলতাব উদ্দিন মোল-া সম্ভবত বি এন পি করেন। আমার মৃত চাচা নবীহাসন মোল্লার ৪ ছেলে ২ মেয়ে। চার ছেলের মধ্যে জ্যেষ্ঠতা অনুসারে তাদের নাম হলোঃ আন্দেশ আলী মোল্লা, উবাইদুল-াহ মোল্লা, আইনুল-া মোল্লাও আজিজুল্লাহ মোল্লা।এরা সবাই জীবিত আছেন। আমার চাচার ছেলেরা কেউ রাজনীতির সংগে জড়িত নেই। আমাদের পরিবারে বর্তমানে শুধু আমার ভাই আলতাবউদ্দিন মোল্লাই রাজনীতির সংগে জড়িত। ১৯৭০-৭১ সালে আমাদের পরিবারের মধ্যে আমিই একমাত্র ছাত্রলীগের সংগে জড়িত ছিলাম। পরে বলেন বাকি সবাই আওয়ামীলীগের সমর্থক ছিলেন। আমি যে ছাত্রলীগ করতাম এর সমর্থনে আমি কোন কাগজ-পত্র আদালতে দাখিল করিনি কারণ এতদিন পরে ঐগুলো দাখিল করার কোন সুযোগ নেই কারণ বাড়ী-ঘর জ্বালিয়ে পুড়িয়ে দিয়েছিল। পাক বাহিনীর সংগে তার দোসররা আলুবদি গ্রামে আমাদের বাড়ীসহ অনেক বাড়ী-ঘর জ্বালিয়ে দিয়েছিল। আমার চাচা নবীউল্লাক আমরা কবর দেই নাই। ২৪ এপ্রিলের ঘটনার পর দেশ স্বাধীন হওয়ার পূর্ব পর্যন্ত আমরা সাভার এলাকায় থাকতাম। ইহা সত্য নয় যে, আমরা সাভারে আমার বোনের বাড়ীতে থাকতাম। সাভার এলাকায় আমরা কারো বাড়ীতে ছিলামনা, ফাঁকা জায়গায় ছাপড়া ঘর উঠিয়ে থাকতাম। তখন কাজ করার মত কিছুই ছিলনা।

আমাদেও বাড়ীর আশে-পাশের লোকজনও সাভার এলাকার বিভিন্ন স্থানে আশ্রয় নিয়েছিল। আসামী কাদের মোল্লার গ্রামের নাম আমি বলতে পারবোনা। ইহা সত্য নয় যে, আমি ১৯৭০-৭১ সালে আসামী আবদুল কাদের মোল্লাকে চিনতামনা। ইহা সত্য নয় যে, ১৯৭০-৭১ সালে আসামী আবদুল কাদের মোল-া আমাদের গ্রামে যায় নাই। ১৯৭০ সালে মিরপুর এ্যাডভোকেট জহির উদ্দিন সাহেবের নির্বাচনী এলাকা কোন কোন এলাকা নিয়ে ছিল তা বলতে পারবোনা। ১৯৭০ সালে আমাদের গ্রামে ভোটার সংখ্যা বা কতগুলো ভোট সেন্টার ছিল তা বলতে পারবোনা। সেই সময়ের আমাদের গ্রামটা এখন শহরের র□প পরিগ্রহ করেছে। সেখানে বিদ্যুৎ, গ্যাস, পানির সংযোগ গিয়েছে। ১৯৭০-৭১ সালে আমাদের গ্রাম হরিরামপুর ইউনিয়নের অর্ন্তভূক্ত ছিল এবং আমাদের গ্রামের লোকই চেয়ারম্যান ছিল। ১৯৭১ সালের ২৪ এপ্রিল আমাদের ইউনিয়নের চেয়ারম্যান ছিলেন হার□ণ মোল্লা তিনি তখন জীবিত ছিলেন। ঐ সময় হেলিকপ্টার শুধু আর্মিরা ব্যবহার করতো। ইহা সত্য নয় যে, ১৯৭০ সালে আমার বয়স ১৯ বছর ছিলনা বা আমি নাবালক ছিলাম। ইহা সত্য নয় যে, ঘটনার সময় ঝোপের নিচে গর্তে লুকিয়ে ঘটনা দেখার কথা সত্য নয়। ইহা সত্য নয় যে,এই মামলার ঘটনার পূর্বে আমি কখনও রাজনীতির সংগে জড়িত ছিলামনা। আমাকে যখন তদন্তকারী কর্মকর্তা জিজ্ঞাসাবাদ করে তখন আমি একাই ছিলাম, আমার সংগে আর কেউ ছিলনা। থানার লোক গিয়ে আমার বাসায় খবর দিলে আমি থানায় আসি।

ইহা সত্য নয় যে, আমি তদন্তকারী কর্মকর্তার কাছে বলিনি যে, আমি তখন ভোটার ছিলাম বা আমি তখন ছাত্রলীগের সংগে জড়িত ছিলাম, আমার পরিবার ও গ্রামবাসী সবাই আওয়ামীলীগ সমর্থক ছিলাম বা ১৯৭০ সালে জাতীয় পরিষদে মিরপুর আসনে আওয়ামীলীগ মনোনিত প্রার্থী ছিলেন এ্যাডভোকেট জহিরউদ্দিন বা তার নির্বাচনী প্রতীক ছিল নৌকা বা ওনার বিপরীতে একজন প্রার্থী ছিলেন দাঁড়িপাল্লা মার্কার অধ্যাপক গোলাম আযম সাহেব বা আমরা এ্যাডভোকেট জহিরউদ্দিন সাহেবের পক্ষে নির্বাচনী প্রচারনা করেছিলাম বা অপর পক্ষে দাঁড়িপাল্লার পক্ষে নির্বাচনী প্রচারনায় অংশ গ্রহন করেন তৎকালীন ইসলামী ছাত্র সংঘের নেতা জনাব আবদুল কাদের মোল-া তার সহযোগী ও বিহারীরা বা আমি আবদুল কাদের মোল-াকে চিনতাম বা এরপর আমরা আমাদের গ্রামে মুক্তিযুদ্ধের প্রস্তুতির জন্য ট্রেনিং আরম্ভ করি বা এরপর ২৫ মার্চ অনেক ঘটনাই ঘটে, পাকহানাদাররা আক্রমন করে আমাদের গ্রামে আশে-পাশে নিচু জমি থাকায় আমরা গ্রামেই থাকি বা ২৪ এপ্রিল, ১৯৭১ ফজরের নামাজের আযানের সময় তখন আমরা একটা হেলিক্যাপ্টারের শব্দ পাই বা এর কিছুক্ষণ পরেই পশ্চিম দিক থেকে গুলির শব্দ পাই বা সাথে সাথে পূর্ব, দক্ষিন ও উত্তর দিক থেকে গুলির আওয়াজ পাই বা এরপর আমরা এই গুলির শব্দে গ্রামের ভিতর দৌড়াদৌড়ি ছুটাছুটি করতে থাকি বা আস্ত আস্ত ফর্সা হতে থাকে তখন দেখতে পাই এদিক সেদিক দুই এক জন লোক মৃত অবস্থায় পড়ে আছে বা আমি আমাদের গ্রামের উত্তর পাশে একটা ঝোপের নিচে গর্তে লুকাই বা তখন ধান কাটার মৌসুম বাহির থেকে অনেক লোক আমাদের গ্রামে আসে ধান কাটতে বা তারপর দেখতে পাই পশ্চিম দিক থেকে পাক সেনারা ঐ সকল ধান কাটার লোকজন এবং গ্রামের লোকজনকে ধরে এনে একত্রে জড়ো করছে বা এরপর দেখি পূর্ব দিক থেকে ঐ সকল ধান কাটার লোকজন এবং গ্রামের লোকজনদেরকে কাদের মাল্লাতার বাহিনী, পাক বাহিনী ও নন বেঙ্গলী বিহারীরা ধরে এনে একই জায়গায় জড়ো করছে বা এর সামান্য কিছুক্ষণ পর আবদুল কাদের মাল্লাকে পাক-বাহিনীর

অফিসারদের সংগে উর্দুতে কথা বলতে দেখি দুর থেকে তা শুনতে পাইনি বা এর কিছুক্ষণ পর দেখি সমস্ত লোকদেরকে বা এক সাইড করে এরা গুলি আরম্ভ করে বা সেখানে কাদের মোল-ার হাতেও রাইফেল ছিল সেও গুলি করে বা ফজরের আযানের পর থেকে আনুমানিক বেলা ১১.০০ টা পর্যন্ত এই হত্যাযজ্ঞ চলে বা এরপর তারা বিভিন্ন বাড়ী-ঘরে ঢুকে লুটপাট ও অগ্নিসংযোগ করে।

ইহা সত্য নহে যে, আলুবদি গ্রামের ঘটনার সাথে আসামী আবদুল কাদের মাল্লাকে জড়িত করে যা যা বলেছি তা অসত্য, বানোয়াট এবং মিথ্যা।

আমার চাচাত ভাই ইব্রাহিমকে আমি চিনি। আমার চাচাত ভাই ইব্রাহিম এবং আমার ভাই আলতাব উদ্দিন মাল্লা এরা ছোট ছিল ১৯৭১ সালে ওরা আমাদের বাড়ীতে স্বাধীনার পতাকা উড়াতেও পারে। ইহা সত্য নয় যে, শুধু এই কারণে আমাদের বাড়ী পাক-বাহিনীরা পুড়িয়েছে। তারা পুরা গ্রামই পুড়িয়েছে। আমাদের গ্রামের মতি মাষ্টারকে চিনতাম তাকে এখনও চিনি তিনি জীবিত আছেন। ঘটনার সময় মতি মাষ্টার গ্রামেই ছিলেন। বিহারী আক্তার গুন্ডাকে নামে চিনতাম। এটা আমি বলতে পারবোনা যে, মতি মাষ্টার আমাদের গ্রাম জ্বালিয়ে দেওয়া এবং সেখানে সংঘটিত হত্যাকান্ড স্বচক্ষে দেখেছেন কিনা। **"মুক্তিযুদ্ধে মিরপুর" বইয়ে** লেখক হিসেবে যে নামটা আছে তা আমার ভাইয়ের । এই বইটা উৎসর্গ করা হয়েছে শহীদ আমার চাচা নবীউল-া মাল্লার স্মৃতির উদ্দেশ্যে। ইহা সত্য নয় যে, এই বইটি আমি ইতিপূর্বে পড়েছি। এই প্রথম আপনার কাছে এই বইটি দেখলাম। আমরা যেহেতু একই গ্রামের বাসিন্দা তাই সবাই সবাইকে চিনি, মতি মাষ্টারকে আমার ভাই আলতাব উদ্দিন মোল-াও চেনে। আমি জানিনা মতি মাষ্টার বই লেখার সময় আমার ভাইকে সহায়তা করেছে কিনা। ইহা সত্য নয় যে, এই বইয়ে ঘটনার সাথে আবদুল কাদের মোল-া জড়িত ছিলেন না মর্মে উল্লখে থাকায় আমি এখন বইটি পড়িনি বলে **বলছি**। ১৯৭০ সালে আমি যে ভোটার ছিলাম সেই মর্মে সংশি-ষ্ট ভোটার লিষ্ট আদালতে দাখিল করিনি এবং তদন্ত কর্মকর্তার কাছেও দেইনি। ইহা সত্য নয় যে, ১৯৭০-৭১ সালে আমি আবদুল কাদের মোল-াকে কোনভাবেই চিনতামনা। ইহা সত্য নয় যে, ঘটনার দিন পাক আর্মি কর্তৃক ধানকাটার লোক এবং গ্রামের লোকদের একত্রে জড়ো করতে আমি দেখিনি। গ্রামের উত্তর পাশে যেখানে ধান মাড়াই করে সেখানেই লোকজনকে জড়ো করেছিল। ইহা সত্য নয় যে, ঐ সময় আবদুল কাদের মাল্লার কোন বাহিনী ছিলনা বা আবদুল কাদের মাল্লা সেখানে উপস্থিত ছিলনা বা পাক বাহিনীর সংগে তিনি উর্দুতে কথা বলেননি বা আবদুল কাদের মোল-া সাহেব সেখানে রাইফেল নিয়ে উপস্থিত ছিলেননা বা গুলি করেননি।

বর্তমানে ইষ্টার্ণ হাউজিং এর ব্যবসার সহিত আমি জড়িত। ১৯৭০ সাল থেকে আজ পর্যন্ত আমি কোন ডাইরি মেইনটেইন করিনি। জাতীয় পরিচয় পত্র অনুসারে আমার জন্ম তারিখঃ ২৪/১১/১৯৫৩। ইহা সত্য নয় যে,আমি শপথ গ্রহন করে আদালতে মিথ্যা সাক্ষ্য দি□ছ। আমি তিন ছেলের বাবা। আমার বিয়ের তারিখ মনে নেই। আমার ছেলেদের জন্ম তারিখ আমার মনে নেই। আমার ভাই আলতাব উদ্দিন মাল্লা রাজনীতি ছাড়া আর কি করেন বলতে পারবোনা। আলতাব উদ্দিন – মাল্লাএবং আমি একই বাড়ীতে বসবাস করিনা।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট

স্বাক্ষর/-অস্পষ্ট ০৫/৮/১২

০৫/৮/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

তারিখঃ ০৬/০৮/২০১২খ্রিঃ (জেরা)

২৪/৪/১৯৭১ তারিখে ফজরের আযান কখন হয় এবং সূর্য কয়টায় উঠে আমি বলতে পারবোনা। ২৪/৪/১৯৭১ তারিখে রাতের আকাশ মেঘলা ছিল। হেলিকপ্টার আসার পর গুলাগুলি শুরু হলে গ্রামের লোকজন গ্রামের ভিতরেই ছুটাছুটি করে। আমাদের গ্রামে ঐ সময় আনুমানিক আড়াই তিন হাজার লোক বাস করতো। যখন পূর্বদিকে ফর্সা হয়, তখনই ফর্সা হয়। ইহা সত্য নয় যে, ঐ রাত্রি মেঘলা রাত্রি ছিল আমি গর্ত থেকে কিছু দেখতে পারিনি। গর্ত থেকে সামনে খালি জায়গা ছিল, ধানক্ষেত ৩/৪ ধাপ নিচু জায়গা ছিল। ইহা সত্য নয় যে, ঐ দিন ঘটনার সময় আমি ঝোপের নিচে গর্তের ভিতর লুকায়ে ছিলামনা। ঐদিন বেলা ১১ টার পরে আমি আমার সুযোগ মত ধানক্ষেতের মধ্য দিয়ে গ্রামের বাইরে চলে যাই। ঐদিন ১১টার পরে গ্রামে লোকজন ছিল। হানাদার বাহিনী ও তার দোসররাও ছিল। ১১টার গর্ত থেকে বের হয়ে আমাদের বাড়ীতে যাইনি। আমার বাবা-মা, ভাই-বোন আগেই গ্রামের বাহিরে ছিল, মা-ভাইবোন সপ্তাহ খানেক আগে এবং বাবা ঘটনার আগের দিন বিকেল বেলা বাড়ী ছেড়ে গ্রামের বাহিরে চলে যায়। চাচাদের বাড়ীর মহিলা এবং বাচ্চারা সপ্তাহ/দশদিন আগেই বাড়ী ছেড়ে গ্রামের বাহিরে চলে যায়। গ্রামের অনেকেই গ্রাম ছেড়ে ঘটনার সপ্তাহ/দশদিন আগেই চলে গিয়েছিল অনেকে আরো আগেও গিয়েছিল। ২৫ মার্চের ঘটনার প্রেক্ষিতে গ্রামের অনেক লোক এইভাবে গ্রাম ছেড়ে চলে গিয়েছিল। ইহা সত্য নয় যে, আমিও আমার বাবা-মার সাথে ঘটনার সপ্তাহ/দশদিন আগে গ্রামের বাইরে চলে যাই।

১৬ আগষ্ট,২০১০ এর আগে ও পরে তদন্তকারী কর্মকর্তার সংগে আর দেখা হয়নি। আমি আমার গ্রামে তদন্তকারী কর্মকর্তাকে নিজে দেখিনি। ইহা সত্য নয় যে, ১৯৭১ সালের ২৪ এপ্রিল আমার গ্রামের ঘটনা ঘটার সময় আসামী আবদুল কাদের মোল্লাকে আমাদের গ্রামে বা তার আশে-পাশে দেখি নাই। বিরুলিয়া-সাদুল-হপুর গ্রাম আমাদের গ্রাম থেকে পশ্চিম দিকে তবে বিরুলিয়া একটু উত্তর-পশ্চিম দিকে এবং দুরত্ব প্রায় ২ কিঃমিঃ এর উপরে। ইহা সত্য নয় যে, ঘটনার সময় অন্ধকার ছিল বা সেজন্য ঘটনার সময় কাউকে দেখিনি। ঘটনার শুরুর সময় অন্ধকার ছিল। ইহা সত্য নয় যে, আসামী একজন বিধায় তাকে শেখানো মতে ডকে সনাক্ত করেছি। ইহা সত্য নয় যে, আমি রাজনীতি করি এবং রাজনীতির আদর্শে আদর্শিত হইয়া আসামীর বিরুদ্ধে এই সাক্ষ্য দিলাম। ইহা সত্য নয় যে, কোর্টে যে সাক্ষ্য দিলাম তা শেখানো মতে দিয়েছি বা তদন্তকারী কর্মকর্তার কাছেও তার শেখানো মতে বক্তব্য দিয়েছি বা সত্য গোপন করে মিথ্যা সাক্ষ্য দিয়েছি। (সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্পষ্ট

স্বাক্ষর/-অস্পষ্ট ০৬/৮/১২

০৬/৮/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

Vide Tribunal's order no.42 dated:07/8/2012 the following statement made by this P.W(P.W.6 Md. Habibullah Mulla) in his cross-examination at page-6 in relation to the book titled"মুক্তিযুদ্ধে মিরপুর" has been expugned: "মুক্তিযুদ্ধে মিরপুর" বইয়ে লেখক হিসেবে যে নামটা আছে তা আমার ভাইয়ের । এই বইটা উৎসর্গ করা হয়েছে শহীদ আমার চাচা নবীউল্লার মোল্লার স্মৃতির উদ্দেশ্যে। ইহা সত্য নয় যে, এই বইটি আমি ইতিপূর্বে পড়েছি। এই প্রথম আপনার কাছে এই বইটি দেখলাম। আমরা যেহেতু একই গ্রামের বাসিন্দা তাই সবাই সবাইকে চিনি, মতি মাষ্টারকে আমার ভাই আলতাব উদ্দিন মোল্লাও চেনে। আমি জানিনা মতি মাষ্টার বই লেখার সময় আমার ভাইকে সহায়তা করেছে কিনা। ইহা সত্য নয় যে, এই বইয়ে ঘটনার সাথে আবদুল কাদের মোল্লা জড়িত ছিলেন না মর্মে উল্লখ থাকায় আমি এখন বইটি পড়িনি বলে বলছি।

স্বাক্ষর অস্পষ্ট

০৭/৮/১২

চেয়ারম্যান

আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor -Versus- Abdul Kader Molla.

Deposition of witness No.07 for the Prosecution aged about 55 years, taken on oath on Wednesday the 8th August 2012.

My name is Abdul Mazid Paluan.

My father’s name is Late Nurun Nobi

My mother’s name is ------------- age-------- I am by religion ------- My home is at village---- ----- Police Station ----------, District ----------, I at present reside in ----

---, Police Station----------, District ------------, my occupation is ----------------

আমার নাম আবদুল মজিদ পালোয়ান। আমার বয়স অনুমান ৫৫ বছর। আমার গ্রামের নাম ঘাটার চর এটা কেরানীগঞ্জ থানার অধীনে। আমাদের গ্রামে আমরা হিন্দু মুসলমান সবাই বাস করতাম। বাংলাদেশ স্বাধীনতার আগে আমাদের গ্রামের কিছু লোক ছাড়া অবশিষ্ট লোকই আওয়ামীলীগ করতো। পাঁচটি মহল্লা নিয়ে আমাদের গ্রাম। ১৯৭১ সালের ২৫ নভেম্বর ভোর বেলায় আমরা গুলাগুলির আওয়াজ শুনতে পাই। গুলাগুলির শব্দে ঘুম থেকে উঠে আমি বাড়ীর নামায় যাই এবং গিয়ে দেখি চারিদিকে আগুন জ্বলছে। আগুন দেখি উত্তর দিক থেকে গুলাগুলির আওয়াজ আসছে শুনতে পাই। তখন আমি আস্তে আস্তে উত্তর দিকে আগ বাড়াই এবং ঘাটার চর স্কুলের মাঠের কাছে গিয়ে থামি। তখন আমাদের এলাকায় ঝোপঝাড় ছিল আমি একটি গাছের আড়ালে লুকাই। তখন আমি দেখি পাক বাহিনীরা লোকজনকে হত্যা করছে। পাক বাহিনীর সাথে আরো কয়েকজন পাঞ্জাবি-পাজামা পরা লোকছিল তাদের মধ্যে একজন ছিলেন আবদুল কাদের মোল্লা । পাক বাহিনীরা লোকজন হত্যা করলো, কাদের মোল্লার হাতে রাইফেল ছিল সেও গুলি করলো। ভোর থেকে ১১ টা পর্যন্ত এই গুলাগুলি এবং হত্যাকান্ড চলে। বেলা ১১ টার পরে পাক আর্মি ও আবদুল কাদের মোল্লার বাহিনীর লোকেরা এলাকা ছেড়ে চলে যায়। তারা চলে যাওয়ার পরে আমরা লোকজনদেরকে ডেকে আনি এবং লাশ সনাক্ত করার চেষ্টা করি। হিন্দু মুসলমান মিলে আনুমানিক ৬০ জন লোক সেখানে মারা যায়। লাশ সনাক্ত করার সময়ে ঐখানে কেরানীগঞ্জ থানার মুক্তিযোদ্ধা কমান্ডার মোজাফফর আহমেদ খান আসেন। তিনি আসলে পরে তার কাছে ঘটনার বর্ণনা দেই। ২৫ নভেম্বর ঘটনার পূর্ব রাতে জয়নাল ডাক্তারের বাড়ীতে আবদুল কাদের মোল্লা মিটিং করেছে। জয়নাল ডাক্তারের বাড়ী আমার বাড়ী থেকে পূর্ব দিকে তিন বাড়ী পরে। ঘটনার দিন ১১ টার পরে পাক বাহিনী ঘটনাস্থল ত্যাগ করার পর জানতে পারি তাদের সংগীয় পাঞ্জাবী-পাজামা পরা খাটো লোকটির নাম আবদুল কাদেও মোল্লাসহ তাদের সংগে আরো কয়েকজন বোরখা পরা লোক ছিল যাতে তাদেরকে সহজে চেনা না যায় । অভিযুক্ত আবদুল কাদের মোল্লা ডকে সনাক্ত। আমি এই ঘটনার ব্যাপারে গত ২৭/৬/২০১২ তারিখে তদন্তকারী অফিসারের কাছে জবানবন্দী দিয়েছি।

XXX (জেরা)ঃ

আমি পঞ্চম শ্রেণী পর্যন্ত পড়াশুনা করেছি। কোর্টে দেখানোর মত আমার কাছে কোন সমন নাই। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্পষ্ট

স্বাক্ষর/-অস্পষ্ট ০৮/৮/১২

০৮/৮/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

তারিখঃ১২/০৮/২০১২খ্রিঃ অপরাহ্নঃ ২.০০ ঘটিকাঃ

পাঁচটি মহল্লা নিয়ে আমাদের গ্রাম গঠিত প্রায় চৌকোনা। আমাদের মহল্লাার নাম ঘাটার চর খালপাড়। কেরানীগঞ্জ থানা থেকে ঘাটার চরের দুরত্ব দক্ষিণে ৩ কিঃমিঃ। ১৯৭১ সালে আমাদের গ্রামে ২-৩% লোক আওয়ামীলীগের বাইরে ছিল।

আমি পাঁচদানা প্রাথমিক বিদ্যালয়ে লেখাপড়া করেছি। আমি যখন প্রথম শ্রেণীতে পড়ি তখন আমার বয়স ছিল ৭/৮ বছর। আমার বয়স যখন ১০/১২ বছর তখন আমার বাড়ীর পাশে মুর□ব্বি ছিলেন কফিল উদ্দিন ব্যাপারী, লুদ্দু মিয়া, উকিল উদ্দিন, নূর হোসেন, নাজিম উদ্দিন, লাল চাঁন প্রমুখ। তখন আমাদের ইউনিয়নের চেয়াম্যান কে ছিল বলতে পারবোনা। তখন আমাদের গ্রামে একজন মেম্বার ছিল তার নাম ডাক্তার জয়নাল আবেদিন। আমার স্কুলের হেডমাষ্টার ছিলেন আবদুল হাকিম মাষ্টার। আমার বর্ণিত ১৯৭১ সালের ২৫ নভেম্বরের ঘটনা উপরোলে-খিত ব্যক্তিগণ দেখেছেন কিনা বলতে পারবোনা। ১৯৭১ সালের ২৫ নভেম্বরের আগে-পরে আমাদের গ্রামে পাক বাহিনী যায়নি।

১৯৭১ সালে আমি নাবালক ছিলামনা, আমার বয়স ১৯ বছর বা তারচেয়ে ২/১ বছর কম হবে। ইহা সত্য নয় যে, উপরোলে-খিত বক্তব্য সঠিক নয়। আমার জাতীয় পরিচয় পত্র আছে, সেখানে আমার জন্ম তারিখ কত লেখা আছে তা বলতে পারবোনা। ভোটার লিষ্টে জন্ম তারিখ কত লেখা আছে বলতে পারবোনা। আমাদের গ্রামে তখন পাঁচটি মহল্লার মধ্যে একটি মহল্লার প্রায় পুরোটাই হিন্দু অধ্যুষিত ছিল। হিন্দু মহল্লা থেকে পূর্ব দিকে ২০০ গজ দুরে আমাদের মহল্লা ছিল। আমার বাড়ী আমাদের মহল-ার মুটামুটি মাঝামাঝি অবস্থানে ছিল। আমাদের মহল্লাটি পূর্ব পশ্চিমে লম্বা ছিল। আমাদের মহল-ায় ঐ সময় আনুমানিক শ'দুয়েক লোকের বসবাস ছিল। আমার বাপ-চাচারা দুই ভাই ছিলেন ওনারা ঘটনার সময় জীবিত ছিলেন। আমরা ৫ বোন ২ ভাই। আমার চাচার ৩ ছেলে ৩ মেয়ে। আমার ভাইদের মধ্যে আমি ছোট চাচাত ভাইরা আমার বড় ছিল। ঘটনার সময় উনারা জীবিত ছিলেন। ঘটনার সময় পাক বাহিনীর গোলাগুলির শব্দ শুনে গ্রামের লোকজন দৌড়িয়ে পালিয়ে গিয়েছিল কিনা তা আমি বলতে পারবোনা। আমি গুলির আওয়াজ শুনে বাড়ী থেকে বেরিয়ে সেদিকে যাই যেদিক থেকে গুলির আওয়াজ আসছিল। তখন আমার বাপ-চাচা, ভাই-বোনেরা কোথায় ছিল কি করছিল বলতে পারবোনা। আমার বাড়ী থেকে দক্ষিণ দিকে যেতে হিন্দু মহল-া, উত্তর দিকে নোয়াগাঁ নামক একটি মহল্লা। আমি নোয়াগাঁ মহল-ার উপর দিয়ে দৌড়ে যাইনি, আমি দক্ষিণ দিকে দৌড়ে মাঠের দিকে গিয়েছি। আমার যাওয়ার সময় ডানদিকে হিন্দ মহল্লা রেখে মাঠের পাশে যাই। আমি যখন দৌড়ে যাই তখন আমার সংগে আর কেহ যায়নি। আমি যখন মাঠের পাশে গিয়ে দাড়াই তখন আমার আশে-পাশে আমার গ্রামের আর কোন লোক দেখিনি। ঐদিন ১১টার পরে বাড়ীতে ফিরে গিয়ে দেখি বাড়ীর সকল লোককে দেখতে পাইনি। আমাদের বাড়ীর লোকজন গ্রামের পাশের নদীর অপর পাড়ে চলে গিয়েছিল বলে আমি শুনেছি। ঐদিন আমি ১১টার পরে বাড়ী এসে এক গ-াস পানি খেয়ে আবার ঐ মাঠের পাশে চলে যাই ঐ সময় আমার সাথে লাল চাঁন ছিল। মাঠে গিয়ে দেখি অনেক লোক। লাল চাঁন এখনও জীবিত আছে। লাল চাঁনের বাবার নাম মোহর চাঁন। হিন্দু মহল-া এবং মাঠের পাশের মহল্লায় চারদিকে আগুন লেগেছিল। ঐ দুই মহল-ার লোকজন আগুন লাগার সময় কোথায় কোন দিকে গিয়েছিল বলতে পারবোনা। অন্য মহল্লার লোকজনরা গোলাগুলির আওয়াজে পালিয়ে যায়, আগুন নিভাতে আসার প্রশ্নই আসেনা। ইহা সত্য নয় ঘটনার দিন অন্য সবার মত আমিও গোলাগুলির আওয়াজ শুনে পালিয়ে যাই। ইহা সত্য নয় যে, ঘটনার দিন গোলাগুলির আওয়াজ শুনে আমি ঘটনার দিকে যাইনি। আমার বাড়ীতে আমার বাবা-মা'র পাশের র□মে আমি ঘুমাতাম। আমার বয়সি কেউ ঘটনার দিন গোলাগুলির আওয়াজ শুনে আমি যেদিকে গিয়েছিলাম সেদিকে যায়নি। ইহা সত্য নয় যে, ঘটনার সময় আমি ছোট ছিলাম বিধায়

গোলাগুলির শব্দ এবং চারিদিকে আগুন দেখে আমার বাবা-মা আমাকে কোলে করে নদীর ওপারে চলে যায় এবং আমার চাচাত ভাই-বোনেরাও সেখানেই চলে যায়। ইহা সত্য নয় যে, ঘটনার সময় আমার বয়স ১০/১২ বছর ছিল এবং আমি তখন প্রাইমারী স্কুলে পড়তাম। তখন আমি কৃষি কাজ করতাম। ইংরেজী ১২ মাসের নাম আমি বলতে পারিনা। ইংরেজী সংখ্যা ১-১০০ পর্যন্ড়ে গননা করতে পারিনা। বাংলা পত্রিকা মোটামুটি পড়তে পারি। ইহা সত্য নয় যে, ২৫ নভেম্বর,১৯৭১ তারিখটি আমি শেখানো মতে বলেছি। আমি আমার বিয়ের তারিখ বলতে পারবোনা। আমার বাবার মৃত্যুর তারিখটি আমি বলতে পারবোনা তবে, সন মনে আছে। আমার ৫ ছেলে ২ মেয়ে। আমার ছেলে-মেয়েদের জন্ম তারিখ আমি বলতে পারবোনা। বিয়ে আমি একটাই করেছি দুইটি নয়।

২৫ নভেম্বর, ১৯৭১ সালে সূর্য উঠার সাথে সাথে আমি বাড়ী থেকে বেরিয়ে যাই সময়টা বলতে পারবোনা। ঘাটার চর স্কুলটি তখন প্রাইমারী স্কুল ছিল। স্কুলের পূর্ব দিকে খোলা খেলা-ধুলার মাঠ। ঘটনার সময় আমাদের গ্রামে বিদ্যুৎ সংযোগ ছিলনা। রাতে বাড়ীতে কুপি বাতি বা হারিকেন জ্বালানো হতো। ঐ সময়ে আমাদের বাড়ীর সাথে লাগোয়া উত্তরে লুদ্দু মিয়ার বাড়ী, দক্ষিণে জমি ছিল, পূর্ব পাশে কফিল উদ্দিন মাতবরের বাড়ী, পশ্চিম পাশে কৃষি জমি ছিল। মোক্তার হোসেনের বাড়ী চিনি তার বাড়ী আমার বাড়ী থেকে পূর্ব দিকে তিন বাড়ী পরে। মোক্তার হোসেন সাহেবরা শুনেছি পরিবার পরিজন নিয়ে নারায়নগঞ্জে থাকেন, গ্রামে থাকেন না। ঐ ঘটনার সময় মোক্তার হোসেন তার পরিবার নিয়ে গ্রামে বসবাস করতেন। ঐ সময় মোক্তার হোসেন সাহেবের একটি ছেলেকে আমি দেখেছি তখন তার বয়স অনুমান ২ বছর ছিল। মোক্তার হোসেন তখন সরকারী চাকরী করতেন তবে, কি চাকরী করতেন তা আমি বলতে পারবোনা। মোক্তার হোসেনরা ছিল দুই ভাই এবং দুই বোন তারা সকলে একই বাড়ীতে থাকতো। মোক্তার হোসেন জয়নাল ডাক্তারের শ্যালক ছিলেন। ঘটনার দিন আনুমানিক দুইশত পাক বাহিনী ঐ ঘটনাস্থলে আসে এবং সংগে রাজাকারও ছিল। পাক বাহিনীর সদস্যদেরকে আমি হেটে যেতে দেখেছি, তারা নদীতে গিয়ে বড় লঞ্চে উঠে। আমার বাবা-মা, ভাই-বোন যে নদী পার হয় সেটি বুড়িগঙ্গার শাখা নদী ছিল। এই নদীতে তখন ছোট ছোট নৌকা দিয়ে পারা-পার হতো। যেহেতু নদীটি ছোট ছিল নদীর এপার থেকে ওপার দেখা যেতো। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।　　　　স্বা/-অস্□ষ্ট

স্বাক্ষর/-অস্□ষ্ট　　　　১২/৮/১২

১২/৮/১২　　　　চেয়ারম্যান

আন্ড়ের্জাতিক অপরাধ ট্রাইব্যুনাল-২

তারিখঃ ১৩/০৮/২০১২ খ্রিঃ (পুনরায় জেরা শুর□)

১৯৭১ সালে আমাদের গ্রামে পাঁচ মহল-য় আনুমানিক এক হাজার লোক বসবাস করতেন। গত নির্বাচনে আমি ভোট দিয়েছি। মোঃ ফরহাদ হোসেন, মোঃ শহীদুল ইসলাম, মোঃ ফরিদ হোসেন এরা আমার ছেলে। গত নির্বাচনের সময় আমার তিন ছেলেও ভোট দিয়েছে। আমার তিন ছেলের জন্ম তারিখ সহ অন্যান্য তথ্যাদি ভোটার লিষ্টে সঠিকভাবে দেওয়া আছে কিনা

আমি বলতে পারবোনা। ভোটার লিষ্টে উলে-খিত আমার তিন ছেলের তথ্যাদি আমি দেইনি। আমার তিন ছেলেই লেখাপড়া জানে। ভোটার লিষ্টে আমার যে জন্ম তারিখ দেওয়া আছে তা সঠিক কিনা আমি বলতে পারবোনা। ভোটার লিষ্টে আমার নাম ও ঠিকানা সঠিকভাবে আছে।

ঘটনার দিন ষাট জন লোক যে মারা গেছে তাদের পরিবারের সদস্যরা গ্রামেই ছিল। ঐ সকল পরিবারের সদস্যরা কেউ কেউ বেঁচে আছেন কেউ কেউ মারা গেছেন। ঐ ষাট জন লোক কার ছেলে কার ভাই সবার নাম বলতে পারবোনা দুই চার দশ জনের নাম বলতে পারবো। লাশ সনাক্ত করার সময় মৃত ব্যক্তিদের আত্মীয় সজন কেউ কেউ এসেছিল, অনেকেই আসেনি সবাই কান্না-কাটি করছিল। লাশ যার যার বাড়ীতে নিয়ে যায়নি, মাঠের থেকেই সবাইকে কবর দিয়েছে। যেমনঃ তৈয়ব আলীর দুই ভাই মারা গেছে, তৈয়ব আলী জীবিত আছে, সমীর উদ্দিন সমু জীবিত আছেন তার একভাই ঐ ঘটনায় মারা গেছে, উকিল উদ্দিন জীবিত আছে তার ভাই মোজারী ঐ ঘটনায় মারা যায়। আমাদের এলাকায় মৃত ব্যক্তিদের নামের স্মৃতি ফলক আছে এই মুহুর্তে তাদের বা তাদের আত্মীয়দের সকলের নাম মনে নেই। উপরে যে তিন জনের নাম বলেছি এর বেশী নাম এই মুহুর্তে বলতে পারবোনা। আমি জানিনা যে ঘটনার শিকার ঐ ষাট জন মৃত ব্যক্তির কোন আত্মীয়-স্বজন এই মামলায় সাক্ষী আছেন কিনা। আমি জুন মাসে তদন্তকারী কর্মকর্তার নিকট জবানবন্দী দিয়েছি।

ঘটনার পর আমি ৭/৮ জন লোককে ঘটনাস্থলে ডেকে এনেছিলাম তারা হলেনঃ লাট মিয়া, ইসলাম, শুক্কুর আলী, তমিজউদ্দিন মাতবর, নাজিমউদ্দিন, বোরহান উদ্দিন এবং আরো দু'চারজন। উলে-খিত ব্যক্তিগণ এই মামলায় সাক্ষী আছেন কিনা আমি বলতে পারবোনা। আমি ঘটনার সময় যে গাছের নিচে লুকিয়েছিলাম সেই গাছটি তদন্তকারী কর্মকর্তাকে দেখাইনি তবে গাছটি সমন্ধে বলেছি। তদন্তকারী কর্মকর্তা আমাকে ঢাকায় তার অফিসে জিজ্ঞাসাবাদ করেছে। আমাকে চিঠির মাধ্যমে তদন্তকারী কর্মকর্তা খবর দিয়েছিল। এই মুহুর্তে ঐ চিঠিটা আমার সংগে নাই। মুক্তিযোদ্ধা কমান্ডার মোজাফফর খানের বাড়ী আমার বাড়ী থেকে পশ্চিম দিকে দেড় কিঃ মিঃ দুরে। আমার বাড়ী এবং মোজাফফর খানের বাড়ীর মধ্যে বিল এবং জমি আছে। বর্তমানে ঐসব ফাকা জায়গায় বাড়ী-ঘর হয়েছে। মোজাফফর খানের নিকট যখন ঘটনা বর্ণনা করি তখন সেখানে উপস্থিত ছিল গ্রামের লালচাঁন, মালেক, খালেক ভাই, শহীদুল ইসলাম, রাজা মিয়া সহ আরো অনেকে। এদের বেশীরভাগ লোকই জীবিত আছে। ভাওয়াল খান বাড়ী হলো মোজাফফর খানের বাড়ী।

ইহা সত্য নয় যে, তদন্তকারী কর্মকর্তার নিকট বলিনি যে, আমাদের গ্রামে যে পাঁচটি মহল্লা আছে বা গুলির শব্দে আমার ঘুম ভাঙ্গে বা বাড়ীর নামায় গিয়ে দেখি চারিদিকে আগুন জ্বলছে বা উত্তর দিক থেকে গুলির শব্দ শুনতে পাই বা আস্তে আস্তে গুলির শব্দ শুনে আমি উত্তর দিকে আগ বাড়াই বা ঘাটার চর স্কুলের মাঠের কাছে গিয়ে থামি বা আমাদের এলাকায় ঝোপ-ঝাড় ছিল বা আমি একটি গাছের আড়ালে লুকাই বা পাক বাহিনীর সাথে আরো কয়েকজন পাঞ্জাবি-পাজামা পরা লোক ছিলেন তাদের মধ্যে একজন ছিলেন আবদুল কাদের মোল্লা।

ইহা সত্য নয় যে, ঘটনার দিন আমি ঘটনাস্থলে আবদুল কাদের মোল্লাকে দেখি নাই বা তিনি সেখানে যান নাই।

ইহা সত্য নয় যে, তদন্তকারী কর্মকর্তার নিকট বলিনি যে, আবদুল কাদের মাল্লার হাতে রাইফেল ছিল এবং সেও গুলি করলো।

ইহা সত্য নয় যে, ঘটনার দিন কাদের মাল্লার হাতে কোন রাইফেল ছিলনা বা তিনি গুলিও করেন নাই।

ইহা সত্য নয় যে, তদন্তকারী কর্মকর্তার নিকট বলিনি যে, ২৫ নভেম্বর ঘটনার পূর্ব রাতে জয়নাল ডাক্তারের বাড়ীতে আবদুল কাদের মাল্লা মিটিং করেছে বা জয়নাল ডাক্তারের বাড়ী আমার বাড়ী থেকে পূর্ব দিকে তিন বাড়ী পরে বা ঘটনার দিন ১১ টার পরে পাক বাহিনী ঘটনাস্থল ত্যাগ করার পর জানতে পারি তাদের সংগীয় পাঞ্জাবী-পাজামা পরা খাটো লোকটির নাম আবদুল কাদের মাল্লাসহ তাদের সংগে আরো কয়েকজন বোরখা পরা লোক ছিল যাতে তাদেরকে সহজে চেনা না যায়।

আমি আমার এলাকায় ওয়ার্ড আওয়ামীলীগের সভাপতি। আমার ওয়ার্ড আওয়ামীলীগের সম্□াদক ইসলাম উদ্দিন। আমার ছেলেরা রাজনীতি করেনা। যে মহল-ায় হিন্দুরা বসবাস করতো সেখান থেকে হিন্দুরা অনেকেই চলে গেছে বর্তমানে ঐখানে হিন্দু-মুসলমান একত্রে বসবাস করে। বর্তমানে আমাদের এলাকায় অধিবাসীদের মধ্যে শতকরা ৫০ জন আওয়ামীলীগের সমর্থক। বর্তমানে আমাদের গ্রামের পাঁচ মহল-ায় লোক সংখ্যা প্রায় পাঁচ হাজার।

ইহা সত্য নয় যে, আসামী আবদুল কাদের মাল্লাকে ঘটনার দিন বা ঘটনার আগে ও পরে দেখিনি । ইহা সত্য নহে যে প্রসিকিউশনের দেখানো মতে আবদুল কাদের মোলাকে ডকে সনাক্ত করেছি। ইহা সত্য নয় যে, বর্তমান সরকারের দলীয় লোক হওয়ায় তাদের শেখানো মতে আসামীর বির□দ্ধে মিথ্যা সাক্ষ্য দিলাম। ইহা সত্য নয় যে, ঘটনায় সময় আবদুল কাদের মোল-া পাঞ্জাবি-পাজামা পরতেন না। আমি তাকে ঘটনার সময়ে পাঞ্জাবি-পাজামা পরা অবস্থায় দেখেছি। ইহা সত্য নয় যে, ঘটনার সময় আমি ঝোপেড় আড়ালে লুকিয়ে ঘটনা দেখিনি। (জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট

স্বাক্ষর/-অস্□ষ্ট ১৩/৮/১২

১৩/৮/১২ চেয়ারম্যান

আন্©র্জাতিক অপরাধ ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor – Versus- Abdul Kader Molla.

Deposition of witness No. 08 for the Prosecution aged about 53 years, taken on oath on Monday the 13th August 2012.

My name is Nur Jahan.

My father's name/Husband name is Late Nabi Hossain @ Bulu

My mother's name is ------------- age-------- I am by religion ------- My home is at

village--------- Police Station ----------, District ----------, I at present reside in ----,

Police Station----------, District ------------, my occupation is ----------------

আমার নাম নূর জাহান, আমার স্বামীর নাম শহীদ নবী হোসেন বুলু। মুক্তিযুদ্ধ চলাকালীন সময় আমার বয়স ছিল ১৩ বছর। তখন আমার সন্তান গর্ভে ছিল। মুক্তিযুদ্ধ চলাকালে নভেম্বর মাসের ২৫ তারিখে একটি ঘটনা ঘটে। আমি তখন আমার স্বামীর সংগে ঘাটার চর গ্রামে থাকতাম। ঐদিন ফজরের নামাজে পর গোলাগুলি শুর□ হয়। গোলাগুলির শব্দশুনে আমি এবং আমার স্বামী দু'জনেই খাটের নিচে লুকাই। বসে থাকার বেশ কিছুক্ষণ পরে গোলাগুলি বন্ধ হয়। গোলাগুলি বন্ধ হওয়ার পরে বের হয়ে দেখি কোথায় কি হ□ছ। তখন বন্ধের(মাঠ) দিক থেকে দেখি আর্মিরা বাড়ীর দিকে আসিতেছে। এরপর আমার স্বামী আমার চাচা শ্বশুর মোজাম্মেল হকের বাসায় যায়। ঐখানে যাওয়ার পর আবার গোলাগুলির শব্দ শুনতে পাই। তখন আমি একবার ঘরের বাইরে যাই আবার ঘরে ঢুকি । এমন সময় একটু পরে আমার মামী আইসা আমার শাশুড়িকে বলে, " বুলুর মারে বুলুর মা তোর বুলু তো নাই।" এই কথা শুনে আমি চিৎকার করে দৌড়িয়ে আমি আমার চাচা শ্বশুরের বাসার দিকে যাই। ঐ খানে গিয়ে দেখি আমার চাচা শ্বশুরকে গুলি করেছে। কয়েকজন আর্মি একজন বাঙ্গালী খাটো এবং কালো বর্ণের লোককে দেখি। ঐখানে আমার স্বামীকে মাটিতে পড়ে থাকতে দেখি। তখন আমি চিৎকার করে আমার স্বামীকে ধরতে যাই। তখন ঐ যে বাঙ্গালী লোকটির কথা বললাম তিনি আমাকে একটি রাইফেলের মত জিনিস তাক করে আমাকে ঐখান থেকে সরে যেতে বলে-। ভয়ে আমি ঘরে দৌড়ে চলে যাই। তখন সাড়ে দশটা কি এগারোটার পরে আমি আমার স্বামীকে উবু হয়ে পড়ে থাকা অবস্থা থেকে উঠাই। তখন আমি দেখতে পাই আমার স্বামীর মুখে এবং কপালে মাটি, তার বুকে হাত দিয়ে দেখি সেখানে রক্ত। তারপর আমি চিৎকার করে কাঁদতে থাকি এবং আমার শ্বাশুড়িকে খবর দিলাম আসার জন্য। তারপর আমার স্বামীকে ৫/৬ জনে ধরে নিজের বাসায় নিয়ে যাই। ঐ ঘটনায় ঘাটার চর গ্রামে প্রায় ৫০/৬০ জন লোক মারা গেছে বলে শুনেছি। ঐ ঘটনায় জয়নাল ডাক্তার ও মুক্তার হোসেন ছিল। আমার শ্বশুরের মুখে শুনেছি জামায়াতের কাদের মাল্লানামে এক লোক আমার স্বামীকে মেরে ফেলেছে। আমি এই কথাটি আমার শ্বশুর লুদ্দু মিয়া ছাড়া অনেকের কাছ থেকে শুনেছি, গ্রামের মজিদ পালোয়ানের কাছেও শুনেছি। আবদুল কাদের মোল-াকে ডকে সনাক্ত। তখন তার ছোট চুল ছিল, দাঁড়ি ছিলনা।

XXX (জেরা)ঃ

আমার বাবার বাড়ী ঘাটার চর গ্রামেই। আমার ফুপাত ভাইয়ের সংগে আমার বিয়ে হয়েছিল। আমি লেখা পড়া করিনি। আমি স্কুলে যাইনি তবে কোরান শরীফ পড়েছি।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট

স্বাক্ষর/-অস্□ষ্ট ১৩/৮/১২

১৩/৮/১২ চেয়ারম্যান

আন্⊕র্জাতিক অপরাধ ট্রাইব্যুনাল-২

তারিখঃ ২৬/০৮/২০১২ খ্রিঃ অপরাহ্ন ২.৩৫মিঃ (পুনরায় জেরা শুর□)

আমার বাবা-মা জীবিত নাই। আমরা দুই ভাই তিন বোন। আমাদের গ্রামে পাঁচটি মহল্লার মধ্যে খালপাড় একটি মহল্লার নাম। এই খালপাড় মহল্ল্যার মধ্যেই আমাদের বাড়ী। আমার ভাই-বোনদের মধ্যে আমিই সবার বড়। গত ২০০৮ সালের নির্বাচনে আমি আওয়ামীলীগের প্রার্থীকে ভোট দিয়েছি। ঢাকাতে আমি পরিবাগ মহল্লায় থাকি। আমি বাসাবাড়ীতে ঝি-য়ের কাজ করি। ২০০৮ সালের আগে থেকেই আমি ঢাকায় ভোট দিয়ে আসছি। বর্তমানে যে বাসায় কাজ করি সে বাড়ীর মালিকের নাম ইঞ্জিনিয়ার সাধন দাস। ভাদুরী টাওয়ার এ-১, পরীবাগ, ঢাকাএ ইঞ্জিনিয়ার সাহেব বসবাস করেন। আমার বিয়ে তিনটা হয়েছিল। বর্তমানে আমার স্বামী নাই। আমার দ্বিতীয় স্বামীর নাম ছিল লাট মিয়া। উনি সর্প দংশনে মারা গেছেন। তৃতীয় স্বামীর নাম নূরুল ইসলাম, তার বাড়ী নোয়াখালী। ঘাটারচর খালপাড় মহল্লায় এখন আনুমানিক হাজার তিনেক লোক বাস করে। আমার বাপ-চাচাদের মধ্যে কেহ জীবিত নাই। বর্তমানে আমার তিন ঘরে তিন জন ছেলে-মেয়ে আছে। প্রথম ঘরে মেয়ে, দ্বিতীয় এবং তৃতীয় ঘরে একজন করে ছেলে আছে। আমার মেয়েকে বিয়ে দিয়েছি, দুইছেলে খালপাড়ে থাকে ওরা আমার সাথেই আছে। আমার দুই ছেলেই লালমাটিয়া আড়ংয়ের পিছনে উদ্দীপণ স্কুলে চাকুরী করে। আমার গ্রামের বাড়ী আমার ছেলেরাই দেখাশুনা করে। আমার গ্রামের বাড়ীর ভোটার লিষ্টে আমার নাম আছে। পরে বলেন গ্রামের বাড়ীতে ভোটার লিষ্টে আমার নাম আছে কিনা তা জানিনা। মজিদ পালোয়ানের বাড়ী হিন্দু পাড়ার সাথে। খালপাড় থেকে হিন্দুপাড়া মহল্লা পশ্চিম-উত্তর কোনায়, তবে কত দুর তা বলতে পারবোনা। আমাদের বাড়ী থেকে মজিদ পালোয়ানের বাড়ী হেটে যেতে ১০/১৫ মিনিট সময় লাগে। আমার বাড়ী ও মজিদ পালোয়ানের বাড়ীর মাঝখানে বহু বাড়ী-ঘর আছে। ইহা সত্য নয় যে, মজিদ পালোয়ান এই মামলার ঘটনা সম্□র্কে আমাকে কিছু বলেন নাই।

এই মামলার তদন্তকারী কর্মকর্তা রাজ্জাক সাহেব আমাকে এই মামলার ঘটনা সম্□র্কে জিজ্ঞাসাবাদ করেছিল, তবে তারিখ মনে নাই। তদন্তকারী কর্মকর্তা আমাকে ঢাকায় বেইলী রোডে তাদের অফিসে জিজ্ঞাসাবাদ করেছে। আমাকে তদন্তকারী কর্মকর্তা একদিনই জিজ্ঞাসাবাদ করেছে। ইহা সত্য নয় যে, আমি তদন্তকারী কর্মকর্তার নিকট আমার বয়স ঘটনার সময় ১৩ বছর ছিল একথা বলি নাই। প্রতিমাসে দুই/তিন বার আমি গ্রামের বাড়ী যাই। ইহা সত্য নয় যে, ঘটনার সময়

আমার গর্ভে সন্তান ছিল একথা আমি তদন্তকারী কর্মকর্তার কাছে বলি নাই। ইহা সত্য নয় যে, ঘটনার দিন গোলাগুলির শব্দ শুনে আমি এবং আমার স্বামী দুজনে খাটের নিচে লুকায় একথা তদন্তকারী কর্মকর্তার কাছে বলিনি। ইহা সত্য নয় যে, খাটের নিচে বসে থাকার বেশ কিছুক্ষণ পরে গোলাগুলি বন্দ হয় এবং বাহির হয়ে কোথায় কি হচেছ দেখি একথা তদন্তকারী কর্মকর্তার কাছে বলিনি। ইহা সত্য নয় যে, আমি তদন্তকারী কর্মকর্তার নিকট বলিনি যে, তখন বন্দের (মাঠ) দিক থেকে দেখি আর্মিরা বাড়ী দিকে আসিতেছে বা ঐখানে যাওয়ার পর আবার গোলগুলির শব্দ শুনতে পাই বা তখন আমি বাড়ীর বাইরে যাই আবার ঘরে ঢুকি বা ঐখানে গিয়ে দেখি আমার চাচা শ্বশুরকে গুলি করেছে বা কয়েকজন আর্মি একজন বাঙ্গালী খাটো এবং কালো বর্নের লোককে দেখি বা তখন আমি চিৎকার করে আমার স্বামীকে ধরতে যাই বা তখন ঐ যে বাঙ্গালী লোকটির কথা বললাম তিনি আমাকে একটি রাইফেলের মত জিনিস তাক করে আমাকে ঐখান থেকে সরে যেতে বলে-া বা ভয়ে আমি ঘরে দৌড়ে চলে যাই। ইহাও সত্য নয় যে, আমি তদন্তকারী কর্মকর্তার নিকট বলিনি যে, তখন সাড়ে দশটা কি এগারোটার পরে আমি আমার স্বামীকে উবু হয়ে হয়ে পড়ে থাকা অবস্থা থেকে উঠাই বা তখন আমি দেখতে পাই আমার স্বামীর মুখে ও কপালে মাটি, তার বুকে হাত দিয়ে দেখি তার বুকে রক্ত বা তারপর আমি চিৎকার করে কাঁদতে থাকি এবং আমার শ্বাশুড়ীকে খবর দিলাম আসার জন্য। ইহাও সত্য নয় যে, আমি তদন্তকারী কর্মকর্তার নিকট বলিনি যে, তারপর আমার স্বামীকে ৫/৬ জন ধরে নিজের বাসায় নিয়ে যাই বা ঐ ঘটনায় জয়নাল ডাক্তার ও মুক্তার হোসেন ছিল বা আমার শ্বশুরের মুখে শুনেছি জামায়াতের কাদের মোল্লা নামে এক লোক আমার স্বামীকে মেরে ফেলেছে। ইহাও সত্য নয় যে, আমি তদন্তকারী কর্মকর্তার নিকট বলিনি যে,আমি এই কথাটি আমার শ্বশুর লুদ্দু মিয়া ছাড়াও অনেকের কাছে থেকে শুনেছি বা গ্রামের মজিদ পালোয়ানের কাছেও শুনেছি। ইহাও সত্য নয় যে, আমি তদন্তকারী কর্মকর্তার নিকট বলিনি যে, ঘটনার সময় আসামী আবদুল কাদের মোল্লার চুল ছোট ছিল বা দাড়ি ছিলনা। আমার শ্বশুর লুদ্দু মিয়ার দুই ছেলে দুই মেয়ে ছিল। দুইছেলে এবং দুই মেয়ের ঘরে ছেলে সন্তানরা জীবিত আছে। ০৩/৫/১৯৭৬ তারিখ আমার জন্ম তারিখ কিনা তা আমি এতটুকু জানিনা। আমি আমার জন্ম তারিখ বলতে পারবোনা। আমার বাবা-মা কত তারিখ-সনে মারা গেছে তা বলতে পারবো। আমার স্বামী লাট মিয়া এবং নূরুল ইসলাম তারা কত তারিখে মারা গেছে আমি বলতে পারবোনা। তদন্তকারী কর্মকর্তা আমার বয়স সম্পর্কে জিজ্ঞাসাবাদ করেছিল। আমার স্বামীকে যেখানে হত্যা করা হয়েছিল সেই ঘটনাস্থলটি আমি তদন্তকারী কর্মকর্তাকে নিজে দেখাইনি। ইহা সত্য নয় যে, আমি তদন্তকারী কর্মকর্তার নিকট বলিনি যে,আসামী আবদুল কাদের মোল-ার বিরুদ্ধে কোন কথা বলিনি। ইহা সত্য নয় যে, পরিবাগ এলাকায় বসবাস করাকালীন সেখান থেকে ভোট দেওয়ার বিষয়াটি সত্য নয়। আমি আমার স্বামীর হত্যার ঘটনার অভিযোগে আমার এলাকার থানায় বা অন্য কোথাও কোন মামলা করিনি। ইহা সত্য নয় যে, আমি আবদুল কাদের মোল-াকে ঘটনার সময় বা পরে কখনও দেখিনি। আমি কোর্ট থেকে কোন নোটিশ পাইনি তদন্তকারী অফিসার আমাকে বলেছিল সাক্ষী দিতে হবে। ইহা সত্য নয় যে, ঘটনার সময় ১৯৭১ সালে আমার জন্মই হয় নাই। ইহা সত্য নয় যে, আমার বর্তমান বয়স ৫৫ বছর নয়। ইহা সত্য নয় যে, আমি এই মামলায় একজন শেখানো সাক্ষী এবং সত্য চাপা দিয়ে মিথ্যা সাক্ষ্য দিলাম। (জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্পষ্ট

স্বাক্ষর/-অস্পষ্ট ২৬/৮/১২

২৬/৮/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor – Versus- Abdul Kader Molla.

Deposition of witness No. 09 for the Prosecution aged about 66 years, taken on oath on Sunday the 26th August 2012.

My name is Md. Amir Hossain Molla

My father's nameMd. Hazi Surjat Ali Molla.

My mother's name is ------------- age-------- I am by religion ------- My home is at village--------- Police Station ----------, District ----------, I at present reside in ----, Police Station----------, District ------------, my occupation is ----------------

আমার নাম মোঃ আমির হোসেন মোল্লা। পিতার নামঃ মৃত হাজি সুরজত আলী মোল্লা। গ্রামঃ দোয়ারী পাড়া, থানা বর্তমানে রূপনগর, সাবেক পল-বী, ঢাকা। আমার বাড়ী থেকে আলুবদি গ্রাম অনুমান ১৫০ গজ উত্তরে। মুক্তিযুদ্ধের সময় আমার বয়স আনুমানিক ২৪ বছর ছিল। ১৯৭১ সালের ৭ মার্চ সোহরাওয়ার্দি উদ্যানে বঙ্গবন্ধুর ভাষণ শুনতে গিয়েছিলাম। বঙ্গবন্ধুর সেই ভাষণে দেশের স্বাধীনতার জন্য, মুক্তিযুদ্ধের জন্য প্রস্তুতি নিতে বলেছিলেন। আমি তাঁর ঐ ভাষণ শুনে নিজে উদ্বুদ্ধ হয়ে আমার মিরপুর এলাকায় স্বেচছাসেবক বাহিনী গড়ে তুলি। তারপর ঢাকা বিশ্ববিদ্যালয়ের তদানিন্তন ইকবাল হলে স্বাধীন বাংলা ছাত্র সংগ্রাম পরিষদের তত্ত্বাবধানে ট্রেনিং গ্রহন করি। ঐ সময় আবদুল কাদের মোল্লা ইসলামী ছাত্র সংঘের ৭০/৮০ জন লোককে নিয়ে তিনি মিরপুরে পাকিস্তান রক্ষার জন্য বিহারীদের ট্রেনিং দিতেন। তখন দেশের অবস্থা ভয়াবহ দেখে ২৩/২৪ মার্চের্রে দিকে আমি আমার পিতা-মাতা ও পরিবারের সদস্যরা সাভারে প্রথমে একটা স্কুলে পরে এক আত্মীয়ের বাড়ীতে আশ্রয় নেই। ২২/২৩ এপ্রিল আমি আমার বাবাকে নিয়ে আমাদের ধান কাটার জন্য আমাদের গ্রাম আলুবদির কাছে আসি। ধান কেটে রাত্রি যাবন করি আলুবদি গ্রামে আমার খালু রুস্তম আলী ব্যাপারীর বাড়ীতে। ২৪ এপ্রিল রাত্র ভোরবেলা ফজরের আযানের সময় আলুবদি গ্রামের পশ্চিম দিকে তুরাগ নদীর পাড়ে হেলিকপ্টার দিয়ে পাঞ্জাবিরা এসে নামে। পূর্বদিক

থেকে আবদুল কাদের মোল-ার নেতৃত্বে এক দেড়শো বিহারী ও বাঙ্গালী এবং পাঞ্জাবিও সংগে ছিল তারা এসে চর্তুদিকে এলোপাথাড়ি গুলি করে তখন বেশ কিছু লোক সেখানে মারা যায়। এরপর গ্রামের ভিতরে প্রবেশ করে বাড়ী বাড়ী থেকে প্রায় ৬৪/৬৫ জন লোক ধরে এনে গ্রামের উত্তর দিকে দাঁড় করায় এবং এই গ্রামে ধান কাটতে আসা প্রায় ৩০০/৩৫০ জন লোককেও ধরে এনে ঐ একই জায়গায় লাইন করে দাঁড় করায় এবং তাদের গুলি করে। কাদের মোল্লার হাতেও রাইফেল ছিল, আক্তার গুন্ডার হাতেও রাইফেল ছিল, পাঞ্জাবিদের সাথে তারাও গুলি করে এবং সেখানে আনুমানিক ৪০০ জন লোক নিহত হয়। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্□ষ্ট

২৬/৮/১২

তারিখঃ ২৭/০৮/২০১২ খ্রিঃ (পুনরায় জবানবন্দী শুর□)

এই ঘটনায় আমার মোট ২১ জন আত্মীয় স্বজন মারা গেছে। যারা মারা গেছেন তাদের মধ্যে আমার খালু র□স্তম ব্যাপারী, আমার মামা সলিম মোল্লা, মামাত ভাই আবদুল আওয়াল মোল্লা, আমার আরেক মামা করিম মোল্লা, মামাত ভাই জয়নাল মোল-া, আমার আরো দুই মামাত ভাই ফজল হক এবং অজল হক, আমার এক তালই কাশেম দেওয়ান, আমার আরেক জেঠাতো ভাই নবী মোল্লা, চাচাত ভাই জোরা মোল্লা, মামাত ভাই লাল চাঁন ব্যাপারী, আরেক মামাত ভাই সুনু মিয়া, চাচা নওয়াব আলী, আরেক চাচা মোখলেছুর রহমান, আমার এক ভাবী ইয়াসমিন বানু প্রমুখ মারা গেছে। এই ঘটনার পরে আমি জুন মাসের প্রথম দিকে ভারতের আসাম রাজ্যের লাইলাপুরে চলে যাই এবং সেখানে মুক্তিযুদ্ধের ট্রেনিং গ্রহন করি। ঐখান থেকে ট্রেনিং নিয়ে মেলাঘরে আসি এবং সেখান থেকে অস্ত্র নিয়ে আগষ্ট মাসের প্রথম দিকে বাংলাদেশে প্রবেশ করি। আমাদের দেশ স্বাধীন হয় ১৬ ডিসেম্বর, ১৯৭১। কিন্তু মিরপুর তখনও স্বাধীন হয়নি। তখন মোহাম্মদপুর ফিজিক্যাল ইন্সষ্টিটিউট থেকে কাদের মোল্লার নেতৃত্বে প্রায় ৭/৮শত আল-বদর বাহিনীর সদস্য এবং কিছু পাঞ্জাবি মিরপুর এসে বিহারীদের সংগে একত্রিত হয়ে পাকিস্তানী পতাকা উড়ায় এবং তারা আবরো বাংলাদেশকে পাকিস্তানে রূপান্@রিত করতে চায়। এর প্রেক্ষিতে ১৮ ডিসেম্বর, ১৯৭১ গ্র□প কমান্ডার হানিফ ভাই এবং সহকারী কমান্ডার রফিকুল ইসলামের নেতৃত্বে জহির উদ্দিন বাবর, মোমিনুল হক এবং আমি সহ প্রায় দেড়শোর মত মুক্তিযোদ্ধা মিরপুরস্থ জন্দি রাডার ক্যাম্□ আক্রমন করি এখানে কাদের মোল-ার আল-বদর বাহিনী ও পাঞ্জাবিদের আস্তানা ছিল। ঐখানে আক্রমন করলে ঐ আস্তানা থেকে ভারী অস্ত্র সস্ত্র দিয়ে আমাদের উপর আক্রমন করে। ঐ সময় আমার সাথীযোদ্ধা আবদুস ছাত্তার তুরাগ নদীর পাড়ে শহীদ হন এবং আমার ডান হাটুতে এবং ডান বাহুতে গুলিবিদ্ধ হয়ে আহত হই, তখন আমরা পিছু হটি। তারপর ৩১ জানুয়ারী আমার সাথী মুক্তিযোদ্ধারা ভারতীয় মিত্র বাহিনীর সহায়তায় মুক্তিযুদ্ধা হাই কমান্ডের নেতৃত্বে চর্তুদিক থেকে মিরপুর আক্রমন করি এবং পাক সেনা ও কাদের মোল-ার নেতৃত্বাধিন আল-বদরদের পরাজিত করে মিরপুরে স্বাধীন বাংলার পতাকা উড়ানো হয়।

আমি ১৯৭০ সালের নির্বাচনে আওয়ামীলীগ প্রার্থী এ্যাডভোকেট জহির উদ্দিন এর পক্ষে নৌকা মার্কার প্রচার চালাই তখন আবদুল কাদের মোল্লা গোলাম আযমের পক্ষে তার প্রতীক দাড়ি পাল-ার পক্ষে প্রচারনা চালায়। তখন আবদুল কাদের মোল্লা ইসলামী ছাত্র সংঘের নেতা ছিলেন। আবদুল কাদের মোল-া ডকে সনাক্ত। (সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট

স্বাক্ষর/-অস্□ষ্ট ২৭/৮/১২

২৭/৮/১২ চেয়ারম্যান

আন্@র্জাতিক অপরাধ ট্রাইব্যুনাল-২

তারিখঃ ০২/০৯/২০১২ খ্রিঃ সময় দুপুর ২.০০ ঘটিকাঃ

XXX জেরাঃ ২০০৮ সালের নির্বাচনে আমি ভোটার ছিলাম এবং ভোট দিয়েছি। সংশি-ষ্ট ভোটার লিষ্টে আমার নাম, ঠিকানা জন্ম তারিখ সঠিক আছে। ১৯৭২-৭৩ সালে এল এ কেস নং-৫ ম—লে আমাদের এলাকার বহু সম্□ত্তি বা জমিজমা সরকার অধিগ্রহন করেছিল। আমরা এই অধিগ্রহন কৃত সম্□ত্তিতে আমরা বসবাস করতাম। অধিগ্রহনকৃত সম্□ত্তির মালিকদের ক্ষতিপুরন প্রাপ্তি ও অন্যান্য সুযোগ সুবিধা পাওয়ার ব্যাপারে আমরা অন্দোলন করেছিলাম কিন্তু সরকারের নিকট থেকে কোন প-ট পাইনি। ১৯৭৩ সালের নির্বাচনে আমি আওয়ামী লীগের সমর্থক ছিলাম। ঐ সময় বঙ্গবন্ধু শেখ মুজিবুর রহমান সরকার প্রধান ছিলেন। আমি মুক্তিযোদ্ধা হিসেবে আন্দোলনের দাবী দাওয়া নিয়ে বঙ্গবন্ধুর নিকট যাইনি। আদালতের জিজ্ঞাসায় সাক্ষী বলেন আমরা আন্দোলন করেছিলাম ১৯৭৭ সালে তাই বঙ্গবন্ধুর জীবদ্দশায় তাঁর নিকট যাওয়ার প্রশ্নই উঠে না। এখনও আমরা অধিগ্রহনকৃত সম্□ত্তিতেই পরিবার পরিজন নিয়ে বসবাস করছি। বর্নিত এল এ কেসে অধিগ্রহনকৃত সম্□ত্তি প-ট হিসেবে অনেককেই বরাদ্দ দেয়া হয়েছে। আমরা এখন পর্যন্ত কোন প-ট বরাদ্দ পাই নাই। তবে পুনর্বাসনের নিমিত্তে যে জায়গা রাখা হয়েছে সেখানেই বসবাস করছি। পুনর্বাসন প-ট হিসেবে বরাদ্দের জন্য যে জায়গা রাখা হয়েছে তা বর্নিত এল এ কেস নং-৫ এর ক্ষতিগ্রস্ত বর্হিভূত লোকদের মধ্যে দেওয়া হয়েছে বলে আমরা শুনেছি। আমরা অধিগ্রহনকৃত জমির যে জায়গায় আছি সেমি পাকা ঘর করে বসবাস করছি। এটা ঠিক নয় যে ১৯৯৬ সালের পূর্ব পর্যন্ত যখন যে দল সরকারে এসেছে সে দলকেই সমর্থন করেছি। ১৯৯৬ সালে আওয়ামী লীগ ক্ষমতায় এলে প-ট পাওয়ার জন্য আমার দাবী দাওয়া সরকারের কাছে উত্থাপন করেছিলাম। পরবর্তী সরকারের কাছে প-ট পাওয়ার জন্য কোন দাবী দাওয়া করিনি। বর্তমান সরকারের কাছেও আমরা প-ট পাওয়ার জন্য দাবী দাওয়া করেছি, প্রক্রিয়া চলছে। ইহা সত্য নয় যে, যেহেতু আমাকে প-ট প্রদানের প্রক্রিয়া চলছে বিধায় আমি অত্র মামলার প্রসিকিউশন পক্ষে সাক্ষী দিতে এসেছি।

এলাকার লোকজন আমাকে হোসেন মাল্লা বলেও ডাকে। ইহা সত্য নয় যে, আমাকে এলাকার লোক লাট ভাই হিসেবে ডাকে। আমজাদ হোসেন নামে আমার এক ভাই আছে। আমার এক ছেলের নাম মনির হোসেন মাল্লা। ইহা সত্য নয় যে, এলাকায় একটি বাহিনী আছে যার নাম মাল্লা বাহিনী এবং আমি তার প্রধান। আজ পর্যন্ত আমি কতবার জেল হাজতে

গেছি তা সঠিকভাবে বলতে পারব না। ইহা সত্য নয় যে, অপরের প-ট বিভিন্ন সময়ে বেআইনীভাবে দখল করার কারণে একাধিকবার আমাকে জেল হাজতে যেতে হয়েছে।

আমাকে যে পত্রিকাটি দেখানো হলো সে পত্রিকাটি হলো 'দৈনিক ইনকিলাব' প্রকাশের তারিখ ১৪ ডিসেম্বর, ২০০১। এই পত্রিকার অষ্টম পৃষ্ঠায় " অবশেষে গ্রেফতার হলেন পল-বীর সেই লাট ভাই আমির হোসেন মাল্লা" শিরনামে একটি খবর ছাপানো হয়েছে। এই সংবাদ শিরোনামের সংগে আমার নিজের ছবি আছে। এখানে অন্যান্য ছবিগুলো আমার ভাই আমজাদ হোসেন মাল্লা বা ছেলে মনির হোসেন মোল-ার ছবি নয়। মহিলার যে ছবিটি আছে এটা আমার ভাইয়ের বান্ধবি কিনা জানিনা। বর্নিত শিরোনামে প্রকাশিত সংবাদের কোন প্রতিবাদ করিনি। এই পত্রিকায় উলে-খ আছে যে, ২০০১ সালে আমি এলাকায় লাটভাই হিসেবে সকলের কাছে পরিচিত কথিত কুখ্যাত চাঁদাবাজ, সন্ত্রাসী, মাদকদ্রব্য ও অবৈধ অস্ত্র ব্যবসায়ী এবং বিশাল সরকারী সম্□ত্তির অবৈধ দখলকারী মোল-া বাহিনীর প্রধান আমির হোসেন মাল্লা তবে উলে-খিত প্রতিবেদনটি সম্□–র্ন মিথ্যা ও ভিত্তিহীন। এই প্রতিবেদনে উলে-খ আছে যে ১৯৭১ সালে ১৬ ডিসেম্বরের পরে মিরপুরের বিভিন্ন বাসা বাড়ীতে লুটপাট করতে গিয়ে আমি গুলিবিদ্ধ হয় তবে এই বক্তব্য সম্□–র্ন ভিত্তিহীন। এটা সত্য নয় যে, আমার এই গুলিবিদ্ধ হওয়ার ঘটনাটিকে পুজি করে মুক্তিযুদ্ধের সার্টিফিকেট সংগ্রহ করেছি। এটা সত্য নয় যে, ২০০১ সালের ১৪ ডিসেম্বর আমার ছেলে মনির মাল্লা ছাত্র দলের নেতা ছিলেন। এটা সত্য নয় যে অবৈধভাবে সরকারী সম্□ত্তি নিজ দখলে রেখে কোটিপতি হয়েছি।

মিরপুরের দুয়ারী পাড়ায় অনেক হাউজিং প্রকল্প আছে। বিচারপতি এ এফ এম আলী আসগর সাহেবের নাম আমি শুনেছি। এটা সত্য নয় যে বিচারপতি মহোদয়ের একটি প-ট আমি সহ অন্যান্যরা জোর করে দখল করেছিলাম এবং সে কারণে আমি সহ অন্যান্যদের বির□দ্ধে মামলা হয়েছিল। ১৫/০৫/২০১২ তারিখে আমি সহ ছয় জন ঐ মামলার স–ত্রে অভিযুক্ত হিসেবে নিম্ন আদালতে আত্মসমর্পন করেছিলাম এবং এই মামলায় আদালত আমাকে জেল হাজতে পাঠানো হয়েছিল। রাষ্ট্রপক্ষ এই মামলায় আমার জামিনের বিরোধিতা করেছিল। আমি জানিনা মনির□জ্জামান মিয়া নামে কোন লোক মাননীয় বিচারপতি মহোদয়ের কোন প-ট দেখাশুনা করতেন কি না। ইহা সত্য নয় যে, মাননীয় বিচারপতির প-টে মাটি ভরাটের সময় আমি চার লক্ষ টাকা চাঁদা দাবী করি। আমি যে মামলায় হাজতে গিয়েছিলাম সেই মামলার বাদীর নাম মনির□জ্জামান তবে তাকে আমি চিনি না।

আমরা পাঁচ ভাই। বড়ভাই মারা গেছে চার ভাই জীবিত আছি। আমি আমির হোসেন মোল-া, আমার ছোট আমজাদ হোসেন মাল্লা, তারপরের ভাইদের নাম হলোঃ জলিল হোসেন মোল-া ও খলিল হোসেন মাল্লা। আমার চার ছেলে যথাক্রমেঃ শাহাদাত হোসেন মাল্লা, মনির হোসেন মোল্লা, সাজ্জাদ হোসেন মাল্লাও মহব্বত হোসেন মাল্লা। আমি যে ব্যবসা করি আমার ছেলেরা একই ব্যবসা করে। এটা সত্য নয় যে, ১৪/১২/২০০১ তারিখের ইনকিলাব পত্রিকায় আমার যে কর্মকান্ডের বর্ননা করা হয়েছে এটাই আমার ব্যবসা। এটা সত্য নয় যে, সন্ত্রাসী কর্মকান্ড করা, চাঁদাবাজি, জমি দখল করা ইত্যাদি আমার ও আমার ছেলেদের পেশা।

একটি অস্ত্র মামলায় আমি অভিযুক্ত হিসেবে মাস খানেক হাজতে ছিলাম তবে এটি একটি সাজানো মামলা ছিল। মামলাটি নিস্□ত্তি হয়ে গেছে আমি খালাস হয়েছি।

এটা সত্য নয় যে, ওয়াকফ অফিসের সামনে কথিত গোলাগুলির সময় আমাকে অস্ত্রসহ পুলিশ গ্রেফতার করেছিল বা আমাকে কোর্টে প্রেরন করেছিল। এই মামলাতেও আমি খালাস প্রাপ্ত হয়েছি।

আমার ভাই আমজাদ হোসেন বি এন পি করেন। খলিল হোসেন মাল্লা জাতীয় পার্টি করেন। ১৯৭১ সালে আমি লেখাপড়া করতাম না, আমি কৃষি কাজ করতাম। ২০০৮ সালের নির্বাচনের পরে আমি এই মামলার আসামী সহ অন্যান্যদের বির□দ্ধে একটি পিটিশন মামলা করেছিলাম। ঐ মামলায় থানা-পুলিশ **তদন্ত** করে পরে তা সি আই ডি'তে যায় তারপর কি হয় জানিনা। বোটনীক্যাল গার্ডেন থেকে দোয়ারী পাড়া গ্রাম পূর্ব উত্তর দিকে আনুমানিক ৪০০/৪৫০ গজ দুরে হবে। দোয়ারী পাড়া গ্রাম উত্তর-দক্ষিণে লম্বালম্বি। ১৯৭১ সালে দোয়ারী পাড়া গ্রামে পূর্ব,পশ্চিম ও উত্তরে আবাদী জমি ছিল ।

আমাদের গ্রাম থেকে আলুবদি গ্রাম উত্তর দিকে আনুমানিক এক দেড়শো গজ দুরে। ঐ এক দেড়শো গজ জায়গা ১৯৭১ সালে আবাদী জমি ছিল। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ০২/৯/১২

স্বাক্ষর/-অস্□ষ্ট, ০২/৯/১২ চেয়ারম্যান

আন্ঃর্জাতিক অপরাধ

ট্রাইব্যুনাল-২ **তারিখঃ ০৩/৯/২০১২খ্রিঃ সময় দুপর ২.০০ ঘটিকা (পরবর্তী জেরা শুর□)ঃ**

কথিত মনির□জ্জামান কর্তৃক দাখিলী আমার বির□দ্ধে পল-বী থানা মামলা নং-১৬, তারিখঃ০৪/৪/২০১২ বর্তমানে চালু আছে। আমি মাননীয় বিচারপতি এ এফ এম আলী আসগর সাহেবের সম্□ত্তি আমি কখনও দখল করিনি এখনও করি না। আনবিক শক্তি কমিশন গৃহ নির্মান সমবায় সমিতি দুয়ারী পাড়া প্রজেক্টের আমি বর্তমান সভাপতি।

দুয়ারী পাড়া গ্রাম আংশিক অধিগ্রহন করা হয়েছে। আমাকে দেখানো ছবিতে যে দালান এর ছবি আছে তা একটি মাদ্রাসা এর পিছনে কবরস্থান আছে এবং পাশের দালানটি মসজিদ এগুলো অধিগ্রহনকৃত সম্□ত্তিতে অবস্থিত। ইহা সত্য নয় যে, আমার বাড়ী এবং মসজিদ মাদ্রাসা তৈরী করে অধিগ্রহনকৃত জমি জবর দখল করে আসছি। দৈনিক ইনকিলাবে প্রকাশিত ১৪ ডিসেম্বর,২০০১ এর সংবাদটি ছবিসহ একই তারিখের দৈনিক আজকের কাগজেও' ছাপা হয়েছিল কি না আমার জানা নাই। একই তারিখের দৈনিক যুগান্তর 'অর্ধশত মামলার আসামী লাটভাই গ্রেফতার' শিরোনামে সংবাদ প্রকাশিত হয়ে থাকতে পারে। তবে এগুলো করা হয়েছিল রাজনৈতিক উদ্দেশ্যে আমাকে নির্বাচন থেকে বিরত রাখার জন্য। যে সকল মামলার কথা বলা হয়েছে এসব মামলা থেকে আমি খালাস প্রাপ্ত হই। আমি যেখানে বসবাস করি সেই এলাকাটা সাংগঠনিকভাবে ৯২ নম্বর ওয়ার্ড, আমি ঐ ওয়ার্ড আওয়ামীলীগের সভাপতি তবে প্রশাসনিকভাবে ঐ ওয়ার্ডটি ৬ নম্বর ওয়ার্ড হিসেবে পরিচিত। এটি একটি বড় ওয়ার্ড। ১৯৮৬ সালে এরশাদ সরকারের আমলে আমাকে মুক্তিযোদ্ধা হিসেবে ঐ ওয়ার্ডের কমিশনার হিসেবে নিয়োগ দেওয়া হয় আমি এক দেড় বছর কমিশনার হিসেবে কাজ করেছি। জনৈক ছফুরা হক বিগত ২১/৪/২০০১ তারিখে

পল-বী থানায় জি ডি নং-১২০২ দায়ের করেন কি না আমি জানিনা এবং কখনও বি এন পি দল করিনি। ১৯৯৬ সালে আমি আওয়ামীলীগের পক্ষে নির্বাচনী প্রচারনার কাজ করেছি। ১৯৯৬ সালে কেয়ারটেকার সরকারের দাবীতে আওয়ামীলীগ, জামায়াতে ইসলামী এবং জাতীয় পার্টি বি এন পি'র বির□দ্ধে আন্দোলন করেছে। ঐ সময় জামায়াত বি এন পি'র বির□দ্ধে দলগতভাবে নির্বাচন করে। ইহা সত্য নয় যে, জামায়াতে ইসলামী বি এন পি থেকে আলাদাভাবে নির্বাচন করায় ১৯৯৬ সালে আওয়ামীলীগ সরকার গঠন করতে সমর্থ হয়।

কথিত মনির□জ্জামান এর দায়েরকৃত মামলায় কোন তারিখে আত্মসমর্পন করে জেল হাজতে যাই মনে নেই। ১৯৭০ সালের নির্বাচনে মিরপুর এলাকায় গোলাম আযম সাহেব একজন প্রার্থী ছিলেন। এটা সত্য নয় যে, তার পক্ষে নির্বাচনে প্রচারনায় অংশ গ্রহনের জন্য তার কাছ থেকে ৫০/-টাকা নিয়েছিলাম। ১৯৭০ সালের নির্বাচনের আগে পর্যন্থ দুয়ারীপাড়া, আলুবদি গ্রাম নিরেট অজ পাড়াগাঁ ছিল। বর্ষাকালে দুয়ারীপাড়া গ্রামের তিন দিকে এবং আলুবদি গ্রামের চারদিকে জল মগ্ন থাকত। ঐ সময় ঐ দুটো গ্রাম বর্ষাকাল চলে যাওয়ার পর এবং বোরো ধান আবাদের সময় ছাড়া বছরের বাকি সময় ঐভাবে জলমগ্ন থাকত না। ১৯৭০ সাল পর্যন্থ আমার পরিবারের সবাই কৃষি কাজ করত। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ০৩/৯/১২

স্বাক্ষর/-অস্□ষ্ট, ০৩/৯/১২ চেয়ারম্যান

আন্থর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

তারিখঃ ০৫/৯/২০১২ খ্রিঃ অপরাহ্ন ২.৫৫ মিঃ(পরবর্তী জেরা শুর□)

আনবিক শক্তি কমিশন গৃহ নির্মান সমবায় সমিতি দুয়ারী পাড়া প্রজেক্টের ৭৫ নম্বর প-ট নিয়ে ঢাকার প্রথম সহকারী জজ আদালতে দেওয়ানী মামলা নং-৫৬৭/২০০৯ হয়েছিল। ঐ মামলায় আমি বিবাদী ছিলাম। মামলাটি আপীল পর্যায়ে বিচারাধিন আছে। বিগত ২০/১০/২০১০ তারিখে ঐ মামলায় একটি অস্থায়ী নিষেধাজ্ঞার আদেশ হয়েছিল আমার বির□দ্ধে। এরপরে পল্লবী থানায় আমার বির□দ্ধে জি ডি ১৯১৯, তারিখঃ ২৩/১০/২০১১ হয়েছিল কিনা জানা নেই। এরপর ০৬/৩/২০১২ ইং তারিখে আমার বির□দ্ধে জি ডি হয়েছিল কি না জানা নেই। পল্লবী থানার মামলা নং-১৬, তারিখঃ ০৪/৪/২০১২ মামলায় আমার বির□দ্ধে চার্জশীট হয়েছিল কি না জানা নেই। পল্লবী থানা মামলা নং- ২৪, তারিখঃ ০৬/৩/২০১২ আমার বির□দ্ধে চার্জশীট হয়েছে কি না বলতে পারব না।

আমরা ১৯৯৪-৯৫ সাল থেকে কৃষি কাজ বন্ধ করে দেই। অধিগ্রহনকৃত আমাদের সম্□ত্তির ক্ষতিপুরনের টাকা আমার বাবা তুলেছেন। তিনি কোন তারিখে কতটুকু সম্□ত্তির বিপরীতে ক্ষতিপুরনের কত টাকা তোলেন তা বলতে পারব না। আমার বাবা জীবিত নাই। তিনি ২০০০ সালে মারা গেছেন, সম্ভবত মার্চ মাসে। আমার বাড়ীর গেটে আমার নামে একটি নাম

ফলক আছে। এই বাড়ীটি দোয়ারীপাড়া মৌজাস্থ অধিগ্রহনকৃত সম্□ত্তির মধ্যে। এই বাড়ীটি পুনর্বাসন প-টে, আমরা এখনও বরাদ্দ পাইনি।

১৯৭১ সালে মিরপুরের জন্দি নামক স্থানে পাক আর্মিরা রাডার ক্যাম্□ কামান স্থাপন করেছিল। এখান থেকে ২৪ এপ্রিল, ১৯৭১ সালে পাক সেনারা গোলাবর্ষন করেছিল আলুবদি গ্রামের দিকে। আমাদের ২২/২৩ বিঘা বোরো জমি ছিল। এগুলো অধিগ্রহন করা হয়নি। ১৯৭১ সালে মিরপুর এলাকায় ৭/৮টি সেকশন ছিল। ১৯৭১ সালের ২২/২৩ মার্চে আমরা গ্রাম ছেড়ে সাভারের বির□লিয়া গ্রামে চলে যাই। দোয়ারীপাড়া ও আলুবদি গ্রাম ঐ বির□লিয়া গ্রাম থেকে পশ্চিম-উত্তর দিকে আনুমানিক ২ মাইল দুরে। আলুবদি গ্রামের শফিউদ্দিন মোল-াকে চিনি। ১৯৭১ সালের ২২/২৩ মার্চে গ্রাম ছেড়ে অধিকাংশ মহিলারা ও অন্যান্যরা চলে গিয়েছিল, কিন্ত্তু শফিউদ্দিন মোল-া গ্রাম ছেড়ে গিয়েছিল কি না আমি জানি না। ঐ সময় দোয়ারী পাড়া গ্রামের সবাই ও আমরা গ্রাম ছেড়ে চলে যাই। বির□লিয়া গ্রামে আমার বড় ভাইয়ের শ্বশুর মতিলাল মিয়ার বাড়ীতে আশ্রয় নেই। আমার জেঠাতো ভাই বোন ঐ সময় কোন দিকে যায় বলতে পারব না। ঐ সময় আমাদের এলাকায় সারা বছরে কেবল বোরো ধানই আবাদ হত। সেচের মাধ্যমে বোরো ধান আবাদ হয়। পৌষ মাসে বোরো ধান লাগান হত। বৈশাখ মাসের ৫/৬ তারিখের দিকে এই বোরো ধানা কাটা আরম্ভ করতাম।

এই মামলার আসামী আবদুল কাদের মাল্লা কোথায় লেখাপড়া করত বলতে পারব না। ইহা সত্য নয় যে, ১৬ ডিসেম্বর, ১৯৭১ এর পর থেকে ৩১ জানুয়ারী, ১৯৭২ পর্যন্ত মিরপুর এলাকা ভারতীয় সেনা বাহিনীর বিহার রেজিমেন্টের নিয়ন্ত্রনে ছিল। যুদ্ধাহত ওয়ারেন্ট অফিসার মোখলেসুর রহমানকে আমি চিনি না। আমি ২ নম্বর সেক্টরে প্রথমে খালেদ মোশাররফ, পরে এ টি এম হায়দার এর অধিনে মুক্তিযুদ্ধ করেছি। ঐ সময় কোম্□ানী কমান্ডার সুবেদার মান্নানকে আমি চিনতাম না। কমান্ডার হেলাল মোর্শেদকে ১৯৭১ সালে চিনতাম না এখন চিনি।

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্□ষ্ট

০৫/৯/১২

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মিরপুর ১২ নম্বর সেকশনে পানির ট্যাংকি ছিল এবং এখনও আছে। ৩০ জানুয়ারী, ১৯৭২ তারিখে ঐ পানির ট্যাংকের কাছে কমান্ডার হেলাল মোর্শেদ তার লোকজন নিয়ে ঐখানে অবস্থান নিয়েছিলেন কি না আমি জানি না। ঐ সময় ১০ নং প্লাটুনর কমান্ডার হাবিলদার ওয়াজেদ আলী বার্কি , দ্বিতীয় ১০ নং প্লাটুনর কমান্ডার চাঁন মিয়া, তৃতীয় ১২ নং প্লাটুনর কমান্ডার সুবেদার মমিন এবং তাদের সাথে ৫৬ জন পুলিশ ছিলেন কি না আমি জানি না। উলে-খিত পুলিশদের নেতৃত্বে ঢাকার এস পি জিয়াউল হক লোদি ও ইন্সপেক্টর নুর□ন নবী ছিলেন কি না জানি না। আমি মিরপুর ১০ নং বাস ষ্টান্ডের মোড় চিনি। ঐ সময় মিরপুর ১০ নং বাস ষ্টান্ডের মোড়ে উল্লখিত ফোর্স মেশিন গান ফিট করেছিল কিনা আমার জানা নাই। ঐ সময় মিরপুর ১২ নং বাস ষ্টান্ডের কাছে পুলিশ ফাঁড়ি ছিল না। সাড়ে এগার নম্বরে পুলিশ ফাঁড়ি ছিল, এখনও আছে। ঐ সময় বর্নিত

পানির ট্যাংকির দিকে যাওয়ার পথে ঢালু জায়গা ছিল। পানির ট্যাংকির থেকে ৩০০/৩৫০ গজ দুরে মুসলিম বাজার এবং নূরী মসজিদ ছিল। পানির ট্যাংকির উত্তর পাশে অপারেশন হেড কোয়ার্টার স্থাপন করা হয়েছিল কি না আমি জানি না। পানির ট্যাংকির পাশে পাকা দেওয়াল থাকতে পারে আমার স্মরন নাই। সাংবাদিক জহির রায়হান ঐ সময় মিরপুরে গিয়েছিলেন শুনেছি, কার সাথে জানি না। আমি জানি না যে এই সমস্ত ফোর্স বিহারীদেরকে অস্ত্র জমা দেওয়ার জন্য মাইকে ঘোষণা দিয়েছিল।

১৯৭১ সালে ৭ মার্চ বঙ্গবন্ধুর ভাষণ শুনতে যাওয়ার সময় আমার সাথে ছিল ওসমান মিয়া, তারা মিয়া, ফজল হক, মহিউদ্দিন, নাসির, আবুল হাসেম, কালু মিয়া আরো অনেকে। যাদের নাম বল-াম তারা কেউ বর্তমানে জীবিত নেই। ৭ মার্চের ভাষণ শুনে উদ্বুদ্ধ হয়ে যাদেরকে নিয়ে স্বে□ছা সেবক বাহিনী গড়ে তুলি তাদের মধ্যে আমি এবং আরেক জন ছাড়া সবাই মারা গেছেন। ২১ জন সদস্য নিয়ে স্বে□ছা সেবক বাহিনী গড়ে তুলেছিলাম, তারা সবাই কৃষি কাজ করত। এরা সবাই আমার গ্রামের লোক ছিল। স্বে□ছা সেবক বাহিনীর সদস্যদের মধ্যে জীবিত একজন নাম আব্বাস বর্তমান বিদেশে আছে। এই ২১ জনের মধ্যে ২/৩জনের সন্তানরা জীবিত নেই অন্যান্যদের পরিবার ও সন্তান জীবিত রয়েছে।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্ □ষ্ট, ০৫/৯/১২

স্বাক্ষর/-অস্ □ষ্ট, ০৫/৯/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

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<u>তারিখঃ ১০/৯/২০১২ খ্রিঃ অপরাহ্ন ৩.০৫ ঘটিকা (পরবর্তী জেরা শুর□)</u>

ফজল হকের দুই ছেলে দুই মেয়ে জীবিত আছে। তার দুই ছেলে যথাক্রমে বাবু এবং কাতল। তারা মিয়ার দুই ছেলে দুই মেয়ে জীবিত আছে। ছেলেদের নাম হলো হালিম ও আলম। মহিউদ্দিনের দুই ছেলে জীবিত আছে, তাদের একজনের নাম শাহাবুদ্দিন অপর জনের নাম আলমাস। নাসিরের তিন ছেলে দুই মেয়ে জীবিত আছে। ছেলেরা হলোঃ যথাক্রমে শফিক, স্বপন ও রিপন। যে নামগুলো উপরে উলে-খ করলাম তাদের মধ্যে কেউ এই মামলার সাক্ষী কি না জানি না। এটা সত্য নয় যে, আমি কোন স্বে□ছা সেবক বাহিনী গড়ে তুলিনি বা এটা সম্পূর্ণ কাল্পনিক, মিথ্যা ও বানোয়াট।

আমি আমাদের স্থানীয় মুক্তিযোদ্ধা কামাল উদ্দিন ওরফে কালা চাঁনকে চিনি। স্থানীয় বাসিন্দা আলী আসগরকে চিনি না। ২৪ এপ্রিল, ১৯৭১ এ যে ঘটনার কথা আমি উলে-খ করেছি তার প্রত্যক্ষদর্শী হাজি আবদুল করিম ছিলেন কি না তাকে চিনি না।

র□স্তম ব্যাপারীর দুই ছেলে যথাক্রমে আনামত ব্যাপারী বয়স আনুমানিক ৫২/৫৩ ও নিলামত ব্যাপারীর বয়স আনুমানিক ৪৬/৪৭ বছর। আমার মামা ছলিম মোল্লার ঐ সময় দুই ছেলে ছিল, তাদের নাম মনে নেই। মামাত ভাইদের বয়স তখন কত ছিল বলতে পারব না। আনুমানিক বয়সও বলতে পারব না। আমার মামাত ভাই আবদুল আওয়াল মোল্লার কয়

ছেলে-মেয়ে ছিল তা সঠিক বলতে পারব না। তবে ছাত্তার মোল্লা নামে তার এক ছেলে ছিল ঘটনার সময় তার বয়স ছিল আনুমানিক ১২/১৩ বছর। আমার মামা করিম মোল্লার এক ছেলে ছিল সে বাবার সংগে ঘটনার সময় নিহত হয়। আমার অপর দুই মামাত ভাই ফজল হক এবং অজল হকের কোন সন্তানাদি ছিল না। আমার তালই কাশেম দেওয়ানের এক ছেলে ছিল তার নাম ছিল নূরুল ইসলাম তখন তার বয়স ছিল ২৪/২৫ বছর। আমার জেঠাতো ভাই নবী মোল্লার দুই ছেলে ছিল, মেয়ে ছিল কি না বলতে পারব না। ছেলেদের মধ্যে একজনের নাম আন্দেশ আলী মোল্লা ঘটনার সময় বয়স ছিল আনুমানিক ১৬/১৭ অপরজন উ বাইদুল্লা মোল্লার বয়স ছিল ১৫/১৬ বছর এরা দুজনেই এখনও জীবিত আছে। জোরা মোল্লা অবিবাহিত অবস্থায় মারা যায়। আলুবদি গ্রামের কিতাব আলী মোল-া নামে কাউকে চিনি না। আমার মামাত ভাই ছুনু মিয়া ঘটনার সময় নিঃসন্ত্থান ছিল। আমার চাচা মোখলেছুর রহমানের এক ছেলে ঘটনার সময় তার বয়স ছিল ১২/১৩ বছর। ইয়াসমিন বানু আমার ভাবী নিঃস্তান অবস্থায় নিহত হন।

১৯৭০ সালের জাতীয় পরিষদ নির্বাচনে জহির□দ্দিন সাহেবের নির্বাচনী এলাকা উত্তরে ধৌর কামার পাড়া (হরিরামপুর ইউনিয়ন) দক্ষিণে রায়ের বাজার ঝিগাতলা পর্যন্ত বিস্তৃত ছিল। তখন মিরপুর-মোহাম্মদপুর একই নির্বাচনী এলাকার অন্তর্ভূক্ত ছিল। ১৯৭০ সালের জাতীয় পরিষদ নির্বাচনে বা প্রাদেশিক পরিষদ নির্বাচনে আওয়ামী লীগের পক্ষ থেকে এ্যাডভোকেট জহির উদ্দিন এবং ডাক্তার মোশাররফ প্রার্থী ছিলেন। কিন্তু কে কোন পরিষদের প্রার্থী ছিলেন তা এই মুহূর্তে বলতে পারব না। সম্ভবত ডাক্তার মোশাররফ এম পি প্রার্থী ছিলেন। এ্যাডভোকেট জহির উদ্দিন অবাঙ্গালী ছিলেন। এ্যাডভোকেট জহির উদ্দিন মিরপুরে বিহারীদের এলাকায় বসবাস করতেন কি না আমি জানি না। ১৯৭০ সালে এ্যাডভোকেট জহির উদ্দিন সাহেব নির্বাচনী প্রচারনায় আমাদের গ্রামে গিয়েছিলেন এবং বক্তব্য রেখেছিলেন। এ্যাডভোকেট জহির উদ্দিন সাহেবের নির্বাচনী প্রচারনায় স্বতস্ফুর্তভাবে অনেক বাঙ্গালী অংশ গ্রহন করেছিল তাদের মধ্যে রশিদ মোল-া, দুলামিয়া বেঁচে আছেন ,অন্যরা প্রায় সবাই মারা গেছে। ১৯৭০ সালের নির্বাচনের সময় মিরপুর এলাকায় বিহারীরা ভোটার সংখ্যায় বেশী ছিল ইহা সত্য নয়। ইহা সত্য নয় যে, ১৯৭০ সালের নির্বাচনের সময় মিরপুর এলাকায় বিহারীরা ভোটার সংখ্যায় বেশী ছিল বিধায় বঙ্গবন্ধু শেখ মুজিবুর রহমান ঐ এলাকায় একজন বিহারী এ্যাডভোকেট জহির উদ্দিন সাহেবকে মনোনয়ন দিয়েছিলেন। ইহা সত্য নয় যে, ১৬ ডিসেম্বর, ১৯৭১ এরপর ভারতীয় সেনা বাহিনী মিরপুর এলাকায় অবস্থান নেয়। এটা সত্য নয় যে, ৩০ জানুয়ারী, ১৯৭২ সালে ভারতীয় সেনা বাহিনীর কাছ থেকে বাংলাদেশ সেনা বাহিনী মিরপুরের দায়িত্ব বুঝে নেয়। ইহা সত্য নয় যে, ৩১ জানুয়ারী, ১৯৭২ সালে আমরা যখন মিরপুর যুদ্ধকরে মুক্ত করি তখন ভারতীয় মিত্র বাহিনী আমাদের সংগে যুদ্ধে ছিল না।

আলুবদি গ্রামের আবদুল বারেক সাহেবকে আমি চিনি না বা তিনি ২৪ এপ্রিল, ১৯৭১ এর ঘটনার প্রত্যক্ষদর্শী কি না তাও জানি না। আলুবদি গ্রামের বীরাঙ্গনা মোছাঃ লাইলিকে আমি চিনি। আলুবদি গ্রামের কালু মোল্লা, মুনসুর আলী দেওয়ান, ওয়ার আলী দেওয়ান, গদু ব্যাপারী, বারেক মাতবর, রহমান ব্যাপারী এদেরকে আমি চিনতাম। আলুবদি গ্রামের উত্তর পাড়ার কিতাব আলী, চুনু ব্যাপারীকে চিনতাম। আমি আলুবদি গ্রামের মোঃ আবদুল হাই পিতা- মোঃ নাইমউদ্দিনকে চিনতাম।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ১০/৯/১২

স্বাক্ষর/-অস্□ষ্ট, ১০/৯/১২ চেয়ারম্যান

আন্⍥র্জাতিক অপরাধ

ট্রাইব্যুনাল-২

<u>তারিখঃ ১৩/৯/২০১২খ্রিঃ অপরাহ্ন ২.৩০ ঘটিকা (পরবর্তী জেরা শুর□)</u>

উপরে বর্নিত ব্যক্তিরা সবাই স্বাধীনতা যুদ্ধে কোন না কোন ভাবে ক্ষতিগ্রস্তত হয়েছে। যে ২১ জনকে হত্যা করা হয়েছে তাদের সন্ততান সন্ততিরা আমার চেয়ে অধিক ক্ষতিগ্রস্থ হয়েছিল। বঙ্গবন্ধু ১০ জানুয়ারী, ১৯৭২ পাকিস্ততানে বন্দীদশা থেকে দেশে ফিরে আসেন। ইহা সত্য নয় যে, ১৬ ডিসেম্বরের পর থেকে ২৭ জানুয়ারী, ১৯৭২ পর্যন্তত ভারতীয় সেনা বাহিনীর বিহার রেজিমেন্ট মিরপুর ১২ নম্বর সেকশন ঘেরাও করে রাখে নিরিহ এলাকাবাসীর নিরাপত্তার জন্য। ইহা সত্য নয় যে,বাংলাদেশ সেনা বাহিনী এবং পুলিশ ২৭ জানুয়ারী, ১৯৭২ এ ভারতীয় বাহিনীর নিকট থেকে মিরপুরের নিয়ন্ত্রন বুঝে নেয়। দালাল আইনে কোন আদালত গঠিত হয়েছিল কি না আমার জানা নেই।

মিরপুরের আক্তার গুন্ডাকে আমি চিনতাম। আক্তার গুন্ডার আদালতে সাজা হয়েছিল কি না আমি বলতে পারব না। ৩১ জানুয়ারী, ১৯৭২ সালের পর আক্তার গুন্ডা জেলে ছিল। সাজা খেটে জেল খানা থেকে বের হয়ে সে পাকিস্ততানে চলে গিয়েছিল কি না আমার জানা নেই। এটা আমার জানা নেই যে, ৩১ জানুয়ারী, ১৯৭২ এরপর মিরপুর এলাকা থেকে অবৈধ অস্ত্রত্র উদ্ধার করতে পুলিশ ও সেনা বাহিনীর আরো দেড়মাস সময় লেগেছিল কি না।

ইহা সত্য নয় যে, ঐ সময় কাদের মোল্লা ইসলামী ছাত্র সংঘের ৭০/৮০ জন লোক নিয়ে মিরপুরে পাকিস্ততান রক্ষার জন্য ট্রেনিং দিতেন মর্মে আমি জবানবন্দীতে যে কথা উল্লেখ করেছি তা বানোয়াট ও মিথ্যা।

ইহা সত্য নয় যে, জনাব আবদুল কাদের মোল-াকে প্রত্যক্ষ এবং পরোক্ষভাবে অভিযুক্ত করে যা যা জবানবন্দীতে বলেছি সম্পূর্ণ মিথ্যা ও বানোয়াট।

আমি এই মামলার তদন্ততকারী অফিসারের কাছে সম্ভবত ১৬/৮/২০১০ তারিখ পল্লবী থানায় বসে জবানবন্দী দিয়েছি। তদন্ততকারী কর্মকর্তাই পল্লবী থানার পুলিশের মাধ্যমে আমাকে খবর দিয়েছে সেখানে যাওয়ার জন্যে। তদন্ততকারী কর্মকর্তার সংগে ১৬/৮/২০১০ তারিখের আগে বা পরে আর কখনও আমার দেখা হয়নি। সময় সঠিক মনে নেই তবে সম্ভবত ঐ দিন বিকাল বেলা জবানবন্দী দিয়েছিলাম। দুয়ারী পাড়ার পূর্ব-দক্ষিণ দিকে কোন ধানী জমি ছিল না। উত্তর পূর্ব দিকে ধানী জমি ৩৫০ গজ পর্যন্তত বিস্ততৃত। আমার বাড়ীর আশেপাশে উত্তর-পুর্ব এবং পশ্চিম দিকে মাছের পুকুর ছিল, পুকুর গুলো আনুমানিক ২০০/২৫০ গজ দুরে ছিল। তখন বাড়ীর আশেপাশে ডোবা বা কচুরি পানা ছিল না। ধান গাছ গুলো তখন একজন মানুষের উ□চতার চেয়ে লম্বা হত না। ঐ সময় বোরো ধান আড়াই/তিন ফিট লম্বা হত, ইরি ধান দেড়/দুই ফিট লম্বা হত। ইহা সত্য নয় যে, ২৩/২৪ মার্চের দিকে আমি আমার পরিবারের সদস্যদেরকে নিয়ে বাড়ী ছেড়ে সাভার যাইনি। ইহা সত্য নয় যে, ২৫ মার্চ, ১৯৭১ এরপর আমরা গ্রামে ছিলাম।

ইহা সত্য নয় যে, ২৪ এপ্রিল, ১৯৭১ এ ঘটনার দিন আমি এবং আমার পরিবার নিয়ে ডোবায় লুকিয়ে ছিলাম না। (নিজে বলেন) আমি এবং আমার পিতা আলুবদি গ্রামের পশ্চিম-উত্তর কোনার দিকে যে কচুরিপানা ছিল সেখানে আমরা লুকিয়ে ছিলাম। সেখান থেকে আমরা ঘটনা দেখি। ইহা সত্য নয় যে, এই কথাগুলো বানোয়াট এবং অসত্য। ইহা সত্য নয় যে, যে কচুরিপানায় লুকিয়ে থাকার কথা বললাম এটা আলুবদি গ্রামে নয় দুয়ারীপাড়া গ্রামে।

এটা সত্য নয় যে, আমি তদন্তকারী কর্মকর্তার নিকট বলিনি যে, তখন দেশের অবস্থা ভয়াবহ দেখে ২৩/২৪ মার্চের্রে দিকে আমি আমার পিতা-মাতা ও পরিবারের সদস্যরা সাভারে প্রথমে একটা স্কুলে পরে এক আত্মীয়ের বাড়ীতে আশ্রয় নেই বা ২২/২৩ এপ্রিল আমি আমার বাবাকে নিয়ে আমাদের ধান কাটার জন্য আমাদের গ্রাম আলুবদির কাছে আসি বা ধান কেটে রাত্রি যাবন করি আলুবদি গ্রামে আমার খালু র□স্তম আলী ব্যাপারীর বাড়ীতে বা কাদের মোল-ার হাতেও রাইফেল ছিল, আক্তার গুন্ডার হাতেও রাইফেল ছিল, পাঞ্জাবিদের সাথে তারাও গুলি করে এবং সেখানে আনুমানিক ৪০০ জন লোক নিহত হয় বা এই ঘটনার পরে আমি জুন মাসের প্রথম দিকে ভারতের আসাম রাজ্যের লাইলাপুরে চলে যাই এবং সেখানে মুক্তিযুদ্ধের ট্রেনিং গ্রহন করি বা ঐখান থেকে ট্রেনিং নিয়ে মেলাঘরে আসি এবং সেখান থেকে অস্ত্র নিয়ে আগষ্ট মাসের প্রথম দিকে বাংলাদেশে প্রবেশ করি বা তখন মোহাম্মদপুর ফিজিক্যাল ইন্সষ্টিটিউট থেকে কাদের মোল-ার নেতৃত্বে প্রায় ৭/৮শত আল-বদর বাহিনীর সদস্য এবং কিছু পাঞ্জাবি মিরপুর এসে বিহারীদের সংগে একত্রিত হয়ে পাকিস্তানী পতাকা উড়ায় এবং তারা আবরো বাংলাদেশকে পাকিস্ততানে রুপান্তরিত করতে চায় বা তারপর ৩১ জানুয়ারী আমার সাথী মুক্তিযোদ্ধারা ভারতীয় মিত্র বাহিনীর সহায়তায় মুক্তিযুদ্ধা হাই কমান্ডের নেতৃত্বে চর্তুদিক থেকে মিরপুর আক্রমন করি এবং পাক সেনা ও কাদের মোল্লার নেতৃত্বাধিন আল-বদরদের পরাজিত করে মিরপুরে স্বাধীন বাংলার পতাকা উড়ানো হয় বা আমি ১৯৭০ সালের নির্বাচনে আওয়ামীলীগ প্রার্থী এ্যাডভোকেট জহির উদ্দিন এর পক্ষে নৌকা মার্কার প্রচার চালাই তখন আবদুল কাদের – মাল্লা গোলাম আযমের পক্ষে তার প্রতীক দাড়ি পাল-ার পক্ষে প্রচারনা চালায় বা তখন আবদুল কাদের মাল্লা ইসলামী ছাত্র সংঘের নেতা ছিলেন।

এই ঘটনার সময় বাদী এবং তার পরিবার বিলের কচুরী পানার মধ্যে লুকিয়ে আত্মরক্ষা করি একথা আমার নালিশী মামলার আরজিতে লেখা আছে। উকিল সাহেব কি লিখেছেন আমি বলতে পারব না। এই কমপে-ইন্ট কেসের পাতায় পাতায় আমার দস্ততখত আছে। ২৫ মার্চ, ১৯৭১ এরপরে বাদী, পিতা-মাতা ভাই-বোন, আত্মীয় স্বজন নিয়া কোথায় যাইবেন বা কি করিবেন এই চিন্তায় দ্বিধাগস্থ হইয়া বাড়ীতে সতর্ক অবস্থায় থাকেন এই কথা এই নালিশী দরখাস্ত লেখা আছে তবে উকিল সাহেব দরখাস্ত কি লিখেছেন তা তিনি জানেন। ইহা সত্য নয় যে, এই মামলার আসামী আবদুল কাদের মোল্লাক জড়িত করে যা সাক্ষ্য দিলাম তা মিথ্যা। (জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ১৩/৯/১২

স্বাক্ষর/-অস্□ষ্ট, ১৩/৯/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

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In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor – Versus- Abdul Kader Molla.

Deposition of witness No. 10 for the Prosecution aged about 69 years, taken on oath on Monday the 17th September 2012.

My name is Syed Abdul Qayum

My father's name Late Syed Abdur Rahim

My mother's name is ------------- age-------- I am by religion ------- My home is at

village--------- Police Station ----------, District ----------, I at present reside in ----, Police Station----------, District ------------, my occupation is ----------------

আমার নাম সৈয়দ আবদুল কাইয়ুম। আমার জন্ম তারিখ ০১/১/১৯৪৪। আমি আমার পেশা জীবনের শুরু থেকেই শিক্ষকতা করে আসছি। ১৯৬৬ সালের ফেব্রুয়ারী মাসে ব্রাহ্মণবাড়িয়া জেলার আখাউড়ায় আমি শিক্ষকতা পেশা শুরু করি। এরপর ১৯৬৮ সালের ডিসেম্বর মাসে মিরপুর বাঙলা স্কুলের প্রধান শিক্ষক হিসেবে যোগদান করি। ১৯৭০ সালের সাধারণ নির্বাচনের সময় মিরপুর বাঙলা স্কুল একটি নির্বাচনী কেন্দ্র ছিল সেখানে আমি নির্বাচনী দায়িত্ব পালন করি। সেই নির্বাচনে জাতীয় পরিষদে এ্যাডভোকেট জহিরউদ্দিন নৌকা প্রতীকের প্রার্থী ছিলেন। প্রফেসর গোলাম আযম সাহেব ছিলেন দাঁড়িপাল্লা প্রতীকের প্রার্থী। নির্বাচনের সময় আমি কারো পক্ষে কাজ করিনি তবে আওয়মীলীগ যারা করত তাদের সংগে চলাফেরা করতাম তাদের খোজ খবর নিতাম। তাদের মধ্যে একজন ছিলেন খন্দকার আবু তালেব সাহেব। খন্দকার আবু তালেব সাহেব আওয়ামীলীগের সমর্থক ছিলেন। দাঁড়িপাল্লা প্রতীকের পক্ষে যারা কাজ করতেন তাদের মধ্যে নঈম খান, সফিরউদ্দিন, জনৈক মোল্লা এর নাম উল্লেখযোগ্য। খন্দকার আবু তালেব আমাকে খুব স্নেহ করতেন। আমি অবসর সময়ে তাঁর কাছে যেতাম, তিনি আমার স্কুলের এডভাইজারী কাউন্সিলের সদস্য ছিলেন। খন্দকার আবু তালিব সাহেব মূলত সাংবাদিক ছিলেন, তিনি এ্যাডভোকেটও ছিলেন। তিনি পূর্ব পাকিস্তান সাংবাদিক ইউনিয়নের সম্পাদক ছিলেন।

১৯৭১ সালের ৭ মার্চ রেসকোর্সে অনুষ্ঠিত বঙ্গবন্ধুর জনসভায় আমি যোগদান করি। এরপর আমরা তাঁর আহবানে অসহযোগ আন্দোলনে শরিক হই এবং স্কুল, কলেজ বন্ধ করে দেই। এরপর ২৩ মার্চ, পাকিস্তানর প্রজাতন্ত্র দিবসে সারা ঢাকায় স্বাধীন বাংলার পতাকা উত্তোলন করা হয় কিন্তু মিরপুরে তা হয়নি। ঐদিন সকাল আট/ সাড়ে আটটার দিকে আমার

কিছু ছাত্র একটি স্বাধীন বাংলার পতাকা জোগাড় করে আমাকে সহ স্কুলে গিয়ে সেই পতাকাটি উত্তোলন করে। পতাকা উত্তোলনের পর বাসায় আসার পথে বিহারীদের মুখে শুনতে পাই " হুকুমাত কিয়া হোগিয়া"। আমি উর্দু ভাষা বেশী বুঝতাম না। তারপর বাসায় চলে যাই। বিকেল বেলা তালেব ভাইয়ের বাসায় যাই। দেশের বিভিন্ন খবরাখবর উনার মাধ্যমে জানতে পারি । সাধারণত রাত সাড়ে এগারোটায় পাকিস্তান টেলিভিশন সম্প্রচার বন্ধ করত কিন্তু সেই দিন রাত বারটার পরে তারা সম্প্রচার বন্ধ করে। আমি খন্দকার আবু তালেব এর বাসায় টেলিভিশন দেখছিলাম। আমরা অপেক্ষা করছিলাম টেলিভিষনের সম্প্রচার বন্ধ করার সময় কোন পতাকাটি দেখায়। পাকিস্তানর পতাকা না কি স্বাধীন বাংলাদেশের পতাকা। রাত বারটার পরে সম্প্রচার বন্ধের সময় টেলিভিশনে পাকিস্তানর পতাকা-ই দেখানো হয়। তারপর আমি বাসায় চলে যাই। রাতে খাওয়া দাওয়া করে শুয়ে পড়ি। আনুমানিক রাত ১.৩৫ মিঃ এর সময় শুনতে পাই যে বাইর থেকে কিছু লোক আমার ঘরের জানালা-দরজা ভেংগে দেওয়ার কথা বলছিল এবং আমার নাম ধরে আমাকে মারার কথা বলছিল। এরপর ভয়ে আমি বাসার পিছন দিয়ে বেরিয়ে একটি প্রাচীর টপকিয়ে সেখানে থাকা একটি ড্রেনের মধ্য দিয়ে তালেব সাহেবের বাসার দিকে যেতে শুরু করি, পথে ৩/৪জন লোক আমাকে আটক করে এবং জিজ্ঞাসাবাদ করে স্কুলে কেন পতাকা উত্তোলন করলাম। এই সময় আমি তাদের কথার জবাব দিতে দিতেই দেখি একজন আমাকে ছুরিকাঘাত করতে উদ্যত হয়। এরপর আমি ছুরিটা ধরে ফেলি, ছুরিটা যখন টান দেয় তখন আমার হাতের তালু কেটে রক্তাক্ত যখম হয় এবং আমি বুঝতে পারি ছুরিটি দুই দিকেই ধারাল ছিল। এই অবস্থায় আমি তালেব সাহেবের বাসার দিকে দৌড় দেই। রাস্তায় তখন একটি ড্রেন লাফ দিয়ে পার হতে গিয়ে পড়ে যাই। ঐ আক্রমনকারীরাও আমার পিছু পিছু ধাওয়া করছিল। এরপর আমি আবার উঠার চেষ্টা করলে বুঝতে আমার হাটু এবং কনুই শিথিল হয়ে গেছে নড়ছে না। তারপর দেখি ওরা আমার ঘাড়ে কোঁপ দিচ্ছে । আমি বাম হাত দিয়ে কোঁপ ঠেকাতে গেলে বাম হাতে কোঁপ লাগে এবং আমার বাম হাতের হাড় কেটে যায় এবং বাম হাতের আঙুল সহ অন্যান্য জায়গায় মারাত্মক রক্তাক্ত জখম হয় । আমার চিৎকার শুনে ঘটনাস্থলের পাশেই অবস্থানরত জনৈক মোল্লা দরজা খুলে বের হতেই আক্রমনকারীরা থমকে যায় এবং চলে যায়। মোল্লার লোকজন তালেব সাহেবের বাসায় খবর দিলে তালেব সাহেব নিজে এবং তাঁর লোকজন বন্দুক সহ এগিয়ে আসেন এবং আমাকে ঐখান থেকে তালেব সাহেবের বাসায় নিয়ে সেবা শুশ্রূষা ও প্রাথমিক চিকিৎসা করান। পরদিন সকালে তালেব সাহেবের গাড়ীতে করে এবং আশেপাশের আরো কিছু লোকজন আমাকে নিয়ে ধানমন্ডির ৩২ নম্বর রোডে বঙ্গবন্ধুর বাসায় নিয়ে যায় । তখন আমি অর্ধচেতন অবস্থায় ছিলাম। বঙ্গবন্ধুর নির্দেশেই আমাকে ঢাকা মেডিকেল কলেজ হাসপাতালে ভর্তি করা হয়। মেডিকেল কলেজের ডাক্তারদের একটি টিম আমার চিকিৎসা করেন। আমার চেতন আসে ২৫ মার্চ,১৯৭১ সকাল বেলা। যেহেতু আমার জ্ঞান ফিরতে দেরী হচ্ছিল মিরপুরের লোকজন মনে করেছিল আমি মারা গেছি। ২৫ মার্চ সকাল ১০/১১টার দিকে দেখি মেডিকেল কলেজে অনেক লোকজন আমাকে দেখতে এসেছে এবং তারা ফিস ফিস করে কথা বলছিল। ঐ দিন রাত ১০/ ১০.৩০ মিঃ এর দিকে দেখি শহীদ মিনারে বোম্বিং হচ্ছে এবং আমাদের হাসপাতালের বিছানাগুলো ঝন ঝন করে আওয়াজ হচ্ছে। অল্প সময়ের মধ্যেই হাসপাতাল মৃত এবং অর্ধমৃত মানুষের ভিড়ে ভরে গেছে।

২৭ মার্চ, ১৯৭১ সকালে কারফিউ শিথিল করেছিল। তখন আমার এক সহকর্মী নাম ফার□ক আহমেদ খান আমাকে হাসপাতালের ড্রেস পরা অবস্থায় কোলে করে তার বোনের বাসা সবুজবাগে নিয়ে যায়। তখনও বাসায় বাসায় ঢুকে মিলিটারীরা মানুষকে হত্যা করছিল। ঐ সময় ৩ এপ্রিল, ১৯৭১ কুলিয়ারচরের এক ভদ্র লোক তার গাড়ীতে করে আমাকে ডেমরায় নদীর ঘাটে পৌছে দেয়। ঐ সময় আমার সাথে আমার বন্ধু ফার□ক খান ও তার বোন ছিল। প্রথমে আমাকে ফার□ক খান তার নবীনগর থানার বীরগাঁও গ্রামের নিজ বাড়ীতে নিয়ে যায়। সেখানে আমি ১৫ এপ্রিল পর্যন্ত ছিলাম। ১৬ এপ্রিল আমি সেখান থেকে আমার নিজ বাড়ী নাসিরনগর থানার অর্ন্তগত নাসিরপুর গ্রামে যাই। এলাকাবাসী আমাকে দেখে অবাক হয়ে পড়ে কারণ ৯ এপ্রিল, ১৯৭১ আমার গ্রামে আমার কুলখানীও হয়ে যায়। এরপর জুন মাসে ফার□ক খান আমাকে আমার বাড়ীতে দেখতে যায়। তখন আমি শুনলাম খন্দকার আবু তালেব সাহেবকে অবাঙ্গালীরা, স্থানীয় আক্তার গুন্ডা ও আবদুল কাদের মোল-ারা মিরপুর ১০ নম্বরের জল্লাদ খানায় নিয়ে হত্যা করেছিল।

দেশ স্বাধীন হওয়ার পরে ১৯৭২ সালের ৩ জানুয়ারী ঢাকায় আসি এবং আবার স্কুলের কার্যক্রম শুর□ করি। তখন আমি আমাকে যে মাল্লা সাহেব বাঁচিয়েছিলেন তার কাছে শুনি আক্তার গুন্ডার লোকজন আমাকে আক্রমন করে জখম করেছিল। তারপর একদিন তালেব সাহেবের গাড়ীর অবাঙ্গালী ড্রাইভার নিজামের সংগে আমার দেখা হয়। তখন নিজাম আমাকে জানায় তালেব সাহেবের ইত্তেফাক অফিসের এক অবাঙ্গালী হিসাব রক্ষক হালিমের সংগে তালেব সাহেব মিরপুরে নিজ বাড়ীতে আসছিলেন। কিন্তু ঐ অবাঙ্গালী হালিম তালেব সাহেবকে নিজ বাড়ীতে না পৌছিয়ে বিহারীদের হাতে তুলে দেয় এবং বিহারীরা জল্লাদ খানায় নিয়ে তাকে হত্যা করে।

৬ নম্বর সেকশনে নিজ বাড়ীতে কবি মেহের□ন্নেসা থাকতেন। তাঁকেও স্বপরিবারে নিজ বাড়ীতে অবাঙ্গালীরা হত্যা করে। আর তেমন কিছু আপাতত মনে পড়ছে না। আমি তদন্তকারী কর্মকর্তা আবদুর রাজ্জাক সাহেবের কাছে জবান বন্দী দিয়েছি।

বাঙলা কলেজের পল্লব নামের একজন ছাত্রকে আবদুল কাদের মোল-া হত্যা করেছে বলে আমি শুনেছি। আসামী আবদুল কাদের মাল্লা ডকে সনাক্ত। ঘটনার সময় তিনি তর□ণ ছিলেন মুখে দাড়ি ছিলনা। এতদিনের ঘটনা সব স্□ষ্ট মনে নেই।

XXXজেরাঃ আমি বর্তমানে মিরপুর থেকে এই মামলায় সাক্ষী দিতে এসেছি। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ১৭/৯/১২

স্বাক্ষর/-অস্□ষ্ট, ১৭/৯/১২ চেয়ারম্যান

আন্@র্জাতিক অপরাধ

ট্রাইব্যুনাল-২

<u>তারিখঃ ২৬/৯/২০১২ খ্রিঃ (পরবর্তী জেরা শুর□)</u>

আমার জন্ম আমার গ্রামের বাড়ীতে। আমরা দুই ভাই এক বোন। আমি সবার বড় নই আমি মেজো। আমার গ্রামের প্রাইমারী স্কুলে লেখাপড়া শুর□ করি। আমি নাসির নগর আশুতোষ হাইস্কুল থেকে ১৯৬১ সালে ম্যাট্রিক পাশ করেছি। আমি এইচ এস সি এবং ডিগ্রী ব্রাহ্মণবাড়িয়া কলেজ থেকে পাশ করেছি। ১৯৭৮-৭৯ সালে ঢাকা টি টি কলেজ থেকে বি এড পাশ করেছি। আদমপুর হাইস্কুলে প্রথম ইংরেজী বিষয়ে শিক্ষকতা আরম্ভ করি। যে হাইস্কুলে শিক্ষকতা শুর□ করি ঐ স্কুলটি বেসরকারী স্কুল ছিল। আমি যখন হাইস্কুলে শিক্ষকতা শুর□ করি তখন আমার বেতন ছিল ১৩৫/-টাকা। সরকার থেকে মাসে ৫/- টাকা হারে ভাতা পেতাম। মিরপুর বাঙলা স্কুলে আসার পূর্ব আমি ৬ মাস সিয়েটো সেন্টো অফিসে স্টাফ হিসেবে চাকুরী করতাম। ১৯৬৮ সালের মার্চ এপ্রিল থেকে ৬ মাস সিয়েটো সেন্টোতে অস্থায়ীভাবে চাকুরী করি, সেই সময়ে আমি মাসে ৭৪০/-টাকা বেতন পেতাম। ১৯৬৮ সালে মিরপুর বাঙলা স্কুলটি বেসরকারী প্রাথমিক বিদ্যালয় ছিল। ঐ সময়ে ঐ স্কুলের পরিচালনা পরিষদের সভাপতি ছিলেন তৎকালীন পি আই এ'র এরিয়া ম্যানেজার মহিউদ্দিন এ চৌধুরী। আমার নিয়োগ পত্র তৎকালীন স্কুল পরিচালনা পরিষদের সম্□াদক জনাব এফ এন সিদ্দিকী সাহেব দিয়েছিলেন। তিনি পি আই এ'র কার্গো সুপারিনটেনডেন্ট ছিলেন। প্রাথমিক বিদ্যালয়ের প্রধান শিক্ষক হিসেবে আমি মাসিক ২০০/-টাকা বেতন পেতাম। আমি যখন স্কুলটিতে যোগদান করি তখন এটি নিম্নমাধ্যমিক স্কুলে পরিনত হয়েছিল। এটা সত্য নয় যে, আমি যখন ১৯৬৮ সালের ডিসেম্বর মাসে স্কুলটিতে যোগদান করি তখন স্কুলটি নিম্নমাধ্যমিক বিদ্যালয় ছিল না। ১৯৬৮ সালের ডিসেম্বর থেকে ০১/১/১৯৭০ পর্যন্ত প্রাইমারী স্কুলের প্রধান শিক্ষক ছিলাম। স্কুলটি প্রাথমিক বিদ্যালয় হলেও তখন সেখানে ষষ্ঠ, সপ্তম ও অষ্টম শ্রেণী খোলা হয়। ০১/১/১৯৭০ সালে সরাকরীভাবে স্কুলটি নিম্নমাধ্যমিক স্কুল হিসেবে স্বীকৃতি পায়। ১৯৭০ সালের নির্বাচনের সময় আমার স্কুলের নির্বাচনী কেন্দ্রে সম্ভবত আমি সহকারী প্রিজাইডিং অফিসার অথবা পোলিং অফিসারের দায়িত্ব পালন করেছিলাম। ১৯৬৮ সালে আমি অবিবাহিত ছিলাম। আমি তখন মিরপুর ১০ নম্বরে দুই র□ম বিশিষ্ট বাসা ভাড়া করে থাকতাম। এই ভাড়া বাসায় আমার সংগে আমার একজন পিয়ন মনির থাকত সে-ই রান্না করত। বাসা ছাড়ার পূর্ব পর্যন্ত মনির আমার বাসায় আমার সংগে ছিল। যখন বিহারীরা আমার বাসায় এসে জানালায় ঠক ঠক করছিল ঐ সময়ে মনির আমার বাসায় ছিল না। দেশে তখন অসহযোগ আন্দোলন চলছিল মনির তার দেশের বাড়ীতে চলে যায়। ১৯৭১ সালের ২৩ মার্চ আমার ঐ ভাড়া বাসা ছাড়ার পর আমি আর ঐ বাসায় যাইনি। আমি যখন বাঙলা স্কুলের প্রধান শিক্ষক ছিলাম তখন সর্বমোট ১২/১৩ জন শিক্ষক ঐ স্কুলে শিক্ষকতা করতেন। ২৩ মার্চ যখন আমার স্কুলে স্বাধীন বাংলার পতাকা উত্তোলন করা হয় তখন আমার স্কুলের নবম শ্রেণীর ৩ জন ছাত্র সেখানে ছিল এবং তারাই পতাকাটি এনেছিল। পতাকা উত্তোলনের সময় আমি ছাড়া আর কোন শিক্ষক সেখানে উপস্থিত ছিল না। ১৯৭১ সালের ৮ মার্চ থেকে স্কুলটি বন্ধ করে দেই এবং ১৯৭২ সালের জানুয়ারী মাসের ৩ তারিখে স্কুলটি প্রথম খোলা হয়। শিক্ষকগণ ছাড়া ঐ স্কুলে ৩ জন পিয়ন এবং একজন ক্লার্ক ছিল, সে বেতনাদি কালেকশন করত। ৮ মার্চ, ১৯৭১ থেকে ৩ জানুয়ারী, ১৯৭২ পর্যন্ত উল্লখিত স্কুল ষ্টাফরা কোন দিন স্কুলে আসেনি, কারণ তখন মিরপুরে ঢুকতেই পারা যেত না। ১৯৭০-৭১ সালে মিরপুরে বিহারীরা সংখ্যায় নগন্য ছিল না বরং বাঙ্গালীরাই সংখ্যা লঘু ছিল। এটা সত্য যে, ১৯৭০-৭১ সালে বিহারীরা বাঙ্গালীদেরকে ভাল চোখে দেখত না। আমি কবি মেহের□ন নেসা এবং কবি

রোজির নাম শুনেছি এবং তাদেরকে চিনতাম। তারা বাঙ্গালী ছিলেন বলে তাদেরকে চিনতাম। সম্□র্ক ভাল থাকা না থাকা অন্য ব্যাপার। কবি মেহের□ন নেসা তখন থেকেই লেখালেখি করতেন,কাজী রোজি পরবর্তীতে লেখালেখি শুর□ করেন। ১৯৭৩ সালে আমি বিবাহ করি। ছাত্র জীবনে ছাত্রলীগ করতাম। এখন আমি কোন লীগ করি না। ১৯৭০ এর নির্বাচনের সময় মিরপুর এলাকায় কিছু সংখ্যক বাঙ্গালী ছাড়া অন্য কেহ ছিল না যাদের সংগে মেশা যায়। ১৯৭১ সালে মিরপুরে এ্যাকশন কমিটি গঠিত হয়েছিল কি না আমি জানিনা। কবি মেহের□ন নেসার বাসা আমার বাসা থেকে উত্তর-পশ্চিমে প্রায় ৫০০ গজ দুরে ছিল। কবি কাজী রোজির বাসা আমার বাসা থেকে উত্তর-পশ্চিমে প্রায় ৪৫০ গজ দুরে ছিল। আমার বাসা থেকে পশ্চিম দিকে প্রায় ১০০/১৫০ গজ দুরে আবু তালিবের বাসা ছিল। আবু তালিব সাহেবের তিনজন ছেলে-মেয়ে ছিল। তাদের নাম ছিল চঞ্চল, অঞ্জু এবং দিপু (মেয়ে)। খন্দকার আবুল আহসান এর ডাক নাম-ই অঞ্জু যিনি তালেব সাহেবের দ্বিতীয় পুত্র। এটা সত্য নয় যে, আমাকে যেখানে আক্রমনকারীরা যখম করে ফেলে রেখেছিল সেখান থেকে খন্দকার আবু তালেব সাহেব আমাকে আনতে যান নাই। খন্দকার আবু তালেব সাহেব ১৯৭০ সাল থেকেই আমার স্কুলের উপদেষ্টা পরিষদের সদস্য ছিলেন, তখন উপদেষ্টা পরিষদের সদস্য ছিলেন সর্বমোট ৫ জন। বাকী ৪ জনের মধ্যে একজন হলেন মোঃ ইসরাইল, আরেকজন জি এইচ আবু ইয়াহিয়া, আরেকজন এম এ হান্নান, আরেকজনের নাম এই মুহুর্তে মনে পড়ছে না। উপদেষ্টা পরিষদ সদস্যদের মধ্যে একজন থাকতেন মিরপুর ১১ নম্বরে অন্যরা কেহ মিরপুর ১০ নম্বর এবং ৬ নম্বরে থাকতেন। এই সদস্যবৃন্দের বাসা আমার বাসা থেকে আনুমানিক ৪/৫শত গজের মধ্যে ছিল। আমার স্কুলের নির্বাচনী কেন্দ্রে আওয়ামীলীগ প্রার্থী সর্বাধিক ভোট পেয়েছিল। এ্যাডভোকেট জহির উদ্দিন বাঙ্গালী ছিলেন। (পরে বলেন) উনি নৌকা মার্কার প্রার্থী ছিলেন, তিনি বাঙ্গালী না বিহারী ছিলেন তা বলতে পারব না। ১৯৭১ সালের ৭ মার্চ আমার স্কুল বন্ধ ছিল। আমার সংগে আমার স্কুলের শিক্ষক ফার□ক খান, আনোয়ার হোসেন, শেখ আবদুল আওয়াল, এম এ খালেক প্রমুখ আমার সংগে বঙ্গবন্ধুর ৭ মার্চের ভাষণ শুনতে রেসকোর্স ময়দানে এসেছিলেন। যে সকল শিক্ষকরা আমার সংগে রেসকোর্সে আসেন তারা আমার বাসার আশেপাশে থাকতেন না। তারা সেকশন ১১,১২ এবং ৬ নম্বর এলাকায় থাকতেন। ১৯৭১ সালে আমার বাসা থেকে উত্তর দিকে ১৫০ গজ দুরে আমার স্কুল অবস্থিত ছিল। ১৯৭১ সালে আমার স্কুলের ছাত্র সংখ্যা ছিল আনুমানিক ৬৫০/৭০০ জন। ঐ ছাত্রদের মধ্যে শতকরা ৮০ ভাগ বাঙ্গালী বাকীরা অবাঙ্গালী বিহারী ছাত্র ছিল। ১৯৬৮ সালে আমি যখন স্কুলে যোগ দেই তখন স্কুলের বাঙ্গালী ও অবাঙ্গালী ছাত্রের সংখ্যা কত ছিল তা আমার মনে পড়ছে না। তখন স্কুলের প্রভাতি শিফট মেয়েদের সকাল ৭টা থেকে দুপুর ১২টা পর্যন্@ চলতো আর দিবা শিফট ছেলেদের ১২.৩০ মিঃ থেকে ৫টা ৫.৩০ মিঃ পর্যন্ত চলতো।

প্রশ্নঃ এই দুটো শিফটে (যেখানে সাক্ষী নিজে প্রধান শিক্ষক) কোন বিহারী ছাত্র বা ছাত্রী পড়াশুনা করতো কি না ?

উত্তরঃ হ্যাঁ পড়ত। (নিজে বলেন) স্কুল ভবনটি ছিল সরকার কর্তৃক নির্মিত। একই ভবনে দুই নামে দুটি স্কুল চলত (শিফট পরিবর্তন করে)। একটি মুসলিম স্কুল নামে বিহারী ছাত্র-ছাত্রীদের জন্য উর্দু মিডিয়াম স্কুল চালু ছিল। অপরটি ছিল বাংলা মিডিয়ামে পরিচালিত বাঙলা স্কুল, আমি যার প্রধান শিক্ষক ছিলাম।

আমার পরিচালিত স্কুলে অবাঙ্গালী ছাত্র ছিল অনধিক শতকরা ৫ জন। আমার অধীনে কোন অবাঙ্গালী শিক্ষক ছিল না। ১৯৬৮ সালে উর্দু মিডিয়াম স্কুলটির প্রধান শিক্ষক ছিলেন জনাব ছামিউল্লাহ তিনি অবাঙ্গালী ছিলেন। ঐ উর্দু মিডিয়াম স্কুলটিতে মোট কতজন শিক্ষক ছিলেন তা আমি বলতে পারব না। উর্দু মিডিয়াম স্কুলটিতে ছাত্র সংখ্যা প্রায় আমাদের দ্বিগুন ছিল। সংখ্যায় প্রায় ১২/১৩শত হবে। স্কুল কম্□াউন্ড চারিদিক থেকে প্রাচীর বেষ্টিত ছিল না। ৩ একর ৬ শতক জমির উপর স্কুলটি প্রতিষ্ঠিত ছিল। ১৯৭৫ সালে আমার স্কুল থেকে ছাত্র-ছাত্রীরা প্রথম এস এস সি পরীক্ষায় অবতীর্ণ হয়। ২৪ ফেব্র□য়ারী, ২০০৫ তারিখে আমি ঐ স্কুল থেকে অবসর গ্রহণ করি। সর্বশেষ মাসিক বেতন সর্বমোট ৩৪/৩৫হাজার টাকা উত্তোলন করি। স্কুলটি যখন পুরোপুরি উ□চ মাধ্যমিক স্কুলে রূপান্@রিত হয় তখন স্কুলের শিক্ষক সংখ্যা কত ছিল তা রেকর্ড দেখে বলতে হবে তবে কখনোই ৪০ জনের নিচে ছিল বলে মনে হয় না। ১৯৭০ সালের নির্বাচনের সময় সারাদেশে বঙ্গবন্ধুর আওয়ামীলীগের জন সমর্থন শতকরা ৯৯% ছিল না তবে ৯৫% হতে পারে।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্□ষ্ট, ২৬/৯/১২

সময়ঃ দুপুর ২.০০ ঘটিকাঃ (পরবর্তী জেরা শুর□)

১৯৭১ সালে মিরপুরে আমি যে বাসায় থাকতাম যতদুর মনে পড়ে সেই বাসার হোল্ডিং নম্বর ছিল ১০/বি, ১৬/৫, মিরপুর। আমার বাসার আশেপাশে আরো অনেক বাড়ীঘর ছিল। আমার বাসার দক্ষিণে ১৬ নম্বর রোড, পূর্ব ১৬/৩, পশ্চিমে ১৬/৭ নম্বর বাসা ছিল। পূর্ব র বাসাটায় জি পি ও ফরেন পোষ্ট এর কর্মচারী জনৈক আতাউর রহমান থাকতেন। তিনি বর্তমানে মৃত। আশেপাশের বাড়ী গুলোতে যারা থাকতেন তারা পরিবার পরিজন নিয়ে বসবাস করতেন। আমার বাড়ীর দরজা জানালায় যখন বিহারীরা ধাক্কাধাক্কি করে তখন আমি ডাক চিৎকার করি নাই। আমার বাসাটি দক্ষিণমুখী ছিল। বাড়ীটির চারিদিকেই প্রাচীর ছিল, দক্ষিণে গেট ছিল। দুই র□মের বাসা ছিল সেই বাসায় দুটি দরজা ছিল একটি উত্তর দিকে আরেকটি পশ্চিম দিকে। আমি যে র□মটায় থাকতাম সেই র□ম থেকে উত্তর দিকের দরজা দিয়ে বের হতাম। বিহারীরা ২৩ মার্চ রাতে আমার বাড়ীর দক্ষিণ দিক থেকে ধাক্কাধাক্কি করেছিল বাকি তিন দিকে বাসা ছিল। যেদিক থেকে ধাক্কাধাক্কি করে আমি সেদিক থেকে বের হইনি আমি উত্তর দিক দিয়ে বের হয়েছিলাম। আমি আমার বাসা থেকে বের হয়ে আমার বাসার উত্তর দিকের বাসার কোন লোকজনকে ডাকাডাকি করিনি। আমার বাসা এবং আমার উত্তর দিকের বাসার পেছনদিকে দুই বাসার মাঝখানে একটি পূর্ব-পশ্চিমে লম্বা ৬ ফিট প্রশস্থ গলি ছিল। গলির দুই পাশে বড় রাস্তা পর্যন্ত এক এক দিকে ৮টি করে মোট ১৬ টি বাসা ছিল। দৌড়ানোর সময় আমি চিৎকার করিনি কারণ ভয়ে অস্থির ছিলাম। আমি পালিয়ে যাবার সময় যে জায়গায় পড়ে গিয়েছিলাম সেখান থেকে আবু তালেব সাহেবের বাড়ীর দুরত্ব ৭৫/১০০ গজ। এইটুকু জায়গার মধ্যে কতগুলো বাড়ী ছিল তা না গুনে বলতে পারব না। আমি যেখানে পড়ে গিয়েছিলাম সেখান থেকে তালেব সাহেবের বাড়ীর মধ্যকার বাড়ীগুলো অবাঙ্গালীদের ছিল, সেই বাড়ীগুলোর কেউ আসে নাই। তালেব সাহেবের বাড়ী থেকে ১৫/২০ জন লোক আমাকে উদ্ধার করতে এসেছিল এদের মধ্যে শুধু তালেব সাহেবের নাম বলতে পারব অন্যদের নাম বলতে পারব না। এটা সত্য নয় যে,

তালেব সাহেবের বাড়ী থেকে তালেব সাহেবসহ ১৫/২০ জন লোক আমাকে উদ্ধার করতে আসেনি। তালেব সাহেবের ছেলে খন্দকার আবুল আহসান সম্ভবত ক্লাস নাইনে পড়ত তার বয়স তখন আনুমানিক ১৩/১৪ বছর ছিল। আহসান আমাকে চিনত। ঐ ঘটনার দিন আহসান বাসায় ছিল। তখন মিরপুরে রাড্ডা বার্ন নামে একটি হসপিটাল ছিল। ইহা সত্য নয় যে, এর পূর্বনাম ছিল সরকারী আউট ডোর ক্লিনিক। সরকারী আউট ডোর ক্লিনিক একটি আলাদা হাসপাতাল ছিল। ইহা সত্য নয় যে, ঘটনাস্থল থেকে একজন বাঙ্গালী আমাকে তালেব সাহেবের বাসায় নিয়ে যায়। ইহা সত্য নয় যে, ঘটনার দিন বিহারীরা আমার ঘরের দরজা ভেঙ্গে ঘরে প্রবেশ করে আমাকে মারপিট করেছিল। আমার তখন যে শারীরিক অবস্থা তখন কোন বাঙ্গালী ডাক্তার আমাকে চিকিৎসা করেছিল কি না বলতে পারব না। ইহা সত্য নয় যে, তখন আমার জ্ঞান ছিল না। ২৩ তারিখের ঘটনার পর আমি জখমি অবস্থায় কখনও জ্ঞান হারা হইনি। আবু তালেবের বাসায় যখন আমাকে নিয়ে যাওয়া হয় তখন থেকে পরদিন সকাল ৮টা পর্যন্ত ঐ বাসায় ছিলাম। আমাদের এক বন্ধু ডাক্তার যার নাম ডাক্তার শেখ হায়দার আলী আমাকে প্রাথমিক চিকিৎসা দেয়। ২৪ মার্চ সকাল ১০ টায় আমি ঢাকা মেডিকেল কলেজ হাসপাতালে ভর্তি হয়ে ২৭ মার্চ সকাল ৮টা পর্যন্ত আমি হাসপাতালে ছিলাম। ১৬ এপ্রিল রাতে আমি আমার গ্রামের বাড়ীতে যাই। ২৫ মার্চ হাসপাতালে আমাকে অনেক লোকজন দেখতে এসেছিল। তৎকালীন স্বাস্থ্য অধিদপ্তরের পরিচালক ডাক্তার নকিব, খন্দকার আবু তালেব, জনাব আবদুল হান্নান, চাটার্ড একাউন্টট্যান্ট আলম, ইসরাইল সাহেব প্রমুখ আমাকে দেখতে আসেন। ২৪ মার্চ , ১৯৭১ সকাল বেলা বঙ্গবন্ধুর সংগে আমার দেখা হয়। ১৯৭২ সালের ৩ জানুয়ারী পর থেকে বঙ্গবন্ধু যতদিন বেঁচে ছিলেন তাঁর সংগে দেখা করি নাই কারণ প্রয়োজন মনে করিনি।

২৩ মার্চ, ১৯৭১ এ আমার উপর যে আক্রমন পরিচালিত হয়েছিল সে বিষয়ে আমি ১৯৭২ সালের ৩ জানুয়ারী বা তার পরবর্তী সময়ে কখনও কোন মামলা বা অভিযোগ দাখিল করিনি। আমি আমাদের নাসির নগর থানায় ১৬ এপ্রিল বা তারপর উপরোক্ত ঘটনার বিষয়ে কোন জি ডি বা কোন মামলা করিনি। ১৯৭১ সালের ২৫ মার্চ ইত্তেফাক পত্রিকার প্রথম পাতায় আমাকে আক্রমনের ঘটনাটি প্রকাশিত হয়েছিল এবং প্রকাশিত এই সংবাদটি আমি হাসপাতালে চিকিৎসাধীন অবস্থায় পড়েছি। ইত্তেফাকের ঐ সংখ্যাটি আমি সংরক্ষন করিনি।

৩ জানুয়ারী, ১৯৭২ এ ঢাকায় ফিরে আসার পর কবি কাজী রোজির সংগে আমার মাঝে মধ্যে দেখা হত তিনি আমার পাশের বাসায় থাকতেন। আমাকে বিহারীদের আক্রমনের ঘটনাটা কাজী রোজি আমার ঢাকা ফিরে আসার আগে থেকেই জানতেন। কাজী রোজি আবু তালেবের আত্মীয় ছিলেন। কাজী রোজির বাবাও একজন সাংবাদিক ছিলেন। কাজী রোজি নিজেই জানতেন, আমার ঘটনা তাকে বলার দরকার হয়নি। কাজী রোজি মিরপুরের আমাকে আক্রমনের ঘটনা নিয়ে লেখালেখি করে থাকতে পারেন। ৩ জানুয়ারী, ১৯৭২ এ ঢাকায় ফিরে আসার পর আমার স্কুলের সহকর্মীদের নতুন করে ঘটনার কথা বলার প্রয়োজন ছিল না কেননা তারা ঘটনাটির কথা পূর্বেই শুনেছেন এবং তারা হাসপাতালেও আমাকে দেখতে গিয়েছিলেন। যে সকল ছাত্ররা ২৩ মার্চ, ১৯৭১ স্কুলে স্বাধীন বাংলার পতাকা উত্তোলনের সময় আমার সংগে ছিল তারাও আমাকে হাসপাতালে দেখতে গিয়েছিল। ঐ তিনজন ছাত্রের একজন পরবর্তীতে স্কুল পরিচালনা কমিটির সদস্য হিসেবে দুইবার দায়িত্ব পালন

করেছেন। আমি যে স্কুলে ছিলাম সেই স্কুলটি ১৯৭০ সালের নির্বাচনের পর প্রতিটি নির্বাচনেই একটি নির্বাচনী কেন্দ্র হিসেবে ব্যবহৃত হয়। ১৯৭০ সালের নির্বাচনের পরে অন্য কোন নির্বাচনের সময় আমি কোন নির্বাচনী দায়িত্বে ছিলাম না। আমি ছাড়া স্কুলের অন্যান্য শিক্ষকদের মধ্যে কেউ কেউ কোন কোন সময় নির্বাচনী দায়িত্বে ছিলেন। আক্তার গুন্ডা মাঝে মাঝে আমার স্কুলে আসত সেই হিসেবে তাকে আমি চিনতাম। আক্তার গুন্ডা বাঙ্গালী ছিল না। তালেব সাহেব ১৯৭০ সালে গাড়ি কেনার পর থেকে গাড়ি চালক নিজামকে চিনতাম। আমার প্রয়োজনে অনেক সময় নিজাম আমাকে আনা-নেওয়া করতো। ইত্তেফাক অফিসের অবাঙ্গালী হিসাব রক্ষক হালিম সাহেবকে আমি চিনতাম না, তবে তার নাম শুনেছিলাম।

যিনি আমার জীবন বাঁচিয়েছিলেন তার সংগে পরবর্তীতে আমার দেখা হয়েছিল। পথে ঘাটে যেখানে দেখা হতো তাকে আমি ডেকে এনে চা-নাস্তা দিয়ে আপ্যায়ন করতাম। তিনি লম্বা দাঁড়ি ওয়ালা লোক ছিলেন। তার নাম ছিল মোল-া। ১৯৭০ সালের নির্বাচনে আমি কোন নির্বাচনী প্রচারনায় অংশ গ্রহণ করিনি। ১৯৭০ সালের নির্বাচনে বঙ্গবন্ধুর নেতৃত্বাধিন যে জনসমর্থন ছিল ১৯৯৬ সালের নির্বাচনে আওয়ামী লীগের সেই জনসমর্থন ছিল না। ১৯৯৬ সালে কেয়ারটেকার সরকারের দাবীতে আওয়ামীলীগ, জামায়াতে ইসলামী এবং জাতীয় পার্টি যৌথভাবে তৎকালীন ক্ষমতাসীন বি এন পি দলের বির□দ্ধে আন্দোলন করেছিল। তদন্তকারী কর্মকর্তা আবদুর রাজ্জাক সাহেবের কাছে আমি চলতি বছরের মে মাসের প্রথম ভাগে জবানবন্দী দিয়েছি। সম্ভবত মিরপুর বাঙলা স্কুলে বসে আমার জবানবন্দী নিয়েছিল, বাসায়ও একদিন গিয়েছিল। ইহা সত্য নয় যে, ২০১২ সালের মে মাসের প্রথম ভাগে তদন্তকারী কর্মকর্তা আবদুর রাজ্জাক সাহেবের কাছে মিরপুর বাঙলা স্কুলে বসে জবানবন্দী দেওয়ার কথাটি অসত্য এবং বানোয়াট। আমি যে স্কুলে চাকুরী করতাম সেখান থেকে সরকারী বাঙলা কলেজটি দক্ষিণ-পশ্চিমে ২ কিঃ মিঃ দুরে।

ইহা সত্য নয় যে, খন্দকার আবু তালেব সাহেবকে অবাঙ্গালীরা, স্থানীয় আক্তার গুন্ডা ও আবদুল কাদের মোল-ারা মিরপুর ১০ নম্বরের জল-াদ খানায় নিয়ে হত্যা করে মর্মে শুনার কথাটি শেখানো,মিথ্যা ও বানোয়াট।

ইহা সত্য নয় যে, বাঙলা কলেজের ছাত্র পল-বকে আবদুল কাদের মোল্লা হত্যা করেছে মর্মে আমার শুনা কথাটি শেখানো, মিথ্যা ও বানোয়াট।

ইহা সত্য নয় যে, আমি তদন্‌ৃকারী কর্মকর্তার কাছে বলিনি যে, সেই নির্বাচনে জাতীয় পরিষদে এ্যাডভোকেট জহিরউদ্দিন নৌকা প্রতীকের প্রার্থী ছিলেন বা নির্বাচনের সময় আমি কারো পক্ষে কাজ করিনি তবে আওয়মীলীগ যারা করত তাদের সংগে চলাফেরা করতাম তাদের খোজ খবর নিতাম বা দাঁড়ি পাল্লা প্রতীকের পক্ষে যারা কাজ করতেন তাদের মধ্যে নঈম খান, সফিরউদ্দিন, জনৈক মোল-া এর নাম উলে-খযোগ্য বা ১৯৭১ সালের ৭ মার্চ রেসকোর্সে অনুষ্ঠিত বঙ্গবন্ধুর জনসভায় আমি যোগদান করি বা এরপর আমরা তাঁর আহবানে অসহযোগ আন্দোলনে শরিক হই এবং স্কুল, কলেজ বন্ধ করে দেই বা এরপর ২৩ মার্চ, পাকিস্তানর প্রজান্ত্র দিবসে সারা ঢাকায় স্বাধীন বাংলার পতাকা উত্তোলন করা হয় কিন্তু মিরপুরে তা হয়নি বা এই সময় আমি তাদের কথার জবাব দিতে দিতেই দেখি একজন আমাকে ছুরিকাঘাত করতে উদ্যত হয় বা এরপর আমি আবার উঠার চেষ্টা করলে বুঝতে আমার হাটু এবং কনুই শিথিল হয়ে গেছে নড়ছে না বা তারপর দেখি ওরা আমার ঘাড়ে

কোঁপ দি□ছ আমি বাম হাত দিয়ে কোঁপ ঠেকাতে গেলে বাম হাতে কোঁপ লাগে এবং আমার বাম হাতের হাড় কেটে যায় এবং বাম হাতের আঙুল সহ অন্যান্য জায়গায় মারাত্মক রক্তাক্ত জখম হয় বা আমার চিৎকার শুনে ঘটনাস্থলের পাশেই অবস্থানরত জনৈক মোল-া দরজা খুলে বের হতেই আক্রমনকারীরা থমকে যায় এবং চলে যায় বা মোল-ার লোকজন তালেব সাহেবের বাসায় খবর দিলে তালেব সাহেব নিজে এবং তাঁর লোকজন বন্দুক সহ এগিয়ে আসেন এবং আমাকে ঐখান থেকে তালেব সাহেবের বাসায় নিয়ে সেবা শুশ্র□ষা ও প্রাথমিক চিকিৎসা করান বা বঙ্গবন্ধুর নির্দেশেই আমাকে ঢাকা মেডিকেল কলেজ হাসপাতালে ভর্তি করা হয় বা আমার চেতন আসে ২৫ মার্চ,১৯৭১ সকাল বেলা বা যেহেতু আমার জ্ঞান ফিরতে দেরী হ□িছল মিরপুরের লোকজন মনে করেছিল আমি মারা গেছি বা ২৫ মার্চ সকাল ১০/১১টার দিকে দেখি মেডিকেল কলেজে অনেক লোকজন আমাকে দেখতে এসেছে এবং তারা ফিস ফিস করে কথা বলছিল বা ঐ দিন রাত ১০/ ১০.৩০ মিঃ এর দিকে দেখি শহীদ মিনারে বোম্বিং হ□েছ এবং আমাদের হাসপাতালের বিছানাগুলো ঝন ঝন করে আওয়াজ হ□েছ বা অল্প সময়ের মধ্যেই হাসপাতাল মৃত এবং অর্ধমৃত মানুষের ভিড়ে ভরে গেছে বা ২৭ মার্চ, ১৯৭১ সকালে কারফিউ শিথিল করেছিল বা তখন আমার এক সহকর্মী নাম ফার□ক আহমেদ খান আমাকে হাসপাতালের ড্রেস পরা অবস্থায় কোলে করে তার বোনের বাসা সবুজবাগে নিয়ে যায় বা তখনও বাসায় বাসায় ঢুকে মিলিটারীরা মানুষকে হত্যা করছিল বা এলাকাবাসী আমাকে দেখে অবাক হয়ে পড়ে কারণ ৯ এপ্রিল, ১৯৭১ আমার গ্রামে আমার কুলখানীও হয়ে যায় বা তখন আমি শুনলাম খন্দকার আবু তালেব সাহেবকে অবাঙ্গালীরা, স্থানীয় আক্তার গুন্ডা ও আবদুল কাদের মোল-ারা মিরপুর ১০ নম্বরের জল-াদ খানায় নিয়ে হত্যা করেছিল বা দেশ স্বাধীন হওয়ার পরে ১৯৭২ সালের ৩

জানুয়ারী ঢাকায় আসি এবং আবার স্কুলের কার্যক্রম শুর□ করি বা তখন আমি আমাকে যে মোল-া সাহেব বাঁচিয়েছিলেন তার কাছে শুনি আক্তার গুন্ডার লোকজন আমাকে আক্রমন করে জখম করেছিল বা তারপর একদিন তালেব সাহেবের গাড়ীর অবাঙ্গালী ড্রাইভার নিজামের সংগে আমার দেখা হয় বা তখন নিজাম আমাকে জানায় তালেব সাহেবের ইত্তেফাক অফিসের এক অবাঙ্গালী হিসাব রক্ষক হালিমের সংগে তালেব সাহেব মিরপুরে নিজ বাড়ীতে আসছিলেন বা কিন্তু ঐ অবাঙ্গালী হালিম তালেব সাহেবকে নিজ বাড়ীতে না পৌছিয়ে বিহারীদের হাতে তুলে দেয় এবং বিহারীরা জল-াদ খানায় নিয়ে তাকে হত্যা করে বা ৬ নম্বর সেকশনে নিজ বাড়ীতে কবি মেহের□ন্নেসা থাকতেন বা তাঁকেও স্বপরিবারে নিজ বাড়ীতে অবাঙ্গালীরা হত্যা করে বা বাঙলা কলেজের পল-ব নামের একজন ছাত্রকে আবদুল কাদের মোল-া হত্যা করেছে বলে আমি শুনেছি।

আমার সম্□র্কে কবি কাজী রোজি লিখে থাকতে পারে তবে আসামী আবদুল কাদের মোল্লা সম্□র্কে লিখেছেন কি না জানিনা। ইহা সত্য নহে যে, বর্তমান ক্ষমতাসীন সরকারের দলের চাপে এবং সেখানো মতে সাক্ষ্য দিলাম বা আসামী আবদুল কাদের মোল্লা সম্□র্কে যে সাক্ষ্য দিয়েছি তা মিথ্যা, বানোয়াট এবং ভিত্তিহীন। ইহা সত্য নয় যে, জনাব আবদুল কাদের মোল-াকে অপরাধের জড়িত করে যে সাক্ষ্য দিয়েছি তা সম্□র্ন অসত্য,ভিত্তিহীন, বানোয়াট এবং সম্□র্ন সত্য গোপন করে দিয়েছি। (জেরা সমাপ্ত) পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বা/-অস্□ষ্ট, ২৬/৯/১২

স্বাক্ষর/-অস্পষ্ট, ২৬/৯/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor – Versus- Abdul Kader Molla.

Deposition of witness No. 11 for the Prosecution aged about 57 years, taken on oath on Sunday the 7th October 2012.

My name is Monwara Begum.

My father's name Late Abdul Motaleb.

My mother's name is ------------- age-------- I am by religion ------- My home is at

village--------- Police Station ----------, District ----------, I at present reside in ----, Police Station----------, District ------------, my occupation is ----------------

আমার নাম মনোয়ারা বেগম। আমি আন্তর্জাতিক অপরাধ ট্রাইব্যুনালে তদন্ত সংস্থায় তদন্তকারী কর্মকর্তা হিসেবে কর্মরত আছি। পুলিশ হেড কোয়াটার্স স্মারক নং-জিএ/৩০-২০১০/আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল/২৬৬/১(২২), তারিখঃ ০২/২/২০১১ মোতাবেক ১৪/২/২০১১ তারিখে যোগদান করি। আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল তদন্ত সংস্থার তদন্তকারী কর্মকর্তা জনাব মোঃ আবদুর রাজ্জাক খান পিপিএম এর রিকুইজিশন মোতাবেক আমি অত্র মামলার কয়েকজন এক্সপার্ট উইটনেস সহ সংশি-ষ্ট ভুক্তভোগী ও নির্যাতিতার জবানবন্দী গ্রহণ করি। তন্মধ্যে ১৩/৮/২০১১ তারিখে অত্র মামলার ভিকটিম মোমেনা বেগম, পিতা- শহীদ হজরত আলী লস্কর, মাতা- শহীদ আমিনা বেগম, স্বামী হাবিবুর রহমান, সাং- বাড়রদি, সেকশন-১২, ব-ক-ডি, শহীদবাগ, ২৪ নম্বর লেন মিরপুর, থানা-পল-বী, ডি এম পি, ঢাকা এর জবানবন্দী গ্রহণ করি। ১৯৭১ সালে মহান মুক্তিযুদ্ধের সময় মোমেনা বেগমের ঠিকানা ছিলঃ মিরপুর সেকশন-১২, ব-ক-ডি, লেন-০৫, বাড়ী নম্বর-২১, ঢাকা। মিরপুর ১০ নম্বর সেকশনের পাম্প হাউস নামে একদা পরিচিত জল-াদ খানায় বসে তার জবানবন্দী রেকর্ড করি। আমার রেকর্ডকৃত জবানবন্দী আমি এস সি ডি'র (সাপি-মেন্টারী কেস ডাইরি) মাধ্যমে তদন্তকারী কর্মকর্তার নিকট দাখিল করি। এটা আমার জবানবন্দী। (জবানবন্দী সমাপ্ত)

XXX জেরাঃ ম–ল তদন্তকারী কর্মকর্তার কাছ থেকে আমি ১৫/২/২০১১ তারিখে রিকুইজিশন পাই। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ০৭/১০/১২

স্বাক্ষর/-অস্□ষ্ট, ০৭/১০/১২ চেয়ারম্যান

আন্⍰র্জাতিক অপরাধ

ট্রাইব্যুনাল-২

<u>তারিখঃ ১৫/১০/২০১২ খ্রিঃ (পরবর্তী জেরা শুর□)</u>

আমি লিখিতভাবে ম–ল তদন্⍰কারী কর্মকর্তার কাছে থেকে রিকুইজিশন পেয়েছিলাম। এই মামলা সংশি-ষ্টে মোট ১০ জনের জবানবন্দী রেকর্ড করি। তারা হলেনঃ সর্ব জনাব ডাক্তার মোঃ আনিসুল হাসান (এম এ হাসান), শাহরিয়ার কবির, অধ্যাপক ড. মুনতাসির উদ্দিন খান মামুন, ড. সাজিদ হোসেন, ফেরদৌসি প্রিয়ভাষিনী, ফাদার রিচার্ড উইলিয়াম টিম, ছখিনা হেলাল, জুলফিকার আলী মানিক, হোসেন আক্তার চৌধুরী ওরফে আক্কু চৌধুরী এবং মোমেনা বেগম। আমি উলে-খিত সাক্ষীদের জবানবন্দী রেকর্ড করা ছাড়াও সাক্ষী জনাবহোসেন আক্তার চৌধুরী ওরফে আক্কু চৌধুরীর নিকট থেকে মুসলিম বাজার বধ্যভূমি খনন কাজ সংক্রান্⍰ সেনা বাহিনীর ৪৬ ব্রিগেডের ধারণকৃত ভিডিও চিত্র সংগ্রহ করেছি। ফাদার রিচার্ড উইলিয়াম টিম এর নিকট থেকে তাঁর লেখা 'ফোরটি ইয়ার্স ইন বাংলাদেশ' বইটি সংগ্রহ করে তদন্⍰কারী কর্মকর্তা জনাব আবদুর রাজ্জাক খাঁন পিপিএম এর নিকট হস্⍰ান্⍰র করি। এছাড়া ড. সাজিদ হোসেনের নিকট থেকে 'একাত্তরের যুদ্ধ শিশু ' বইটি সংগ্রহ করি ও তাঁর গবেষণাকালীন ১৯৭২ সনে যুদ্ধ পরবর্তী সময়ে অস্ট্রেলিয়ান শৈল চিকিৎসক ড. জেফরি ডেভিসের লেখা ১৯৭১ সনে নারী নির্যাতনের ভয়াবহতা সম্□র্কে একটি প্রতিবেদন যাতে তিনি নারী নির্যাতনের সংখ্যা চার থেকে সাড়ে চার লক্ষ। একটি রিকুইজিশন স–ত্রে আমাকে কমপে-ইন্ট রেজিষ্টার ক্রমিক নং-১ অনুযায়ী এই মামলার আসামীসহ আরো তিন জন অভিযুক্তের তদন্⍰ কাজ পরিচালনা করেছি। আমি আমার তদন্⍰ শেষে বিগত ০২/১০/২০১১ তারিখে আমার সাপি-মেন্টারি কেইস ডাইরি (এস সি ডি) ম–ল তদন্⍰কারী কর্মকর্তার নিকট দাখিল করেছি। আমার কাছে প–র্নাঙ্গ এস সি ডি এখন নাই। তবে যেদিন রিকুইজিশন পাই সেদিন থেকেই আমার তদন্⍰ কাজ শুর□ করি। আমার কাছে এস সি ডি না থাকায় এই মুহুর্তে কোন তারিখে তদন্⍰ আরম্ভ করি তা বলা সম্ভব নয়। ১৫/২/২০১১ তারিখে এই মামলার তদন্⍰ স–ত্রে বাইরে গিয়েছি বলে মনে পড়ে না, তবে মামলা সংক্রান্⍰ পুরানো সকল কাগজপত্র, বইপত্র পর্যালোচনা শুর□ করেছি। (পরে বলেন) আমি ইতিপুর্বে ০২/১০/২০১১ তারিখে সাপি-মেন্টারি কেইস ডাইরি (এস সি ডি) মুল তদন্তকারী কর্মকর্তার নিকট দাখিল করেছি মর্মে যা বলেছিলাম সেখানে তারিখটি ভুল বলেছি- আসলে তারিখটি হবে ২৫/১০/২০১১।

আমি সর্বপ্রথম ২৩/৩/২০১১ তারিখে ড. সাজিদ হোসেন এর জবানবন্দী রেকর্ড করি চট্টগ্রাম সার্কিট হাউসে বসে। আমার পে-স অব পোষ্টিং আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল এর তদন্ত সংস্থায়, যার হেড অফিস ঢাকায় অবস্থিত। ঢাকা থেকে অফিসের ফোর্সসহ গাড়ী করে চট্টগ্রাম গিয়েছি। যেহেতু আমি এস সি ডি মুল আই ও এর কাছে সাবমিট করেছি তাই সেটি না দেখে আমি সুনির্দিষ্টভাবে চট্টগ্রাম যাবার তারিখ ও সময় বলতে পারছি না।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ১৫/১০/১২

স্বাক্ষর/-অস্পষ্ট, ১৫/১০/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

তারিখঃ১৬/১০/২০১২খ্রিঃ (পরবর্তী জেরা শুরু)

আমি আজ এস সি ডি সহ আদালতে এসেছি।

প্রশ্নঃ এই মামলার আসামী কাদের মোল-ার বিরুদ্ধে ড. সাজিদ হোসেন কি তথ্য জানতেন যে তার ভিত্তিতে তার জবানবন্দী রেকর্ড করার জন্য চট্টগ্রাম গেলেন ?

উত্তরঃ 'একাত্তরের যুদ্ধ শিশু' নামে একটি বই লিখেছেন ড. সাজিদ হোসেন। সারাদেশে সংঘটিত মানবতা বিরোধী অপরাধ তদন্ত করতে গিয়ে রিকুইজিশন অনুযায়ী আমার কাছে মনে হয়েছে ড. সাজিদ হোসেনের জবানবন্দী নেওয়া আবশ্যক সেই কারণে আমি চট্টগ্রামে গিয়েছিলাম তার জবানবন্দী নেবার জন্য।

২১/৩/২০১১ তারিখে সকাল ৭ ঘটিকায় সড়ক পথে ফোর্স সহ রওনা দিয়ে আমি বিকাল ৫টায় চট্টগ্রামে পৌঁছি। ২১ এবং ২২ মার্চ আমি চট্টগ্রাম সার্কিট হাউসে অবস্থান করি। ২২ মার্চ আমি সারাদিন তদন্ত কাজে ব্যস্ত ছিলাম। মহিলা বিষয়ক পরিদপ্তরসহ বিভিন্ন জায়গায় গিয়েছি। সারাদিন তদন্তকাজে কোথায় কি করেছি তা এস সি ডি'তে উলে-খ করা আছে। আমি ২২ তারিখের এস সি ডি সংগে আনিনি। টেলিফোনে অনুরোধের প্রেক্ষিতে ড. সাজিদ হোসেন সার্কিট হাউসে আসেন। ড. সাজিদ হোসেন চট্টগ্রাম মেরিন একাডেমীর কমাডেন্ট। ড. সাজিদ হোসেন এর বক্তব্য আমি নিজে লিপিবদ্ধ করি, পরে আমার রেকর্ডকৃত লিখিত জবানবন্দী দেখে আমার কম্পিউটর অপারেটর টাইপ করে তারপর উহাতে আমি দস্তখত এবং তারিখ দিয়েছি। ইহা সত্য নয় যে, আমার রেকর্ডকৃত লিখিত জবানবন্দীতে আমার কোন দস্তখত এবং তারিখ নাই। ২৩/৩/২০১১ তারিখ বিকাল ৫টা থেকে সন্ধ্যা ৭টা পর্যন্ত ড. সাজিদ হোসেনের জবানবন্দী গ্রহন করি। চট্টগ্রাম থেকে কখন রওনা হয়েছি তা এই মুহূর্তে বলতে পারব না। আমার এস সি ডি না দেখে আমি তারিখ এবং সময় বলতে পারব না। ঢাকা অফিসে এসে আমার এস সি ডি ক্লোজ করেছি। মামলা তদন্তকালে আমি যেদিন যেদিন এই মামলার তদন্ত কার্যক্রম পরিচালনা করেছি তা ডাইরিতে উলে-খ করেছি।

আমি কমপে-ইন্ট রেজিষ্টার-১ সূত্রে ২৭/৮/২০১১ এবং ২৫/১০/২০১১ তারিখে শাহরিয়ার কবির সাহেবকে জিজ্ঞাসাবাদ করি। কমপে-ইন্ট রেজিষ্টার-১ এ চারজন আসামীর বিরুদ্ধে অভিযোগের কথা বলা হয়েছে। তারা হলেনঃ সর্বজনাব মতিউর রহমান নিজামী, আলী আহসান মোহাম্মদ মুজাহিদ, কামারুজ্জামান এবং আবদুল কাদের মোল-া। উনার পুরো জবানবন্দী লিপিবদ্ধ করতে উলে-খিত দুই দিন সময় লাগে। শাহরিয়ার কবির সাহেবের বাসা গ-১৬, মহাখালীতে তার জবানবন্দী রেকর্ড করি। ইহা সত্য নয় যে, ২৭/৮/২০১১ তারিখে আমি শাহরিয়ার কবিরকে জিজ্ঞাসাবাদ করিনি। আমি এস সি ডি'তে উলে-খ করেছি ২৭/৮/২০১১ তারিখে শাহরিয়ার কবিরকে জিজ্ঞাসাবাদ করা হয়েছে এবং আরো উলে-খ করেছি পরে তাকে আরো জিজ্ঞাসাবাদ করা হবে। কয়পৃষ্ঠা জবানবন্দী তা এস সি ডি'তে উলে-খ করিনি তবে পুর্নাঙ্গ জবানবন্দী কথাটি

লিপিবদ্ধ আছে। শাহরিয়ার কবির সাহেবের জবানবন্দীর আমি দুইটি কপি করি, তার একটি আমার কাছে রাখি, একটি মুল তদন্তকারী কর্মকর্তার কাছে জমা দিয়েছি। যে তদন্তকারী কর্মকর্তা আমাকে রিকুইজিশন দিয়েছিলেন আমি সেই তদন্তকারী কর্মকর্তার কাছে শাহরিয়ার কবির সাহেবের জবানবন্দী দিয়েছিলাম। মুনতাসির মামুনের জবানবন্দী রেকর্ড করি ১৭/৭/২০১১ এবং ১৭/৮/২০১১ তারিখে। ইহা সত্য নয় যে, ১৭/৭/২০১১ তারিখে উনার কোন জবানবন্দী রেকর্ড করিনি। কমপে-ইন্ট রেজিষ্টার-১ সুত্রে তদন্তে জন্য আমি বাংলাদেশের বিভিন্ন জায়গায় গিয়েছি। ফেরদৌসি প্রিয় ভাষিনীর জবানবন্দী আমি ১৯/২/২০১১ এবং ০৬/৭/২০১১ তারিখে বাড়ী নং-৩৮, রোড নং-৩, ধানমন্ডিতে বসে রেকর্ডকরন সম্পন্ন করি। ১৯/২/২০১১ থেকে ০৬/৭/২০১১ তারিখ পর্যন্ত এই দীর্ঘ সময় কেন জবানবন্দী সম্পন্ন করতে পারিনি তা এস সি ডি'তে উলে-খ আছে। ছখিনা হেলাল, জুলফিককার আলী মানিক এবং আক্কু চৌধুরীকে যথাক্রমে ১৩/৮/২০১১ তারিখ, ০২/৬/২০১১ তারিখ ও ০৩/৮/২০১১ এবং ০২/১০/২০১১ তারিখে ঢাকায় জিজ্ঞাসাবাদ করি।

তদন্তকালে মুক্তিযুদ্ধ যাদুঘরের আরেকটি অংশ মিরপুর ১০ নম্বরের জল-াদ খানা বধ্যভূমি স্মৃতি পিঠ এর মাধ্যমে সাক্ষী মোমেনা বেগমের বিস্তারিত তথ্য প্রাথমিকভাবে অবহিত হই। আমি মোমেনা

বেগমের পিতামাতার বাড়ী ঘটনাস্থলে যাই নাই। তদন্তকারী কর্মকর্তা গিয়েছেন। মোমেনা বেগমকে জিজ্ঞাসাবাদের পুর্বে তার আই ডি কার্ড বা পরিচয় পত্র জোগাড়ের প্রয়োজন মনে করিনি, তবে জিজ্ঞাসাবাদকালে আমি তার ছবি সম্বলিত আই ডি কার্ড দেখেছি।

প্রশ্নঃ মোমেনা বেগমের ছবি সম্বলিত আই ডি কার্ড আপনার তদন্ত প্রতিবেদনের সংগে দাখিল করেছেন কি ?

উত্তরঃ আমি আমার তদন্ত প্রতিবেদনের সংগে ছবি সম্বলিত আই ডি কার্ড দাখিল করিনি। কারণ মুক্তিযুদ্ধ যাদুঘর, জল-াদ খানা বধ্যভূমি স্মৃতি পিঠ এ সংরক্ষিত মিরপুর এলাকার শহীদ পরিবারের রেজিষ্টারের যে তালিকা আছে সেখানে মোমেনা বেগমের বাবা শহীদ হযরত আলী লস্কর এর নাম উলে-খ আছে এবং মোমেনা বেগমের নামও সেখানে আছে তার টেলিফোন নম্বরও আছে। তার ছবি সেখানে ছিলনা।

জল-াদখানা থেকে মোমেনা বেগমের বাবার বাড়ী ঘটনাস্থল কাছাকাছি কি না এটা বলতে পাবর না এটা বলতে পারবে মুল তদন্তকারী কর্মকর্তা। ১৩/৮/২০১১ তারিখ ১০.১০ মিনিটে আমার অফিস থেকে রওনা হয়ে মিরপুর ১০ নং সেকশনে জল-াদখানা, বধ্যভূমি স্মৃতি পিঠ এর উদ্দেশ্যে রওনা হই। মোমেনা বেগমকে আমি কোন লিখিত নোটিশ পাঠাইনি, তবে আমি তাকে জিজ্ঞাসাবাদ করার পুর্ব দিন জল-াদখানা বধ্যভূমি স্মৃতি পিঠ এর ইনচার্জ নাসির উদ্দিনকে বলেছিলাম মোমেনা বেগমকে জানাতে তিনি যেন পরের দিন সেখানে উপস্থিত থাকেন। সেই অনুসারে তিনি সেখানে মোমেনা বেগমকে হাজির করান। নাসির উদ্দিন মোমেনা বেগমকে তার বর্তমান ঠিকানায় যোগাযোগ করে তাকে আমার সম্মুখে হাজির করান। নাসির উদ্দিনকে মোমেনার পরিচয় নিশ্চয়তার জন্য জিজ্ঞাসাবাদ করার প্রয়োজন মনে করিনি। কারণ শহীদ পরিবারের রেজিষ্টার মোমেনার পরিচয়ের জন্য যথেষ্ট। এই মোমেনা যে হযরত আলী লস্করের কন্যা তা আমি নিরূপন করেছি। মোমেনা বেগম যে

শহীদ হযরত আলী লস্করের কন্যা তা বঙ্গবন্ধু কর্তৃক তাকে প্রদত্ত ২,০০০/-টাকার চেক প্রদানের একটি পত্রের মাধ্যমে আমি নিশ্চিত হই যে, তিনি শহীদ হযরত আলী লস্করের কন্যা।

প্রশ্নঃ আপনি তদন্তকালে দোয়ারীপাড়া নামের কোন গ্রামের সন্ধান পেয়েছেন কি না ?

উত্তরঃ আমি এই মামলার তদন্ত করিনি কিন্তু মোমেনার জবানবন্দী গ্রহণ করেছি। মোমেনার জবানবন্দীতে দোয়ারীপাড়া গ্রাম উলে-খ আছে। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্□ষ্ট, ১৬/১০/১২

<u>সময় দুপুর ২.১৫ ঘটিকা (পরবর্তী জেরা)</u>

আমি তদন্তকারী কর্মকর্তা হিসেবে সাক্ষীদের জবানবন্দী রেকর্ড করেছি। এক্সপার্ট উইটনেস হিসেবে আমি এখানে বর্নিত ১০ জনের মধ্যে ৭ জনকে পরীক্ষা করেছি। ভুক্তভোগী হিসেবে ৩ জনের জবানবন্দী আমি লিপিবদ্ধ করেছি। ভুক্তভোগী ৩ জনের মধ্যে ছিলেন ফেরদৌসী বেগম ওরফে ফেরদৌসী প্রিয়ভাষিনী, ছখিনা হেলাল এবং মোমেনা বেগম। জবানবন্দী রেকর্ড করার সময় আমি শুনেছি মোমেনা বেগম বিবাহিতা ছিলেন। আমি মোমেনা বেগমের বক্তব্য রেকর্ড করার সময় তিনি তার স্বামীর নাম বলেছিলেন এবং সেইভাবে আমি জেনেছি তিনি বিবাহিত এবং তার আই ডি কার্ড দেখেও জেনেছি তিনি বিবাহিত ছিলেন। ইহা সত্য নয় যে আমি যে মোমেনা বেগমকে জিজ্ঞাসাবাদ করেছি তিনি হাবিবুর রহমানে স্ত্রী নন বা শহীদ হযরত আলী লস্করের কন্যা নন। ইহা সত্য নয় যে, ১৯৭১ সালে মিরপুরের ১২ নং সেকশনের ব-ক-ডি এর লেন-৫ এর ২১ নম্বর বাড়িটি মোমেনার বাবার ছিলনা বা তারা সেখানে বসবাস করতেন না। ইহা সত্য নয় যে, আমি হযরত আলী লস্করের কন্যা হিসেবে যে ভুক্তভোগী মোমেনা বেগমের এর বক্তব্য লিপিবদ্ধ করেছি তিনি প্রকৃত মোমেনা বেগম নন বা তিনি একজন ভূয়া মোমেনা বেগম। ইহা সত্য নয় যে, আমি রিকুইজিশন মোতাবেক সঠিকভাবে তদন্ত করিনি। ইহা সত্য নয় যে, আমি ঘটনাস্থলে না গিয়ে অফিসে বসে মনগড়াভাবে জবানবন্দী লিপিবদ্ধ করেছি। আমি ১৯৭৭ সালে ১ আগষ্ট সাব ইন্সপেক্টর হিসেবে পুলিশ বিভাগে যোগদান করি। ০১/৮/১৯৭৭ থেকে ০১/৬/১৯৮৭ সাল পর্যন্ত বিভিন্ন থানায় পুলিশ অফিসার হিসেবে কর্মরত ছিলাম এবং কোর্টে সি এস আই হিসেবে কর্মরত ছিলাম। আমি ০১/৬/১৯৮৭ থেকে সম্ভবত ১৯৯৪ সাল পর্যন্ত ঢাকা সি এম এম আদালতে কোর্ট ইন্সপেক্টর হিসেবে কাজ করি, তবে এরমধ্যে কিছুদিনের জন্য আমি মেটারনিটি লীভ এ ছিলাম এবং কিছুদিন রিজার্ভ অফিস ইন্সপেক্টর হিসেবে দায়িত্ব পালন করি। ঢাকা সি এম এম কোর্টে আমি ঢাকা নর্থ জি আর সেকশনের কাজ তদারকি করতাম এবং এ সি প্রসিকিউশনের পক্ষে ঢাকা জজ কোর্টেও দায়িত্ব পালন করেছি। আমি এই মামলা সংশি-ষ্টে কোন ঘটনাস্থল পরিদর্শন করিনি। মুল তদন্তকারী কর্মকর্তা ঘটনাস্থল পরিদর্শন করেছেন। এই মামলার মুল তদন্তকারী কর্মকর্তা আমাকে জিজ্ঞাসাবাদ করেছেন। আমি আমার তদন্ত কার্যক্রম পরিচালনা কালে (রিকুইজিশন মুলে) যখন যা পেয়েছি (ডকুমেন্ট) যথাসময়ে তা মুল তদন্তকারী কর্মকর্তার নিকট জমা দিয়েছি। এই মামলার সংশি-ষ্টতায় তিনি

কোনগুলো ব্যবহার করেছেন সেটা তার ব্যাপার। তবে আমি আক্কু চৌধুরীর নিকট থেকে জল-াদখানা বধ্যভূমি এবং মুসলিম বাজার বধ্যভূমির ভিডিও চিত্র এর সিডি সংগ্রহ করে তাকে দেই। আমাকে জিজ্ঞাসাবাদের সময় আমি কিছু জমা দেই নাই কারণ প্রয়োজন ছিল না। আমার জবানবন্দী উনি রেকর্ড করেছেন কি না আমি জানিনা। এই মামলার মুল তদন্তকারী কর্মকর্তা আমাকে একবারই জিজ্ঞাসাবাদ করেছেন কথাটি সঠিক নয়। যেহেতু আমি উনার রিকুইজিশন মুলে মামলাটির কিছু কার্যক্রম গ্রহণ করেছি। সেহেতু প্রায়শই উনার সংগে আমার মত বিনিময় হতো। আমি তাকে সময়ে সময়ে আমার কার্যক্রমের অগ্রগতি অবহিত করেছি। আমি এই মামলার একজন আংশিক তদন্তকারী কর্মকর্তা হিসেবে সাক্ষ্য দিলাম। ইহা সত্য নয় যে, আমি রিকুইজিশন মোতাবেক সঠিক তদন্ত করিনি। (জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ১৬/১০/১২

স্বাক্ষর/-অস্□ষ্ট, ১৬/১০/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor – Versus- Abdul Kader Molla.

Deposition of witness No. 12 for the Prosecution aged about 58 years, taken on oath on Monday the 8th October 2012.

My name is Md. Abdur Razzak Khan, PPM.

My father's name Late Muslem Uddin Khan.

My mother's name is ------------- age-------- I am by religion ------- My home is at

village--------- Police Station ----------, District ----------, I at present reside in ----

Police Station----------, District ------------, my occupation is ----------------

আমার নাম মোঃ আবদুর রাজ্জাক খান, পিপিএম। আমি তদন্তকারী কর্মকর্তা, তদন্ত সংস্থা, আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল, বাংলাদেশ। আমি এই মামলার তদন্তকারী কর্মকর্তা। গণপ্রজাতন্ত্রী বাংলাদেশ সরকার, স্বরাষ্ট্র

মন্ত্রনালয়ের স্মারক নং- সমঃ(আইন-২)/তদন্তকারী সংস্থা-১-৫/২০১০/১০১-তারিখঃ ২৫/৩/২০১০খ্রিঃ স–ত্রে আমাকে তদন্ত কর্মকর্তা হিসেবে নিয়োগ প্রদান করেন। সেই মোতাবেক আমি ২৮/৩/২০১০ তারিখে তদন্ত সংস্থায় যোগদান করি এবং বর্তমানে কর্মরত আছি। তদন্ত সংস্থায় কর্মরত থাকা অবস্থায় মামলা তদন্তের প্রস্তুতিকালে বাংলাদেশের মুক্তিযুদ্ধের ইতিহাস ও পটভূমি সংক্রান্তে বিভিন্ন বইয়ের সংশি-ষ্ট অংশ পাঠ পুর্বক সংগ্রহ করি। ২১/৭/২০১০ তারিখের মাননীয় আন্তর্জাতিক অপরাধ ট্রাইব্যুনালের রেজিষ্ট্রার মহোদয়ের অফিসের মাধ্যমে পল-বী থানা মামলা নং-৬০, তারিখঃ ২৫/১/২০০৮ এর জুডিসিয়াল নথি প্রাপ্ত হয়ে আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল এর ১৫ জুলাই,২০১০ এর বিধিমালার ৫ বিধি অনুসারে তদন্ত সংস্থায় রক্ষিত কমপে-ইন্ট রেজিষ্টারে ক্রমিক নং-১, তারিখঃ ২১/৭/২০১০ এ অন্তর্ভ–ক্ত করা হয়। ঐ তারিখে আমাকে তদন্ত সংস্থা থেকে অত্র মামলার তদন্তভার দেওয়া হয়।

তদন্তকালে অভিযোগটি পর্যালোচনা করি। ২৫/৭/২০১০ তারিখে মাননীয় আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল এর রেজিষ্ট্রার মহোদয়ের অফিসের মাধ্যমে স্মারক নং- আন্তঃঅপঃট্রাই/৯৮/১০, তারিখঃ২২/৭/২০১০ মোতাবেক কেরানীগঞ্জ থানা মামলা নং-৩৪, তারিখঃ ৩১/১২/২০০৭ প্রাপ্ত হই। বর্নিত দুটি মামলার অভিযোগ পর্যালোচনায় প্রতিভাত হয় যে, ১৯৭১ সালের ২৫ মার্চ এর পর থেকে ১৬ ডিসেম্বর, ১৯৭১ দখলদার পাকিস্তান সেনা বাহিনী ও তাদের এদেশীয় সহযোগী বাহিনীর আত্মসমর্পনের প–র্ব পর্যন্ত বাংলাদেশের মহান স্বাধীনতা যুদ্ধকালে বর্নিত দুটি মামলার আসামীগণ তাদের দল ও দলের নেতাকর্মীগণ দখলদার পাকিস্তানী সেনা বাহিনীর সহযোগিতায় একত্রিত হয়ে মিরপুর ও কেরানীগঞ্জ থানা এলাকায় হত্যা, গণহত্যা ও অগ্নিসংযোগের অপরাধ সংঘঠিত করে। এর প্রেক্ষিতে উক্ত মামলা দুটির আসামীগণের দ্বারা আন্তর্জাতিক অপরাধ ট্রাইব্যুনালস এ্যাক্টের ৩(২) ধারার অপরাধ সংগঠিত হওয়ায় মামলার সুষ্ঠু ও কার্যকর তদন্তের স্বার্থে ২২/৭/২০১০ তারিখে তাদেরকে গ্রেফতার দেখানোর জন্য বিজ্ঞ চীফ প্রসিকিউটরের মাধ্যমে আবেদন করি। তৎপ্রেক্ষিতে মাননীয় ট্রাইব্যুনাল ০২/৮/২০১০ তারিখে সংশি-ষ্ট আসামীগণকে মামলায় গ্রেফতার করে জেল হাজতে আটক রাখার নির্দেশ প্রদান করেন।

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্পষ্ট, ০৮/১০/১২

আসামী আবদুল কাদের মোল-ার বিষয়ে তদন্তকালীন প্রাপ্ত তথ্যে জানা যায় তিনি ফরিদপুর রাজেন্দ্র কলেজের এইচ এস সি পড়াকালীন ইসলামী ছাত্র সংঘের রাজনীতির সাথে সম্পৃক্ত হন। ১৯৭০ সালে তিনি ঢাকা বিশ্ববিদ্যালয়ের শহীদুল-া হলের ইসলামী ছাত্র সংঘের সভাপতি ছিলেন। আসামী আবদুল কাদের মোল-া ২০/৪/১৯৭১ তারিখে ফজরের নামাজের সময় দখলদার পাকিস্তানী সেনা বাহিনী ও আবদুল কাদের মোল-ার নেতৃত্বে তার বাহিনীর অনুমান ১০০/১৫০ জন লোক তুরাগ নদীর পাড়ে আলুবদি গ্রামের চারিদিক ঘিরে নির্বিচারে গুলি বর্ষন করে স্থানীয় নিরিহ, নিরস্ত্র বাঙ্গালী ও ধান কাটা শ্রমিক মিলে অনুমান ৩৫০ জন লোককে হত্যা করে তাদের লাশ বিভিন্ন কুপের মধ্যে ফেলে দেওয়ার বিষয়ে ১৬/৮/২০১০ তারিখে আলুবদি গ্রামে তদন্ত ও ঘটনা সংশি-ষ্ট ব্যক্তিদের জিজ্ঞাসাবাদ করে তাদের জবানবন্দী লিপিবদ্ধ করি। আলুবদি

গ্রামে হত্যাকৃত ব্যক্তিদের লাশ ফেলা কুপের ও তুরাগ নদীর পাড়ের খসড়া মানচিত্র ১৭/৮/২০১০ তারিখে অংকন ও স–চীপত্র তৈরী করি।

২৫/১১/১৯৭১ তারিখে দখলদার পাকিস্@ানী সেনা বাহিনীর সহায়তায় আসামী আবদুল কাদের মোল-া স্থানীয় রাজাকারদের সহায়তায় ঢাকা জেলার কেরানীগঞ্জ থানাধিন ভাওয়াল খান বাড়ী ও ঘাটারচর শহীদনগর এলাকায় সংঘটিত গণহত্যার স্থান সম–হ ১৫/১/২০১১ তারিখে পরিদর্শন করিয়া ঘটনার বিষয়ে তদন্@ প–র্বক ঘটনাস্থল সম–হের খসড়া মানচিত্র অংকন, স–চী তৈরী এবং স্থির চিত্র গ্রহন করি এবং সংশি-ষ্ট সাক্ষীদের জবানবন্দী লিপিবদ্ধ করি।

২৭/৩/১৯৭১ তারিখে আসামী আবদুল কাদের মোল-া ও তার বাহিনী দ্বারা মিরপুর ৬ নং সেকশনের ডি ব-কের ১২ নং রোডের ৬ নং বাড়ির বাসিন্দা স্বাধীনতা প্রিয় শহীদ কবি মেহের□ন নেসা ও তার মা সহ দুই ভাইকে নির্মমভাবে হত্যা এবং ১৯৭১ সালে মিরপুর ১২ নং সেকশনের ডি ব-কের ১৮ নং লাইনের ১৮ নং বাড়ীতে বসবাসকারী শহীদ পল-ব ওরফে টুন টুনি মিয়া পিতা মৃত মানিক সরদারকে ৫ এপ্রিল, ১৯৭১ সালে মিরপুর ১২ নং সেকশনে অবস্থিত ঈদগা মাঠে নির্মমভাবে অত্যাচার করে নৃশংসভাবে হত্যার বিষয়ে ৩০/৮/২০১১ তারিখে তদন্@ করি এবং সংশি-ষ্ট সাক্ষীদের জবানবন্দী লিপিবদ্ধ করি।

মামলা তদন্@ করাকালীন আমার তদন্@কাজে সার্বিক সহায়তা করার জন্য বিশেষত নির্যাতিতা নারীদের জিজ্ঞাসাবাদ প–র্বক তাদের জবানবন্দী লিপিবদ্ধ করার জন্য তদন্@ সংস্থার তদন্@ কর্মকর্তা মনোয়ারা বেগমকে ১৫/২/২০১১ তারিখে অধিযাচন পত্র (রিকুইজিশন) দেই। তিনি আমার দেওয়া পত্র মোতাবেক অন্যান্য সাক্ষীদের জবানবন্দী লিপিবদ্ধ করা সহ ভিকটিম সাক্ষী মোমেনা বেগমকে জিজ্ঞাসাবাদ করে তার জবানবন্দী রেকর্ড করে অতিরিক্ত কেস ডাইরির মাধ্যমে আমাকে প্রদান করেন।

আসামী আবদুল কাদের মোল-াকে ট্রাইব্যুনালের অনুমতি নিয়ে ১৫/৬/২০১১ তারিখে তদন্@ সংস্থার হেফাজতে নিয়ে তাকে জিজ্ঞাসাবাদ করা হয়। জিজ্ঞাসাবাদে প্রাপ্ত তথ্য তদন্ে@ প্রতিফলিত হয়েছে।

মামলা তদন্@কালে দালিলিক সাক্ষ্য হিসেবে সাগর পাবলিশার্স ২৩, নাটক সরণী, নিউ বেইলী রোড ঢাকা হতে ০৯/৬/২০১১ তারিখে অন্যান্য বইয়ের সহিত ডিসেম্বর ১৯৯৮ সালে কারিতাস
পাবলিকেশন্স হতে প্রকাশিত মহিউদ্দিন চৌধুরীর লেখা " সানসেট এ্যাট মিড-ডে" বইটি জব্দ করি। উক্ত বইয়ের ৯৭ পৃষ্ঠার প্যারা ২ এর সপ্তম লাইনে উলে-খ আছে - " The workers belonging to purely Islami Chatra Shango were called Al-Badar" এই সেই জব্দ তালিকা এবং এই জব্দ তালিকা ম–লে বইটি জব্দ করি, এতে আমার স্বাক্ষর আছে। এই সেই জব্দ তালিকা (প্রদর্শনী-১) এবং আমার দস্@খত (প্রদর্শনী- ১/১)। মাননীয় ট্রাইব্যুনালে দাখিলকৃত 'ম–ল জব্দ তালিকা' ম–ল ভলিয়্যুম এর ৯২ পৃষ্ঠায় এই জব্দ তালিকা সন্নিবেশিত আছে। এটা সেই জব্দকৃত বই " সানসেট এ্যাট মিড-ডে" (প্রদর্শনী-২)।

মামলাটি আমি সরেজমিনে তদন্@ করে তদন্ে@ প্রাপ্ত সাক্ষ্য প্রমাণে ও দালিলিক সাক্ষ্যে আসামী আবদুল কাদের মোল-া, পিতা- মরহুম সানাউল-াহ মোল-া, সাং- আমিরাবাদ, থানা- সদরপুর, জেলা- ফরিদপুর। বর্তমান ঠিকানাঃ ফ্লাট নং-

৮/১, গ্রীনভ্যালি এপার্টমেন্ট, ৪৯৩, বড় মগবাজার, থানা-রমনা, ডিএমপি, ঢাকা এর বির□দ্ধে আন্ড়র্জাতিক অপরাধ ট্রাইব্যুনালস এ্যাক্ট, ১৯৭৩ এর ৩(২)(এ)(এইচ) ধারার অধীনে মানবতা বিরোধী অপরাধ সংঘটনে নিজের সম্□ৃক্ততা এবং ৩(২)(এ)(জি)(এইচ) এর অধীনে মানবতা বিরোধী অপরাধ করার প্রস্তুতি, যোগসাজস করে ও ষড়যন্ত্র করে উলে-খিত অপরাধ সংঘটনে সম্□ৃক্ত থাকার অপরাধ প্রাথমিকভাবে প্রমাণিত হওয়ায় ৩০/১০/২০১১ তারিখে মাননীয় ট্রাইব্যুনালে বিচারের উদ্দেশ্যে বিজ্ঞ চীফ প্রসিকিউটর বরাররে তদন্ড় প্রতিবেদন দাখিল করি।

তদন্ড় প্রতিবেদন দাখিল করার পরে আসামী আবদুল কাদের মোল-ার বির□দ্ধে অতিরিক্ত সাক্ষ্য প্রমাণ সংগ্রহের প্রচেষ্টা অব্যাহত রাখি। অতিরিক্ত সাক্ষ্য প্রমাণ সংগ্রহকালে আসামীর বির□দ্ধে আইনের ৩(২) ধারার অপরাধ সংঘটন সম্□র্কিত অতিরিক্ত ১৫ জন সাক্ষীর জবানবন্দী রেকর্ড করি। ০৯/৫/২০১১ তারিখে সাগর পাবলিশার্স ২৩, নাটক সরণী, নিউ বেইলী রোড ঢাকা হতে জুন ২০05 সালে কামিয়াব প্রকাশন লিঃ হতে প্রথম প্রকাশিত অধ্যাপক গোলাম আযমের লেখা "জীবনে যা দেখলাম" বইয়ের পঞ্চম খন্ডটি সাগর পাবলিশার্স এর লাইব্রেরীতে বসে জব্দ করি। ঐ বইয়ের ১৫৩ পৃষ্ঠায় উলে-খ আছে যে, " আমার একান্ড় সচিব হিসেবে আবদুল কাদের মোল-া" শিরোনাম অংশের তৃতীয় লাইনে উলে-খ আছে, "মোল-া এক সময়ে ঢাকা বিশ্ববিদ্যালয়ে শিবিরের সভাপতি ছিলেন"। এই সেই জব্দ তালিকা (প্রদর্শনী-৩) আমার স্বাক্ষর (প্রদর্শনী-৩/১) এই সেই জব্দকৃত বই (প্রদর্শনী-৪)।

তদন্ড় প্রতিবেদন দাখিলের পর আসামীর বির□দ্ধে রেকর্ডকৃত অতিরিক্ত সাক্ষীদের জবানবন্দী, জব্দ তালিকা ও জব্দকৃত বই আইনের ৯(৪) ধারা অনুযায়ী চীফ প্রসিকিউটের মাধ্যমে মাননীয় ট্রাইব্যুনালে দাখিল করা হয়। এই আমার জবানবন্দী। (জবানবন্দী সমাপ্ত)

XXXজেরাঃ

প্রশ্নঃ আপনি সাদা কাগজে লেখা দেখে বিজ্ঞ ট্রাইব্যুনালে সাক্ষ্য দিলেন ?

উত্তরঃ যেহেতু ফৌজদারী কার্যবিধি এবং সাক্ষ্য আইন এই ট্রাইব্যুনালে প্রযোজ্য নয় সেজন্যে আমার তদন্ড়ে প্রাপ্ত তথ্যাবলী সাদা কাগজে নোট করে এনে সেটা দেখে সাক্ষ্য দিলাম।

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ০৮/১০/১২

স্বাক্ষর/-অস্□ষ্ট, ০৮/১০/১২ চেয়ারম্যান

আন্ড়র্জাতিক অপরাধ

ট্রাইব্যুনাল-২

তারিখঃ ১৭/১০/২০১২ খ্রিঃ (পরবর্তী জেরা)

অত্র ট্রাইব্যুনালের মাননীয় রেজিষ্ট্রার অফিসের স্মারক ম–লে কেরানীগঞ্জ থানার মামলা নং-৩৪, তারিখঃ ৩১/১২/২০০৭, এবং পল-বী থানার মামলা নং- ৬০, তারিখঃ২৫/১/২০০৮ উভয় মামলার নথি আমি পেয়েছিলাম। উলে-খিত

মামলা দুটির তদন্ত কার্যক্রম সংশি-ষ্ট থানা কর্মকর্তা তদন্তকার্যক্রম কবে করেছে তা আমার জানা নাই । আমি তদন্তকালে উলে-খিত মামলা সংশি-ষ্ট জুডিসিয়াল নথি দুটি পর্যালোচনা করেছিলাম। প্রথম তারিখঃ ২৬/১/২০০৮ হতে ২১/৭/২০১০ তারিখ পর্যন্ত তদন্ত রিপোর্ট দাখিল করার জন্য ৩১ টি তারিখ ধার্য ছিল। ঐ মামলার তদন্তকারী কর্মকর্তা প্রথমে কে ছিলেন বলতে পারব না। তবে ২১/৭/২০১০ তারিখের আদেশ মোতাবেক দেখা যায় এই মামলার তদন্তকারী কর্মকর্তা ছিলেন মোঃ ন–র□ল ইসলাম সিদ্দিকী, পুলিশ পরিদর্শক, সি আই ডি, ঢাকা। এই মামলার এজাহারকারী ছিলেন মোঃ আমির হোসেন মোল-া, পিতা- মৃত হাজী সুরজত আলী মোল-া, সাং- দোয়ারীপাড়া, থানা-পল-বী , ঢাকা। মোঃ আমির হোসেন মোল-া ম–খ্য মহানগর হাকিম আদালতে পিটিশন কেস নং-১০/২০০৮, তারিখঃ ২৪/১/২০০৮ এ দাখিল করেছিলেন। ঐ পিটিশন কেসটির নালিশ বা অভিযোগ টাইপ করা কপি, উহাতে কে দস্তখত করে দাখিল করেছিল আমি বলতে পারব না। ঐ মামলায় আবদুল কাদের মোল-াকে গ্রেফতার করা হয়েছিল কি না তা জুডিসিয়াল নথিতে নাই। কোন কেসে আসামী আবদুল কাদের মোলা আটক ছিলেন তা আমি বলতে পারব না, তবে তাকে আমি আন্তর্জাতিক অপরাধ ট্রাইব্যুনালের তদন্ত সংস্থা কমপে-ইন্ট রেজিষ্টার ক্রমিক নং-১, তারিখঃ ২১/৭/২০১০ খ্রি স–ত্রে আসামীকে অত্র মামলায় গ্রেফতার দেখানোর জন্য আবেদন করেছিলাম। (পরে দরখাস্ত পর্যালোচনা করে বলেন) পল-বী থানার মামলা নং- ৬০, তারিখঃ২৫/১/২০০৮ এরপ্রেক্ষিতে আবদুল কাদের মোল-া জেল হাজতে আটক ছিলেন তা আমার গ্রেফতার দেখানোর দরখাস্তে উলে-খ আছে। ইহা সত্য নয় যে, প–র্বে বর্নিত আবদুল কাদের মোল-াকে গ্রেফতার করা হয়েছিল কি না তা পল-বী থানার উক্ত মামলার জুডিসিয়াল নথিতে না থাকার কথাটি মিথ্যা বলেছি। ১৪/৭/২০১০ তারিখের আদেশ ম–লে আবদুল কাদের মোল-াকে পল-বী থানার মামলা নং-৬০, তারিখ ২৫/১/২০০৮ স–ত্রে জেল হাজতে প্রেরন করা হয় মর্মে জুডিসিয়াল নথিতে উলে-খ আছে। পল-বী থানার মামলায় তদন্তের সময় বৃদ্ধির জন্য কোন আবেদন করেননি। ২১/৭/২০১০ তারিখে সি এম এম ঢাকা এর আদেশ ম–লে মামলাটি আন্তর্জাতিক অপরাধ ট্রাইব্যুনালে প্রেরন করা হয়। ঐ মামলার তদন্তকারী কর্মকর্তার কেস ডাইরি আমি পাইনি তাই তা পর্যালোচনা করার সুযোগ হয়নি। পল-বী থানার ঐ মামলার কোন তদন্তকারী কর্মকর্তাকে আমার তদন্তকালীন সময়ে আমি জিজ্ঞাবাদ করিনি। ইহা সত্য নয় যে, ঐ মামলার তদন্তকারী অফিসারগণ দীর্ঘদিন তদন্তের পর ঘটনার সত্যতা পায়নি হেতু আমি তদন্তকালে ঐ সকল তদন্তকারী কর্মকর্তাকে জিজ্ঞাসাবাদ করিনি। পল-বী থানার মামলাটি ২৫/১/২০০৮ থেকে ২১/৭/২০১০ তারিখ পর্যন্ত তদন্তাধীন ছিল। যেহেতু পল-বী থানার মামলাটি দন্ডবিধির ধারা ১৪৮/৪৪৮/৩০২/৩৪/২০১/৩২৬/৩০৭/৪৩৬ এর আওতায় দাখিল করা হয়েছিল সেহেতু ঐ মামলার সি ডি পর্যালোচনা করার কোন প্রয়োজন মনে করিনি। সি এম এম কোর্টের প্রসিকিউশনের আবেদনের প্রেক্ষিতে পল-বী থানার মামলাটি বিজ্ঞ সি এম এম অত্র ট্রাইব্যুনালে প্রেরন করেছিলেন। পল-বী থানার মামলাটির নালিশী দরখাস্তে কিছু সাক্ষীর নাম উলে-খ করা আছে তারা হলেনঃ গইজুদ্দিন মোল-া, আবদুস ছাত্তার মোল-া, ফজলুল হক, আনামত হোসেন ব্যাপারী, মোহাম্মদ আলী মাতবর, মুক্তিযোদ্ধা কামাল উদ্দিন, কদম আলী ব্যাপারী, আনারউদ্দিন ব্যাপারী, হাজী আম্বর আলী   মোল-া, মতিউর রহমান মোল-া, জুমন মোল-া, রিয়াজউদ্দিন ফকির, হাজি আবদুর রশিদ মোল-া। পল-বী

থানার মামলার নালিশী দরখাস্তের উলে-খিত সাক্ষীদের মধ্যে বাদী আমির হোসেন মোল-া, গইজুদ্দিন মোল-া ও আবদুস ছাত্তার মোল-াকে জিজ্ঞাসাবাদ করেছি। নালিশী দরখাস্তে দাখিলকারী আইনজীবীর নাম মোঃ আবদুর রাজ্জাক উলে-খ আছে। আমার তদন্তকালে আমি বিজ্ঞ আইনজীবী আবদুর রাজ্জাক সাহেবকে জিজ্ঞাসাবাদ করিনি। নালিশী দরখাস্তে উলে-খিত সাক্ষীদের সকলেরই বাড়ী আলুবদি গ্রাম বলে উলে-খ করা আছে। ইহা সত্য নয় যে, যেহেতু পল-বী থানার নালিশী দরখাস্তে বর্নিত সাক্ষীদের মধ্যে তিন জন ছাড়া বাকী সাক্ষীরা নালিশী অভিযোগ সমর্থন করেনি বিধায় আমি তাদেরকে জিজ্ঞাসাবাদ করিনি।

কেরানীগঞ্জ থানার মামলা নং-৩৪, তারিখঃ ৩১/১২/২০০৭, ধারা ৪৪৭/ ৪৪৮/ ৪৩৬/ ৩০২/ ১০৯/১১৪ দন্ডবিধি হিসেবে রুজু হওয়ার আগে মামলাটি ঢাকার চীফ জুডিসিয়াল ম্যাজিষ্ট্রেট কোর্টে পিটিশন কেস হিসেবে দাখিল করা হয়। উলে-খিত মামলার নালিশী দরখাস্তে বাদী সহ মোট ৮ জনকে সাক্ষী হিসেবে দেখানো হয়েছে তারা হলেনঃ মোজাফফর আহমেদ খান (বাদী), আনসার উদ্দিন খান, তৈয়ব হোসেন খান, মাবিয়া খাতুন, মনোয়ারা বেগম, বিবি আয়েশা, হাবিবুর রহমান খান এবং নাজিমুদ্দিন খান। এই সাক্ষীদের সবার বাড়ী মধ্যে বিবি আয়েশা ছাড়া বাকী সাক্ষীদের ঠিকানা কেরানীগঞ্জ থানাধীন ভাওয়াল খান বাড়ী দেখানো হয়েছে। ঐ মামলায় মোট আসামীর সংখ্যা ১৩ জন। ০১/১/২০০৮ তারিখে মামলাটিতে প্রথম বিচারিক আদেশ হয়। ১৭/১২/২০০৭ তারিখে জুডিসিয়াল ম্যাজিষ্ট্রেট কোর্ট নং-৩ এ নালিশী দরখাস্তটি দাখিল করা হয়। ০১/১/২০০৮ থেকে ২২/৭/২০১০ তারিখ পর্যন্ত মোট ৩৭টি আদেশ হয়। আদেশগুলো তদন্তকারী কর্মকর্তার প্রতিবেদন দাখিলসহ বিভিন্ন বিষয়ের প্রেক্ষিতে হয়েছে। কেরানীগঞ্জ থানার মামলাটির তদন্তকারী কর্মকর্তা কোন তদন্ত প্রতিবেদন দাখিল করেননি বা প্রতিবেদন দাখিলের সময় বর্ধিত করনের কোন প্রার্থনা করেননি। কেরানীগঞ্জ থানার মামলার নালিশী দরখাস্তে উলে-খিত সাক্ষীদের মধ্যে বিবি আয়েশা ছাড়া সকলকে আমি জিজ্ঞাসাবাদ করেছি এবং তাদের জবানবন্দী আমি রেকর্ড করেছি। কেরানীগঞ্জ থানা মামলার এবং পল-বী থানার মামলার অভিযোগ সমূহ দাখিলকারী আইনজীবী একই ব্যক্তি। কেরানীগঞ্জ থানার মামলার তদন্তকারী কর্মকর্তা ছিলেন মোঃ আসাদুজ্জামান, ভারপ্রাপ্ত কর্মকর্তা, কেরানীগঞ্জ থানা। এই মামলায় ১৪/৭/২০১০ তারিখে আসামী আবদুল কাদের মোল-াকে গ্রেফতার দেখানো হয়েছে। ঐ মামলার নথি আমি পাইনি তাই ঐ মামলায় তদন্তকারী কর্মকর্তা কতজন সাক্ষীকে পরীক্ষা করেছিলেন তা পর্যালোচনা করার কোন সুযোগ ছিল না। আমার তদন্তকালীন সময়ে আমি কেরানীগঞ্জ থানার মামলার তদন্তকারী কর্মকর্তাকে জিজ্ঞাসাবাদ করিনি। ২২/৭/২০১০ তারিখের আদেশ বলে ঢাকার জুডিসিয়াল ম্যাজিষ্ট্রেট-৩ ঐ মামলাটি পরবর্তী কার্যার্থে আন্তর্জাতিক অপরাধ ট্রাইব্যুনালে প্রেরন করেন। ইহা সত্য নয় যে, যেহেতু কেরানীগঞ্জ থানার মামলার তদন্ত কারী কর্মকর্তা মামলাটির তদন্তঅন্তে কোন সারবত্তা পাননি বিধায় আমি তাকে অত্র মামলায় জিজ্ঞাবাদ করিনি।

টু কোর্টঃ ঐ মামলার তদন্তকারী কর্মকর্তার কার্যক্রম পর্যালোচনা করা অপরিহার্য মনে করিনি।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্পষ্ট, ১৭/১০/১২

<u>সময় অপরাহ্ন২.২০ ঘটিকাঃ</u>

শুধু পল-বী থানার মামলাটি তদন্ত সংস্থার কমপে-ইন্ট রেজিষ্টার ক্রমিক নং- ১ এ অন্তর্ভুক্ত করি। ইহা সত্য নয় যে, আমি তদন্ত সংস্থায় যোগদান করার তারিখ ২৮/৩/২০১০ এর পর তদবীর করে পল-বী থানার মামলাটি আন্তর্জাতিক অপরাধ ট্রাইব্যুনালে পাঠানোর ব্যবস্থা করি। ২১/৭/২০১০ তারিখে তদন্তভার গ্রহণ করার পর ঐ দিন আমি পল-বী থানার মামলার এজাহারটি পর্যালোচনা করেছি।

প্রথম ১৬/৮/২০১০ তারিখে মো আমির হোসেন মোল-া, মোঃ শফিউদ্দিন মোল-া, মোঃ আবদুস ছাত্তার মোল-া, মোছাঃ রেখা, মোঃ জইনুদ্দিন, হাজি আবদুর রউফ মোল-া, মোছাঃ শাহিদা বেগম, মোঃ রফিক ব্যাপারী, মোঃ সাদেক উল-া দেওয়ান, মোঃ কিতাব উদ্দিন, মোঃ দলিলুদ্দিন এবং মোঃ রহিম বাদশাকে জিজ্ঞাবাদ করে তাদের জবানবন্দী লিপিবদ্ধ করেছি। আমি ঐ দিন পল-বী থানায় বসে উলে-খিত সাক্ষীদের জবানবন্দী গ্রহণ করি। তদন্তের প–র্বে সোর্সের মাধ্যমে সাক্ষীদের নাম,ঠিকানা সংগ্রহ করি। এই মামলায় তদন্তকার্যে আমাকে সহায়তা করার জন্য ৭/৮ জন সোর্স নিয়োগ করেছিলাম। ১৬/৮/২০১০ তারিখে আমিসহ মোট তিনজন সাক্ষীদের জবানবন্দী রেকর্ড করি। অন্য দুজন অফিসারের নাম মোঃ মতিউর রহমান ও মোঃ ন–র□ল ইসলাম।

এরপর ২৮/৯/২০১০ তারিখে পল-বী থানায় বসে মোঃ হার□ন মাতবর, মোঃ গয়েজ উদ্দিন, মোঃ সদর আলী মাতবর, মোঃ নইমুদ্দিন মিয়া, মোঃ হোসেন আলী, মোঃ মুসলিম, হাজী আবদুল খালেক, আলহাজ্ব মোঃ কদম আলী মাতবর, আবদুল মালেক ব্যাপারী, মোঃ হাশেম মোল-া, কালাচাঁন মিয়া এবং মোঃ ওয়াজুল হক মাতবর-কে জিজ্ঞাসাবাদ করি এবং তাদের জবানবন্দী লিপিবদ্ধ করি। সোর্সের মাধ্যমে তথ্য সংগ্রহ করে থানার পুলিশের সহায়তায় উলে-খিত সাক্ষীদেরকে জিজ্ঞাসাবাদ করি। ঐদিন আমি এবং মনোয়ারা বেগম সাক্ষীদের জবানবন্দী রেকর্ড করেছি।

এরপর ১৫/১/২০১১ তারিখে কেরানীগঞ্জ উপজেলা পরিষদ মিলনায়তনে বসে মোজাফফর আহমেদ খান, মোঃ এনাম মিয়া, মোছাঃ রোমেজা খাতুন, মোছাঃ মনোয়ারা, মোছাঃ জমিলা খাতুন, মোছাঃ মাহমুদা বেগম, মোছাঃ আঙ্গুরা, মোছাঃ ফাতেমা বেগম, মনোয়ারা বেগম, মোঃ হাবিবুর রহমান খান, মোঃ নাজিমুদ্দিন খান, মোঃ মোসলেম উদ্দিন খান, তৈয়ব হোসেন খান, মোঃ মুনসুর আলী, আখতার□জ্জামান, র□সমাতুন, মির জসিম উদ্দিন, আনসার উদ্দিন খান, হাজী মোঃ বেলায়েত হোসেন, ন–র□ল ইসলাম, মর্জিনা বেগম, রহিম, নজুমুদ্দিন-দেরকে জিজ্ঞাসাবাদ করে তাদের জবানবন্দী লিপিবদ্ধ করি। প্রথমে আমি এবং আমার সংগীয় অফিসাররা হাতে লিখে জবাবন্দী রেকর্ড করি এবং পরবর্তীতে তা কম্পি□উটার টাইপ করা হয়। আমিসহ মোট তিনজন অফিসার উলে-খিত সাক্ষীদের জবানবন্দী লিপিবদ্ধ করি। অন্য দুজন অফিসার হলেন জেড এম আলতাফুর রহমান, এস এম ইদ্রিস আলী।

আমার কেস ডাইরির ম–ল পান্ডুলিপি না দেখে আমি বলতে পারবনা আমি নিজে কার কার জবানবন্দী লিপিবদ্ধ করি এবং আমার সহকর্মী অফিসাররা কার কার জবানবন্দী লিপিবদ্ধ করেছিল। ম–ল পান্ডুলিপিটি হাতে লেখা। ইহা সত্য নয় যে,

আমার হাতে যে কেস ডাইরি আছে এটা প–নাঙ্গ কেস ডাইরি নয়। এই কেস ডাইরিটি কম্পিউটারে কম্পোজকৃত। আমরা একটি টিম ওয়ার্ক করেছি। হাতে লেখা ম–ল

পান্ডুলিপিটি আমার অফিসে আছে। আমার টিমের কোন কোন অফিসার কোন কোন সাক্ষীর জবানবন্দী রেকর্ড করেছেন তার বিস্তারিত আমার কাছে আছে এবং আমি হাতে লেখা পান্ডুলিপি কোর্টে আনতে পারব এবং হাতের লেখা দেখে কে কার জবানবন্দী রেকর্ড করেছেন তা বলতে পারব।১৫/১/২০১১ তারিখের পর থেকে তদন্ত প্রতিবেদন দাখিল করা পর্যন্ত আমি আরো ১৪ জন সাক্ষীর জবানবন্দী লিপিবদ্ধ করেছি। ১৪/৯/২০১১ তারিখে জাতীয় যাদুঘরে বসে ড.স্বপন কুমার বিশ্বাস ও মোঃ আবদুল মালেক হাওলাদারকে; ০৩/৩/২০১১ তারিখে মুক্তিযুদ্ধ যাদুঘরে বসে এ কে এম মোমিনুল ইসলাম ওরফে মামুন সিদ্দিকী ও আমেনা খাতুনকে; ২৩/১০/২০১১ তারিখে বাংলা একাডেমীতে বসে সৈয়দ মাসুমুল কবির ও মোঃ নেজামুদ্দিন মিয়াকে ; ০৩/৩/২০১১ তারিখে কং ৮৪৫ মোঃ আবু হানিফকে আন্তর্জাতিক অপরাধ ট্রাইব্যুনালের তদন্ত সংস্থার অফিসে বসে; ২১/৫/২০১১ তারিখে কং ১৮২ প্রবীর ভট্টাচার্য ও অপ–র্ব শর্মাকে সিলেট সার্কিট হাউসে বসে; ২৯/৮/২০১১ তারিখে ঢাকা বিশ্ববিদ্যালয়ের ভি সি অফিস সংলগ্ন একটি কক্ষে ড. কে এম সাইফুল ইসলাম খানকে; ০৯/৬/২০১১ তারিখে মোঃ জাকির হোসেন প্রধানকে নিউ বেইলী রোডস্থ সাগর পাবলিশার্স এর লাইব্রেরীতে বসে; ১৬/৩/২০১১ তারিখে তদন্ত সংস্থার অফিসে বসে মোঃ মতিউর রহমানকে ; ২৫/১০/২০১১ তারিখে একই অফিসে বসে মনোয়ারা বেগমকে ; ১০/১০/২০১১ তারিখে মোঃ ন–রুল ইসলামকে এবং ০৫/৬/২০১১ তারিখে জেড এম আলতাফুর রহমানকে একই অফিসে বসে জিজ্ঞাসাবাদ করি এবং তাদের জবানবন্দী রেকর্ড করি।

অপর তদন্তকারী কর্মকর্তা মনোয়ারা বেগম ১৫/২/২০১১ তারিখে আমার প্রদত্ত রিকুইজিশন মোতাবেক তার অংশের তদন্ত সমাপ্ত করে এস সি ডি আমার নিকট প্রদান করেন। মনোয়ারা বেগম ১০ জন সাক্ষীর জবানবন্দী লিপিবদ্ধ করেছিলেন। যে ১০ জন সাক্ষীর জবানবন্দী মনোয়ারা বেগম লিপিবদ্ধ করেছিলেন সেই ১০ জনের জবানবন্দী আমার নিকট আছে। এই মামলায় তদন্ত প্রতিবেদন দাখিল করা পর্যন্ত সর্বমোট ৪৮ জনকে পরীক্ষা করা হয় তার মধ্যে ৪০ জনকে তদন্ত প্রতিবেদনে সাক্ষী হিসেবে উলে-খ করেছি। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্পষ্ট, ১৭/১০/১২

স্বাক্ষর/-অস্পষ্ট, ১৭/১০/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

তারিখঃ ২১/১০/২০১২ খ্রিঃ দুপুর ২.১০ ঘটিকা (পরবর্তী জেরা)

ইহা সত্য নয় যে, আমি তদন্তকালে ৪৮ জন সাক্ষীকে পরীক্ষা করিনি। এটা সত্য যে, ১৬/৮/২০১০ তারিখে আমি ১২ জন সাক্ষীর জবানবন্দী রেকর্ড করেছি। এটা সত্য যে, ২৮/৯/২০১০ তারিখে আমি ১২ জন সাক্ষীর জবানবন্দী রেকর্ড করেছি। এটা সত্য যে, ১৫/১/২০১১ তারিখে আমি ২৩ জন সাক্ষীর জবানবন্দী রেকর্ড করেছি। আমি ৩০/১০/২০১১ তারিখে

আমি তদন্ত প্রতিবেদন দাখিল করি। এটা সত্য নয় যে, ১৫/১/২০১১ তারিখ হতে তদন্ত প্রতিবেদন দাখিলের পূর্ব পর্যন্ত আরো ১৪জন সাক্ষীর জবানবন্দী রেকর্ড করেছি। ১৫/১/২০১১ তারিখ হতে ৩০/১০/২০১১ তারিখের মধ্যবর্তী সময়ে আমি ১৫ জন সাক্ষীর জবানবন্দী রেকর্ড করেছি। তদন্ত প্রতিবেদন দাখিলের পূর্ব পর্যন্ত আমি ছাড়া আমার রিকুইজিশন মোতাবেক অপর তদন্তকারী কর্মকর্তা মনোয়ারা বেগম আরো ১০ জন সাক্ষীর জবানবন্দী রেকর্ড করেছেন। এটা সত্য যে, তদন্ত প্রতিবেদন দাখিলের পূর্ব পর্যন্ত আমি এবং অপর তদন্তকারী কর্মকর্তা মনোয়ারা বেগম সর্বমোট ৭২ জন সাক্ষীর জবানবন্দী লিপিবদ্ধ করি। তদন্ত প্রতিবেদন দাখিলের পর চীফ প্রসিকিউটরকে ফর্মাল চার্জ গঠনের ব্যাপারে আমি কোন সহায়তা করিনি। এই মামলার বিচার কার্য শুরু হওয়ার পর সাক্ষীদের ট্রাইব্যুনালে হাজির করার ব্যাপারে আমি সহায়তা করেছি। এই মোজাফফর আহমেদ খান নামের এক সাক্ষীকে আমি এই ট্রাইব্যুনালে সাক্ষী হিসেবে হাজির করার ব্যাপারে সহায়তা করেছি। তদন্তকালে মোজাফফর আহমেদ খানের জবানবন্দী আমি রেকর্ড করেছি এবং তা পর্যালোচনা করেছি। ৩ জুলাই, ২০১২ তারিখে মোজাফফর আহমেদ খানকে অত্র ট্রাইব্যুনালে সাক্ষ্য দেওয়ার জন্য আনার ব্যবস্থা করি। ইহা সত্য নয় যে, মোজাফফর আহমেদ খান (পি ডবি-উ-১) কর্তৃক অত্র ট্রাইব্যুনালে সাক্ষ্য প্রদানের পর আমি আবদুল মজিদ পালোয়ানের জবানবন্দী রেকর্ড করি। আমি ২৭/৬/২০১২ তারিখে আমার তদন্ত সংস্থার অফিসে বসে অতিরিক্ত সাক্ষী আবদুল মজিদ পালোয়ানের জবানবন্দী রেকর্ড করি। ইহা সত্য নয় যে, আবদুল মজিদ পালোয়ানের জবানবন্দী অবৈধভাবে গ্রহন করি।

মোজাফফর আহমেদ খান বাদী হয়ে বর্নিত যে নালিশী মামলা করেছিলেন সেখানে আবদুল মজিদ পালোয়ান এবং নূরজাহান সাক্ষী ছিলেন না। ইহা সত্য নয় যে, আমি মোজাফফর আহমেদ খানের ট্রাইব্যুনালে প্রদত্ত জবানবন্দী দেখে আবদুল মজিদ পালোয়ানের জবানবন্দী রেকর্ড করি। ইহা সত্য নয় যে, মোজাফফর আহমেদ খানের জবানবন্দী দেওয়ার পর আমি ইচ্ছাকৃতভাবে আবদুল মজিদ পালোয়ানের জবানবন্দী পেছনের তারিখ দেখিয়ে রেকর্ড করেছি মর্মে উল্লেখ করেছি। আবদুল মজিদ পালোয়ানকে সংবাদ প্রদান করে তাকে অফিসে হাজির করা হয়েছিল। ইহা সত্য নয় যে, আমি মোজাফফর আহমেদ খান ট্রাইব্যুনালে সাক্ষ্য দেওয়ার পর নুরজাহানের জবানবন্দী রেকর্ড করেছি। সোর্সের মাধ্যমে এই সাক্ষীর ব্যাপারে জানতে পারি। তদন্ত সংস্থার অফিসে বসে ৩০/৬/২০১২ তারিখে অতিরিক্ত সাক্ষী নূরজাহানের জবানবন্দী রেকর্ড করি। ইহা সত্য নয় যে, আইনের বরখেলাপ করে নূরজাহানের জবানবন্দী রেকর্ড করি। আমার সোর্স নূরজাহানকে পরিবাগস্থ ভাদুরী টাওয়ার এ-১ থেকে আমাদের তদন্ত সংস্থার অফিসে নিয়ে আসে। ইহা সত্য নয় যে, প্রসিকিউশন কেসের ত্রুটি ঘোচানোর জন্য মোজাফফর আহমেদ খান কর্তৃক ট্রাইব্যুনালে জবানবন্দী প্রদানের পর আমি আবদুল মজিদ পালোয়ান এবং নূরজাহানকে এই মামলার সাক্ষী দেখিয়ে পিছনের তারিখ দেখিয়ে তাদের জবানবন্দী রেকর্ড করি।

এই মামলার অভিযোগ গঠনের পর অতিরিক্ত সাক্ষী হিসেবে মোট ৬ জনের জবানবন্দী লিপিবদ্ধ করি, তারা হলেনঃ আবদুল মজিদ পালোয়ান, নূরজাহান বেগম, কং নং-২২৫০৭ মোঃ এ কে রবিন হাসান, আবদুল মতিন, মিসেস মনোয়ারা বেগম এবং মোঃ মইজউদ্দিন। ৩০/১০/২০১১ তারিখের পরে ১৫ জন অতিরিক্ত সাক্ষীর জবানবন্দী রেকর্ড করি। এদের মধ্যে ০৮/১/২০১২ তারিখে খন্দকার আবুল আহসান ও সাহেরাকে ; ১৭/৩/২০১২ তারিখে সৈয়দ শহীদুল হক মামা ; ১০/৪/২০১২

তারিখে জনাব মোঃ সালাউদ্দিন ভুইয়া ও মোমেনা বেগম, পিতা-মৃত আবদুর রাজ্জাক ; ১৫/৪/২০১২ তারিখে কবি কাজী রোজী ; ০৯/৫/২০১২ তারিখে ডাক্তার মোজাম্মেল হোসেন রতন ও কং নং ৪৫৫৪ মোঃ সোহাগ পারভেজ ; ১২/৫/২০১২ তারিখে সৈয়দ আবদুল কাইয়ুম ; ১১/৬/২০১২ তারিখে মোঃ মইজউদ্দিন ও মিসেস মনোয়ারা বেগম; ২৭/৬/২০১২ তারিখে আবদুল মজিদ পালোয়ান ; ৩০/৬/২০১২ তারিখে ন–রজাহান ; ২৭/৮/২০১২ তারিখে এজাবউদ্দিন মিয়া ও মাসুমুল কবির এর জবানবন্দী রেকর্ড করি।

অতিরিক্ত সাক্ষী মোট ৭ জনের তথা খন্দকার আবুল আহসান, সাহেরা, সৈয়দ শহীদুল হক মামা, মোঃ সালাউদ্দিন ভূইয়া ওরফে ফয়েজ ভূইয়া, কবি কাজী রোজী, মোমেনা বেগম, পিতা- মৃত আবদুর রাজ্জাক, ডাক্তার মোজাম্মেল হোসেন রতন এর লিপিবদ্ধ কৃত জবানবন্দী গত ০৪/৭/২০১২ তারিখে চীফ প্রসিকিউটরের অফিসে জমা দেই।

অতিরিক্ত সাক্ষী সৈয়দ আবদুল কাইয়ুম, মিসেস মনোয়ারা বেগম, মোঃ মইজউদ্দিন, আবদুল মজিদ পালোয়ান, ন–রজাহান প্রমুখ এর লিপিবদ্ধকৃত জবানবন্দী চীফ প্রসিকিউটর বরাবরে ১৯/৭/২০১২ তারিখে জমা দেই। অতিরিক্ত সাক্ষী কং নং ২২৫০৭ এ কে রবিন হাসান, মোঃ আবদুল মতিন, মাসুমুল কবির এর লিপিবদ্ধকৃত জবানবন্দী চীফ প্রসিকিউটর বরাবরে ১০/৯/২০১২ তারিখে জমা দেই।

এটা সত্য নয় যে, ৩২ জন তদন্ত প্রতিবেদনে অপ্রদর্শিত সাক্ষীরা কেউ প্রসিকিউশনের কেস সাপোর্ট করেনি বিধায় তাদেরকে তদন্ত প্রতিবেদনে সাক্ষী হিসেবে উলে-খ করা হয়নি।

সাক্ষী আমির হোসেন মোল-াকে তার দায়ের করা নালিশী দরখাস্ত দেখে এই মামলায় সাক্ষী হিসেবে প্রদর্শন করেছি। সাক্ষী সৈয়দ শহীদুল হক মামাকে (পি. ডবি-উ-২) ১০/৭/২০১২ তারিখে এই ট্রাইব্যুনালে সাক্ষী হিসেবে উপস্থিত করেছিলাম। সৈয়দ শহীদুল হক মামাকে তার ঢাকার বাসায় বসে তার জবানবন্দী রেকর্ড করেছিলাম। তার নাম আমি সোর্সের মাধ্যমে জানতে পারি। মোমেনা বেগম (পি. ডবি-উ-৩) পিতা- শহীদ হযরত আলী লস্কর এর জবানবন্দী আমি রেকর্ড করি নাই অপর তদন্তকারী কর্মকর্তা মনোয়ারা বেগম রেকর্ড করেছেন তবে এই জবানবন্দী তদন্ত রিপোর্ট দাখিলের প–র্বে আমি পর্যালোচনা করেছি। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্পষ্ট, ২১/১০/১২

স্বাক্ষর/-অস্পষ্ট, ২১/১০/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

<u>তারিখঃ ২২/১০/২০১২ খ্রিঃ (পরবর্তী জেরা)</u>

ইহা সত্য নয় যে, ০৪/৭/২০১২ তারিখে অতিরিক্ত সাক্ষী সৈয়দ শহীদুল হক মামা এর জবানবন্দী চীফ প্রসিকিউটর বরাবরে জমা দেওয়ার কথা সত্য নয়।

প্রশ্নঃ ০১/৪/২০১২ তারিখের ফরোয়াডিং ম–লে আপনি কোন কোন অতিরিক্ত সাক্ষীর জবানবন্দী চীফ প্রসিকিউটর বরাবরে জমা দিয়েছেন ?

উত্তরঃ খন্দকার আবুল আহসান, সাহেরা, সৈয়দ শহীদুল হক মামা এর জবানবন্দী আমি চীফ প্রসিকিউটর বরাবর ফরোয়াডিং সহ জমা দিয়েছি। (নিজে বলেন) ০১/৪/২০১২ তারিখে অত্র মামলার সংশি-ষ্ট প্রসিকিউটর জনাব মোহাম্মদ আলী সাহেব আনঅফিসিয়ালি এই অতিরিক্ত সাক্ষীর জবানবন্দী হাতে হাতে গ্রহণ করেন। পরবর্তীতে এটা আমার নিকট যথাযথ প্রক্রিয়ায় জমা দেওয়া হয়েছে প্রতীয়মান না হওয়ায় আমি ০৪/৭/২০১২ তারিখে চীফ প্রসিকিউটর বরাবরে ফরোয়াডিং সহ এই অতিরিক্ত সাক্ষীদের জবানবন্দী জমা দেই।

০১/৪/২০১২ তারিখে যে অতিরিক্ত সাক্ষীদের জবানবন্দী চীফ প্রসিকিউটর বরাবরে জমা দিয়েছি সেখানে সাক্ষীদের জবানবন্দীর নিচে কোন তারিখ উলে-খ করি নাই। ০৪/৭/২০১২ তারিখে এই অতিরিক্ত সাক্ষীদের জবানবন্দী চীফ প্রসিকিউটর বরাবরে দাখিলের সময় তাদের জবানবন্দীর নিচে জবানবন্দী গ্রহণের তারিখ উলে-খ করেছি। আমার কেস ডাইরিতে উলে-খ আছে যে, ০১/৪/২০১২ তারিখে ৩ জন অতিঃ সাক্ষী যথাক্রমে খন্দকার আবুল আহসান, সাহেরা, সৈয়দ শহীদুল হক মামা এর জবানবন্দী আমি চীফ প্রসিকিউটর বরাবর জমা দিয়েছি। এই মামলায় এক নম্বর সাক্ষী মোজাফফর আহমেদ খানের আদালতে প্রদত্ত জবানবন্দী (জেরার প–র্বে) প্রদানের পরে অতিঃ সাক্ষী আবদুল মজিদ পালোয়ানের জবানবন্দী চীফ প্রসিকিউটরের নিকট জমা দিয়েছি। ১৫ জন অতিরিক্ত সাক্ষীর মধ্যে এজাবউদ্দিন মিয়া, মাসুমুল কবির, খন্দকার আবুল আহসান, সাহেরা, সৈয়দ শহীদুল হক মামা ছাড়া বাকী সকল অতিঃ সাক্ষীদের জবানবন্দী ০৪/৭/২০১২ তারিখে চীফ প্রসিকিউটর এর নিকট জমা দেই নাই।

অত্র মামলার তদন্ে রিপোর্টে আসামীর কলামে আমি একজনের নাম উলে-খ করেছি। তদন্ে রিপোর্টে সাক্ষীর কলামে আমি ১৭ জন সাক্ষীর নাম উলে-খ করেছি। উলে-খিত ১৭ জন সাক্ষীর মধ্যে কেরানীগঞ্জের ঘাটারচর ও অন্যান্য এলাকার ঘটনার সাক্ষী হিসেবে ৩ জনের নাম উলে-খ করেছি তারা হলেনঃ মোজাফফর আহমেদ খান, তৈয়ব আলী এবং র□খসানা খাতুন নেছা। অবশিষ্ট ১৪ জনের নাম হলোঃ ছখিনা হেলাল, জুলফিকার আলী মানিক, শেখ শরিফুল ইসলাম ওরফে বাবলু, মোমেনা বেগম, পিত- শহীদ হযরত আলী লস্কর, ডাক্তার এম এ হাসান, হোসেন আক্তার চৌধুরী ওরফে আক্কু চৌধুরী, মোঃ আমির হোসেন মোল-া, মোঃ শফিউদ্দিন মোল-া, মোঃ আবদুস ছাত্তার মোল-া, মোছাঃ রেখা, মোঃ জইনুদ্দিন, হাজি আবদুর রউফ মোল-া, মোছাঃ শাহিদা বেগম, মোঃ রফিক ব্যাপারী। তদন্ে রিপোর্ট দাখিল করা পর্যন্ে আমি উপরোলে-খিত সাক্ষী ছাড়া আর অন্য কোন সাক্ষীর জবানবন্দী গ্রহণ করি নাই।

২৮/৩/২০১০ তারিখে অত্র আন্ের্জাতিক অপরাধ ট্রাইব্যুনালের তদন্ে সংস্থায় যোগদানের প–র্বে আমি সি আই ডি, বাংলাদেশ পুলিশের পরিদর্শক হিসেবে কর্মরত ছিলাম। আমি যখন সি আই ডি'তে কর্মরত ছিলাম তখন ঢাকায় ৪টি জোন ছিল। এগুলো হলোঃ ঢাকা উত্তর, দক্ষিণ, পুর্ব ও পশ্চিম। আমি ঢাকা উত্তর জোনে কর্মরত ছিলাম। ঢাকা উত্তর জোনে আমি যখন কর্মরত ছিলাম তখন ঐ জোনে ৪টি থানা ছিল যথাঃ মিরপুর, তেজগাঁও, ক্যান্টনমেন্ট এবং গুলশান থানা। আমি ১৯৯৭

সালের সম্ভবত মে মাসে সি আই ডি ঢাকা উত্তর জোনে যোগ দেই। সি আই ডি দক্ষিণ জোনে কোন কোন থানা ছিল আমার এই মুহুর্তে মনে নেই।

শহীদ পল-ব ওরফে টুনটুনি ১৯৭১ সালে মিরপুর বাঙলা কলেজের ছাত্র ছিলেন। তখন মিরপুর ১১ নং সেকশনের বি-ব-কের ৭ নং লেনের ১ নং রোডের ৮ নং বাড়ীতে শহীদ পল-বের পরিবার বসবাস করত। শহীদ পল-বরা ৫ ভাই ছিলেন তারা এক সংগে বাবা-মা সহ বসবাস করতেন। আমি শহীদ পল-ব ওরফে টুনটুনির ভাবী সাহেরাকে জিজ্ঞাসাবাদ করেছি। তদন্তকালে আমি মিরপুর বাঙলা কলেজে যাইনি। পল-ব যে মিরপুর বাঙলা কলেজের ছাত্র ছিল এই মর্মে আমি কোন দালিলিক প্রমাণ তদন্তকালে সংগ্রহ করিনি। পল-বের বাড়ীর আশেপাশের বাড়ীতে ১৯৭১ সালে যারা বসবাস করত তারা কেউ না থাকায় আমি কাউকে জিজ্ঞাসাবাদ করতে পারিনি। সরকার পল-বদের বাড়ী এবং আশেপাশের এলাকা অধিগ্রহণ করেছে। আমি পল-বের ভাবী সাহেরাকে যখন জিজ্ঞাসাবাদ করি তখন তিনি মেইন রোড নং-৪, ১১-এফ, তালতলা বস্তি, পল-বী এই ঠিকানায় থাকতেন । আমি পল-বের ভাবী সাহেরাকে জিজ্ঞাসাবাদের জন্য বেলা ১১.২০ ঘটিকার সময় অফিস হতে বের হই এবং মিরপুর জল-াদ খানায় বসে সাহেরার জবানবন্দী রেকর্ড করি।

প্রশ-ঃ পল-বের ভাবী সাহেরাকে জিজ্ঞাবাদের পূর্বে আপনি কোন নোটিশ প্রেরন করেছিলেন কি?

উত্তরঃ আমি কোন নোটিশ প্রেরন করিনি। কারণ মিরপুর জল-াদ খানায় শহীদদের তালিকা রক্ষিত আছে সেই তালিকা অনুযায়ী আমি মিরপুর জল-াদ খানা স্মৃতি বিদ্যাপিঠ এর ইনচার্জ নাসির সাহেবকে পল-বের ভাবীকে খবর দিতে বলি। সেভাবে সাহেরাকে খবর প্রেরন করা হয় এবং আমি জল-াদ খানায় বসে তার জবানবন্দী রেকর্ড করি।

আমার জানা নেই মিরপুর জল-াদ খানা স্মৃতি বিদ্যাপিঠে কখন থেকে শহীদদের তালিকা সংরক্ষন করা হচ্ছে, তবে এহ বিদ্যাপিঠটি ২০০৭ সালে উদ্বোধন করা হয়। এটা আমার জানা নেই যে শহীদ পল-বের নামের পাশে পূর্বের ঠিকানা দেওয়া আছে কি না। আমার সি ডি'তে এ সম্পর্কে কিছু উলে-খ করি নাই।

তদন্তকালে কেরানীগঞ্জের ঘাটারচরে সাক্ষী নূরজাহান ছাড়াও আমি গণহত্যা সম্পর্কিত অন্যান্য শহীদ পরিবারের সদস্যদের সংগে কথা বলেছি। আমি ঘাটারচরের শহীদ পরিবারের সদস্য তৈয়ব আলী, রুখসানা খাতুন নেছা, মোছাঃ মনোয়ারা বেগমকে জিজ্ঞাসাবাদ করেছি। ১৯৭১ সালে ঘাটারচরে সংঘটিত গণহত্যার সময় মোট কতটি পরিবার লোক ক্ষতিগ্রস্থ হয়েছিল সেটি নির্নয় করতে পারিনি তবে কতজন মানুষ নিহত হয়েছিল সেটি নির্নয় করেছি। নূরজাহানের বয়স ১৯৭১ সালে কত ছিল তা আমি নির্নয় করার মতো এক্সপার্ট নই । তবে তিনি যখন আমার সামনে জবানবন্দী দিয়েছিলেন তখন তার বয়স ১৯৭১ সালে ১৩ বছর ছিল বলে বলেছেন। নূরজাহান বেগমের বয়স নির্ধারন করার জন্য ভোটার আই ডি কার্ড দেখার জন্য তার কাছে চাইনি এবং সংশি-ষ্ট ভোটার লিষ্ট পর্যালোচনা করিনি। সাক্ষী নূরজাহানের গ্রামের বাড়ী ঘাটারচর খালপাড় ছিল বলে তদন্তে পেয়েছি। আমি তদন্তে জন্য ঘাটারচর খালপাড় গিয়েছি। আমি যখন খালপাড় এলাকায় গিয়েছি তখন সেখানকার বাড়ীঘরের কোন হোল্ডিং নম্বর ছিল কি না তা আমার সি ডি'তে উলে-খ নাই। আমি ৩০/৬/২০১২ তারিখে তদন্তের কাজে সকাল ১১.৪০ ঘটিকায় খালপাড়ে নূরজাহানের বাড়ী পৌছি। নূরজাহানের বাড়ীর চারদিকে

কাদের বাড়ী তা সি ডি'তে উলে-খ করিনি। ন–রজাহানের বাড়ী থেকে গণহত্যার স্থানের দুরত্ব উত্তর দিকে আনুমানিক ৫ কিঃমিঃ। গণহত্যার স্থান থেকে আবদুল মজিদ পালোয়ানের বাড়ীর দুরত্ব কোনদিকে কত কিঃমিঃ তা সি ডি'তে উলে-খ করি নাই। তদন্তকালে ঘটনাস্থল এর উত্তরে ঘাটারচর ঈদগাহ মাঠ, দক্ষিণে সার্জেন্ট বিল-াল হোসেনের বাড়ী, প–র্বে তাপু মিয়ার কাপড়ের দোকান, পশ্চিমে ঘাটারচর প্রাথমিক বিদ্যালয় অবস্থিত পেয়েছি।

ভাওয়াল খান বাড়ী থেকে ঘাটারচরের ঘটনাস্থল এর দুরত্ব কত এবং কোন দিকে তা আমার সি ডি'তে উলে-খ নাই। ঘাটারচরে ডাক্তার জয়নালের বাড়ীতে আমি যাইনি, তবে তাকে আমি জিজ্ঞাসাবাদের জন্য নোটিশ প্রদান করেছিলাম। নোটিশ প্রেরন করেছিলাম পুলিশ সুপার নারায়নগঞ্জের মাধ্যমে। তিনি বর্তমানে হুড়গাঁও, থানা- রূপগঞ্জ, জেলা - নারায়নগঞ্জে বসবাস করেন। তার বয়স বর্তমানে ১০০ বছরের অধিক এবং তিনি মানসিকভাবে সুস্থ নন মর্মে রূপগঞ্জ থানা থেকে আমাকে অবহিত করায় তাকে জিজ্ঞাসাবাদ করা যায়নি। জয়নাল আবেদিন সাহেবের পরিবারের আর কোন সদস্য আছে কি না আমার জানা নাই। ১৯৭১ সালে ঢাকা থেকে ঘাটারচরের ঘটনাস্থল যাওয়ার কি ব্যবস্থা ছিল তা সি ডি'তে উলে-খ করি নাই। ঘটনার সময়কার কোন লোকজনকে না পাওয়া যাওয়ায় জিজ্ঞাসা করিনি তারা কিভাবে ঘাটারচর থেকে ঢাকা আসতেন। ঘাটার গ্রামটি কোন দিকে লম্বা তা আমার সি ডি'তে উলে-খ নাই। ডাক্তার জয়নাল সাহেবের বাড়ী ঘাটারচরের কোথায় অবস্থিত ছিল তা তদন্তে জানার জন্যে আমি উদ্যোগ নেইনি।

তদন্তকালে ভাওয়াল খান বাড়ী ঘটনাস্থলের চারদিকে অর্থাৎ উত্তরে একটি বসতবাড়ী, দক্ষিণেও দুটি বসত বাড়ী, প–র্বদিকে পিচঢালা রাস্তা এবং পশ্চিমেও দুটি বসতবাড়ী পেয়েছি।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্পষ্ট, ২২/১০/১২

<u>সময় দুপুর ২.২০ ঘটিকা (পরবর্তী জেরা)ঃ</u>

আমার তদন্তকালে ভাওয়াল খান বাড়ীতে তিনটি ঘটনাস্থল পেয়েছি। দ্বিতীয় ঘটনাস্থল হলো মনোহারিয়া গ্রাম। আমার তদন্তকালে এই ঘটনাস্থলের উত্তরে পিচঢালা রাস্তা, দক্ষিণে একটি ব্রিজ ও দুটি বসত বাড়ী, প–র্বে পাকা রাস্তা এবং পশ্চিমেও পাকা রাস্তা ছিল। তৃতীয় ঘটনাস্থল ঘাটারচর। এটা ঠিক নয় যে, তদন্তকালে ভাওয়াল খান বাড়ীতে তিনটি ঘটনাস্থল পেয়েছি। কেরানীগঞ্জ থানায় মোট তিনটি ঘটনাস্থল একটি ঘাটারচর, অপরটি ভাওয়াল খান বাড়ী এবং অপরটি মনোহারিয়া।

তদন্তকালে ভাওয়াল খান বাড়ী থেকে মনোহরিয়া গ্রামের শুরু অনুমান ২০০ গজ প–র্বে। এটা সত্য নয় যে, মনোহরিয়া গ্রামে তিনটি অংশ আছে এগুলো হলোঃ ভাওয়াল মনোহরিয়া, বড় মনোহরিয়া ও ছোট মনোহরিয়া। ঘটনার সময়কার তেমন কোন উলে-খযোগ্য লোকদের সাক্ষাত পাইনি যাদের কাছ থেকে ঘটনার সময় ঘটনাস্থলের ভৌগলিক অবস্থান কি ছিল সে সম্পর্কে জিজ্ঞাসাবাদ করতে পারি। ইহা সত্য নয় যে, আমি যে তিনটি ঘটনাস্থলের বর্ননা দিয়েছি তা আমার মনগড়া।

সাক্ষী মোজাফফর আহমেদ খানের বাড়ীটি ভাওয়াল খান বাড়ী গ্রামে অবস্থিত। ঘটনাস্থল হিসেবে উলে-খিত তিনটি গ্রাম কোন ইউনিয়নের অন্ত্র্গত তা আমি জানিনা আমার সি ডি'তে উলে-খ করিনি। আমি এই তিনটি ঘটনাস্থল একদিনে পরিদর্শন করেছিলাম। ইহা সত্য নয় যে, পরিদর্শনকালে আমার সংগে আর কেহ ছিল না আমি একাই ছিলাম। আমার সংগে তদন্তকারী অফিসার জেড এম আলতাফুর রহমান এবং এস এম ইদ্রিস আলী ছিলেন। তদন্তকালে আমরা সড়ক পথে সরকারী গাড়ীযোগে ঘটনাস্থলে যাই। আমার জানা নাই এই সড়ক পথটি কবে তৈরী হয়। এটা আমার জানা নেই ঘটনার সময় সড়ক পথটি ছিল কি না। ঘটনার সময় ঘটনাস্থল হিসেবে উলে-খিত তিনটি গ্রাম কোন ইউনিয়নের অন্ত্র্গত ছিল তা আমি জানিনা আমার সি ডি'তে উলে-খ করিনি। তদন্তকালে এলাকার ইউনিয়ন পরিষদের চেয়ারম্যান বা মেম্বারদেরকে জিজ্ঞাসাবাদ করিনি। ইহা সত্য নয় যে, উলে-খিত তিনটি ঘটনাস্থলের সাক্ষী হিসেবে আবদুল মজিদ পালোয়ান ও ন–রজাহানকে বানোয়াট সাক্ষী হিসেবে জিজ্ঞাসাবাদ করেছি এবং তাদের জবানবন্দী লিপিবদ্ধ করেছি। উলে-খিত তিনটি ঘটনাস্থল এলাকায় সাক্ষী মোজাফফর আহমেদ খান ছাড়া আর কোন মুক্তিযোদ্ধা ছিল কি না তা আমি নির্নয় করেছি। ঐ এলাকায় আরো যে সকল মুক্তিযোদ্ধাদেরকে আমি পেয়েছিলাম তাদের মধ্যে মোঃ শাজাহান, কমান্ডার উপজেলা মুক্তিযোদ্ধা কমান্ড, মোঃ সিদ্দিকুর রহমান, ডেপুটি কমান্ডার, মাহফুজুল আলম চৌধুরী, মোঃ আওলাদ হোসেন, মাইন উদ্দিন শেখ, মোঃ শাহজাহান ফার□কী, মোঃ রহমত উল-াহ প্রমুখের নাম উলে-খযোগ্য। আমি উলে-খিত মুক্তিযোদ্ধাদেরকে ঘটনা সম্□র্কে মৌখিকভাবে জিজ্ঞাসাবাদ করেছি তবে তাদের জবানবন্দী লিপিবদ্ধ করিনি। ঘটনার সময় সাক্ষী মোজাফফর আহমেদ খান কোন স্কুলে লেখাপড়া করতেন তা আমি সি ডি'তে উলে-খ করিনি। সাক্ষী ন–রজাহান যখন আমার সামনে জবানবন্দী দিয়েছেন তখন তিনি একটি বাড়ীতে গৃহপরিচারিকার কাজ করেন বলে উলে-খ করেছেন। সাক্ষী মজিদ পালোয়ান তদন্তের সময় কি কাজ করতেন তা আমার সি ডি'তে উলে-খ নাই।

তদন্তকালে মিরপুরের আলুবদি গ্রাম পরিদর্শনের জন্য আমি ১৬/৮/২০১০ তারিখে দুপুর ১.৪০ ঘটিকায় সেখানে পৌছি। পল-বী থানা থেকে অনুমান ৭/৮ কিঃ মিঃ উত্তর দিকে আলুবদি গ্রাম। আলুবদি গ্রাম থেকে বর্তমান তুরাগ নদীটি অনুমান ৮/৯ কিঃ মিঃ পশ্চিম দিকে। ঘটনার সময় পশ্চিম দিকে তুরাগ নদীটি কত দুরে ছিল তা আমি নির্নয় করিনি, সি ডি'তে উলে-খ নাই। ১৬/৮/২০১০ তারিখে আলুবদি গ্রাম পরিদর্শনকালে আমার সংগে তদন্ত সংস্থার অপর পরিদর্শক মোঃ মতিউর রহমান ও মোঃ ন–র□ল ইসলাম ছিলেন। সকাল ৯.০০ ঘটিকায় আমরা আলুবদি গ্রামের উদ্দেশ্যে রওনা হই। আলুবদি গ্রামের স্কেচ ম্যাপ আমি ১৬/৮/২০১০ তারিখে দুপুর ১.৪০ মিনিটে তৈরী করেছি। আলুবদি গ্রাম থেকে প্রায় রাত ১১.৪০/৪৫ মিঃ এর সময় অফিসে ফিরে আসি। আলুবদি গ্রামের উত্তরে খাল আছে কি না তা আমার স্কেচ ম্যাপে উলে-খ নাই। আমার প্রস্তুতকৃত স্কেচ ম্যাপে আলুবদি গ্রামের উত্তর দিকে একটি বধ্যভূমি (কুপ) এর উলে-খ আছে। ঘটনার সময় আলুবদি গ্রামের উত্তর দিকে কোন খাল ছিল কি না বা বিস্তৃত ফসলি জমি ছিল কি না তা আমি নির্নয় করিনি। ১৯৭১ সালে আলুবদি গ্রামের দক্ষিণ বা দক্ষিণ প–র্বে কোন গ্রাম ছিল কি না তা আমি তদন্ত করিনি। ঘটনার সময় আলুবদি গ্রামের

পশ্চিম দিকে তুরাগ নদী পর্যন্‌্ত 'চটক' (স্থানীয় ভাষায়) বা ফাকা মাঠ ছিল যা বর্ষাকালে জলাবদ্ধ থাকে। ঘটনার সময় আলুবদি গ্রামের প–র্ব দিকে খোলা মাঠ ছিল।

তদন্‌্তকালে ১৬/৮/২০১১ তারিখে দুয়ারীপাড়ায় গিয়েছিলাম। দুয়ারীপাড়া গ্রামের কোন স্কেচ ম্যাপ আমি করিনি। পল-বী থানা থেকে অনুমান ৬/৭ কিঃ মিঃ পশ্চিমে দুয়ারীপাড়া গ্রাম অবস্থিত। তদন্‌্তকালে ১৬/৮/২০১১ তারিখে সকাল ১০.০০ ঘটিকায় আমি ও আমার সহযোগী তদন্‌্তকারী অফিসার জেড এম আলতাফুর রহমান দুয়ারী পাড়ার উদ্দেশ্যে রওনা হয়ে ১২.৪০ মিঃ সেখানে পৌছি। এই মামলার আসামী কাদের মোল-া দোয়ারী পাড়ায় থাকতেন মর্মে সাক্ষী মোমেনা বেগম, পিতা- শহীদ হযরত আলী লস্কর, এবং সাক্ষী ছখিনা হেলাল, পিতা- শহীদ খন্দকার আবু তালেব গং এর জবানবন্দীতে প্রদত্ত বক্তব্য যাচাই করার জন্য আমি এবং আমার সংগীয় অফিসার দোয়ারীপাড়ায় যাই। দোয়ারীপাড়া থেকে আমরা আমাদের অফিসে ঐদিন রাত ১০.২০ মিঃ ফিরে আসি। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্‌্পষ্ট, ২২/১০/১২

স্বাক্ষর/-অস্‌্পষ্ট, ২২/১০/১২

চেয়ারম্যান

আন্‌্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

<u>তারিখঃ ২৩/১০/২০১২ খ্রিঃ (পরবর্তী জেরা)</u>

আমি এই মামলার তদন্‌্ত কাজ শুর্‌ু করি ২১/৭/২০১০ তারিখে এবং শেষ করি ২৭/৮/২০১২ তারিখে। এই মামলার তদন্‌্ত কার্যের সময় আমি সি ডি হিসেবে ২৪ খন্ড ব্যবহার করেছি। ২৬/৯/২০১২ তারিখে সি ডি ক্লোজ করেছি। আমার তদন্‌্তকালে ওসমান গনির কোন নিকট আত্মীয়কে না পাওয়ায় আমি জিজ্ঞাসাবাদ করতে পারিনি। শহীদ গোলাম মোস্‌্তফার স্‌্ত্রী মর্জিনা বেগমকে আমি জিজ্ঞাসাবাদ করি এবং তার জবানবন্দী লিপিবদ্ধ করেছিলাম।

আমি তদন্‌্তকালে দুয়ারীপাড়াস্থ সাক্ষী আমির হোসেন মোল-ার বাড়ীতে কখনও যাইনি। ১৯৭১ সালে আলুবদি গ্রামে বিদ্যুৎ সংযোগ ছিল কি না তা আমি নির্নয় করিনি। আলুবদি গ্রাম থেকে দুয়ারীপাড়ার দুরত্ব উত্তর-পশ্চিম দিকে আনুমানিক এক থেকে দেড় কিঃ মিঃ। আলুবদি গ্রামের স্কেচ ম্যাপ করতে গিয়ে এই দুরত্ব পাই। দুয়ারীপাড়া থেকে তুরাগ নদী কোন দিকে কত দুর তা সঠিক বলতে পারব না। দোয়ারীপাড়ার উত্তর দিকে আলুবদি গ্রাম অন্য তিন দিকে কোন গ্রাম আছে তা বলতে পারব না। আলুবদি গ্রামের দক্ষিণ-প–র্ব দিকে মিরপুর। ইহা সত্য নয় যে, আলুবদি গ্রাম থেকে দুয়ারীপাড়ার দুরত্ব উত্তর-পশ্চিম দিকে আনুমানিক এক থেকে দেড় কিঃ মিঃ এবং দোয়ারীপাড়ার উত্তর দিকে আলুবদি গ্রাম এর অবস্থানের কথা সত্য নয়। ইহা সত্য নয় যে, প্রকৃতপক্ষে আমি কখনও আলুবদি গ্রামে যাইনি।

ঘটনার সময় দুয়ারীপাড়া গ্রামের চারিদিকে খাল, ডোবা এবং নদীও ছিল তা আমি তদন্‌্তকালে জানতে পেরেছি। তুরাগ নদীর উভয় পাড়ে ঘটনার সময় কি কি স্থাপনা ছিল তা আমি আমার তদন্‌্তকালে নির্নয় করতে পারিনি। ১৯৭১ সালে

ঐ এলাকায় বসবাসকারী কোন বর্ধিষ্ণু লোক পাইনি তবে আমার কাছে যারা জবানবন্দী দিয়েছেন তারাও বলতে পারেননি। তুরাগ নদীর পাড়ের স্কেচ ম্যাপ আমি নিজেই তৈরী করেছি কারো দেখানো মতে করিনি।

যেহেতু সাগর পাবলিশার্স একটি পুরানো লাইব্রেরী সেহেতু আমি ধারণা করি যে, সিজকৃত বইগুলি ('সানসেট এ্যাট মিড ডে' এবং 'জীবনে যা দেখলাম') সেখানে পাওয়া যাবে সেই ধারণা থেকে আমি বইগুলি সেই লাইব্রেরী থেকে জব্দ করি। জীবনে যা দেখলাম বইটি মোট-৮ খন্ডের। আমার তদন্তকালে আমি এই দুটি বই ছাড়া আরো বই জব্দ করেছি তবে এই মামলার প্রেক্ষিতে উলে-খিত দুটি বই আদালতে প্রদর্শনী হিসেবে চিহ্নিত করেছি।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্পষ্ট, ২৩/১০/১২

<u>সময় দুপুর ২.০০ ঘটিকা (পরবর্তী জেরা)</u>

তদন্তকালে দুয়ারীপাড়ায় মোট ৪টি ক্ষতিগ্রস্থ পরিবারের সন্ধান পাই। এই চারটি পরিবার হলোঃ মোঃ সাকাওয়াত হোসেন, হাজী আবদুল গফুর, মোঃ ফরিদুজ্জামান এবং আমির হোসেন মোল-ার পরিবার। তদন্তকালে আলুবদি গ্রামে মোট ৮টি ক্ষতিগ্রস্থ পরিবারের সন্ধান পাই। এই আটটি পরিবার হলোঃ শফিউদ্দিন মোল-া, আবদুস ছাত্তার মোল-া, মোছাঃ রেখা, জইনউদ্দিন, হাজী আবদুর রঊফ মোল-া, মোছাঃ শাহিদা বেগম, রফিক বেপারী ও মোঃ দলিল উদ্দিন এর পরিবার।

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্পষ্ট, ২৩/১০/১২

সাক্ষী শফিউদ্দিন মোল-া (পি ডবি-উ-৬) তদন্তকালে আমার নিকট বলে থাকতে পারেন যে, তিনি তখন ছাত্র লীগের সংগে জড়িত ছিলেন, আমার পরিবার ও গ্রাম বাসী সবাই আওয়ামী লীগ সমথক ছিলেন, তবে আমি তা তার লিপিবদ্ধকৃত জবানবন্দীতে উলে-খ করিনি।

ইহা সত্য যে,এ্যাডভোকেট জহিরউদ্দিন বা তার নির্বাচনী প্রতীক ছিল নৌকা বা ওনার বিপরীতে একজন প্রার্থী ছিলেন দাঁড়িপাল-া মার্কার অধ্যাপক গোলাম আযম সাহেব বা তারা এ্যাডভোকেট জহিরউদ্দিন সাহেবের পক্ষে নির্বাচনী প্রচারনা করেছিলেন বা অপর পক্ষে দাড়িপাল-ার পক্ষে নির্বাচনী প্রচারনায় অংশ গ্রহন করেন তৎকালীন ইসলামী ছাত্র সংঘের নেতা জনাব আবদুল কাদের মোল-া বা তিনি আবদুল কাদের মোল-াকে চিনতেন বা এরপর তারা তাদের গ্রামে মুক্তিযুদ্ধের প্রস্তুতির জন্য ট্রেনিং আরম্ভ করে- একথাগুলো সাক্ষী শফিউদ্দিন মোল-ার (পি ডবি-উ-৬) আমার কাছে প্রদত্ত জবানবন্দীতে নাই।

ইহা সত্য যে, তদন্তকালে আমার কাছে প্রদত্ত সাক্ষী শফিউদ্দিন মোল-ার (পি ডবি-উ-৬) এর জবানবন্দীতে উলে-খ নাই যে, পাকহানাদাররা আক্রমন করে তাদের গ্রামে আশে-পাশে নিচু জমি থাকায় তারা গ্রামেই থাকে বা তখন দেখতে পান এদিক সেদিক দুই এক জন লোক মৃত অবস্থায় পড়ে আছে বা তিনি তাদের গ্রামের উত্তর পাশে একটা ঝোপের নিচে গর্তে লুকান বা ঐ সকল ধান কাটার লোকজন এবং গ্রামের লোকজনকে ধরে এনে একত্রে জড়ো করছে বা এরপর দেখেন

যে প–র্ব দিক থেকে ঐ সকল ধান কাটার লোকজন এবং গ্রামের লোকজনদেরকে কাদের মোল-া তার বাহিনী, পাক বাহিনী ও নন বেঙ্গলী বিহারীরা ধরে এনে একই জায়গায় জড়ো করছে বা আবদুল কাদের মোল-াকে পাক-বাহিনীর অফিসারদের সংগে উর্দুতে কথা বলতে দেখেন দুর থেকে তা শুনতে পাননি। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ২৩/১০/১২

স্বাক্ষর/-অস্□ষ্ট, ২৩/১০/১২ চেয়ারম্যান

আন্্জর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

তারিখঃ ০১/১১/২০১২ খ্রিঃ (পরবর্তী জেরা)

ইহা সত্য যে, সাক্ষী শফিউদ্দিন মোল-া (পি ডবি-উ-৬) আমার কাছে বলেনি যে, তিনি তখন ভোটার ছিলেন বা তিনি তখন ছাত্রলীগের সংগে জড়িত ছিলেন, তাহার পরিবার ও গ্রামবাসী সবাই আওয়ামীলীগ সমর্থক ছিলেন বা দাড়িপাল-া মার্কায় গোলাম আযমের পক্ষে নির্বাচনী প্রচারনায় অংশ গ্রহন করেন তৎকালীন ইসলামী ছাত্র সংঘের নেতা জনাব আবদুল কাদের মোল-া ও তার সহযোগী ও বিহারীরা বা তিনি আবদুল কাদের মোল-াকে চিনতেন।

ইহা সত্য যে, সাক্ষী শফিউদ্দিন মোল-া (পি ডবি-উ-৬) এইভাবে আমার কাছে বলেনি যে, উত্তর পাশে একটি ঝোপের নিচে একটি গর্তে লুকাই এবং সেখান থেকে সে দেখতে পায় কাদের মোল-ার হাতে রাইফেল ছিল এবং সেও গুলি করে। তবে এই সাক্ষী এইভাবে বলেছে যে, " আমি ধানের স্তুপের ফাঁক দিয়ে তাকায়ে দেখি আবদুল কাদের মোল-া একটি রাইফেল দিয়ে দাঁড়ানো নিরিহ, নিরস্¿ বাঙ্গালীদের গুলি করে।"

আলুবদি গ্রামের ঘটনার শিকার নবী উল-ার পরিবারের কাউকে জিজ্ঞাসাবাদ করিনি। গয়েজউদ্দিন মোল-াকে আমি জিজ্ঞাসাবাদ করেছি। ট্রাইব্যুনালের সমনের উপর ভিত্তি করে সাক্ষী ট্রাইব্যুনালে সাক্ষ্য দিয়েছে। ইহা সত্য নয় যে, আমি ই□ছা করে প্রত্যক্ষদর্শী গয়েজউদ্দিনকে সাক্ষী হিসেবে প্রদর্শন করিনি।

ইহা সত্য যে, সাক্ষী সৈয়দ আবদুল কাইয়ুম (পি ডবি-উ-১০) তদন্্তকালে আমার কাছে বলেনি যে, দাঁড়িপাল-া প্রতীকের পক্ষে যারা কাজ করতেন তাদের মধ্যে নইম খান, সফিরউদ্দিন, জনৈক মোল-া এর নাম উলে-খযোগ্য। ইহা সত্য যে, আমার চিৎকার শুনে ঘটনাস্থলের পাশেই অবস্থানরত জনৈক মোল-া দরজা খুলে বের হতেই আক্রমনকারীরা থমকে যায় এবং চলে যায় এই কথাগুলো এই সাক্ষী আমার নিকট বলেনি। তবে এই সাক্ষী বলেছিল যে, " তখন আমার চিৎকারে পাশের বাড়ীর মোল-া সাহেব বাড়ী হতে বাহির হইয়া আসিলে বিহারীরা পালাইয়া যায়।" এই পাশের বাড়ীর মোল-াকে আমি জিজ্ঞাসাবাদ করিনি, কারণ তিনি জীবিত নেই। ইহা সত্য নয় যে, পাশের বাড়ীর মোল-া জীবিত আছেন। (টু কোর্ট) পাশের বাড়ীর মোল-ার পুরো নাম তদন্্তে জানতে পারিনি। ইহা সত্য নয় যে, পাশের বাড়ীর মোল-াই গোলাম আযমের পক্ষে নির্বাচনী প্রচারনায় অংশ নিয়েছিলেন বা এই পাশের বাড়ীর মোল-ার স্থলে বর্তমান আসামীকে সরকারের রাজনৈতিক উদ্দেশ্য

হাছিলের জন্য মিথ্যাভাবে জড়িত করেছি। তদন্তকালে আমি আবদুল কাদের মোল-া নামে আসামী ব্যতিত আর কোন ব্যক্তিকে পাইনি। পুলিশ বাহিনীতে মনোয়ারা বেগমের পদবী এ এস পি এবং আমার পদবী পুলিশ পরিদর্শক। আন্তর্জাতিক অপরাধ ট্রাইব্যুনালের তদন্ত সংস্থায় পুলিশ বাহিনীর নিয়মিত সদস্য সহ অবসর প্রাপ্ত কর্মকর্তারাও তদন্তকারী কর্মকর্তা হিসেবে কাজ করছেন। আন্তজাতিক অপরাধ ট্রাইব্যুনালের তদন্ত কার্যে পুলিশের জ্যেষ্ঠতারক্রম প্রযোজ্য নয়। সাপি-মেন্টারী কেস ডাইরি ক্লোজ করার পর মনোয়ারা বেগম সেটিসহ সাক্ষীর জবানবন্দী আমার কাছে পাঠিয়েছিলেন। মনোয়ারা বেগম কর্তৃক রেকর্ডকৃত সাক্ষীর জবানবন্দী আমি পর্যালোচনা করেছি। আমিও শহীদ হযরত আলী লস্করের মেয়ে মোমেনা বেগমকে জিজ্ঞাসাবাদ করেছি কিন্তু তার জবানবন্দী আমি পৃথকভাবে রেকর্ড করিনি।

খন্দকার আবু তালেবের হত্যার ঘটনায় সাক্ষী মোমেনা বেগমকে (পিতা- শহীদ হযরত আলী লস্কর) আমি তদন্ত রিপোর্টে সাক্ষী হিসেবে প্রদর্শন করেছি। তদন্তকালে তদন্তের স্বার্থে আমি অনেক বই

পুস্তক পড়েছি। ইহা সত্য নয় যে, সাক্ষী কাজী রোজির লেখা ‘শহীদ কবি মেহের□ন নেসা’ বইটি আমি পড়েছি । ইহাও সত্য নয় যে, এই বইটিতে মেহের□ন নেসা কিভাবে নিহত হয়েছে তা লেখা আছে এবং তা জেনেও আমি ই□ছাকৃতভাবে বইটি না পড়ার কথা বলেছি। ১৯৭০ সালে কবি কাজী রোজি (পি ডবি-উ-৪) মিরপুর ৬ নং সেকশনে বসবাস করতেন। ১৯৭০ সালে কবি কাজী রোজি ঢাকা বিশ্ববিদ্যালয়ে পড়ালেখা করতেন। কবি কাজী রোজি মিরপুর ৬ নং সেকশনের সি ব-কে থাকতেন এবং কবি মেহের□ন নেসা থাকতেন ডি ব-কে। কবি কাজী রোজি ঢাকা বিশ্ববিদ্যালয়ে আসতেন এবং কবি মেহের□ন নেসা বাংলা একাডেমীতে কাজ করতেন তারা দুজনই প্রায়শই একই বাসে আসা-যাওয়া

করতেন, সেকারণে উভয়ের মধ্যে সখ্যতা ছিল। ইহা সত্য যে, তদন্তে আমি পেয়েছি যে, কবি কাজী

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্□ষ্ট, ০১/১১/১২

রোজি কর্তৃক মিরপুরে গঠিত এ্যাকশন কমিটির সভাপতি ছিলেন এবং কবি মেহের□ন নেসা ঐ কমিটির সদস্য ছিলেন।

ম—ল সাক্ষীর জবানবন্দীর তালিকায় প্রদর্শিত সাক্ষীদের জবানবন্দীতে আমি এবং মনোয়ারা বেগম স্বাক্ষর করেছি এবং অতিরিক্ত সাক্ষীদের জবানবন্দীতে আমি স্বাক্ষর করেছি। ইহা সত্য নয় যে, আমার স্বাক্ষরিত সাক্ষীদের জবানবন্দীতে প্রদত্ত প্রত্যয়নের বক্তব্য সঠিক নয়। শহীদ খন্দকার আবু তালেবের ড্রাইভার নিজাম স্বাধীনতার পরেই দেশ ত্যাগ করেছে বিধায় তাকে জিজ্ঞাসাবাদ করা যায়নি। ইত্তেফাক অফিসের হিসাব রক্ষক হালিমকে আমার তদন্তকালে জিজ্ঞাসাবাদ করিনি। (টু কোর্ট) তিনি অবাঙ্গালী স্বাধীনতার পরে তিনি দেশ ত্যাগ করেছেন।

সাক্ষী মোজাফফর আহমেদ খান কতজন ট্রুপস নিয়ে পাক বাহিনীর মোকাবেলা করেছিলেন সে বিষয়ে তার জবানবন্দী ছাড়া অন্য কোথাও উলে-খ নেই। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্□ষ্ট, ০১/১১/১২

<u>**সময় দুপুর ২.১০ ঘটিকা (পরবর্তী জেরা)**</u>

আমার তদন্ত রিপোর্টে ঘাটারচর শহীদ নগরের নবী হোসেন বুলুকে একজন শহীদ হিসেবে উল্লেখ করেছি। যে দশ জন সাক্ষী ট্রাইব্যুনালে পরীক্ষিত হয়েছেন তাদের বয়স নির্ধারনের জন্য সংশ্লিষ্ট ভোটার লিষ্ট ও জাতীয় পরিচয় পত্র পর্যালোচনা করিনি। সাক্ষী নূরজাহান শহীদ নবী হোসেন বুলুর স্ত্রী কিনা এই মর্মে তাদের বিয়ের কাবিননামা আমি তদন্তকালে পর্যালোচনা করিনি। ইহা সত্য নয় যে, কাবিননামাটি আমি ইচ্ছাকৃতভাবে পর্যালোচনা করিনি কারণ নূরজাহানকে শহীদ নবী হোসেন বুলুর স্ত্রী হিসেবে প্রমাণ করতে পারব না। ইহা সত্য নয় যে, ঘটনার সময় নূরজাহান নবী হোসেন বুলুর স্ত্রী ছিলেন না। ইহা সত্য নয় যে, ঘটনার সময় সাক্ষী নূরজাহানের জন্ম হয় নাই। যে সোর্সদের মাধ্যমে সাক্ষীদের তথ্য সংগ্রহ করেছি তাদেরকে পরীক্ষা করিনি। সাক্ষীদের বক্তব্য আমার টিমের অন্য যে সকল কর্মকর্তা লিপিবদ্ধ করেছেন তাদের বক্তব্য আমি রেকর্ড করিনি। ইহা সত্য নয় যে, ঘাটারচরের শহীদ পরিবারের সদস্যদের কাউকে সাক্ষী হিসেবে প্রদর্শন করিনি। ইহা সত্য নয় যে, নবী হোসেন বুলুকে তদন্ত রিপোর্টে শহীদ হিসেবে উল্লেখ করার বক্তব্য সঠিক নয়।

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্পষ্ট, ০১/১১/১২

ইহা সত্য যে, সাক্ষী কাজী রোজি (পি ডবি-উ-৪) তদন্তকালে আমার কাছে বলেননি যে, কাদের মোল্লা ও তার সহযোগী যারা ছিলেন তাদের অনেকে মাথায় সাদা পট্টি অথবা লাল পট্টি বেঁধে মেহেরদের বাসায় সকাল ১১টায় ঢুকে যায়।

ইহা সত্য যে, সাক্ষী কাজী রোজি (পি ডবি-উ-৪) তদন্তকালে আমার কাছে বলেননি যে, মেহের যখন দেখলো ওরা তাদেরকে মারতে এসেছে তখন সে কুরান শরীফ বুকে চেপে বাঁচতে চেয়েছিল।

ইহা সত্য যে, আমার কাছে সাক্ষী কাজী রোজি (পি ডবি-উ-৪) তদন্তকালে আমার কাছে বলেননি যে, বাংলাদেশ স্বাধীনতার পরে তিনি মেহেরুন্নেসার বাসায় যেতে চেয়েছিলেন কিন্তু তিনি জানতেন ঐ বাসায় অন্য কেউ বসবাস করছে বা মেহেরকে মেরে গলাটা কেটে ফ্যানের সংগে মাথার চুল বেধে কল্লাটা ঝুলিয়ে দিয়েছিল। তবে এই সাক্ষী আমার কাছে বলেছিল যে, কবি মেহেরুন নেসার বাড়ীতে ঢুকে প্রথমেই কবি মেহেরুন নেসাকে জবাই করে দেহ থেকে মাথা বিচ্ছিন্ন করে। ইহা আমার কাছে এই সাক্ষী বলেছে যে, গুলজার এবং অন্য একজন অবাঙ্গালীর কাছে মেহেরের হত্যার কথা শুনেছিলেন।

ইহা সত্য যে, আমার কাছে সাক্ষী খন্দকার আবুল হাসান (পি ডবি-উ-৫) বলেনি যে, আবদুল হালিম তার গাড়ীতে করে আব্বাকে মিরপুরে নিয়ে এসে আবদুল কাদের মোল্লার নিকট হস্তান্তর করেন। তবে এই সাক্ষী আমার কাছে বলেছিল যে, তিনি খলিলের কাছে শুনেছিলেন যে, হালিম তার গাড়ী নিয়ে এসে তার বাবাকে মিরপুরে নিয়ে যায়।

ইহা সত্য নয় যে, সাক্ষীর জবানবন্দী নিজে লিপিবদ্ধ না করে বা পর্যালোচনা না করে আমি প্রত্যয়ন পত্র দিয়েছি।

ইহা সত্য যে, আমার কাছে সাক্ষী আবদুল মজিদ পালোয়ান (পি ডবি-উ-৭) হুবহু এভাবে বলেনি যে, আমাদের গ্রামে যে পাঁচটি মহল-া আছে বা গুলির শব্দে আমার ঘুম ভাঙ্গে বা বাড়ীর নামায় গিয়ে দেখে চারিদিকে আগুন জ্বলছে বা উত্তর দিক থেকে গুলির শব্দ শুনতে পাই বা আস্েত্ম আস্েত্ম গুলির শব্দ শুনে আমি উত্তর দিকে আগ বাড়াই বা ঘাটার চর স্কুলের মাঠের কাছে গিয়ে থামি বা আমাদের এলাকায় ঝোপ-ঝাড় ছিল বা আমি একটি গাছের আড়ালে লুকাই বা পাক বাহিনীর সাথে আরো কয়েকজন পাঞ্জাবি-পাজামা পরা লোক ছিলেন তাদের মধ্যে একজন ছিলেন আবদুল কাদের মোল-া বা আবদুল কাদের মোল-ার হাতে রাইফেল ছিল এবং সেও গুলি করে বা ২৫ নভেম্বর ঘটনার প–র্ব রাতে জয়নাল ডাক্তারের বাড়ীতে আবদুল কাদের মোল-া মিটিং করেছে বা জয়নাল ডাক্তারের বাড়ী সাক্ষীর বাড়ী থেকে প–র্ব দিকে তিন বাড়ী পরে বা পাক বাহিনী ঘটনাস্থল ত্যাগ করার পর জানতে পারি তাদের সংগীয় পাঞ্জাবী-পাজামা পরা খাটো লোকটির নাম আবদুল কাদের মোল-াসহ তাদের সংগে আরো কয়েকজন বোরখা পরা লোক ছিল যাতে তাদেরকে সহজে চেনা না যায়।

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্□ষ্ট, ০১/১১/১২

ঘাটারচরের ঘটনায় নিহত বা ক্ষতিগ্রস্@ কোন হিন্দু পরিবারের সদস্যদের আমি জিজ্ঞাসাবাদ করিনি। ইহা সত্য নয় যে, ন–রজাহান এবং মজিদ পালোয়ানকে সাক্ষী মোজাফফর খানের সাক্ষ্য প্রদানের পর শেখানো সাক্ষী হিসেবে তাদের জবানবন্দী রেকর্ড করেছি বা তারা ঘটনার প্রকৃত সাক্ষী না।

ঘটনার সময় ন–র জাহানের বয়স ১৩ বছর ছিল একথা ন–রজাহান (পি ডবি-উ-৮) তার জবানবন্দী রেকর্ডকালে আমার কাছে বলেনি। ঘটনার সময় ন–রজাহানের গর্ভে সন্@ান ছিল এ

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মর্মে কোন বক্তব্য ন–রজাহান আমার কাছে বলে নাই। ঘটনার দিন গোলাগুলির শব্দ শুনে আমি এবং আমার স্বামী দুজনে খাটের নিচে লুকায় একথা তদন্@কারী কর্মকর্তার কাছে বলিনি। ইহা সত্য নয় যে, খাটের নিচে বসে থাকার বেশ কিছুক্ষণ পরে গোলাগুলি বন্দ হয় এবং বাহির হয়ে কোথায় কি হচেছ দেখি একথা তদন্@কারী কর্মকর্তার কাছে বলেনি বা তখন বন্দের (মাঠ) দিক থেকে দেখে আর্মিরা বাড়ী দিকে আসিতেছে বা ঐখানে যাওয়ার পর আবার গোলগুলির শব্দ শুনতে পায় বা তখন সে বাড়ীর বাইরে যায় আবার ঘরে ঢুকে। তবে একথা বলেছে যে, চাচা শ্বশুর মোজাম্মেল হকের বাড়ীতে গিয়ে দেখে উঠানের উপর মোজাম্মেল হক ও তার স্বামী মৃত অবস্থায় পড়ে আছে। ইহা সত্য যে, কয়েকজন আর্মি একজন বাঙ্গালী খাটো এবং কালো বর্নের লোককে দেখার কথা এই সাক্ষী আমার কাছে দেখার কথা বলেনি বা এই সাক্ষী চিৎকার করে তার স্বামীকে ধরতে যায় । ঐ যে বাঙ্গালী লোকটির কথা বললাম তিনি আমাকে একটি রাইফেলের মত জিনিস তাক করে আমাকে ঐখান থেকে সরে যেতে বলে-া বা ভয়ে আমি ঘরে দৌড়ে চলে যায়।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ০১/১১/১২

স্বাক্ষর/-অস্□ষ্ট, ০১/১১/১২ চেয়ারম্যান

ট্রাইব্যুনাল-২

তারিখঃ ০৪/১১/২০১২ খ্রিঃ(পরবর্তী জেরা)

ইহা সত্য যে, সাক্ষী নূরজাহান তদন্তকালে আমার নিকট বলেননি যে, তখন সাড়ে দশটা কি এগারোটার পরে তিনি তার স্বামীকে উবু হয়ে হয়ে পড়ে থাকা অবস্থা থেকে উঠান বা তখন তিনি দেখতে পান তার স্বামীর মুখে ও কপালে মাটি, তার বুকে হাত দিয়ে দেখেন তার বুকে রক্ত বা তারপর তিনি চিৎকার করে কাঁদতে থাকেন এবং তার শ্বাশুড়ীকে খবর দেন আসার জন্য বা তিনি তদন্তকারী কর্মকর্তার নিকট বলেননি যে, তারপর তার স্বামীকে ৫/৬ জন ধরে নিজের বাসায় নিয়ে যান।

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্পষ্ট, ০৪/১১/১২

এই সাক্ষী আমার কাছে এইভাবে বলেননি যে, ঐ ঘটনায় জয়নাল ডাক্তার ও মুক্তার হোসেন ছিল। তবে আমার কাছে বলেছিল যে, ঘাটারচর গ্রামের জয়নাল আবেদিন তার শালা মুক্তার হোসেন, ফয়জুর রহমান ঢাকা থেকে পাকিস্তান আর্মি ও কাদের মোল্লার রাজাকার বাহিনী নিয়ে এসে তাদের ঘাটার চর গ্রামে ৬০ জন লোককে হত্যা করে ও বাড়ী ঘর জালিয়ে দেয়।

ইহা সত্য যে, এই সাক্ষী আমার কাছে এইভাবে বলেননি যে, তিনি তার শ্বশুরের মুখে শুনেছেন যে, জামায়াতের কাদের মোল্লা নামে এক লোক তার স্বামীকে মেরে ফেলেছে।

ইহা সত্য যে, এই সাক্ষী আমার কছে বলেছে যে, তিনি তার এই কথাটি তার শ্বশুর লুদ্দু মিয়া ছাড়াও অনেকের কাছে থেকে শুনেছেন। তবে মজিদ পালোয়ানের কাছে শুনার কথাটি তিনি আমার কাছে বলেননি।

ইহা সত্য যে, এই সাক্ষী আমার কাছে জবানবন্দী দেওয়ার সময় বলেননি যে, ঘটনার সময় আসামী আবদুল কাদের মোল্লার চুল ছোট ছিল বা দাড়ি ছিলনা। তদন্তকালে আমি শহীদনগরে ১১ জন শহীদের নাম পেয়েছিলাম। পরবর্তীতে ঐ ১১ জন সহ মোট ৫২ জন শহীদের তালিকা পেয়েছিলাম। তদন্ত রিপোর্টে যে ১১ জন শহীদের নাম উল্লেখ করেছি তারা হলেনঃ শহীদ ওসমান গনি, শহীদ গোলাম মোস্তফা, শহীদ দরবেশ আলী, শহীদ আরজ আলী, শহীদ রাজামিয়া, শহীদ আবদুর রহমান, শহীদ আবদুল কাদির, শহীদ সোহরাব হোসেন, শহীদ আবদুল লতিফ, শহীদ নজরুল ইসলাম, শহীদ মোহাম্মদ আলী। আমি তদন্ত রিপোর্টে ঐ ১১ জনের নাম উল্লেখ করে লিখেছিলাম এই শহীদগণ ছাড়াও আরো অনেকে শহীদ হন। শহীদ নগরের ঘটনাস্থল থেকে নূরজাহানের চাচা শ্বশুর মোজাম্মেল হকের বাড়ী কোন দিকে কত দুর তা আমি নির্নয় করিনি।

এই মামলার তদন্তকালে আমি আসামীকে তদন্তের স্বার্থে গত ১৫/৬/২০১১ তারিখে সেফ হোমে নিয়ে জিজ্ঞাসাবাদ করেছিলাম। আমি তদন্তকালে জনৈক "এম এ কাদির মোল্লাহ্" নামে এক ব্যক্তিকে পেয়েছি যিনি ১৯৭৭

সালে মৎস্য উন্নয়ন সংস্থা এর পরিচালক (অর্থ) হিসেবে চাকুরী করতেন এবং তিনি ঢাকা বিশ্ববিদ্যালয়ের একজন সিনেট মেম্বর ছিলেন। উনার বাড়ী বরগুনা জেলায় তিনি বর্তমানে ঢাকার উত্তরায় বসবাস করেন। ইহা সত্য নয় যে, এই "এম এ কাদির মোল-াহ্" ১৯৭১ সালে মিরপুরে বসবাস করতেন।

ইহা সত্য নয় যে, আসামী আবদুল কাদের মোল-া ১৯৭১ সালে ঘটনার সময় তার দেশের বাড়ী ফরিদপুরে অবস্থান করতেন। আমি আমার তদন্েকালে ঘটনার সময়কালের তোলা আসামীর কোন ছবি সংগ্রহ করিনি। আমি তদন্েকালে পেয়েছি যে, ঘটনার সময় ১৯৭১ সালে এম এ কাদির মোল-াহ্ চট্টগ্রামে এম এ কাদির এন্ড কোম্ানী নামে চাটার্ড একাউন্টস এর ব্যবসা করতেন। আমি আমার তদন্েের সময় আবদুল কাদের মোল-া নামে কোন ব্যক্তি বরগুনার অধিবাসী ছিলেন কি না তা নির্নয় করিনি। আমি তদন্েকালে পেয়েছি ১৯৬৬ সালে আবদুল কাদের মোল-া ফরিদপুর সরকারী রাজেন্দ্র কলেজে বি এস সি প্রথম বর্ষে পড়াকালীন প্রথমে বাম সংগঠন করতেন পরবর্তী সময়ে ইসলামী ছাত্র সংঘে যোগদান করেন।

প্রশ-ঃ ইসলামী ছাত্র সংঘে আসামীর যোগদানের বিষয়ে কোন কাগজ-পত্র পেয়েছিলেন কি না ?

উত্তরঃ আমি কোন কাগজ-পত্র পাইনি। তবে, তদন্েকালে ফরিদপুর পুলিশ সুপারের মাধ্যমে সদরপুর থানার ভারপ্রাপ্ত কর্মকর্তার নিকট থেকে এক প্রতিবেদনের মাধ্যমে জানতে পারি আসামী আবদুল কাদের মোল-া তদানিন্েন প–র্ব পাকিস্োন ইসলামী ছাত্র সংঘের সদস্য ছিলেন এবং পরবর্তীতে বাংলাদেশ জামায়াতে ইসলামীর সহকারী সেক্রেটারী জেনারেলের পদে অধিষ্ঠিত হন।

ফরিদপুরের পুলিশ সুপার বা সদরপুর থানার ভারপ্রাপ্ত কর্মকর্তাকে এই মামলায় সাক্ষী হিসেবে দেখাইনি।

ইহা সত্য নয় যে, কম্িউটার কম্োজকৃত সাক্ষীদের জবানবন্দী আমি না পড়ে স্বাক্ষর করেছি।

এটা সত্য যে, সাক্ষী আমির হোসেন মোল-া (পি ডবি-উ-৯) আমার কাছে বলেননি যে, তখন দেশের অবস্থা ভয়াবহ দেখে ২৩/২৪ মার্চের দিকে তিনি তার পিতা-মাতা ও পরিবারের সদস্যরা সাভারে প্রথমে একটা স্কুলে পরে এক আত্মীয়ের বাড়ীতে আশ্রয় নেয় বা ২২/২৩ এপ্রিল তিনি তার বাবাকে নিয়ে তাদের ধান কাটার জন্য তাদের গ্রাম আলুবদির কাছে আসে বা ধান কেটে রাত্রি যাপন করে আলুবদি গ্রামে তার খালু র্স্তম আলী ব্যাপারীর বাড়ীতে আসেন।

এই সাক্ষী এইভাবে তদন্েকালে আমার কাছে বলেনি যে, কাদের মোল-ার হাতেও রাইফেল ছিল, আক্তার গুন্ডার হাতেও রাইফেল ছিল, পাঞ্জাবিদের সাথে তারাও গুলি করে এবং সেখানে আনুমানিক ৪০০ জন লোক নিহত হয়। তবে এই সাক্ষী আমার কাছে এভাবে বলেছিল যে, প–র্বদিক হতে আবদুল কাদের মোল-ার নেতৃত্বে অসীম, আক্তার গুন্ডা, নেওয়াজ, লতিফ, ডোমাসহ প্রায় ১৪০/১৫০ জন লোক আমাদের আলুবদি গ্রাম ঘিরিয়া ফেলে এবং নির্বিচারে গুলি বর্ষন করতে থাকে।

ইহা সত্য যে, এই সাক্ষী তদন্েকালে আমার কাছে বলেনি যে, এই ঘটনার পরে সে জুন মাসের প্রথম দিকে ভারতের আসাম রাজ্যের লাইলাপুরে চলে যায় এবং সেখানে মুক্তিযুদ্ধের ট্রেনিং গ্রহন করে বা ঐখান থেকে ট্রেনিং নিয়ে মেলাঘরে আসে এবং সেখান থেকে অস্ত্র নিয়ে আগষ্ট মাসের প্রথম দিকে বাংলাদেশে প্রবেশ করে বা তখন মোহাম্মদপুর ফিজিক্যাল ইন্সষ্টিটিউট থেকে কাদের মোল-ার নেতৃত্বে প্রায় ৭/৮শত আল-বদর বাহিনীর সদস্য এবং কিছু পাঞ্জাবি মিরপুর

এসে বিহারীদের সংগে একত্রিত হয়ে পাকিস্⌐ানী পতাকা উড়ায়। তবে এই সাক্ষী এইভাবে বলেছিল যে,মোহাম্মদপুর ফিজিক্যাল ট্রেনিং ইন্সষ্টিটিউট থেকে প্রায় ৮/৯শত আল-বদর বাহিনীর সদস্য মিরপুরে আবদুল কাদের মোল-ার নেতৃত্বে রাজাকার বাহিনীর কাছে গিয়ে আশ্রয় গ্রহন করে।

ইহা সত্য যে, এই সাক্ষী তদন্⌐কালে আমার কাছে বলেনি যে, তিনি ১৯৭০ সালের নির্বাচনে আওয়ামী লীগ প্রার্থী এ্যাডভোকেট জহির উদ্দিন এর পক্ষে নৌকা মার্কার প্রচার চালায় তখন আবদুল কাদের মোল-া গোলাম আযমের পক্ষে তার প্রতীক দাড়ি পাল-ার পক্ষে প্রচারনা চালায় বা তখন আবদুল কাদের মোল-া ইসলামী ছাত্র সংঘের নেতা ছিলেন। সাক্ষী আমির হোসেন মোল-ার জবানবন্দী আমি পল-বী থানায় বসে গ্রহন করি। সাক্ষী আমির হোসেন মোল-ার বির□দ্ধে কোন ফৌজদারী মোকদ্দমার কোন খোঁজ-খবর করিনি।

ইহা সত্য যে, সাক্ষী সৈয়দ আবদুল কাইয়ুম (পি ডবি-উ-১০) এর জবানবন্দীতে এই মর্মে উলে-খ নাই যে, তার চিৎকার শুনে ঘটনাস্থলের পাশেই অবস্থানরত জনৈক মোল-া দরজা খুলে বের হতেই আক্রমনকারীরা থমকে যায় এবং চলে যায় বা মোল-ার লোকজন তালেব সাহেবের বাসায় খবর দিলে তালেব সাহেব নিজে এবং তাঁর লোকজন বন্দুক সহ এগিয়ে আসেন।

ইহা সত্য যে, এই সাক্ষী জবানবন্দীতে এই মর্মে উলে-খ নাই যে, তখন আমি শুনলাম খন্দকার আবু তালেব সাহেবকে অবাঙ্গালীরা, স্থানীয় আক্তার গুন্ডা ও আবদুল কাদের মোল-ারা মিরপুর ১০ নম্বরের জল-াদ খানায় নিয়ে হত্যা করেছিল। তবে এই সাক্ষীর জবানবন্দীতে এই মর্মে উলে-খ আছে যে, জুন ১৯৭১ তারিখে ফার□ক আহমেদ খান এর নিকট থেকে জানতে পারে খন্দকার আবু তালেব সাহেবকে হত্যা করা হয়েছে।

ইহা সত্য যে, বাঙলা কলেজের পল-ব নামের একজন ছাত্রকে আবদুল কাদের মোল-া হত্যা করেছে বলে আমি শুনেছি তা এই সাক্ষীর জবানবন্দীতে এই মর্মে উলে-খ নাই ।

ইহা সত্য নয় যে, আসামীর বির□দ্ধে যে সকল অভিযোগ তদন্⌐ অন্⌐ে রিপোর্ট দাখিল করেছি তা মিথ্যা, বানোয়াট ও উদ্দেশ্য প্রনোদিত। ইহা সত্য নয় যে, আসামী আবদুল কাদের মোল-া মামলায় বর্নিত কোন ঘটনার সংগে কোন ভাবেই জড়িত নন। ইহা সত্য নয় যে, প্রকৃত অপরাধী আবদুল কাদের মোল-াকে বাদ দিয়ে মিথ্যাভাবে বর্তমান আসামী আবদুল কাদের মোল-ার বির□দ্ধে তদন্⌐ প্রতিবেদন দাখিল করেছি। ইহা সত্য নয় যে, সরকারের রাজনৈতিক উদ্দেশ্য হাছিলের জন্য এই আসামীকে রাজনৈতিকভাবে হেয় প্রতিপন্ন করার জন্য অসত্য তদন্⌐ প্রতিবেদন দাখিল করেছি। ইহা সত্য নয় যে, সত্য গোপন করে মিথ্যা সাক্ষ্য দিলাম।(জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ০৪/১১/১২

স্বাক্ষর/-অস্□ষ্ট, ০৪/১১/১২ চেয়ারম্যান

আন্⌐র্জাতিক অপরাধ

ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor -Versus- Abdul Kader Molla.

Deposition of witness No. 01 for the defence aged about 64 years, taken on oath on Thursday the 15th November 2012.

My name is Abdul QuaderMolla.

My father's name is Md. Sanaullah Molla.

My mother's name is ------------- age-------- I am by religion ------- My home is at village---------- Police Station ----------, District ----------, I at present reside in --------, Police Station----------, District ------------, my occupation is ----------------

আমার নাম আবদুল কাদের মোল-া, আমার পিতার নাম মোঃ সানাউল-াহ মোল-া। আমার জন্ম তারিখ ০২/১২/১৯৪৮খ্রিঃ। আমার জন্ম স্থানঃ জরিপের ডাংগি, ইউনিয়ন-চর বিষ্ণুপুর, থানা ও উপজেলা- সদরপুর, জেলা - ফরিদপুর। আমার বর্তমান স্থায়ী ঠিকানা- গ্রামঃ আমিরাবাদ, ইউ পি- ভাষানচর, থানা ও উপজেলা- সদরপুর, জেলা- ফরিদপুর। আমার বর্তমান ঠিকানা- ফ্লাট নং-৮/এ, গ্রীন ভ্যালি এপার্টমেন্ট, প-ট নং-৪৯৩, বড় মগবাজার, ঢাকা-১২১৭।

আমার প্রাথমিক শিক্ষা হয় জরিপের ডাংগি সরকারী প্রাথমিক বিদ্যালয়ে। ১৯৫৮ সালে আমি প্রাথমিক শিক্ষা বৃত্তিসহ সম্‌ন্ন করি। আমি ১৯৫৯ সালে আমিরাবাদ ফজলুল হক ইন্সষ্টিটিউশনে ভর্তি হই, এটি একটি হাইস্কুল। আমি ১৯৬৪ সালে ঐ স্কুল থেকে এস এস সি প্রথম বিভাগে পাশ করি। ঐ বৎসরই সম্ভবত জুলাই মাসে ফরিদপুর রাজেন্দ্র কলেজে একাদশ শ্রেণীতে বিজ্ঞান বিভাগে ভর্তি হই। ঐ কলেজ থেকে ১৯৬৬ সালে দ্বিতীয় বিভাগে আই এস সি পাশ করি। ঐ কলেজ থেকে ১৯৬৮ সালে বি এস সি পাশ করি। এরপর প্রায় এক বছর চার মাস বাইশরশি শিব সুন্দরী একাডেমীতে শিক্ষকতা করি। ১৯৬৯ সালের ডিসেম্বর মাসের শেষের দিকে ঢাকা বিশ্ববিদ্যালয়ে পদার্থ বিদ্যা বিভাগে এম এস সি ক্লাসে ভর্তি হই। আমি ড. মোহাম্মদ শহীদুল-াহ হলের আবাসিক ছাত্র ছিলাম। ঐ সময় গোটা বছরই প্রায় ক্লাস হয়েছে, মাঝে মাঝে হরতাল এবং অন্যান্য রাজনৈতিক কর্মস–চীর কারণে ক্লাসের বিঘ্নও ঘটেছে ফলে যথা সময়ে প-িমিনারী পরীক্ষা অনুষ্ঠিত হয়নি। ডিসেম্বরের পরীক্ষা ১৯৭১ সালে ফেব্রয়ারী-মার্চে অনুষ্ঠিত হয়। আমাদের প্রাকটিক্যাল পরীক্ষার তারিখ পড়েছিল সম্ভবত ১২/১৩ মার্চ, ১৯৭১। কিন্তু ঐতিহাসিক ৭ মার্চে স্বাধীন বাংলাদেশের স্থপতি মরহুম শেখ মুজিবুর রহমান কর্তৃক চুড়ান্ত অসহযোগ আন্দোলনের ডাক দেওয়ার কারণে উলে-খিত তারিখের পরীক্ষা স্থগিত হয়ে যায়। তখন আমরা ৮ মার্চ তারিখে বিভাগীয় চেয়রাম্যান ড. মোঃ ইননাস আলী সাহেবের কাছে যাই এবং আমরা জিজ্ঞেস করি পরীক্ষা কবে হবে। তখন তিনি বলেন দেশের যে পরিস্থিতি তাতে পরীক্ষা নেওয়া সম্ভব নয়। আরো বললেন তোমরা হলে থাক আমি তোমাদের অচিরেই আমার

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সিদ্ধান্ত জানাব। আমরা যারা হলে ছিলাম তারা বিভাগীয় চেয়ারম্যানের সিদ্ধান্ত দেওয়ার পূর্বে আমরা নিজেরাই আবারো তাঁর সংগে দেখা করি। এই পরিস্থিতিতে তিনি আমাদের নিরাপত্তার কথা ভেবে ঢাকায় যাদের থাকার ব্যবস্থা আছে তাদেরকে নিজ নিজ বাসায় চলে যাবার পরামর্শ দিলেন। আর যাদের ঢাকায় বাড়ী ঘর নেই তাদেরকে তাদের গ্রামের বাড়ীতে চলে যেতে বললেন। যাবার আগে ডিপার্টমেন্টের অফিসে প্রত্যেকের ডাক এবং টেলিগ্রাম ঠিকানা দিয়ে যাবার জন্য নির্দেশ দিলেন।

এরপর ১১/১২ মার্চ, ১৯৭১ আমি আমার নিজ গ্রামের বাড়ী আমিরাবাদ চলে যাই। সেখানে যাবার পর প্রতিদিনই বিশ্ববিদ্যালয় এবং কলেজে পড়ুয়া ছাত্ররা যারা বাড়ীতে চলে এসেছে তারা এবং স্থানীয় স্কুলের শিক্ষক এবং বিভিন্ন কলেজের শিক্ষকগণ আমরা একত্রে আমিরাবাদ হাই স্কুলের মাঠে বসতাম এবং রেডিওতে প্রচারিত প্রতিদিনের খবরা-খবর শুনতাম। ইতিমধ্যে আমাদের সাথে একজন অবসর প্রাপ্ত জে সি ও আমাদের সাথে যোগদান করেন। এভাবে এক সপ্তাহ বা তার কিছু সময় বেশী পার হয়ে যায়।

২৩ মার্চ, ১৯৭১ আমাদের এলাকায় তখনও স্বাধীন বাংলাদেশের পতাকাটি যায়নি। অধিকাংশ বাড়ী ঘরে কালো পতাকা উত্তোলন করা হয়। শুধুমাত্র থানা হেড কোয়ার্টারে পাকিস্তানের পতাকা উত্তোলন করা হয়। ঐ দিন আমরা ১২টার সময় জে সি ও সম্ভবত উনার নাম ছিল মফিজুর রহমান এর ডাকে আমরা বেশ কিছু বিশ্ববিদ্যালয় এবং কলেজ পড়ুয়া ছাত্র এবং স্কুলের উচ্চ শ্রেণীর কয়েকজন ছাত্র একত্রিত হই। মফিজুর রহমান সাহেব আমাদেরকে বললেন তিনি বিকাল থেকেই আমাদেরকে মুক্তিযুদ্ধের ট্রেনিং দিবেন এবং সেই লক্ষ্যে তিনি কিছু কাঠের তৈরী ডামী রাইফেল জোগাড় করেছেন। তিনি আরো বললেন রাজনৈতিক সমস্যার সমাধান হবে বলে মনে হয় না। তাই আমাদেরকে এখন থেকেই প্রস্তুতি নিতে হবে। আমরা ঐদিন বিকালে তার পরামর্শ মত ৩০/৪০ জন একত্রিত হই। তিনি প্রাথমিক পরীক্ষা নেওয়ার পর ২/১ জন বাদে প্রায় সকলকেই প্রশিক্ষন নেবার জন্য মনোনিত করেন এবং ঐদিন থেকেই আমরা পিটি, প্যারেড শুরু করি। তিনি প্রথম ৩দিন আমাদেরকে ডামী রাইফেল দেন নাই। পরবর্তীতে ২০/২১ টি ডামী রাইফেল আমাদেরকে দেন এবং এই রাইফেল গুলো দিয়েই আমরা প্রশিক্ষন চালিয়ে যেতে থাকি।

পাকিস্তান সেনা বাহিনী ৩০ এপ্রিল বা ১ মে তারিখে ফরিদপুরে পৌঁছার দিন পর্যন্ত আমরা ট্রেনিং চালিয়ে যাই। ফরিদপুরে সেনা বাহিনী পৌছার পর কয়েক দিন আমাদের ট্রেনিং বন্ধ থাকে। এর কয়েকদিন পর আবার ট্রেনিং চালু হয়। যেদিন পাক সেনারা ফরিদপুর থেকে বরিশালের দিকে যায় সেদিন আমরা আমাদের স্কুল থেকে কামানের গোলার শব্দ শুনতে পাই। কামানের গোলার শব্দ শুনার পর আমরা মাঠ থেকে স্কুল ঘরের ভিতরে ঢুকে যাই। এরই মধ্যে একদিন কয়েকটি যুদ্ধ বিমান আমাদের মাথার উপর দিয়ে খুব নিচু দিয়ে উড়ে যায় ফলে সকলে সাংঘাতিকভাবে ভীত সন্ত্রস্ত হয়ে যায় এবং আমাদের ওস্তাদ ট্রেনিং বন্ধ করে দেয়। এই সময়ে পাকিস্তান রেডিও থেকে অবসর প্রাপ্ত অথবা এল পি আর'এ থাকা বা ছুটিতে থাকা সকল সামরিক কর্মকর্তা ও সিপাহীদেরকে কাজে যোগদান করার নিমিত্তে নিকটবর্তী থানা অথবা সেনা ছাউনিতে যোগদানের আহবান জানান হয়। এই সময়ে আমি বাড়ীতে অবস্থান করে আকাশ বাণী কলকাতা, স্বাধীন বাংলা বেতার কেন্দ্র

এবং পাকিস্@ান রেডিওর খবর নিয়মিত শুনতে থাকি। গ্রামে অবস্থানকালীন সময়ে মৌলভী মোঃ ইসহাক ওরফে ধলা মিয়া পীর সাহেবের বাড়ীতে যেতাম এবং উনার দুই মেয়েকে পড়াতাম ঐ পীর সাহেবের এক জামাতা মুক্তিযুদ্ধে অংশ গ্রহন করেছিল বলে পরে জানতে পেরেছি এবং পীর সাহেবের ছেলেরা সবাই স্বাধীন বাংলার সমর্থক ছিল। পীর সাহেব তখন আমাকে কিছু টাকা দেন তার বাজারের ঘরটি ব্যবসা বাণিজ্য করার জন্য চালু করতে। বাজারটি চৌদ্দরশি বাজার নামে পরিচিত হলেও কাগজে কলমে এটি সাড়ে সাতরশি বাজার নামে পরিচিত। বাজারটির হাটবার ছিল শনি ও মঙ্গলবার, তবে প্রতিদিন বাজার বসতো। পুরো ১৯৭১ সাল এবং ১৯৭২ সালের প্রায় পুরো সময় আমি প্রতি সপ্তাহে শনি ও মঙ্গলবারে বাজারে যেতাম এবং পীর সাহেবের বাজারের ঘরে বসতাম এবং ব্যবসা করতাম। ১৯৭১ সালে তৎকালীন সদরপুর-ভাঙ্গা নির্বাচনী এলাকা থেকে নির্বাচিত আওয়ামী লীগের প্রাদেশিক পরিষদ সদস্য জনাব এ্যাডভোকেট মোশাররফ হোসেন এবং সদরপুর থানা আওয়ামী লীগ সভাপতি জনাব শাহজাহান তালুকদার এর সংগে আমার নিয়মিত যোগাযোগ ছিল। সম্ভবত ১৯৭১ সালে নভেম্বর মাসে যখন আমাদের এলাকা মোটামুটি মুক্ত এলাকা হিসেবে পরিচিত হয়ে যায় তখন সদরপুর থানা মুক্তিযোদ্ধা কমান্ডার জনাব লুৎফুল করিম এর সাথেও আমার পরিচয় হয় এবং তারপর থেকে এদের সংগে আমার যোগাযোগ ছিল।(জবানবন্দী অসমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ১৫/১১/১২

স্বাক্ষর/-অস্□ষ্ট, ১৫/১১/১২ চেয়ারম্যান

আন্@র্জাতিক অপরাধ

ট্রাইব্যুনাল-২

<u>তারিখঃ ১৮/১১/২০১২ খ্রিঃ (পরবর্তী জবানবন্দী)</u>

উপরে উলে-খিত ব্যক্তিগণের বাড়ী সদরপুর থানায়। ১৯৭১ সালের ১৬ ডিসেম্বর চূড়ান্@ বিজয়ের পর আমি লেখাপড়ার জন্য ঢাকা আসার চেষ্টা করতে থাকি। উপরে উলে-খিত ব্যক্তিগণের সাথে ঢাকায় যাওয়ার ব্যাপারে পরামর্শ করি যাতে আমার লেখাপড়ার কোন ক্ষতি না হয়। তারা তিন জনই আমাকে একযোগে পরামর্শ দেন এখন ঢাকায় যাওয়া ঠিক হবেনা। কারণ হিসেবে তারা বলেন "তোমার 'ভূমিকা' সম্□র্কে ঢাকায় করো জানা নাই।সেখানে গেলে বর্তমান অবস্থায় যেকোন ধরণের বিপদ হতে পারে। আমরা তোমার ভূমিকা সম্□র্কে জানি তাই তুমি বাড়ীতে থাক। আমরা খোঁজ খবর নেই, তারপর সবকিছু জানা শুনার পর এবং বঙ্গবন্ধু দেশে ফিরে আসলে ছড়ানো ছিটানো অস্¿পাতি সরকারের হাতে জমা হলে পরিস্থিতি স্বাভাবিক হবে, জান-মালের নিরাপত্তা বিধান হবে, তখন আমরাই তোমাকে ঢাকায় পৌছানোর ব্যবস্থা করব।"

এরপর তাদের পরামর্শ মোতাবেক আমি বাড়িতে এবং উপরে উলে-খিত পীর সাহেবের বাড়ীতে অবস্থান করতে থাকি এবং চৌদ্দরশি বাজারে ব্যবসা করতে থাকি। তখন মাঝে মধ্যে ঢাকা বিশ্ববিদ্যালয়ের শহীদুল-া হলে ছাত্র লীগের তৎকালীন নেতা হাসান, মাকসুদ, আবদুল হাই প্রমুখের কাছ থেকে আমি চিঠি পেতে থাকি, তারা লেখে যে, তোমার বির□দ্ধে কোন অভিযোগ নাই তুমি তাড়াতাড়ি ঢাকায় চলে আস। এই চিঠিপত্র সম্□র্কে আমি সদরপুর থানার উলে-খিত তিন ব্যক্তিকে জানায়। তারা বললেন একটু দেখেশুনে যাওয়াই ভাল, এই চিঠি যে তারাই লিখেছেন তার কি প্রমাণ আছে।

১৯৭২ সালের সম্ভবত নভেম্বর-ডিসেম্বরে সদরপুর থানা আওয়ামী লীগের তৎকালীন সভাপতি জনাব শাহজাহান তালুকদার নিজেই আমাকে ঢাকায় নিয়ে আসেন এবং আমাকে শহীদুল-াহ হলের গেটে নামিয়ে দেন। আমি আসার পর ছাত্র লীগের বর্নিত নেতৃবৃন্দ আমার ভর্তি এবং হলে থাকার ব্যাপারে সহযোগিতা করেছেন। কারণ তারা আমার ক্লাস মেট ছিলেন এবং আমি তাদেরকে লেখাপড়ার ব্যাপারে সহযোগিতা করতাম এবং তাদের সংগে আমার আন্@রিকতাও ছিল।

১৯৭১ সালের সম্ভবত জুলাই মাসের শেষের দিকে আমি ঢাকা বিশ্ববিদ্যালয়ের পদার্থ বিদ্যা বিভাগের অফিস থেকে টেলিগ্রাম এবং ডাকযোগে খবর পাই যে, পরীক্ষা শুর□ হয়েছে, আমি যেন এসে প্রাকটিক্যাল পরীক্ষা দেই। আমি এই বার্তা মোতাবেক জুলাই মাসের শেষের দিকে আমি ঢাকায় আসি এবং হলেই উঠি। সপ্তাহ খানেক প্রাকটিক্যাল ক্লাসও করি। ক্লাস শেষ হওয়ার ২/৩ দিন পর তিন দিনের বিরতিসহ দুই দিন ব্যাপি প্রাকটিক্যাল পরীক্ষা চলে। পরীক্ষা শেষে সপ্তাহ খানেক পর আবার বাড়ী চলে যাই।

মুক্তিযুদ্ধ চলাকালীন সময়ে অনুষ্ঠিত পরীক্ষা বাতিল হওয়ার কারণে আমার ব্রেক অব ষ্টাডি হয় এবং এ কারণে পদার্থ বিদ্যায় এম এস সি করা হয়নি। ১৯৭৪ সালে আমি আই ই আর (ইন্সষ্টিটিউট অব এডুকেশন এন্ড রিসার্চ) এ ডিপে-ামা ইন এডুকেশন (সোস্যাল সাইন্স) এ ভর্তি হই। ১৯৭৫ সালে প্রথম শ্রেণীতে প্রথম স্থান অধিকার করে ডিপে-ামা ইন এডুকেশন পাশ করি।

আমি অষ্টম শ্রেণীতে পড়াকালীন সময়ে তৎকালীন প–র্ব পাকিস্@ান ছাত্র ইউনিয়নে যোগদান করি। এরপর ডিগ্রী প্রথম বর্ষে যখন পড়াশুনা করি তখন ইসলাম এবং কমিউনিজমের তুলনাম–লক পড়াশুনা করে ইসলামের শ্রেষ্ঠত্ব বুঝতে পেরে আমি ইসলামী ছাত্র সংঘে যোগদান করি। এটা ১৯৬৬ সালের সেপ্টেম্বর মাসের ঘটনা। তারপর থেকে ইসলামী ছাত্র সংঘের কাজ করতে থাকি। ঢাকা বিশ্ববিদ্যালয়ে আমি ১৯৭৭ সাল পর্যন্@ পড়াশুনা করি। পড়াশুনা শেষকরে ঐ সালেই আমার রেজাল্ট প্রকাশ হওয়ার আগেই আমি কিছু দিন ইসলামী ফাউন্ডেশনে চাকুরী করি। পরবর্তীতে বি ডি আর সেন্ট্রাল পাবলিক স্কুল এন্ড কলেজে চাকুরী করি। আমি সেখানে ভারপ্রাপ্ত অধ্যক্ষ হিসেবে দায়িত্ব পালন করি। আমি উদয়ন বিদ্যালয়ে ১৯৭৪-৭৫ সালে শিক্ষকতা করেছি। আমি মানারাত স্কুলের প্রতিষ্ঠাতা ছিলাম।

১৯৭৯ সালের মে মাসে জামায়াতে ইসলামী বাংলাদেশ নামে পুনরায় আত্মপ্রকাশ করার পর আমি জামায়াতে ইসলামীতে যোগদান করি। ইতিমধ্যে জামায়াতে ইসলামীর ম–খপাত্র হিসেবে পরিচিত দৈনিক সংগ্রাম পুনঃপ্রকাশিত হয়। আমি মানারাতে থাকা অবস্থায় ঐ পত্রিকায় শিক্ষা বিভাগের পাতার পরিচালক ছিলাম। আমার সাংবাদিকতার প্রতি প্রবল আগ্রহের কারণে আমি সংগ্রাম পত্রিকার নির্বাহী সম্□াদক হিসেবে ১৯৮১ সালের প্রথম দিকে যোগদান করি তবে তখনও আমি মানারাত ট্রাষ্টের সদস্য ছিলাম। ইতিমধ্যে ঢাকা সাংবাদিক ইউনিয়নের প্রাথমিক সদস্য পদ লাভ করি। ১৯৮২-৮৪ পর্যন্@ ঢাকা সাংবাদিক ইউনিয়নের দুই বার নির্বাচিত সহ-সভাপতি ছিলাম তার সংগে জামায়াতে ইসলামীর রাজনৈতিক কর্মকান্ড চালাতে থাকি। সম্ভবত ১৯৮৩ সালে ঢাকা মহানগর জামায়াতের সাধারণ সম্□াদক নিয়োজিত হই। ১৯৮৭ সাল আমি ঢাকা মহানগর জামায়াতের আমির নির্বাচিত হই এবং ১৯৯১ সাল পর্যন্@ এই দায়িত্ব পালন করি। ঢাকা মহানগর জামায়াতে

ইসলামীর আমির হিসেবে আমি কেন্দ্রীয় লিঁয়াজো কমিটির সদস্য ছিলাম। কেন্দ্রীয় লিঁয়াজো কমিটির সদস্য থাকার কারণে তৎকালীন এরশাদ বিরোধী অন্দোলন পরিচালনার স্বার্থে বর্তমান মাননীয় প্রধান মন্ড্রী শেখ হাসিনা এবং মাননীয় বিরোধী দলীয় নেত্রী খালেদা জিয়াসহ উভয় দলের সিনিয়র নেত্রী বৃন্দের সংগে আমার সখ্যতা গড়ে উঠে। ১৯৯১ সালের সাধারণ নির্বাচনের পর আওয়ামী লীগ এবং বি এন পি কারোরই প্রয়োজনীয় সংখ্যা গরিষ্ঠতা না থাকার কারণে প্রথম আওয়ামী লীগ জামায়াতের সমর্থন চায়। জামায়াতে ইসলামের সমর্থন পেলেও আওয়ামী লীগ সরকার গঠন করতে পারবেন না একথা আওয়ামী লীগকে জানানো হয়। এরপর বি এন পি আমাদের কাছে সরকার গঠনের জন্য সমর্থন চাইলে আমরা বি এন পি'কে সমর্থন দেই এবং শর্ত দেই যে, সংসদীয় পদ্ধতির সরকার এবং তত্ত্বাবধায়ক সরকারের অধীনে নির্বাচন বিষয় দু'টি সংবিধানে অন্ড্রর্ভুক্ত করতে হবে। বি এন পি সরকার সংসদীয় পদ্ধতির সরকার প্রবর্তনের বিষয়টি সংবিধানে অন্ড্রর্ভুক্ত করলেও তত্ত্বাবধায়ক সরকারের বিধানটি তারা সংবিধানে অন্ড্রর্ভুক্ত করেনি এই কারণে আমরা পরবর্তীতে আওয়ামী লীগ এবং জাতীয় পার্টির সংগে একীভুত হয়ে তত্ত্বাবধায়ক সরকারের দাবীতে আন্দোলন শুর□ করি।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্□ষ্ট, ১৮/১১/১২

<u>সময় দপুর ২.১৫ ঘটিকা (পরবর্তী জবানবন্দী)</u>

উলে-খিত আন্দোলনের সময় মরহুম আবদুস সামাদ আজাদের বাসায় প্রায়শঃই লিঁয়াজো কমিটির মিটিং হতো এবং আমি সেখানে উপস্থিত থাকতাম। নাসিম সাহেব এই লিঁয়াজো কমিটিতে গৃহীত আন্দোলনের কর্মস–চী সম্□র্কে ব্রিফিং করতেন। আমি এগুলো নোট করে নিয়ে এসে বিভিন্ন পত্রিকায় ছাপানোর ব্যবস্থা করতাম। আন্দোলন তীব্রতররূপলাভ করলে ১৯৯৬ সালের ফেব্র□য়ারী মাসের শেষ সপ্তাহে আমাকে এবং আওয়ামী লীগ নেতা তোফায়েল আহমেদকে একই দিনে গ্রেফতার করে, আটকাদেশ দিয়ে ঢাকা কেন্দ্রীয় কারাগারে পাঠিয়ে দেয়। সপ্তাহ দুয়েক পরে আমি মুক্তি পাই। আমাদের আন্দোলন চলতে থাকে। এক পর্যায়ে বি এন পি তত্ত্বাবধায়ক সরকারের দাবী মেনে নিয়ে আইন পাশ করে। আন্দোলনের কারণে জামায়াতের সাথে বি এন পি'র দুরত্ব সৃষ্টি হয় ফলে ১৯৯৬ সালের জুন মাসের নির্বাচনে জামায়াত এবং বি এন পি আলাদাভাবে নির্বাচন করে। এই নির্বাচনে আওয়ামীলীগ সংখ্যা গরিষ্ঠতা পেয়ে সরকার গঠন করে। তৎকালীন মাননীয় প্রধান মন্ড্রী শেখ হাসিনা এক পর্যায়ে আমাকে ডেকে পাঠিয়েছিলেন এবং আমাকে বললেন আমরা তো সরকার গঠন করলাম, আমাদের কিছু পরামর্শ দেন। বর্তমান স্বরাষ্ট্র মন্ড্রী জনাব মহিউদ্দিন খান আলমগীর ম–খ্য সচিব ছিলেন এবং তিনি আমাকে প্রধান মন্ড্রীর পক্ষ থেক রিসিভ করেন। আমি তখন প্রধান মন্ড্রীকে কিছু গঠনম–লক পরামর্শ দেই যা শুনে তিনি আমাকে সাধুবাদ দেন। একইভাবে তিনি পরে আমাকে আরো দু'বার ডেকেছিলেন।

এখন আমি মনে করছি দীর্ঘদিন যাদের সংগে রাজনৈতিক আন্দোলন করলাম, মিটিং মিছিল করলাম, সুসম্□র্ক রাখলাম, সখ্যতা রেখে চলেছি তারা এখন শুধুমাত্র রাজনৈতিক প্রতিহিংসা চরিতার্থ করার জন্য দীর্ঘ ৪০ বছর পর আমার বির□দ্ধে মিথ্যা মামলা দায়ের করেছে। আমার বির□দ্ধে আনিত অভিযোগ সম–হের সংগে আমার বিন্দুমাত্র কোন সংশি-ষ্টতা

ছিলনা এবং নাই এবং আমি কোনভাবেই ঐ ঘটনা সম–হের সংগে জড়িত ছিলামনা। বিগত ৪০ বছর সময়ের মধ্যে আমার বির□দ্ধে কারোর পক্ষ থেকে পত্র-পত্রিকায় বা কোন কর্তৃপক্ষের বরাবরে আনিত কোন অভিযোগ উত্থাপিত হয়নি। আমার বির□দ্ধে আনিত অভিযোগ সম–হ মিথ্যা, বানোয়াট, কাল্পনিক এবং রাজনৈতিক উদ্দেশ্য প্রনোদিত। (জবানবন্দী সমাপ্ত)

XXX (জেরা)ঃ

আমরা তিন ভাই ছয় বোন ছিলাম। বর্তমানে জীবিত আছি তিন ভাই তিন বোন। আমার বড় ভাইয়ের নাম মোঃ ইব্রাহিম মোল-া, ছোট ভাইয়ের নাম মোঃ মইন উদ্দিন মোল-া। বর্তমানে ভাষনচর ইউনিয়ন পরিষদের চেয়ারম্যান আমার ছোট ভাই মোঃ মইন উদ্দিন মোল-া। আমি জাতীয় সংসদ সদস্য পদে দুইবার নির্বাচন করেছি। আমার নির্বাচনী এলাকা ছিল সদরপুর-চরভদ্রাসন। দু'টি নির্বাচনেই আমার জামানত বাজেয়াপ্ত হয়েছিল। আমি বি এস সি পড়াকালীন সময়ে শেষের দিকে ফরিদপুর রাজেন্দ্র কলেজের ইসলামী ছাত্র সংঘ শাখার সভাপতির দায়িত্ব পালন করি। ১৯৭০ সালে আমি তৎকালীন ঢাকা হল বর্তমান শহীদুল-াহ হল শাখার ইসলামী ছাত্র সংঘের সভাপতি নির্বাচিত হই। তখন আমাদের হল শাখায় ছাত্র সংঘের কর্মী ছিল ১৩ জন। আমি প্রফেসর গোলাম আযম সাহেবের একান্ত সচিব হিসেবে কাজ করেছি। ১৯৭৭ সালের শেষের দিকে প্রফেসর গোলাম আযম সাহেব দেশে ফেরার পর জামায়াতে ইসলামীর সিদ্ধান্ত মোতাবেক জামায়াতে ইসলামী আমাকে তাঁর একান্ত সচিব হিসেবে কাজ করার দায়িত্ব প্রদান করে। ইসলামী ছাত্র সংঘ শিবিরে পরিনত হয়নি, শিবির একটি নতুন ছাত্র সংগঠন। সংগঠনের আদর্শিক বিষয়ে আমরা ইসলামী ছাত্র সংঘ জামায়াতে ইসলামের পরামর্শ গ্রহন করতাম। ইসলামী ছাত্র শিবির প্রতিষ্ঠিত হয় ১৯৭৭ সালের ফ্রেব্র□য়ারী মাসে আমি মে মাসে ঐ সংগঠনে যোগদান করি এবং ঐ মাসেই আমার ছাত্র জীবনের সমাপ্তি ঘটে। প্রফেসর গোলাম আযম রচিত 'জীবনে যা দেখলাম' বইটি সম্□র্কে আমার ধারনা আছে। সম্□–র্ন বইটি আমি পড়িনি, সংগ্রাম পত্রিকায় তার যতটুকু ছাপা হতো ততটুকু পড়েছি। ধলামিয়া পীর সাহেব বর্তমানে বেঁচে নেই, তিনি ইন্তেকাল করেছেন। ধলামিয়া পীর সাহেব পুলিশের সাবেক আইজিপি ও বিশিষ্ট যৌন বিজ্ঞানী জনাব আবুল হাসনাত মোঃ ইসমাইল সাহেবের ছোট ভাই। আমার কথিত অবসর প্রাপ্ত জে সি ও জনাব মফিজুর রহমান সম্ভবত জীবিত নেই। উনার বাড়ী ছিল আমিরাবাদ আমাদের গ্রামে। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ১৮/১১/১২

স্বাক্ষর/-অস্□ষ্ট, ১৮/১১/১২

চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

তারিখঃ ১৯/১১/২০১২ খ্রিঃ(পরবর্তী জেরা)

ইসলামী ছাত্র সংঘ থেকে শুধু 'সংঘ' শব্দটি বাদ দিয়ে তদস্থলে শিবির শব্দটি প্রতিস্থাপন করে এই ছাত্র সংগঠনটি ইসলামী ছাত্র শিবির নামে নুতন সংগঠন হিসেবে আত্ম প্রকাশ করে কি না আমি জানিনা। যারা ইসলামী ছাত্র শিবির প্রতিষ্ঠা করেছে তারাই জানে। পাকিস্তান ইসলামী ছাত্র সংঘের পাকিস্তান শব্দটির স্থলে বাংলাদেশ দ্বারা প্রতিস্থাপিত হয় কি না,

এটাও তারাই বলতে পারবে। আমি নোয়াখালী জেলা জামায়াতে ইসলামীর নেতা মহিউদ্দিন চৌধুরীকে চিনতাম না। ইহা সত্য নয় যে, আমি কৌশলগত কারণে মহিউদ্দিন চৌধুরীকে না চেনার কথা বলেছি। ইহা সত্য যে, আমি সময় পেলেই বই পড়তে ভালবাসি। মহিউদ্দিন চৌধুরী কর্তৃক লিখিত 'সানসেট এ্যাট মিডডে' বইটি আমি পড়িনি। ইহা সত্য নয় যে, মুক্তিযুদ্ধ চলাকালীন সময়ে ইসলামী ছাত্র সংঘের সমস্ে নেতাকর্মীরা আল-বদরে রূপান্েরিত হয়ে যায়। তবে আল-বদরে কেউ কেউ যেয়ে থাকতে পারে, আমার জানা নেই। ১৯৭১ সালে মুক্তিযুদ্ধের মাঝামাঝি সময়ে ঢাকা বিশ্ববিদ্যালয়ের ফিজিক্যাল সেন্টারে ইসলামী ছাত্র সংঘ কর্তৃক আয়োজিত একটি সিম্ে□াজিয়ামে আমার অংশ গ্রহন করার কথা সত্য নয়। আমি ফিজিক্যাল সেন্টারটি তখন চিনতাম না। ধলা মিয়া পীর সাহেবের তিন ছেলে। বড় ছেলের নাম মাহবুব আলম চৌধুরী, মেজো ছেলের নাম রইসুল আলম চৌধুরী এবং ছোট ছেলের নাম শহীদুল আলম চৌধুরী। মেজো ছেলে মারা গেছে। ইহা সত্য নয় যে, পীর সাহেবের অপর দুই ছেলে ইসলামী ছাত্র সংঘ করতেন এবং এখনও জামায়াতে ইসলামীর অন্ধ সমর্থক। পীর সাহেবের সম্ভবত চার মেয়ে ছিল। ইহা সত্য নয় যে, পীর সাহেবের মেয়েদের বিয়ে হয়েছে জামায়াত পন্থি পরিবারের সদস্যদের সাথে। পীর সাহেবের এক মেয়ে মিনার বিয়ে হয়েছে এল জি ই ডি'র (অবঃ) নির্বাহী প্রকৌশলী জনাব আবদুল গফফার এর সংগে, তিনি মুক্তিযুদ্ধের কমান্ডার ছিলেন। ইহা সত্য নয় যে, আমার কথিত জে সি ও মফিজুর রহমান নামে কোন লোক আমাদের এলাকায় মুক্তিযুদ্ধের ট্রেনিং দেননি এবং নেননি বা এ বিষয়ে আমি যা বলেছি তা কৌশলগত কারণে বলেছি। ইহা সত্য নয় যে, ভাষানচর ইউনিয়নের চেয়ারম্যান আমার ছোট ভাই মইন উদ্দিন মোল-া জামায়াতে ইসলামীর একজন একনিষ্ঠ কর্মী। আমার ভাই হিসেবে তিনি একজন জামায়াতে ইসলামীর সমর্থক হতে পারেন। আমার ভাই যেহেতু একজন চেয়ারম্যান সেই হিসেবে ইউ এন ও সাহেবের সংগে সম্□র্ক আছে।

বাংলাদেশ স্বাধীন হবার পর আমি যখন সবান্ধব সদরপুর থানার সামনে দিয়ে হেটে আসছিলাম তখন কয়েক ঘন্টার জন্য গ্রেফতার হয়েছিলাম। সম্ভবত এটা ১৯৭২ সালের জানুয়ারী মাসের ঘটনা,তবে আমি সময় ও তারিখটি সম্□র্কিত নিশ্চিত নই। আমাকে পরে আওয়ামী লীগ থানা সভাপতি জনাব শাহজাহান তালুকদার ও মুক্তিযোদ্ধা কমান্ডার জনাব লুৎফুল করিম আমাকে মুক্ত করে নিয়ে যান। ইহা সত্য নয় যে, ১৯৭২ সালের ৩১ জানুয়ারী পর্যন্ে ঢাকার মিরপুর পাকসেনা, স্থানীয় বিহারী এবং আমার দখল ছিল বা তারপর মিরপুর মুক্ত হওয়ার পরে আমি যখন পালিয়ে ফরিদপুর যাই, তখন সেখানে পুলিশ আমাকে গ্রেফতার করে। ইহা সত্য নয় যে, সদরপুর থানা আওয়ামী লীগ সভাপতি জনাব শাহজাহান তালুকদার ও মুক্তিযোদ্ধা কমান্ডার জনাব লুৎফুল করিম কর্তৃক আমাকে থানা থেকে মুক্ত করে নিয়ে যাওয়ার কথাটি সর্বৈব মিথ্যা এবং এটা আমার একটি কৌশলগত বক্তব্য।

ইহা সত্য নয় যে, এরপর ১১/১২ মার্চ, ১৯৭১ আমি আমার নিজ গ্রামের বাড়ী আমিরাবাদ চলে যাই বা সেখানে যাবার পর প্রতিদিনই বিশ্ববিদ্যালয় এবং কলেজে পড়ুয়া ছাত্ররা যারা বাড়ীতে চলে এসেছে তারা এবং স্থানীয় স্কুলের শিক্ষক এবং বিভিন্ন কলেজের শিক্ষকগণ আমরা একত্রে আমিরাবাদ হাই স্কুলের মাঠে বসতাম এবং রেডিওতে প্রচারিত প্রতিদিনের

খবরা-খবর শুনতাম বা ইতিমধ্যে আমাদের সাথে একজন অবসর প্রাপ্ত জে সি ও আমাদের সাথে যোগদান করেন বা এভাবে এক সপ্তাহ বা তার কিছু সময় বেশী পার হয়ে যায় এই সকল বক্তব্য
সর্বৈব মিথ্যা, বানোয়াট এবং প্রসিকিউশন কর্তৃক আনিত অভিযোগ থেকে অব্যাহতি পাওয়ার লক্ষ্যে কৌশলগত কারণে আমার কর্তৃক সৃষ্ট কাহিনী।

ইহা সত্য নয় যে, ২৩ মার্চ, ১৯৭১ আমাদের এলাকায় তখনও স্বাধীন বাংলাদেশের পতাকাটি যায়নি বা অধিকাংশ বাড়ী ঘরে কালো পতাকা উত্তোলন করা হয় বা শুধুমাত্র থানা হেড কোয়ার্টারে পাকিস্তানের পতাকা উত্তোলন করা হয় বা ঐ দিন আমরা ১২টার সময় জে সি ও সম্ভবত উনার নাম ছিল মফিজুর রহমান এর ডাকে আমরা বেশ কিছু বিশ্ববিদ্যালয় এবং কলেজ পড়ুয়া ছাত্র এবং স্কুলের উচ্চ শ্রেণীর কয়েকজন ছাত্র একত্রিত হই বা মফিজুর রহমান সাহেব আমাদেরকে বললেন তিনি বিকাল থেকেই আমাদেরকে মুক্তিযুদ্ধের ট্রেনিং দিবেন এবং সেই লক্ষ্যে তিনি কিছু কাঠের তৈরী ডামী রাইফেল জোগাড় করেছেন বা তিনি আরো বললেন রাজনৈতিক সমস্যার সমাধান হবে বলে মনে হয় না বা তাই আমাদেরকে এখন থেকেই প্রস্তুতি নিতে হবে বা আমরা ঐদিন বিকালে তার পরামর্শ মত ৩০/৪০ জন একত্রিত হই বা তিনি প্রাথমিক পরীক্ষা নেওয়ার পর ২/১ জন বাদে প্রায় সকলকেই প্রশিক্ষন নেবার জন্য মনোনিত করেন এবং ঐদিন থেকেই আমরা পিটি, প্যারেড শুরু করি বা তিনি প্রথম ৩দিন আমাদেরকে ডামী রাইফেল দেন নাই বা পরবর্তীতে ২০/২১ টি ডামী রাইফেল আমাদেরকে দেন এবং এই রাইফেল গুলো দিয়েই আমরা প্রশিক্ষন চালিয়ে যেতে থাকি এই সকল বক্তব্য সর্বৈব মিথ্যা, বানোয়াট এবং প্রসিকিউশন কর্তৃক আনিত অভিযোগ থেকে অব্যাহতি পাওয়ার লক্ষ্যে কৌশলগত কারণে আমার কর্তৃক সৃষ্ট কাহিনী।

ইহা সত্য নয় যে, পাকিস্তান সেনা বাহিনীর ৩০ এপ্রিল বা ১ মে তারিখে ফরিদপুরে পৌছানোর দিন পর্যন্ত আমাদের ট্রেনিং চলার কথা বা কয়েকদিন ট্রেনিং বন্ধ থাকার পর চালু হবার কথা বা যেদিন পাক সেনারা ফরিদপুর থেকে বরিশালের দিকে যায় এবং কামানের গোলার শব্দ শুনার কথা এবং শব্দ শুনে স্কুলের ঘরে ঢুকার কথা সর্বৈব মিথ্যা ও বানোয়াট। ইহা সত্য নয় যে, পীর সাহেবের ছেলে-মেয়েরা সবাই স্বাধীন বাংলার সমর্থক বা পীর সাহেবের টাকায় চৌদ্দরশি বাজারে আমার ব্যবসা করার কথা বা ১৯৭১ ও ১৯৭২ সালের পুরো সময় ঐ খানে থাকার কথা সর্বৈব মিথ্যা এবং বানোয়াট।

আমি শুনেছি যে, সাবেক প্রাদেশিক পরিষদ সদস্য মরহুম এ্যাডভোকেট মোশাররফ সাহেবের স্ত্রী বর্তমানে একজন জাতীয় সংসদ সদস্য। ইহা সত্য নয় যে, মুক্তিযুদ্ধ চলাকালীন সময়ে আমি যখন সদরপুরে অবস্থান করছিলাম তখন উল্লিখিত এ্যাডভোকেট মোশাররফ সাহেব এবং সদরপুর থানা আওয়ামী লীগের সভাপতি (সহ-সভাপতি) জনাব শাহজাহান তালুকদার এবং মুক্তিযুদ্ধা কমান্ডার জনাব লুৎফুল করিম এর সংগে আমার নিয়মিত যোগাযোগ থাকার কথাটি সর্বৈব মিথ্যা এবং বানোয়াট। ইহা সত্য নয় যে, আমি বাইশরশি শিব সুন্দর একাডেমীতে ১৯৬৯ সালের অক্টোবর মাসে শিক্ষক হিসেবে যোগদান করি এবং ১৯৭০ সালের ৩০ এপ্রিল পর্যন্ত সেখানে শিক্ষকতা করি। আমি সম্ভবত ১৯৬৮ সালের আগষ্ট-সেপ্টম্বরে ঐ স্কুলে যোগদান করি এবং ১৯৬৯ সালের ডিসেম্বর পর্যন্ত সেখানে শিক্ষকতা করি।

ইহা সত্য নয় যে, ১৯৭১ সালের ৭ মার্চের পরে গ্রামের বাড়ী সদরপুরের আমিরাবাদে চলে যাওয়া এবং সেখানে ১৯৭২ সালের নভেম্বর মাস পর্যন্ত অবস্থান করা এবং অবস্থান কালীন সময়ে আমার কর্মকান্ড সম্পর্কে আমি জবানবন্দীতে যা যা বলেছি তা মিথ্যা, বানোয়াট এবং কৌশলগত কারণে মিথ্যা গল্প অবতারনার উদ্দেশ্যে করেছি। ইহা সত্য নয় যে, মহান মুক্তিযুদ্ধকালীন সময়ে আমি ঢাকায় ছিলাম বা পাক সেনা বাহিনী বা মিরপুরের বিহারীদের সহিত সংশ্লিষ্ট থেকে আমার বিরুদ্ধে আনিত মিরপুর ও কেরানীগঞ্জ থানাধীন এলকায় সংঘঠিত অপরাধ সমূহের অভিযোগের সাথে আমি জড়িত ছিলাম। ইহা সত্য নয় যে, আমি সত্য গোপন করে মিথ্যা সাক্ষ্য দিলাম।

(আসামী কর্তৃক পুনঃ তলব মতে জবানবন্দী)

আমার পক্ষে দাখিলকৃত ডকুমেন্টের মধ্যে ২০/৪/২০১২ তারিখে বিটিভি'তে প্রচারিত একটি সাক্ষাৎকার ও দুইটি প্রামাণ্য চিত্র সম্বলিত একটি সিডি (তিন সেট) দাখিল করা আছে। এই সেই সিডি (বস্তু প্রদর্শনী-I)। জাহানারা ইমাম কর্তৃক লিখিত 'একাত্তরের দিনগুলি' বইটি ১৯৮৬ সালে প্রথম প্রকাশিত হয়, যাহা আদালতে দাখিল আছে, এই সেই বই (প্রদর্শনী-এ)। এই সেই কবি কাজী রোজী লিখিত বই 'শহীদ কবি মেহেরুন নেসা' যা প্রথম ২০১১ সালে প্রথম প্রকাশিত হয় (প্রদর্শনী-বি)। ইহা ২০০১ সাল ১৪ ডিসেম্বরে প্রকাশিত দৈনিক আজকের কাগজের প্রকাশিত 'রাজধানীর দুর্ধর্ষ সন্ত্রাসী গ্রেফাতার' শিরোনাম সম্বলিত সংবাদের পেপার কাটিং, ২০০১ সাল ১৪ ডিসেম্বরে প্রকাশিত দৈনিক ইনকিলাবে প্রকাশিত 'অবশেষে গ্রেফতার হলেন পল্লবীর সেই লাটভাই আমির হোসেন মোল্লা' শিরোনাম সম্বলিত সংবাদের পেপার কাটিং, একই তারিখে দৈনিক যুগান্তরে প্রকাশিত 'অর্ধশত মামলার আসামী লাটভাই গ্রেফতার শিরোনাম সম্বলিত সংবাদের পেপার কাটিং। এগুলো আদালতে দাখিল করা আছে, এগুলো (প্রদর্শনী-সি সিরিজ)। (পুনঃ জবানবন্দী সমাপ্ত)

XXX (জেরা)

প্রসিকিউশন কর্তৃক জেরা করতে অস্বীকৃতি (declined)।

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বা/-অস্পষ্ট, ১৯/১১/১২

স্বাক্ষর/-অস্পষ্ট, ১৯/১১/১২

চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor -Versus- Abdul Kader Molla.

Deposition of witness No. 02 for the defence aged about 82 years, taken on oath on Wednesday the 21st November 2012.

My name is Susil Chandra Mondal.

My father's name is Late Upen Chandra Mondal.

My mother's name is ------------- age-------- I am by religion ------- My home is at village---- ----- Police Station ----------, District ----------, I at present reside in --------, Police Station---- ------, District ------------, my occupation is ----------------

আমার নাম সুশীল চন্দ্র মন্ডল, পিতা মৃত- উপেন চন্দ্র মন্ডল। বয়স ৮২ বছর। গ্রাম- আমিরাবাদ, থানা- সদরপুর, জেলা- ফরিদপুর। আমি এই মামলার আসামী আবদুল কাদের মোল-া-কে চিনি। আবদুল কাদের মোল-া প্রাইমারী স্কুল পাশ করে আমার বাড়ীর পাশে হাইস্কুল ঐ স্কুলে পড়তে আসে। ঐ স্কুলের নাম ফজলুল হক ইন্সষ্টিটিউশন। আমার বাড়ীতে সন্েেতাষ বাবু নামে একজন বি এস সি শিক্ষক লজিং থাকতেন। কাদের মোল-াসহ আরো বেশ কিছু ছাত্র আমার বাড়ীতে ঐ শিক্ষকের নিকট প্রইভেট পড়তে আসতো। কাদের মেহের মৃধার বাড়ীতে থেকে আমিরাবাদ স্কুলে পড়াশুনা করতো। মেহের মৃধা কাদেরকে তার ছেলের মতোই ভালবাসতো। কাদের মোল-ার ব্যবহার ও আচার আচরণে সন্তুষ্ঠ হয়ে মেহের মৃধা নিজের ছেলের সংগে কাদের মোল-ার এক বোনের বিয়ে দেয়। তারপরেই কাদের মোল-ার বাবা আমাদের আমিরাবাদে বাড়ী করে। কাদের মোল-ার বড় বোনের বিয়ে হয়েছে আমার বাড়ীর একবাড়ীর পরের বাড়ীতে। কাদের মোল-ার পরিবার মিলায়ে আমরা সকলে এক সংগে মিলেমিশে বসবাস করি। কাদের মোল-া প্রাইমারীতে বৃত্তি পায় এবং ম্যাট্রিক প্রথম বিভাগে পাশ করে। ম্যাট্রিক পাশ করার পরে ফরিদপুর রাজেন্দ্র কলেজে ভর্তি হয়ে কাদের মোল-া আই এস সি এবং বি এস সি পাশ করে। বি এস সি পাশ করে এসে কাদের মোল-া বাইশরশি হাইস্কুলে শিক্ষকতা শুর করে। বাইশরশি হাইস্কুলের কাছে পীর সাহেবের বাড়ী ছিল। পীর সাহেবের দুই ছেলে ঐ স্কুলে পড়াশুনা করতো। পীর সাহেবের দুই ছেলে ঐ স্কুলের চেয়ার-টেবিলে বসে ক্লাস করতো অন্যান্য ছেলে-পেলেরা বেঞ্চে বসতো। শিক্ষক ক্লাসে ঢুকলে পীর সাহেবের ছেলেরা দাঁড়াত না। জাকের'রা ১০/১৫ জন ঐ ছেলে দুটিকে স্কুলে নিয়ে আসতো এবং স্কুল থেকে বাড়ীতে নিয়ে আসতো। কাদের মোল-া পীর সাহেবের দুই ছেলের জন্য রক্ষিত চেয়ার এবং টেবিল ক্লাস রম থেকে বাইরে ফেলে দেয় এবং বলে যে তোমরা আদব কায়দা শেখ এবং বেঞ্চে অন্যান্য ছাত্রদের সংগে বস এবং এক পর্যায়ে তাদেরকে বেঞ্চে বসতে বাধ্য করে। ঐ স্কুলের অন্যান্য শিক্ষকরা বলাবলি করতে লাগলো আমরা যা করতে পারিনি কাদের তা দুইদিনে করে ফেললো, আর এটা কেমন হলো যে, হুজুরের ছেলেদেরকে বেঞ্চে বসাতে বাধ্য করলো। দুইদিন পর আটরশির পীর সাহেব কাদের মোল-াকে দেখা করার জন্য খবর দিল। খবর দিলে কাদের মোল-া পীর সাহেবের সংগে দেখা করবার গেলে

হুজুর জিজ্ঞাসা করে আমার ছেলেদের বসার চেয়ার টেবিল বাইরে ফেলে দিলে কেন। তখন কাদের বললো হুজুর আপনার ছেলেদের কি শুধু বইপড়ে লেখাপড়া শেখার জন্য পাঠিয়েছেন? না মুরব্বিদেরকে সম্মান কিভাবে দেখানো হয় তা শেখানোর জন্য পাঠিয়েছেন। হুজুর বললেন লেখা পড়ার পাশাপাশি শিষ্টাচার শেখার জন্য পাঠিয়েছি। সমস্েত ঘটনা শুনে হুজুর বললেন তুমি যা করেছ ভাল কাজ করেছ।

আটরশির হুজুরের বাড়ীর কাছে আরেক জন হুজুরের বাড়ী ছিল তার নাম ছিল ধলামিয়া পীর সাহেব। কাদের মোল-ার পিতা ধলা মিয়া পীর সাহেবের মুরিদ ছিলেন। এই পীর সাহেব যখন শুনলেন কাদের মোল-া তার বাড়ীর কাছে স্কুলে শিক্ষকতা করছে যেখানে ছেলে-মেয়েরাও লেখাপড়া করতো। তখন তিনি তার ছেলেমেয়েদেরকে পড়াশুনা করানোর জন্য তাকে খবর দিয়ে তার নিজ বাড়ীতে থাকতে বললেন। বাইশরশি স্কুলে প্রায় বছর খানেক শিক্ষকতা করার পর তিনি উ□চ শিক্ষার জন্য ঢাকায় চলে গিয়েছিলেন। ১৯৭১ সালে ৭ মার্চ বঙ্গবন্ধু জাতীর উদ্দেশ্যে যে ভাষণ দিলেন এরপর ঢাকার স্কুল কলেজ বন্ধ হয়ে যায়। ৭ মার্চের ভাষণের ৬/৭ দিন পর দেখি কাদের মোল-া আমার বাড়ীর পাশে তার যে বোন থাকতো সেই বাড়ীতে এসে ওঠে। তখন তাকে আমি জিজ্ঞাসা করি তুমি কবে আসলা সে উত্তর দিল দিন তিনেক হয় আসছি। ধলা মিয়া পীর সাহেবের বাড়ীতে ছিলাম। কাদের মোল-া বললো পীর সাহেব বলেদিয়েছেন উনার বাড়ীতে থাকতে হবে, এরপর থেকে কাদের মোল-া ঐ বাড়ীতে থাকতেন। ঐ বাড়ীর পাশে চৌদ্দরশি বাজারে ধলামিয়া পীর সাহেবের দোকানঘর ছিল, তিনি কাদের মোল-াকে তার বড় ছেলের সংগে ঐ দোকানে বসে ব্যবসা করতে বলে-া। সে সাধারণত বাড়ীতে আসতো না পীর সাহেবের বাড়ীতে থাকতো, আমরা বাজারে গেলে দেখতাম কাদের পীর সাহেবের ঘরে বসে ব্যবসা করছে। এইভাবে ব্যবসা করতে করতে দেশ স্বাধীন হয়ে গেলে তার ৯/১০ মাস পরে সে আবার ঢাকায় চলে যায় পড়াশুনা করার জন্য , সে বাড়ীতে খুব কম আসতো। কাদের খুব ভাল মানুষ। (জবানবন্দী সমাপ্ত)

XXXজেরাঃ

আমরা তিন ভাই এক বোন ছিলাম। আমার ছোট দুই ভাই হলোঃ পরিমল চন্দ্র মন্ডল ও বিজয় কুমার মন্ডল। আমার দুই ভাই জীবিত আছে। আমার ছোট ভাই পরিমল প্রাইমারী স্কুলে মাষ্টারী করতো এখন অবসর জীবন যাপন করছে। বিজয় কিছু করেনা। অবসর নেবার প—র্ব পর্যন্ত পরিমল বেশ কয়েকটি স্কুলে মাষ্টারী করতো, স্কুল গুলোর নাম বলতে পারব না। সর্বশেষ কোন স্কুল থেকে অবসর নিয়েছে তার নামও বলতে পারব না। ২০০৮ সালের নির্বাচনের সময় আমি ভোটার ছিলাম। ২০০৮ সালের নির্বাচনে আমাদের এলাকায় আওয়ামী লীগের এবং বি এন পি'র কে কে প্রার্থী ছিলেন আমি তা বলতে পারব না। ইহা সত্য নয় যে, ঐ নির্বাচনে আমি বি এন পি প্রার্থী শাহ আলমের পক্ষে নির্বাচনী প্রচারনা চালিয়েছিলাম। ইহা সত্য নয় যে, ১৯৯৬ সালের নির্বাচনে আমি বি এন পি প্রার্থী শাহজাদা মিয়ার পক্ষে প্রচারনা চালিয়েছিলাম। ইহা সত্য নয় যে, আমি ১৯৯৬ সাল থেকে অদ্যাবধি বি এন পি করি এবং আমি আমার ভাষানচর ইউনিয়ন বি এন পি'র সক্রিয় সদস্য আছি। বর্তমানে ভাষানচর ইউনিয়ন পরিষদের চেয়ারম্যান মাইনুদ্দিন মোল-া তিনি আবদুল কাদের মোল-ার ভাই। মাইনুদ্দিন মোল-া জামায়াতে ইসলামের স্থানীয় নেতা। আমি ভাষানচর ইউনিয়নের বি এন পি সভাপতি এবং সম্□াদকের নাম বলতে পারব না। ইহা সত্য নয় যে, আমি স্থানীয় বি এন পি নেতাকর্মী এবং মাইনুদ্দিন মোল-ার সংগে একীভুত হয়ে যুদ্ধ আপরাধীদের বিচার কার্য বিঘ্নিত করার জন্য স্থানীয়ভাবে মিটিং মিছিল করে অরাজকতা সৃষ্টি করছি। আমার বাড়ী থেকে ধলা মিয়া পীর সাহেবের বাড়ী ৭ মাইল দুরে। পীর সাহেবের দুই ছেলে স্থানীয়ভাবে জামায়াত রাজনীতির সংগে জড়িত কি না আমি জানিনা। আমার বাড়ী থেকে আমিরাবাদ স্কুলটি সিকি মাইলেরও কম দুরত্বে অবস্থিত। আমিরাবাদ স্কুলের শিক্ষক শুধাংশু শেখর মন্ডলকে আমি চিনি। তার

বাড়ী আমার বাড়ীর পাশে ৫/৬টি বাড়ীর পরে। নান্নু ব্যাপারীকে আমি চিনি, তিনি আমার চেয়ে ছোট। তিনি কোথায় চাকুরী করেন জানিনা, তবে আগে পুলিশে চাকুরী করতো বলে জানতাম। আজাহার□ল ইসলাম পিতা-মৃত হিশামউদ্দিনকে আমি চিনি না। আমি সব সময় কাদের মোল-ার সংগে থাকতাম না।

ইহা সত্য নয় যে, বঙ্গবন্ধুর ৭ মার্চের ভাষনের ৬/৭ দিন পর কাদের মোল-ার আমার আমার বাড়ীর পাশে তার বোনের বাড়ীতে আসা এবং আমার সংগে কথাবার্তা বলার কথা সত্য নয় এবং এই বক্তব্য স্থানীয় বি এন পি নেতৃবৃন্দ, কাদের মোল-ার ভাই জামায়াত নেতা মাইনুদ্দিন মোল-া ও জামায়াত সমর্থিত ব্যক্তিদের দ্বারা শেখানো মতে সম্□র্ন উদ্দেশ্য ম–লকভাবে মিথ্যা, বানোয়াট ও কল্প কাহিনী উপস্থাপন করেছি। ইহা সত্য নয় যে, ধলা মিয়া পীর সাহেবর বাড়ীতে কাদের মোল-ার থাকার কথা এবং চৌদ্দরশি বাজারে পীর সাহেবের ছেলের সংগে বাজারে অবস্থিত তার দোকানঘরে বসে ১৯৭১ সালে মুক্তিযুদ্ধ চলাকালীন সময়ে ব্যবসা করার কথা সম্□র্ন বানোয়াট এবং জামায়াত ও বি এন পি নেতাদের কর্তৃক শেখানো মতে মিথ্যা কাহিনী বলেছি। ইহা সত্য নয় যে, কাদের মোল-ার ভাই মাইনুদ্দিন মোল-া এবং জামায়াত এবং বি এন পি নেতৃবৃন্দ আমাকে ও আমার ছোট ভাই বিজয়কে কাদের মোল-ার পক্ষে সাক্ষ্য দেওয়ার জন্য মোটা অংকের টাকা গ্রহনের প্রস্◌্তাব দিলে আমি তা গ্রহন করি এবং আমার ভাই বিজয় তা গ্রহন করেনি। ইহা সত্য নয় যে, স্থানীয় বি এন পি এবং জামায়াতে নেতা এবং কাদের মোল-ার ভাই মাইনুদ্দিন মোল-া দেশে রাজনৈতিক পট পরিবর্তনের ভয় দেখিয়ে ও আর্থিক প্রলোভন দেখিয়ে আামাকে দিয়ে সত্য গোপন করে কাদের মোল-ার পক্ষে মিথ্যা সাক্ষ্য দিতে বাধ্য করেছে। ইহা সত্য নয় যে, স্থানীয় বি এন পি, জামায়াত নেতাদের কথায় আমার ছোট ভাই বিজয় কাদের মোল-ার পক্ষে মিথ্যা সাক্ষ্য দিতে রাজি না হওয়ায় তাদের ভয়ে ভীত হয়ে বর্তমানে সে গৃহ ছাড়া অবস্থায় আছে। ট্রাইব্যুনাল থেকে আমার সাক্ষী দেবার জন্য কোন কাগজ যায় নাই, কাদের মোল-ার ছেলে আমাকে ট্রাইব্যুনালে নিয়ে এসেছে। বাড়ী থেকে গতকাল রওনা হয়ে ঢাকায় পৌছি। ইহা সত্য নয় যে, ২/৩দিন প–র্বেই আমাকে বাড়ী থেকে এনে কাদের মোল-া সাহেবের ছেলে এবং অন্যান্যরা তাদের হেফাজতে রাখে এবং আমাকে শিখিয়ে পড়িয়ে আজ আদালতে আমাকে সাক্ষ্য দিতে নিয়ে এসেছে। ইহা সত্য নয় যে, ১৯৭১ সালের ২৫ মার্চ থেকে শুর□ করে ১৯৭২ সালের জানুয়ারী মাস পর্যন্◌্ত আমি কখনও আবদুল কাদের মোল-াকে গ্রামের বাড়ীতে দেখি নাই। ইহা সত্য নয় যে, রাষ্ট্র পক্ষের দ্বারা আনিত অভিযোগ থেকে আবদুল কাদের মোল-া সাহেবকে বাঁচানোর উদ্দেশ্যে সত্য গোপন করে তার পক্ষে মিথ্যা সাফাই সাক্ষ্য দিলাম। আমি বাড়ী থেকে সাক্ষ্য দিতে আসার পথে স্থানীয় আওয়ামী লীগ নেতারা আমাকে বাধা প্রদান করে নাই।(জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ২১/১১/১২

স্বাক্ষর/-অস্□ষ্ট, ২১/১১/১২

চেয়ারম্যান

আন্◌্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor -Versus- Abdul Kader Molla.

Deposition of witness No. 03 for the defence aged about 65 years, taken on oath on Monday the 26th November 2012.

My name is Md. Muslem Uddin Ahmed.

My father's name is Late Azim Uddin Bepari.

My mother's name is ------------- age-------- I am by religion ------- My home is at village--------- Police Station ----------, District ----------, I at present reside in --------, Police Station----------, District ------------, my occupation is ----------------

আমার নাম মোঃ মোসলেম উদ্দিন আহমেদ, পিতা মরহুম আজিম উদ্দিন ব্যাপারী। গ্রাম-বাইশরশি, উপজেলা-সদরপুর, জেলা- ফরিদপুর। আমার বয়স ৬৫ বছর। বর্তমানে আমি একজন অবসরপ্রাপ্ত শিক্ষক। আমি এবং আবদুল কাদের মোল-া দুজনই আমিরাবাদ ফজলুল হক ইন্সষ্টিটিউটে পড়তাম। আবদুল কাদের মোল-া স্কুলে আমার এক বছরের জুনিয়র ছিলেন। আমি এস এস সি পাশ করি ১৯৬৩ সালে, আবদুল কাদের মোল-া পাশ করে ১৯৬৪ সালে। এস এস সি পাশ করার পর আমি ফরিদপুরে অবস্থিত সরকারী রাজেন্দ্র কলেজে ভর্তি হই। আবদুল কাদের মোল-া তার পরের বছর একই কলেজে ভর্তি হয়। ১৯৬৭ সালে আমি বি এস সি পাশ করি। বি এস সি পরীক্ষা সমাপ্তির পরেই আমি বাইশরশি শিব সুন্দরী একাডেমীতে একজন সহকারী শিক্ষক হিসেবে যোগদান করি। তার এক বছর পর সম্ভবত সেপ্টেম্বর-অক্টোবর মাসে আবদুল কাদের মোল-াও একই স্কুলে সহকারী শিক্ষক হিসেবে যোগদান করেন। এইভাবে আমরা একই স্কুলে শিক্ষকতা করতে থাকি। যেহেতু কাদের মোল-ার বাড়ী স্কুলে থেকে দুরে ছিল সেজন্য স্কুলের কাছাকাছি ধলামিয়া পীর সাহেবের বাড়ীতে সে জায়গির থাকত। ধলামিয়া পীর সাহেবের ছেলে-মেয়েরাও৩ঐ একই স্কুলে পড়ালেখা করতো। সম্ভবত ১৯৬৯ সালের নভেম্বর কি ডিসেম্বর মাসে আবদুল কাদের মোল-া ঢাকা বিশ্ববিদ্যালয়ে ভর্তি হন। ভর্তির প–র্বে স্কুলের প্রধান শিক্ষক বাবু নলিনী রঞ্জন সেন কাদের মোল-াকে সহকারী-প্রধান শিক্ষকের পদে নিয়োগ দিতে চেয়েছিলেন এবং বলেছিলেন আপনি বিদ্যালয় ছেড়ে যাবেন না। তারপর তিনি ঢাকা বিশ্ববিদ্যালয়ে পড়াশুনার জন্য চলে গেলেন। ১৯৭১ সালের ৭ মার্চে জাতীর পিতা বঙ্গবন্ধু শেখ মুজিব যখন ভাষণ দিলেন তার ৮/১০ দিন পরেই ফরিদপুরের সদরপুরে কাদের মোল-া সাহেবের সংগে আমার দেখা হয়। জিজ্ঞাসাবাদের এক পর্যায়ে তিনি বললেন, বঙ্গবন্ধুর ভাষণের ৪/৫ দিন পর তিনি বাড়ীতে এসেছেন। মাস খানেক পরে চৌদ্দরশি বাজারে ওনার সংগে আমার দেখা হয়। তখন তাকে জিজ্ঞেস করি তুমি কি করছো, তিনি বললেন ধলামিয়া পীর সাহেবের কথামত আমি তাঁর ছেলের সংগে ব্যবসা করছি। পুরা এক বছরই তাকে আমি চৌদ্দরশি বাজারে ব্যবসা করতে

দেখেছি। ১৯৭২ সালে কয়েক মাস এলাকায় থাকার পর তিনি ঢাকায় চলে আসেন। তিনি অত্যন্ত বিনয়ী এবং ভাল লোক। আমাদের স্কুলের চেয়ারম্যান আওয়ামী লীগ নেতা শাহজাহান তালুকদারের সংগে তার ভাল সম্পর্ক ছিল। (জবানবন্দী সমাপ্ত)

XXXজেরাঃ

একই স্কুলে পড়াশুনা ও শিক্ষকতা করার সুবাদে জনাব আবদুল কাদের মোল-ার সংগে আমার সুসম্পর্ক গড়ে উঠে। আমি কোর্ট থেকে কোন সাক্ষীর সমন পাইনি। কাদের মোল-া সাহেবের ছেলে আমাকে ৮/১০দিন পূর্বে এই মামলায় সাক্ষ্য দিতে বলেছেন। তার আগে আমি নিশ্চিতভাবে জানতাম না যে, আমাকে এই মামলায় সাক্ষ্য দিতে হবে। ঢাকায় আমি নিজেই সাক্ষী দিতে এসেছি ২১/১১/২০১২ তারিখে। ইহা সত্য নয় যে, ২১/১১/২০১২ তারিখ থেকে আজ পর্যন্ত আমি আসামী পক্ষের লোকদের সংগেই ছিলাম। ইহা সত্য নয় যে, আসামী পক্ষের লোকেরা আমাকে কি কি সাক্ষ্য দিতে হবে তা শিখিয়ে দিয়েছে। আমি বর্তমানে সদরপুর উপজেলাধীন বাইশরশি ইসলামিক রিসোর্স সেন্টারে সাধারণ কেয়ারটেকার হিসেবে কর্মরত আছি। আমি ২০০৭ সালের জুলাই-আগষ্ট থেকে এই রিসোর্স সেন্টারে কর্মরত আছি। আমি ২০০৮ সালে ভাঙ্গা উপজেলাধীন নুরুল-াগঞ্জ ইউনিয়নে ড. মাজেদ খান উচ্চ বিদ্যালয়ে প্রধান শিক্ষক হিসেবে যোগদান করি। আমি মাজেদ খান উচ্চ বিদ্যালয়ে সম্ভবত বছর তিনেক ছিলাম। ইহা সত্য নয় যে, বিভিন্ন রকম অনিয়ম এবং দুর্নীতির অভিযোগে আমার বিরুদ্ধে একটি পোষ্টার বের হয়েছিল, যেখানে লেখা ছিল, " একাত্তরের রাজাকার এই মুহুর্তে স্কুল ছাড়।" ইহাও সত্য নয় যে, আন্দোলনের কারণে আমাকে পদত্যাগ করতে হয়েছিল। আমি স্বেচ্ছায় পদত্যাগ করেছি। ইহা সত্য নয় যে, ১৯৭৬ সালের শেষের দিকে থেকে আমি সদরপুর উপজেলা জামায়াতে ইসলামীর আমির ছিলাম। ইহা সত্য যে, ১৯৮৬ এবং ১৯৯১ সালে আবদুল কাদের মোল-া সাহেব জামায়াতে ইসলামীর প্রার্থী হিসেবে দাঁড়িপাল-া প্রতীকে জাতীয় সংসদ নির্বাচনে প্রতিদ্বন্দ্বিতা করেন। আমরা চার ভাই এক বোন। বড়ভাইয়ের নাম খবির আহমেদ ব্যাপারী, মেজো ভাইয়ের নাম মোঃ সুলায়মান মিয়া, তারপর আমি এবং ছোটভাইয়ের নাম এম এ ফজল। ইহা সত্য নয় যে, উপরে উলে-খিত দুটি নির্বাচনেই আমি এবং আমার উলে-খিত ভাইয়েরা ও আমাদের জ্ঞাতি গোষ্ঠি সকলেই কাদের মোল-ার পক্ষে নির্বাচনী প্রচারনায় অংশ গ্রহণ করেছিলাম। আমি যখন ইসলামী রিসোর্স সেন্টারে যোগদান করি তখন রাষ্ট্রীয় ক্ষমতায় ছিল বিএনপি-জামায়াত ইসলামী জোট সরকার। ইহা সত্য নয় যে, যেহেতু কাদের মোল-া সাহেব জামায়াতে ইসলামী নেতা হিসেবে জোট সরকারের একজন অংশীদারী ছিলেন, তাই তার সুপারিশেই ২০০৭ সালে আমি ইসলামী রিসোর্স সেন্টারে চাকুরী পাই।

ইহা সত্য নয় যে, ১৯৭১ সালের ৭ মার্চে বঙ্গবন্ধু শেখ মুজিবুর রহমানের ভাষণের ৮/১০ দিন পর ফরিদপুরের সদরপুরে কাদের মোল-া সাহেবের সংগে আমার দেখা হওয়া এবং কথাবার্তা

হওয়ার কথা বা তার মাস খানেক পরে চৌদ্দরশি বাজারে ওনার সংগে আমার দেখা হওয়ার কথা বা সেখানে তাকে সে কোথায় থাকছে জিজ্ঞেস করলে ধলা মিয়া পীর সাহেবের বাড়ীতে থাকার কথা বা পীর সাহেবের ছেলের সংগে ব্যবসা করার কথা বা পুরো এক বছরই চৌদ্দরশি বাজারে ব্যবসা করতে দেখার কথা সম্পূর্ন মিথ্যা, বানোয়াট এবং কাদের মোল-াকে মামলা থেকে বাঁচানোর জন্য একটি সৃষ্ট কল্পকাহিনী মাত্র। ইহা সত্য নয় যে, ১৯৭১ সালের মার্চ মাসের প্রথম থেকেই ১৯৭২ সালের ৩১

জানুয়ারী পর্যন্ত জনাব আবদুল কাদের মোল-া ঢাকায় ছিলেন ।ইহা আমার জানা নেই যে, আবদুল কাদের মোল-া মুক্তিযুদ্ধ চলাকালীন সময়ে ইসলামী ছাত্র সংঘের নেতা ছিলেন কি না। ইহা সত্য নয় যে, জনাব আবদুল কাদের মোল-া পাক বাহিনীর সংগে যোগসাজসে ঢাকা মহানগরীর বিভিন্ন এলাকায় বিশেষ করে বৃহত্তর মিরপুর এলাকায় এবং ঢাকা জেলার কেরানীগঞ্জে গণহত্যাসহ নানা ধরণের মানবতা বিরোধী অপরাধের সহিত লিপ্ত ছিলেন। ইহা সত্য নয় যে, মহান মুক্তিযুদ্ধ চলাকালীন সময়ে আমি কখনও জনাব কাদের মোল-াকে ফরিদপুরে বা সদরপুরের কোথাও দেখিনি। অন্যান্য জেলার মত ফরিদপুর জেলায় রাজাকারদের একটি লিষ্ট ছিল কি না আমি জানিনা। ইহা আমি জানিনা যে, ১৯৭১ সালে মুক্তিযুদ্ধ চলাকালীন সময়ে মানবতা বিরোধী সকল কর্মকান্ডের সংগে জামায়াতে ইসলামী এবং ইসলামী ছাত্র সংঘ সরাসরি জড়িত ছিল কি না। কাদের মোল-া সাহেব রাজেন্দ্র কলেজে পড়াশুনা করার সময় ইসলামী ছাত্র সংঘের রাজনীতির সংগে জড়িত থাকতে পারেন, তবে আমি জানি না। ইহা সত্য নয় যে, কাদের মোল-া সাহেব আমার ঘনিষ্ঠ বন্ধু হওয়ার কারণে আমি মহান মুক্তিযুদ্ধের সময়কালে তার সমস্ত মানবতা বিরোধী কর্মকান্ড সম্পর্কে ওয়াকিবহাল থাকার পরেও মিথ্যা সাক্ষ্য দিলাম। ইহা সত্য নয় যে, আসামী পক্ষের শেখানো মতে আমি মিথ্যা সাক্ষ্য দিলাম। (জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বা/-অস্পষ্ট, ২৬/১১/১২

স্বাক্ষর/-অস্পষ্ট, ২৬/১১/১২

চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor -Versus- Abdul Kader Molla.

Deposition of witness No. 04 for the defence aged about 60 years, taken on oath on Sunday the 2nd December 2012.

My name is Most. Sahera

My Husband's name is Late Fajar Ali.

My mother’s name is ------------- age-------- I am by religion ------- My home is at village--------- Police Station ----------, District ----------, I at present reside in --------, Police Station----------, District ------------, my occupation is ----------------

আমার নাম মোছাঃ সাহেরা। স্বামী মৃত ফজর আলী ।আমার বয়স আনুমানিক ৬০ বছর। বাসা ১১ নং তালতলা বস্তি, থানা পল-বী। আমার স্বামী ফজর আলীরা ৫ ভাই ছিলেন। বড় ভাসুরের নাম সেকেন্দার, মেজো ফজর আলী (আমার স্বামী), মন্টু, টুনটুনি ও আব্বাস। আমার শ্বশুরের নাম মৃত মানিক সরকার, শ্বাশুড়ির নাম গোলেহার। স্বাধীনতা যুদ্ধের সময়

আমরা সাভারে ছিলাম। সাভারে যাওয়ার আগে মিরপুর ১২ নম্বরে থাকতাম। ঐ বাসায় আমার শ্বাশুড়ি, ভাসুর, দেবর, আমি, আমার স্বামীসহ সবাই একত্রে বাস করতাম। ১২ নম্বর মুসলিম বাজার ছিল আমাদের বাসার ঠিকানা। টুনটুনির নামই পল-ব। পল-ব তখন মিরপুর বাঙলা কলেজের ছাত্র ছিল। স্বাধীনতা যুদ্ধের সময় আমার বড় ছেলে ফার□ক ৫ মাস বয়সের ছিল। আমার ও আমার স্বামীর ভোটার আই ডি কার্ড আমার কাছে আছে। পল-বকে ১৯৭১ সালে যুদ্ধের সময় আক্তার গুন্ডা আর বিহারীরা হত্যা করেছে। যুদ্ধের পর সাভার থেকে আমরা আবার মিরপুরে ফিরে আসি। মুসলিম বাজারের ঈদগা মাঠে টুনটুনি ওরফে পল-বকে আক্তার গুন্ডা ও বিহারীরা হত্যা করে। আমি শুনেছি আমার দেবর মুক্তিযুদ্ধে যোগদানের জন্য ভারত যা□ছিল তখন নবাবপুর থেকে তাকে ধরে নিয়ে আসে এবং মুসলিম বাজারে তাকে হত্যা করে। আমি জনগণের কাছ থেকে শুনেছি পল-বের হত্যাকান্ডের ঘটনা। ইতিপ–র্বে এই মামলার ঘটনার ব্যাপারে আমি কারো কাছে কোন জবানবন্দী দেইনি। (জবানবন্দী সমাপ্ত)

XXXজেরাঃ

ট্রাইব্যুনাল থেকে সাক্ষ্য দেওয়ার জন্য আমি কোন সমন বা নোটিশ পাইনি। কাদের মোল-া সাহেবের ছেলে ৩/৪ দিন আগে আমার কাছে গিয়ে তার বাবার পক্ষে সাক্ষী দেওয়ার জন্য বলেছে। আজকে কাদের মোল-া সাহেবের ছেলেই আমাকে নিয়ে এসেছে। আমার দুই ছেলে এক মেয়ে। বড় সন্‌্‌তান ছেলে তার নাম ফার□ক। আমি হাতের কাজ করি (সেলাইয়ের কাজ)। আমি লেখাপড়া জানিনা। মিরপুর জল-াদ খানা পাম্□ হাউজের নাসির উদ্দিনকে আমি চিনি। অনুমান এক বছর আগে আমি জল-াদ খানায় গিয়েছি, নাসিরের সংগে কথাবার্তা হয়েছিল। ইহা সত্য নয় যে, জল-াদ খানায় নাসির উদ্দিনের উপস্থিতে আবদুর রাজ্জাক খান এবং মনোয়ারা বেগম এই দুই জন তদন্‌্‌তকারী কর্মকর্তার সংগে আমার কথাবার্তা হয়েছে।(চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।

স্বাক্ষর/-অস্□ষ্ট, ০২/১২/১২

সময় দুপুর ২.১৫ ঘটিকাঃ (পরবর্তী জেরা)

আমার স্বামীর বড় ভাই সেকেন্দার ১৯৭১ সালে বিবাহিত ছিলেন না। আমার ভাসুর এবং দেবররা স্বাধীনতার পরে বিয়ে করে। ভাসুর সেকেন্দার এবং দেবরদের স্‌্‌ী এবং ছেলে-মেয়েরা জীবিত আছেন। আমার দেবর টুনটুনি ওরফে পল-ব আমাকে শ্রদ্ধা করতো, আমি তাকে স্নেহ করতাম। টুনটুনি নাটক করতো শুনি নাই তবে সে একটি সিনেমা করেছিল বলে শুনেছি। ইহা সত্য যে, শেষ রাতের তারা নামে সে একটি সিনেমা করেছিল। সে আমাকে সিনেমাটি দেখতে বলেছিল কিন্তু আমি তা দেখতে যাইনি। ১৯৬৮ সালে আমার বিয়ে হয়। আমার যখন বিয়ের হয়েছিল তখনই টুনটুনি বিয়ে করার যোগ্য ছিল। টুনটুনি দেখতে খুব সুন্দর ছিল এই জন্য সবাই তাকে পল-ব বলে ডাকতো। ১৯৭০ সালের নির্বাচনে আমি ভোটার হই নাই। ভোটাভুটির কথা আমি শুনেছি। বঙ্গবন্ধুর ভাষণের কথা আমি শুনেছি, কিন্তু আমি দেখিনি। আমি শুনেছি বঙ্গবন্ধুর ভাষণের পর টুনটুনি কলেজে মাঠে বন্ধুদের প্যারেড করাতো। শেখ কামালের সংগে টুনটুনির ভাল সম্□র্ক ছিল কি না আমি জানিনা। শেখ

কামাল বঙ্গবন্ধু শেখ মুজিবের বড় ছেলে। টুনটুনি লেখাপড়া করতো, সে বাইরে কি করছে না করছে আমি জানিনা। ইহা সত্য নয় যে, টুনটুনি কখন শেখ কামালের সংগে কথা বলতে যেত এবং কি কথা বলতো তা আমার কাছে এসে গল্প করতো। আক্তার গুন্ডার নাম প্রথম আমি আমার শ্বাশুড়ির কাছ থেকে শুনেছি। আক্তার গুন্ডা ও মিরপুরের বিহারীরা আমার দেবর টুনটুনির বির□দ্ধে খুব খ্যাপা ছিল। ১৯৭১ সালের মার্চ মাসে আক্তার গুন্ডা এবং বিহারীদের ভয়ে আমরা পরিবার পরিজনসহ সাভারে গিয়ে আশ্রয় নেই। টুনটুনি তখন আমাদের সংগে যায় নাই পরে গিয়েছে। আমরা সাভার যাওয়ার ৪/৫ দিন পর টুনটুনি সেখানে যায়। সাভারে আমার শ্বাশুড়িসহ আমরা সবাই ছিলাম, শ্বশুর ছিলেন না। টুনটুনি আমার শ্বাশুড়ির কাছে এবং আমার কাছে বলতো সে মুক্তিযুদ্ধে যাবে। আমি এটা শুনেছি যে, আমার দেবর টুনটুনিকে মুসলিম বাজার ঈদগা মাঠে এনে তার আঙ্গুল কেটে গাছে ঝুলিয়ে মেরে ফেলে। (পরে বলেন) টুনটুনিকে গাছে ঝুলিয়েছে শুনিনি, তবে তার আঙ্গুল কেটেছে, চোখ উঠিয়ে ফেলেছে একথা শুনেছি। একথাগুলো আমি আমার শ্বাশুড়ির কাছ থেকেও শুনেছি, অন্যলোকের কাছ থেকেও শুনেছি। আমার শ্বাশুড়ি জীবিত নেই। আমি কাদের মোল-া ইসলামী ছাত্র সংঘের নেতা ছিলেন তা শুনিনি, আমি জীবনেও কাদের মোল-ার নাম শুনিনি। আক্তার গুন্ডা কাদের মোল-ার এক নম্বর সহচর ছিলেন একথা আমি শুনিনি। আমি ইহা শুনিনি যে, আমার দেবর টুনটুনি ওরফে পল-ব যেহেতু মুক্তি সংগঠিত করছিল সেকারণে কাদের মোল-া সাহেবের নির্দেশে হত্যা করার লিষ্টে তার নাম রাখা হয়েছিল। ইহা আমি জানিনা যে, কাদের মোল-ার নির্দেশে আক্তার গুন্ডা, হাক্কা গুন্ডা, নেহাল ও অন্যান্য বিহারী গুন্ডারা আমার দেবর পল-বকে নবাবপুর থেকে ধরে এনেছিল কি না। আক্তার গুন্ডা ছাড়া আমি আর কারো নাম জানতাম না, কারণ তখন আমার বৌকাল ছিল। আমি এটা শুনিনি যে, কাদের মোল-ার নির্দেশে আক্তার গুন্ডা আমার দেবর টুনটুনিকে আঙ্গুল কেটে গুলি করে হত্যা করেছিল। আমি আজ পর্যন্@ জীবনেও কাদের মোল-ার নাম শুনিনি।

ইহা সত্য নয় যে, আজ থেকে ৪/৫ দিন আগে কাদের মোল-া সাহেবের ছেলে এবং তার পক্ষের লোকজন আমাকে তার পক্ষে সাক্ষ্য দেবার জন্য বলে এবং সাক্ষ্য না দিলে জীবনের ক্ষতি হবে বলে ভয় দেখায়। ইহা সত্য নয় যে, কাদের মোল-ার ছেলে আমাকে সত্য গোপন করে তার পিতার পক্ষে সাফাই সাক্ষ্য দেবার জন্য মোটা অংকের টাকা দেয়। ইহা সত্য নয় যে, একদিকে জীবনের ভয় এবং অন্যদিকে মোটা অংকের টাকার লোভে মিথ্যা সাক্ষ্য দিলাম এবং বার বার কাদের মোল-াকে না চেনার কথা বলছি। ইহা সত্য নয় যে, আজ থেকে আনুমানিক বছর খানেক আগে মিরপুর জল-াদখানা পাম□ হাউজে তদন্@কারী কর্মকর্তা মনোয়ারা বেগম এবং আবদুর রাজ্জাক খানের কাছে নাসির উদ্দিনের উপস্থিতিতে কাদের মোল-ার নির্দেশে পল-বকে হত্যা করা হয়েছে একথা আমি বলছিলাম। আমি এক বছরের বেশী হবে পাম□ হাউজে যাইনি। আমি দুই একদিন পাম□ হাউজে গিয়েছি। অনেকদিন আগে মনে করেন ৫/৬ বছর আগে আমি জল-াদখানার পাম□ হাউজে গিয়েছি। কারণ লোকজন টুনটুনি হত্যার বিষয় জানতে চাইতো। অন্য কোন কাজে আমি পাম□ হাউজে যেতাম না। ইহা সত্য নয় যে, আর্থিকভাবে লাভবান হয়ে সত্য ঘটনা গোপন করে আসামী কাদের মোল-ার পক্ষে মিথ্যা সাক্ষ্য দিয়ে গেলাম।(জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ০২/১২/১২

স্বাক্ষর/-অস্পষ্ট, ০২/১২/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor -Versus- Abdul Kader Molla.

Deposition of witness No. 05 for the defence aged about 52 years, taken on oath on Wednesday the 5th December 2012.

My name is Altab Uddin Molla.

My father's name Late Habibulla Molla.

My mother's name is ------------- age-------- I am by religion ------- My home is at village---------- Police Station ----------, District ----------, I at present reside in --------, Police Station----------, District ------------, my occupation is ----------------

আমার নাম আলতাব উদ্দিন মোল-া, পিতা মৃত হাবিবুল-াহ মোল-া। আমার বর্তমান বয়স ৫২ বছর। আমার ঠিকানা আলুবদী, থানা- পল-বী, ঢাকা। ১৯৯৬ সালে যখন আওয়ামী লীগ এবং জামায়াতে ইসলামী তত্ত্বাবধায়ক সরকারের দাবীতে আন্দোলন করে তখন আমি পত্র-পত্রিকার মাধ্যমে আবদুল কাদের মোল-ার নাম জানতে পারি। যখন চার দলীয় জোট গঠিত হয় তখন বিভিন্ন সভা-সমাবেশে বা টিভির মাধ্যমে এবং প্রেস ক্লাবেও তাকে আমি স্বশরীরে দেখেছি। ১৯৭০ সালের নির্বাচনের সময় আমার বয়স ছিল ১২ বছর। আমাদের গ্রামের সবাই আওয়ামী লীগ করতো, আমি নিজেও বিভিন্ন মিটিং মিছিলে অংশ গ্রহন করেছি। এ্যাডভোকেট জহির উদ্দিন জাতীয় পরিষদ নির্বাচনে এবং ডাক্তার মোশাররফ হোসেন প্রাদেশিক পরিষদে আওয়ামী লীগ মনোনিত প্রার্থী ছিলেন। দাঁড়িপাল-া প্রতীকে প্রার্থী ছিলেন গোলাম আযম, তিনি সম্ভবত জাতীয় পরিষদের প্রার্থী ছিলেন। তখন লাঙল, এবং হারিকেন মার্কারও প্রার্থী ছিলেন। সম্ভবত আতাউর রহমান খান লাঙল মার্কার প্রার্থী ছিলেন। আমাদের এলাকায় জামায়াতে ইসলামীর কোন মিটিং মিছিল হয় নাই।

১৯৭১ সালে আমাদের গ্রামে এক ভয়াবহ ঘটনা ঘটে। প্রথম ২৫ মার্চ দিবাগত রাত্রে অর্থাৎ ২৬ মার্চ আক্তার গুন্ডা, ডোমা, গুল মোহাম্মদ খানদের নেতৃত্বে ৪/৫ হাজার বিহারী আলুবদী গ্রাম আক্রমন করার চেষ্টা করে। আমার চাচা তৎকালীন ইউনিয়ন পরিষদ চেয়ারম্যান জনাব হার□ন-অর-রশিদ মোল-ার নেতৃত্বে আলুবদী গ্রামের লোকজন শক্ত প্রতিরোধ গড়ে তোলে এবং এদেরকে বিতাড়িত করে ১২ নম্বর বিহারী কলোনীতে ফিরে যেতে বাধ্য করে। তারপর বিহারীরা আলুবদীর দিকে না গিয়ে আশেপাশের গ্রাম গুলো দ্বিগুন, চাকুলী, দোয়ারীপাড়া আক্রমন করে বাঙ্গালীদের গ্রাম ছাড়া করে। বাঙ্গালীরা সাভারের বির□লিয়া ইউনিয়নে আশ্রয় নেয়। তারপর পাক বাহিনী একদিন বর্তমান মিরপুর সেনানীবাস মসজিদের কাছ থেকে আলুবদির দিকে মেশিন গানের গুলি ছোড়ে এবং প্রতিদিনই হেলিকপ্টার দিয়ে পাক সেনারা আলুবদী গ্রামের উপর চক্কর দিতে থাকে। অবস্থা খারাপ মনে করে তখন অনেকেই স্ত্রী এবং সন্তানদের সাভারের বির□লিয়া ইউনিয়নের বিভিন্ন গ্রামে আত্মীয় স্বজনের বাড়ীতে পাঠিয়ে দেয়। আমরাও সাভারের বির□লিয়া ইউনিয়নের সার□লিয়া গ্রামে আমার বাবার চাচার তৈরী করা বাড়ীতে আশ্রয় নেই। ৩/৪দিন ঐ বাড়ীতে থাকার পর আমরা আলুবদিতে চলে আসবো বলে মনস্থির করি। কারণ ঐ সময় ধান কাটার মৌসুম ছিল। কিছু ধান সার□লিয়াতে এবং কিছু ধান আলুবদীতেও কাটা হয়। ঐ সময় আমি এবং আমার চাচাত ভাই ওবাইদুল-াহ সার□লিয়াতে কাটা ধান পাহারা দিতাম। ঐ সময় ভোর রাত্রে একটি হেলিকপ্টার আলুবদীর দিক থেকে এসে খুব নিচু দিয়ে সার□লিয়ার উপরে চক্কর দেয়। হেলিকপ্টার চলে যাওয়ার কিছুক্ষন পর আলুবদীর দিকে প্রচন্ড গোলাগুলির শব্দ শুনতে পাই। আমরা এবং আরো যারা সার□লিয়াতে আশ্রয় নেই, তারা ঘুম থেকে উঠে সার□লিয়া ঘাটে বসে আলুবদীর দিকে তাকিয়ে থাকি। অনেকেই আলুবদীতে রয়ে যাওয়া আত্মীয় স্বজনের জন্য কান্নাকাটি করতে থাকে। সম্ভবত ২৪ এপ্রিল, ১৯৭১ ভোর রাত্র থেকে সকাল সাড়ে ৭টা থেকে ৮টা পর্যন্ত গুলি চলে। আলুবদি গ্রামের তিনদিক থেকে পাক সেনারা জাকুড় দিতে দিতে আলুবদী গ্রামে ঢুকে যাকে যেখানে পেয়েছে তাকে গুলি করে হত্যা করেছে। বেলা ২টা পর্যন্ত এই হত্যাকান্ড চলেছে। তখন বাড়ীঘরে অগ্নিসংযোগও করে। বেলা ২টার পর পাক বাহিনী চলে গেলে বিহারীরা আমাদের বাড়ীঘর লুটপাট করে। পাক বাহিনীর সংগে কোন সিভিলিয়ান ছিলনা। বিহারীরা শুধু লুটপাটের উদ্দেশ্যেই আসে।

টু কোর্টঃ ঐ ঘটনায় ধান কাটার উদ্দেশ্যে আসা শ্রমিকসহ মোট ৩৬০-৩৭০ জন লোক মারা যায়।

আমরা ৪ ভাই ৩ বোন। বড়ভাই সাফিউদ্দিন মোল-া, তারপর আমি, তারপর নাসির উদ্দিন মোল-া এবং শরিফ উদ্দিন মোল-া। আমার মা এখনও জীবিত আছেন। দোয়ারী পাড়া গ্রাম আমাদের গ্রামের দক্ষিণ-প–র্ব দিকে ১ কিঃ মিঃ দুরে। দোয়ারী পাড়ার আমির হোসেন মোল-াকে আমি চিনি, তিনি আমার পাশের গ্রামের মানুষ, সেই হিসেবে তাকে চিনি। পত্র-পত্রিকা এবং টিভির মাধ্যমে আমি জানতে পেরেছি এই মামলায় আমার বড় ভাই শফিউদ্দিন মোল-া ও আমির হোসেন মোল-া প্রসিকিউশনের পক্ষে সাক্ষ্য দিয়েছেন। আমির হোসেন মোল-া আমাদের গ্রামের ঘটনা ঘটার ৮/১০ দিন প–র্বেই তিনি মুক্তিযুদ্ধে যোগদান করতে ভারতে চলে গিয়েছিলেন। আমার বড় ভাই শফিউদ্দিন মোল-া ঘটনার দিনের প–র্ব রাত্রে ধান পাহারারত অবস্থায় আলুবদী গ্রামেই ছিলেন। ঘটনার দিন ভোর রাত্রে পাক বাহিনী আমাদের গ্রামের পশ্চিম পাশে তুরাগ নদীর পাড়ে অবতরন করার পর আমার চাচা নবীউল-াহ মোল-া আমার ভাইকে সার□লিয়া পাঠিয়ে দেয়। ফজরের আজানের সাথে

সাথে আমার ভাই শফিউদ্দিন মোল-া সার্লিয়ায় পৌছে। আমির হোসেন মোল-ার দুইটি বাড়ী আছে একটি দোয়ারী পাড়া মসজিদের পাশে অপরটি পল-বীতে। আমাদের গ্রামটি উচু থেকে সেখান থেকে আস্েস্ত আস্েস্ত নিচু। আমাদের গ্রামের চারদিকে নিচু জমি সেখানে বোরো ধানের চাষ হতো। আমার চাচা নবী উল-াহ মোল-ার ৪ ছেলে ২ মেয়ে তারা সবাই জীবিত আছে, আমার চাচীও জীবিত আছেন। আমার চাচাতো ভাইদের নামঃ আন্দেশ আলী মোল-া, ওবাইদুল-াহ মোল-া, আইনুল হক মোল-া এবং আজিজুল হক মোল-া।

টু কোর্টঃ ঘটনার সময় আমি আসামী কাদের মোল-াকে ঘটনাস্থলে ছিলনা এবং তাকে দেখি নাই।

এই মামলা হওয়ার পর শুনেছি কাদের মোল-া আলুবদীর ঘটনার সংগে জড়িত ছিলেন, মামলা হওয়ার আগে শুনিনি। মামলা হওয়ার আগে আবদুল কাদের মোল-ার নাম আমি না শুধু, আমাদের গ্রামের কেউই শুনেনি। (জবানবন্দী সমাপ্ত)

XXXজেরাঃ

গত সাধারণ নির্বাচনে আমি ভোট দিয়েছিলাম। আমার জাতীয় পরিচয় পত্র আছে, সংগে আনিনি। জাতীয় পরিচয় পত্রে আমার জন্ম তারিখ দেওয়া আছে ১০/৪/১৯৬৪ সাল। আমি বর্তমানে বি এন পি'র রাজনীতির সংগে জড়িত। ইহা সত্য যে প–র্বে আমি যুবদল কেন্দ্রীয় কমিটির নেতা ছিলাম। বর্তমানে পল-বী থানা বি এন পি'র কোন কমিটি নাই, আমরা ৪/৫ জনে সমন্বয় করে পল-বীতে বি এন পি'র কর্মকান্ড পরিচালনা করি। (চলবে)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্পষ্ট, ০৫/১২/১২

স্বাক্ষর/-অস্পষ্ট, ০৫/১২/১২ চেয়ারম্যান

আন্তর্জাতিক অপরাধ

ট্রাইব্যুনাল-২

তারিখঃ ০৬/১২/২০১২খ্রিঃ (পরবর্তী জেরা)

শফিউদ্দিন মোল-া আমাদের ভাই-বোনদের মধ্যে সবার বড়। ওনার পরে আমার বড় বোন সামসুন নাহার, তারপর রাশেদা বেগম অনু, তারপর আমি, তারপরছোট বোন মঞ্জুআরা বেগম, নাসির উদ্দিন ও সর্বকনিষ্ঠ শরিফ উদ্দিন। আমরা সর্বমোট ৯ ভাই-বোন ছিলাম, তারমধ্যে ২ জন ভাই বোন মারা গেছেন। আমার বড় আলমাস উদ্দিন মারা গেছেন। আমার আরেক বড় বোন যিনি রাশেদা বেগমের বড় ছিলেন তিনিও মারা গেছেন। আমি ভাই-বোনদের মধ্যে ষষ্ঠ।

২০১১ সালের ডিসেম্বরে আমার লিখিত বই 'মিরপুরে মুক্তিযুদ্ধ' আমার এক বন্ধু প্রকাশ করে। বইটির পান্ডুলিপি আমি প্রায় ৫ বছর প–র্বেই লিখেছিলাম। স্ত্রীর অসুস্থতার কারণে তখন তা প্রকাশ করা সম্ভব হয়নি। আমি ১৯৮১ সালে প্রথম এস এস সি পরীক্ষা দিয়ে অকৃতকার্য হই। পরবর্তীতে দেশের বাইরে যাই এবং দেশে ফিরে এসে সম্ভবত ১৯৯৮ সালে এস এস সি পাশ করি। আমি বি এ ক্লাস পর্যন্ত পড়েছি, বি এ পাশ করিনি। মিরপুর বোটানীক্যাল গার্ডেন গোরান চটবাড়ী মৌজায় আর কিছু অংশ আগুনদিয়া মৌজায়। ইহা সত্য যে, চটবাড়ী মৌজায় বোটানীক্যাল গার্ডেনের পশ্চিম পাশে কিছু জমি জবর দখল করার অভিযোগে আমার বিরুদ্ধে শাহআলী থানায় ৫৪১৩ নং জিডি, তারিখঃ ১০/১০/২০১২ দায়ের হয়েছে। তবে এই

জিডিটি একটি মিথ্যা অভিযোগে দায়ের করা হয়েছে। আমি বা আমার সহযোগীরা কখনও ঐ জমি জবর দখল করিনি বা করতে যাইনি। এই জমি আমরাই শিক্ষকদের কাছে বিক্রি করে দিয়েছি। আমি এখনও জানিনা যে, পল-বী থানার আলম নামে কেহ আমার বির□দ্ধে ঢাকা মহানগর হাকিম আদালতে সি আর কেস নং- ৬০১/২০১২ দায়ের করেছে কি না। এরশাদ সাহেবের শাসনামলে আমি বৃহত্তর মিরপুর থানার ২ নম্বর ওয়ার্ডের যুবদলের সভাপতি ছিলাম এবং মিরপুর থানা যুবদলের আহবায়ক ছিলাম। ইহা সত্য নয় যে, আমি যখন বৃহত্তর মিরপুর থানার যুবদলের আহবায়ক ছিলাম তখন আমার কোন বৈধ পেশা ছিল না, আমি চাঁদাবাজির সংগে সম্□ৃক্ত ছিলাম। তখন আমি বিদেশ থেকে এসেছি, আমার পারিবারিকভাবে আর্থিক অবস্থা ভাল। আমার চাচা মতিউর রহমান মাষ্টার প্রাথমিক বিদ্যালয়ে শিক্ষকতা করেন, তিনি আমার বাবার খালাত ভাই। আমাদের পরিবারে আরেক মতিউর রহমান আছেন যার নামের শেষে মোল-া পদবী আছে, তিনিও আমার চাচা, বাবার চাচাত ভাই। ইহা সত্য নয় যে, আমি চাঁদাবাজি করতাম বলে আমার বড় ভাই শফিউদ্দিন মোল-া উপরে উলে-খিত দুই চাচা এবং পরিবারের মুর□ব্বিরা আমাকে আমাদের মুল বাড়ী থেকে বের করে দেওয়ার কারণে আমি বর্তমানে অন্যত্র অবস্থান করি। আমার মুল বাড়ী থেকে শহরে যাতায়াতের জন্য সেনানিবাসের ভিতরের রাস্তা ছাড়া অন্য কোন রাস্তা ছিল না। রাজনৈতিক কারণে সেনানিবাস এলাকা দিয়ে রাতের বেলা যাতায়াত করা অসুবিধা ছিল বিধায় আমি পলবীতে বাসা ভাড়া করে থাকি। ইহা সত্য নয় যে, আমি যুবদলের রাজনীতি করাকালীন সময়ে আমার চাচা মতিউর রহমান মোল-া এবং বড়ভাই শফিউদ্দিন মোল-াকে বহনকারী রিকসাকে লক্ষ্য করে মিরপুর ১২ নম্বর বাস ষ্টান্ডের কাছে আমি বোমা ছুড়ে মেরেছিলাম। আমার স্ত্রীর নাম ফেরদৌসী বেগম। ইহা সত্য নয় যে, আমার সংগে বিবাহের পুর্বে আমার স্ত্রীর অন্যত্র বিবাহ হয়েছিল। ইহা সত্য নয় যে, আমার স্ত্রীর পুর্বের স্বামী বিদেশে থাকার সময়ে তার সাথে আমার যোগাযোগ হয় এবং তাকে আমি ভাগিয়ে নিয়ে এসে বিয়ে করেছি। ইহা সত্য নয় যে, আমার স্ত্রীর পুর্ব স্বামীর ঔরসে এক ছেলে ও এক মেয়ে রয়েছে।

ইহা সত্য নয় যে, আমার চাচাত ভাই ওবাইদুল-াহ বি এন পি'র রাজনীতির সংগে জড়িত। ইহা সত্য নয় যে, ২৪ এপ্রিল, ১৯৭১ সালে আলুবদীতে সংঘটিত ঘটনার সময় পাক বাহিনীর সংগে কোন সিভিলিয়ান ছিল না এটা কৌশলগত কারণে শেখানো মতে মিথ্যা কথা বলেছি। ইহা সত্য নয় যে, এই ঘটনার পরে আমি জেনেছি এবং শুনেছি যে, ঘটনার সময় আবদুল কাদের মোলা ঘটনাস্থলে উপস্থিত থেকে পাক বাহিনীর সাথে অপারেশনে অংশ গ্রহন করে। ইহা সত্য নয় যে, ঘটনার ৮/১০ দিন পুর্বে মুক্তিযোদ্ধা আমির হোসেন মোল-া মুক্তিযুদ্ধে অংশ গ্রহণ করার জন্য নিজ বাড়ী থেকে ভারতে যান কথাটি সত্য নয় এবং কৌশলগত কারণে শেখানো মতে বলেছি। আমার চাচা নবীউল-াহ মোল-া ১৯৭১ সালের ২৪ এপ্রিল শহীদ হন। ইহা সত্য নয় যে, ঘটনার প—র্ব মুহুর্তে আমার চাচা নবীউল-াহ মোল-া আমার বড় ভাই শফিউদ্দিন মোল-াকে নিজ বাড়ী থেকে সাভারের সার□লিয়াতে পাঠিয়ে দেওয়া এবং শফিউদ্দিনের সেখানে পৌছার কথাটি মিথ্যা, বানোয়াট এবং কৌশলগত কারণে শেখানো মতে বলেছি।

ইহা সত্য নয় যে, ২০০১ সালে বি এন পি- জামাত জোট সরকার গঠন করার সুবাদে আমার সাথে আবদুল কাদের মোল-ার ভাল সম্□র্ক গড়ে ওঠে। পল-বী থানায় জামায়াতে ইসলামীরও একটি সংগঠন আছে। ইহা সত্য নয় যে, সরকার

বিরোধী আন্দোলনে আমরা জামায়াতের সংগে এক সংগে আন্দোলন করি। আমরা যার যার অবস্থান থেকে আমাদের রাজনৈতিক কর্মকান্ড পরিচালনা করি। ইহা সত্য নয় যে, জামায়াতে ইসলামীর কেন্দ্রীয় নেতা এই মামলার আসামী জনাব আবদুল কাদের মোল-াকে বাঁচানোর উদ্দেশ্যে জামাত এবং বি এন পি নেতাদের শেখানো মতে আমি মিথ্যা সাক্ষ্য দিলাম। (জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম। স্বা/-অস্□ষ্ট, ০৬/১২/১২

স্বাক্ষর/-অস্□ষ্ট, ০৬/১২/১২ চেয়ারম্যান

আন্⍩র্জাতিক অপরাধ

ট্রাইব্যুনাল-২

In the International Crimes Tribunal-2, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012.

Chief Prosecutor -Versus- Abdul Kader Molla.

Deposition of witness No. 06 for the defence aged about 62 years, taken on oath on Thursday the 13th December 2012.

My name is A. I. M. Loqueman.

My father's name is Late Moulana Hedayet Ullah.

My mother’s name is ------------- age-------- I am by religion ------- My home is at village---------- Police Station ----------, District ----------, I at present reside in --------, Police Station----------, District ------------, my occupation is ----------------

আমার নাম হাফেজ এ আই এম লোকমান, পিতা মরহুম মওলানা হেদায়েত উল-াহ। আমার বর্তমান বয়স ৬২ বছর। গ্রাম- গন্ডমারা, থানা- হাইমচর, জেলা- চাঁদপুর। আমি এই মামলার আসামী আবদুল কাদের মোল-াকে চিনি। আমি ১৯৭০ সালে সেপ্টেম্বর মাসে ঢাকা বিশ্ববিদ্যালয়ে রাষ্ট্র বিজ্ঞান সম্মান শ্রেণীতে প্রথম বর্ষে ভর্তি হই। একই বছেরর অক্টোবর মাসে শহীদুলাহ হল ফলংছদের ইমাম হিসেবে যোগদান করি। তখন ঐ মসজিদে আবদুল কাদের মোলা সাহেব নামাজ পড়তে আসতেন সেইভাবে তার সংগে আমার পরিচয় হয়। ১৯৭১ সালের ৭ মার্চের বঙ্গবন্ধুর ঐতিহাসিক ভাষণের পর অসহযোগ আন্দোলন শুর□ হয়। অসহযোগ আন্দোলনের কারণে বিশ্ববিদ্যালয়ে ক্লাস বন্ধ হয়ে যায়। এই ক্লাস বন্ধ হয়ে যাওয়ার কারণে ৭ মার্চের ৩/৪ দিন পর একদিন দেখি আবদুল কাদের মোল-া সাহেব তার ব্যাগ নিয়ে বাড়ী চলে যা□ছন। তিনি আমাকে দেখে ছালাম দিয়ে বললেন হুজুর আমি বাড়ী চলে যা□ছ, আবার কবে আসি ঠিক নাই, ভুল টুল হলে মাফ করে দিবেন। এরপর ক্লাস হতো না ছাত্ররা হল ছেড়ে চলে যায়, আমি হলে ছিলাম।

এরপর ১৯৭২ সালের মার্চ মাসে আবার ক্লাস শুর□ হলে ছাত্ররা ক্লাসে ফিরে আসে। আমি ইমাম হিসেবে হলেই ছিলাম। ১৯৭২ সালের শেষে বা ১৯৭৩ সালের শুর□তে দেখি আবদুল কাদের মোল-া সাহেব শহীদুল-াহ হলে এসেছেন। শুভে□ছা বিনিময়ের পর জিজ্ঞাসা করলে তিনি জানান এতদিন তিনি বাড়ীতেই ছিলেন এবং বললেন পদার্থ বিদ্যা বিভাগে আর ভর্তি হতে পারবেন না, আই ই আর-এ ভর্তি হবেন। তারপর থেকে তিনি হলেই থাকতেন, আসা-যাওয়া করতেন, আলাপ হতো। নিয়মিত নামাজ পড়তেন, লোক হিসেবে ভাল ছিলেন। আমি শহীদুল-াহ হলের মসজিদে ৪১ বছর ৯ মাস ইমামতীর চাকুরী করার পর বিশ্ববিদ্যালয়ের চাকুরী থেকে অবসর নিয়েছি। (জবানবন্দী সমাপ্ত)

XXX জেরা

আমার পুরো নাম আবু ইস্কান্দার মোহাম্মদ লোকমান। আমার সঠিক জন্ম তারিখ আমি সঠিকভাবে বলতে পারব না। তবে আমি শুনেছি দ্বিতীয় বিশ্বযুদ্ধের সময় অর্থাৎ ১৯৩৯ সালে আমার জন্ম। ১৯৭১ সালের ৭ মার্চের পর থেকে ১৬ ডিসেম্বর পর্যন্ত আমি হলেই থাকতাম, মাঝে মধ্যে ধুপখোলা এলাকায় আমার ভাইয়ের বাসায় যেতাম। ১৯৭১ সালের ১৬ ডিসেম্বরের পর থেকে ৩১ জানুয়ারী ১৯৭২ পর্যন্ত আমি মাঝে মধ্যে ধুপখোলায় আমার ভাইয়ের বাসাতে যেতাম, সকালে গিয়ে বিকালে চলে আসতাম, আমি অন্য কোথাও যেতাম না। আমার শ্বশুর বাড়ী সন্দ্বীপ। আমি ১৯৭১ সালে অবিবাহিত ছিলাম। আমি ছাত্র অবস্থাতেই শহীদুলা হল মসজিদে ইমামতি করতাম। আমরা ৫ ভাই ৪ বোন। ধুপখোলায় আমার ভাই আতিক উল-া থাকতেন তিনি ভাই-বোনদের মধ্যে দ্বিতীয়, আমি ভাইদের মধ্যে চতুর্থ এবং ভাই-বোনদের মধ্যে অষ্টম। ইহা সত্য নয় যে, আমি বিশ্ববিদ্যালয়ে পড়াকালীন সময়ে আমি ইসলামী ছাত্র সংঘের রাজনীতির সংগে জড়িত ছিলাম না। আমি শুনেছি আবদুল কাদের মোল-া ইসলামী ছাত্র সংঘ করতেন, তবে আমি তার কর্মী ছিলাম না। ইহা সত্য নয় যে, আবদুল কাদের মোল-া শহীদুল-াহ হলের যে কক্ষের আবাসিক ছাত্র ছিলেন সেই কক্ষে আমি প্রায়শই যেতাম। শহীদুল-াহ হলের পূর্ব নাম ছিল ঢাকা হল। তখন আমি শহীদুলাহ হলের একটি র□মে ওয়াক্তের নামাজে ইমামতী করতাম। মাঝে মাঝে কার্জন হলের মসজিদে জুম্মার নামজের ইমামতী করতাম। তখন যারা আমার পিছনে নামাজ পড়তে তাদের মধ্যে শরিফুল ইসলাম নির□, আজিজ সরকার, আবদুল কাদের মোল-া, আবদুস ছামাদ প্রমুখের নাম মনে আছে। আমি যখন ঢাকা বিশ্ববিদ্যালয়ের ছাত্র ছিলাম তখন আমার আপন কোন ভাই-বোন এই বিশ্ববিদ্যালয়ে পড়তো না।

আমার দুই চাচাত ভাই জাফর উল-া ও সানা উল-া তখন এস এম হলের ছাত্র ছিল। ইহা সত্য নয় যে, আমি উপরে যাদের নাম বললাম এবং আমার দুই চাচাত ভাই এরা সবাই ইসলামী ছাত্র সংঘের নেতা ও কর্মী ছিলেন। এদের মধ্যে নির□ ও আজিজ সরকার ছাত্র লীগ করতো। ইহা সত্য নয় যে, জনাব আবদুল কাদের মোল-াকে বাঁচানোর জন্য আমি কৌশলগত কারণে বলছি আমি ইসলামী ছাত্র সংঘের সংগে জড়িত ছিলাম না। ১৯৭১ সালের ২৫ মার্চ রাতে আমি শহীদুল-াহ হলেই ছিলাম। ইহা সত্য নয় যে, ৭ মার্চের ৩/৪ দিন পর আবদুল কাদের মোল-ার ব্যাগসহ বাড়ী চলে যাওয়ার কথা সত্য নয়। ১৯৭১ সালের ২৫ মার্চ রাত্রে শহীদুল-া হলে কোন আক্রমন হয় নাই, ২৫ মার্চ সকালে আক্রমন হয়েছে। (পরে বলেন) ২৬ মার্চ সকালে আক্রমন হয়েছিল। আমার খেয়াল ছিল না। আমার উপর কোন আক্রমন হয় নাই। ইহা সত্য নয় যে, আমি আবদুল কাদের মোল-া সাহেবের দলীয় লোক বিধায়, পাকিস্তানের সমর্থক হওয়ায় আমার উপর কোন আক্রমন হয় নাই। আমি সকালে র□মেই ছিলাম না। মুক্তিযুদ্ধকালীন পুরো সময়ে পাকিস্তানীদের পক্ষ থেকে আমার উপর কোন আক্রমন হয়নি। আমি ট্রাইব্যুনালে আসার জন্য কোন সমন প্রাপ্ত হই নাই। আমি বর্তমানে আজিমপুর থাকি। কয়েক মাস আগে কাদের মোল-া সাহেবের ছেলে তার বাবার পক্ষে সাক্ষ্য দেবার জন্য বললে আমি সাক্ষ্য দিতে রাজি হই। দুইদিন আগে আমাকে এই মামলায় সাক্ষ্য দিতে বলে এবং আজ আমাকে নিয়ে আসে। ইহা সত্য নয় যে, আমি আবদুল কাদের মোল-ার ছেলের অনুরোধে কাদের মোল-া সাহেবের দলীয় কর্মী হিসেবে তাকে বাঁচানোর জন্য আজ আদালতে মিথ্যা সাক্ষ্য দিলাম। (জেরা সমাপ্ত)

পড়িয়া দেখিয়া শুদ্ধ স্বীকারে স্বাক্ষর করিলাম।
স্বাক্ষর/-অস্□ষ্ট, ১৩/১২/১২

স্বা/-অস্□ষ্ট, ১৩/১২/১২
চেয়ারম্যান
আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল-২

After reproducing the evidence in toto as above, in order to explore the propriety, legality, sagacity of the Tribunal's findings on facts on individual charges, I shall now move to examine the submissions placed by the learned Advocates from both the side of the fence, on the evidence, recap here again some extracts of evidence which are pertinent for the analyses I am going to embark upon, on charge to charge basis.

Analyses of Evidence on individual charges

Charge No. 1: Through this charge the appellant was implicated for being involved in the killing of one Pallab, a student of Bangla College. The allegation as tabled is like this: some anti liberation persons apprehended Pallab from Nawabpur area of Dhaka City, forcibly trailed him

to the Appellant, who was a prominent leader of Islami Chattra Sangha, an important member of Al-Badar or a member of a group of individuals at Mirpur, Section -12, and then at the Appellant's order, his accomplices dragged Pallab to a field at Mirpur -12, known as Idgah Ground, where the latter was kept hanging with a tree and then on 5th April, 1971 Pallab, who was a non-combatant civilian, was killed at the order of the Appellant by his accomplices, one of whom is named Aktar.

To substantiate the allegations encapsuled in this charge, the prosecution adduced and examined two witnesses viz. P.W. 2 and P.W. 10.

P.W. 2, named Shahidul Huq Mama, full text of whose testimony has been re-incarnated above verbatim, stated that as he popped out at around 8 0'Clock in the morning on 26th March, 1971, saw Bengali houses in Mirpur, ablaze and as he was on his way home to Mirpur -1, he saw ebullient Biharis all over the places. As he and a companion, got close by, he heard Quader Molla and others, who took part in the mayhem, (whose name's he had uttered earlier) yelling "Shahid has arrived, take on him". As he started running, they followed him- he crossed river Turag swimming and reached Sadullapur. He spoke of two events: One that took place on 27th March when Quader Molla, Hasib Hashmi, Abbas Chairman, Akhtar Goonda, Hukka Goonda, Nehal and many others chopped Meherunnessa, her brother and mother, into pieces. Hukka Goonda had his base at Thatari Bazar. There Akhtar Goonda and his accomplices rounded up Pallab aka Tuntun and took him to a place called Muslim Bazar at Mirpur and chopped off the latter's fingers and then hanged him with a tree and then killed him ruthlessly. That was possibly on 5th April, 1971. Quader Molla, Akhtar Goonda and the Biharis, were the felons.

In cross examination this deponent stated that he heard about the killing of Meherunnessa, her brother and mother on 27th March from the flocking crowd and that he came to know about Pallab's apprehension, torture at Muslim Bazar and of the killing from the crowd, adding that he heard of Meherunnessa and Pallab's killing, from people known to him as well as from the crowd at Mirpur.

P.W. 10, Syed Abdul Qayum, a teacher testified that he heard that Pallab, a student of Bangla College, was killed by Abdul Quader Molla. Identifying Abdul Quader Molla in the dock, he went on saying that at the relevant time the Appellant was a young man without beard.

This witness expressed that he himself was attacked with a knife on 24th March, 71, because he hoisted Bangladesh flag in his school on 23rd March, 71, and sustained serious injury for which he received hospital treatment as a patient upto 27th March.

During cross examination this witness inflexibly repeated the assertion he made during the examination in chief to the effect that he heard that Quader Molla killed a student named Pallab.

Mr. Razzak questioned the propriety and the testimony of P.Ws. 2 and 10 on the grounds that,

(1) their evidence are purely hearsay without attribution

(II) although the date of killing has been mentioned, neither the date nor the time of dragging Pallab to Mirpur has been stated

(III) no details as to dragging has been given

(IV) P.W. 10 said that he mentioned it to I.O. but the I.O. said otherwise (V) evidence of P.W. 10 is of no legal value because he failed to tell the I.O. that he heard about Pallab's killing.

<u>About hearsay.</u>

So far as the complaint against hearsay is concerned, the same falls through instantaneously once it is reckoned that the Act, which has engendered a special law, has made hearsay evidence admissible.

Parliament in its wisdom had done so reckoning that procuring direct eye witnesses to prove atrocities that pervaded during our Glorious War of Liberation would be difficult, if not impossible. In this regard, as in other regards too, our Parliament followed Nuremburg Charter, which also made hearsay evidence admissible, followed by Rome Statute and the statutes of other Tribunals set up at the instance of the United Nations to try people accused of Crimes against Humanity.

As to Mr. Razzak's complaint that these P.Ws. did not disclose the identity of the people they heard from,I am afraid, I find no substance to accept this profferment.

Factually it is not correct to say that the P.W. 2 failed to disclose the source of his information. P.W. 2, as the records reveal, said when cross examined; ২৭শে মার্চ মেহেরুন্নেছা তার ভাই ও মাকে হত্যার বিষয়টি কাফেলার জনতার কাছ থেকে শুনেছি। পলবকে ঠাটারি বাজার হতে ধরে নিয়ে এসে মিরপুর মুসলিম বাজারে নির্যাতন ও হত্যা করার বিষয়টি আমি জনতার কাছ থেকে শুনেছি। মেহেরুন্নেসা ও পলবকে হত্যা কান্ডের ঘটনা দুটি আমি পরিচিত মানুষের কাছ থেকে এবং মিরপুরের জনতার কাছ থেকে শুনেছি ।

It is therefore, abundantly clear that P.W. 2 did disclose in clear terms that he heard these from the moving crowd as well as from his acquaintants. This is also noteworthy that P.W. 2 so expressed under cross examination. It is true that P.W. 10 did not disclose the source of his hearsay deposition on Pallab and Meherunnessa killing, but it is a deeply trenched principle of rules of evidence that deposition of one single witness is enough to hand down a conviction if the deponent is believed.

Mr. Razzak's argument is also legally untenable. In this respect the following passages, ICC expressed in Prosecutor-v-Lubanga (page 753 of Archbold, International Criminal Court Practice, Procedure and Evidence, 3rd Edition) is important as the same sheds unobstructed beacon on the legal position –,

"At the confirmation, hearsay is admissible, even if the source of the evidence is anonymous. In Katanga & Ngudjcli, whilst relying on ECHR Jurisprudence (ECtHR, Kostovski V. The Netherlands, Judgment of 20 November 1989, Application No. 11454/85, par. 44), the Pre-Trial Chamber reiterated the previous finding of the Pre-Trial chamber in Lubanga that "..........There is nothing in the statute or the Rules which expressly provides that the evidence which can be considered hearsay from anonymous sources is inadmissible *per se*. In addition, the Appeals Chamber has accepted that, for the purpose of the confirmation hearing, it is possible to use items of evidence which may contain anonymous hearsay, such as redacted versions of witness statements" (Prosecutor V. Lubanga) Ref: Archbold, page-753).

In prosecution-v- Zlatko Aleksovski, the Appeal Chamber of ICTY, (IT 95-14/1-AR 73) made following observation on hearsay evidence;

"It is well settled in the practice of the Tribunal that hearsay evidence is admissible. Thus relevant out of court statements which a Trial Chamber considers probative are

admissible under Rule 89 (C). This was established in 1996 by the Decision of Trial Chamber II in Prosecutor v. Tadic and followed by Trial Chamber I in Prosecutor V. Blaskic. Neither Decision was the subject of appeal and it is not now submitted that they were wrongly decided. Accordingly, Trial Chambers have a broad discretion under Rule 89 (C) To admit relevant hearsay evidence. Since such evidence is admitted to prove the truth of its contents, a Trial Chamber must be satisfied that it is reliable for that purpose, in the sense of being voluntary, truthful and trustworthy, as appropriate; and for this purpose may consider both the content of the hearsay statement and the circumstances under which the evidence arose; or, as Judge Stephen described it, the probative value of a hearsay statement will depend upon the context and character of the evidence in question. The absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is "first –hand" or more removed, are also relevant to the probative value of the evidence. The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to the evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence."

On the complaint, as recorded in the Grounds, that the Tribunal failed to define hearsay, I wish to iterate that this is a very lame ground indeed. The word hearsay is a lucid English word, incapable of importing any ambiguity or duality of construction. So the meaning as giving in a standard English dictionary will suffice. Oxford English Dictionary defines "Hearsay Evidence" as "evidence given by a witness based on information received from others rather than personal knowledge". I do not see how 'any other' meaning can be assigned to it and why a Judicial body should go beyond it.

Lord Coleridge expressed in R-V-Peters, (1886,16 Q-BD 636)

"I am quite aware that dictionaries are not to be taken as authoritative exponent of the meanings of words used in Acts of Parliament, but it is a well known rule of courts of law that words should be taken to be used in their ordinary sense". His Lordship in that case relied on

the dictionary authored by Johnson and Webster to locate the meaning of the word "credit". This principle is being followed without intermission ever since.

Even if P.W. 10 is excluded, testimony of P.W. 2 stands tight and is enough to uphold conviction on charge-1, because the Tribunal below which had the opportunity to observe his demeanour, must have believed him.

Defence did not put any suggestion to P.W. 2 to the effect that he did not hear about Pallab's killing.

It is also worth noting that P.W. 10 refuted a defence suggestion that his testimony on Pallab's killing was tutored, false or fake. He denied the defence suggestion that he did not hear about Pallab's killing.

Charge-2. This charge is, as stated ante, based on the allegation that the Appellant was involved in the killing of Meherunnessa.

P.W. 2, P.W. 4 and P.W. 10 deposed for the prosecution on this excruciating event.

As stated above in the context of Charge No. 1, P.W. 2 quite unambiguously stated that he heard about Meherunnessa's killing from both the flocking crowd as well as from his acquaintants. While he stated in chief that he heard about it, he did not disclose identity of the source, but in cross he stated that he heard it from the men on the move for safety and his acquaintant. As marching for safety ended within a few days following 25th March crackdown, it can safely be assumed from well known and incontrovertible facts for the purpose of judicial notice, that he heard it within a period of countable days after the event. His testimony remained untoppled through cross examination.

As the trial Tribunal found him credible, we can not assume otherwise.

P.W. 4 is the primordial prosecution witness for this charge.

In her testimony, this witness, who is a widely acclaimed literary personality, a well known poet, said, at the time in question Quader Molla was the leader of an organization named Islamic Chatra Sangha, and the local non-Bengalis used to work under his leadership, they worked for Jamat-e-Islami. At that time one Advocate Zahir was Awami League candidate for the Parliamentary election and this witness worked for him along with Mehersunnessa and

others. She chaired an action committee of which Meherunnessa and many others were members. On 25th March, on her return home, having completed a meeting, she was informed that a raid would take place at her as well as Meherunnessa's places of abode, because they two were the only female members in the action committee. She transmitted this news to Meherunnessa with a request that she and her family leave the house as the deponent would herself do so. She herself left her dwelling at Mirpur but Meherunnessa and her family stayed back in theirs. On 27th March, in the afternoon, she came to know that Quader Molla and his accomplices, with red or white head gears, entered into Meherunnessa's house at 11 O'Clock in the morning. Meher realizing that they came to kill them, held a holy Quaran with her chest, to be spared. Yet, the invaders slaughtered all four of them. This witness was not sure whether Quader Molla himself entered the house, although they entered under the leadership of Quader Molla. After liberation she intended to go to Meherunnessa's house, but abandoned that idea having known that, the house was occupied by some others. A couple of days later two non-Bengalis, one named Gulzar, told her something which runs like this, মেহেরকে মেরে গলাটা কেটে ফেনের সঙ্গে মাথার চুল বেধে কলাটা ঝুলিয়ে দিয়েছিল। মেহের তখন কাটা মুরগির মতো ছট ফট করছিল। " She also identified the Appellant in the dock.

Her version that the assailants were robed with red or white head gears receives corroboration from the information, Prof. Montasir Mamun of History Department, Dhaka University, reveals to the effect that Rajakar, Al-Badors used to wear white or red gears (Shanti Committee 1971, Page-38)

Under cross, she said she heard about Meher's killing from others on 27th March, but she did not remember from whom she first heard it after she returned from Kolkata. She heard about Meherunnessa's killing when she was staying at her aunts house at Kolabagan in Dhaka for the first time, and she heard this from people that came from Mirpur, but could not name them. She went on saying that she was at her aunt's house at Kolabagan on 27th March and heard about Meherunnessa's killing a while before the sun set, from a person who came from Mirpur, but she could not name that person. She heard Quader Molla's name many times since 1970 election. She denied that a Bihari butcher, named Abdul Quader, committed all those crimes and the Appellant is not him.

Mr. Razzak launched three prone attack on P.W. 4's evidence. He argued that her testimony can not be clothed with any credence because,

(I) in her book titled, Shahid Kobi Meherunnessa, she made no mention of the Appellant, and wrote that Meherunnessa was killed by the Biharis

(II) her deposition was discrepant with the statement she made to the I.O. (III) her deposition was contradictory in that at one stage she said she heard of Meherunnessa's killing while at another she said she saw it by herself.

So far as this witness's book is concerned she has very lucidly and credibly explained why she did not mention this Appellant's name and blamed the Biharis, which is that she did not mention any one's name for two reasons i.e. (I) pre-existing fear (II) as the system of the trial of war criminals was not in existence.

Mr. Mahbubey Alam, the learned Attorney General in expressing his view on P.W. 4's explanation, submitted that although the book was published in June, 2011, it can not be held to have been written in that year: Writing such a book takes years. He also re-iterated that P.W. 4's fear can not be ruled out. We find substance in the learned Attorney General's contention.

We take judicial notice of the fact that quite a number of people who wrote or expressed views on the role of Pakistanis and their Bengali cohots during the War of Liberation or have propagated in favour of Bengali nation, have been subjected to wild attack and atrocities. For example, celebrated litterateur Humayun Azad was hacked to death for his writing on the role of Bengali Collaborators, there was bomb attack at Ramna Botomul killing scores of people and hence we find no reason to disavow P.W. 4's fear. We also note that the book was meant to be a literary work, not a documentary evidence of history, as she said in cross examination.

<u>Status of Section 161 Statement.</u>

Mr. Razzak was particularly emphatic on the statement of the witnesses recorded by the Investigating Officer (I.O) prior to the commencement of the trial under Section 8(6) of the Act, which resembles Section 161 of the Code of Criminal Procedure (Cr. P.C.), and it is this aspect on which he based his 2nd allegation.

This requires me to explore the status and impact of Section 161 statement with precedents.

Section 161 of the Code of Criminal Procedure (Cr. P.C.) requires the I.O to record statement of potential witnesses of alleged offences. This recording is essentially part of the I.O's investigation process which helps the I.O to conclude investigation. These statements, do not form part of evidence, but can nevertheless also be used by the defence under Section 145 of the Evidence Act to draw the court's attention to any possible contradiction in the witnesses' deposition to discredit him.

Surely it is known to all familiar with the criminal jurisprudence that, statement of potential witnesses recorded by the Investigating Police Officer, which are, where the provisions of Cr. P.C. applies, done in accordance with the provisions contained in Section 161 of the Cr. P.C., is no evidence at all, but can only be used by the defence under Section 162 Cr.P.C. and 145 of the Evidence Act 1872 to prove contradiction with the previous statement if that is the case. There are plethora of high preponderant authorities from all over the sub-continent to confirm that Section 161 statements are no evidence.

It was held in Nazir Hussain –v- Md. Shafi 17 DLR (SC) 40, by the Pakistan Supreme Court that a statement recorded by the Police under Section 161 Cr. P.C. can not be utilised as substantive evidence. It can only be utilised under Section 162 Cr. P.C. to contradict such witness in the manner provided by Section 145 of the Evidence Act -1872.

In Prya Bala Das –v- Ata 22 DLR 582 this Division went far enough even to express that use of statement recorded under Section 161 Cr. P.C. as substantive evidence causes failure of justice.

In Abul Kalam Azad alias Ripon –v- State, 58 DLR AD 26, the Appellate Division held that an omission from the statement recorded in a boiled feorm does not amount to contradiction and the alleged contradiction sought to be taken from the omission in the statement, can not, in a particular case, be proved under Section 162 of the Code of Criminal Procedure to hold that contradiction in accordance with Section 162 of the Code of Criminal Procedure has been established.

All of the above stated and many other authorities with unbroken chain establish that such a statement can not be treated as a legal piece of evidence

Mr. Razzak's submission, therefore holds no water.

Discrepancy, Contradiction and Omission in the Light of Section 161 statement.

On Mr. Razzak's 2nd allegation, it is necessary to see what the I.O. as P.W. 12 stated in respect of P.W. 4's statement to him and hence the same is reproduced below:

" ইহা সত্য যে, কাজী রোজি (পি, ডবিই-৪) তদন্তকালে আমার কাছে বলেনি যে, মেহের যখন দেখলো ওরা তাদেরকে মারতে এসেছে তখন সে কোরান শরীফ বুকে চেপে বাচতে চেয়েছিল।"

The question is did she contradict herself or just made a bare omission.

Though both the statutes referred to above have been explicitly excluded by the Act, the Act itself has kept provision for recording of statement by the I.O. Rules of evidence, in this respect recognise three concepts, (I) contradiction (II) discrepancy and (III) Omission.

Contradiction is obviously very significant for the purpose of assessing the veracity of a witness' deposition, while discrepancy also goes some way for such an assessment. An omission can, obviously not be put on the same scale as contradiction or discrepancy and its importance, if any, for the purpose of assessing veracity, depends on all the attending circumstance, inclusive of normal human behaviour and the importance the witness attaches to the statement he makes to the I.O. compared to the deposition he formally makes in a court of law.

When a person gives evidence in a court of law under oath, obviously he is much more cautious and formal. He does not necessarily follow the same pattern of exactitude and rectitude while he makes informal statement to an I.O. who is not like a court. He may take it rather casually and hence some omissions during his statement to an I.O. can not be taken to be fatal, though a direct contradiction or even a discrepancy many have sinister bearing. In fact absolute consistency may raise doubt as to tutoring and may not sound natural.

In the instant case, although Mr. Razzak was content to use the words "contradiction" and "discrepancy", we can not treat them either as contradiction or discrepancy.

Oxford dictionary defines contradiction as a "statement of the opposite, denial, inconsistent statement". The same dictionary attributes "difference, failure to correspond, inconsistency, for the term discrepancy, while omission has been given to mean "something that has been omitted or overlooked". Omit, as per this dictionary, denotes "leave out, not insert or include, fail or neglect to say"

Having perused Oxford Dictionary, I find it impossible to be in consensus with Mr. Razzak's synthesis that these were either contradiction or discrepancy. In my view they were bare omission. I also note that the elemental aspect of her evidence concentrated on the fact that she first heard before twilight on 27th March, when she was staying at Kolabagan at her

aunt's house, from a boy that came from Mirpur that Meherunnessaa was murdered with family. It is not the defence case that she failed to say this bit of fact to the I.O.

Those statements which P.W.4 omitted to mention to the I.O, were not the paramount ones, but only peripheral.

So, I find no reason to vilify P.W. 4's evidence on this count.

It is also the case that P.W.4 told I.O. that she warned Meher to leave Mirpur and that I.O. on investigation found that P.W.4 was the head of the action committee and Meherunessa was one of the members.

I.O. also confirmed that P.W.4 told him that she heard from Gulzar and another non-Bangali about Meher's killing and that P.W4 told him that after entering into her house they first killed Meher.

Thus, it is abundantly clear that she narrated to the I.O. all important, substantive and decisive matters. There was no omission on those core facts.

To back up his claim that P.W4 at one stage said that she heard of the occurrence and at another said she saw the same herself, Mr. Razzak cited P.W.4's following deposition:

(I) "আমি ২৭শে মার্চ বিকালে খবর পেলাম যে, মেহরুনেচ্ছা ও তার দুটি ভাই ও মাকে কাদের মোল্লা ও তার সহযাগি যারা ছিলেন তাদের অনেক মাথায় সাদা পট্রি অথবা লাল পট্রি বেঁধে মেহেরের বাসায় সকাল ১১টায় ঢুকে যায় বলে শুনছি"।

(II) "কাদর মোল্লার নেতৃত্ব সেদিন মেহরুনর বাসায় ওরা ঢুকেছিল কিন্তু কাদর মোল্লা নিজ ঢুক ছিল কিনা তা বলত পারবা না"।

It is the second part of the above quoted deposition on the basis of which Mr. Razzak submitted that P.W.4 at another stage said she saw it. I find Mr. Razzak's submission not only fallacious but also totally absurd and devoid of any logic whatsoever. I wonder how such a supposition could have been gestated and what made Mr. Razzak to say that P.W.4 said or implied she saw the event.

Nowhere did she say that she saw the event. It is also impossible to infer from the quoted statement that she implied that she saw it by herself.

We agree with the learned Attorney General that she deposed in a very natural manner. The Tribunal, which had the opportunity to observe her demenour must have believed her. I find no reason to arrive at any different conclusion.

On demeanour Sir Rupert Cross states; "Nokes included the demeanour of witness among the items of real evidence. If a witness gives his evidence in a forthright way, unperturbed by cross examination, the court will no doubt be more disposed to believe him than would be the case with a halting and prevaricating witness" (Cross on Evidence, Ninth Edition, Page-49).

P.W.4 quite unambiguously stated that she saw the Appellant in the past, while identifying him on the dock. She denied the suggestion that this Quader Molla is not the same man who was involved in 1971 atrocities. She remained unperturbed during rigorous and some what protracted cross examination. She asserted that the Appellant was, in 1970, leader of an Islami Student organization. She denied the suggestion that she lied about having known the Appellant before.

Charge-3 This charge relates to the killing of Khandakar Abu Taleb. Prosecution relied on the testimony tabled by P.W.5 and 10 to substantiate this charge.

P.W.5, who is a son of assailed Khandakar Abu Taleb, stated in his deposition that following Awami Leagues massive victory in the election, the Appellant, who campaigned for Ghulam Azam, committed several brutal killings at Mirpur after 25th March, 1971.

Under cross examination this witness stated that in 1971, he went to a law firm named BNR Law Firm, where his father worked, in quest of his father and then came to know that Advocate Khalil saw the non-Bengali Chief Accountant of Daily Ittefak, named Abdul Halim, took this deponents' father in Halim's car. This witness also stated that he heard from the non-Bengali chauffeur, Nizam, that Halim handed over his father to the Appellant and his father was killed at the Jallad Khana at Mirpur No. 10. He also said that it is known to most people that the Appellant lived at Doari Para of Mirpur. He also deposed that although he did not see the Appellant in person before, yet he viewed the Appellant's image in the television and news papers. He said he was 13/14 years of age at that time.

P.W. 10, who claimes to have had himself been attacked and injured at the early hours on 24th March 71, for hoisting Bangladesh flag in his school at Mirpur, asserted in chief that in June 71 his friend Faruk Khan visited him at his residence and at that time he heard that non-Bengalis, local Aktar Goonda and Abdul Quader Molla etc. had killed Abu Taleb at Mirpur 10 Jallad Khana (slaughter house). He went on to say at a subsequent time he came across Abu

Taleb's non-Bengali chauffeur, named Nizam, who intimated that Taleb proceeded for the latter's house at Mirpur with Daily Ittefak's non-Bengali Chief Accountant, named Halim, but instead of taking Taleb to his own house, non-Bengali Halim handed Taleb over to the Biharis and the Biharis killed him at the Jallad Khana.

This witness identified the Appellant in the dock saying that the Appellant was young, without beard at the time in question. He explicitly refuted the suggestion that he did not hear that non-Bengalis, local Akhtar Goonda, and Abdul Quader Molla etc. killed Mr. Taleb, and that he deposed falsely or was coerced by the party in power.

Mr. Razzak assailed the deposition of P.W. 5 stating that as his deposition is tainted with some major discrepancies, his credibility is doubtful, it is implicit from his deposition as if he himself saw the incidents, his statement was discrepant with that of P.W. 10, and that while the charge as framed named the area as Arambagh, P.W. 5 said it was Shantinagar.

He also submitted, that the Appellant's name found no place in the Jallad Khana report.

As we can see from the record, P.W.-5 deposed under cross that in 1971, he went to BNR Law Firm and learnt thence that Advocate Khalil saw Halim to take his father in Halim's car. He further stated during cross examination that he heard from their chauffeur, Nizam that Abdul Halim handed over his father to Abdul Quader Molla and others. He went on to say under cross examination that he did neither hear nor ask about the location where his father was handed over, but Nizam told him that his father was killed at the Jallad Khana.

So, having perused P.W. 5's statement in chief as well as under cross examination, I find no discrepancy. As a matter of fact during cross examination he elaborated with greater details what he stated in chief. His testimony deserves greater reliance because if he wished to mislead the Tribunal he would very well have misquoted what he heard during his BNR law Firm visit:

Contrary to what Mr. Razzak submitted I fail to be satisfied that P.W. 5 deposed in such a manner as if he saw the event himself. He did rather state that he, along with other members of his family, went to Shantinagar on 24th March 71 leaving his father behind at Mirpur. He also maintained all along, that he heard all these.

According to Mr. Razzak there was discrepancy between the charge and P.W-5's deposition in that while it is stated in the charge that Abu Taleb was returning from his house at

Mirpur to Arambagh, P.W. 5 said it was Shantinagar. We have scanned P.W.5's deposition from top to the toe. Nowhere had he said that his father was returning to Shantinagar at that time. The only thing he said about Shantinagar is that his family went to his Fufa's house at Shantinagar on 24th March leaving his father behind at Mirpur and that at the time massacre started on 25th March they were in that Fufa's house in Shantinagar.

Was there any discrepancy between the testimonies of P.Ws' 5 and 10, as Mr. Razzak argued?

Records of evidence reveal that P.W. 10 said he first heard from his colleague Faruk Ahmed Khan in June 71 that the non-Bengali, local Aktar Goonda and Abdul Quader Molla killed Abu Taleb.

So, although P.Ws. 5 and 10 heard from two different sources, yet what both of them heard is in total agreement, which is that non-Bengalis, Aktar Goonda and Quader Molla killed Taleb at Mirpur Jallad Khana. So there was no discrepancy at all, there was rather striking and Siamese identicality.

Now, both the P.Ws also said that they heard from Nizam. While P.W 5 said under cross that Nizam told him that instead of taking Taleb to his home at Mirpur, Halim handed over Taleb to Abdul Quader Molla and others, P.W 10 said that after the liberation Nizam told him that instead of taking Taleb to his house at Mirpur, Halim handed over Taleb to the Biharis who killed Taleb at the Jallad Khana.

It is true that there was discrepancy as to Nizam's statement in that while P.W 5 said Nizam told him Taleb was handed over to Quader Molla and others who killed Taleb at the Jallad Khana, P.W. 10 said Nizam told him after liberation that Taleb was handed over to the Biharis who killed Taleb at the Jallad Khana. However, this discrepancy would loose its sinister significance once it is realized that Nizam narrated his version to two different people at different times and that except Nizam's version to P.W. 10, facts that emanated from other sources all support the claim that Taleb was handed over to QuaderMolla and others who killed Taleb at Mirpur Jallad Khana. Indeed P.W.10 should be credited for not distorting the version he heard from Nizam.

Mr. Razzak complains that P.Ws. 5 and 10 should not be treated with credence because they failed to mention certain important things to the I.O. According to the I.O's deposition, P.W. 5 did not tell to him that Nizam told him that Halim took his father and handed the latter over to Quader Molla, but told that he heard from Advocate Khalil that Halim took Taleb to Mirpur.

I am not prepared to treat this as a contradiction or even a discrepancy but a mere omission. Given that the time gap between the occurrence and statement to the I.O was too wide, total uniformity can not be expected. The I.O. as P.W. 12, stated that this witness did not tell him that he then heard that non-Bengalis, Aktar Goonda and Quader Molla and others killed Abu Taleb at Mirpur -10 Jallad Khana, but this witness said that in June 71 he heard from Faruk Khan that Abu Taleb was killed.

Bare Omission Distinguished.

Although this matter has in part been discussed under charge 2, more elaboration of it has been necessitated by Mr. Razzak's submission on this area under charge 3 as well.

I have stated that it is in the record that some prosecution witnesses failed to state something to the I.O. which they stated in the Tribunal during their deposition and that these are nothing more than bare omissions and can, by no stretch of imagination, be dragged to the realm of contradiction.

It must not escape ones introspection that the circumstances and surroundings in which a person gives statement to an I.O. is diametrically different from those in a court of law. In a court a witness is cautious, assiduous and formal, whereas he can not be expected to maintain that degree of exactitude and diligence in an informal situation i.e when he gives statement to an I.O. So, unless the omission really puts thing topsy turvy, or nearly so, or travels far enough to be equated with a contradiction, a mere omission should not be treated as mutually carnivorous.

There are high preponderant authorities to support this contention. In 14 BLD (AD) 253, the Appellate Division emphasised that benefit of doubt can not be given for minor omissions.

In 7 BCR (HC) 220, the High Court Division held that mere omission to give details of occurrence does not discredit a witness, whose testimony has otherwise been substantially corroborated.

Indian Supreme Court in a plentitude of decisions underscored the insignificance of such previous omissions which can not amount to contradictions on material points.

In Tahsildar Singh and another-v-The State of Uttar Pradesh, (1959 SCR Scrip (2) 875), during a murder trial the Session's Judge turned down a defence prayer, seeking allowance to cross examine a prosecution witness on his previous statement to the I.O. The convict, who was sentenced to death, appealed, fiercely contending that the trial judge by rejecting the said prayer, erred in law.

The High Court agreed that the omissions on which the defence wished to cross examine the witness, amounted to contradiction and that the Judge below was wrong in disallowing the defence to cross examine the prosecution witness, but nonetheless, turned down the defence application holding that no prejudice had been caused to the appellant by the disallowance of cross examination in respect to omissions. The appellant also prayed that the witness be summoned to reply to those questions. The High Court rejected that prayer, dismissed the appeal and affirmed the conviction and the sentence.

The Indian Supreme Court, however, in affirming the conviction and the sentence, over turned the High Court's view that the omission amounted to contradiction or that the trial judge was wrong in not allowing the defence to cross examine the witness.

The Supreme Court came up with the conclusion that statement to the I.O. could be used under Section 162 of the Code of Criminal Procedure only for the purpose of contradicting a statement in the witness box under the second part of Section 145 of the Evidence Act, but it could not be used for the purpose of cross examining the witness under the first part of Section 145. The Supreme Court also emphasised the incorrectness of the view that all omissions in regard to important features of the incident, which were expected to be included in the statement made before the police, should be treated as contradiction, observing further that an omission in making a statement to the I.O. could be used as a contradiction only if (I) it was necessarily implied from the recital or recitals found in the statement (II) it was a negative aspect of a positive recited in the statement or (III) when the statement before the Police and that before the court could not stand together, and that was for the trial judge to decide in each case, after comparing the part or parts of the statement recorded by the police with that made in the witness box, whether the recital intended to be used for contradiction, was of one of the nature indicated above.

The Supreme Court cited with approval the observation of the trial court which, is reproduced below; "Therefore if there is no contradiction between his evidence in court and his recorded statement in the diary, the latter can not be used at all. If a witness deposes in court that a certain fact existed but had stated under section 161 Cr.PC, either that fact had not existed or that the reverse and irreconcilable fact had existed, it is a case of conflict between the deposition in the court and the statement under Section 161 Cr.P.C and the latter can be used to contradict the former. But if he had not stated under Section 161 anything about the fact, there is no conflict and the statement can not be used to contradict him. In some cases an omission in the statement under Section 161 may amount to contradiction of the deposition in Court. They are the cases where what is actually stated is irreconcilable with what is omitted and impliedly negatives its existence"

In illustrating that the question is one of fact, the Supreme Court insisted that the word contradiction is of such wide connotation that it takes in all material omissions and a court can decide whether there are such omission as to amount to contradiction only after the question is put, answered and the relevant statement or part of it is marked, and, therefore, no attempt should be made to evolve a workable principle but the question must be left out large to be decided by the judge concerned on the facts of each case.

To illustrate the factual and conceptual difference between "an omission" and a "contradiction", Burn J of Madras High Court in re-Ponnusami Chetty (ILR 1933 Mad. 475) stated,

"Whether it is considered as a question of logic or language, "omission" and "contradiction" can never be identical. If a proposition is stated, any contradictory preposition must be a statement of same kind, whether positive or negative. To "contradict," means to "speak against," or in one word, "to gainsay." It is absurd to say that you can contradict by keeping silent. Silence may be full of significance, but it is not a "diction" and therefore it can not be "contradiction" considering the provision of S. 145 of the Evidence Act."

In reiterating the above cited view, Mockett J of the Madras High Court in re-Guruva Vannan, (ILR 1944 Mad. 897) made the fallowing observation, "I respectfully agree with the Judgment of Burn J in Punnasami Chetty-v-Emperor in which the learned Judge held that a

statement under Section 162 of the Code of Criminal procedure can not be filed in order to show that a witness made statements in the witness box, which he did not make to the police, and that bare omission can not be a contradiction."

The learned Judge points out that, whilst a bare omission can never be a contradiction, a so-called omission in "a statement may some times amount to a contradiction, for example, when to the police three person are stated to have been the criminals, and later at the trial four are mentioned".

In the case in hand, I can not accept Mr. Razzak's view on the omissions on record, not only because it is for the trial court to decide on fact whether a given omission amounts to contradiction, but, in my reckoning none of the omissions Mr. Razzak cited can amount to contradiction and hence I can not endorse the proposition that the Tribunal misanalysed the evidence.

For the reason stated above I find no substance whatsoever in the prayer that we should either summon P.W.3 to be cross examined on omissions or remand the case to the Tribunal for the said purpose.

This omission can not be taken as contradiction or decisive.

Charge- 4 Although this comes within the scope of Criminal Appeal No. 24 of 2013, for convenience, I will discuss it here as both the appeals were heard together.

The Tribunal below's finding on this charge is that the prosecution has failed to prove the allegations that the Appellant before us was a party to the massacre committed at village Ghatar Char.

Prosecution adduced 3 witnesses to establish this allegation. They are P.Ws. 1, 7 and 8.

Following deposition of P.W.1 are important;

(I) During the Liberation War he, a Freedom Fighter, once clandestinely went to his maternal uncle's house at Mohammadpur and on his return to his village home, he saw the Appellant standing in front of the Torture Cell gate at the Physical Training Centre at Mohammadpur, holding a Chinese Rifle, with his associates.

(II) On 25th November 1971, this witness first heard gun shots in the morning, the attack continued till 11 a.m, he along with his troops sat down on a low land, heard that Pak

army and the Rajakars left around 11 a.m, he arrived at Ghatar Char via Khan Bari, through the back pathway, came across Tayab Ali, Abdul Majid and many others, Abdul Majid told him that in a meeting held on 23/24th November, which was attended, among others, by the Appellant, a decision was taken to perpetrate mass killing of unarmed people and they implemented that decision on 25th November.

P.W.7 deposed that he heard gun sound in the morning on 25th November 71, slowly moved northward and stopped near the school field, the area was surrounded by bush, he hided himself behind a tree, and saw Pak soldiers in the killing spree, there were some punjabi clad persons with Pak troops, one of whom was Abdul Quader Molla, there was a rifle in QuaderMolla's hand and he also fired, they left around 11 a.m, about 60 people were killed, at the time he was identifying the corps, Freedom Fighter Commander Muzaffar Khan (P.W.-1) arrived and this witness narrated the event to the earlier, that Quader Molla arranged a meeting at the residence of Doctor Jainal (a civic body member) the previous night, that after they departed at 11 a.m, he came to know that the punjabi clad short statured man was Quader Molla. He identified the Appellant in the dock, he was more or less 19 years of age. He denied all nugatory suggestions, including the one that he was 10/12 years of age, his parents, on hearing gun sound took him across the river, and he did not see Quader Molla. He also said about 200 Pakistani troops were there and Rajakars were with them and that he saw them walking towards a big boat on the river. He said Muzaffar's house was about 1½ k.m away from his one.

P.W-8, who claims to have been 13 years at the time in question, was pregnant, said she heard gun sound after the Fazar Prayer on 25th November 1971, she along with her husband hided underneath their bed, emerged after the shooting stopped and went out to see what happened and saw Pakistani army walking towards their house, her husband then went to his uncle's house and then heard gun sounds again, she started osculating in and out of the house, a while later, her aunt came and yelled, "Bulu's mother, your Bulu is no more," this witness screamed and ran towards her husband's paternal uncle's house, saw that her husband's paternal uncle was being shot at, she saw a few army personnel, a dark skinned, short statured Bengali person, and that her husband was lying on the ground, she screamed and tried to hold her

husband, the Bengali man aimed the rifle at her and asked her to get away, and she ran away to the room, at around 10.30-11 a.m she picked up her husband and found his face blood stained, she called for her mother-in-law, took her husband's corps to their house, she heard 50/60 people were killed, Doctor Joynal and Muktar were in the incident, she heard from her father in law that one Quader Molla of Jamat had killed her husband, she heard this from many others in addition to her father in law, Ludu Miah. She heard it from Majid Pahlwan of the village, she identified Quader Molla in the dock saying at the relevant time he had no beard and had short hairs.

Her house is 10/15 minutes away from Majid's house.

In concluding that the prosecution had failed to prove this charge, the Tribunal observed

(I) P.W-7 made conflicting version as once he claims to have witnessed the Appellant at the crime site and then claims to have learnt that person named Abdul Quader Molla accompanied the gang

(II) P.W-7 did not even disclose the source of his knowledge as to the presence of the accused

(III) P.W-7's version that on hearing gun sound he proceeded towards whence the sound emanated, is not natural as it would not be normal for a Bengali civilian to go to a place where the perpetrators were operating from

(IV) Notwithstanding P.W-7's denial, P.W. 12, the I.O. stated in evidence that this witness did not state all these to him

(V) These omissions represent "glaring contradiction" on material particular, which cast doubt on his credibility

(VI) P.W-8's version is that she learnt from P.W.-7 that a person named Quader Molla had killed her husband, and as the Tribunal found P.W. 7's version contradictory and devoid of credence, P.W. 8's version does not carry any value and can not be treated as corroborative.

(VII) It is not plausible that P.W. 8 could remember the appearance of the " Bengali person" she claims to have seen at the crime site 40/41 years ago,

(VIII) Mere fact that P.W. 1 saw the Appellant standing in front of the Torture Cell with a rifle in hand, does not connect him with the offence leveled, although this fact may lead to the inference that he was an armed member of Al-Badar.

Meticulous scrutiny of the evidence as recorded reveal that the Tribunal entertained numerous errors in so finding.

First and the most conspicuous mistake can be detected from the Tribunal's observation, as recorded in Paragraph 300 of its judgment, to the effect that as P.W.7's testimony was found to be contradictory and barren of credence, P.W.8's version was also of no value as P.W. 7 was her source of information on the killing of her husband.

This finding of fact is, visibly, out of track with what is in the record, which depict that P.W. 8 rather asserted that it was her father-in-law,Ludu Miah, from whom she heard that a man named Quader Molla of Jamat had killed her husband,continuing thereafter to state that in addition to hearing from her father-in-law, Luddu Miah, she also heard the same from many others, inclusive of Majid Pahlwan (P.W.7).

P.W. 8 was a very natural and spontaneous witness, who was not only within a very short proximity of the place of occurrence but was also an eye witness to the shooting of her husband's uncle, who moved to the place of her husband's killing immediately after that incident was occasioned, saw the Appellant at that spot and was threatened by the Appellant at gun point. Again, although her evidence as to the identity of the killer was a hearsay one, it was not a crude hearsay, but was within the "res gestae" exception because of this contemporaneity. She heard it from her father-in-law and many others, including P.W. 7, immediately afterwards. So, apart from admissibility of hearsay evidence under the Act, this evidence would have been admissible even under our general law of evidence. According to Sir Rupert Cross, contemporaneity is the raison d`eter for res gestae exception to hearsay rule. Lord Denman observed in Peacock-v- Haris (1836 5Ad 4 E 1449). "A contemporaneous declaration may be admissible as part of a transaction …… contemporaneity is a matter of degree, and no useful purpose would be served by an elaborate citation of authority (Cross on Evidence, sixth Edition, Page-584) Ratter-v-R (1972 AC 378) is the most important English authority on re-

gestae. This witness' version as to the date, timing of the commencement and cessation of onslaught, number of people killed, the location, presence of Bengali collaborators and the people who assembled after the end of the holocaust, tally in toto with that advanced by others, making her story infallible.

The Tribunal's finding on memory suffers from a grave misdirection. The science of psychology teaches us about voluntary and involuntary memory, suggesting that events like the ones that took place in 71 to the victims would fall within the category of voluntary memory, which may survive ad-infinitum. The person whom she saw with arms soon after her husband was killed and who pointed the gun at her, is not likely to be forgotten easily. Secondly an incident observed by a person when she is a teenager survives in her memory for much longer a period and, finally, unlike a young one, appearance of a fully grown up person do not change drastically after the bone ossification process terminates. Although she omitted certain events when making statement to the I.O., some of her narration to the I.O. are very significant indeed, which in I.O's language run, " তবে আমার কাছ বলছিল যে ঘাটাচর গ্রামর জয়নাল আবদিন তার শালা মুক্তার হোসেন, ফয়জুর রহমান ঢাকা থেকে আসা পাকিস্তান আর্মি ও কাদের মোলার রাজাকার বাহিনী নিয়ে এসে তাদের ঘাটার চর গ্রামে ৬০ জন লোককে হত্যা করে ও বাড়ী ঘর জালিয়ে দেয়।

The I.O. (P.W. 12) also stated, " ইহা সত্য যে, এই সাক্ষী আমার কাছে এইভাবে বলেনি যে, তিনি তার শশুরের মুখে শুনেছেন যে, জামায়াতের কাদের মোলা নামে এক লোক তার স্বামীকে মেরে ফেলেছে। ইহা সত্য যে, এই সাক্ষী আমার কাছে বলেছে যে, তিনি তার এই কথাটি তার শশুর লুদু মিঞা ছাড়াও আরো অনেকের কাছ থেকে শুনেছেন। তবে মজিদ পালোয়ানের কাছে শুনার কথাটি তিনি আমার কাছে বলেনি।"

So, according to the I.O. (P.W. 12), P.W. 8 told him that Jaynal Abedin, his brother-in-law, Moktar Hussain, Faizur Rahman brought from Dhaka, Pak army and Quader Molla's Rajakar force who killed 60 people in Ghatar Char and that P.W. 8 told him that apart from her father-in-law, Luddu Miah, she also heard that her husband was killed by Jamat's Quader Molla, from many others, though she did not tell him that her source of information also included Majid Pahlowan (P.W. 7).

This bit of information makes P.W.8's evidence impeccable indeed, on which alone the Tribunal should have found charge- 4 proved.

We can also not endorse the Tribunals finding on P.W. 7's testimony.

His statement as to the date, time of commencement and cessation of firing, number of people killed, their religion, location, involvement of Bengali collaborators, people that assembled afterwards, names of Bengalis who were involved, that Appellant was holding a gun, physical description of the Appellant are in downright agreement with the version P.W 1 and 7 narrated. We do not see much substance in the conclusion that a person would not proceed towards the location the invaders are positioned. He was at that time a young man. It can not be ruled out that a man in his position would not be inquisitive enough to see what was happening from a place of hiding, as he claims to have done. We find it implausible that P.W. 7 contradicted himself on Quader Molla's identity from the fact that in giving evidence at one stage he said that there were some punjabi clad people with Pak forces, one of whom was Quader Molla, and saying at another stage that after the departure of Pak forces he came to know that the punjabi attaired short statured man was Quader Molla. The Tribunal's view is irreconcilable with the reality. Years before P.W. 7 came to depose, he knew that the punjabi clad man was Quader Molla as he heard that on the date in question after the army left, and as such, at the inception of his testimony he told the Tribunal that the person concerned was Quader Molla expressing at a later stage of his deposition as to how he came to know at that time that the person concerned was Quader Molla.

We do not think that failure to name the source is blended with any malevolent significance, as a sizable crowd inundated the place.

The Tribunal disbelieved P.W. 7 on the ground that he, in the Tribunal's language made some "glaring contradiction" in making statement to the I.O.

Having dissected the I.O's evidence, we find this aspersion incongruous. What I.O stated is "not exactly in same words", suggesting that although P.W. 7 did not narrate the facts verbatim, he did, nevertheless, make statement to that effect.

So far as the testimony of P.W.1 is concerned, it is true that his viewing Quader Molla in front of Torture Cell with his associates with a Chinese rifle in his hand the day before, on its own does not prove the charge, but if one collates P.W. 1's other statement, such as that on 25th November 71 he heard gun sound in the early morning, that they proceeded towards Ghatar Char with his troops, heard that some 57 Hindus and Muslims had been killed, the orgy

of killing continued till 11 a.m, heard at 11 a.m that the Rajakers and Pak soldiers left the spot, arrived Ghater Char to see Ganges of blood, heard from local Tayab Ali and Abdul Majid (P.W 7) and many others who were busy in identifying the corps, Abdul Majid, on being asked, replied that on 23/24th November 71, a meeting took place at Ghatar Char, which was attended by Muslim League's Doctor Jainal, KG Karim, Babla, Moktar Hussain, Faizur Rahman, and the leaders of Islami Students Organization, Quader Molla, where it was decided that indiscriminate killing of unarmed people would be unleashed and that decision was implemented on 25the November 71 with the fact that Quader Molla was seen standing in front of the Torture Cell with a Chinese rifle in hand, he would encounter title hurdle to see an unbroken chain capable to constitute viable circumstantial evidence to establish charge No. 4. This witness also confirmed that he knew Quader Molla from before and identified him in the dock.

He appears to have been a very natural and sedulous witness. No adverse comment about the demeanour of this witness has been made by the Tribunal.

Charge- 5. This charge is based on the allegation of killing of some 344 civilians at a village named Alubdi, in which the appellant allegedly aided and abetted.

Prosecution examined P.Ws. 6 and 9 to establish this charge.

P.W. 6, who claims to have been 19 years at the time under consideration, stated that in 1970 he worked for Awami League's Parliamentary candidate whereas Abdul Quader Molla, the then leaders of Islami Student Organisation, campaigned for Golam Azam. He knew Quader Molla. At the time of Fazr Azan on 24th April 71, he along with others, saw the landing of a helicopter by the bank of the river at the western side of the village and soon thereafter heard gun shots. He saw a couple of dead bodies, he concealed himself in a ditch by a bush at the northern side of the village. It was paddy reaping season, lots of labours frequented the village for paddy cutting. He saw Pak soldiers marshalling from the east those rice cutters and villagers together and saw Quader Molla chatting with Pak soldiers in Urdu, although he could not hear them. After that he saw them to start shooting the people they assimilated. Quader Molla had a rifle in his hand and participated in the shooting. Some 360/370 people, including 70/80 paddy cutting labours were killed. His first cousin was one of those killed. The carnage lasted till 11 a.m. The ditch was about 4 feet deep, he was as tall at that time as he is now, some paddy

cutters on the field, though present at that time, had not commenced the cutting. He denied the suggestion that because of the presence of tall paddy trees, it was not possible on his part to see around from the ditch. Since the event on 24th he and his family members moved to live at Savar. His neighbours in the village also remained in sanctuary at Savar till Liberation. (He identified Quader Molla in the dock).

He said the ditch he holed himself in was around a bush, nothing could be seen to the south as there was a dwelling on that side, land away from his village was lower, the paddy field was about 300/400 yds away from his homestead, there were open space in front of the ditch and the paddy field was at a 3/ 4 step lower level.

His evidence coupled with the fact that the I.O. found a mass grave in the northern side of village Alubdi, suggests that the killing took place at the north side, which was closer to the P.W. 6's homestead.

P.W.9 deposed that he formed a voluntary force in Mirpur Area after Bangabandhu's 7th March speech and then underwent training at Iqbal Hall under the supervision of Independent Bangla Student Action Parishad. At that time Abdul Quader Molla imparted training to the Bihari's at Mirpur to save Pakistan. He went to his village, Alubdi, with his father on 22nd /23rd April for paddy cutting, and after cutting paddy spent the night at his uncle's dwelling. Early in the morning on 24th April 1971, a helicopter landed at the bank of river Turag at the western side of Alubdi village with Punjabi soldiers. About 100/150 Biharis, Bengalis and Punjabis arrived from the eastern side under Quader Molla's leadership and started indiscriminate shooting as a result of which many people lay dead. After that they rounded up 64/65 persons from different homes in the village, about 300/350 paddy cutters were shot. Quader Molla and Aktar Goonda had rifles in their hands. About 400 people were killed. 21 of this witness' relatives were amongst the dead.

In 1970 election he campaigned for Awami candidate where as Quader Molla, who was a leader of the Islami Student Organisation, worked for Golam Azam. He denied all the defence suggestions that he is a land grabber, criminal, extortionist, drug peddler. During cross examination this witness stated that he kept himself hidden by water-hyacinth when he witnessed the occurrences. He also stated that in a criminal petition that he filed previously in a

criminal court, he stated this fact of hiding within water-hyacinth. He also asserted that he filed a criminal case against the present Appellant and others in 2008. (He identified Quader Molla in the dock).

In his endeavour to tople this charge Mr. Razzak primarily resorted to the argument of improbability. In his submission, it could not be possible on the P.W. 6's part to view the alleged events, as he said, from a ditch, as his vision would have been obstructed by paddy trees and that a Bengali would rather try to run away from the spot, not dare to take a position to watch the shooting.

On P.W.9, he repeated the same improbability argument. In addition he tried to portray P.W.9 as a person of doubtful character because he allegedly faced criminal prosecution and was involved in civil litigation, conceding however that no criminal charge was ever proved against that witness and that he did not face any criminal conviction.

I find Mr. Razzak's argument of improbability, unacceptable. Given that the ditch was about 4 feet deep, given that, there is no assertion that P.W.6 was dwarf, given that as P.W.6 said the ditch was not in the paddy field but about 300/400 yds away from the paddy field, which according to this witness was at a 3/ 4 steps lower level, given that there were open spaces in front of the ditch given that the paddy plants lose heights when paddies are ripe, it can not be said that it was improbable for an inquisitive person to watch the events from a hiding as this witness described.

The I.O.'s evidence that he discovered a mass cemetery on the northern side of the village, lends overwhelming weight to the version advanced by this witness.

As to Mr. Razzak's assertion that the normal behaviour of a Bangali person would have been to escape, we are of the view, that is exactly what P.W.6 did, he concealed himself inside the ditch from where he also had the opportunity to watch the events. If he tried to run away, he would, in all probability have embraced the same fate.

Improbability theory is even more unacceptable in respect to P.W.9 as there is nothing to show that this witnesses' vision could have been hindered by any object.

We find Mr. Razzak's aspersion on this witness' disposition rather uncanny when he had to admit that P.W.9 was not found guilty of any offence by any criminal court and there is

nothing to show that he faced any criminal conviction and hence Mr. Razzak's attack on this witness' character and credibility, is obviously unworthy of any consideration and surely, awkward, least said.

Indeed both these witnesses were reckoned to be trustworthy by the Tribunal before which they appeared and deposed.

Charge-6 This is the charge which is founded upon the worst of all allegations, which reveals a petrifyingly convulsive episode.

Although only one witness, P.W.3, was put forward to establish this charge, her testimony was really unimpeachable, she was not only an eye witness but a direct victim of inexonerable savagery that made 1971 a blotted year for the whole world.

P.W.3, who was 12/13 years of age, testified that his father was involved in the campaign for the liberation of the Bangali people and her mother was pregnant. They lived at Mirpur 12 area. sometimes before the dusk on 26th March 71, her father ran towards the house, yelling "Quader Molla would kill". On entering, he locked the room and asked his wife and children, all of whom were in the room, to hide underneath the bed. She and her elder sister concealed themselves under the bed. Quader Molla and his companions shouted, "open the door, pigs, or else we will throw bombs". They hurled an explosive as this witness' family refused to open the door. Her mother then opened the door with a kitchen chopper in her hand. They shot her immediately. When her father went forward to hold her mother, Quader Molla held his shirt collar from behind yelling "pigs, will you support Awami League? will you go with Bangabondhu, yell Joy Bangla Slogan, go to procession ? His father begged ,uttering Quader Molla's name, for mercy. They did then drag her father out of the room and slaughtered her mother by the kitchen chopper. (The Tribunal records that this witness broke down in tears at that point). They also slaughtered his two other sisters. They killed his two years old brother too by throwing him on the ground. When that boy screamed her sister also screamed from under the bed. On hearing sister's screaming, they dragged that sister out, tore her clothes and embarked upon sexual atrocities on her, she kept screaming until that point when she ended in silence. By then the sun set and darkness loomed. They pushed an object underneath the bed which touched her left leg, and they dragged her out, she fainted. When she

regained her consciousness, it was late at night, she witnessed severe a pain in her abdomen. She found her short torned. She moved toward her neighbour's house slowly. As they opened their door, having seen her clothes soaked with blood and her short, torned, they gave her something to wear and to put on the wounds of her leg and took her to a doctor the following day. This traumatic events devastated her completely. She identified Quader Molla in the dock, saying that Molla was much younger at that time, shouting, " I wish to ask him, where is my father". During cross, she said the bed was a heightened one, there was a trunk underneath, the window was partly open, although she did not see Quader Molla before, she saw the man that came with the Biharis but spoke in Bengali and it is him who dragged her father out and he is QuaderMolla, she saw it from beneath the bed, did not see the killing of father, but heard from Akkas Member after liberation that Quader Molla killed him. She denied the suggestion that the room was not sufficiently lit. She said her mother was slaughtered inside the room, her two sisters were slaughtered inside the room, one sister was with her under the bed and screamed when they killed her brother and it is at that point that they dragged her hidden sister out, and unleashed sexual atrocity on her, she could not know the whereabouts of her father ever since. .

Mr. Razzak submits that in his view she is a hearsay witness, and her evidence should not be treated as anything more than that. Mr. Razzak also complained that the learned Advocate for the Appellant who appeared before the Tribunal, could not adequately cross examine her and she should now be re-called for further cross examination.

It is Mr. Razzak's case that P.W.3's identity as an offspring of Hazrat Ali remained obscure. She has failed to narrate how she came to know that the person in question was indeed Quader Molla. He also questioned as to how P.W. 3 remembered the event so many decades afterwards, and could also remember Quader Molla's face. According to him this witness's testimony does not connect QuaderMolla with any overt act. He went on to say that P.W. 3's evidence is at odd with Jallad Khana report and should not be looked at with any credence the same having not been corroborated. In Mr. Razzak's introspection P.W. 3 could not project herself as a credible witness.

We are unable to accede to Mr. Razzak's contention that P.W. 3 was a hearsay witness. Except as to the killing of her father, she is an eye witness. She was no doubt an eye witness on

the act of rape committed on her sister by those who came with Quader Molla. She was also an eye witness on the slaughtering of her pregnant mother, her three sisters, 2 years old brother, and of course as to the act of dragging her father out by QuaderMolla. She was also the circumstantial witness as to the rape committed on her ownself.

She specifically said that she saw the dragging by Quader Molla of her father. It is clear from the way she narrated the events that she was truthful. The bed was sufficiently high as an old fashioned high bed capable of accomodating a trunk underneath, which are still found in village homes, even in some urban homes, hiding underneath of which are quite common. The sun was yet to set. At such a timing it can safely be assumed that while it was dark under the bed, visibility was unimpaired beyond that area. So it was a situation when noticing the witness under the bed was difficult, but her ability to watch people in and out of the room remained within the bound of possibility. She explicitly stated when Quader Molla caught her father, the latter uttered the name of QuaderMolla and begged to be saved. So there was no difficulty on her part to recognise Quader Molla.

As to P.W. 3's identity, Mrs. Monwara Begum, an Investigating Officer, confirmed that she scanned documents retained at the Liberation War Museum and Jallad Khana Archive at Mirpur and found that Monowara is shown in all those documents as a daughter of Martyr Hazrat Ali Laskar. She also detected a cheque Bangabandhu gave to P.W. 3 for being an offspring of a Martyr. Moreover, she was very extensively cross examined on all issues yet she could not be debased.

The fact that she broke down in tears while deposing, goes a long way to vindicate the veracity of her evidence and identity.

About her memory what I expressed in respect to P.W. 8 is equally applicable to her.

Defence Witnesses:

The defence examined as many as 6 witnesses, inclusive of the Appellant himself who deposed as D.W. 1, stating that he was an M.Sc. student of Dhaka University from the later part of 1969, was a resident at a hall of residence of the University, his belated examination commenced in February –March 1971 and the practical examination was scheduled on 12/13th March, but the same was adjourned. Being advised by the Vice-Chancellor he left for his village

home Amirabad on 11/12th March. He used to assemble at Amirabad School field with other students and listen to radio news. On 23rd March a Junior Commissioned Officer of the army organised arms training course for 30/40 people including the Appellant to prepare them for liberation war and they continued with the training till 30th April or 1st May 71, the day Pakistani army reached Faridpur. Training resumed a few days later but stopped out of fear after they heard cannon sound and air force planes flew over the area. At the request of a villager, he commenced business at a place that a village Pir owned in the local market and he continued with that business by being present every Saturday and Tuesday throughout 1971 and 72. He maintained contact with Awami League Leaders. Though he tried to go to Dhaka after liberation on 16th December 1971, the two Awami leaders and one Freedom Fighter commander he remained in contact with, advised him against Dhaka odessey at that time because his role was not known to anyone in Dhaka and hence he could land into trouble, and hence he stayed back in the village and continued with the business there. He used to receive letters from Student League leaders of the hall he lived in, who asked the Appellant to return to Dhaka with the assurance that there was no complaint against him. Possibly in November/December 1972, the then head of Sadarpur Awami League himself escorted the Appellant to Dhaka and dropped him at the gate of his hall. Those Student League leaders then helped him to secure a place in the hall. Possibly towards the end of July 71 he received a telegraphic message about the resumption of the exam for which he went to Dhaka at the end of July, stayed in that hall and attended practical classes and returned to the village a week after the end of the examination.

Having been convinced about the supremacy of Islam, he, when a degree level student, joined Islami Student organisation in 1966 and continued to work for the Islami Student organisation ever since. He Joined Jamate Islami after that party re-surfaced in May 1979. In the meanwhile, Jamat's media, named Daily Sangram also resumed publication, of which the Appellant was in the post of director of education page and joined as the executive editor of the daily in 1981. He continued with Jamat's programmes, was elected the "Amir" of Dhaka Metropolitan area of Jamat in 1987.

In 1970 he was elected the President of the Islami Students Organisation at the hall of residence he resided at and also acted as the personal secretary to Mr. Golam Azam. On ideological questions Islamic Students Organisations used to follow Jamat. He said that some leaders/workers of Islami Sudents Organisations may have been converted into Al-Badr. He was arrested in January 1972.

D.W.2, testified that the Appellant, who was known to this witness from the latter's high school days, saw the Appellant in the house of Appellant's sister at village Amirabad a couple of days after 7th March and that he saw the Appellant engaged in a business at the market place in the Pir's business premises. 9/10 months after the liberation the Appellant went back to Dhaka having continuously been in the business before that. He received no summon from the Tribunal but the Appellant's son escorted him to the tribunal.

D.W. 3 stated the appellant was his school mate in the village, he met the appellant at a place named Sadarpur within Faridpur, some 8/10 days after 7th March and the Appellant told him at that time that a couple of days after Bangabondu's 7th March speech, he arrived at the village, he met the Appellant again at the market place a month later and the Appellant intimated that he was engaged in a business with the son of the Pir and that this witness saw him at the village for a full year and that a month after liberation the Appellant returned to Dhaka. He had received no court summon but the Appellant's son asked him to give evidence. He admitted having resigned from the headmastership of the school, though denied that in the wake of mass agitation against him for being a Rajakar, he was dismissed. He admitted to have been appointed at the Islamic research Centre at a time when BNP-Jamat alliance was in power, though he denied that he got that job at the instance of the Appellant who was a leader of Jamat.

D.W.6, the Imam of the hall where the Appellant resided, deposed that he commenced his job as the Imam of the hall concerned, where the Appellant frequented to offer prayer and that is how he knew the Appellant. As the classes stopped, a couple of days after 7th March, he saw Quader Molla proceeding to the latter's village with bag and baggage. The Appellant told this witness that he was going to the village home. The students left the hall, but this witness stayed on. This witness again saw the Appellant in the hall towards the end of 1972 or early 73

and when asked, told this witness that during the whole of the intervening period, he remained in his village home and that he could not get admitted into the Physics Department. He also had received no summon from court and he agreed to give evidence as was asked to do so by the Appellant's son.

Having compared the testimonies of D.Ws 1, 2, 3 and 6, all of whom basically tried to prove the Appellant's alibi, I have detected catastrohic discrepancies, capable of rendering their version to nullity.

The appellant himself said that he ran the business at the market place at his village home upto the end of 1972, whereas D.W. 3 asserted that the Appellant was in the business for a total period of one year, which means upto March 72.

While the Appellant insisted that he returned to the hall to take the practical exms in July 71 for a period, which on calculation appears to have been in excess of 4 weeks, D.W. 6, who affirmed that he stayed back in the hall and performed as the Imam of the Hall's mosque, stated that the Appellant remained in the village all through the period and that he next saw the Appellant only at the end of 1972. D.W. 2 and D.W. 3 also said that they kept seeing the Appellant in his business venue in the market place throughout the period i.e. without intermission.

There are yet two other plausible reasons why I find the alibi evidence incredible.
The Appellant quite emphatically stated that he was the private secretary to Mr.Golam Azam, the then head of Jamate Islam, he was head of the Shahidulla Hall unit of Islami Student Organisation, the student organisation, which was Jamate Islami's ideological apostle, and acted in accordance with Jamats' sermons. Assertion by a number of P.Ws that Mr. Golam Azam was a candidate for Parliamentary election that took place in 1970, as a Jamat nominee, has never been disputed by the defence side. It is only natural that as Mr. Golam Azam's private secretary and Jamat's ideological follower, he would have devoted a great deal of time to campaign for Mr. Golam Azam, yet the Appellant did not utter a word about Mr. Golam Azam's 1970 election though he gave vivid description of what he claims to have been doing in 1970, which makes his deposition doubtful. Secondly, in the light of the appellant's admitted background it is inconceivable that the Appellant would have had taken armed training to liberate Bangladesh

from Pakistani suzerienty. While truth will face casualty if it is stated omnibus that all the activists of Jamat and its offshoots resorted to killing, raping etc. and while reality dictates that some members of Jamat parted company with Jamat's stance particularly after the Pak army's crackdown, the stark truth is that Jamat as a political party conceptually and incessantly remained loyal to Pak army, opposed to Liberation War and took a firm position to stand by the idea of united Pakistan and interruptedly kept helping Pak army throughout the War period, in their effort to foil the Liberation War.

That Jamat as a political party could not reconcile with the War of Liberation and remained committed to Pakistan is widely admitted by most Jamat Leaders as well.

Appellant's subsequent activities such as his continuation as a Jamat high up after it re-emerged as a political party in 1979 proves that he did not deviate from Jamat's philosophy and therefore his claim to have had taken armed training to fight Pak army to Liberate Bangladesh is simply absurd and devoid of any credibility whatsoever. This patently concocted claim goes to tarnish the very root of his credit rating as a witness.

His deposition that they abandoned the training programme out of fear after hearing cannon fire and seeing fighter planes over their head is equally irreconcilable with the scenario that persisted at that time. Nobody abandoned training out of fear which must have been in everyone's contemplation when they embarked upon the idea of participating in the liberation war. Neither D.W.2 or D.W.3 deposed to corroborate the Appellant's claimed armed training.

D.W 4, the widow of assailed Pallab's brother, who was originally figured in the list of prosecution witnesses, subsequently changed side. She was in total consensuality as to the factum of Pallab's dragging and killing at the place and in the manner with the deposition of P.W. 9 and P.W.2, though she remained mum as to the alleged involvement of the Appellant in this murder.

She was a hearsay witness. According to her version Pallab was forcibly escorted from Nowabpur following which he was killed by Aktar goonda and his Bihari cronies in 1971 at a place marked as 1dga Field of Muslim Bazar. Under prosecution's cross examination, she replied that Quader Molla's son approached her a couple of days ago to depose for the

Appellant and that is why she came to testify for him having been brought to the Tribunal by the Appellant's son.

What is most strange is that while this witness in one breath unequivocally and explicity stated that she was approached by Quader Molla's son and was brought to the Tribunal by Quader Molla's son, she stated in another breath that she never heard the name "Quader Molla" in her life. This two mutually destructive statements make it amply clear that the truth was not with her. She was preparaed to twist the truth as per her convenience.

This witness flatly denied having given any statement to any I.O, yet Monowra Begum, P.W-11 stated without any ambiguity that this witness made a statement to the earlier. Moreover, the undisputed fact that she was initially in the prosecution's witness' list, leaves no doubt whatsoever that she made some statement to an I.O. without which she could not have been in the list of P.Ws. So she was far from the truth when she said she made no statement to any I.O. As such, as a witness she can not be showered with any credence at all.

Evidence of D.W.5 is of no relevance whatsoever as he asserted that at the relevant time he was in a different village named Sharulia, whereas the killing operation took place at village Alubdi. Thus, he had no means to know who were present or participated in the operation that resulted in mass killing at Alubdi village. He did not say he heard it.

I would also like to add that the Apeellant's fear, as he elaborated when testifying as DW1, that he was scared of returning to Dhaka, was advised not to go to Dhaka, that he was arrested in 1972, leave a lot to be desired. The question is why had he to be apprehensive of his fate and why could he have been a subject of suspicion had he not been involved with untoward activities? This in my view is a tacit admission at least as to the fact that he was opposed to the Liberation War, which belies his claimed armed training, to say the least.

I do not, therefore , find any misdirection on the part of the Tribunal below in axing the evidence of the DWs.

Defence submissions on Residual Factual Aspects.

Defence assailed the conviction engaging legal as much as factual issues, insisting that the conviction falls apart on both the perspective.

Legal submissions as advanced by Mr. Razzak, who appeared as the Appellant's learned Counsel, has already been inscripted above. Certain aspect of Mr. Razzak's fact based arguments have also been elaborated above when analysing evidential aspects against each of the 6 charges.

I shall, therefore, embark upon the residue of Mr. Razzak's fact oriented submission now.

Mr. Razzak expressed serious disquiet on what he described as the Tribunal's declination to accept his clients application to recall P.W. -3 (Momena), to examine Jallad Khana documents, and submitted that by so doing the Tribunal below resorted to irretrievable miscarriage of justice. He asked us either to allow the defence to re-call P.W.3 or to remit the case to the Tribunal so as to enable the defence to cross examine her, on the facts which had been left untouched and also to explore the evidential aspect of the Jallad Khana documents. He cited the English decision in the case of Birmingham Six. On the demand to be allowed to examine P.W. 3 again, Mr. Razzak submitted that the Appellant's learned Advocate that was initially engaged failed to put some pertinent questions to this witness of the prosecution and thus, she should now be made available to reply to those missed out questions in the interest of justice.

He relied on Rule 48(1) read with Rule 46(A) of the Rules of Procedure. He also produced the proposed questions, which are as below:

(1) You did not tell the I.O that your father came running yelling that QuaderMolla would kill.

(2) You did not tell the I.O. that QuaderMolla and the Biharis shouted while at the door that "you pigs open the door, or we will throw bombs"

(3) You did not tell the I.O. that when your father tried to hold your mother, the accused held your father's Colar and shouted, will you not do Awami League now ? go with Bangabondhu ? Join procession ? shout Joy Bangla ? and that at that time your father begged to QuaderMolla, saying "QuaderBhai spare me, Aktar Bhai spare me", and then they dragged your father out of the room.

(4) You did not tell the I.O. that "I found none in my house, only stings and stings, a lot of people were killed their. A man named Kamal Khan, who used to entertain Freedom Fighters with tea, told you that QuaderMolla killed your father, Akkas Molla was your Ukil father, he also said the same thing, he used to say pray for justice to the God, God will do justice."

Rule 48(1) stipulates; " The Tribunal may, at any stage of trial of a case, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, and re-call and re-examine any person already examined."

Rule 46(A) provides, "Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of the Tribunal to make such Order (s) as may be necessary to meet the ends of justice or to prevent abuse of the process".

It is quite clear from the language in the rule, which is similar to the language in Section 540 of the Code of Criminal Procedure, that the power has been conferred upon the court, not upon any of the parties.

Secondly, the exercise of the power is discretionary, which may only connote that the Court will invoke this power if the interest of justice so warrants.

Records reveal that P.W.3 was extensively and quite skillfully cross examined by the defence on all relevant areas. In view of our finding, elaborated above, that mere omission, as opposed to contradiction or conflicting statement, to mention something to the I.O is not necessarily portentous, having scrunised the record with required precision, we are of the view that the judgment of the Tribunal would not have been different if P.W.3 would have replied in the negative to all of the proposed questions and hence we do not reckon that interest of justice has suffered any affliction.

Universally recognised rule is that an appeal court may allow further evidence on appeal, but it is an established rule that the Court will not exercise this power save in exceptional cases, i.e. where it is deemed that such evidence is of such importance that, if it had been before the Court of first instance, it would have had an influence upon the court in favour of the applicant, and provided, he was unable despite reasonable diligence, to adduce such evidence in the court of first instance.

I do also rely on the ratio expressed by the Indian Supreme Court in Tahsildar Sing-v-the State of Uttar Pradesh, ante,

The Tribunal expressed that this application was a ploy to delay the proceeding. Given that the defence has, during the hearing, made attempts to enlength the proceeding, as the records disclose, I find no reason to disagree.

On Jallad Khana documents, Mr. Razzak submitted that the defence learned from a news paper report that a manager of the Jallad Khan, which is a part of the National Liberation War Museum, recorded some statement of some witnesses.

Mr. Razzak argued that, an information collector of the Jallad Khana recorded statement of one Momena Begum, who is a sister of slain Meherunnessa. He submitted that the Tribunal has utterly failed to appreciate the Jallad Khana record, to the serious prejudice of the Appellant.

Records depict that the defence filed an application with the Tribunal on 8th January 2013, engaging Section 11(I)(c) of the Act, asking the Tribunal to call for the registers of the Jallad Khana, stating that they could not procure any certified copies of the documents in the

registry, nor could they get any witness to depose for those documents, which are very pertinent. Photocopies of some papers, claiming the same to be of the Jallad Khana register, were enclosed with the petition. Mr. Razzak also placed emphatic reliance on what he termed as contradiction by the prosecution witnesses as between their statement to the I.O. and deposition in the Court.

Mr. Razzak tended to place paramount reliance on the ratio of the UK Court of Appeals' decision in the case of Birmingham Six (1991 Cr. Appeal Review, Page 287), but we find no element in the case in hand to relate the same with the decision in Birmingham Six case, which, succinctly is that if new evidence surfaces after a trial or even appellate procedure is concluded, a trial de-novo can nevertheless be re-commenced.

In that case after fresh scientific evidence, commissioned by the Home Office as well as new evidence that Devonshire Police detected, cropped up, the Secretary of State for Home Affairs referred the matter to the Court of Appeal.

In the instant case no such new evidence has come to light. On Jallad Khana documents, having scanned the reasons assigned by the Tribunal, which are figured at Paragraphs 389 through 394 of its judgments, reproduced above, we find no substance whatsoever that the reasons were barren of substance. As we look at it the reasons are fully impregnated with cogency. To coagulate the Tribunal's view, we would add that the Appellant and / or his learned Advocates came to know of Jallad Khana records at the latest on 17th October 2012, the date on which P.W. 11's examination was concluded, because that witnesses explicitly stated that she picked up information from the Mirpur Jallad Khana on some P.Ws. yet they remained mum for nearly three months before filing the subject application. This inordinate delay is inexplicable and can quite sensibly be looked at as a delaying device, given that the defence filed numerous unmeritorious applications during the trial that subsisted for a year after the assumption of cognizance.

I would also add that most people allegedly named and claimed in the Jallad Khana document had deposed under oath before the Tribunal and were extensively and rigorously cross examined by skilled lawyers and that they also laid statement to the I.O. and the I.O. was

also subjected to cross examination and hence these can not be treated as new evidence under any yardstick

He also complained that QuaderMolla's name is not figured in Jallad Khana documents. Admittedly these claimed documents were never adduced as evidence and never formed part of the proceeding. I can not accept as evidence some unauthenticated photocopies, which were never proved. I do not know what they are whence they came, who made them. These are obscure photocopies of some papers from unidentified source.

Residual Law Points invoked by Mr. Razzak.

Mr. Razzak, a Lawyer of commendable skill, expertise and standing, engaged multi matrixed law points to assail the judgment.

Drawing our attention to some preliminary issues the defence raised before the Tribunal he proffered that the Parliament's intention, when it passed the Act was to try only listed 195 Pakistani soldiers (Prisoners of War), and that was expressly stipulated in the unamended Act as well as in the first constitutional amendment and that the phrases individual or group of individuals have been brought to the Act by an amendment to it brought about in 2009 and that the same was done with malafide intention. Mr. Razzak cited the views, Lord Atkin in the celebrated case of Liversidge –v- Anderson (1942 AC 206) laid down.

It goes without saying that the High Court Division can strike out a legislation if and only if, the same is repugnant to any provisions of the Constitution. Chief Justice Cokes obitar, expressed in 1610 in Dr. Bohams case (1610 8 Co Rep 114a; 77E R464), that the Judges can declare an Act of Parliament utterly void if the same is against common right, does not represent the legal position (Pickin-v- British Railway Board 1974 Act 765), not even in a country governed by a written constitution where Parliament's legislative power is not untrammelled. In any event, the amended version has not been declared ultravires and we do not see how can this amendment, which has been made to make it possible to try those individuals, not being part of the auxiliary forces, who participated in the offences indexed in the Act, be stigmatised as malafide. I am at a loss to find any nexus between Lord Atkin's minority view in Liversidge-v- Anderson, which was that power conferred upon the Secretary of State under UK's Defence of the Realm Act, required him to be satisfied 'objectively' rather

than 'subjectively' in deciding whether an alien is of hostile origin and Mr. Razzak's complaint that Parliament acted malafide.

Mr. Razzak further argued that since Pakistani soldiers, the principals, had been exonerated, their accomplices cannot be tried. We see no merit in this argument either, because the Act has made the accomplices amenable to trial, for their own deeds without reference to the Pakistani soldiers.

Moreover it has been held by the Punjab High Court that when the principal accused is acquitted, the abetor need not necessarily be acquitted, whether the abetor can be convicted depends on the circumstance of the particular case (ILR 1974 1 Punjab 449).

Abetment by itself is a substantive offence and the abettor can be convicted even before the principal is apprehended and put on trial (1969 Ker LJ 215).

Being Accomplice and Abetor

Abetment need not be by instigation. It may be conspiracy, the proof of which is generally a matter of inference (AIR 1944 Lah. 380).

A person who instigates others to beat the deceased and they inflict several injuries on him resulting in his death cannot escape responsibility for abetment of murder (AIR 1933 Lah. 928).

Penal Code has elaborately explained in section 109 what abetment connotes and entails something which is reproduced below, and which negatives Mr. Razzak's arguments that definition of abetment can only be found in Public International Law. 'Explanation – An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid which constitutes the abetment."

On the basis of the authorities cited above it can be proclaimed without any qualm that the allegation of abetment has been proved beyond any reasonable doubt. This is also to be borne in mind that appellant acted as principal rather than as an abettor. The evidence show that he overtly participated in all the offences save the offence of raping only where he was abettor. Though he is said to have been an abetdtor as to charges, evidence project him as a perpetrate with clear overt acts.

Indian Supreme Court in the case of Amit Kapoor –vs- Ramesh Chandes ANR (Criminal Appeal No. 1407 of 2012) held.

"An abetter under Section 108 is a person who abets an offence. It includes both the person who abets either the commission of an offence or the commission of an act which would be an offence. In terms of Section 107IPC, Explanation (1) to Section 107 has been worded very widely. We may refer to the judgment of this Court in the case of Goura Venkata Reddy v. State of A.P [(2003)] 12 SCC 469], wherein this Court held, as under: "Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; (3) intentionally aids, by act or illegal omission, the doing of that thing.

In King Emperor-v- Barendra Kumar Ghosh, Bomay High Court and the Privy Council observed, "Abetment does not in itself involve the actual commission of the crime abetted. It is a crime apart (Emperor-v-Barendra Kumar Ghosh 27 BomLR 148).

In the case of Charles Taylor, the former President of Liberia, who was the first head of a State to be convicted by an International War Crime Tribunal, the Appeals Chamber of the Special Court for Sierra Leon held that key to culpability for aiding and abetting a crime was that of a suspect participated, in encouraging the commission of crimes and had a substantial effect on the crimes actually being committed, not the particular manner in which a suspect was involved.

The Judges in Taylor case openly disagreed with the ICTY's decision in the case against former Serbian General Moncilo Perisic who was acquitted as ICTY held that to prove allegation of aiding and abetting what has to be proved is that the accused "specifically directed" aid toward committing the crimes.

In respect to charge of abeting and being an accomplice, the Privy Council's advice, reflected through the pen of Lord Sumner, is quite pertinent, which reads; "In crimes as in other things they also serve who only stand and wait." In that case though the respondent was

part of a term that killed a Sub-Post Master, he himself did not shoot but waited outside, armed.(King Emperor-v-BarendraKumar Ghosh AIR 1925 PC-1).

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

Delay and Allegation of Political Motive

Allegation of long delay can also hold no water as it is an universally recognised principle of law that a criminal case is not hurdled by any limitation as to time. No law requires the prosecution to offer any explanation for delay and in any case, delay in respect to the present prosecution is self explanatory given the circumstances and the events that proceeded following the assassination of the Father of the Nation who led the country to the Liberation War and the resultant victory.

It is a matter of common knowledge that Shah Aziz, who was one of the top collaborator with the Pakistani rulers in 1971 and kept himself engaged as a globe trotter in campaigning against our Liberation War, was inducted as the Prime Minister of this country after the assassination of the Father of the Nation in August 75: how could then those who committed crime against humanity in 1971 by siding with Pakistani forces, be brought to the book during those period? Shah Aziz was not the only one. Col. Mustafiz another high profile collaborator was placed as the Home Minister. Many other Pakistani collaborators were in the helm of the state affairs either as Ministers or top civil or army officers.

One can also not be oblivious of the fact that Eichman was tried in 1961 for the offences he committed between 1939-45, Suharto and Pinochet were indicted decades after the offences they were charged with, were committed. People accused of crimes against Humanity in Cambodia were also tried ages afterwards.

Maurice Papon was convicted in 1998 for crimes against humanity for his participation in the deportation of Jews in concentration camps during WWII-almost 50-55 years after the crimes took place.

Nikolaus Klaus Barbie was indicted in 1984 for the crimes committed during the 2nd War, Erich Priebke was tried in Italy decades later. Australia prosecuted Polyukhovich in 1998

for crimes Committed during 2nd great war. Paul Tonvier was indicted in France 50 years later. Demjanjuk was tried in Munich on 11th March 2009 for 2nd War offences. For the same type of inconducive circumstances, the trial of the killers of Bangabondhu also commenced decades afterwards.

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

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

Nurturing a political belief is one thing while advancing such beliefs through legally proscribed devices, is quite another. A person can obviously not claim impunity if he advances his political belief by resorting to criminal activities and if he does, he can not allege that his trial is of political nature. A common criminal can not seek protection even under the Refugee Convention. Most of the Extradition Treaties exclude common crimes fxrom the exclutory lists.

We have no reason to be at variance with the theme that the Appellant was not convicted of an offence punishable under Section 302 of the Penal Code or Section 9 of the Women and Children Repression Act. He was tried, convicted of and sentenced under a Special Law enacted by our own Parliament. By this enactment the legislators have drawn a distinction between a murder as punishable under Section 302 of the Penal Code and a rape punishable under Section 9 of the Women and Children Repression Act (1) on the one hand and murder or rape as being a crime againstd Humanity on the other by adding some other felonies with murder and rape bringing those pre-existing offecnes under one umbrella of Crime against Humanity and making murder and rape part of that crime, if it is committed against civilian population, which is not a requirement under Section 302 of the Penal Code. So, while under

Section 302 of the Penal Code, suffice it will to prove a case of ordinary murder or rape, "civilian population is a sine qua non to prove a crime under Section 3(2)(a) of the Act, because the requirements of civilian population is explicitly figured in the Act. Crime against Humanity by itself in not an offence, it becomes an offence when any of the individual offences enveloped therein, is committed against civilian population.

The question is whether the attack has to be widespread or/and systematic.

Mr. Razzak submits that an indictment under Section 3(2)(a) can not stand unless prosecution proves that the acts were wide spread or systematic. He refers to International law. I have already stated that International Law is not applicable. So far as the act is concerned, there is nothing in Section 3(2) or in any other Section of the Act which imposes such a burden upon the prosecution. This is a requirement under the Rome Statute, but the Appellant was not indicted under the Rome Statute, nor, for the reasons elaborated on the non-applicability of Public International Law, induction of Rome Statute permissible where our own law sufficiently covers the area. Actus reas of an offence under Section -3 (2) of the Act is not dependent upon it being wide spread and / or systemic.

We would nevertheless add that given the fact that the whole world knows what went on in Bangladesh in 1971 and given that it has been proved by evidence that the Appellant committed the offence with a view to obliterate the war of Liberation and the cherished aspiration of the Bengali people to attain Liberation, in conjunction with Paki army which was bent to crush that aspiration in a planned, pre-meditated and systematic manner through countrywide operation, it is axiomatic, that the offences formed part of systematic and widespread operation and hence the same stand proved any way on Judicial notice of fact of common knowledge.

Although the Act does not envisage the action to be part of wide spread and systematic operation, the evidence, nevertheless, proved beyond reasonable doubt the acts of which the Appellant was a party was indeed part of wide spread and systematic attack. "Widespread" has been defined in Prosecutor-v- Tadic by the Trial Chamber, as a concept which includes massive, frequent, large scale action carried out collectively with considerable seriousness and directed against multiplicity of victims.

It was also held that inhuman act against the population in one Municipality would suffice. Page-1050, Archbold /1051

The Trial Chamber in Tadic states that systematic indicate a pattern or methodical plan which is thoroughly organised and part of a common policy involving substantial public or private resources.

In Prosecutor –vs- Kunarac et al it was held that the existence of a plan or a policy may be evidentially relevant but is not a legal element of the crime. Archbold –Page- 1051

Apart from ample evidence that have been adduced to substantiate this element, the fact that the Pakistani authority with the help and involvement of their Bengali collaborators clamped down with widespread and systematic attack upon Bengali civilian population in a planned and methodical and authenticated manner is so universally known a fact one can, without any hesitation, take judicial notice of that fact and since evidence prove beyond doubt that the Appellant resorted to those offences to give effect to the said Pakistani plan, it goes without saying that the attack carried out by him was but part of wide spread and systematic attack as planned and implemented by the Pakistani authority. The Tribunal arrived at the same factual conclusion.

Judicial Notice

In Bagosora et al, matters of common knowledge were described as "facts which are not subject to dispute among reasonable persons, including common or universally known facts such as historical facts, generally known geographical facts and the cause of nature, or facts that are generally known within the area of the Tribunal's territorial jurisdiction" as well as "facts which are readily verifiable by reference to a reliable and authoritative source."(Prosecutor Vs Bagosora etal, Prosecutor Vs Ndindliy Imaua et al)

It was held in Prosecutor Vs Karemera et el that Judicial Notice of facts of common knowledge should not be refused on the ground they constitute legal conclusions or elements of the charged offence. (Archbold Page- 779)

In the case of Prosecutor-vs-Karemera et al it was also held that "Judicial Notice can, be taken of the acts and conduct of persons allegedly under the responsibility of the accused, such as alleged subordinates, alleged members of a joint criminal enterprise, and persons the accused

is alleged to have aided and abetted, as well as facts related to the existence of a joint criminal enterprise (Prosecutor-vs-Karemera et al) Archbold-Page-784.

Mr. Razzak submits that the prosecution was tied with the onus to prove that the alleged offences were directed against civilian population but had failed to discharge that onus.

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

The phrase civilian population is not a term of art, nor a delicate legal jargon. These two words are very simple, which attract no complication and their meaning can very easily be ascertained by reference to any credible English dictionary, including Oxford Dictionary, according to which "civilian" means a person, not in the armed services or the police force. According to the decisions of the UN created crime tribunals, to qualify as civilian population, they must be non-combatant. The evidence adduced clearly established that all the victims were non-combatant. We rely on the ordinary dictionary meaning cannon of interpretation.

The Trial Chamber of ICT-Y held in Prosecutor-v-Tadic (Judgment 7th may 1997) that the requirement that the acts must be directed at a civilian population does not mean that the entire population of a state or territory must be subjected to attack, adding that "the emphasis is not on the individual victim but on the collective".

Archbold's International Criminal Courts, Practice, Procedure and Evidence. 3rd Edition, states, by reference to the ratio expressed in decided cases, "It is, however, not required that every act be directed against a collective of civilians, provided that the act formed part of widespread or systematic attack against a civilian population. "(Page 1046)

The Appeal Chamber of ICTR in Prosecutor-v-Nahiman at el, popularly dubbed as medicase (28th November 2007), held save for extermination, "a crime need not be carried out against a multiplicity of victims in order to constitute a crime against humanity. Thus an act directed against a limited number of victims, or against a single victim, can constitute a crime against humanity, provided it forms part of a widespread or systematic attack against a civilian population."

In the instant case there are ample evidence to support the allegation that the Appellant's acts formed part of widespread attack. Evidence prove beyond doubt that the Appellant's acts, as the Tribunal below held, were not isolated ones, but part of a wide spread plan to thwart the Liberation War.

Archbold, with reference to Vukovor Hospital Decision, states, "It is not required that each act which occurs within the attack be widespread or systematic, provided that the acts form part of an attack with these characteristic." (Page 1048)

With reference to Prosecutor-v-Tadic, Prosecutor-v-Kunarac et al Appeal Chamber 12th June 2002, Prosecutor-v-Blaskic Appeal Chambers, 29th July 2004, Archbold expresses as follows;

"In other words, if some murders, some rapes, and some beatings take place, each form of conduct need not be widespread or systematic, if together the fact satisfy either of these, conditions. The individual action themselves need not be widespread or systematic, provided that they form part of such an attack. The commission of a single act, such as one murder, in the context of a broader campaign against the civilian population, can constitute a crime against humanity (see, Judic Judgment, para- 649). "Clearly, a single act by a perpetrator taken within the context of a widespread or systematic attack against a civilian population entails individual criminal responsibility and one individual perpetrator need not commit numerous offences to be held liable." The Blaskic Appeal Judgement para, 101, emphasised "that the acts of the accused need only be a part of this attack, and all other conditions being met, a single or limited number of acts on his or her part would qualify as a crime against humanity, unless those acts may be said to be is dated or random". Also see, Vukovar Hospital Decision, Para 30, and Prosecutor Vs Brima et al. Jail Judgment, June 20.2007).

Allegation of Impartiality against of Witnesses

The Appellant's allegation that the witnesses are partisan is simply a travestry of the truth. There is no evidence that P.Ws. 2 ,3,4, 5, 7, 8 and 10 are connected with the government or the party in power. Evidence are that some of them were involved with the Liberation War and some are relatives or friends of the victims.

Reasons dictate that as Freedom Fighters , their only interest would be to see that those who were the real culprits in 71 should be punished, not the framed ones. Similarly the close ones of the victims also would not like to see innocent people punished : their interest must also be to see real culpits are taken to task.

Criminal Appeal No. 24 of 2013.

This appeal has been preferred by the Chief Prosecutor. By this appeal he has challenged the finding that (1) the prosecution failed to prove charge No. 4 and (2) complained that the sentence passed was lenient.

Prosecution's right to appeal against sentence did not exist in the un-amended Act and thus it was not open to the prosecution to challenge a Tribunal's decision on sentence. By Section 3 of Act no. III of 2013 old Section 21 was substituted by new S. 21, of which new sub-section (2) vested right of appeal against sentence for the first time on to the government, or the complainant, or the informant, without disturbing the convict's pre-existing right to appeal. Right of appeal by the convict invoking original section 21 was an one way traffic. The Act, however was amended on 13th February, 2013, some eight days after the Appellant of Criminal Appeal No. 25 of 2012 was convicted.. Sub-section (2) of amended section 21 now fortifies the prosecution with an equal right of appeal, thereby assuring equality.

Mr. Razzak contended that acquittal means acquittal as a whole, not in respect to single charge and that while he accepts that the amended version is not ultra vires the Constitution in view of Article 47, the amendment would not, however, apply to the present Appellant of Appeal no. 25because the same was brought about after the proceeding before the Tribunal terminated on delivery of the judgment and during the period when no appeal was pending either.

Mr. Mahbubey Alam, the learned Attorney General on the other hand argued that because of Article 47, the applicability of the amended version cannot be challenged and also that it is applicable to the Appellant because it was enacted within thirty days period, during which the Appellant's right to lodge an appeal was subsisting.

On the first of these two issues, i.e. whether acquittal of a specific charge, as opposed to acquittal from the proceeding as a whole is appealable, I do not encounter any dilemma.

A person may be, indeed, is quite often, charged under various counts. For example he may face charges for murder under section 302, for attempt to commit murder under section 307, for grievous hurt under section 326 of the Penal Code at the same time in one and only proceeding.

In the event, which is not uncommon, he is found not guilty of murder but guilty of attempt or grievous hurt or even for homicide not amounting to murder under Section 304 of the Penal Code, will the prosecution not be competent to lodge an appeal against acquittal on the count of murder? Not only common sense, but also high preponderance of authority show that the appeal will be quite maintainable. So the contention that acquittal on one charge is not appealable is not consistent with the legal scheme.

The next question is whether the Tribunal was right to acquit the Appellant of Charge No. 4.

For the interest of convenience I disussed the evidential aspect in relation to Charge No. 4., when I was considering the factual aspect in relation to other charges which fell within Criminal Appeal No. 25 of 2013, supra, and arrived at the invariable finding that the Tribunal below misdirected itself in evaluating and analysing the evidence in its proper context and thereby caused miscarriage of justice by acquitting the appellant of this charge.

I am therefore, poised to set aside the Tribunal's negative finding on this charge and allow the Chief Prosecutor's appeal on charge No. 4 holding that the evidence proved the case under Charge No. 4 against the Appellant of Criminal Appellant No. 25 of 2013 beyond reasonable doubt.

Whether Amendment Made in 2013 to Act XIX of 1973 Applicable to the Present Appellant.

This is one of the two questions for the resolution of which we asked seven amici curiae to assist us, whose opinion are figured below.

At the inception it has to be borne in mind that the vires of the amended version has not been shaken by any High Court Division. Indeed it appears to be accepted by all concerned that the amendment satisfied the test of constitutionality and is hence valid. Indeed Mr. Razzak also concedes that the amendment itself is intravires, but it can not apply to the Appellant.

Opinion of the Amici Curiae on this question are as below:

Mr. T. H. Khan.

Although the instant amendment has been given retrospective effect from 14.7.2009, it will not be applicable in respect of the Convict Appellant, Addul Quader Molla because, on the date of the amendment, i.e., 18.2.2013, the Tribunal had become functus officio, since no proceeding was pending before the Tribunal as far as the present case is concerned.

There are numerous cases which held that retrospective laws are not obnoxious to constitutional objection, while in others they have been held to be void. The different decisions have been based upon facts making the different rulings applicable. There is no doubt of the right of the legislature to make laws which reach back to and change or modify the effect of prior transactions, for example, where such a statute attempts to cure omissions, defects on innocent mistakes in legal proceedings, instruments and where they are of the nature of irregularities only, and do not extend to matters of jurisdiction. However, legislation of this description is exceedingly liable to abuse. Therefore, it is always a sound rule of construction to give a statute (in this case, the amendment) a prospective operation only. In fact, many countries around the world have deemed it important to forbid such laws altogether by their constitutions.

If Parliament had intended that this amendment would also apply to the cases which have already been disposed of by the Tribunal prior to the amendment, Parliament would have used unmistakable words making its intention clear by making specific reference to the judgment passed by the Tribunal. Since no such specific reference has been made in the amendment, it cannot be said that Parliament intended the amendment to be applicable to the cases disposed of by the Tribunal before the enactment of the amendment.

In my opinion, there is no scope of making the provisions of the amendment applicable to the case of Abdul Quader Molla as the amendment was enacted 14 days after the judgment was passed by the Tribunal. The present case, therefore, must be determined on the law as it stood when the judgment was rendered.

Mr. Rafique –Ul Huq:

Section 1(2) of the said International Crimes (Tribunals) (Amendment) Act, 2013 gave effect to the said new section 21 with effect from 14.7.2009.

Section 1(2) of the said Act of 2013 is a valid peace of legislation and in view of the principle of "Presumption of Constitutionality", the said section 1(2) of the said act of 2013 is valid and constitutional unless the same is declared unconstitutional by the Supreme Court of

Bangladesh. Therefore, it shall be deemed as if the said new section 21 were in the said Act of 2013 from 14.7.2009. Hence, the Government has all the right to prefer appeal against the conviction of Quader Molla as if the said provision were in existence as of the date of limitation of proceeding of Quader Molla, conviction and sentence of Quader Molla and as of the date of preferring the appeal.

Article 47(3) of the Constitution save any provision of law enacted for the purpose of prosecution of any person, who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law from being void or unlawful due to inconsistency, if any with the Constitution of Bangladesh. Therefore, even if, the said section 1(2) of the said Act of 2013 were inconsistent with any provision of the Constitution of Bangladesh, still the said section 1(2) of the said Act of 2013 cannot be declared void or unlawful due to any such inconsistency with the Constitution, if at all. Hence, the constitutionality of section 1(2) of the said Act of 2013 being protected by the Constitution itself, the said new section 21 of the said Act of 1973 shall be treated to have effect from 14.7.2009. Therefore, the Government can prefer appeal under the provision of the said new Section 21 of the said Act of 1973 as of right.

Mr. M. Amir-Ul-Islam:

The amendment made to section 21 of the International Crimes (Tribunal) Act, 1973 on 17.02.2013 was done in accordance with law and the following case laws are relevant here:

In the case of Rao Shiv Bahadur Sing and another Vs. The State of Vindhaya Pradesh, AIR 1953 SC 394, a question arose from the fact that the charges as against the two appellant referred to the offences committed as having been under the various sections of Indian Penal Code as adopted in the State of Vindhaya Pradesh by ordinance No. XLVIII of 1949. This ordinance was passed on 11th September, 1949, while the offences themselves were said to have been committed in the months of February, March and April, 1949, i.e., months prior to the Ordinance. It was held by Jagannadhadas J. in interpreting Article 20(1) of the Indian

constitution, "In this context it is necessary to notice that what is prohibited under article 20 is only conviction or sentence under an ex post facto law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a court different from that which had competence at the time cannot ipso facto be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular court or by a particular procedure, except in so far as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved".

In this instant case, the 2013 Amendment, cannot ipso facto be held unconstitutional because the amendment was made for the cause of equality and justice to be decided by the Apex Court for both the side, the Appellant and the prosecutor for the final deliberation on equity and justice which is neither by way of discrimination nor by the violation of any other fundamental right.

Though the amendment made to section 21 of the International Crimes (Tribunal) Act, 1973 on 17.02.2013 was given an effect from 14.07.2009, but the operation of the amendment dated 17.02.2013 is prospective as it allows the Appeal to be filed within thirty (30) days. Therefore, the time reference is prospective. Now the question is has the prosecution indicted the accused about the commission of any act which was not at the relevant time a violation of any law. Therefore the question is not, has the accused's action been in violation of law when committed or has he been convicted or sentenced for an act which is being an act which was lawful and an act which was not violation of law ? In this case the accused has neither been convicted of any offence which was not a violation of law at the time of commission, nor has been subjected to a greater or different penalty. Thus amending statutes which enlarge a class of persons who may be competent to appeal in criminal cases against a sentence are not ex post facto in their application to prosecutions for crimes committed prior to their passage; for they do not attach criminality to any act previously done which was innocent when done; nor aggravate any crime theretofore committed, nor provide a greater punishment than was prescribed at the time of its commission, nor do they alter the degree, or lessen the amount or measure, of the proof which was made necessary to conviction when the crime was committed. The crime for which the present respondent was indicted, the punishment prescribed therefor and the quantity or the degree of proof necessary to establish his guilt, all remained unaffected by amending section 21 of International Crimes (Tribunal) Act, 1973.

Article 35 (1) of the Constitution of the Peoples Republic of Bangladesh embodies the underlining objection to ex post facto laws. This Article 35(1) is exactly Article 20 (1) of the Constitution of India and Article 6 of the Constitution of Islamic Republic of Pakistan 1956. International Crimes (Tribunal) Act 1973 is excluded from the ambit of Article 35 (Protection in respect of trial and punishment) due to Article 47A and Article 47(3) of the Constitution. Even if it was not protected by Article 47 A and 47(3) it would not violate the provisions of Article 35. Article 35(1) is as follows: "No person shall be convicted of any offence except for

violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence".

In the case of Dobbert vs. Florida (1977) 432 US 282, Ernest Dobbert murdered two of his children between December 31, 1971, and April 8, 1972. On July 17, 1972, the Supreme Court of Florida invalidated the death penalty provision of the murder statute in effect at the time of Dobbert's crimes. Five months later, the Florida legislature enacted a revised death penalty statute for murder in the first degree. In accordance with the provisions of the 1972 revised statute, Dobbert was convicted in 1974 of first degree murder in the Fourth Circuit Court of Florida and sentenced to die notwithstanding a jury recommendation of life imprisonment. The conviction was appealed to the Supreme Court of Florida on several grounds, including an argument that the imposition of the death sentence was a violation of the ex post facto clause of the United States Constitution. The Supreme Court of Florida affirmed the conviction without ruling on the ex post facto argument. In a 6-3 decision, the United States Supreme Court also affirmed, holding that the retroactive application of the death penalty statute was not a violation of the constitutional prohibition of ex post facto laws because Dobbert had received "fair warning" of Florida's intention to seek the death penalty for his crimes. The court here relied on the principle set out through the case of Hopt vs. Utah and held that "even when a retroactive procedural change works to the particular disadvantage of an accused the Supreme Court has held the change as constitutional, because it does not involve a substantive interest in which the accused has a vested right."

In the case of Hopt Vs. People of the Territory of Utah, (1884) 110 US 574, the plaintiff in error and one Emerson were jointly indicted in a court of Utah for the murder, in the first degree, of John F. Turner. Each defendant demanded a separate trial, and pleaded not guilty. Hopt, being found guilty, was sentenced to suffer death. The judgment was affirmed by the supreme court of the territory. But, upon writ of error that judgment was reversed, and the case remanded, with instructions to order a new trial. Upon the next trial, the defendant being found guilty, was again sentenced to suffer death. That judgment was affirmed by the supreme court of the territory. Defendant's claim in this case was the ex post facto change in the civil practice act should not be applicable in his case through which one of the co-accused's confession was used against him for the conviction. Section 378 of the Civil practice Act of Utah stated that persons against whom judgment has been rendered upon a conviction for felony, unless pardoned by the governor, or such judgment has been reversed on appeal, shall not be witnesses, which was repealed on the ninth day of March, 1882, after the date of the alleged homicide, but prior to the trial of the case. It was contended that such repeal, by which convicted felons were made competent witnesses in civil cases, did not make them competent in criminal cases; in other words, for such is the effect of the argument, those who were excluded as witnesses, under the civil practice act, at the time the criminal procedure act of 1878 was adopted, remained incompetent in criminal cases, unless their incompetency, in such case,

was removed by some modification of the civil practice act expressly declared to have reference to criminal prosecutions. The Supreme Court held that "it was intended by the criminal procedure act of 1878 to make the competency of witnesses in criminal actions and proceedings depend upon the inquiry whether they were, when called to testify, excluded by the rules determining their competency in civil actions. If competent in civil actions, when called, they were, for that reason, competent in criminal proceedings. The purpose was to have one rule on the subject applicable alike in civil and criminal proceedings. The court principally relied on the rational that statutes which simply enlarge the class of persons who may be competent to testify in criminal cases are not ex post facto in their application to prosecutions for crimes committed prior to their passage; for they do not attach criminality to any act previously done, and which was innocent when done, nor aggravate any crime therefore committed, nor provide a greater punishment than was prescribed at the time of its commission, nor do they alter the degree, or lessen the amount or measure, of the proof which was made necessary to conviction when the crime was committed. The crime for which the present defendant was indicted, the punishment prescribed therefore, and the quantity or the degree of proof necessary to establish his guilt, all remained unaffected by the subsequent state".

In the case of Mohammad Alam and 3 others Vs. The state [19 DLR (1967) 242], the incident that led to the prosecution of the Appellant took place on the 18th January, 1963. They were committed for trial to the Court of Session, by order of the committing Magistrate, dated the 6th June, 1963. Till that time the Code of Criminal procedure provided for trial of such cases by the Court of Sessions with the aid of assessors. On the 1st of April, 1964, however, the Code was amended by Provincial Act XVII of 1964 which changed the law so far as the Province of West Pakistan is concerned. As the result of the amendment, introduced into the Code by this Act, all trials before a Court of Session were ordered to be with the aid of a jury or by the Judge himself. It was held by S.A. Rahman, J, that, "Where the legislature has made its intention clear that the amending Act should have retrospective operation, there is no doubt that it must be so construed, even through the consequences may entail hardship to a party. But even without express words to that effect, retrospective effect may be given to an amending law, if the new law manifests such a necessary intendment. With regard to the procedural laws, the general principle is that alternations in procedure are retrospective unless there be some good reason against such a view. If a statute deals merely with the procedure in an action, and does not affect the rights of the parties, it will be held to apply prima facie, to all actions pending as well as future. It is only if it be more than a mere matter of procedure, that is if it touches a right in existence at the passing of the new Act, that the aggrieved party would be entitled to succeed in giving a successful challenge to the retrospective effect of the new Act……… As a result of above discussion, I have reached the conclusion that the trial in the present case cannot be said to have been vitiated by the failure to call assessors for aiding at the trial".

It is also pertinent to mention that the instant appeal is against an order of acquittal or an order of sentence of convicted Abdul Quader Molla, therefore there is no termination of proceeding it is still pending before this Hon'ble Court.

The amendment made to section 21 of the International Crimes (Tribunal) Act, 1973 on 17.02.2013 is applicable to the accused-appellant for the following reasons:

Firstly, the amendment dated 17.02.2013 created a right of appeal for the Government or the Chief Prosecutor enabling to appeal against inadequate sentence.

Secondly, in no way this right of appeal is taking away any right of the accused-appellant, who is already an appellant before the Apex Court, both against his conviction and sentence thus the right is preserved and in no way disturbed. The amendment to section 21 of International Crimes (Tribunal)Act, 1973 has incorporated a substantive right i.e. right to appeal by the complainant or the informant; through which the procedure for appeal has been modified as a result both the parties has been put on an equal footing. This is a beneficial law which renders a better scope of scrutiny so that equal justice could be ensured. The amendment has brought the judgment and sentence to go under scrutiny to ensure equality of liability of the accused which is the guideline for criminal jurisprudence. The degree of offence being equal the punishment must be equal under equal circumstances. This Hon'ble Court has to justify the question, if killing one person would be given death sentence how for being an accomplice in the mass killing of 300-350 unarmed civilians one gets life sentence.

Thirdly, right of appeal of the Government can't be termed as prejudice having a better scrutiny both on law and fact. If there is any unequal treatment in awarding punishment varying a degree in equal circumstance it is likely to violate the preamble of the Constitution using a twin expression 'equality and Justice' which means Justice without equality is derogation of Justice itself. The preamble of the Constitution which is the beacon light for the entire Constitution particularly reflects that justice and equality can be the prime aim for the 2013 Amendment of the ICT Act. Therefore, it enhances the cause of equality and justice to be decided by the Apex Court as the amendment Act creates the scope for both the sides, the Appellant and the Prosecutor for the final deliberation on equality and justice. So, it is pertinent that it can't be dismissed under the garb of so called plea of retroactivity, while the law is evidently applicable. The law does not affect the finding of the proceeding. It merely allows the Highest Court to entertain the appeal and sentence as well providing the scope for complete justice to be delivered upon equal punishment for equal offence incurring equal liability.

Fourthly, equality and justice are the cordial principles in dispensing sentence and as the Courts and Tribunals are held at very high pedestal in public mind in ensuring justice equal justice has to be reflected, keeping in mind the twin concept in the constitution-equality and justice. Article 27 also guarantees the concept of equality which cannot be oblivion on the beacon light that is enshrined in the Preamble of the Constitution.

Fifthly, the 2013 amendment will facilitate the resolving issue which was created after inadequate punishment to bring the perpetrators into justice and the people's will and the thirst

for justice should be taken account while adjudicating justice. In addition, the rights guaranteed under Article 31, clauses (1) and (3) of Article 35 and Article 44 of the Constitution shall not apply to the accused-Appellant. Moreover, the ICT Act 1973 has the protection under Article 47 (3) of the Constitution, whereas the Article 47(3) are one of the basic provisions of the Constitution under Article 7 B of the Constitution which are not amendable.

Lastly, This amendment has to be interpreted in accordance with Article 103 (2) of the Constitution.

This is significant that according to Article 103(2) of the Constitution, appeal has been contemplated against any judgments, decrees, orders or sentence of the High Court Division. The said Article has given an additional enumeration for appeal in such other case as may be provided by the Act of the Parliament. The Parliament in this case responded evidently about the concept of equality integrated in the concept of justice with clear intention provided for the highest scrutiny of the matter by the Apex Court.

Mr. Mahmudul Islam:

Mr. Mahmudul Islam expressed that so far as right to appeal by the state existed even before the 2013 amendment, provisions introduced by the said amendment can not be said to be retro-active.

By the said amendment ambit of the state's right of appeal only has been extended. It is a procedural matter. By this no change has been brought to any substantive law. Field of the offence has not been expanded, nor has the punishment been enhanced.

It is not true that any vested right of the Appellant has been infringed or impaired. There has been no interference or pruning in the Appellant's right to appeal.

Since the vires of the amended provision is not questioned, but rather accepted, and if the same is applicable to others, there exists no reason why it should not apply to the instant Appellant.

According to him the contention that the amendment was made after the proceeding terminated is not based on sound proposition because his right to prefer an appeal was still in subsistence.

He also opined that the appellate forum's inherent power to enhance sentence under the doctrine of enhancement was always there anyway and as such it can not be said that the Appellant has been prejudiced in substance by the amendment.

He cited Pakistan Supreme Court's decision in Sayeedur Rahman –v- the Chief Election Commission, Dhaka (17 DLR SC 23), where the Supreme Court held that once an appeal has been admitted in the Supreme Court against the decree or order of the High Court, the matter becomes sub-judice again and thereafter the Supreme Court has seisin of the whole case. The Supreme Court, therefore, can take into account the provisions of the new Act which repealed (the earlier) Act and grant relief accordingly even though the judgment of the High Court had been correct according to law as it then stood. As during the pendency of the appeal the(new)

Act repealed the bar of disqualification as provided in (the old Act), the disqualification would not be applicable to this case".

The Supreme Court held that the appellate court is to give effect to the change of law made while the case is pending in the appellate court. It further stated that the appellant will be entitled to take advantage of the repealing provision.

Mr. Mahmudul Islam went on to opine that irrespective of this courts power under Article 104 as the Appellate Division, this court as the appellate forum is also fortified with the fundamental principle of jurisprudence to enhance sentence that is deemed inappropriate, adding that the doctrine of fundamental fairness is an essential component of adjudication.

Mr. Rokanuddinh Mahmud:

International Crimes (Tribunals) Act, 1973 (Act XIX of 1973) was enacted on 20.07.1973. Section 21 granted a convict a right of appeal to the Appellant Division against conviction and sentence under Section 3 provided it is filed within 60 days from the date of the order of conviction and sentence.

There was no right of appeal granted to the prosecution /complainant/informant/Government against an order of acquittal or sentence under the Act.

International Crimes (Tribunals) Act, 209 was enacted to amend Section 21 to grant the Government a right of appeal to the Appellate Division against the order of acquittal to be preferred within 60 days.

International Crimes (Tribunals) (Second Amendment) Act, 2012 was enacted to amend Section 21 providing for appeals against conviction and sentence by the accused and against acquittal by the Government to be preferred within 30days.

International Crimes (Tribunals)(Amendment) Act, 2013 was enacted on 18.02.213 amending Section 21 granting Government/complainant/informant a right of appeal to the Appellate Division against an order of acquittal or sentence within 30 days from the date of the order.

Section 1 (2) of the amending Act of 2013 made the amendment expressly retrospective stating that it would be effective from 14.07.2009 which was the date when the International Crimes (Tribunals)(Amendment)Act, 2009 was passed for the first time amending Section 21 granting the Government a right of appeal against an order of acquittal.

The convict-appellant was convicted and sentenced to life imprisonment by the International Crimes Tribunal on 05.02.2013. The applicable law as on that date required him to file the appeal within 30 days, but the Government had no right of appeal against his sentence as it was not an order of acquittal.

The amendment in question was enacted on 18.02.2013, a date which fell within 30 days of the date on which the convict-appellant was sentenced. Following the amendment, the appeal was filed by the Government within the said 30 days period.

In this regard, the provisions of Article 47 (3) of the Constitution must be borne in mind which categorically and expressly provided that notwithstanding anything contained in the

Constitution, no law providing for prosecution or punishment of persons accused of crimes against humanity etc. shall be void or unlawful on ground of the same being inconsistent with any part of the Constitution.

Article 47A (1) makes fundamental rights guaranteed under Article 31, clause (1) and (3) of Article 35 and Article 44 inapplicable to any person to whom a law specified in clause (3) of Article 47 applies, i.e. a person such as the convict-appellant.

Article 47A(2) bars convict-appellant from having the right to move the Surpeme Court for any of the remedies under the Constitution. If the convict-appellant is allowed now to raise the question of validity of the amendment in question in any of these appeals, it would amount to allowing him to exercise a right which the Constitution has expressly deprived him of. What is not allowed to be done directly cannot be done indirectly.

The Constitution (First Amendment) Act 1973 (Act No. 15 of 1973) was enacted on 15 July 1973 to insert clause (3) of Article 47 and Article 47A in order to enable the Parliament to pass the International Crimes (Tribunals) Act, 1973 on 20th July 1973.

First, the amendment makes it expressly retrospective. Secondly, such amendment is protected by the aforesaid constitutional provision. Besides, when there is an express retrospective effect, having the sanction of the Constitution, there is no scope for the Court to interpret as to whether the law has a retrospective effect or not, and whether it is applicable to the convict-appellant. It is applicable to the convict-appellant.

The court must first be satisfied that the amendment is in fact retrospective so far as this appeal against sentence is concerned before any presumption against retrospectivity is applied. A statute is retrospective which takes away or impairs any vested right acquired under the existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. Other statutes, though they may relate to acts or events which are past, are not retrospective in the sense in which the word is used for the purposes of the rule under consideration.

In general, when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to the law as existed when the action was begun, unless the new statute shows a clear intention to vary such rights. But, if the necessary amendment of a statute is to affect the rights of the parties to pending actions, the court must give effect to the intention of the legislature and apply the law as it stands at the time of the judgment even though there is no express reference to pending actions (Ref: Hutchinson vs. Jouncey 1950 1 KB 574).

The effect of a change in the law between a decision at first instance and the hearing of an appeal from that decision was discussed by the House of Lords in the case of Att.-Gen.v. Vernazza 1960 A. C 96, the facts of which are: in April 1959. at the suit of the Attorney-General under the supreme Court of Judicature Act 1951, the High Court made an order prohibiting Vernazza, as a vexatious litigant, from institution new proceedings without leave. In

May, the Supreme Court of Judicature (Amendment) Act was passed and section 1(1) gave the High Court power to prohibit the continuance of existing proceedings without leave.

The House of Lords held that under section 1(1) the Court of Appeal would have power, on Vernazza's appeal against the original order, to make the new kind of order with regard to existing proceedings. Lord Denning regarded section 1(1)as procedural only, for it did not prevent a litigant from pursuing any remedy which was properly open to him, but only from carrying proceedings which were an abuse of the process of court.

Lord Denning held that it was "clear that in the ordinary way the Court of Appeal cannot take into account an statute which has been passed in the interval since the case was decided at the first instance, because the rights of litigants are generally to be determined according to the law in force at the date of the earlier proceedings. But it is different when the statute is retrospective either because it contains clear word to that effect or because it deals with the procedure only, for then Parliament has to show an intention that the Act should operate on pending proceedings, and the Court of Appeal are entitled to give effect to this retrospective intent as well as a court of first instance". For this purpose, however, a statute which takes away the right of appeal is not to be regarded as affecting mere matters of proceedings.

Thus in Vernazza case, Lord Dening held that even if the 1959 Supreme Court of Judicature (Amendment) Act did affect substantive rights, it contained clear words to show that the Parliament intended it to be retrospective, for it empowered the High Court to make an order that "any legal proceedings instituted by the vexatious litigant in any court before the making of the order shall not be continued by him" without leave.

In the instant case, parliament has expressly stated that the amendment will have retrospective effect and as such there is no scope for construction or interpretation.

The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the courts. No person has a vested right in any course or procedure, but only the right of prosecution or defense in the manner prescribed for the time being, by or for the court in which he sues, and if an Act of Parliament alters that mode of procedure he can only proceed according to the altered mode.

Lord Blackburn held in the case of Gardner vs. Lucas (1878) 3 App. Cas. 582 (603) that "Alterations in the form of procedures are always retrospective, unless there is some good reason or other way they should not be".

The Case of R v The Inhabitants of St. Mary, Whitechapel (1848) 12 QBR 120, 116 ER 811 is a case in point. Section 2 of the Poor Removal Act, 1846 provided that no woman residing in any parish with her husband at the time of his death would be removed from such parish, for twelve calendar months next after his death so long as she continued to be a widow. It was sought to remove within 12 months period a woman whose husband had died before the Act was passed, on the ground that to make the section apply in such a case was to construe it retrospectively, the right to remove being a vested right which had accrued on the men's

death. But the Court held otherwise. Lord Denman CJ held: "that the Statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective Statute because a part of the requisite for its action is drawn from time antecedent to its passing".

Similarly, in the instant appeal, the amended Section 21 is in its direct operation prospective, as it relates to an appeal filed by the Government in future after the enactment (but before expiry of the original 30 days limitation), and it cannot be properly called a retrospective statute because a part of the requisite for the appeal is drawn from a time antecedent to the passing of the amendment.

In other words, the operation of the amended Section 21 with respect to the appeal filed by the Government against the sentence of the convict-appellant is not, properly construed, retrospective, inasmuch as that the appeal itself has been filed after the amendment to Section 21 has come into effect, but still within the 30 days period running from the date of the sentence as prescribed by the amended Section 21; however, a part of the requisite for the appeal, i.e. the date of the sentence, is drawn from a time antecedent to the date on which Section 21 was materially amended.

The convict was sentenced before the amending Act was enacted. A right of appeal was granted before expiry of the period of limitation for filing the appeal. The fact that a prospective right is to be measured by an antecedent fact does not of itself make the provision for that right retrospective.

The case Re A Solicitor's Clerk (1957) 1 WLR 1219 is a case in point: The clerk was convicted in 1953 for four charges of larceny, but the charges did not relate to money or property of his employer or employer's client and so an order prohibiting solicitors from employing him could not be made under the provisions of Section 16 of the Solicitors Act 1941. The Solicitors (Amendment) Act, 1956 amended Section 16 so as to include conviction for larceny irrespective of ownership. The Court held that the amendment was not a true retrospective provision. Lord Goddard CJ held "it enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past is the cause or reason for the making of the order, but the order has no retrospective effect. It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable or if a penalty were inflicted for having acted in this or any other capacity before…. This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past".

Taking the clue from Lord Goddard, it may be argued that the 2013 amendment to Section 21 enables an appeal to be filed against the sentence of the convict in the future provided it is filed within 30 days period of limitation so fixed by law and the sentence which was passed in the past is the cause or reason for filing of the appeal, but the filing of the appeal itself is free from any retrospective effect in this particular case. Thus, it may be argued that Section 1(2) of the amending Act is superfluous insofar as this particular appeal is concerned.

Similarly, in the case of Master Ladies Tailors Organisation vs Minister of Labour (1950)2 All ER 5225 it was held that the fact that prospective benefit is to be measured by antecedent fact does not necessarily make the provision for that benefit retrospective. This was a case where a law came into force on 15 August 1949 making provision for holiday remuneration calculated on the basis of normal wage to accrue from 1 May 1948 payable when a worker ceases to be employed after it became operative. It was argued that a provision for accrual of remuneration before the law came into force made the law retrospective. Such argument was rejected upon the aforesaid finding.

Section 6 of the General Clauses Act 1897 is not attracted to the instant amendment and is not applicable as there has been no repeal of the original provision of Section 21 of the Act of 1973. The original Section 21 comprises one paragraph with a proviso in the following paragraph. When it was first amended, the original paragraph remained as it is , as subsection (1) and a new subsection namely subsection (2) was added giving the government a right of appeal against acquittal. The proviso in the original Section 21 became subsection (3) and the same also became applicable to the appeal to be preferred by the Government. Subsequent amendment of Section 21 also did not change the original provisions of the said Section. So, by the subsequent amendments there was “no repeal” of the original provision of Sections. Hence, there is no scope for the effect of repeal provision to be applied to the amendment as contained in Section 6 of the General Clauses Act 1897.

The most important aspect to be borne in mind in this regard is inherent power (as well as the practice) of the Appellate Court to enhance the sentence passed by the trial court even when there is no appeal against the sentence by the prosecution (irrespective of whether such right of appeal to the prosecution is granted by law or not). Such inherent power to enhance the sentence is exercised by the Appellate Court in an appeal against conviction and sentence filed by the accused. At the time of admission of appeal preferred by the accused against conviction and sentence, if the Appellate court, upon hearing the accused-appellant and considering the judgment, is of the view that the sentence passed by the trial court is inadequate, it may, while admitting the appeal for hearing, also issue a rule for enhancement of the sentence. Thus, in this case also, irrespective of whether the law is amended or not, whether the right of appeal against the sentence is granted to the Government/prosecution/informant/complainant or not, whether such right of appeal is exercised by them or not, and whether such amendment is retrospective or prospective, this court sitting as a Court of Appeal has the inherent power to enhance the sentence in the appeal filed by the convicted-accused if, upon consideration of the sentence, it is of the view that the sentence given by the trial court is lenient in the attending facts and circumstances of the case.

The question of enhancement may, therefore, also be considered by this Hon’ble Court in the appeal preferred by the convict-appellant irrespective of the appeal preferred by the Government/prosecution.

Ajmalul Hossain QC.

Section 21 of the ICTA contains provisions regarding right of appeal. In the original Section 21 of the ICTA, Government had no right of appeal rather this section states that only a convicted person shall have the right of appeal in the Appellate Division of the Supreme Court of Bangladesh. Section 21 of the ICTA was first amended in July 2009 by section 6 of the International Crimes (Tribunals) (Amendment) Act 2009 in which, inter alia, Government was given the right of appeal only against an order of acquittal. Section 21 of the ICTA was further amended in September 2012 by section 4 of the International Crimes (Tribunals) (Second Amendment) Act 2012 in which the limitation period for filing appeal was made 30 days. Therefore, on 05 February, 2009, when the ICT-2 pronounced the verdict in the case of Abdul Quader Molla, section 21 of the ICTA stood as follows:

21. Right of appeal:

(1) A person convicted of any crime specified in Section 3 and sentenced by a Tribunal shall have the right of appeal in the Appellate Division of the Supreme Court of Bangladesh against such conviction and sentence.

(2) The Government shall have the right of appeal to the Appellate Division of the Supreme Court of Bangladesh against an order of acquittal.

(3) An appeal under sub-section (1) or (2) shall be preferred within thirty days of the order of conviction and sentence or acquittal.

Therefore, given the structure of section 21 of the ICTA on 5 February 2009, the Government would not be able to file appeal against the verdict of the imprisonment for life and 15 years imprisonment as pronounced by the ICT-2 in the case of Abdul Quader Molla. However, the Government had the right to file an appeal only againsdt the order of acquittal as made by the ICTD-2 in respect one of the charges of crime.

The Parliament further amended section 21 of the ICTA on 17 February 2013 by Section 3 of the International Crimes (Tribunal) (Amendment) Act 2013. By this amendment, inter alia, the Government or the complainant or the informant, as the case may be, has been given the right of appeal to the Appellate Division of the Supreme Court of Bangladesh against an order of acquittal or an order of sentence. The International Crimes (Tribunal) (Amendment) Act 2013 has been given retrospective effect from 14 July 2009. Therefore, the amendment made to Section 21 of the ICTA got retrospective effected from 14 July 2009. At present, section 21 of the ICTA stands as follows:

"21. Right of appeal.

(1) A person convicted of any crime specified in section 3 and sentenced by a Tribunal may appeal, as of right, to the Appellate Division of the Supreme Court of Bangladesh against such conviction and sentence.

(2) The Government or the complainant or the informant, as the case may be, may appeal, as of right, to the Appellate Division of the Supreme Court of Bangladesh against an order of acquittal or an order of sentence.

(3) An appeal under sub-section (1) or (2) shall be preferred within 30 (thirty) days from the date of conviction and sentence or acquittal or any sentence, and no appeal shall lie after the expiry of the aforesaid period.

(4) The appeal shall be disposed of within 60 (sixty) days from the date of its filing.

(5) At the time of filing the appeal, the appellant shall submit all documents as may be relied upon by him.

Therefore, by dint of this amendment, the Government derived right to file appeal against the verdict of life imprisonment and 15 years imprisonment as pronounced by the ICT-2 in the case of Abdul Quader Molla. The Government exercised his right and on 3 March 2013 preferred Criminal Appeal No. 24 of 2013 before the Appellate division of the Supreme Court of Bangladesh against both order of sentence and order of acquittal as made in the verdict of the ICT-2 in the case of Abdul Quader Molla. Now, question has arisen in respect of the retrospective effect of the amendment made to section 21 of ICTA in respect of convict appellant. Abdul Quader Molla as at the time of pronouncement of the verdict by the ICT-2 on 05 February 2009, the Government had no right of appeal against an order of sentence.

Article 35(1) of the Constitution provides protection against ex post facto laws. However, in the case of Tarique Rahman Vs. Government of Bangladesh and others, it has been held by the Appellate Division of the Supreme Court of Bangladesh that article 35(1) of the Constitution envisages the prohibition on conviction or sentence under an ex post facto law, not trial of the offence alleged to have been committed or the procedure to be followed in the investigation, inquiry in respect of an offence alleged to have been committed. Parliament has power to give retrospective effect to laws other than laws which retrospectively create offences and punish them.

Article 35(1) of the Constitution is exactly article 20(1) of the Constitution of India and article 6 of the Constitution of Islamic Republic of Pakistan. Article 35(1) of the Constitution embodies the underlying objection to the ex post facto laws though that expression had not been used. Article 1 Section 9 Clause 3 and section 10 of the US Constitution provide that "no bill of attainder or Ex post facto law shall be passed" and "no state shall….pass any bill of attainder ex post facto law…." In Dobbert Vs. Florida's the Us Supreme Court held that procedural changes in the law are not ex post facto. Specifically, it was held in this case that a change in Floridsa's statute altering the methods used in determining whether the death penalty is to be imposed but not changing the amount of punishment for the crime was both procedural and ameliorative and therefore held not ex post facto.

It is submitted that by retrospective effect of the amendment made to section 1 of the ICTA does not increase or alter the risk of getting capital punishment on the part of Abdul Quader Molla. At the time of commission of the offences in 1971, Abdul Quader Molla was aware of the risk as the alleged activities were punishable offence under customary international law. By committing or attempting to commit the alleged offences, Abdul Quader Molla accepted the risk of being prosecuted and sentenced with capital punishment. Therefore, no

derogation of substantive right of Abdul Quader Molla has been made by giving retrospective effect to the amendment of section 21 of the ICTA. "In Nuremberg Trial, the argument that there could be no punishment of crime without a pre-existing law, nulla poena sine lege, was dismissed as inapplicable to the existing facts, since there could be no doubt that the defendants knew they were acting in defiance of international law".

The amendment made to section 21 of the ICTA on 17 February 2013 is not violation of the rules against ex post facto law as provided for by articles 35 (1) of the Constitution as the amendment made to section 21 does not retrospectively create offences and punish them (conviction or sentence) rather it only provides procedure for appeal. Therefore, I am of the view that the amendment made to section 21 of the ICTA on 17 February 2013 with retrospective effect from 14 July 2009 providing for right of appeal against an order of acquittal or an order of sentence by the Government or the complainant or the informant after termination of the proceeding is applicable in respect of convict appellant, Abdul Quader Molla.

In respect of the Second question, my answer is also in the affirmative that the amendment made to section 21 of the ICTA on 17 February 2013 with retrospective effect from 14 July 2009 providing for right of appeal against an order of acquittal or an order of sentence by the Government or the complainant or the informant after termination of the proceeding is applicable in respect of convict appellant, Abdul Quader Molla.

Mr. A.F. Hassan Arif:

On 18 February 2013, Section 21 of ICTA was further amended to give a right of appeal to the 'Government' or the 'complainant' or the 'informant' against an order of acquittal as well as sentence (deemed effective from 14tdh July 2009). The amendment thus is ex post facto law. The Supreme Court of United States at different times has enunciated varying definitions of the phrase "ex post facto law". The early and classic definition was as follows (i) Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action; (2) every law that aggravates a crime, or makes it greater than it was when committed; (3) every law that changes the punishment, and inflicts a greater punishment that the law annexed o the crime when committed; (4) every law that alters the legal rules of evidence and receives less or different testimony than the law required at the time of commission of the offence, in order to convict the offender.

In our constitution Article 35(1) of the Constitution provides protection against ex facto laws.

The instant amendment to the law is procedural change in respect of the right of appeal. It does not make any new offence nor does it increase the gravity of an existing offence under which the appellant convict is being tried. Therefore, it is submitted that, the amendment to section 21 brought about in April 2013 does not fall foul of Article 35(1) of the Constitution. It is further submitted that even if the said amendment is found to be an ex facto law, the convict appellant is barred by Article 47(3) from challenging the existence of the said law as being

unconstitutional. The amendment therefore is a valid legislation; all pending trials are covered by the amendment.

Having said that, a distinction may be drawn between any trial that has been concluded resulting in a past and closed transaction and those cases where the trial is pending. The case of Dafedar Niranjan Singh and another supports the contention that retrospective effect to laws are applicable to pending matters, but where the case has achieved finality, a retrospective law cannot be used to reopen a case which is otherwise past and closed. Similarly, in the case of Delhi Cloth and General Mills Co. Ltd. V CTI, the High Court gave its decision in an income tax matter under Section 66 of the Income Tax Act, 1922, in January 1926. On April 1, 1926, Section 66-A of the Income Tax Act was added to the Act by an Amending Act, giving a right of appeal to the Privy Council. On the question whether the new section destroyed the finality earlier attached to the order of the High Court, their Lordships of the Privy Council observed:

> "the principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in colonial Sugar Refining Co V. Irving, where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in the existence at the passing of a statute, are not to be applied retrospectively in the absence of express enactment or necessary intendment. Their Lordships can have no doubt that provisions which if applied retrospectively, would deprive of their existing finality, orders, which, when the statute comes into force, was final, are provisions, which touch existing right. Accordingly, the section now in question is to apply to orders final at the date when it came into force, it may be clearly so provided, In their Lordships' judgment, therefore, the petitioners in these case have no statutory right of appeal to His Majesty in Council."

It is a substantive right of convicted person to the finality of sentence. The right of appeal is a substantive right granted to the Government, complainant or informant to prefer appeal against inadequacy of sentence. The forum, procedure of preferring appeal limitation is procedural which can always he amended with retrospective effect. None of the parties to litigation has any vested right to such procedure. The procedure may be modified relating to the proceedings of the tribunal. In the instant appeal the trial is past and closed. The sentence on the date of amendment is past and closed by judgment of the Tribunal. The said judgment is a decision of a judicial forum. The judicial decision has attained finality. The right of appeal has been granted after judicial decision has attained finality. The sentence has attained finality subject to law that was prevailing when judicial pronouncement was made. The language of the amendment does not indicate that the concluded judicial pronouncement has been subjected to appeal. As an example, amendment to the Customs Act 1969 made by inserting section 30 A, is

an instance where the effect of judicial pronouncement was nullified specifically. Section 30 A of the Customs Act states as follows:

> "Value and effective rate of duty *Notwithstanding anything contained in any other law for the time being in force or any decision of any court,* for the purposes of section 30, the value and the rate of duty applicable to goods shall retrospectively include the value as determined under Section 25 and any amount of duty imposed under Section 18, 18a or 18B and the amount of duty that may have become payable in the consequence of the withdrawal of the whole or any part of the exemption or concession from duty whether before or after the conclusion of a contract or agreement or the sale of such goods for opening of a letter of credit in request thereof."

The question is whether tribunal concluded judgment covered by otherwise valid amendment in conclusion, the amendment is valid and cannot be questioned, the amendment satisfies all cannons of interpretation without any reservation. The amendments although procedural, nonetheless affects the substantive right of the convict appellant, so far finality to sentence is concerned on the date of amendment.

In Garikapati Veeraya the Supreme Court of India observed that "in constructing the articles of the constitution courts must bear in mind a cardinal rule that statuses should be interpreted, if possible, so as to respect vested right. The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so constructed as to have the effect of altering the law applicable to the claim in litigation at the time when the Act was passed. In the English case of R v. Oliver the Court of Criminal Appeal referring to Buckaman V Button and Director of Public Prosecutions V Lamb observed that "it was there, as here, contended that the offence having been committed before the date of the coming into operation of the Order, the increased penalties could not be imposed. We do not doubt in any way the correctness of his argument that where an enactment alters the rights of persons or creates fresh liabilities, the enactment ought not be held to be retrospective *unless the language is quite unambiguous and clear."*

It is submitted that the language of the amended section does not clearly provide that cases that have achieved finality by judicial pronouncement is amenable to appeal on the ground of inadequate sentence. Such intention cannot be deduced from a prima facie reading of the section 21(3). In the event of the uncertainty, the amendment may not apply to the concluded judgment.

The applicability is not a question of vires of the law because the law is valid in all respect. It is a question of construction of the law. The issue of inadequacy of sentence is not beyond the jurisdiction of Appellate Division. While dealing with the appeal of the convict the Appellate Division is empowered under Article 104 to examine the inadequacy of the sentence, if complete justice so demands.

As the majority of the amici curiae opined, the amending provision is, in my view, applicable in the instant Appllant.

If the constitutionality of the amended legislation is accepted in respect to other convicts, there can be no reason why it shall not apply to the Appellant of Appeal No. 25, a person whose appeal proceeding before this Division was potentially imminent on the date of amendment. It did not achieve finality.

It is true that the amendment was made after the verdict was passed by the trial Tribunal and before the Appellant lodged this appeal. But it is equally true that the amendment was made during the life span prescribed for exercising his right of appeal. So, at that time the petitioner was a potential appellant, who turned to be a real appellant when he exercised his right to appeal. The principle of reason dictates that the period granted for lodging appeal must be included within the appeal proceeding for the purpose of deeming an appeal as continuation of the trial, a theme which attracts no discord.

Over and above, Article 47 of the Constitution acts as a total stumbling block against the Appellant in this respect.

Mr. Razzak contends a right had vested upon his client to the effect that the prosecution would have no right to appeal, the moment the Tribunal passed the Judgment on 5th February 2013, which right can not be taken away because of Section 6 of the General Clauses Act 1897. Having perused Section 6, we find this submission devoid of substance.

Section 6 reads; "where this Act, or any [Act of Parliament] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(c) affect any right, privilege, obligation or liability acquired accrued or incurred under any enactment so repealed;"

It is quite obvious that Section 6 contemplates a very different scenario which is where a previously existing statute that vested a right on a person is subsequently "repealed" and thereby erases or purported to erase that vested right, in the absence of a projected different inention to the effect that person's pre-existing right shall not extinguish.

Here, nothing has been "repealed" by the amendment, rather some new element has been added. The convict's right to appeal has been kept intact without slightest abrogation.

It is true that an amendment may very well include repeal but that is only when by amendment a pre-existing statute or part of it is repealed.

Here by amendment nothing has been repealed, but some new provision has been added, not in substitution of the pre-existing one but in addition there to. Hence this is not a repealing amendment.

As per the Oxford Dictionary, repeal means "revoke" "rescind" or annul a law, or an Act of Parliament etc.

According to wharton's Law Lexicon, repeal means revocation or abrogation. In the case in hand, nothing from the original Act has been "revoked", or rescinded or abrogated. So reliance on Section 6 of the General Clauses Act is out of order.

I fully concur with the views Mr. Mahmudul Islam and Mr. Azmalul Hussain QC expressed which is to the effect that amendment infused into section 21 of the Act is not violation of the rules against ex post facto law as the same does not create new offences nor does it provides for punishment thereof, rather it provides for procedure for appeal only and as such the amendment allowing the prosecution to exercise right of appeal against acquittal or an order of sentence, is applicable in respect to the instant Appellant.

This view is supported by the Appellate Division's decisions in Tarique Rahman-v-Government and Bangladesh and another (63 DLR AD Page-18) where this Division held that the Constitution envisages prohibition on conviction or sentence under an ex-post facto law, not trial of offence or the procedure to be followed in the investigation, inquiry in respect of an offence alleged to have been committed.

In Government of Bangladesh-v-Sheikh Hasina and another (60 DLR AD, Page-90) this Division expressed, prohibition under Article 35 does not extend at the time of the commission of the offence or trial by a court different from that which had competence at that time can not ipso facto be held to be unconstitutional.

Even the US Supreme Court arrived at identical decision in the case of Dobbert-v-Florida (432 US 282, 1977), holding that procedural changes in the law are not ex post facto, in

respect to a Florida statute which altered the methods used in determining whether death penalty is to be imposed but not changing the amount of punishment for the crime. It was held that the change was both procedural and ameliorative and hence not ipso facto.

In the case in hand I am in inflexible concord with the views of the majority of the amici that the amendment in question was but procedural, not substantive.

I also find no reason not to uphold Mr. Hussain's view that the retrospective amendment did not increase or alter the Appellant's risk to face capital punishment, as he was, in 1971 aware of the risk because the alleged acts were punishable offences under the Customary International Law and by committing and attempting to commit the alleged offences the Appellant swallowed the risk of being sentenced to death (Nuremberg Judgment based Customary International Law endorsed capital punishment), and as such the Appellant's substantive right faced no derogation.

Mr. Hussain's articulation goes hands in glove with Nuremberg Tribunal's ratio that nullem crimen lege principle would not apply as there could be no doubt that the accuseds therein knew they were acting in defiance of International Law. Judge Rolling of the Tokyo Tribunal also made same enunciation.

In this contex Mr. Ajmalul Hussain QC submitted that the Appellant always knew that what he was doing may lead him to the gallow and hence he can not now say, as he is saying.

We are also in agreement with the proposition that Article 47 of the Constitution firmly stands against the Appellant in any event.

Majority of the amici curea opined that this Division, can, in any event enhance the sentence, not only under Article 104 but also under the general principle of Criminal Jurisprudence. Mr. Mahmudul Islam expressed that under the doctrines of enhancement as well as the principle of fundamental fairness, this Division can enhance sentence irrespective of the prosecution's Appeal.

Prof. Rafiqul Islam's, supra, under quoted observation also makes sense. "The previous appeal provision suffered from the lack of parity of appeal right in that it offered the losing party an unqualified right to appeal but the winning party had only a qualified right to appeal,

which was discriminatory and unjust in any standard. Through the recent amendment, Parliament has merely addressed this anomaly in the legal right to appeal. If it is argued that this amendment and its retroactive application would compromise the due process, it must also be noted that the previous imbalanced appeal arrangement significantly militated against the due process to which the winning party was entitled to. This recent amendment was in order and indeed imperative to render justice and the due process to all parties equally." (Daily Star, dated 30th March 2013).

Those familiar with English constitutional law are aware of the fact that after the House of Lord's decision in Burmah Oil Company-v-Lord Advocate (1965, AC 75), the British Parliament enacted War Damage Compensation Act 1965 reversing the benefit Burmah Oil received from the House of Lord's Judgment. One may say that only a sovereign Parliament as the British Parliament is, can do it and no Parliament with trammelled power can do so. My reply is that Article 47 has in fact granted a kind of untrammelled power on our Parliament to legislate upon those who came within the ambit of that Article.

Sentence

Having so found I shall now address the moot question i.e. whether the sentence was lenient and whether the same should be enhanced to capital punishment.

This is obviously a very sensitive and touchy issue which can not be resolved lightly but deserves highest degree of consideration and deep introspection, the reason why I have explored and examined a wide range of authorities, from various jurisdictions.

It is true that capital punishment does not have a place in the statute of many countries, while it is true, equally well, that death sentence is not only prevalent in a plethora of countries, inclusive of some component States of the

United States of America, but its application is quite frequent in countries like Malaysia, Indonesia, Middle East, Iran, India, Pakistan and so on. Most of these countries profess the "deterent " rather than "retribution" doctrine yet reckon in certain felonies capital punishment provides appropriate deterrence. Consequences such as damage, predicament, ordial, trauma, harm etc. suffered by the victim and his/ her near ones are taken into account. In Bangladesh death sentence is prescribed not only by the Act but also by the Penal Code, the Special Powers Act and Women and Children Repression Act 2003. Demand for restoration of death sentence is quite ripe in the U.K.

Principle of Sentenceing in International Law- Rome Statute.

Article 78 of ICC statute dictates, " In determining the sentence, the court shall,………. take into account such factors as the gravity of the crime and the individual circumstances of the convicted persons".

Article 80, then stipulates, "Nothing in this part affects the application by States of penalties prescribed by their national law, nor the law of states which do not provide for penalties prescribed in this part.

145.- 1. In its determination of the sentence pursuant to article 78, paragraph 1, the Court shall:

(a) Bear in mind that the totality of any sentence of imprisonment and fine, as the case may be, imposed under article 77 must reflect the culpability of the convicted person;

(b) Balance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and of the crime;

(c) In addition to the factors mentioned in article 78, paragraph 1, give consideration, inter alia, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted

person; the degree of intent; the circumstances, manner, time and location; and the age, education, social and economic condition of the convicted person.

2. In addition to the factors mentioned above, the Court shall take into account, as appropriate:

(a) Mitigating circumstances such as:

(i) The circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;

(ii) The convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court;

(b) As aggravating circumstances:

(i) Any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature;

(ii) Abuse of power or official capacity;

(iii) Commission of the crime where the victim is particularly defenceless;

(iv) Commission of the crime with particular cruelty or where there were multiple victims;

(v) Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3;

(vi) Other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.

On Death Sentence

Article 6(2) of the International Covenant on Civil and Political Rights which has by now, assumed the status of Customary International Law, affirms that in states that retain capital punishment, the death penalty may only be imposed for the 'most serious crimes'. Human rights monitoring mechanisms support the view that this concept is confined to murder. (Page-41, Uimaginable Atrocities, Justice, Politics, and Rights at the War Crimes Tribunal, ProfessorWilliam Schabas OC , MRIA. Oxford University Press)

Other UN Originated Tribunals.

In determining the appropriate term of imprisonment the ad hoc Tribunals shall have recourse to the sentencing practice of the Courts of Rwanda and the former Yugoslavia (see Article 23 (1) of the ICTR Statute ad 24 (1) ICTY Statutes). The Statutes expressly make

reference to the gravity of an offence and the individual circumstances of an accused as factors to consider in imposing sentence (see Articles 23(2) and 24(2) respectively). Article 19 of the Statute establishing the Special Court for Sierra Leone requires the court to have recourse to the sentencing practice of the ICTR and the national practice of the courts of Sierra Leone. The ECCC Law and Internal Rules are silent on this matter. Article 24(1) of the Statute of the Special Tribunal for Lebanon provides that the Trial Chamber shall, as appropriate, have recourse to international practice regarding prison sentences and to the practice of the national courts of Lebanon (also see STL rule 172 (B) (iii).

The Rome Statute and ICC Rules of Procedure and Evidence do not require that recourse be had to the sentencing practice of the territory where the crime was committed, though the ICC will not be prevented from considering such laws under Article 76(1) if relevant to the imposition of an "appropriate" sentence.

Article 78(1) of the Rome Statute requires the Court to take into account the gravity of the crime and the individual circumstances of the convicted person. The ICC Rules of Procedure and Evidence further provide that the sentence imposed "must reflect the culpability of the convicted person" (Rule 145 (1) (a) and "balance all the relevant factors including any mitigating and aggravating factors and consider the circumstances of both the convicted person and the crime" (Rule 145 (1) (b). Rule 145 (1) (c) details additional factors relevant in the assessment of the appropriate sentence.

The Rules of Procedure and Evidence of the ICTY, ICTR SCSL, and STL refer to aggravating circumstances and mitigating circumstances, including substantial cooperation with the Prosecutor, as additional factors for consideration in sentencing (see Rule 101 (B) of ICTY, ICTR and SCSL Rules of Procedure and Evidence. Also see Rule 172 (B) (i)(ii) of the STL Rules of Procedure and Evidence). The ECCC. Internal Rules are silent on such matters.

The Code of Crimes against the Peace and Security of Mankind finally adopted in 1996 (Article- 3 UN 2 DOC Report) stated the punishment shall be commensurate with the character and the gravity of the crime."

Sentencing-British Practice

A cardinal principle was evolved as early as in 1909 in re-Tarrison (1909, 2 Cr. A.R 94). It was stated that body of decision worthy of being called a jurisprudence has grown up. From The earliest days, the court of Criminal Appeal (now the court of Appeal, Criminal Division) established certain procedural principle. One was that the statutory maximum sentence should be reserved for the worst possible case.

Another principle was enunciated in re-Gumbs

(1926, 19 Cr. App. R.74) which is that the Court should only alter a sentence if it is wrong in principle.

In Attorney General's reference no. 7 of 1989, it has been stated that a sentence will be increased if it is outside the proper limits of a Judges discretion. (1990, 2 Cr. A.R (s) 1).

Lord Lane expressed "Sentencing is an art, not a science.

A British white Paper, says "If the punishment is just, and in proportion to the seriousness of the offence, then the victim, the victim's family and friends, and the public will be satisfied that the law has been upheld and there will be no desire for further retaliation or private revenge." (white Paper 1990, para 2.3)

Lord Taylor CJ expressed, "The seriousness of an offence is clearly affected by how many people it harms and to what extent. For example, a violent sexual attack on a woman in a public place gravely harms her. But if such attacks are prevalent in a neighbourhood, each offence affects not only the immediate victim, but women generally in that area, putting them in fear and limiting their freedom of movement. Accordingly, in such circumstances, the sentence commensurate with the seriousness of the offence may need to be higher than elsewhere. (1993 14 Cr. App. R 448).

That in a case of aggravated offence, the sentence should be harsher is reflected in the decision arrived at by the Court of Appeal in Hindawi (1998 10 Cr. App. R. (s) 104), where 45 years prison sentence for placing a bomb in the bag carried by the accused's pregnant girl friend, who was destined to board an aircraft, which if exploded, could have killed some 360/370 passengers, was held to have been apposite, stating it was "not a day too long"

In Allen and Bannett (1988 10 Cr. App. R (s) 4, 66) it was held that greater culpability is probably the answer where an offender commits crime against a vulnerable victim: there is a

widely shared view that it is worse to take advantage of a relatively helpless person and so the offender is more culpable if aware that the victim is specially vulnerable.

Re Boswell (1982 4 Cr.App.R (s) 317) is a case which shows that decision on violence against young children emphasise their helplessness as a prominent reason for aggravating the sentence in these types of cases. Not only greater culpability but greater harm are also to be reckoned.

Eichmann's Sentence

The following observation was made on sentence;

" He (the appellant) was not coerced into doing what he did and was not in any danger of his life for, as we have seen above, he did much more than was demanded of him or was expected of him by those who were his superiors in the chain of command. No one would have taken him to task, and he would certainly not have been brought to the gallows, had he – to give one example- based himself on the assent of Hitler and Ribbentrop to the emigration to Sweden and Switzerland of a few tens of thousands of Jews (see paragraph 16(e) above), and had he not undermined it so wickedly and slyly.

The Appellant never showed repentance or weakness or any weakening of strength or any weakening of will in the performance of the task which he undertook. He was the right man in the right place, and he carried out his unspeakably horrible crimes with genuine joy and enthusiasm, to his own satisfaction and the satisfaction of all his superiors. The conditions of 'necessary' provided in Section 18 of the Criminal Code Ordinance therefore were not in any way present here, and the Appellant would have been liable to the death penalty under Section 1 of the Nazis and Nazi Collaborators (Punishment) Law, 1950, even if the defence provided by Section 18 of the Ordinance had not been excluded by Section 8 of the Law, in respect of offences set out in that law. All the more so now that that defence has been excluded. For no one has even so much as suggested that the Appellant "did his best to reduce the gravity of the consequences of the offence" or that he did what he did with intent "to avert consequences more serious than those which resulted from the offence" (sub-sections (a) and (b) of Section 11 of the Law).

There was here, therefore, neither any 'necessity' within the meaning of Section 18 of the Ordinance, nor any 'extenuating circumstances' within the meaning of Section 11 of the Law, and the Appellant deserves the punishment to which he was sentenced by the District Court."

US Supreme Court's Refusal

Some of those convicted by the US Military Tribunal in Nuremberge challenged death sentences imposed upon them to the US Supreme Court, but the said Court refused to interfere (Phl et al-v-Achesonet, Schallmermair et al-v-Marshall, Order dated 6th June 1951, 15 TWC 1198-240.

Indian Practice

Mohammad Ajmal Mahmmad Amir Kasab –v-State of Moharastra Criminal Appeal No. 1899-19000 of 2011.

The Supreme Court of India has laid down vivid principles on aggravated sentence in the above noted case in following terms;

"The High Court, too, has noticed that the appellant never showed any remorse for the large-scale murder committed by him.

The alternative option of life sentence is thus unquestionably excluded in the case of the appellant and death remains the only punishment that can be given to him.

The Constitutional validity of death penalty was tested in Bachan Singh v. State of Punjab [105] and in that case a Constitution Bench of this Court, while upholding the Constitutional validity of death sentence, observed that the death penalty may be invoked only in the rarest of rare cases. This Court stated that: "For persons convicted of murder life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

The Bachan Singh principle of the 'rarest of rare cases' came up for consideration and elaboration in Machhi Singh v. State of Punjab [106]

In Machhi Singh this Court observed that though the "community" revered and protected life because "the very humanistic edifice is constructed on the foundation of reverence for life principle" it may yet withdraw the protection and demand death penalty. The kind of cases in which protection to life may be withdrawn and there may be the demand for death penalty were then enumerated in the following paragraphs: " It may do so "in rarest of rare cases" when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance: 1. Manner of commission of murder. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance, (i) when the house of the victim is set aflame with the end in view to roast him alive in the house. (ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death. (iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner. II. Motive for commission of murder. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course for betrayal of the motherland. III. Anti-social or socially abhorrent nature of the crime. (a) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance. (b) In cases of "bride burning" and what are known as "dowry deaths" or when murder is committed in order to remarry for the sake of extracting

dowry once again or to marry another woman on account of infatuation. IV. Magnitude of crime. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed. V. Personality of victim of murder. When the victim of murder is (a) an innocent child who could not have or has not provided enen an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-à-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

This case has shocked the collective conscience of the Indian people as few other cases have.

The offences committed by the appellant show a degree of cruelty, brutality and depravity as in very few other cases.

Against all this, the only mitigating factor is the appellant's young age, but that is completely offset by the absence of any remorse on his part, and the resultant finding that in his case there is no possibility of any reformation or rehabilitation.

Putting the matter once again quite simple, in this country death as a penalty has been held to be Constitutionally valid, though it is indeed to be awarded in the "rarest of rare cases when the alternative option is unquestionably foreclosed." Now, as long as the death penalty remains on the statute book as punishment for certain offences, including "waging war" and murder, it logically follows that there must be some cases, howsoever rare or one in a million, that would call for inflicting that penalty. That being the position we fail to see what case would attract the death penalty, if not the case of the appellant. To holdback the death penalty in this case would amount to obdurately declaring that this Court rejects death as lawful penalty even though it is on the statute book and held valid by Constitutional benches of this Court".

In respect to the case in hand, I have given utmost thought to the question of sentence, because although under our law death sentence where it is permissible, is the norm, one can not put out of his though, as the Indian Supreme Court expounded in Bachan Singh-v-State of

Punjab, “A real and abiding concern for the dignity of human life postulates resistence to taking a life through law’s instrumentality. That ought to be done save in the rarest of rare cases when alternative option is unquestionably foreclosed.”

I also deeply considered the expression the same court put on record in Machhi Sing-v-State of Punjab, which are, “though the community revered and protected life because the very humanistic edifice is constructed on the foundation of reverence for life principle” it may yet withdraw the protection and demand death penalty”.

Although the Indian law is different from the provision in the Act in that while in India capital punishment falls within exception, the Act has put “death” sentence first in the order, in my view, ordaining that death should be the rule while other sentences should rank below death. I am in no doubt that the concept of reverence for life is universal and hence death sentence should only be inflicted when no other sentence would be commensurate with the offence.

There are offences which are so outrageous which, in the language of the Indian Supreme Court, ‘shock the collective conscience of the people.’

Having placed all the evidence under microscopic scanning, I remain astutely convinced that the offence described in charge no. 2 and 6 are so grotesque that question of alternative sentence is unquestionably foreclosed. There is no mitigating factor.

Offecnes under charges 2 and 6 are so abhorring that sparing the Appellant from the gallows would be tantamount to frustrating the general will of the Parliament, which by placing death sentence at the top of the list of sentences in Section 20(2), must, in my view, had in mind the offences enumerated in charges 2 and 6.

Life is, no doubt precious, but the Appelalnt himself caused wanton destruction of many precious lives in a fiendish manner generating some kind of reign of terror in 1971 which ignited wholesale indignation. His victims were helpless. He aided and abeted in the commission of worst kind of rape over two minor girls, one of whom succumbed to the carnal assault, in a profoundly reprehensible savage and repulsive manner which is bound to put on turmoil any conscience. Killing of Hazrat Ali’s minor son and Meherunnesa was too gruesome

to be contemplated. These are the acts that in 1971 shocked world conscience, compelled several million people to take sanctuary in India.

In my view his culpability is in no way lesser than that of any of the eleven people that were hanged on 6th October 1946 persuant to the conviction, Nuremberg Tribunal passed, or that of Ajmal Kasab who was sent to the gallow by the Indian Courts notwithstanding that death sentence is exception in India.

In chorus with the Indian Supreme Court I would say logically there must be some cases that would call for infliction of death penalty, and in my reckoning this is one of such cases.

Having underscrored the egregious and beastly nature of the offences the Appellant committed leaving behind trail of pain and sorrow for the victims or their families and indeed for the nation as a whole, which may last for ever, question of lenient sentence can not arise. The offences he committed can only be perpetrated by a person of diabolic perception. In the light of the decadent and draggy relics his horrendous acts left behind, the misery he unleashed, there is no punishment in worldly laws grave enough to match the offences he had committed.

I am therefore inclined to sentence him to death for the offences under charge 6. Although he deserves same sentence for the offences under charge 2, since the Appellant can not be hanged twice, I shall confine my death sentence for the offences under charge 6 only.

In passing this sentence I have taken account of the predicament the victims and their close ones have been subjected to as well as the general impact it radiated on the society in its entirety. His monostrosity must have stunned all righteous people, not only in 1971 but also afterwards, may be through eternity, not only in Bangladesh but beyond. As such death is the only appropriate sentence. His acts were inconceively ominous, frenzied and demonlike. Traumatic wounds his paws caused for the whole society, will never be healed.

Hence, the Criminal Appeal No. 25 of 2013, lodged by Abdul Quader Molla, Son of late Sanaullah Molla of village Amirabad, District Faridpur, Dhaka address Flat no. 8/A Green Valley Apartment, 493 Boro Moghbazar, P.S. Ramna, Dhaka, presently held at Kashimpur Jail, Gajipur, is dismissed.

The Chief Prosecutor's Appeal No. 24 of 2013 is found to be maintainable and the same is allowed on both the counts, namely that the Tribunal misdirected itself in holding that charge No. 4 has not been proved and the sentence is disproportionate to the gravity of the offence, wherefor the judgment passed by the Tribunal No. 2 dated 5th February, 2013 acquitting the afore named Abdul Quader Molla from charge No. 4 is set aside, instead he is found guilty of Charge no. 4 as well for Crime Against Humanity under Section 3(2) of the International Crimes (Tribunals) Act 1973 and is sentenced to imprisonment for life for the offences in Charge No. 4.

The Chief Prosecutor's Appeal No. 24 of 2013 in respect to lenient sentence is also allowed. While the order of conviction passed by the Tribunal No. 2 in respect to offences under charge No.6 is affirmed, the sentence handed down for those offences in charge No. 6, namely, imprisonment for life, being too lenient and disproportionate to the felonies the Appellant had committed , the same is set aside. Aforenamed Appellant Abdul Quader Molla is, instead, sentenced to death by hanging in the neck for the offences committed under charge No. 6 under Section 3(2) of the International Crimes (Tribunals) Act 1973.

Convictions and sentences passed by the Tribunal No. 2 on Charges Nos. 1,2,3 and 5 are also affirmed.

Let Abdul Quader Molla, named and identified above, be hanged till death.

Let a copy of this judgment be placed before all concerned.

J.

COURTS ORDER

Criminal Appeal No.24 of 2013 filed by the Government is found to be maintainable unanimouly. The appeal is allowed by majority. The order of acquittal passed by the International Crimes Tribunal No.2 in respect of charge No.4 is set aside by majority and the respondent is found guilty of the said charge as well. He is sentenced to imprisonment for life of

that charge. He is sentenced to death by majority of 4:1 in respect of charge No.6. He be hanged till death.

Criminal Appeal No.25 of 2013 filed by Abdul Quader Molla is dismissed unanimously. The conviction in respect of charge No.6 is maintained unanimously. The conviction and sentence passed in respect of charge Nos.1, 2, 3 and 5 are maintained by majority of 4:1.

C.J.

J.

J.

J.

J.

The 17th September, 2013
Mohammad Sajjad Khan

APPROVED FOR REPORTING